

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. UK3912640 LIGHT VITAMIN

IN THE NAME OF SHENZHEN KAIYAN MEDICAL EQUIPMENT CO. LTD.

AND OPPOSITION THERETO NO. 442785

BY OUTSIDE IN (CAMBRIDGE) LIMITED

DECISION

1. This is an appeal by the Opponent/Appellant, Outside In (Cambridge) Limited, against a decision of Hearing Officer Mr Arran Cooper (the Hearing Officer) dated 18 June 2025 in which he dismissed the opposition in full.
2. The mark applied for by the Applicant/Respondent, Shenzhen Kaiya Medical, is for LIGHT VITAMIN in classes 9, 10 and 42. The relevant priority date is 5 January 2023.
3. The opposition is based upon prior registration VITAMIN L in classes 10 and 11, registered on 20 April 2007, under ss.5(2)(b) and 5(3) Trade Marks Act 1994 as follows:

Class 10: Medical instruments and apparatus; lights and light apparatus for use in the field of light therapy.
Class 11: Apparatus for lighting including lighting connected to alarm clocks.
4. Neither party requested a hearing and the decision was taken by the Hearing Officer based upon the papers.
5. Before me at a hearing taking place on 15 December 2025 the Opponent/Appellant was represented by Ben Longstaff, instructed by Harrison IP. The Applicant/Respondent did not take part in the appeal proceedings.

STANDARD OF APPEAL

6. There was no dispute as to this. The principles are set out in the well-known cases of *Axogen v Aviv Scientific* [2022] EWHC 95 (Ch), *Lifestyle Equities v Amazon* [2024] UKSC 8 and *Iconix v Dream Pairs* [2025] UKSC 25.

7. The Appellant cited my previous summary of the principles in *SOCIAL WORK NEWS O/0050/24*) at [13]:

To paraphrase, an appeal should only be allowed where the decision of the lower court was “wrong”. Absent an error of law, the appellate court would be justified in concluding that the decision of the lower court was wrong if the judge’s conclusion was “outside the bounds within which reasonable disagreement is possible”. In the case of a multifactorial assessment and in the absence of a distinct error of principle, the appeal court should show a real reluctance, but not the very highest degree of reluctance, to interfere.

8. I have sought to apply those principles. It is not enough that a different tribunal might have reached a different conclusion; I must be satisfied that the Hearing Officer was wrong in the conclusion he reached.

9. Finally, in relation to one of the specific grounds pursued in the present case, namely the “classification” of the similarity of the marks, I also bear in mind the guidance of Arnold LJ in *TVIS Ltd v Howserv Services Ltd* [2024] EWCA Civ 1103; [2025] ETMR 2 at §95 where he held at §§33-35 (emphasis added):

Ground 1: Visual and aural similarity

33. TVIS argues that the judge erred in holding that PETSURE is, visually and aurally, merely “similar” to VETSURE and that he should have held that it was highly similar.

34. I do not accept this argument for two reasons. The first is that no error of principle on the part of the judge has been identified. **The assessment of the degree of visual and aural similarity between a sign and a trade mark is a matter for the first instance tribunal.** Nor can it be said that the judge’s assessment is plainly wrong.

35. **The second and more fundamental reason is that, while it is conventional for first instance tribunals in trade mark cases to articulate their assessment of the degree of visual and aural similarity between signs and trade marks using words such as “high”, “medium” or “low”, there is no legal requirement for**

tribunals to do so. All that is required is for the tribunal to assess the nature and extent of any similarities. This is because what matters is not the verbal label that is applied to the assessment, but whether the similarities in conjunction with the other factors which must be taken into account lead to a likelihood of confusion. It is possible for there to be no likelihood of confusion despite a relatively high degree of visual and aural similarity. Equally it is possible for there to be a likelihood of confusion despite a relatively low degree of visual and aural similarity. It depends on the other factors that are in play.

THE HEARING OFFICER'S DECISION

10. The Hearing Officer's findings can be summarised as follows:

- (a) On proof of use, the Hearing Officer noted that the evidence did not give details of advertising spend, unit sales or turnover in the UK. Nevertheless, he was satisfied that use had been demonstrated for the Opponents Vitamin L light product to treat seasonal affective disorder.
- (b) He reasoned that this amounted to use of the goods in class 10 for "lights and light apparatus for use in the field of light therapy" but that use for the other goods in class 10 and 11 had not been demonstrated.
- (c) In relation to the Applicant's proposed classes of goods/services, he held that the class 9 goods, most of the class 10 goods and the class 42 services were dissimilar, but that "Visible light treatment instruments; Apparatus for phototherapy; LED masks for therapeutic purposes" in class 10 were identical.
- (d) The average consumer was a member of the public looking for light therapy treatments, and the selection of such goods was primarily visual with a medium degree of attention.
- (e) Comparing the marks, the Hearing Officer found that they were visually, aurally and conceptually similar to a medium degree. He held that the Opponent's mark enjoyed a medium degree of inherent distinctive character but no enhanced distinctive character because of the lack of precision and clarity in the Opponent's evidence.
- (f) Applying the global test based on the above, he rejected the contention that there was a likelihood of direct or indirect confusion.

- (g) He also rejected the s.5(3) grounds, holding that the Opponent had demonstrated insufficient reputation to get it off the ground, and that there was also no link between the marks.

GROUND OF APPEAL

11. Mr Longstaff addressed the appeal under five headings, alleging errors which apply cumulatively as follows:
 - (a) Error in the assessment of the Appellant's evidence of use, going to both the goods and acquired distinctiveness/reputation.
 - (b) This resulted in the wrong identification of the appropriate fair specification.
 - (c) The assessment of similarity of goods was consequently wrong. Even on his own assessment of the appropriate specification, the Hearing Officer was wrong to find no similarity at all with classes 10 and 42.
 - (d) The assessment of indirect confusion failed to take into account the conceptual similarity between the marks in issue.
 - (e) The Hearing Officer wrongly held that no link would arise for the purposes of s.5(3). Had he not erred in relation to reputation and the key conceptual similarity between the marks, he ought to have held that the relevant link would inevitably arise in the minds of consumers.
12. I will deal with the alleged errors under each of these headings below, but I will start with the point about the specification of goods.

Assessment of Use – Goods & Fair Specification

13. The Hearing Officer criticised the vagueness of the Opponent's evidence. I think there was some justification for this. Parties should not expect hard-pressed tribunals to have to piece together pages of an exhibit in order to work out the total number of units said to have been sold. It would have been much better if the total had been provided in Mr Cridland's witness statement, or at the very least in the written submissions provided by the Opponent to the Hearing Officer.
14. Nevertheless, the Hearing Officer did accept that the Opponent had demonstrated use through sales with Amazon, John Lewis and Boots of the product depicted in the evidence for sale on amazon.co.uk as follows:

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Roll over image to zoom in

Lumie Vitamin L, Slim Light Box for Effective SAD Light Therapy, White

[Visit the Lumie Store](#)

4.7 2,023 ratings

| 148 answered questions
3K+ bought in past month

Deal

-39% £59.99

RRP: £99.00

FREE Returns

Available at a lower price from other sellers that may not offer free Prime delivery.

Style Name: **Vitamin L - ...**



£59.99



£198.00



£174.00

Style Vitamin L - Slim Light Box

Brand Lumie

Colour White

Product dimensions 3D x 20W x 28H centimetres

Special feature Energy Efficient, Lightweight

☐ Yes, I want a free trial with **FREE Premium Delivery** on this order.
[amazon prime](#)

Delivery

Pickup

£59.99

FREE Returns

FREE delivery **Friday, 22 December**. [Details](#)

Or fastest delivery **Tomorrow, 20 December**. Order within **2 hrs 27 mins**. [Details](#)

Arrives before Christmas

Delivering to Morecambe LA3 – [Update location](#)

In stock

Quantity: 1 ▾

Add to Basket

Buy Now

Dispatches from Amazon

Sold by Amazon

Returns Returnable until Jan 31, 2024

Payment Secure transaction

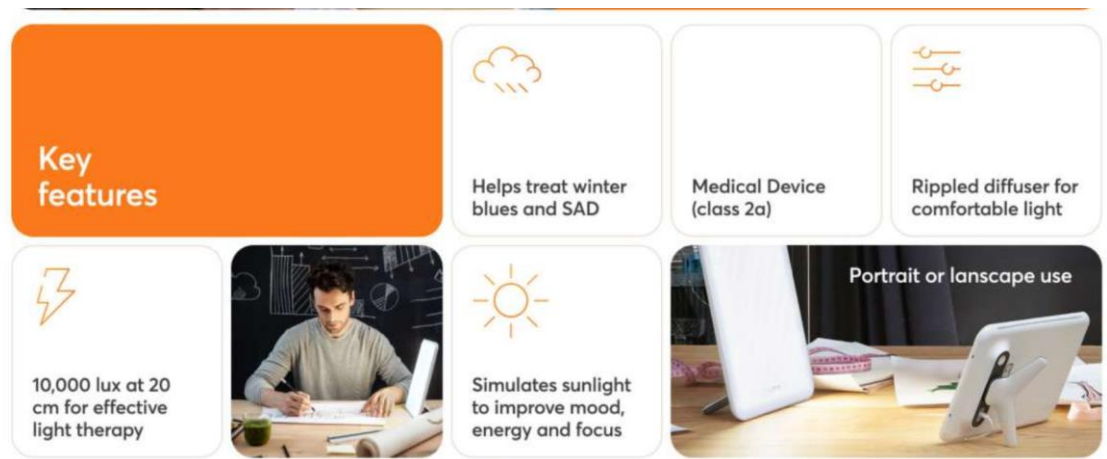
✓ [See more](#)

☐ Add gift options

Add to List

New & Open box (8) from **£57³²** & **FREE Delivery**.

15. Other parts of the Amazon sales page included the following:



Product information

Technical Details

General Information

Product Name	Lamp
Units	1.0 count
Brand	Lumie
Country of origin	China

Additional Information

ASIN	B073P2WNDS
Customer Reviews	4.7 ratings 2,023 4.7 out of 5 stars
Best Sellers Rank	904 in Health & Personal Care (See Top 100 in Health & Personal Care) 2 in SAD Lights
Date First Available	3 July 2017

16. The issue for the Hearing Officer was to identify the goods in the specification for which use had been demonstrated. Before me, Mr Longstaff was keen to point out that the numbers of units sold to Amazon in the exhibit exceeded 15,000 and that potential uses of the product included as a domestic lamp as well as a class IIa medical device.
17. The Hearing Officer rejected the suggestion that the evidence supported the notion that the goods could be used for decorative purposes. I think he was right to do so. The publicity material provided in evidence emphasised the properties of the devices for treating Seasonal Effective Disorder. There was insufficient basis in the evidence (which I have reviewed) to demonstrate that the goods were sold and/or used as domestic lamps. These would normally be registered in Class 11 of the Madrid Classification which covers Apparatus and installations for lighting. So the Hearing Officer was entitled to hold that use within the class 11 specification had not been shown.
18. However, I have more difficulty with the Hearing Officer's decision to exclude "medical instruments and apparatus" from the notional specification based on lack of proof of use. The Hearing Officer explained that because the Opponent only sold

one product under the Vitamin L brand, it was not appropriate to permit the specification to be maintained for “medical instruments and apparatus”. However, it is clear from the evidence that the Vitamin L product is sold as a medical device. Indeed, the Hearing Officer relied in his §30 on the advertisement of the product’s medical nature to dismiss the class 11 claim. So in this respect I consider that the Hearing Officer went wrong.

19. The Opponent conceded that the specification might more fairly be characterised as “Medical instruments and apparatus for lighting and light therapy”. I agree.
20. So I consider that a fair specification to reflect the evidence submitted under the proof of use requirements would be:

Class 10: Medical instruments and apparatus for lighting and light therapy; lights and light apparatus for use in the field of light therapy.

Assessment of Use – Reputation

21. The appeal on reputation was founded on the numbers of sales to Amazon, mentioned above, and the fact that, as also shown above, the Vitamin L product was said to be the No. 2 seller in SAD lights on the Amazon webpage. Mr Cridland put it as follows:
 10. Exhibit JC3 to this statement is an extract of the Vitamin L listing page on www.amazon.co.uk. The exhibit reveals that Vitamin L:
 - 10.1 has been available on www.amazon.co.uk since 3 July 2017;
 - 10.2 is ranked no. 2 in SAD lights according to Amazon sales data; and
 - 10.3 has an average rating or review score of 4.7 out of 5 stars based on more than 2,000 ratings.
22. The Hearing Officer had highlighted the paucity of the evidence, explaining in §28 that it was “*missing a range of key information usually adduced in order prove genuine use*”. He gave examples of turnover and advertising spend. I agree that the evidence was deficient in this respect. The Opponent sought to justify this by saying such material was confidential. That may be, but there are ways of filing such information at the Registry whilst protecting it from being made public, so this is no real excuse.
23. The Hearing Officer also rejected reliance on the sales ranking, explaining:

Dealing with these in turn, it is my understanding that the ratings are global ratings and could stem from purchases outside of the UK or from other Amazon platforms. In respect of the category, I have nothing to suggest the size of the category at issue and, further, whether this is a category that relates to global use.

24. Mr Longstaff criticised this finding and said there was no basis for the Hearing Officer to have made it. But as can be seen from Mr Cridland's evidence above, he did not explain what the ranking related to. Further, it is notorious that there are many ways of boosting listings on Amazon and without a verifiable explanation for the basis of the ranking, which was neither provided by Mr Cridland nor in submission, the Hearing Officer was entitled to be sceptical. The Opponent did not attempt to provide any information about the size of the relevant market within the UK generally, or its position within it. I therefore refuse to interfere with the conclusion of the Hearing Officer that the Opponent had not made out in the evidence basis for enhanced distinctiveness.
25. I also bear in mind that the Opponent's mark is a secondary mark for the specific VITAMIN L product, and that is accompanied by the name of the manufacturer, Lumie, which is the primary indicator of origin. This further weakens any claim to enhanced distinctive character of VITAMIN L through use, particularly in light of the paucity of the evidence served.

Similarity of Goods

26. It is necessary for me to re-evaluate this part of the Hearing Officer's Decision because I have arrived at a different specification based upon use. However, having done so, I arrive at the same list of identical goods, namely "*Visible light treatment instruments; Apparatus for phototherapy; LED masks for therapeutic purposes*". Further, there are no other goods or services which I consider to be similar.
27. The Opponent argued before me that I should find the Hearing Officer fell into error in rejecting the submission that the Class 42 services "*Research and development in the field of lighting products, namely, light bulbs, lamps, luminaires, lighting fixtures, LED modules, and LCD backlighting modules; Research and development in the field of light therapy*" were similar to the goods that the Hearing Officer identified as having been used by the Opponent. I decline to do so. I do not consider that the Hearing Officer was "wrong" to conclude as he did in §46. The services differ in nature and purpose to the goods, and there are different trade channels and users. Although, as the Hearing Officer recognised, research into light therapy goods is

important to the products themselves, I think the Hearing Officer was entitled to find no complementarity based on the material before him.

Comparison of Marks

28. The Opponent's appeal on likelihood of confusion focussed on the Hearing Officer's finding of medium conceptual similarity. It was suggested that the consumer would obviously see the L in VITAMIN L as a reference to light, and so LIGHT VITAMIN would be seen as highly conceptually similar to VITAMIN L.
29. Mr Longstaff submitted that the Hearing Officer wrongly ignored the nature of the goods in reaching his decision. He had cited the decision of Professor Phillip Johnson in *Emiliana* (BL O/054/22) where the Appointed Person observed that *"[w]hen assessing the conceptual similarity of two marks, this is usually done without reference to the goods or services in question (the similarity of goods coming into the assessment at the stage of determining the overall likelihood of confusion)"*.
30. I agree that when making a comparison of conceptual similarity, it is usually possible to do this without reference to the goods. However, I do not agree that the preceding assessment of conceptual meaning should always take place without any reference to the goods or services. In particular, where there is a potential link between the conceptual meaning of the mark and the goods to which it is affixed, it is necessary to have the goods in mind to determine whether there is any conceptual allusion to them.
31. The Opponent cited §11-051 of the current edition of Kerly to me, and its reference at footnote 83 to the Irish case *Pat Walsh v British Sky Broadcasting Group* [2013] ETMR 27:

11-051

In order to assess the degree of similarity between the marks concerned, the court or tribunal must determine the degree of visual, aural (or phonetic) and conceptual similarity between them⁸² and, where appropriate, evaluate the importance to be attached to those different elements taking account of the category of goods or services in question⁸³ and the circumstances in which they are marketed.

83 In *Pat Walsh v British Sky Broadcasting Group* [2013] E.T.M.R. 27, the Controller of the Irish Patents Office noted at [73] that when considering conceptual similarity of the marks: "[this] cannot be carried out in complete isolation from the goods or services covered by the mark. Where the mark contains an element that describes the goods or services offered, it conveys a particular type of message to the consumer. For example, the

‘stout’ part of the trade mark GUINNESS STOUT, when affixed to a bottle of stout, may go unnoticed or be subconsciously ignored by the consumer. Here the message the consumer receives is that the stout is from Guinness and not the message of the stout being from Guinness Stout; whereas a tin of beans, bearing the mark GUNNESS [sic] STOUT, gives the message that the beans are from Guinness Stout.” For a EUTM example of a case where, for language reasons, an element of a mark may be descriptive to some but distinctive to others, see *Perfetti Van Melle Benelux BV v OHIM* [2016] E.T.M.R. 17 GC.

32. It is perhaps surprising that there is no English case expressly dealing with the same point. However, I do consider that the assessor should normally consider if the goods have a potential effect on conceptual meaning as a result of any link or allusion between the mark and the goods. Hence, the conceptual meaning of VITAMIN L may be different for light therapy products as opposed to e.g. furniture.
33. To this extent I consider that in the Hearing Officer made an error of law in failing to take into consideration the nature of the goods.
34. In the present case, I think it is significant that the goods are for use in light therapy, and I think that a significant number of consumers will see the L in the Opponent’s sign as standing for light. When combined with VITAMIN, the conceptual suggestion is that the goods will provide a necessary dose of light to the user. The LIGHT VITAMIN mark applied for is perhaps more awkwardly ordered as a matter of language, but I think that both marks are capable of conveying the same conceptual idea (at least for goods which involve the transmission of light) – the provision of a dose of essential light. To that extent I think the Hearing Officer fell into error. Had he taken into account the nature of the goods he would have attributed a higher degree of conceptual similarity to the relevant comparison.

Likelihood of Confusion

35. As I have arrived at a different specification of goods, and as I have held that the Hearing Officer erred in relation to his assessment of the conceptual similarity of the goods, I am obliged to carry out a fresh assessment of the global analysis of likelihood of confusion.
36. To summarise, there are identical goods, members of the public buying the goods by primarily visual means paying a medium degree of attention. The marks are visually and aurally similar to a medium degree and, in my judgment, conceptually similar to a medium to high degree. The Opponent’s mark possesses a medium degree of distinctive character.

37. Doing the best I can, I consider that there will be an element of direct confusion arising from the identity of the goods and the notion of imperfect recollection – “the light therapy lamps which allude to light and also have vitamin in the name”. I therefore consider that the Applicant’s marks should be refused for the following categories of goods in Class 10:

Visible light treatment instruments; Apparatus for phototherapy; LED masks for therapeutic purposes.

38. The remaining classes of goods and services are unobjectionable under s5(2)(b) – I do not consider that there will be direct or indirect confusion, essentially for the reasons given by the Hearing Officer. They are as follows:

Class 9: Ampere-hour meters; Battery testers; Electronic-based instruments for measuring environmental parameters including humidity, mold, bacteria, air quality and water quality; Electronic devices for measuring electric current; Radiation-measuring instruments; Scientific instrumentation for measuring intensity and wavelength of light ; Scientific instrumentation for measuring resistance, voltage, current, frequency and conductivity; Scientific instrumentation for measuring temperature, pressure, humidity, pH level, and force; Scientific measuring instruments, namely, conductivity meters; Voltmeters.

Class 10: Heating pads, electric, for medical purposes; massage apparatus; Electro-stimulation apparatus for use in therapeutic treatment; Apparatus for the electrical stimulation of groups of muscles; Transcutaneous electrical nerve stimulation instruments; Medical radiation apparatus; Hot therapy apparatus; Vibration generating apparatus for massage.

Class 42: Product safety testing services; Radiation measurement services; Research and development in the field of lighting products, namely, light bulbs, lamps, luminaires, lighting fixtures, LED modules, and LCD backlighting modules; Research and development in the field of light therapy; Testing, analysis and evaluation of the services of others to determine conformity with certification standards; Testing, analysis, and evaluation of the goods of others to assure compliance with industry standards.

5(3)

39. The Opponent also appealed under s.5(3). I can deal with this briefly.
40. As will appear from my comments on the quality of the evidence and the Hearing Officer's assessment of enhanced distinctive character, I do not consider that a s.5(3) objection even gets off the ground. The Opponent has just not demonstrated that it has sufficient reputation in the mark through the evidence. It follows that the Opponent's appeal on link also fails.

COSTS

41. Below, the Hearing Officer awarded the Applicant/Respondent £1200.
42. The Opponent/Appellant has had a modicum of success on this appeal, and in relation to goods which are at the heart of its business. However, the Applicant/Respondent has taken no part in the appeal and so I do not consider it appropriate to make a costs award against the Applicant/Respondent on appeal.
43. In order to reflect the decision which I consider the Hearing Officer should have made below, I will reduce the payment which the Opponent has been ordered to pay to the Applicant in respect of the first instance proceedings. I therefore order that the Opponent should pay the Applicant £800 within 21 days of the date of this decision.
44. The Applicant's mark LIGHT VITAMIN should be allowed to proceed to grant in respect of the specification identified in paragraph 38 above.

Thomas Mitcheson KC
The Appointed Person
16 December 2025