

O-526-14

**TRADE MARKS ACT 1994  
IN THE MATTER OF APPLICATION NUMBER 3036032  
BY P Z CUSSONS (INTERNATIONAL) LIMITED  
TO REGISTER THE FOLLOWING TRADE MARK  
IN CLASSES 3 AND 5:**

**CHOCOLATE ORANGE**

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## **CHOCOLATE ORANGE**

### **Background**

1. On 23 December 2013 PZ Cussons (International) Limited ('the applicant') applied to register the words 'CHOCOLATE ORANGE' as a trade mark for the following goods:

Class 3: Non-medicated toilet preparations; preparations for cleansing the skin; preparations for cleansing the skin and having anti-bacterial properties; facial and body moisturising preparations; body creams, milks, lotions; massage oils; aromatic and fragrance preparations; hand creams; emollient creams and washes; soap; liquid soap; personal cleaning wipes; bath creams; bath foams; bath salts; bath oils; bath wash; bubble bath; shower gels; shower creams; shaving preparations; shave gels; shaving creams; shaving foams; after-shave preparations; talcum powder; deodorants and anti-perspirants; foot sprays; hair care preparations; shampoos; conditioners; combined shampoo and conditioners.

Class 5: Disinfectant, sanitary and antiseptic preparations for use on, and cleansing, the skin; wipes and tissues impregnated with any of the aforesaid goods.

2. On 24 January 2014, the Intellectual Property Office ('IPO') issued an examination report in response to the application. In that report, the following objection was raised under sections 3(1)(b) and (c) of the Trade Marks Act 1994:

*"The application is not acceptable in Classes 3 and 5 as there is an objection under Section 3(1)(b),(c) and (d) of the Act. This is because the mark consists exclusively of a sign which has become customary in the relevant trade. A number of other traders already use the term in a way where it appears to function as a descriptive shorthand for 'chocolate and orange' scent, and thereby may designate a desirable characteristic of the goods. This descriptive message would immediately be recognised by the average consumer."*

The examiner substantiated the objection with extracts from the Internet showing third-party use of the term 'chocolate orange' in respect of toiletry products. These extracts consisted of details of sites retailing toiletries such as hand wash, bath preparations and body butter, and all show use of the words 'chocolate orange' appearing as a

description of the fragrance of the goods alongside distinctive marks such as 'Nature's Goodies', 'Sherbert Pip' and 'Superdrug'. These materials are reproduced at Annex A.

3. On 20 March 2014, Nucleus-ip (the agent) responded contesting the objection. The examiner was not persuaded by the agent's arguments, and on 17 April wrote to the agent confirming this, marking the correspondence 'final response' because she did not think they could reach a conclusion in writing. On 16 June 2014 the agent requested an *ex parte* hearing.
4. At the hearing, which was held on 6 August 2014, Mr Preedy argued that the words CHOCOLATE ORANGE have not become customary in the trade to designate the kind of goods (he used the word 'escalator' as an example of word which *has* been used to the extent that it is now perceived as being descriptive). I agreed with Mr Preedy that an objection under section 3(1)(d) was not appropriate as the words CHOCOLATE ORANGE have not become customary in the trade for soaps, hand washes etc. I therefore waived that objection. However, I was not persuaded by the agent's arguments in respect of the objections raised under sections 3(1)(b) & (c), and so maintained those objections and refused the application.
5. On 10 September 2014, the agent submitted a form TM5 requesting a statement for the reasons for the decision. I am now asked under section 76 of the Trade Marks Act 1994 and rule 69 of the Trade Marks Rules 2008 to state in writing the grounds of my decision and the materials used in arriving at it. No formal evidence has been put before me for the purposes of demonstrating acquired distinctiveness. Therefore, I have only the *prima facie* case to consider.

### **The applicant's case for registration**

6. Prior to setting out the law in relation to sections 3(1)(b) and (c) of the Act, I will set out the applicant's case for *prima facie* acceptance of the mark. The agent submitted that:
  - Whilst IPO had obtained and provided a number of pages from the Internet incorporating the words CHOCOLATE ORANGE, this itself does not mean that the word combination is *not* a trade mark. In Mr Preedy's submission, many others may have had the same idea, but they had not sought to register the word combination. In the present case, the Applicant has been the party which has decided to seek protection.
  - The Internet extracts sent with the examination report did *not* support the examiner's objection. Mr Preedy disagreed that the pages showed the words 'chocolate orange' being used descriptively. To the contrary, he considered that those words were being used to indicate the trade origin of the product on which they appear.
  - It is questionable as to what a 'chocolate-and-orange' scent may actually be. He doubted the extent to which it would be uniformly known and/or recognised.

- Use of the expression 'chocolate orange' in relation to the smell of a product would not be affected by registration of this mark. A chocolate-and-orange-fragranced soap would be described in terms such as e.g. 'XYZ brand' chocolate-and-orange-fragranced soap.
  - The agent argued that if one was to request a 'chocolate orange' soap or bath fizzer in a retail outlet, there is absolutely no possibility of there being a collection of such chocolate orange' products in any particular area of the shop. Instead, the term would be perceived as a reference to the trade mark and would not be seen as having any descriptive meaning.
7. In addition to the aforementioned arguments, all of which were presented to me either in written correspondence or orally at the *ex parte* hearing, the agent made an additional submission in the statement attached to the request for a full written decision. In that statement, Mr Preedy made a point about the specific nature of some of the toiletry products contained within the specification, namely those which leave a fragrance on the user after use (such as facial and body moisturizing preparations and body creams), as opposed to those which, whilst being fragranced, are washed away after use (such as hand soap, for example). In this context, and particularly in relation to former type of fragranced product, Mr Preedy contented that the scent of chocolate orange would not be attractive to the individual in the way that, say, rose or lavender would be. At the time, this appeared to me to suggest that the agent was conceding that the term 'chocolate orange' is, at least in respect of some product, capable of indicating fragrance.

## Decision

8. Section 3(1) of the Act reads as follows:

*3.-(1) The following shall not be registered –*

*(a) ...*

*(b) trade marks which are devoid of any distinctive character,*

*(c) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services,*

*(d) ...*

*Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.*

The above provisions mirror Articles 3(1) (b) and (c) of First Council Directive 89/104 of 21 December 1988. The proviso to section 3 is based on the equivalent provision of Article 3(3).

### **Relevant authorities - general considerations**

9. The Court of Justice of the European Union ('CJEU') has repeatedly emphasised the need to interpret the grounds for refusal of registration listed in Article 3(1) and Article 7(1), the equivalent provision in Council Regulation 40/94 of 20 December 1993 on the Community Trade Mark, in the light of the general interest underlying each of them (*Bio ID v OHIM*, C-37/03P, paragraph 59 and the case law cited there and, more recently, *Celltech R&D Ltd v OHIM*, C-273/05P).
10. The general interest to be taken into account in each case must reflect different considerations according to the ground for refusal in question. For example, in the case of the registration of colours *per se* not spatially delimited, the Court has ruled that the public interest is aimed at the need not to restrict unduly the availability of colours for other traders in goods or services of the same type. Also, in relation to section 3(1)(b) (and the equivalent provisions referred to above) the Court has held that "...the public interest... is, manifestly, indissociable from the essential function of a trade mark" (*SatellitenFernsehen GmbH v OHIM* C329/02 (*SAT. 1*)). The essential function thus referred to is that of guaranteeing the identity of the origin of the goods or services offered under the mark to the consumer or end-user by enabling him, without any possibility of confusion, to distinguish the product or service from others which have another origin (see paragraph 23 of the above mentioned judgment).

### **Section 3(1)(c)**

11. There are a number of CJEU judgments which deal with the scope of Article 3(1)(c) of First Council Directive 89/104 and Article 7(1)(c) of Council Regulation 40/94 (the Community Trade Mark Regulation), whose provisions correspond to section 3(1)(c) of the UK Act. I derive the following main guiding principles from the cases noted below:
  - Subject to any claim in relation to acquired distinctive character, signs and indications which may serve in trade to designate the characteristics of goods or services are deemed incapable of fulfilling the indication of origin function of a trade mark (*Wm Wrigley Jr & Company v OHIM*, C-191/01P (*Doublemint*), paragraph 30);
  - Article 7(1)(c) (section 3(1)(c)) pursues an aim which is in the public interest that descriptive signs or indications may be freely used by all (*Doublemint*, paragraph 31);
  - It is not necessary that such a sign be in use at the time of application in a way that is descriptive of the goods or services in question. It is sufficient that it *could* be used for such purposes (*Doublemint*, paragraph 32);
  - It is irrelevant whether there are other, more usual signs or indications designating the same characteristics of the goods or services. The word 'exclusively' in

paragraph (c) is not to be interpreted as meaning that the sign or indication should be the only way of designating the characteristic(s) in question (*Koninklijke KPN Nederland NV v Benelux Merkenbureau*, C-363/99 (*Postkantoor*), paragraph 57);

- An otherwise descriptive combination may not be descriptive within the meaning of Article 3(1)(c) of the Directive provided that it creates an impression which is sufficiently far removed from that produced by the simple combination of those elements. In the case of a word trade mark, which is intended to be heard as much as to be read, that condition must be satisfied as regards both the aural and the visual impression produced by the mark (*Postkantoor*, paragraph 99);
- In *Matratzen Concord AG v Hukla Germany SA*, C-421/04 the CJEU stated that *"...to assess whether a national trade mark is devoid of distinctive character or is descriptive of the goods or services in respect of which its registration is sought, it is necessary to take into account the perception of the relevant parties, that is to say in trade and or amongst average consumers of the said goods or services, who are reasonably well informed and reasonably observant and circumspect, in the territory in respect of which registration is applied..."*;
- I am also mindful of the decision of the General Court (formerly the Court of First Instance) in *Ford Motor Co v OHIM*, T-67/07 where it was stated: *"...there must be a sufficiently direct and specific relationship between the sign and the goods and services in question to enable the public concerned immediately to perceive, without further thought, a description of the category of goods and services in question or one of their characteristics"*.

12. I must also be aware that the test is one of immediacy or first impression, as confirmed by the General Court which, in its decision on *Sykes Enterprises v OHIM (Real People Real Solutions)*, [2002], ECT II-5179, stated:

*"...a sign which fulfils functions other than that of a trade mark is only distinctive for the purposes of Article 7(1)(b) of Regulation No 40/94 if it may be perceived immediately as an indication of the commercial origin of the goods or services in question, so as to enable the relevant public to distinguish, without any possibility of confusion, the goods or services of the owner of the mark from those of a different commercial origin."*

13. It is clear from the aforementioned case law that I must determine, assuming notional and fair use, whether the mark in suit will be viewed by the average consumer as a means of directly designating an essential characteristic of the goods for which registration is sought.

14. The goods at issue are toiletries in class 3 and disinfectants and sanitary preparations in class 5. It is reasonable to assume that the goods claimed will be purchased by the general public and, given the low unit cost of such everyday goods, it is likely that the level of attention given to the purchase will be low. They are not specialist goods, the purchase of which would involve a particular level of knowledge or technical skill in their purchase.

15. I have to determine how I consider the average consumer would understand the term 'chocolate orange' when seeing it on, for example, hand wash or shower gels. In my opinion, when encountered in the *prima facie* case, the term would be understood as indicating fragrance, rather than commercial origin. The Internet hits sent with the examination report fully support this, with the 'Nature's Goodies', 'Bath Buuble and Beyond', 'Superdrug' and 'Sherbertpip' examples all showing either a representation of product packaging and/or product descriptions which indicate fragrance. In the 'Superdrug' example, for instance, the product description reads as follows:

*"...a luxurious infusion of dark chocolate with orange oil..."*

As stated above, full details of the Internet hits sent with the examination report can be found at Annex A.

16. Even without the benefit of such supporting material, I still believe the average consumer would only ever see these words as indicating fragrance. To my mind, there is no doubt that consumers would know what a 'chocolate orange' fragrance is. It is a fact that the smell of both chocolate and oranges (separately) are known and recognisable. And if those smells are combined, even if one was unsure as to the exact nature of the fragrance (in the way, for example, that one might be unsure of the exact fragrance of a 'rose-scented' product due to the differences in fragrance according to the variety of rose), I still believe that the relevant consumer would see the words as denoting smell. The popularity of the well-known confectionery product known as 'Terry's Chocolate Orange' has given consumers an understanding of what the combined fragrance of chocolate and oranges is. In correspondence, Mr Preedy referred to a straw poll of individuals whose first reaction to the term 'chocolate orange' related to this confectionery item. This is understandable given the high profile advertising campaigns undertaken by the producers of Terry's Chocolate Orange. However, I have not been told exactly what those undertaking the straw poll were asked, and am sure that if they had been asked what those words meant in relation to toiletries, their reaction would be that the words referred to a fragrance.
17. I have to consider whether the objection properly applies to all the goods applied for. It might be considered unlikely that *disinfectants* would be fragranced with chocolate orange, but it is not impossible, and certainly all of the other goods in the specification could well be marketed on the basis of their chocolate orange fragrance. As explained at paragraph 7 above, Mr Preedy considered it unlikely that certain goods (i.e. those with fragrance intended to stay with the user all day) would be fragranced with chocolate orange as it would be unattractive to the user. In response to this argument, I would argue that one cannot really determine what *is* or what *is not* an 'attractive' fragrance. Olfactory sensation will always be subjective, and will vary according to the individual. However, 'attractiveness' of the fragrance is not a relevant argument. What *is* relevant is how those words are perceived by the average consumer, and if they only function as an indicator of the fragrance then they cannot do the job of indicating the trade origin.
18. I must bear in mind that giving the applicant a monopoly in the words 'chocolate orange' would prevent others from using them in order to describe a characteristic of their

products. In *Linde A.G. v Rado Uhren A.G.* (Case C-53/01) the following guidance was given at paragraphs 73 - 74:

*“73. According to the Court’s case-law “Article 3(1)(c) of the Directive pursues an aim which is in the public interest, namely that descriptive signs or indications relating to the characteristics of goods or services in respect of which registration is applied for may be freely used by all, including as collective marks or as part of complex or graphic marks. Article 3(1)(c) therefore prevents such signs and indications from being reserved to one undertaking alone because they have been registered as trade marks (see to that effect, Windsurfing Chiemsee, paragraph 25).*

*74. The public interest underlying Article 3(1)(c) of the Directive implies that, subject to Article 3(3) any trade mark which consists exclusively of a sign or indication which may serve to designate the characteristics of goods or a service within the meaning of that provision must be freely available to all and not be registrable.”*

19. I must also respond to Mr Preedy’s reference to our previous acceptance of marks such as ‘apple’ for computers, and ‘blackberry’ and ‘orange’ for telephones, pointing out that, because such products are conventionally fragranced, we naturally did not object to such marks on the basis that they are (or could be) descriptive of the smell of computers or telephones. I consider it is highly unlikely that anyone would want to purchase a computer or telephone on the basis of its smell, and so I am unsurprised that the Registrar chose not to raise similar objections in these cases. Consumers encountering words such ‘apple’, ‘blackberry’ and ‘orange’ in respect of technological and telecommunication-type product would not expect any reference to fragrance. In contrast, one very much does purchase goods such as hand washes, soaps and toiletries etc. by reference to their fragrance. In this context, the examiner has clearly shown that the words ‘chocolate orange’ are being used by others in order to denote fragrance in the same way that one might use more familiar terms such as ‘lavender’ and ‘rose’.
20. Taking into account all of the above, I have concluded that the mark applied for consists exclusively of a sign which may serve, in trade, to designate the fragrance of the goods. It is therefore excluded from registration by section 3(1)(c) of the Act.
21. Having found that to be the case, it effectively ends the matter. However, in case I am found to be wrong in this regard, I will go on to determine the matter under section 3(1)(b).

### **Section 3(1)(b)**

22. I approach this ground of objection on the basis of the following principles derived from the CJEU cases referred to below:
  - An objection under section 3(1)(b) operates independently of objections under section 3(1)(c) - (*Linde AG (and others) v Deutsches Patent-und Markenamt*, Joined Cases C-53/01 to C-55/01, paragraphs 67 to 68);

- For a mark to possess a distinctive character it must identify the product (or service) in respect of which registration is applied for as originating from a particular undertaking and thus to distinguish that product (or service) from the products (or services) of other undertakings (*Linde* paragraphs 40-41 and 47);
- A mark may be devoid of distinctive character in relation to goods or services for reasons other than the fact that it may be descriptive (*Postkantoor* paragraph 86);
- A trade mark's distinctiveness is not to be considered in the abstract but rather by reference to the goods or services in respect of which registration is sought, and by reference to the relevant public's perception of that mark (*Libertel Group BV v Benelux Merkenbureau*, Case C-104/01, paragraphs 72-77);
- The relevant public must be deemed to be composed of the average consumer who is reasonably well-informed and reasonably observant and circumspect (*Libertel* paragraph 46 referring to Case C-342/97 *Lloyd Schuhfabrik Meyer*).

23. Furthermore, in relation to section 3(1)(b), it was held in paragraph 86 of *Postkantoor* that:

*"In particular, a word mark which is descriptive of characteristics of goods or services for the purposes of Article 3(1)(c) of the Directive is, on that account, necessarily devoid of any distinctive character with regard to the same goods or services within the meaning of Article 3(1)(b) of the Directive. A mark may none the less be devoid of any distinctive character in relation to goods or services for reasons other than the fact that it may be descriptive."*

24. Ms. Anna Carboni, sitting as the Appointed Person in *COMBI STEAM*, BL O-363-09, conveniently summarised the leading case law in respect of this part of the Act when, at paragraph 7 of that decision, she stated the following:

*"It has been said that lack of distinctive character is the essence of any objection under section 3(1)(b), (c) or (d) of the Act and that, despite its position in the list, section 3(1)(b) performs "a residual or sweeping-up function", backing up the other two provisions, which contain specific and characteristic examples of types of marks that lack distinctive character: Procter & Gamble Ltd's Trade Mark Application [1999] RPC 673 (CA) per Robert Walker LJ at 679. If a trade mark is entirely descriptive of characteristics of goods or services (and thereby prohibited from registration under section 3(1)(c)), it will also be devoid of any distinctive character under section 3(1)(b): Koninklijke KPN Nederland BV v Benelux-Merkenbureau Case C-363/99 (POSTKANTOOR) [2004] ETMR 57 (ECJ) at [86]."*

25. I do not believe the sign would be capable of performing the essential function of a trade mark without the relevant public being educated into seeing it that way. In my view, consumers would not consider the mark to be that of any particular supplier of the goods the subject of the application. The Registrar considers the sign to be descriptive of specific characteristics of the goods. It is clear from the above guidance that if a mark is entirely descriptive of characteristics of goods or services, it will also be devoid of any

distinctive character under section 3(1)(b). As I have found that the mark in question is open to objection under section 3(1)(c) of the Act, it follows that it is also open to objection under section 3(1)(b).

26. I have concluded that the sign applied for will not be identified as a trade mark without first educating the public that it is an indication of trade origin. I therefore conclude that the mark applied for is devoid of any distinctive character and is thus excluded from *prima facie* acceptance under section 3(1)(b) of the Act.

### **Conclusion**

27. In this decision I have considered all the documents filed by the applicant, and all the arguments submitted to me in relation to this application. Having done so, and for the reasons given above, the application is refused under the terms of section 37(4) of the Act because it fails to qualify under sections 3(1)(b) and 3(1)(c).

**Dated this 10th day of December 2014**

**Linda Smith  
For the Registrar  
The Comptroller-General**

## ANNEX A

Example 1 provided with the examination report. Taken from website at:

[www.naturesgoodies.co.uk/product/chocolate-orange-body-butter-2](http://www.naturesgoodies.co.uk/product/chocolate-orange-body-butter-2)

In the product image shown below, it appears that the product 's primary trade mark is 'Nature's Goodies'. In contrast, the term 'chocolate orange' appears to be indicating fragrance:



Further images from the 'Nature's Goodies' website are shown below. From these images, one can see how the average consumer would perceive the words 'Nature's Goodies' as indicating the trade mark, and the words such as 'orange and apricot' and 'coconut and honey cocoa' as indicating fragrance:



Example 2 provided with the examination report. Taken from website at:

[www.amazon.co.uk/Chocolate-Orange-Bath-Limited-Edition/dp/B00620DVG8](http://www.amazon.co.uk/Chocolate-Orange-Bath-Limited-Edition/dp/B00620DVG8)

Here the trade mark is clearly shown on the container as being 'BATH BUBBLE & BEYOND'. The words 'chocolate orange' in the product description appear to indicate the fragrance:



### Chocolate Orange Bath & Shower Gel 250ml (Limited Edition)

by [Bath Bubble & Beyond](#)

[Be the first to review this item](#)

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Price: **£4.95**

**Only 2 left in stock.**

Dispatched from and sold by [IAOS](#).

- Bath and Shower Gel
- Size approximately 250ml
- Hand made by Bath Bubble & Beyond in the UK
- Other scents and products available in the range

> [See more product details](#)

Example 3 provided with the examination report. Taken from website:

[www.sherbetpip.co.uk/products/chocolate-orange-bath-marbles](http://www.sherbetpip.co.uk/products/chocolate-orange-bath-marbles)

The screenshot shows the top section of the Sherbet Pip website. On the left is the 'Sherbet pip' logo in multi-colored text. To the right, there is an email address 'sales@sherbetpip.co.uk', a shopping cart icon showing '(0) Items: £0.00', and social media icons for Twitter and Facebook. Below these is a red button that says 'Last minute Gift? Try a Sherbet Pip Gift Card'. A horizontal navigation bar contains links for 'HOME', 'SHOP', 'BLOG', 'ABOUT US', 'POSTAGE & DELIVERY', 'SEE US IN THE PRESS', and 'CONTACT US'. The main content area features a product image of a tube of bath fizzers, a yellow header for 'CHOCOLATE ORANGE BATH MARBLES', a price of '£2.50', and a description: 'A tube of 10 mini bath fizzers, handmade in Dorset.' Below the description is a paragraph of usage instructions: 'Run yourself a deep bath and drop 2 or 3 into the water. As they fizz they release their rich fragrance into the air. Jump in, splash around or lie back, relax and enjoy as they soften and perfume the bath water and gently fragrance the skin.'


It appears from the image of the packaging that the primary trade mark is 'Sherbetpip'. The subsequent product description indicates that the goods are chocolate orange-fragranced bath marbles.

Example 4 provided with the examination report. Taken from website at:

[www.superdrug.com/superdrug/superdrug-chocolate-orange-self-heating-mask/iWhipstickChocolateOrangeLipBalm](http://www.superdrug.com/superdrug/superdrug-chocolate-orange-self-heating-mask/iWhipstickChocolateOrangeLipBalm)

[Back](#) Superdrug **Chocolate Orange** Self-Heating Mask

You may also like  
Also in this



A real favourite! Superdrug's **Chocolate Orange** Self-Heating Mask is a luxurious infusion of dark chocolate with tangy orange oil to moisturise and nourish the skin.

Deliciously tempting the mask warms skin to help open pores and deeply purify the skin for a glowing complexion.

Suitable for vegetarians.  
Paraben Free  
BUAV Approved

Buy 1 get 2nd 1/2 price >

5.0

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In this example, the goods are being sold under the 'Superdrug' trade mark, whilst the product description refers to "...a *luxurious infusion of dark chocolate with tangy orange oil to moisturise and nourish the skin*". This is clearly a reference to the *fragrance* of the product..

Example 5 provided with the examination report. Taken from website at:

[www.rawgaia.com/organic-skin-care/bath/raw-chocolate-orange-bath-melt.html](http://www.rawgaia.com/organic-skin-care/bath/raw-chocolate-orange-bath-melt.html)

The screenshot shows the Raw Gaia website interface. At the top, there is a shopping cart icon with '0 Items' and a total price of '£0.00'. The Raw Gaia logo is prominently displayed. Navigation links include 'Home', 'About Raw Gaia', 'Testimonials', 'Skin care info', 'Trade enquiries', 'Blog', and 'Contact'. A subscription form is present with fields for 'First Name \*', 'Last Name \*', and 'Email \*', and a 'Subscribe' button. The main content area features a product listing for 'Raw Chocolate Orange Bath Melt'. It includes a product image, a 'View Large Image' link, and product details: 'SKU:BM-ChocOrange', 'Size:80g', and 'Price: £5.99'. There is an 'Add to cart' button and a 'Related Products' section. The product description states: 'With five bath melt pieces in one packet, you get to enjoy bath after bath of skincare delight. For a truly pleasurable bath experience, use this rich and sensual bath melt. Let the sumptuous smell of sweet orange and the best quality raw chocolate aroma surround you. Lie back and relax while the ingredients soften and moisturise your skin, leaving it feeling nourished and smooth. Ingredients: Raw Gaia's Raw Chocolate Orange Bath Melt is made with Organic, cold-pressed cocoa (cacao) butter, which helps to soften and beautify the skin. Cocoa butter is great for all types of skin. It helps to repair dry and damaged skin with its skin cell restoration properties and restore elasticity thanks to the high levels of antioxidants and minerals within. Cocoa butter promotes smooth and healthy skin and works well to protect against the weather. (read more) Organic sweet orange essential oil: A zesty and sweet citrus fragrance. Naturally high in vitamins, sweet orange also helps with the formation of collagen and the growth and repair of body tissue.'

In the above example, the term 'Raw Gaia' appears to be the primary trade mark, whilst the product description goes on to indicate that the products offered for sale are chocolate orange-fragranced bath melts.

Example 6 provided with the examination report. Taken from website at:  
[www.astonishcleaners.com/news-new-handwash-arrives.html](http://www.astonishcleaners.com/news-new-handwash-arrives.html)



Here, the labelling on the bottle incorporates the 'Astonish' logo, together with the words 'chocolate orange' which appear to denote the variety of the product.

Example 7 provided with the examination report. Taken from website at:

[www.blossomtreesoap.co.uk/product.chocolate-orange-gingerChocolateOrange/BlossomTreeSoap](http://www.blossomtreesoap.co.uk/product.chocolate-orange-gingerChocolateOrange/BlossomTreeSoap)



**CHOCOLATE  
ORANGE**

£3.95

SWEETLY UPLIFTING!

This is a gorgeous smelling soap and highly moisturising. Essential oils of sweet orange and ginger are added to a nourishing combination of cocoa butter, shea butter and carrot tissue oil which is beneficial for dry and mature skins. Cocoa powder is added to the soap which does make it look good enough to eat but please do not try! You would definitely be foaming at the mouth!



I believe the average consumer would see the words 'Blossom Tree Soap' as the indicator of trade origin, and the words 'chocolate orange' as the fragrance.

Example 8 provided with the examination report. Taken from website at:

<http://a-review-a-day.blogspot.co.uk/2012/07/todays-review-carex-chocolate-orange.html>

This is taken from a product review website and shows the applicant's hand wash. In this context, the the words 'chocolate orange' appear to indicate the fragrance. The review confirms that the goods *do* smell of chocolate orange.

## A review a day.

[Home](#)   [Contact Me](#)

Tuesday, 3 July 2012

### Today's Review: Carex Chocolate Orange Hand Soap



Oh yeah, this is getting real now. Are your kids filthy buggers? does the mere sight of soap send them into a screaming frenzy? What you need is this stuff. It's soap that smells like a chocolate orange. and yes, I can attest that it does actually **smell like chocolate orange**. It's amazing. Better still, after the initial scent it gave way to a sort of jelly baby tone. That's two types of confectionary in one.