

O/295/19

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION UK 3348871

BY

NATURE FARM FOOD LTD

TO REGISTER THE FOLLOWING TRADE MARK



AND

OPPOSITION THERETO NO. 600001040

BY

THE ANIMAL STORE, FOOD AND ACCESSORIES, S.L

Background and Pleadings

1. NATURE FARM FOOD LTD (the Applicant) applied to register the figurative trade mark, shown on the cover page of this decision, on the 27 October 2018 for goods outlined below in classes 28, 28, 30, and 31. It was accepted and published on the 23 November 2018.

Class 28: Games, toys and playthings; video game apparatus; gymnastic and sporting articles; decorations for Christmas trees.

Class 29: Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk and milk products; edible oils and fats.

Class 30: Coffee, tea, cocoa and artificial coffee; rice; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; edible ices; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ice.

Class 31: Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and unprocessed grains and seeds; fresh fruits and vegetables, fresh herbs; natural plants and flowers; bulbs, seedlings and seeds for planting; live animals; foodstuffs and beverages for animals; malt.

2. THE ANIMAL STORE, FOOD AND ACCESSORIES, S.L (the Opponent) opposes the application by way of the Fast Track opposition procedure, under section 5(2)(b) of the Trade Marks Act 1994 (the Act), relying on its earlier EU registered mark

FARM NATURE number EU13978812 which was filed on the 23 April 2015 and registered on the 10 August 2015, for goods in class 31 namely:

Class 31: Foodstuffs and fodder for animals

3. The Opponent opposes all of the Applicant's goods, claiming that there is a likelihood of confusion because under section 5(2)(b) of the Act the trade marks are similar and are to be registered for goods identical or similar to those for which the earlier mark is protected.

4. The Applicant filed a defence and counterstatement denying the claims made.

5. Neither party has applied for leave to file evidence and the matter has proceeded in accordance with the Fast Track procedure. The Applicant is unrepresented whereas the Opponent is represented by Novagraaf UK. This decision is taken upon the careful perusal of the papers filed.

Decision

6. The opposition is based on section 5(2)(b) of the Act which states:

“5(2) A trade mark shall not be registered if because-

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

7. An earlier trade mark is defined in section 6 of the Act, which states:

“6. - (1) In this Act an “earlier trade mark” means –

(a) a registered trade mark, international trade mark (UK), Community trade mark or international trade mark (EC) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks,

(2) References in this Act to an earlier trade mark include a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of subsection (1)(a) or (b), subject to its being so registered.”

8. In these proceedings, the Opponent is relying upon its EU trade mark registration, shown above, which qualifies as an earlier mark under section 6 of the Act. As the earlier mark had been registered for less than five years at the date the application was published it is not subject to the proof of use provisions contained in section 6A of the Act. Consequently, the Opponent is entitled to rely upon all its Class 31 goods of its registration, as specified, without having to establish genuine use.

9. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG, Case C-251/95*, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc, Case C-39/97*, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V. Case C-342/97*, *Marca Mode CV v Adidas AG & Adidas Benelux BV, Case C-425/98*, *Matratzen Concord GmbH v OHIM, Case C-3/03*, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH, Case C-120/04*, *Shaker di L. Laudato & C. Sas v OHIM, Case C-334/05P* and *Bimbo SA v OHIM, Case C-591/12P*.

The principles:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings to mind the earlier mark, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods

10. When conducting a goods comparison, all relevant factors should be considered as per the judgment of the Court of Justice of the European Union (“CJEU”) in *Canon Kabushiki Kaisha v Metro Goldwyn Mayer inc* Case C-39/97, where the court stated at paragraph 23 of its judgment that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be

taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary”.

11. I am also guided by the relevant factors for assessing similarity identified by Jacob J in *Treat*, [1996] R.P.C. 281 namely:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

12. In addition, in *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), Floyd J stated that:

“... Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless, the principle should not be taken too far. *Treat* was decided the way it was because the ordinary and natural, or core, meaning of 'dessert sauce' did not include jam, or because the ordinary and natural description of jam was not 'a dessert sauce'. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the

category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question."

13. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court ("GC") stated that:

"29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM- Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark".

14. To establish a likelihood of confusion between the marks it is essential for there to be identity or similarity between the goods. In *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA, Lady Justice Arden stated that (my emphasis):

"49..... I do not find any threshold condition in the jurisprudence of the Court of Justice cited to us. Moreover I consider that no useful purpose is served by holding that there is some minimum threshold level of similarity that has to be shown. **If there is no similarity at all, there is no likelihood of confusion to be considered.** If there is some similarity, then the likelihood of confusion has to be considered but it is unnecessary to interpose a need to find a minimum level of similarity.

15. The Opponent submits in its statement of grounds that "The other goods are all or are substantially all goods that can be produced naturally/organically on a farm or by the use of farming methods and/or that might typically be purchased at a farm shop, and on that basis are goods which are similar"

16. The Applicant replies stating that “The trade mark name of the opponent is related to animal food...The products the opponent sells, our customers cannot consume as their products are for animals.”

17. The competing goods are set out as follows:

Applicant's goods	Opponent's goods
<p>Class 28: Games, toys and playthings; video game apparatus; gymnastic and sporting articles; decorations for Christmas trees.</p>	
<p>Class 29: Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk and milk products; edible oils and fats.</p>	
<p>Class 30: Coffee, tea, cocoa and artificial coffee; rice; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; edible ices; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ice.</p>	
<p>Class 31: Raw and unprocessed agricultural, aquacultural, horticultural and forestry products; raw and</p>	<p>Class 31: Foodstuffs and fodder for animals</p>

unprocessed grains and seeds; fresh fruits and vegetables, fresh herbs; natural plants and flowers; bulbs, seedlings and seeds for planting; live animals; foodstuffs and beverages for animals; malt.	
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18. In my view the Applicant's "*foodstuffs for animals*" are identical to the Opponent's "*Foodstuffs and fodder for animals*" because the identical wording is used whereas "*raw and unprocessed agricultural products; raw and unprocessed grains and seeds;*" are identical as per the decision in *Meric*; these goods cover animal feed, in its natural raw and unrefined state and are encompassed within the Opponent's broader category of goods. If, however, I am wrong in this assessment then they are highly similar as raw and unprocessed agricultural products, grains and seeds would typically be found in feedstuff and fodder given to farm animals for example.

19. Similarly aquaculture involves the rearing of aquatic animals or the cultivation of aquatic plants for food¹ and therefore "*raw and unprocessed aquacultural products*" are either identical according to *Meric* or again share a high degree of similarity with animal foodstuff or animal fodder. The nature of the products are different, however they are all foodstuff for animals or fish and therefore share the same purpose and trade channels.

20. "*Beverages for animals*" however would not be identical to "*foodstuff for animals*" as they differ in nature; but they would share purpose in so far as beverages and foodstuff are both products that nourish and sustain life. In my view the trade channels and retail outlets would be the same, as those purchasing foodstuff for their animals

¹ <https://en.oxforddictionaries.com/definition/aquaculture>

would undoubtedly buy beverages for them also. In light of this, I find that there is a high degree of similarity between these goods.

21. This now leaves “*raw and unprocessed horticultural and forestry products; natural plants; malt; fresh fruits and vegetables, fresh herbs; natural flowers; bulbs, seedlings and seeds for planting; live animals;*” Taking into account the core purpose of these goods, whilst there may be an overlap with some fruits/vegetables and plants being given as foodstuff to animals, this would not be viewed as their primary function in their raw state. In my view, these goods are foods for human consumption or vegetation/floras for cultivation or human use. Taking into account the decision in *You View*, to construe that these goods were identical or similar to animal foodstuff or animal fodder would be to unnaturally strain their meaning from their ordinary, natural and core purpose. On this basis I do not find similarity between these goods and that of the Opponent.

22. Using this same reasoning, I see no similarity between the Applicant’s “*Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk and milk products; edible oils and fats*” in class 29 and its “*Coffee, tea, cocoa and artificial coffee; rice; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; edible ices; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ice.*” in class 30. These goods are beverages or foodstuff for human consumption. A consumer purchasing these goods would not consider that their ordinary meaning extends to animal foodstuff or fodder. They do not share purpose, channels of trade, nature or method of use. To say that they are complementary or competitive is too far removed from the core purpose of the goods in question. Consumers would not think that they originate from the same or linked undertaking. There is no similarity between these goods.

23. Despite the Opponent’s submissions I see no obvious similarity whatsoever between its “*Foodstuff and fodder for animals*” and the Applicant’s goods in class 28.

They are dissimilar. The goods belong in different markets and could not compete with one another. There is no complementarity between them where one could be used or was indispensable to the other or that the same undertaking was responsible for them.

24. For these reasons the opposition fails under section 5(2)(b) in relation to the following goods:

Class 28: Games, toys and playthings; video game apparatus; gymnastic and sporting articles; decorations for Christmas trees.

Class 29: Meat, fish, poultry and game; meat extracts; preserved, frozen, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs; milk and milk products; edible oils and fats.

Class 30: Coffee, tea, cocoa and artificial coffee; rice; tapioca and sago; flour and preparations made from cereals; bread, pastries and confectionery; edible ices; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar, sauces (condiments); spices; ice.

Class 31: Raw and unprocessed horticultural and forestry products; natural plants; malt; fresh fruits and vegetables, fresh herbs; natural flowers; bulbs, seedlings and seeds for planting; live animals.”

25. I will therefore only go on to consider the likelihood of confusion, in relation to those contested goods in class 31, that I have found to share identity or similarity as outlined above namely “*Raw and unprocessed agricultural and aquacultural products; raw and unprocessed grains and seeds; foodstuffs and beverages for animals;*”

Average Consumer

26. When considering the opposing marks, I must determine, first of all, who the average consumer is for the goods and the purchasing process. The average consumer is deemed reasonably well informed and reasonably observant and circumspect. For the purposes of assessing the likelihood of confusion the average consumer's level of attention is likely to vary according to the category of goods and services in question.²

27. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

28. The Opponent states that “the average consumer for the goods at issue will be both the general public and the professional public. In the case of the latter when it comes to the purchase of foodstuff and fodder for farm animals.” Whereas the Applicant states that “our customer base is totally different”. To my mind the average consumer of the goods at issue, which are general goods for animal consumption, is a member of the general public who is likely to choose the goods through self-selection

² Lloyd Schuhfabrik Meyer, case c- 342/97.

from shelves of brick and mortar retail outlets or their online webpage equivalents. It will include professional users as part of this demographic; farmers or those who care for animals who run a business or farm. I consider the purchasing process to be predominantly a visual one but with aural considerations not being discounted following discussions with sales representatives. Regardless of whether the consumer is a business user or member of the general public, due to the nature of the goods, at least an average level of attention would be used in the purchasing process where price, suitability and quality play a part.

Comparison of marks

29. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“.....it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

30. It would be wrong, therefore, to artificially dissect the trade marks, although, it is necessary to take into account the distinctive and dominant components of the marks

and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

31. The respective trade marks are shown below:

Applicant's mark	Opponent's mark
	FARM NATURE

Opponent's mark

32. The Opponent's word only mark consists of two recognisable words "FARM" and "NATURE" presented in capitals in an unremarkable font. Both words are well known to the average UK consumer. Neither word dominates the other in the overall impression as they would be read together describing /indicating the nature of the business.

Applicant's mark

33. The Applicant's mark is much more complex consisting of a number of features namely a device together with the words NATURE, FARM and FOOD. These

elements are presented in a white roundel on a black background. There is a further black circular device at the centre of the roundel which includes a graphic representation of three sheaves of wheat presented in a light shade of green. Underneath the wheat are two sets of three intersecting arcs in different shades of green representing fields. Around the outer edge of the roundel the word NATURE is positioned above the inner device, in what appears to be Cooper Black font; the words "FARM FOOD" appear in the same font, at the bottom of the roundel below the inner device, but are smaller in size and are presented in a light green colour overlaid on a banner in a different shade of green. Both sides of the outer circle include an image of a sheaf of wheat.

34. The inner device is the most dominant and distinctive feature in the overall impression because the eye is naturally drawn to the centre of the mark. Whilst the word NATURE is prominent it nevertheless plays a less dominant role due to its weakly distinctive nature. Likewise, the role of the words FARM FOOD within the mark are limited due to their size, positioning and descriptive characteristics as they simply describe the nature of the goods provided by the undertaking. The colour combination, font, additional wheat sheaves and graphical presentation of the elements within the outer circle also play a lesser role in the overall impression of the mark as they will be seen as decorative elements.

Visual and Aural Comparison

35. The common elements and only point of visual and aural similarity lie with the words FARM and NATURE which are identical in both marks. Visually the words are the only elements of the Opponent's mark which have any similarity to the Applicant's mark which is much more complex consisting of the words presented in a roundel, an inner graphical device, the additional word FOOD, the sheaves of wheat, and colour application. Weighing up the visual similarities and differences between the two marks and since the common elements will be viewed as descriptive of the goods, there is a low degree of visual similarity between them.

36. Aurally the word NATURE in the Applicant's mark appears unaccompanied whereas the word FARM is presented in combination with the word FOOD to create a phrase. The Applicant's verbal elements will therefore be pronounced as "NATURE" and "FARM-FOOD". Each element of the Opponent's mark will be given its ordinary English pronunciation being well known dictionary words and will be pronounced "FARM-NATURE". In light of this, I consider the marks to be aurally similar to a medium degree with the shared presence of the words FARM and NATURE.

Conceptual Comparison

37. The Opponent submits that "the average consumer would immediately grasp that the [marks] both relate to farm produced, natural or organic products" and therefore the marks are "conceptually similar to a high degree". The Applicant is silent on this point. Both marks include the words NATURE and FARM and will be given their ordinary meanings.

38. Nature is defined as "The phenomena of the physical world collectively, including plants, animals, the landscape, and other features and products of the earth, as opposed to humans or human creations."³ whereas, the word farm is defined as "an area of land and its buildings, used for growing crops and rearing animals".⁴ Both marks will be understood as a reference to produce originating from the land. The device in the Applicant's mark reinforces this concept. The contested marks are conceptually highly similar due to the meaning of the common elements.

Distinctive character of the earlier mark

³ <https://en.oxforddictionaries.com/definition/nature>

⁴ <https://en.oxforddictionaries.com/definition/farm>

39. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97, the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

40. Registered trade-marks possess varying degrees of inherent distinctive character, some being suggestive or allusive of a characteristic of the goods and services on offer to those with high inherent characteristics such as invented words which have no allusive qualities.

41. The Opponent has not filed any evidence as this is a Fast Track opposition and therefore I am only able to consider the position based on inherent characteristics. The earlier mark consists of two words, which do not form a phrase when considered together, however, strongly allude to produce in its natural state emanating from the farm rather than being manufactured. Since both words allude to the Opponent's goods, in my view the mark has a low degree of inherent distinctiveness.

Likelihood of confusion

42. When considering whether there is a likelihood of confusion between the two marks I must consider whether there is direct confusion, where one mark is mistaken for the other or whether there is indirect confusion where the similarities between the marks lead the consumer to believe that the respective goods or services originate from the same or related source.

43. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognised that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: “The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark, I conclude that it is another brand of the owner of the earlier mark.”

44. In determining whether there is a likelihood of confusion there are a number of factors to bear in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods or services and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the Opponent's trade mark, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must consider that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

45. I have found the marks to be visually similar to a low degree and aurally to a medium degree. I have found the conceptual similarities to be high. I have found the earlier mark to have a low degree of inherent distinctiveness. I have identified the average consumer to be a member of the general public or business user selecting the goods primarily through visual means paying an average level of attention. I have found only a small proportion of the goods in class 31 to be identical or similar.

46. Due to the nature of the goods and taking into account the impact of the device in the Applicant's mark together with the roundel I think it unlikely that the application would be directly confused with the earlier word only mark. As the roundel device is the most dominant and distinctive element of the Applicant's mark, with the other components playing a weak role, I do not believe that the marks will be confused with each other. The consumer when comparing the marks may well recognise that there is similarity with the words "NATURE" and "FARM" but disregard these elements as being descriptive, or at least of weak distinctiveness for the goods, and therefore will not consider that any goods of an identical/similar nature come from the same economically linked undertaking. On this basis I consider there is no likelihood of confusion.

Conclusion

47. The opposition under section 5(2)(b) fails accordingly; subject to any successful appeal the application may proceed to registration for all its goods.

Costs

48. The opposition having failed, the Applicant is entitled to a contribution towards its costs. For Fast Track opposition proceedings, costs are capped at £500 according to TPN 2/2015. I take into account the fact that the Applicant is unrepresented and has not incurred any legal fees and therefore the award for costs is as follows:

Preparing a counterstatement and considering the notice of opposition and statement of grounds	£200
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49. I order THE ANIMAL STORE, FOOD AND ACCESSORIES, S.L to pay NATURE FARM FOOD LTD the sum of £200. The sum to be paid within fourteen days of the expiry of the appeal period or within fourteen days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 30th day of May 2019

Leisa Davies

For the Registrar