

**O/546/19**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF TRADE MARK APPLICATION NO. 3330472 BY  
1041281 BC LTD.  
TO REGISTER:**



**AS A TRADE MARK IN CLASSES 3, 5 AND 25**

**AND**

**IN THE MATTER OF THE OPPOSITION THERETO  
UNDER NO. 414611 BY  
BASTIDE LE CONFORT MÉDICAL**

## Background and pleadings

1. 1041281 BC Ltd. (“the applicant”) applied to register the trade mark shown on the front page of this decision in the United Kingdom on 9 August 2018. It was accepted and published in the Trade Marks Journal on 7 September 2018 in respect of the following goods:

### Class 3

*Non-medicated skin care preparations; Beauty care cosmetics; Cosmetic creams and lotions; Cosmetic creams for skin care; Cosmetic kits; all the aforesaid excluding hair care products and preparations.*

### Class 5

*Nutritional supplements; Dietary supplements; Nutritional supplements for veterinary use; Nutritional supplements for pets; Herbal tea for medicinal use; Slimming tea for medicinal use.*

### Class 25

*Clothing; T-shirts; Crop tops; Tank tops; Tops; Sweaters; Hoodies; Leggings; Jackets; Bandanas; Beanies; Coats; Scarves; Socks; Sweat bands; Sweat pants; Sweatshirts; Swimwear; Footwear; Bottoms [clothing] Shorts; Pants; Underwear; Headwear; Hats; Caps; Sun visors [headwear].*

2. The application was partially opposed by Bastide Le Confort Médical (“the opponent”). The opposition is based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”) and concerns all goods in Classes 3 and 5 of the application. The opponent is relying upon International Trade Mark WE00001285711:

## PREMIA

The mark has a priority date of 20 May 2015 and was designated for protection in the EU on 12 October 2015. This protection was granted on 6 December 2016 in respect of the following goods, all of which the opponent states it is relying on in this opposition:

Class 3

*Wet tissues for cosmetic use*

Class 5

*Briefs, pants and hygienic bandages, sanitary pads; disposable napkins; protective gear for incontinent; wet tissues for pharmaceutical use care, textile babies' diapers; disposable paper or cellulose babies' napkins and diapers.*

Class 10

*Disposable pads and sheets for incontinent; protective gloves; incontinent protective pads.*

Class 16

*Paper protective towels.*

3. The opponent claims that the marks are similar and that the goods covered by the applicant's specification are similar to goods covered by the earlier mark, because they share a similar purpose and have the same distribution channels and relevant public, leading to a likelihood of confusion on the part of that public. Therefore, registration of the contested mark should be refused under section 5(2)(b) of the Act.
4. The applicant filed a defence and counterstatement, denying the claims.
5. Neither party filed evidence in these proceedings. The opponent filed written submissions on 15 April 2019 and the applicant filed theirs on 18 June 2019. These will not be summarised but will be referred to as and where appropriate during this decision.
6. A hearing was not requested by either party, so this decision has been taken following a careful consideration of the papers.
7. In these proceedings, the opponent is represented by Wildbore & Gibbons, and the applicant by LegalForce RAPC Worldwide.

## Decision

8. Section 5(2)(b) of the Act states that:

“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.”

9. An “earlier trade mark” is defined in section 6(1) of the Act:

“In this Act an ‘earlier trade mark’ means –

(a) a registered trade mark, international trade mark (UK) or 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.”

10. The registration upon which the opponent relies qualifies as an earlier trade mark under the above provision. As the mark was granted protection in the EU within the five years before the date on which the applicant’s mark was published, it is not subject to proof of use and the opponent is therefore entitled to rely on all the goods for which the mark stands registered.

11. In considering this opposition, I am guided by the following principles, gleaned from the decisions of the courts of the European Union 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 BV* (Case

C-342/97), *Marca Mode CV v Adidas AG & Adidas Benelux BV* (Case C-425/98), *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (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-334/05 P) and *Bimbo SA v OHIM* (Case C-519/12 P):

- (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. The average consumer is deemed to be reasonably well informed and reasonably circumspect and observant, but someone 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 the earlier mark to mind, 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**

12. In *Canon Kabushiki Kaisha*, the Court of Justice of the EU (CJEU) stated 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 complementary.”<sup>1</sup>

13. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU held that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods or services. The General Court clarified the meaning of

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<sup>1</sup> Paragraph 23

“complementary” goods or services in *Boston Scientific Ltd v OHIM*, Case T-325/06:

“...there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking.”<sup>2</sup>

14. Guidance was also given by Jacob J (as he then was) in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] RPC 281. At [296], he identified the following relevant factors:

(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.”

15. The goods to be compared are shown in the table below:

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<sup>2</sup> Paragraph 82.

Opponent's goods	Applicant's goods
<p data-bbox="263 248 646 331"><u>Class 3</u> <i>Wet tissues for cosmetic use.</i></p> <p data-bbox="263 398 813 734"><u>Class 5</u> <i>Briefs, pants and hygienic bandages, sanitary pads, disposable napkins, protective gear for incontinent; wet tissues for pharmaceutical use care, textile babies' diapers; disposable paper or cellulose babies' napkins and diapers.</i></p> <p data-bbox="263 801 813 992"><u>Class 10</u> <i>Disposable pads and sheets for incontinent; protective gloves; incontinent protective pads.</i></p> <p data-bbox="263 1059 582 1137"><u>Class 16</u> <i>Paper protective towels.</i></p>	<p data-bbox="837 248 1388 584"><u>Class 3</u> <i>Non-medicated skin care preparations; Beauty care cosmetics; Cosmetic creams and lotions; Cosmetic creams for skin care; Cosmetic kits; all the aforesaid goods excluding hair care products and preparations.</i></p> <p data-bbox="837 651 1388 936"><u>Class 5</u> <i>Nutritional supplements; Dietary supplements; Nutritional supplements for veterinary use; Nutritional supplements for pets; Herbal tea for medicinal use; Slimming tea for medical purposes.</i></p>

16. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

“... 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.”<sup>3</sup>

17. In making my comparison, I shall, where appropriate, group goods together where they are “sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons”.<sup>4</sup>

### **Class 3**

18. The opponent submits that the applicant’s Class 3 goods are similar to its *wet tissues for cosmetic use* as they are used with cosmetics and skincare, are often sold together as a kit, share the same channels of trade and are often produced by the same undertakings. The applicant, on the other hand, submits that tissues and cosmetics have different purposes, as the cosmetics are intended to improve the user’s appearance and the tissues are used for cleaning. The applicant also submits that the opponent’s products “are marketed primarily for wiping in diaper changing”.<sup>5</sup>
19. I agree with the opponent in respect to *Non-medicated skin care preparations, Beauty care cosmetics, Cosmetic creams and lotions, and Cosmetic creams for skin care* which to my mind can be considered collectively. These are all goods used on the skin and that are intended to improve its appearance. The opponent’s specification states that these tissues are intended for cosmetic use, rather than merely sanitary purposes. In my view, the average consumer would expect the tissues to contain some substance that has a beneficial effect on the user’s appearance, such as a moisturiser or cleanser, and it is not uncommon for the goods to be produced by the same undertakings. They are, to my mind, complementary. In addition, the users will be the same and the goods are likely to be sold close together, particularly in supermarkets. Their physical nature is different, with the tissues being made of paper and the applicant’s goods consisting of creams, liquids, powders and gels. Consequently, I find that *Non-*

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<sup>3</sup> Paragraph 12.

<sup>4</sup> *SEPARODE Trade Mark*, BL O-399-10, paragraph 5.

<sup>5</sup> Applicant’s written submissions, paragraph 10.

*medicated skin care preparations; Beauty care cosmetics; Cosmetic creams and lotions; and Cosmetic creams for skin care* are similar to *wet tissues for cosmetic use* to at least a medium degree.

20. The products included in *Cosmetic kits* would not necessarily have the same protective or care-giving properties as the goods I have already considered. However, the users will be the same and the uses overlap. I have no evidence to support the opponent's submission that its goods are often sold in cosmetic kits, but they may certainly be used with the kits and, in my view, the average consumer would not be surprised if they were the responsibility of the same undertaking. The goods do share the same distribution channels and will be sold in relatively close proximity to each other. I find that *cosmetic kits* and *wet tissues for cosmetic use* are similar to a medium degree.

#### **Class 5**

21. It is my view that the applicant's Class 5 goods are different from the opponent's goods. The users may be the same, but the uses are not. The applicant's goods are intended to be ingested by humans or animals to improve their health, while the opponent's goods are to maintain cleanliness of babies or children or adults who are suffering from incontinence, or to protect parts of the body that might have been wounded or otherwise injured (*bandages* and *wet tissues for pharmaceutical use care*). Channels of trade may overlap, but the goods are likely to be stocked in different parts of a pharmacy or supermarket. They are unlikely to sit side-by-side on the shelf. The nutritional supplements for animals will be sold by specialist retailers. They are not in competition with each other, nor do I consider them to be complementary. Their physical nature is also different. It seems to me that the average consumer will not assume that they are produced by the same, or a related, undertaking. For these reasons, I find the goods to be different. Where there is no similarity, there is no confusion, so the opposition fails in respect of the Class 5 goods.

## Average consumer and the purchasing act

22. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion, I must bear in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question: see *Lloyd Schuhfabrik Meyer*.

23. 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:

“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 word ‘average’ denotes that the person is typical. The term ‘average’ does not denote some form of numerical mean, mode or median.”<sup>6</sup>

24. The average consumer for the goods at issue is a member of the general public. The applicant's goods are available at a wide range of prices, and are sold through high-street retailers, chemists, supermarkets, department stores, websites and specialist cosmetics suppliers. The visual element would be most significant in the purchasing process for all the goods in question, as the average consumer would tend to self-select what they wanted to buy. However, I do not ignore the aural element, as some cosmetics and skincare choices will be assisted by sales staff. The goods are purchased relatively frequently and, while they may sometimes be inexpensive, the average consumer will still consider the suitability of the product for their needs, weighing up, for example, the ingredients, the suitability of the product for the consumer's skin type, and any ethical concerns. It seems to me

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<sup>6</sup> Paragraph 60.

that the average consumer will be paying an average level of attention during the purchasing process.

25. The opponent's goods will also be sold through the same retailers, but these are more likely to be relatively inexpensive, and sales staff will consequently assist in fewer purchases. However, the average consumer will still want to consider the suitability of the products, and in my view will be paying an average level of attention.

### **Comparison of marks**

26. 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 in *Bimbo SA v OHIM*, C-591/12 P, that:


“... it is necessary to ascertain in each individual case, the overall impression made on the target public by the sign for which the 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.”<sup>7</sup>

27. It would be wrong, therefore, artificially to dissect the marks, although it is necessary to take into account their distinctive and dominant components and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

28. The respective marks are shown below:

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<sup>7</sup> Paragraph 34.

Earlier mark	Applied-for mark
PREMIA	

29. The applicant’s mark consists of the two words “PREMIA” and “NATURALS” displayed on two lines. The first word is in upper and lower case, presented in a greenish grey, while the second is in smaller green capital letters. Both words are in a standard sans serif font. Above the words is a device which is made up of one dark green leaf shape flanked by two smaller lighter green leaf shapes at 45 degrees. The opponent submits that it is the word “PREMIA” that is the dominant and distinctive element of the applicant’s mark, as the word “NATURALS” is non-distinctive in the context of the contested goods and the device is “of a basic and simple construction which is not particularly distinctive”.<sup>8</sup> While I agree with the opponent that “NATURALS” will be seen as alluding to a quality of the goods, I consider that the device does make a contribution to the overall impression of the mark.

30. The opponent’s mark consists of the word “PREMIA” in capital letters and a standard font. As this is a word mark, protection extends to the word in upper- or lower-case in any standard font. The overall impression of the mark rests in the word itself.

***Visual comparison***

31. The opponent’s word mark can be found in its entirety in the applied-for mark. I have already found that the word “NATURALS” is not distinctive, but that the device will be noticed by the average consumer. I described the construction of

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<sup>8</sup> Opponent’s written submissions, paragraph 13.

this device in paragraph [29] above. I find there to be a medium degree of visual similarity between the marks.

### ***Aural comparison***

32. The word “PREMIA” will be pronounced in the same way in each of the marks. It seems to me that there will be some consumers who, when saying the applicant’s mark aloud, would say “NATURALS” and some who would not. The device, of course, cannot be spoken. For the latter consumers, the marks would be aurally identical; while for the others, the marks would be aurally similar to a medium degree.

### ***Conceptual comparison***

33. The word “PREMIA” is the plural of “PREMIUM”, as in a regular payment for example to secure insurance cover. It seems to me unlikely that the average consumer would associate the word used in this context with the goods of either party. The average consumer may interpret the word as a play on “PREMIUM”, in the sense of “the best quality”. Some consumers will, as the opponent submits, ascribe no direct meaning to the word. They will assume that it has been invented.

34. Looking at the applicant’s mark, the average consumer is likely to interpret the device as depicting leaves, and together with the word “NATURALS” this will convey the message of goodness, nature and health. For those consumers who think that “PREMIA” is a made-up word, there will be no comparison to be made as the opponent’s mark would have no conceptual content; for those consumers who see it as a play on, or the plural of, “PREMIUM”, the marks will have a medium degree of conceptual similarity.

### ***Distinctiveness of the earlier mark***

35. There is, as has already been noted, a greater likelihood of confusion if the earlier mark is highly distinctive. The CJEU provided guidance on assessing a mark’s distinctive character in *Lloyd Schuhfabrik Meyer*:

“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).”

36. The opponent has not claimed any enhanced distinctiveness through use, and, indeed, has submitted no evidence, so I can only consider the inherent distinctiveness of the earlier mark. I have already noted that some average consumers will think that “PREMIA” is an invented word. Invented words generally have a higher than average level of inherent distinctiveness, and for these consumers I find that to be the case here. For the consumers who identify the word as a plural, the mark will have an average level of inherent distinctiveness, as it would not be descriptive of the goods or allusive to any quality that might be found in them. For the consumers to whom the mark communicates ideas of quality, the mark will have a lower than average level of inherent distinctiveness.

## Conclusions on likelihood of confusion

37. In assessing the likelihood of confusion, I must adopt the global approach set out in the case law to which I have already referred in paragraph 11 of this decision. I must also have regard to the interdependency principle, that a lesser degree of similarity between the goods may be offset by a greater degree of similarity between the marks, and vice versa.<sup>9</sup> The distinctiveness of the earlier mark must also be taken into account.
38. Such a global assessment does not imply an arithmetical exercise, where the factors are given a score and the result of a calculation reveals whether or not there is a likelihood of confusion. I must keep in mind the average consumer of the goods and the nature of the purchasing process. I note that it is generally accepted that marks are rarely recalled perfectly, the consumer relying instead on the imperfect picture he has kept in his mind.<sup>10</sup>
39. In *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17, Mr James Mellor QC, sitting as the Appointed Person, gave helpful guidance on assessing the likelihood of confusion:

“81.2 ... in my view it is important to keep in mind the purpose of the whole exercise of a global assessment of a likelihood of confusion, whether direct or indirect. The CJEU has provided a structured approach which can be applied by tribunals across the EU, in order to promote a consistent and uniform approach. Yet the reason why the CJEU has stressed the importance of the ultimate global assessment is, in my view, because it is supposed to emulate what happens in the mind of the average consumer on encountering, for example, the later mark applied for with an imperfect recollection of the earlier mark in mind. It is not a process of analysis or reasoning, but an impression or instinctive reaction.

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<sup>9</sup> *Canon Kabushiki Kaisha*, paragraph 17.

<sup>10</sup> *Lloyd Schuhfabrik Meyer*, paragraph 27.



81.3 Third, when a tribunal is considering whether a likelihood of confusion exists, it should recognise that there are four options:

81.3.1 The average consumer mistakes one mark for the other (direct confusion);

81.3.2 The average consumer makes a connection between the marks and assumes that the goods or services in question are from the same or economically linked undertakings (indirect confusion);

81.3.3 The various factors considered in the global assessment lead to the conclusion that, in the mind of the average consumer, the later mark merely calls to mind the earlier mark (mere association);

81.3.4 For completeness, the conclusion that the various factors result in the average consumer making no link at all between the marks, but this will only be the case where either there is no or very low similarity between the marks and/or significant distance between the respective goods or services;

81.3.5 Accordingly, in most cases, it is not necessary to explicitly set out this fourth option, but I would regard it as a good discipline to set out the first three options, particularly in a case where a likelihood of indirect confusion is under consideration.”

40. I shall consider direct confusion first. It seems to me that, on seeing the applied-for mark on the applicant’s goods, the average consumer is likely to mistake the mark for the opponent’s, which is, as I have already noted, entirely contained in the applied-for mark. The average consumer may not remember whether there was a device or not in the opponent’s mark. It is, in my view, more likely that confusion will occur among those consumers who see “PREMIA” as an invented word, given its high degree of inherent distinctiveness in such circumstances. In

*Soulcycle Inc v Matalan Ltd*, [2017] EWHC 496 (Ch), Mann J approved the approach of the Hearing Officer at first instance in considering the reactions of average consumers who did, and did not, recognise the word “SOUL” within the mark “SOULUXE”. Quoting Arnold J’s judgment in *Interflora Inc v Marks and Spencer plc* [2013] EWHC 1291 (Ch), he held it justifiable to consider confusion in relation to a proportion of the class of average consumer by reference to perceptions. Consequently, I find there is a likelihood of direct confusion.

41. In the event that I am wrong in this, I will now consider indirect confusion. In *Duebros*, Mr James Mellor QC stressed that a finding of indirect confusion should not be made merely because the two marks share a common element. That said, it seems to me that the average consumer is likely to assume that the goods came from the same or connected undertakings. I have already found that “NATURALS” is non-distinctive for the applicant’s goods. It is the kind of word that can be used to denote a sub-brand, and this message is reinforced by the device. Launching a range of cosmetic products is a plausible move for a business that sells *wet tissues for cosmetic use*. Consequently, there is a likelihood of indirect confusion.

## **Outcome**

42. The partial opposition succeeds with respect to the following goods:

### Class 3

*Non-medicated skin care preparations; Beauty care cosmetics; Cosmetic creams and lotions; Cosmetic creams for skin care; Cosmetic kits; all the aforesaid goods excluding hair care products and preparations*

43. The partial opposition fails with respect to the following goods:

### Class 5

*Nutritional supplements; Dietary supplements; Nutritional supplements for veterinary use; Nutritional supplements for pets; Herbal tea for medicinal use; Slimming tea for medical purposes.*

## **Conclusion**

44. The partial opposition has been partially successful. The application by 1041281 may proceed to registration in respect of the goods in classes 5 and 25.

## **Costs**

45. Both parties have had some success in these proceedings. In the circumstances, I order both parties to bear their own costs.

**Dated this 16<sup>th</sup> day of September 2019**

**Clare Boucher  
For the Registrar,  
Comptroller-General**