O/0668/25

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NO. 3623547

BY OLIMP LABORATORIES SP. Z O.O.

TO REGISTER:

OLIMP MEDICAL NUTRITION

AS A TRADE MARK IN CLASSES 5, 35, 39, 42 & 44

AND

IN THE MATTER OF THE OPPOSITION THERETO

UNDER NO. 426804 BY

COMITÉ INTERNATIONAL OLYMPIQUE

BACKGROUND AND PLEADINGS

1. On 8 April 2021, Olimp Laboratories Sp. z o.o. ("the applicant") applied to register **OLIMP MEDICAL NUTRITION** as a trade mark in the United Kingdom in respect of the goods and services shown in the table in paragraph 17 of this decision. The application has a priority date of 6 March 2021, claimed from European Union Trade Mark ("EUTM") No. 018418494.

2. On 13 September 2021, the application was opposed by Comité International Olympique ("the opponent"). The opposition is based on sections 5(2)(b) and 3(5) of the Trade Marks Act 1994 ("the Trade Marks Act") and concerns all the goods and services in the application.

3. Under section 5(2)(b), the opponent initially relied on several marks. However, some were dropped during the course of the proceedings and there is only a single mark that is now being relied on.[1] This is UKTM No. 801496460, **OLYMPIAN**, which has a filing date of 26 June 2019 and a registration date of 9 April 2020. This is a comparable mark, created from an International Registration designating the EU, which was vaid at the end of the Brexit transition period. The mark is registered for goods and services in Classes 1, 2, 3, 5, 7, 8, 9, 10, 11, 12 ,14, 16, 17, 18, 19, 21, 25, 28, 32, 35, 36, 37, 38, 39, 41, 42, 43 and 44. The opponent relies on the goods and services shown in the table in paragraph 17.

4. The above mark qualifies as an earlier mark under section 6(1)(a) of the Trade Marks Act by virtue of its earlier filing date. As it was registered within the five years before the priority date of the contested mark, the opponent is not required to show that it has used the mark. The opponent may rely on all the goods and services listed above.

5. The opponent claims that the marks are similar, and that the goods and services covered by the marks are either identical or similar. Consequently, it claims that there exists a likelihood of confusion on the part of the relevant public in the UK.

6. Under section 3(5), the opponent claims that the contested mark consists of or contains a protected word within the meaning of the Olympic Symbol etc (Protection)

[1] The section 5(3) ground was also dropped.

Act 1995 (“the Olympic Symbol Act”). It argues that the applicant is not a person appointed under section 1(2) of the Olympic Symbol Act to be proprietor of an Olympics Association right, nor does it have the consent of an appointed person. Under section 3(1)(b) of the Olympic Symbol Act, a person infringes the Olympic association right if in the course of trade they use a word so similar to a protected word as to be likely to create in the public mind an association with the Olympic Games or the Olympic movement. Protected words are listed in section 18 of the Olympic Symbol Act as Olympiad, Olympiads, Olympian, Olympians, Olympic and Olympics. Consequently, the opponent argues that the application should be refused.

7. The applicant filed a defence and counterstatement denying the claims made.

8. Only the applicant filed evidence. This comes from Stanisław Jedliński, President of the Management Board of Olimp Laboratories Sp. z o.o., a position he has held since 2001. His witness statement is dated 27 May 2024. It is accompanied by six exhibits and goes to the origin of the mark, the applicant’s branding and refers to previous cases involving the two parties in different jurisdictions. Some of the exhibits have been translated from Polish and there is a witness statement from the translator, Maria Magdalena Charyło-Samul, dated 23 July 2024, in which she confirms that she has been a Polish-English sworn translator since 2003 and is familiar with both languages.

9. The applicant also filed written submissions dated 27 May 2024.

10. Neither side requested a hearing and both filed written submissions in lieu of the same on 17 October 2024 (in the case of the opponent) and 21 October 2024 (in the case of the applicant).

11. In these proceedings, the opponent is represented by Bird & Bird LLP and the applicant by Katarzyna Eliza Binder-Sony.

RELEVANCE OF EU LAW

12. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated

law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

PRELIMINARY ISSUE

13. The applicant has adduced a number of decisions in disputes between the parties before other tribunals, including the national trade mark offices of Spain, China, Yemen, Georgia, South Korea and Saudi Arabia.[2] It submits that in all these cases, it was found that there was no likelihood of confusion between the opponent's OLYMPIC marks and the applicant's OLIMP marks. Decisions in other tribunals are not binding on me and so I shall say no more about them.

DECISION

Section 5(2)(b)

14. Section 5(2)(b) of the Act is as follows:

> "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."

15. In considering the opposition under this section, I am guided by the following principles, gleaned from the decisions of the Court of Justice of the European Union ("CJEU") 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*

[2] Exhibit 6.

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 they have kept in their 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; and

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

Comparison of goods and services

16. It is settled case law that I must make my comparison of the goods and services on the basis of all relevant factors. These include the nature of the goods and services, their purpose, their users and method of use, the trade channels through which they reach the market, and whether they are in competition with each other or are complementary: see *Canon*, paragraph 23, and *British Sugar Plc v James Robertson & Sons Limited (TREAT Trade Mark)* [1996] RPC 281 at [296]. As the General Court ("GC") said in *Boston Scientific Ltd v OHIM*, Case T-325/06, goods and services are complementary when

> "82. … 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."

17. The goods and services to be compared are shown in the table below:

Contested goods and services	**Earlier goods and services**
<u>*Class 5*</u> *Pharmaceuticals; Veterinary preparations; Medical preparations; Medicines for human purposes; Medicines for veterinary purposes; Food supplements; Health food supplements for persons with special*	<u>*Class 5*</u> *Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for dental fillings*

Contested goods and services	Earlier goods and services
dietary requirements; Nutritional supplements; Herbal supplements; Vitamins and vitamin preparations; Plant and herb extracts for medicinal use; Dietary supplement drink mixes; Dietetic foods adapted for medical purposes; Dietetic food adapted for veterinary use; Food supplements; Meal replacement powders; Dietetic beverages adapted for medical purposes; Nutritional drink mix for use as a meal replacement; Vitamin drinks; Dietetic products for invalids; Food for medically restricted diets; Nutraceutical preparations for therapeutic or medical purposes; Nutritional supplement meal replacement bars for boosting energy; Infant formula; Freeze-dried food adapted for medical purposes; Electrolytes for medical use; Homogenized food adapted for medical purposes.	*and dental impressions; disinfectants; pesticides; fungicides; herbicides.*
Class 35 *Retailing and wholesaling relating to pharmaceutical, veterinary and medical preparations, and sanitary and medical articles; Retailing and wholesaling of dietary supplements and dietetic preparations; Retailing and wholesaling relating to foodstuffs and foodstuffs for a medical diet;*	*Class 35* *Advertising; dissemination of advertisements by any media, especially in the form of topic-based messages centred on human values; advertising via sponsoring; business management; business administration; office functions; promotion of the goods and services*

Contested goods and services	Earlier goods and services
Providing information via the internet relating to the sale of pharmaceutical and veterinary preparations, dietetic preparations, dietary supplements and foodstuffs; Presentation of goods on communication media, for retail purposes; Advertising and marketing; Sales promotion; Distribution of advertising, marketing and promotional material; Direct marketing; Organisation of customer loyalty programs for commercial, promotional or advertising purposes; Organisation of exhibitions and trade fairs for business and promotional purposes; Provision of an online marketplace for buyers and sellers of goods and services.	*of others, through contractual agreements, especially through partnership (sponsoring) and licenses, offering them greater exposure and/or image strength and/or a surge of sympathy derived from that greater exposure and/or that image strength of cultural and sports events, especially international ones, and/or the surge of sympathy derived therefrom; promotion of the goods and services of others by means of what is referred to as the initial interest factor driving the public to consider, from among many competitors, goods or services that are are presented to them with personal signs, emblems or messages to capture their attention; promotion of the goods and services of others by the means referred to as image transfer; rental of advertising space of all kinds and on any media, in digital or other form; business administration of the participation of national teams to an international athletic competition and promotion of support to said teams aimed at the public and interested sectors; statistical information services.*

Contested goods and services	Earlier goods and services
Class 39 *Delivery, despatching and distribution of newspapers and magazines; Warehouse storage; Delivery of goods; Wrapping and packaging services; Despatch of goods; Packaging and storage of goods; Delivery of goods by mail order; Transport; Freight forwarding.*	*Class 39* *Transport, packaging and storage of goods; arranging of tours; storage services for media containing still and moving images.*
Class 42 *Research and development services; Research of foodstuffs; Professional advisory services relating to food technology; Science and technology services; Scientific and industrial research; Development of pharmaceutical preparations and medicines; Scientific and technological design; Scientific analysis; Medical and pharmacological research services; Provision of scientific information; Scientific laboratory services; Preparation of scientific reports; Scientific services relating to the isolation and cultivation of human tissues and cells; Testing of pharmaceuticals; Research and development in the pharmaceutical and biotechnology fields; Testing of foodstuffs.*	*Class 42* *Scientific and technological services and research and design relating thereto; industrial analysis and research services; carrying out laboratory analyses; design and development of computers and software.*

Contested goods and services	Earlier goods and services
Class 44 *Pharmaceutical services; Medical services; Dietician service; Dietetic counselling services [medical]; Medical counselling; Dietetic advisory services; Nutrition counselling; Pharmacy advice; Health counselling; Hygienic and beauty care; Consultancy and information services provided via the Internet relating to pharmaceutical products; Medical information services provided via the Internet.*	*Class 44* *Medical services; medical and pharmaceutical toxological inspections; veterinary services; hygienic and beauty care for human beings and animals; agriculture, horticulture and forestry services.*

18. In my comparison, I shall group the goods and services together where this appears to be appropriate, in the manner described by Mr Geoffrey Hobbs QC, sitting as the Appointed Person in *SEPARODE Trade Mark*, BL O-399-10:

> "5. The determination must be made with reference to each of the different species of goods listed in the opposed application for registration; if and to the extent that the list includes goods which are sufficiently comparable to be assessable for registration in essentially the same way for essentially the same reasons, the decision taker may address them collectively in his or her decision."

Class 5

19. The applicant admits that its *Pharmaceuticals* and *Veterinary preparations* are identical to goods in the opponent's specification.

20. The opponent's *Pharmaceutical … preparations* is a broader term that includes the applicant's *Medical preparations; Medicines for human purposes.* Where goods (or services) in one party's specification are included in a broader term from the other

party's specification, those goods (or services) are considered to be identical: see *Gérard Meric v OHIM*, Case T-133/05, paragraph 29. I find that they are identical.

21. The applicant's *Medicines for veterinary purposes* are included in the opponent's *veterinary preparations.* I find them to be identical.

22. The opponent submits that the applicant's *Infant formula* is included in, and therefore identical to, the opponent's *Food for babies*. I agree.

23. The opponent also submits that the remaining contested goods in this class are all nutritional and/or dietetic substances and so are encompassed by, or are highly similar, to its *Dietetic substances adapted for medical use.* I understand that dietetic substances are preparations that are formulated to supply particular nutritional needs, such as the appropriate balance of vitamins and minerals for people living with various medical conditions. In my view, they may be foodstuffs intended for consumption as part of a meal, or they may be supplements. I consider that the following terms are included in the opponent's broader term and so are identical per *Meric*: *Dietetic foods adapted for medical purposes; Dietetic beverages adapted for medical purposes; Dietetic products for invalids; Food for medically restricted diets; Nutraceutical preparations for therapeutic or medical purposes; Freeze-dried food adapted for medical purposes; Homogenized food adapted for medical purposes*.

24. The opponent's *Dietetic substances adapted for medical use* is also encompassed by the following terms from the applicant's specification: *Food supplements; Health food supplements for persons with special dietary requirements; Nutritional supplements; Herbal supplements; Vitamins and vitamin preparations; Plant and herb extracts for medicinal use; Dietary supplement drink mixes; Vitamin drinks*. I find them identical per *Meric*.

25. In my view, the applicant's *Dietetic food adapted for veterinary use* is encompassed in the opponent's broader *veterinary preparations*. I find them identical per *Meric*.

26. The next group of contested goods consists of goods that are designed to replace meals. These are *Meal replacement powders; Nutritional drink mix for use as a meal replacement; Nutritional supplement meal replacement bars for boosting energy*.

While these goods may be used by individuals who are trying to lose weight, it is my view that they may also be used for medical purposes, for instance, to ensure that people whose appetite has been affected by illness get the nutrients that they need. On this basis, I consider that these goods covered by the applicant's terms would be included in the opponent's broader *Dietetic substances adapted for medical use*, and are therefore identical. However, if I am wrong in this, I find that they are highly similar, as the purpose, method of use, trade channels and users are likely to be the same. There may be some overlap in nature and a degree of competition.

27. The applicant's final goods in this class are *Electrolytes for medical use*. I understand that these are minerals that the body needs in order to function. The applicant's goods would be used in situations where the level of electrolytes in a person's body is too low, for example, because of an underlying health condition. In my view, they are included in the opponent's broader *Dietetic substances adapted for medical use* and so are identical per *Meric*.

Class 35

28. The term *Advertising* appears in both parties' specifications and so is self-evidently identical.

29. The first group I shall address consists of the applicant's *Retailing and wholesaling relating to pharmaceutical, veterinary and medical preparations, and sanitary and medical articles; Retailing and wholesaling of dietary supplements and dietetic preparations; Retailing and wholesaling relating to foodstuffs and foodstuffs for a medical diet.* I shall compare these services to the opponent's Class 5 goods (*Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use*).

30. In *Oakley, Inc. v OHIM*, Case T-116/06, at paragraphs 46-57, the GC held that although retail services are different in nature, purpose and method of use from goods, retail services for particular goods may be complementary to those goods, and distributed through the same trade channels, and therefore similar to a degree.

31. In *Tony Van Gulck v Wasabi Frog Ltd*, BL O/391/14, Mr Geoffrey Hobbs QC, sitting as the Appointed Person, reviewed the law concerning the comparison of retail services and goods. He said:

> "9. The position with regard to the question of conflict between use of **BOO!** for handbags in Class 18 and shoes for women in Class 25 and use of **MissBoo** for the Listed Services is considerably more complex. There are four main reasons for that: (i) selling and offering to sell goods does not, in itself, amount to providing retail services in Class 35; (ii) an application for registration of a trade mark for retail services in Class 35 can validly describe the retail services for which protection is requested in general terms; (iii) for the purpose of determining whether such an application is objectionable under Section 5(2)(b), it is necessary to ascertain whether there is a likelihood of confusion with the opponent's earlier trade mark in all the circumstances in which the trade mark applies for might be used if it were to be registered; (iv) the criteria for determining whether, when and to what degree services are *'similar'* to goods are not clear cut."

32. However, on the basis of the European courts' judgments in *Sanco SA v OHIM* (Case C-411/13 P) and *Assembled Investments (Proprietary) Ltd v OHIM* (Case T-105/05), upheld on appeal in *Waterford Wedgwood Plc v Assembled Investments (Proprietary) Ltd* (Case C-398/07 P), Mr Hobbs concluded that:

> i) Goods and services are not similar on the basis that they are complementary if the complementarity between them is insufficiently pronounced that, from the consumer's point of view, they are unlikely to be offered by one and the same undertaking;
>
> ii) In making a comparison involving a mark registered for goods and a mark proposed to be registered for retail services (or vice versa), it is necessary to envisage the retail services <u>normally</u> associated with the opponent's goods and then to compare the opponent's goods with the retail services covered by the applicant's trade mark;
>
> iii) It is not permissible to treat a mark registered for 'retail services for goods X' as though the mark were registered for goods X;

iv) The GC's findings in *Oakley* did not mean that goods could only be regarded as similar to retail services where the retail services related to exactly the same goods as those for which the other party's trade mark was registered (or proposed to be registered).

33. It is clear from this case law that where the applicant's retail services are to be compared to the opponent's goods, the retail services will be different in nature, purpose and method of use from those goods. Despite these differences, where there is some complementarity and shared trade channels, retail services *may* be similar to goods. It is equally clear that complementarity alone will not suffice for a finding of similarity, where from the consumer's point of view, the retail services of the applicant would not normally be offered by the same undertaking as the goods. Furthermore, I note that I must not treat the retail services as goods, although consideration of the retail services normally associated with the opponent's goods should be made.

34. In my view, there is complementarity between the goods and the retail services. The goods are essential for the delivery of the services and the average consumer would expect to see goods covered by the opponent's terms sold as own-brand products by retailers and wholesalers. The retail services would be supplied to the same users as the goods. I find that the retail services are similar to the opponent's Class 5 goods listed in paragraph 29 above to a medium degree and the wholesale services similar to the same goods to a low to medium degree.

35. I also consider that the applicant's *Providing information via the internet relating to the sale of pharmaceutical and veterinary preparations, dietetic preparations, dietary supplements and foodstuffs* is complementary to the opponent's *Pharmaceutical and veterinary preparations* and *dietetic substances adapted for medical use*. The average consumer would expect an undertaking responsible for the goods also to provide information on the sale of those goods. The services and goods are different in nature and method of use, but there are likely to be shared trade channels and users. I find that the goods and services are similar to a medium degree.

36. The opponent submits that the remaining services are all highly similar to its broad term *Advertising* or the promotional services listed in Class 35 of its specification, such as *Promotion of the goods and services of others by the means referred to as image*

transfer. In comparing these services, I am mindful that the courts have on numerous occasions stressed that it is important not to interpret terms too liberally, particularly where those terms cover services, and that they should be confined to the substance or core of their possible meanings: see *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1)* [2024] UKSC 36 at paragraph 365; *YouView Ltd v Total Ltd* [2012] EWHC 3158 at paragraph 12. At this point, I shall say that I understand that image transfer is a form of sponsorship, where an undertaking sponsors an event, such as the Olympics, or a team or individual with the intention of benefiting from the positive attributes of that event, team or individual and increasing its sales as a result.

37. I consider that the applicant's *Presentation of goods on communication media, for retail purposes* is a form of advertising. It involves promoting goods on television, radio and other communication media so that the public can find out about them and decide to purchase them. I find that it is identical to the opponent's *Advertising*. However, if I am wrong in this, I consider that there will be an overlap in the user and purpose of the parties' services. They are likely to reach the market through overlapping trade channels. If they are not identical, I find them to be similar to at least a medium degree.

38. I understand that *Marketing* is the process of finding out what different groups of customers want and using this information to craft messages that will encourage them to buy an undertaking's goods or services. That same information may also be used to refine products and services so that they better meet customer desires, and to develop new products and services. Consequently, I consider that there is an overlap in purpose between these services and the opponent's *Advertising*. Both parties' services will be supplied to the same users and there is some similarity in nature, given that both services involve the production of promotional strategies and individual messages. There is likely to be some overlap in trade channels. I do not consider that the services are in competition, but there may be a degree of complementarity. I find that the services are similar to a high degree.

39. I consider that the applicant's *Sales promotion* is a broad term that encompasses *Promotion of the goods and services of others by the means referred to as image transfer*. However, if I am wrong in this, I consider that the services are highly similar as there is an overlap in purpose, user and nature, and some competition.

40. The next service to be considered is the applicant's *Distribution of advertising, marketing and promotional material*. The opponent's specification includes the term *Dissemination of advertisements by any media, especially in the form of topic-based messages centred on human values*. The word "especially" does not mean that what follows is an exhaustive list of the services in respect of which the opponent's mark is registered. I find that the terms are identical.

41. I turn now to the applicant's *Direct marketing*. This is a form of promotion that is based on communicating directly with individual consumers, as opposed to advertising that is broadcast to a general audience, for instance, on television or on advertising hoardings in the street. In my view, it could include the opponent's *Dissemination of advertisements by any media, especially in the form of topic-based messages centred on human values*. I find them to be identical.

42. I now come to the applicant's *Organisation of customer loyalty programs for commercial, promotional and advertising purposes*. I shall compare these services to the opponent's *Advertising*. The applicant's services involve the development and management of loyalty schemes, and their purpose is to attract and retain customers through rewarding their loyalty. There is some similarity with the opponent's services as these are intended to attract customers. The nature of the services is different. There is likely to be an overlap in user, but there is nothing that suggests to me that there is likely to be any overlap in trade channels. I do not consider that there is any significant degree of competition between the services, nor do I find them to be complementary. Taking these factors into account, I find that the services are similar to a low to medium degree.

43. The next service is the applicant's *Organisation of exhibitions and trade fairs for business and promotional purposes.* I shall compare these services to the opponent's *Rental of advertising space of all kinds and on any media, in digital or other form.* The users of both services will be an undertaking that wishes to promote its goods or services to potential customers. The purpose of them both is to provide a physical space in which that promotion can be done. This may be a stand at an exhibition or an advertising feature in print or other media. The nature of the services is different, as is their method of use. I also do not consider it likely that there will be shared trade

channels. However, I do think that there is a degree of competition between the services. Overall, I find that they are similar to a low to medium degree.

44. Finally in this class, I come to the applicant's *Provision of an online marketplace for buyers and sellers of goods and services*. I shall compare these services to *Advertising*, as this is the term that the opponent submits is highly similar to the applicant's services. There may be some overlap in trade channels as online marketplaces may provide the facility for advertising the goods sold via the marketplace on their websites, for example, through promoted listings. There is an overlap in user. However, the nature of the services is different, as the applicant's services involve the provision of technology and processes to support the buying and selling of goods and services. The purpose and method of use are different. I do not find that there is any competition or complementarity. The services are similar to a low degree.

Class 39

45. The following services are included in both specifications: *Packaging and storage of goods.* In addition, I consider that the applicant's *Transport* includes the opponent's *Transport … of goods* and so is identical per *Meric.*

46. The opponent submits that *Delivery, despatching and distribution of newspapers and magazines; Delivery of goods; Despatch of goods; Delivery of goods by mail order; Freight forwarding* are all included in the opponent's *Transport … of goods* and so are identical. I agree that they are identical per *Meric*.

47. The applicant's *Warehouse storage* is included in the opponent's *… storage of goods* and is identical per *Meric.*

48. The applicant's *Wrapping … services* are a type of *Packaging service* and so I find that the applicant's *Wrapping and packaging services* are identical to the opponent's services.

Class 42

49. I consider that the following services are all included in the opponent's *Scientific and technological services and research and design relating thereto* and so are

identical per *Meric*: *Research and development services; Research of foodstuffs; Professional advisory services relating to food technology; Science and technology services; Scientific and industrial research; Development of pharmaceutical preparations and medicines; Scientific and technological design; Scientific analysis; Medical and pharmacological research services; Provision of scientific information; Scientific laboratory services; Preparation of scientific reports; Scientific services relating to the isolation and cultivation of human tissues and cells; Testing of pharmaceuticals; Research and development in the pharmaceutical and biotechnology fields; Testing of foodstuffs.*

Class 44

50. The following services appear in the specification of both parties: *Medical services.*

51. The applicant's *Pharmaceutical services* includes the opponent's *Medical and pharmaceutical toxological inspections*, and so I find them to be identical per *Meric*.

52. The applicant's *Dietician service; Dietetic counselling services [medical]; Dietetic advisory services; Nutrition counselling* are all services that would be used by people who need to make changes to, or monitor, their diets for health reasons, which could include reasons related to specific medical conditions. I consider that they would be included in the opponent's broader *Medical services* but, if I am wrong in this, I take the view that they are highly similar. There is an overlap in user, purpose, method of use and nature of service. They may also be delivered through the same trade channels.

53. I consider that the applicant's *Medical counselling; Pharmacy advice; Health counselling; Consultancy and information services provided via the Internet relating to pharmaceutical products; Medical information services provided via the Internet* are all included in the opponent's broader *Medical services*. I find them to be identical per *Meric*.

54. The applicant's *Hygienic and beauty care* is a broader term that includes the opponent's *Hygienic and beauty care for human beings and animals*. I find them to be identical.

Average consumer and the purchasing process

55. The average consumer is deemed to be reasonably well informed and reasonably circumspect: see *Hearst Holdings Inc & Anor v A.V.E.L.A. Inc & Ors*, [2014] EWHC 439 (Ch), paragraph 60. For the purposes of assessing the likelihood of confusion, it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods and services in question: see *Lloyd Schuhfabrik*, paragraph 26.

56. The applicant submits that the average consumer for its goods and services are likely to be *"healthcare professionals, patients, and individuals seeking specialised dietary and nutritional supplements"* and that such consumers display a greater attention to detail during the purchasing process.[3] It goes on to argue that the opponent's goods and services are purchased by a broader audience and that the distinction between the consumer groups minimises the risk of confusion.

57. The opponent does not make any detailed submissions on this point. It simply argues that the level of attention *"is likely to range from relatively low in relation to advertising, promotional, transport, packaging and storage services, to moderate in relation to pharmaceutical, medical and nutrition-related goods and services."*[4]

58. I shall consider the goods in Class 5 first. In *Olimp Laboratories sp. z o.o. v European Union Intellectual Property Office (EUIPO)*, Case T-817/19, the GC considered the average consumer for, and level of attention which would be paid in the selection of, pharmaceutical and medical products in this class. It said:

> "39. Where the goods in question are medicinal or pharmaceutical products, the relevant public is composed of medical professionals, on the one hand, and patients, as end users of those goods, on the other (see judgment of 15 December 2010, *Novartis v OHIM – Sanochemia Pharmazeutika (TOLPOSAN)*, T-331/09, EU:T:2010:520, paragraph 21 and the case-law cited; judgment of 5 October 2017, *Forest Pharma v EUIPO – Ipsen Pharma (COLINEB)*, T-36/17, not published, EU:T:2017:690, paragraph 49),

[3] Written submissions of 27 May 2024, paragraph 27.
[4] Written submissions, paragraph 38.

> 40. Moreover, it is apparent from case-law that, first, medical professionals display a high degree of attentiveness when prescribing medicinal products and, second, with regard to end consumers, in cases where pharmaceutical products are sold without prescription, it must be assumed that those goods will be of concern to consumers, who are deemed to be reasonably well informed and reasonably observant and circumspect where those goods affect their state of health, and that these consumers are less likely to confuse different versions of such goods. Furthermore, even assuming that a medical prescription is mandatory, consumers are likely to demonstrate a high level of attentiveness upon prescription of the goods at issue in the light of the fact that those goods are pharmaceutical products. Thus, medicinal products, whether or not issued on prescription, can be regarded as receiving a heightened level of attentiveness on the part of consumers who are normally well informed and reasonably observant and circumspect (see judgment of 15 December 2010, *TOLPOSAN*, T-331/09, EU:T:2010:520, paragraph 26 and the case-law cited)."

59. Keeping this case law, and the decisions cited, in mind, I find that the average consumer of the following goods is either a medical professional or a patient: *Pharmaceuticals; Medical preparations; Medicines for human purposes; Plant and herb extracts for medicinal use; Dietetic foods adapted for medical purposes; Dietetic beverages adapted for medical purposes; Dietetic products for invalids; Nutraceutical preparations for therapeutic or medical purposes; Freeze-dried food adapted for medical purposes; Electrolytes for medical use; Homogenized food adapted for medical purposes*. The goods will be purchased from a pharmacy, health food shop, supermarket or other general store and their online equivalents. In some instances, they will be acquired via a prescription from a medical professional. In addition, when purchased for use in a clinical setting such as a hospital, the goods are likely to be obtained from a specialist supplier, either through catalogues or other printed material or a website. In my view, both visual and aural aspects of the mark will be important. While the average consumer may see the mark on websites, promotional material or on packaging on shelves, they may also receive word-of-mouth recommendations and discuss the choice with medical or pharmacy staff. Because the goods are purchased

with the aim of treating or managing health conditions, I find that the level of attention paid will be high, whether the consumer is a professional or a patient.

60. The average consumer of *Veterinary preparations; Medicines for veterinary purposes; Dietetic food adapted for veterinary use* is either a veterinary professional or person responsible for the day-to-day care of a particular animal or animals. The individual is likely to purchase them directly from a veterinary practice or supplier of veterinary products, which is likely in turn to purchase the goods from the manufacturer or a wholesaler. It is possible that the goods may also be purchased from a pet shop or similar retailer, and the online equivalent. The average consumer is likely to see the mark on websites, promotional material or packaging, although as with the goods intended for humans, I consider that they are also likely to discuss their purchases with sales staff or receive word-of-mouth recommendations. In my view, the level of attention paid will also be fairly high, whether the consumer is a professional or a pet owner, given the impact of the goods on the health of the animals in the purchasers' care.

61. The average consumer for *Infant formula* and *Food for babies* is a parent or other carer for a very young child. The goods are likely to be purchased from a supermarket, pharmacy or general store, or their online equivalents. In a physical shop, the goods are likely to be selected from the shelf by the purchaser; when bought online, the marks will be visible. The average consumer may also have seen advertisements or other promotional material. The visual aspect of the mark will therefore be important, although I do not discount the possibility of aural recommendations, including from sales staff. The goods are likely to be purchased fairly frequently and be relatively inexpensive. The average consumer is likely to pay attention to the dietary and nutritional information and the ingredients used. In my view, the average consumer will pay a medium to high degree of attention.

62. The remaining contested Class 5 goods are *Food supplements; Health food supplements for persons with special dietary requirements; Nutritional supplements; Herbal supplements; Vitamin and vitamin preparations; Dietary supplement drink mixes; Food supplements*; *Meal replacement powders; Nutritional drink mix for use as a meal replacement; Vitamin drinks; Food for medically restricted diets; Nutritional supplement meal replacement bars for boosting energy.* I found that these goods were

identical to the applicant's *Dietetic substances adapted for medical use*. It is the consumer that is exposed to both parties' goods that is relevant to an assessment of the likelihood of confusion. I therefore find that the average consumer is either a medical professional or a patient wishing to buy the supplements to treat or alleviate a medical condition. For this reason, I consider that the level of attention is likely to be fairly high, if not perhaps as high as for pharmaceutical products. However, I do consider that it will be higher than medium. For the same reasons as outlined in paragraph 59 above, I take the view that visual and aural aspects of the mark will be important.

63. Turning to Class 35, I take the view that the average consumer of the applicant's retailing and wholesaling services is the same as the average consumer of the relevant goods in Class 5, with the individual patient being more likely to use the retail services and the professional more likely to use the wholesale services. Both types of consumer will be interested in the range of goods on offer, levels of customer service, location and any delivery arrangements, and prices, among other things. They will choose a provider of services after having seen promotional material, such as advertisements, browsing websites or seeing signage on physical premises. In my view, the average consumer of whichever type would pay a medium degree of attention.

64. I now turn to *Provision of an online marketplace for buyers and sellers of goods and services*. In the case of the buyers, I consider that the average consumer will pay a medium degree of attention when deciding which marketplace to use. As with the retail services, they are likely to be interested in the range of goods and services on offer. They are also likely to consider the ease of use of the online marketplace and its features. The nature of the services means that the mark is likely to be visible to the average consumer, but I do not discount the possibility of word-of-mouth recommendations. A seller is likely to pay a greater degree of attention, as they could be expected to want to use a marketplace that provides access to a large population of potential customers and they will need to be aware of terms and conditions of their use of the marketplace. In my view, the degree of attention paid will be slightly higher than medium.

65. The remaining services in Class 35 are related to advertising, marketing and promotion. The average consumer of these services is likely to be a business, although

individuals may also use advertising services on a more *ad hoc* basis. They are likely to have seen the mark on promotional material or online, but may also receive word-of-mouth recommendations. Because of the impact of advertising, marketing and promotion on the success of their business, they are likely to pay a higher than medium degree of attention.

66. The services in Class 39 are all related to delivery, transport, packing and storage of goods. The average consumer of these services is likely to be a business, although I accept that members of the general public may also use the services. As with the services considered in the previous paragraph, the visual aspect of the mark is likely to be most important. In my view, the average consumer will pay a higher than medium degree of attention.

67. In my view, the same rationale applies in respect of the Class 42 services, which are all scientific and technological services likely to be purchased by businesses or other organisations.

68. I shall consider the Class 44 services in groups. In my view, *Pharmaceutical services; Medical services; Dietician service; Dietetic counselling services [medical]; Dietetic advisory services; Nutrition counselling; Medical counselling; Pharmacy advice; Health counselling* are likely to be purchased with a high or fairly high degree of attention by medical professionals and patients. Both visual and aural aspects of the mark are likely to be important. The level of attention paid when sourcing *Medical information services provided via the Internet* and *Consultancy and information services provided via the Internet relating to pharmaceutical products* is likely to be a little lower, but still at a medium level.

69. *Hygienic and beauty care* services are likely to be purchased by members of the general public on a fairly frequent basis. The average consumer will consult the internet and printed and other promotional material and may also receive word-of-mouth recommendations. Consequently, I find that both visual and aural aspects of the mark are likely to be important. In my view, the average consumer will pay a slightly higher than medium degree of attention to the purchase.

Comparison of the marks

70. It is clear from *SABEL* (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* that:

> "34. … 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."

71. Artificial dissection of the marks would therefore be wrong, although it is necessary for me 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.

72. The respective marks are shown below:

Contested mark	**Earlier mark**
OLIMP MEDICAL NUTRITION	**OLYMPIAN**

73. Both marks are plain word marks. The earlier mark consists of a single word and so the overall impression of that mark by necessity lies in that word. The contested mark consists of three words. The second and third of these, "MEDICAL NUTRITION", are descriptive of the goods and services related to dietary supplements and nutritional advice, and so the first word, "OLIMP" is the dominant and distinctive element of the mark in relation to these goods and services. For the remaining goods and services, they are not descriptive, but may be allusive. The word "OLIMP" makes the greater contribution to the overall impression of the mark for these goods and services, with a

lesser role played by the words “MEDICAL NUTRITION”, which will be understood as a unit.

Visual comparison

74. The earlier mark has eight characters, while the contested mark is made up of three words, having five, seven and nine characters respectively. I have found that for some of the goods and services the second and third words are descriptive. However, the descriptiveness does not mean they can automatically be disregarded: see *The Stockroom (Kent) Ltd v Purity Wellness Group (PURITY HEMP COMPANY IMPROVING LIFE AS NATURE INTENDED)*, BL O-115-22, paragraph 31. In the context of the mark as a whole, I do not think that they would be ignored, although they will carry less weight.

75. Both marks coincide in their first, second, fourth and fifth letters. I recall that the GC held in *El Corte Inglés, SA v OHIM*, Joined cases T-183/02 and T-184/02,[5] that the average consumer tends to pay more attention to the beginnings of words than the ends. However, this is not a hard-and-fast rule. The opponent submits that *“it is common for the letters ‘y’ and ‘i' to be used interchangeably in certain contexts (i.e. in puns and play-on-words, as well as in foreign words with variant spellings, including Olympus/Olimpus), so this difference will have minimal impact”*.[6] The opponent gives me no further examples. I do not consider that the letter “i” is commonly used in the word “Olympus”, i.e. the mountain in Greece. I accept that the word has been transliterated from a different alphabet, but the letter “y” is standard in English usage. This is supported by the evidence in the applicant’s Exhibit 2. Furthermore, the suffix “-IAN” is not replicated in the first word of the earlier mark. I therefore find that there are some similarities and some differences between the earlier mark and the first word of the contested mark. I have also found that the second and third words cannot just be ignored. Taking account of the overall impressions of the marks, I find that they are visually similar to a medium degree.

[5] See paragraphs 81 and 82.
[6] Written submissions, paragraph 46.

Aural comparison

76. The earlier mark has four syllables, while the contested mark has eight. I agree with the opponent that the first two syllables of the marks will be pronounced identically. As with the visual comparison, I do not consider that the rest of the applicant's mark will be ignored. I do bear in mind, though, that the average consumer tends to pay more attention to the beginnings of marks. Taking account of the overall impressions of the marks, I find that they are aurally similar to a medium to high degree.

Conceptual comparison

77. There is no dispute that the earlier mark would be understood by the average consumer to refer to a participant in the Olympic Games. In its submissions, the opponent argues that the word has other meanings, including "having the qualities of a god" and "of, or relating to, Mount Olympus".[7] It is possible that some consumers will understand the word in this way, but it is my view that it is more likely that they will make the connection with the Olympic Games.

78. The opponent submits that the first word of the contested mark, "OLIMP", will also be understood by the average consumer to be related to the Olympic Games. The applicant, on the other hand, submits that its mark refers to the mountain in Greece that, according to ancient Greek mythology, was the home of the gods. In addition, the applicant argues that the words "MEDICAL NUTRITION" will convey a conceptual message, namely, that the goods and services relate to medicine and nutrition.

79. It is settled case law that the average consumer does not analyse trade marks. For a conceptual message to be relevant, therefore, it needs to be one that comes readily to the mind of the average consumer. For this reason, I am not persuaded by the applicant's submissions that the consumer will think about Mount Olympus when encountering the contested mark, but neither do I believe that they will associate the mark with the Olympic Games, given the absence of the suffixes "-IC", "-IAN" or "-IAD". In my view, it is more likely that they will not attribute any concrete meaning to the word. I find that there is no conceptual similarity between the marks.

[7] Paragraph 48.

Distinctive character of the earlier mark

80. Distinctive character is a measure of how strongly a mark distinguishes the goods or services of one undertaking from those of others. The factors that I must take into account in assessing the level of distinctive character were set out by the CJEU in *Lloyd Schuhfabrik Meyer*:

> "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)."

81. Registered trade marks possess varying degrees of inherent distinctive character from the very low, because they are suggestive of, or allude to, a characteristic of the goods or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of the mark can be enhanced by the use that has been made of it.

82. The opponent has filed no evidence to show use of the earlier mark and so I only have the inherent position to consider. The word is not descriptive and in my view it is not allusive either. Consequently, I find that the earlier mark has a medium degree of inherent distinctive character.

Conclusions on likelihood of confusion

83. Making an assessment of the likelihood of confusion is a matter of considering the relevant factors from the viewpoint of the average consumer of the goods and services at issue and determining whether they are likely to be confused. When doing this, I am required to bear in mind that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely on the imperfect picture

of them that they have in their mind. This means that the global assessment emulates what happens in the mind of the average consumer on encountering the later mark with an imperfect recollection of the earlier mark. The courts have not said what weight should be attached to each of the factors or provided a formula that can be applied to any set of circumstances. However, I am required to take account of the interdependency principle, i.e. that a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services or vice versa.

84. Earlier in my decision, I found that:

a) The goods and services are identical or similar to different degrees, ranging from low to high;

b) The average consumer of the goods and services varies, as does their degree of attention;

c) The marks are visually similar to a medium degree, aurally similar to a medium to high degree and conceptually dissimilar; and

d) The earlier mark has a medium degree of inherent distinctive character.

85. The opponent submits that *"The average consumer is likely to believe that the Contested Goods and Services provided under the Contested Mark originate from or are otherwise authorised by the Opponent."*

86. There are two types of confusion. Direct confusion is where the average consumer mistakes one mark for the other, while indirect confusion is where the average consumer recognises that the marks are different, but assumes that the later mark also identifies the goods or services of the owner of the earlier mark, or that the two undertakings are related: see *L.A. Sugar Limited v Back Beat Inc*, BL O/375/10, paragraph 16.

87. I have found that the level of attention paid to all of the goods and services, apart from some of the Class 35 and Class 44 services, is higher than medium. A greater degree of attention means that it is less likely that the average consumer would mistake one mark for the other. It is settled case law that the average consumer rarely has the

chance to make direct comparisons between the marks and may remember them imperfectly. However, the differences between the marks are, in my view, sufficient for them not to be mistaken one for the other, even where the level of attention paid is only medium. I say this because I found the average consumer would not attribute a concrete meaning to "OLIMP", while they would associate the earlier mark with the Olympic Games. I remind myself that the average consumer does not spend time analysing trade marks. In addition, I consider that the visual differences between the marks are too significant to lead to such a mistake being made. I find no likelihood of direct confusion.

88. In *LA Sugar*, Mr Iain Purvis QC, sitting as the Appointed Person, explained the concept of indirect confusion as follows:

> "16. ... 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 as a whole, I conclude that it is another brand of the owner of the earlier mark.
>
> 17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:
>
> > (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right ('26 RED TESCO' would no doubt be such a case).
> >
> > (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand

or brand extension (terms such as 'LITE', 'EXPRESS', 'WORLDWIDE', 'MINI', etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)."

89. In *Liverpool Gin Distillery Limited & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ said:

"12. This is a helpful explanation of the concept of indirect confusion, which has frequently been cited subsequently, but as Mr Purvis made clear it was not intended to be an exhaustive definition.

13. As James Mellor QC sitting as the Appointed Person pointed out in *Cheeky Italian Ltd v Sutaria* (O/291/16) at [16] 'a finding of likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion'. Mr Mellor went on to say that, if there is no likelihood of direct confusion, 'one needs a reasonably special set of circumstances for a finding of a likelihood of indirect confusion'. I would prefer to say that there must be a proper basis for concluding that there is a likelihood of indirect confusion given that there is no likelihood of direct confusion."

90. The opponent's arguments on indirect confusion are based on the average consumer perceiving that the word "OLIMP" relates to the Olympic Games. However, I found that they would not do so. Having made such a finding, I do not consider that there is a proper basis for concluding that there is a likelihood of indirect confusion given there is no likelihood of direct confusion.

91. The section 5(2)(b) ground fails.

Section 3(5)

92. Section 3(5) of the Trade Marks Act is as follows:

"A trade mark shall not be registered in the cases specified, or referred to, in section 4 (specially protected emblems)."

93. Section 4(5) of the Trade Marks Act states that:

"A trade mark which consists of or contains a controlled representation within the meaning of the Olympic Symbol etc. (Protection) Act 1995 shall not be registered unless it appears to the registrar–

(a) that the application is made by the person for the time being appointed under section 1(2) of the Olympic Symbol etc. (Protection) Act 1994 (power of Secretary of State to appoint a person as the proprietor of the Olympics association right), or

(b) that consent has been given by or on behalf of the person mentioned in paragraph (a) above."

94. A "controlled representation" is defined by section 3(1) of the Olympic Symbol etc. (Protection) Act 1995 ("the Olympic Symbol Act"):

"(1) A person infringes the Olympics association right if in the course of trade he uses–

(a) a representation of the Olympic symbol, the Olympic motto or a protected word, or

(b) a representation of something so similar to the Olympic symbol or the Olympic motto as to be likely to create in the public mind an association with it, or a word so similar to a protected word as to be likely to create in the public mind an association with the Olympic Games or the Olympic movement

(in this Act referred to as 'a controlled representation')."

95. Section 18(2) of the Olympic Symbol Act states that the following are protected words: Olympiad, Olympiads, Olympian, Olympians, Olympic, and Olympics.

96. The applicant submits that:

> "44. Previous cases and interpretations of the Olympic Symbol etc (Protection) Act 1995 have focused on the use of exact protected words. The Applicant's mark uses a variant spelling OLIMP and focuses on a distinct industry sector which should be considered a significant deviation from the protected words listed in Section 18, thereby falling outside the scope of Section 4(5)."

97. Neither party has referred me to any specific previous cases. The editors of *Kerly's Law of Trade Marks and Trade Names* cite only a single case relating to this Act. This involved the refusal of an application filed in 1998 for the word "OLYMPIC" for cooking oils.[8] However, as shown above, the Olympic Symbol Act (as amended in 2006) does not apply simply to the exact forms of the protected words, but also to ones that are so similar to a protected word *"as to be likely to create in the public mind an association with the Olympic Games or the Olympic movement"*.

98. Section 4(3) of the Olympic Symbol Act 1995 defines an association with the Olympic Games or the Olympic movement in the context of whether an act is, or is not, an infringement of the Olympics association right:

> "A person does not infringe the Olympics association right by using a controlled representation in a context which is not likely to suggest an association between a person, product or service and the Olympic Games or the Olympic movement and for the purposes of this subsection-
>
> (a) the concept of an association between a person, product or service and the Olympic Games or the Olympic movement includes, in particular-
>
> (i) any kind of contractual relationship;
>
> (ii) any kind of commercial relationship;
>
> (iii) any kind of corporate or structural connection, and

[8] BL O/081/00. See *Kerly's Law of Trade Marks and Trade Names*, 17th edition, paragraphs 10-262 to 10-264.

(iv) the provision by a person of financial or other support for or in connection with the Olympic Games or the Olympic movement, but

(b) a person does not suggest an association with the Olympic Games or the Olympic movement only by making a statement which-

(i) accords with honest practices in industrial and commercial matters, and

(ii) does not make promotional or other commercial use of a protected word by incorporating it in a context to which the Olympic Games and the Olympic movement are substantively irrelevant."

99. I note the legislation states that this definition of an association with the Olympic Games or the Olympic movement applies to that particular subsection. However, if a word that is used in trade is not sufficiently similar as to create in the public mind an association with the Olympic Games or the Olympic movement and so does not infringe the Olympics association right, it does not appear to me to be logical to assess the word by different criteria when it is included in an application for a trade mark. It seems to me that when using the word "association" the legislature was envisaging a commercial relationship or a corporate connection of the type that under section 5(2)(b) of the Trade Marks Act is relevant when considering whether there is likelihood of indirect confusion. In the absence of any other provision in the Olympic Symbol Act, any secondary legislation, or any case law to assist me in interpreting the term,[9] I shall keep in mind the definition given above. As a trade mark is a means of denoting trade origin, I consider that any relevant association would be commercial, financial, contractual or corporate.

100. The legislation does not define *"the public mind"*. I consider that for the present purposes the public would include the consumers of the goods and services for which registration is sought. This is because they are the people who are likely to come

[9] Section 3(4) of the Act states that the Secretary of State may make an order specifying what is to be treated as an association between a person, product or service and the Olympic Games or the Olympic movement. I have found no such order.

across the contested mark in use. I also consider that it is appropriate to take account of the perception of parties who trade in the contested goods or services, and so make decisions about which goods and services to offer to their customers. They too will come across the contested mark in use.

101. The opponent submits that the contested mark shares a greater degree of similarity with the Protected Words "OLYMPIC" and "OLYMPICS" than it does with "OLYMPIAN". Again, it argues that the words "MEDICAL NUTRITION" in the contested mark are descriptive and will be disregarded by the public. The word "OLYMPIC" is only two, as opposed to three, letters longer than "OLIMP", and aurally has three syllables while "OLIMP" has two. It appears to me that there is scope for considering the word "OLIMP" on its own, provided that the context in which it is, or would be, used suggests the required association. Nevertheless, I consider that the average consumer will be well aware that the letter "Y" is used in the protected words and will not necessarily see "OLIMP" as a contraction of any of them or another word that would cause the public to believe that there was an association between the contested mark and the Olympic Games or Olympic movement. I say this on the basis of my findings under section 5(2)(b) of the average consumer's perception of the contested mark and I also take into account the relatively high level of attention paid during the purchase of most of the contested goods and services.

102. The opponent submits that the phrase "MEDICAL NUTRITION" denotes a field that has a clear link with professional athletes *"who rely on health and nutrition related products and services to enhance performance and guard against injury"*.[10] This submission is made in response to the argument of the applicant that its focus on medical and nutritional products is unrelated to the Olympic Games or the Olympic movement.[11] Even so, it is my view that the contested mark is not so similar to one or more of the protected words as to create in the mind of the public an association with the Olympic Games or the Olympic movement.

103. The opposition fails under section 3(5).

[10] Written submissions, paragraph 58.
[11] Written submissions dated 27 May 2024, paragraph 37.

OUTCOME

104. The opposition has failed and Application No. 3623547 may proceed to registration.

COSTS

105. The applicant has been successful and is entitled to a contribution towards its costs, in line with the scale set out in Tribunal Practice Notice No. 2/2016. I have calculated the award as follows:

> *£250 for preparing a statement and considering the other side's statement*
> *£500 for preparing evidence*
> *£300 for filing written submissions in lieu of a hearing*
> ***£1050 in total***

106. I therefore order Comité International Olympique to pay Olimp Laboratories sp. z o.o. the sum of £1050. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an unsuccessful appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 22nd day of July 2025

Clare Boucher
For the Registrar,
Comptroller-General