O/0677/25

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO. 4029515
BY MRH WHOLESALE LIMITED
IN RESPECT OF THE TRADE MARK:

Lyfe Vits

IN CLASS 5

AND

IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 447855
BY AJIX, INC.

BACKGROUND AND PLEADINGS

1. On 21 March 2024, MRH Wholesale Limited ("the applicant") applied to register the trade mark shown on the cover page of this decision ("the contested mark") in the UK. The application was published for opposition purposes on 5 April 2024, and registration is sought for goods in Class 5.[1]

2. On 5 June 2024, the application was opposed in full by Ajix, Inc. ("the opponent"). Initially the opposition was based upon sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 ("the Act"),[2] however in an email dated 30 August 2024, the opponent withdrew the section 5(3) ground leaving section 5(2)(b) only. The opponent relies upon the following trade mark:

> 'LYFE GROUP'
> International registration ("IR") no. 1494354
> International registration and designation date: 9 September 2019;
> Priority date: 7 March 2019;[3]
> Date of protection granted in UK: 1 April 2020;
> For the purpose of these proceedings the opponent relies upon all its goods and services, namely those in Classes 5, 40 and 42.[4]
> ("the earlier mark")

3. In its notice of opposition, the opponent claims that the marks are similar and that the respective goods and services are identical or similar, resulting in a likelihood of confusion. The applicant filed a counterstatement denying the grounds of opposition.

4. The opponent's mark qualifies as an earlier mark under section 6(1) of the Act. As it had not completed its registration procedure more than five years before the application date for the contested mark, it is not subject to the use provisions contained

[1] See goods and services comparison.
[2] 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. See also Tribunal Practice Notice ("TPN") 2/2020 End of Transition Period – impact on tribunal proceedings.
[3] Priority is claimed from US Trade Mark No.88329515
[4] See goods and services comparison.

in section 6A of the Act. Consequently, the opponent may rely upon all of the goods and services for which the earlier mark is registered without having to establish genuine use.

5. The opponent is represented by Bird & Bird LLP, whereas the applicant represents itself.

6. Neither party filed evidence. Both parties were given the option of an oral hearing but neither requested to be heard on this matter, nor did they file written submissions in lieu of a hearing. This decision is taken following a careful review of the papers before me.

DECISION

Section 5(2)(b): legislation and case law

7. Section 5(2)(b) and 5A of the Act read as follows:

> "(2) A trade mark shall not be registered if because-
>
> (a) […]
>
> (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.
>
> […]
>
> 5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which

the trade mark is applied for, the application is to be refused in relation to those goods and services only."

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

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

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

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

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

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

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

(g) a lesser degree of similarity between the goods or services may be offset by a great 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 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

9. In *Canon*, Case C-39/97, the CJEU stated that:

> "23. In assessing the similarity of the goods or services concerned, … all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary".

10. Additionally, the factors for assessing similarity between goods and services identified in *British Sugar Plc v James Robertson & Sons Limited ("Treat ")* [1996]

R.P.C. 281 include an assessment of the users and the channels of trade of the respective goods or services.

11. In *Kurt Hesse v OHIM*, Case C-50/15 P, the CJEU stated that complementarity is an autonomous criterion capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court ("GC") stated that "complementary" means:

> "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".

12. For the purposes of considering the issue of similarity of goods and services, it is permissible to consider groups of terms collectively where appropriate: *Separode Trade Mark,* BL O-399-10.[5]

13. In the case of goods and services, the terms used should not be interpreted widely but confined to the core of the possible meanings attributable to the terms: *SkyKick UK Ltd & Anor v Sky Ltd & Ors (Rev1) [2024] UKSC 36*, at [365].

14. It is noted that a comparison of the respective specifications was not provided by the opponent. Accordingly, taking guidance from Iain Purvis KC, sitting as Appointed Person in the *SmartX* trade mark decision,[6] as the opponent has not provided a comparison between the goods and services at issue, I will proceed to make my own. As per *Separode*, I will approach the comparison of the goods and services at issue by grouping them collectively in as few groups as I consider logical. Further, where the terms listed are particularly wide or vague, I will endeavour to follow the principles outlined in *Skykick* by comparing what I consider to be the core meaning of the goods and services, without affording them neither a too liberal, nor an artificially narrow, interpretation.

[5] Paragraph 5
[6] BL O/0911/24, at [32].

15. Pursuant to section 60A of the Act, I am mindful of the fact that the goods and services are not to be automatically regarded as being similar to each other on the ground that they appear in the same class, nor automatically regarded as dissimilar from each other on the ground that they appear in different classes. I also note that in *Unicorn Studio Inc v Veronese* Case CH-2023-000214, Iain Purvis, KC, sitting as deputy High Court judge, stated that any finding of similarity (between goods and services) requires the exercise of common sense. Meanwhile, in *RALEIGH INTERNATIONAL Trade Mark* [2001] RPC 11, Mr Geoffrey Hobbs QC (as he then was), sitting as the Appointed Person, observed that when goods or services are not identical or self-evidently similar, the opposition should be supported by evidence as to their similarity.

16. The competing goods and services are as follows:

Opponent's goods and services	**Applicant's goods**
Class 5 Capsules for pharmaceuticals and health food products in the nature of dietary and nutritional supplements, sold empty. Class 40 Customized manufacture of capsules for pharmaceutical products. Class 42 Pharmaceutical testing, research, or development.	Class 5 Vitamins and vitamin preparations; Gummy vitamins; Vitamin supplements; Vitamin and mineral supplements; Dietary supplements consisting of vitamins; Multivitamins; Vitamin tablets; Protein supplements; Zinc dietary supplements; Folic acid dietary supplements; Dietary and nutritional supplements; Food supplements.

Vitamins and vitamin preparations; Vitamin supplements; Vitamin and mineral supplements; Dietary supplements consisting of vitamins; Multivitamins; Protein supplements; Zinc dietary supplements; Folic acid dietary supplements; Dietary and nutritional supplements; Food supplements

17. The contested goods are vitamins and supplements, taken, for example, to address nutrient gaps in diets, improve or maintain overall health, and potentially reduce the risk of certain health conditions, etc. Whilst such vitamins and supplements, are normally digested naturally through various foodstuffs, they can also be ingested in liquid or powder form, via, amongst other things, a capsule, being a small soluble case of gelatine. Whilst the contested goods are not present in the opponent's class 5 specification, I note that it does contain, *capsules for pharmaceuticals and health food products in the nature of dietary and nutritional supplements, sold empty*. Whilst I acknowledge that the opponent's goods concern empty capsules, I am of the view that these goods share a degree of similarity with the contested goods.

18. In my view, as the applicant's goods are likely to be available in a variety of delivery forms, including capsules, for example, I find that there is a complementary relationship between the respective goods at issue, in the sense that one is indispensable or important for the use of the other. As such, the average consumer may believe that the same undertaking is responsible for the production of both goods. Furthermore, the goods are likely to be distributed through the same distribution channels, for example, to pharmacies, and may target the same users, such as those who facilitate the dosage and intake of the goods at issue. Accordingly, I find that the respective goods are similar to a medium degree.

Vitamin tablets; Gummy vitamins

19. The contested vitamin goods are in tablet and gummy form. A *tablet* (vitamin) consists of a solid formulation of a compressed powdered substance, comprising vitamins, minerals and other ingredients, etc; A *gummy* (vitamin) is a chewable supplement, containing vitamins, often resembling gummy candies/sweets. The opponent's class 5 goods are *capsules for pharmaceuticals and health food products in the nature of dietary and nutritional supplements, sold empty*. Unlike my previous finding above, I am of the view that the contested *vitamin tablets* and *gummy vitamins,* and the opponent's class 5 goods have no relevant factors in common. The opponent's capsules are empty and are only designed to hold a certain dosage of medication, vitamin or supplement, etc, in powder or liquid form, for example. Whereas the

contested *vitamin tablets; gummy vitamins* are not capsules, nor will they be contained in capsules.

20. Even if it could be claimed that the purpose of the respective goods is very broadly healthcare, the intended purpose of the goods differs. Generally speaking, the purpose of vitamins, such as the contested goods, are designed to help individuals meet their nutritional needs, support overall health or address specific deficiencies. Conversely, the purpose of empty capsules, such as the opponent's goods, is to hold a certain dosage of medication, vitamins or supplement, etc., in the form of powder or liquid, allowing them to be taken orally. The healthcare/medical industry encompasses a wide range of goods with very different natures, and the goods at issue will likely be manufactured by different undertakings specialised in a specific field within the healthcare industry. I am of the view that the contested goods have a different nature and will satisfy different purposes to the opponent's goods. Furthermore, the respective goods are not complementary, nor would they be in competition.

21. Therefore, in the absence of any evidence or submissions to the contrary, I am of the view that the applicant's goods and the opponent's class 5 goods are dissimilar. Furthermore, on this basis, the same conclusion applies to the opponent's *customized manufacture of capsules for pharmaceutical products* in class 40.

22. With regards to the opponent's remaining services, namely *pharmaceutical testing, research, or development* in class 42, I am of the view that these services are also dissimilar to the applicant's class 5 goods. Broadly speaking, the applicant's goods are various supplements, used for the treatment of specific nutritional deficiencies. These goods are not 'pharmaceutical products',[7] which, in general, relate to products resulting from pharmacy, that is to say, the art of creating, preparing, preserving and dispensing or administering medicinal products, intended for the treatment or prevention of illnesses. As such, I do not find any obvious similarity between the applicant's goods and the opponent's *pharmaceutical testing, research, or development* services. The goods and services will satisfy different consumer needs, will originate from different providers and will move through different trade channels.

[7] *Hasco TM v EUIPO* – Case T-12/22

Furthermore, the goods and services are neither in competition nor are they complementary. Moreover, the opponent has not provided any submissions in relation to the comparison between the competing goods and services beyond its suggestion that they are similar.

23. As some degree of similarity between goods and services is necessary to engage the test for likelihood of confusion, my findings above mean that the opposition aimed against those goods I have found to be dissimilar will fail.[8] For ease of reference, the opposition under the section 5(2)(b) ground fails against the following goods:

Class 5 Vitamin tablets; Gummy vitamins.

The average consumer and the nature of the purchasing act

24. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose 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 or services in question (see *Lloyd Schuhfabrik Meyer*, Case C-342/97).

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

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

[8] *eSure Insurance v Direct Line Insurance*, [2008] ETMR 77 CA

26. The average consumer of the goods will include members of the general public as well as medical/healthcare professionals, such as pharmacists. The frequency with which the goods are purchased by the general public is likely to vary, depending upon whether, for example, the vitamin and dietary supplements necessitate repeated usage, etc. For medical/healthcare professionals, the goods are likely to be purchased relatively frequently, for example, stocking a pharmacy. I do not consider the purchasing act for any of the goods to be merely casual, as whilst they are not strictly medical or pharmaceutical in nature, being *inter alia*, vitamin and dietary supplements, they are still likely to be an important choice for the general public, and therefore they will want to ensure that the product is safe and appropriate for their needs. Accordingly, when purchasing these goods, the general public will likely demonstrate a medium level of attention. As for medical/healthcare professionals, I am of the view that a higher level of attention will be paid, on the basis that they will need to consider whether the goods at issue are safe and suitable for use, etc. Accordingly, taking these factors into account, it is my view that the level of attention paid by medical/healthcare professionals when purchasing these goods will be slightly higher than medium, although not considerably so.

27. The goods are likely to be selected by the general public via general retailers, pharmacies, and health stores, or their online equivalents. The goods will be self-selected from shelves and cabinets, or after viewing information on websites. Therefore, visual considerations will likely dominate the selection process, however, I recognise that advice may be sought from retail assistants, specialists, or medical/healthcare professionals. Therefore, I do not discount an aural component to the purchase. For medical/healthcare professionals, the goods are likely to be purchased from suppliers and manufacturers, whereby visual considerations are likely to dominate the selection process. However, as verbal discussions may take place with a sales representative, for example, I do not, discount an aural component to the purchase.

Comparison of the marks

28. It is clear from *Sabel BV v. Puma AG* that the average consumer normally perceives a trade 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 trade marks must be assessed by reference to the overall impressions created by them, bearing in mind their distinctive and dominant components. The CJEU stated in *Bimbo SA v OHIM*, that:

> "34. […] it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion."

29. It would be wrong, therefore, to artificially dissect the trade 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 trade marks.

30. The trade marks to be compared are as follows:

The opponent's mark	**The applicant's mark**
LYFE GROUP	Lyfe Vits

Overall impression

31. The marks at issue are plain word marks. In *LA Superquimica v European Union Intellectual Property Office (EUIPO)*, Case T-24/17, the GC held that such plain word marks protected the word or words contained in the mark in whatever form, colour or typeface.[9] Therefore, the fact that the applicant's mark is sought to be registered in title case, and the earlier mark is registered in upper case, is not relevant for the purposes of my comparison.

[9] Paragraph 39.

32. The opponent's mark begins with the invented word 'LYFE', followed by the word 'GROUP'. The word 'GROUP' will be seen as merely denoting the corporate structure of the opponent and will therefore be non-distinctive. As such, I find that the word 'LYFE' is the dominant and distinctive element in the mark, with the word 'GROUP' playing a much lesser role due to its descriptive nature.

33. The applicant's mark begins with the invented word 'Lyfe', followed by the invented word 'Vits'. However, in view of the applicant's goods at issue, the 'Vits' element will, in my view, bring to mind the thought of 'vitamins'. As such, I find that the dominant and distinctive element of the mark is 'Lyfe', with the allusive word 'Vits' playing a slightly lesser role.

Visual comparison

34. Visually, the marks coincide insofar as they identically share the same first word 'LYFE'/'Lyfe'. This similarity appears at the beginning of the respective marks, being where consumers tend to focus,[10] as this position is generally considered to have more impact due to consumers in the UK reading from left to right. The marks are visually different in that the second word in the opponent's mark is 'GROUP', whereas the second word in the applicant's mark is 'Vits'. Overall, I find the competing marks to be visually similar to a medium degree.

Aural comparison

35. The opponent's mark consists of two words, namely 'LYFE GROUP' and will likely be articulated as 'LIFE GROUP'; the applicant's mark also consists of two words, namely 'Lyfe Vits', and will likely be articulated as 'Life Vits'; therefore, the marks aurally coincide in their first syllable 'LYFE'/'Lyfe'. The marks are aurally different insofar as their additional words, 'GROUP' and 'Vits' respectively. Accordingly, I am of the view that the marks are aurally similar to a medium degree.

[10] *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

Conceptual comparison

36. For a conceptual message to be relevant it must be capable of immediate grasp by the average consumer. This is highlighted in numerous judgments of the GC and the CJEU including *Ruiz Picasso v OHIM* [2006] E.C.R.-I-643; [2006] E.T.M.R 29. The assessment must, therefore, be made from the point of view of the average consumer.

37. With regards to the word 'LYFE'/'Lyfe' present in the respective marks, I am of the view that there are two possible scenarios. The first is that the word could be perceived as an invented word, with no concept. The second, far more likely possibility is for consumers to see 'LYFE', as a fanciful and/or deliberate misspelling of the common dictionary word 'LIFE', and immediately think of the ordinary meaning of that word. For this group of average consumers, this word in the marks is conceptually identical.

38. The word 'GROUP' in the opponent's mark, acts as a point of conceptual difference between the marks and will likely be understood as, amongst other things, reference to a collection of people or things, or as reference to a corporate structure.

39. With regards to the word 'Vits' in the applicant's mark, this acts as a point of conceptual difference between the marks. Whilst this word is invented, I am of the view that it could bring to mind the thought of vitamins.

40. Overall, following on from my comments above regarding the shared word 'LYFE'/'Lyfe', despite being an invented word, I am of the view that a significant proportion of consumers will see the word as a fanciful or deliberate misspelling of 'LIFE', articulate it in their heads as 'LIFE', and immediately think of the ordinary meaning of that word. Accordingly, I consider there to be a medium degree of conceptual similarity between the marks.

Distinctive character of the opponent's mark

41. The distinctive character of a trade mark can be measured only, first, by reference to the goods or services in respect of which registration is sought and, second, by

reference to the way it is perceived by the relevant public. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, the CJEU stated that:

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

42. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

43. Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, the opponent has not filed any evidence of use in relation to the earlier mark. Consequently, I have only the inherent position to consider

44. The earlier mark is a word mark comprising the words 'LYFE GROUP. As previously stated, although the word 'LYFE' is invented I am of the view that it will

likely be perceived as a fanciful or deliberate misspelling of ‘LIFE’. The word ‘GROUP’ in the opponent’s mark, will be understood as referring to the corporate structure of the opponent. Consequently, as the word ‘GROUP’ adds nothing to the distinctive character of the mark, the distinctive character rests with the word ‘LYFE’, which although an invented word, will likely be seen as a misspelling of ‘LIFE’, which has no obvious meaning in respect of the goods and services at issue. As such, when considering the mark as a whole, I find it to be inherently distinctive to between a medium to high degree.

Likelihood of confusion

45. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. One such factor is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and services, and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier trade mark, the average consumer for the goods and services, and the nature of the purchasing process. In doing so, I must be mindful to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

46. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one trade mark for the other, while indirect confusion is where the average consumer realises the trade marks are not the same but puts the similarity that exists between the trade marks and goods down to the responsible undertakings being the same or related.

47. Earlier in the decision I found that:

- The marks are visually, aurally and conceptually similar to a medium degree.

- The similarity of the parties' goods and services vary between similar to a medium degree to dissimilar.

- The earlier mark has between a medium to high degree of inherent distinctive character for the goods at issue.

- The average consumer would include members of the general public, paying a medium level of attention, as well as medical/healthcare professionals, paying a slightly higher than medium level of attention (although not considerably so), who will source the goods at issue by both visual and aural means.

48. Taking all the above factors into account, I keep in mind that the marks at issue share the same identical, dominant and distinctive word, 'LYFE'/'Lyfe', and that the differences between the marks are caused by descriptive or allusive words, namely 'GROUP' and 'Vits' respectively. Therefore, I am of the view that these additional elements will have a lesser impact on the overall impressions of the marks. As such, I consider that the 'GROUP' and 'Vits' elements will likely be overlooked, resulting in the marks both being perceived as 'LYFE'/'Lyfe' marks, causing them to be mistakenly recalled or misremembered as each other, when used on goods that are similar to a medium degree. Consequently, I consider that there exists a likelihood of direct confusion between the marks, even where a higher than medium level of attention will be paid.

49. Even if I am wrong in that finding, taking all of the above factors into account, the average consumer is likely to view the common use of the word 'LYFE'/'Lyfe' in relation to such similar goods as an indication that the marks originate from the same or economically linked undertakings. The use of the word 'GROUP' in the earlier mark, being a non-distinctive addition, and the use of the word 'Vits' in the applicant's mark being allusive in respect of the goods at issue is, in my view, consistent with brand variation. Consequently, I consider there to be a likelihood of indirect confusion.

CONCLUSION

50. The opposition under section 5(2)(b) is partially successful. Therefore, the applicant's mark is hereby, subject to any successful appeal of my decision, refused registration for the following goods:

Class 5 Vitamins and vitamin preparations; Vitamin supplements; Vitamin and mineral supplements; Dietary supplements consisting of vitamins; Multivitamins; Protein supplements; Zinc dietary supplements; Folic acid dietary supplements; Dietary and nutritional supplements; Food supplements.

51. The applicant's mark can proceed to registration in respect of the following goods for which the opposition has been unsuccessful:

Class 5 Vitamin tablets; Gummy vitamins.

COSTS

52. The opponent has achieved a greater measure of success and is therefore entitled to a contribution towards its costs, in line with the scale set out in Tribunal Practice Notice (TPN) 1/2023. In the circumstances, I award the opponent the sum of £400 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Official fee:[11]	£100
Preparing a notice of opposition and considering the counterstatement:	£300
Total:	**£400**

[11] Although the opponent initially opposed under sections 5(2)(b) and 5(3), the latter ground was withdrawn in submissions dated 30 August 2024, without being evidenced so the case proceeded on 5(2)(b) only. Therefore, I have reduced the opposition fee accordingly.

53. I therefore order MRH Wholesale Limited to pay Ajix, Inc., the sum of £400. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 22nd day of July 2025

Sam Congreve
For the Registrar