

BL O/0871/25

IN THE MATTER OF THE TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION NO. 1474873 IN THE NAME OF BIOGENA GMBH & CO KG FOR THE TRADE MARK



IN CLASSES 5, 29 & 30

AND IN THE MATTER OF OPPOSITION THERETO UNDER NO. 418971

BY BIOGEN MA INC.

AND IN THE MATTER OF AN APPEAL FROM THE DECISION OF J. HOPKINS (O/0335/25) DATED 7 APRIL 2025.

DECISION

Introduction

1. This was an appeal by Biogen GmbH & Co KG. ("**Appellant**") from decision O/0335/25 of J. Hopkins ("**Decision**") concerning the opposition by Biogen MA Inc. ("**Respondent**") to the Appellant's designation under International Registration No. WO0000001474873 for the following UK mark ("**IR**"):



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2. The IR was registered on 31 October 2018 and on the same day the Appellant designated the UK as a territory in which it sought to protect the IR.
3. The IR was published for opposition purposes on 4 October 2019, and on 3 January 2020 the Respondent partially opposed the protection of the IR in the UK under s. 5(2)(b) of the Trade Marks Act 1994 (“**the Act**”), relying on two of its earlier registered trade marks for **BIOGEN**.
4. Neither side filed evidence. A hearing was requested, following which J. Hopkins for the Registrar decided that the opposition was partially successful.
5. On 7 May 2025 the Appellant filed a Notice to Appeal to the Appointed Person against the Decision under Section 76 of the Act.

Subsequent events

6. A hearing was listed before me on 22 September 2025. However, on 16 September 2025 the Appellant’s representatives informed the Appointed Persons Secretariat Manager that the Appellant wished to withdraw its appeal.

Outcome

7. Accordingly, the Decision stands. The protection of the IR in the UK will be refused in respect of the following goods:

Class 5: Pharmaceutical and veterinary preparations; nutraceuticals for use as a dietary supplement; sanitary preparations for medical purposes; dietic food and substances adapted for medical and veterinary use; dietetic products for a balanced diet; starch for dietetic or pharmaceutical purposes; dietary supplements for humans and animals; antioxidants for medical purposes; nutritional supplements and dietetic food supplements for sports and performance enhancement, adapted for medical use; meal replacement powders for sports and performance enhancement for medical use; mineral food supplements, consisting primarily of vitamins, amino acids, minerals and trace elements, adapted for medical purposes; vitamin preparations; preparations for making medicated dietetic beverages; medical plasters; materials for surgical dressings; disinfectants; fungicides.

8. Protection of the IR in the UK will be granted for the following goods, against which the opposition failed:

Class 5: Food for babies; powdered milk for babies; material for dental fillings and dental impressions; preparations for destroying noxious animals; herbicides.

Costs

9. The Respondent seeks an off scale costs award of its costs incurred in responding to the appeal. The Respondent's representatives state that they incurred costs of £1,050, primarily on 12 and 15 September in "re-reading the decision appealed, considering applicant's grounds for appeal, considering whether there was basis for Applicant's remarks regarding similarity of goods; considering inherent distinctiveness of BIOGEN mark and arguments to support distinctiveness, and preparing an outline of the skeleton arguments".
10. As the proceedings were commenced prior to the commencement date of TPN 1/2023, the scale costs in TPN 4/2007 are applicable. On that scale, up to £1,500 per day of hearing can be awarded for preparing for and attending a hearing. Although the hearing did not take place, it was reasonable for the Respondent to incur costs in preparing for it, and I accordingly order that the Appellant must pay the Respondent the sum of £1,050 in this appeal.
11. As for the costs below, the Hearing Officer ordered that the Appellant should pay the Respondent £1,000. That order still stands.
12. Accordingly, the Appellant must pay the Respondent the sum of £2,050 within 21 days of this decision.

Dr. Brian Whitehead

22 September 2025

Representation

Stevens Hewlett & Perkins for the Appellant/ Applicant

Finnegan Europe LLP for the Respondent/ Opponent