BL O/0951/26

TRADE MARKS ACT 1994

IN THE MATTER OF
TRADE MARK APPLICATION NO. 4198437
IN THE NAME OF ANTHONY OPARAOCHA
TO REGISTER AS A TRADE MARK:



IN CLASS 5

AND

IN THE MATTER OF OPPOSITION THERETO
UNDER NO. 456419
BY NEW ROOTS HERBAL INC.

BACKGROUND AND PLEADINGS

1. On 3 May 2025, Anthony Oparaocha ("the applicant") filed an application for the trade mark shown on the cover page of this decision ("the contested mark") in the UK. The trade mark was published for opposition purposes on 30 May 2025, and registration is sought for goods in class 5, as set out in paragraph 27 of this decision.

2. On 2 September 2025, the application was opposed in full by NEW ROOTS HERBAL INC. ("the opponent"). Initially the opposition was based upon sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 ("the Act").[1] However, in an email dated 2 December 2025, the opponent withdrew the section 5(3) ground, leaving only section 5(2)(b). The opponent relies upon the following trade mark:

ChillPills

Nanani

UK trade mark registration no. 911061017[2]
Filing date: 23 July 2012
Registration date: 22 January 2013
Relying upon all of its goods and services in classes 5 and 35, as set out in paragraph 27 of this decision.

3. The opponent claims that the marks are highly similar, and that the goods and services at issue are either identical or highly similar, resulting in a likelihood of confusion and association between the marks.

[1] 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.
[2] Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM or International Registration designating the EU. As a result, the opponent's mark was converted into comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the same legal status as if they had been applied for and registered under UK law, and the original filing dates remain the same. See also Tribunal Practice Notice ("TPN") 2/2020 End of Transition Period – impact on tribunal proceedings.

4. The applicant filed a counterstatement denying the ground of opposition.

5. The earlier mark had been registered for five years or more by the date on which the contested application was filed and was therefore potentially subject to proof of use under section 6A of the Act. However, the applicant expressly ticked 'no' on his Form TM8, the defence and counterstatement, to the question as to whether the opponent was required to submit proof of use. Accordingly, the opponent may rely upon all the goods and services identified in its pleadings.

6. Only the applicant filed evidence in these proceedings. No hearing was requested, and only the opponent filed written submissions in lieu of the same.

7. The opponent is represented by Abion UK Limited; the applicant is self-represented.

EVIDENCE AND SUBMISSIONS

8. The applicant's evidence comprises his witness statement dated 17 February 2026 and exhibits A to G. Mr Oparaocha is the founder of a wellness and supplement business operating in the United Kingdom. The exhibits are summarised below:

- Exhibits A, B, B1 - extracts taken from the online global retail platform 'Amazon' showing products featuring the words 'Chill Pill' in their product names which are marketed as, inter alia, mood and stress support supplements and calming herbal supplements.
- Exhibit C - extract taken from the online retail platform 'takeiris.com', showing a product featuring the words 'Chill Pills' in its product name which is marketed as an all-in-one stress-reduction supplement; 'takeiris.com' is a direct-to-consumer wellness brand operating primarily in the US market.
- Exhibit D - extract taken from the online retail platform 'bbnaturalhealth.co.za', showing a product featuring the words 'Chill Pill' in its product name which is marketed as a herbal supplement intended for stress and anxiety relief; 'bbnaturalhealth.co.za' is an e-commerce website operating in the South African market.

- Exhibit E - extract taken from the online retail platform ‘professional supplementcenter.com’, showing a supplement product featuring the words ‘Chill Pill’ in its product name; ‘professionalsupplementcenter.com’ is a supplement retailer based in the US.
- Exhibit F - extract taken from the online retail platform ‘evewellness.com’, showing a product featuring the words ‘Chill Pills’ in its product name, marketed for mood, anxiety and sleep support and for stress and anxiety relief. It is noted that ‘evewellness.com’ is a wellness brand operating primarily in the New Zealand market.
- Exhibit G - extract taken from the online retail platform ‘leafly.com’, showing a product featuring the words ‘Chill Pill’ in its product name. It is noted that ‘leafly.com’ is a platform serving the legal cannabis market in the US.

9. The applicant relies on this evidence to support his contention that ‘Chill Pills’, which appears in the earlier mark as ‘ChillPills’, has weak distinctive character. I will consider that contention and the above supporting evidence as a preliminary issue below.

10. The opponent filed written submissions in lieu of a hearing on 11 May 2026.

11. I make this decision having taken full account of all the papers before me, referring to them in this decision only to the extent that I consider it is necessary.

PRELIMINARY ISSUES

12. The applicant raises a number of points in his counterstatement that I intend to address as preliminary issues, before considering the merits of the opposition.

- <u>Goods comparison and the target market</u>

  “The Applicant's brand is positioned within the wellness and lifestyle supplement market, with distinctive visual branding (neon tones, glitch effects, youth-culture inspired design). The Opponent's mark, by contrast, appears to operate in a different commercial and stylistic context (clinical/medical).

Given the divergence in trade channels, target consumers, brand presentation, and clear difference in design language and logo design, the average consumer is unlikely to be misled or confused."

13. Differences between the goods and services currently provided by the parties are irrelevant, except to the extent that those differences are apparent from each party's specifications. It is the goods and services relied upon by the opponent and the goods applied for by the applicant that I will be comparing later in this decision. The assessment I must make between the goods and services is a notional and objective assessment, rather than a subjective one.

14. Furthermore, marketing strategies, including the targeting of specific consumers, are temporary and may change over time. As such, it is not appropriate to take the parties' current marketing strategies into account in my assessment. However, I will make an assessment, later in this decision, as to who the average consumer could be for the goods and services at issue.

- Common use of the terms 'Pills' and 'Chill Pills'

"The word "pills" is a common descriptive term widely used by third parties in the health and supplement sector (examples include "Happy Pills," "Sleepy Pills," etc.).

[…] The Opponent cannot reasonably claim exclusive rights over a generic term. For this very reason previous trademark attempts of mine were refused.

"CHILL PILL(S)" is a common, descriptive and non-distinctive phrase. The Applicant submits that the phrase "chill pill" / "chill pills" is a widely understood colloquial expression in the English language, commonly used to describe calmness, relaxation, stress relief, or emotional moderation.

When applied to supplements, wellness products, or mood-support formulations, the phrase is descriptive or highly allusive of the intended purpose or effect of the goods.

> The Applicant will rely on extensive third-party evidence, including screenshots already prepared, demonstrating widespread, concurrent and longstanding use of the terms “chill pill” and “chill pills” by numerous unrelated traders, operating independently of both the Applicant and the Opponent.
>
> […]
>
> As a result, consumers are conditioned to encounter “chill pill(s)” from a variety of commercial sources and do not perceive the phrase as denoting a single trade origin.
>
> […]
>
> The Opponent cannot monopolise a common phrase.
>
> […]
>
> Given the descriptive and commonly used nature of the phrase, no single trader can legitimately claim exclusivity over “chill pill(s)” for relaxation or wellness-related goods. I personally tried in the past and was refused, so on these same grounds the opponent cannot make the exact same claim.”

15. In support of these submissions, the applicant relies on the third-party uses summarised at paragraph 8 as evidence that ‘Chill Pill(s)’ is descriptive or non-distinctive in relation to the opponent’s class 5 goods.

16. The applicant’s evidence comprises eight screenshots which he submits demonstrate use of ‘Chill Pill(s)’ for health supplements by a number of unrelated traders, such that consumers would not perceive the expression as indicating a single trade origin.

17. The exhibits are undated, although the witness statement records that they were retrieved between 9 September and 13 December 2025, which is after the relevant

date of 3 May 2025.[3] However, those retrieval dates do not, of themselves, establish when the uses shown began. The exhibits demonstrate that supplement products bearing the wording 'Chill Pill(s)' were available online, but largely concern websites apparently directed at overseas markets. Whilst that does not preclude their relevance to the UK, the evidence does not establish the extent to which UK consumers had encountered those products by the relevant date. Further, some of the exhibits display the ® symbol alongside the wording 'Chill Pill',[4] indicating that the wording is presented as a registered trade mark. Taken as a whole, I find the evidence insufficient to establish that third-party use had weakened the distinctive character of 'ChillPills' among UK consumers at the relevant date. That finding is separate from my assessment of the words 'ChillPills' inherent distinctive character, which I will address later in this decision.

18. Accordingly, for the avoidance of doubt, I will say no more about this evidence and, instead, continue to make my decision based on a fair and notional assessment of the similarity of the marks at issue and the respective goods and services in their specifications, and in doing so, will draw my own conclusions on the inherent distinctiveness of the earlier mark.

DECISION

Section 5(2)(b)

19. Section 5(2)(b) of the Act reads as follows:

> "5(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,

[3] Filing date of the application.
[4] Exhibits B and B1.

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

20. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor* [2025] UKSC 25:

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

21. In *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc,* Case C-39/97, the Court of Justice of the European Union ("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".

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

> "29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category,

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

23. 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.

24. 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]

25. 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].

26. 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 requires the exercise of common sense.

27. The competing goods and services are as follows:

The applicant's goods

Class 5 Vitamin supplements; Nutritional supplements; Dietary supplements; Probiotic supplements; Herbal supplements; Protein supplements; Prebiotic supplements; Food supplements; Mineral dietary supplements; Zinc dietary supplements; Mineral nutritional supplements; Dietary and nutritional supplements; Vitamin and mineral supplements; Protein dietary supplements; Anti-oxidant food supplements; Dietary food

[5] Paragraph 5.

supplements; Dietary supplements for humans; Vitamin and mineral food supplements; Dietary supplements with a cosmetic effect; Mineral dietary supplements for humans; Food supplements for sportsmen; Multivitamins.

The opponent's goods and services

Class 5 Parapharmaceutical preparations, vitamins, minerals and trace elements, dietetic and nutritional preparations for medical purposes, medicated syrups, combined preparations based on vitamins, minerals, trace elements and plant extracts, food supplements enriched with vitamins, minerals or trace elements, vitamin preparations, multivitamin preparations, mineral preparations and multimineral preparations for medical purposes, herbal teas for medical purposes, medicinal plants, dietetic substances adapted for medical use, preparations or foodstuffs containing proteins for medical purposes, herbal extracts or syrups for medical purposes, food additives based on vitamins in the form of concentrates, protein concentrates for use as food additives for medical and food purposes, medicated sweets and confectionery for medical purposes, preparations containing biological catalysts for active persons, and for sportspeople and convalescents, analeptic foodstuffs for medical purposes, food extracts and preparations covering specific nutritional requirements, edible goods for dietetic and diabetic diets, food additives in solid and liquid form for strengthening the immune system and revitalising the health in the form of mixtures as a powder or as drops, syrups, gels, creams, tablets, effervescent tablets, lozenges, coated tablets, capsules, sweets, jellies or powders, all the aforesaid being for medical purposes, beverages and extracts enriched with vitamins for medical purposes, medicinal herbs; Dietetic substances containing plant extracts; Dietetic foods containing plant extracts; Vitamin preparations; None of them related to animals.

Class 35 Retailing in shops, wholesaling and sale via global computer networks of parapharmaceutical preparations, vitamins, minerals and trace

elements, dietetic and nutritional preparations for medical purposes, medicated syrups, combined preparations based on vitamins, minerals, trace elements and plant extracts, food supplements enriched with vitamins, minerals or trace elements, vitamin preparations, multivitamin preparations, mineral preparations and multimineral preparations for medical purposes, herbal teas for medical purposes, medicinal plants, dietetic substances adapted for medical use, preparations or foodstuffs containing proteins for medical purposes, herbal extracts or syrups for medical purposes, food additives based on vitamins in the form of concentrates, protein concentrates for use as food additives for medical and food purposes, medicated sweets and confectionery for medical purposes, preparations containing biological catalysts for active persons, and for sportspeople and convalescents, analeptic foodstuffs for medical purposes, food extracts and preparations covering specific nutritional requirements, edible goods for dietetic and diabetic diets, food additives in solid and liquid form for strengthening the immune system and revitalising the health in the form of mixtures as a powder or as drops, syrups, gels, creams, tablets, effervescent tablets, lozenges, coated tablets, capsules, sweets, jellies or powders, all the aforesaid being for medical purposes, beverages and extracts enriched with vitamins for medical purposes, medicinal herbs, dietetic substances containing plant extracts, dietetic foodstuffs containing plant extracts, vitamin preparations; Import - export.

28. For the avoidance of doubt, I do not consider that the limitation in the opponent's class 5 specification, namely *none of them related to animals*, affects my comparison of the parties' goods.

The comparison

29. With regard to the similarity of the goods and services, both parties have provided comments. Whilst I do not intend to summarise these here, I confirm that I have given them due consideration in making the following comparisons.

Vitamin supplements; Nutritional supplements; Dietary supplements; Probiotic supplements; Herbal supplements; Protein supplements; Prebiotic supplements; Food supplements; Mineral dietary supplements; Zinc dietary supplements; Mineral nutritional supplements; Dietary and nutritional supplements; Vitamin and mineral supplements; Protein dietary supplements; Anti-oxidant food supplements; Dietary food supplements; Dietary supplements for humans; Vitamin and mineral food supplements; Dietary supplements with a cosmetic effect; Mineral dietary supplements for humans; Food supplements for sportsmen

30. The contested goods comprise various categories of supplements. Each category encompasses supplements enriched with vitamins, minerals or trace elements, including supplements which combine those ingredients with probiotics, herbal ingredients or protein, or which are intended to produce a cosmetic effect. I find that such goods overlap with the opponent's *food supplements enriched with vitamins, minerals or trace elements, preparations or foodstuffs containing proteins for medical purposes, herbal extracts or syrups for medical purposes*. Accordingly, I find that the goods at issue are identical in accordance with the principle outlined in *Meric*.

Multivitamins

31. Broadly speaking, the contested goods are dietary supplements combining several vitamins, sometimes with minerals, in a single product. The contested wide term *multivitamins* encompass the opponent's *multivitamin preparations.* The goods are therefore identical in line with the principle set out in *Meric*.

The average consumer and the nature of the purchasing act

32. 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).

33. In *Iconix* (cited above), the Supreme Court approved the comments of Arnold LJ in *Lidl Great Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1)* [2024] EWCA Civ 262, where he pointed out that:

> (a) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
>
> (b) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers;
>
> (c) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
>
> (d) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;
>
> (e) The average consumer's level of attention varies according to the category of goods or services in question; and
>
> (f) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

34. The average consumer of the goods at issue 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 are purchased for regular or occasional use. For medical/healthcare professionals, the goods are likely to be purchased relatively frequently, for example, when stocking a pharmacy. I do not consider the purchasing act to be merely casual. Although the goods are not necessarily medical or pharmaceutical in nature, consumers are likely to take care to ensure that they are safe and appropriate for their needs.

35. Accordingly, when purchasing these goods, the general public will likely demonstrate a medium level of attention. As for medical/healthcare professionals, they are likely to pay slightly more attention, given their responsibility for selecting products suitable for supply or recommendation to others. I consider their level of attention to be slightly higher than medium, although not considerably so.

36. 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, with visual considerations 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

37. 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."

38. 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.

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

The opponent's mark	The applicant's mark
ChillPills Nahani	CHILL PILLZ

40. Both parties have made lengthy comments regarding the similarity of the marks. Whilst I do not propose to reproduce those here, I have taken them all into consideration in reaching my decision.

Overall impression

41. The applicant's figurative mark consists of the words 'CHILL PILLZ', placed one above the other in large, forward-slanting white uppercase lettering. The word 'CHILL' has blue outlines and icicle-like detailing extending from the lower edges of the letters, while 'PILLZ' has pink and blue edging. Both words have a heavy black shadow, which appears fragmented beneath 'PILLZ'. I am of the view that the words hang together

as a unitary phrase, with the word ‘CHILL’ qualifying the word ‘PILLZ’. Accordingly, the overall impression of the mark resides in the combination of those two words. With regard to the stylisation in the mark, I find that it makes a noticeable, albeit secondary, contribution to the overall impression.

42. The opponent’s figurative mark consists of the words ‘ChillPills Nahani’ placed one above the other. ‘ChillPills’ appears in red upper and lowercase lettering, with ‘Chill’ in a heavier font than ‘Pills’. The word ‘Nahani’ is presented in brown upper and lowercase lettering, with a curved brown stem bearing two green leaves which forms part of the letter ‘h’. A faded yellow background sits behind the wording and figurative element. I am of the view that the average consumer is likely to perceive ‘ChillPills’ and ‘Nahani’ as two separate word elements, each making an independent and equal contribution to the overall impression of the mark. With regard to the figurative elements, I find that they make a noticeable contribution to the overall impression, although the wording plays the greater role.

Visual comparison

43. Visually, the marks coincide in the sequence of letters ‘CHILL PILL’, although the applicant’s wording ‘CHILL PILLZ’ is presented as two separate words, whereas ‘ChillPills’ in the opponent’s mark is conjoined. The respective endings, ‘Z’ and ‘s’, create a point of visual difference, as does the additional word ‘Nahani’ in the opponent’s mark. The marks also differ in their overall presentation and figurative detailing. Whilst the different presentations and the additional word ‘Nahani’ create clear visual differences, I consider that the close resemblance between ‘CHILL PILLZ’ and ‘ChillPills’ remains a substantial point of visual similarity. Accordingly, taking the similarities and differences into account, I find the marks to be visually similar to between a low and medium degree.

Aural comparison

44. Aurally, I am of the view that ‘CHILL PILLZ’ in the applicant’s mark will be pronounced identically to ‘ChillPills’ in the opponent’s mark, notwithstanding the different spellings. The additional word ‘Nahani’ in the opponent’s mark constitutes a

point of aural difference. The figurative elements in the marks will not be articulated. Taking the similarities and differences into account, I find the marks to be aurally similar to a medium degree.

Conceptual comparison

45. 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.

46. The words 'CHILL PILLZ' in the applicant's mark will likely be understood as a variant spelling of 'chill pills', bringing to mind the expression 'take a chill pill', meaning to calm down or relax. The word 'ChillPills' in the opponent's mark conveys the same meaning. As for the additional word 'Nahani' in the opponent's mark, this neither alters nor qualifies that shared concept, on the basis that the average consumer will likely perceive the word as invented and will not attribute any immediate meaning to it.

47. With regard to the figurative elements, the icicle-like detailing in the applicant's mark merely reinforces a suggestion of coldness associated with the word 'CHILL', whilst the leaves and stem element in the opponent's mark may convey a natural concept, e.g. that the goods at issue contain natural/plant-derived ingredients.

48. Overall, I find that the marks share the same central conceptual message, namely pills which help the user to 'chill', i.e. relax. Therefore, I find the marks to be conceptually similar to a high degree.

Distinctive character of the earlier mark

49. 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 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).
>
> 23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

50. 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 and services, to those with high inherent distinctive character, such as invented words which have no allusive qualities.

51. The distinctive character of a mark can be enhanced through use. Although the opponent claims enhanced distinctive character in its written submissions, it has filed no evidence to support that claim. Consequently, I have only the inherent position to consider.

52. With regard to the distinctive character of the earlier mark, in his counterstatement the applicant submits:

"[…] the phrase "chill pill" / "chill pills" is a widely understood colloquial expression in the English language, commonly used to describe calmness, relaxation, stress relief, or emotional moderation. When applied to supplements, wellness products, or mood-support formulations, the phrase is descriptive or highly allusive of the intended purpose or effect of the goods.

[…]

As a result, consumers are conditioned to encounter "chill pill(s)" from a variety of commercial sources and do not perceive the phrase as denoting a single trade origin.

[…]

Given the descriptive and commonly used nature of the phrase, no single trader can legitimately claim exclusivity over "chill pill(s)" for relaxation or wellness-related goods. […]. Any distinctiveness in the Opponent's registration, if present at all, resides only in: the mark taken as a whole; its additional verbal matter; its specific stylisation and figurative root device.

[…]

Given the weak inherent distinctiveness of the shared wording, even relatively modest differences are sufficient to avoid confusion."

53. In its submissions,[6] the opponent states the following:

"[…] the Opponent does not contest the comment that 'CHILL PILL(S)' is used in common parlance, as part of sayings such as 'calm down, take a chill pill' etc. However, this is not common in respect of the specific class 5 goods applied for under the Subject Mark, nor covered under class 5 in the Opponent's Mark. […] there is no such good as a 'chill pill'. This is a made-up phrase used within

[6] Witten submission in lieu of a hearing, dated 11 May 2026.

some sayings in the English language and does not denote an actual supplement, multivitamin or any other type of good listed in class 5.

Indeed, CHILL PILL(S) is certainly not descriptive of goods such as vitamin supplements, protein supplements, herbal supplements etc. which are products designed to add nutrients to a normal diet. They are often taken to ensure enough nutrients are consumed but are not intended to treat or prevent diseases. Any purely descriptive use of the phrase CHILL PILL would have to be in association with the reduction of stress, which neither the Opponents' goods, nor the goods covered under the Subject Mark specify."

54. In *Kurt Geiger Ltd v A-List Corporate Ltd*,[7] the Appointed Person observed that the distinctive character of the earlier mark as a whole is relevant to the likelihood of confusion only insofar as it resides in the element common to the marks.

55. The earlier mark is figurative, comprising the words 'ChillPills' and 'Nahani', together with a stem and leaf device and a yellow background. As discussed above, I have found that 'ChillPills' will likely convey the idea of pills which can help the user to chill (relax). In relation to goods intended to promote calmness or relaxation, I find that 'ChillPills' would strongly allude to their intended purpose or effect and therefore this element of the mark possesses a low degree of inherent distinctive character. The conjoining of the words does nothing to alter that finding.

56. As for the 'Nahani' element of the mark, the average consumer will likely perceive this word as invented, with no apparent descriptive or allusive significance for the goods at issue. The stem and leaf device suggests natural or plant-derived ingredients and consequently adds little distinctive character for goods containing such ingredients. Accordingly, taking the mark as a whole, I find that it possesses a medium degree of inherent distinctive character, arising principally from the inclusion of the word 'Nahani'.

[7] BL O/075/13.

Likelihood of confusion

57. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between them, and the goods, down to the responsible undertaking being the same or related. 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. The first is the interdependency principle, i.e. a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods at issue, and the nature of the purchasing process. In doing so, I must be alive 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.

58. Earlier in the decision I found that:

- The goods are *Meric* identical.

- 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).

- The purchasing process will be predominantly visual, although I do not discount an aural component.

- The marks are visually similar to between a low and medium degree; aurally similar to a medium degree; and conceptually similar to a high degree.

- The shared phrase ‘CHILL PILLS/Z’ present in the marks possesses a low degree of inherent distinctive character in relation to some of the goods at issue;

however, when considered as a whole, the earlier figurative mark 'ChillPills Nahani' is inherently distinctive to a medium degree.

59. Taking the above into account, I consider that the average consumer will notice and recall the presence of the additional word 'Nahani' in the earlier mark. That word contributes independently and equally to the overall impression of the earlier mark and creates clear visual and aural differences between the marks. Bearing in mind those differences and the respective levels of attention paid by the average consumer, I do not consider that the marks will be mistaken for one another, even allowing for imperfect recollection. Accordingly, I find that there is no likelihood of direct confusion.

60. I will now consider whether there is a likelihood of indirect confusion.

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

> "16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized 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)."

62. These examples are not exhaustive but provide helpful focus.

63. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor QC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion. He added that "trade mark law was about consumers' unwitting assumptions, not what they could find out if they thought to check".

64. Accordingly, it is necessary for me to consider whether the common element 'CHILL PILLS/Z', viewed in the context of each mark as a whole, provides a proper basis for consumers to assume that the marks denote the same or economically linked undertakings. I bear in mind that the shared expression has a low degree of inherent distinctive character for certain goods, such as pills intended to promote calmness or relaxation, and that the earlier mark's medium distinctiveness arises principally from the inclusion of 'Nahani'. The question therefore is whether the average consumer, recognising the differences between the marks, would nevertheless attribute the respective goods to the same or economically linked undertakings, bearing in mind

that mere association between the marks is insufficient. I am of the view that a significant proportion of the relevant public will do so.

65. Taking account of the separate presentation of ‘ChillPills’ and ‘Nahani’ in the earlier mark and the invented character of the latter, I consider that the average consumer is likely to perceive ‘ChillPills’ as a product-line name and ‘Nahani’ as an accompanying house brand. Both elements contribute equally to the overall impression but perform different branding functions. On encountering the applicant’s mark on identical goods, the average consumer is likely to regard ‘CHILL PILLZ’, pronounced identically to ‘ChillPills’, as that product-line name used without the house brand, with the spelling – the ‘Z/s’ last letters – being easily mis-recalled one for the other and the figurative differences reflecting a variation in presentation rather than a different trade origin. Taking the marks as a whole and the respective levels of attention into account, I find a likelihood of indirect confusion, notwithstanding the shared expression’s low distinctiveness for relaxation-related goods. The slightly higher level of attention paid by medical/healthcare professionals does not, in my view, alter that conclusion.

CONCLUSION

66. The opposition under section 5(2)(b) of the Act succeeds in full. Subject to any successful appeal against this decision, the application is refused.

COSTS

67. The opponent has been successful and is 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 £1050 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Official fee	£100[8]
Preparing a notice of opposition and considering the applicant's counterstatement	£250
Preparing written submissions in lieu of a hearing; and	£400
Considering and commenting on the other side's evidence	£300
Total:	£1050

68. I therefore order Anthony Oparaocha to pay NEW ROOTS HERBAL INC. the sum of £1050. 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 23rd day of October 2026

Sam Congreve
For the Registrar

[8] Although the opposition was initially brought under sections 5(2)(b) and 5(3), the latter ground was withdrawn on 2 December 2025 without supporting evidence having been filed. The opposition therefore proceeded under section 5(2)(b) only. Accordingly, I have limited the award in respect of the official fee to £100.