O/0979/26

TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK APPLICATION NUMBER 4118024

BY

THG NUTRITION LIMITED

TO REGISTER THE FOLLOWING TRADE MARK:

FUEL YOUR

IN CLASS 5, 29, 30 AND 35

AND

IN THE OPPOSITION THERETO

UNDER NUMBER 452532

BY APPLIED NUTRITION LIMITED

BACKGROUND & PLEADINGS

1. On 29 October 2024, THG Nutrition Limited ("the applicant") applied to register the trade mark shown on the cover page of this decision in the UK ("the contested mark"). The contested mark was published for opposition purposes in the Trade Marks Journal on 22 November 2024 in respect of the following goods and services:

Class 5: Dietary supplements; dietary food supplements; nutritional supplements; dietetic and slimming foodstuffs and substances; mineral food-supplements; food-supplements based on vitamins, minerals and raw products from plants; health food supplements; vitamin preparations; slimming aids; herbal supplements and herbal extracts; herbal beverages; meal replacement powders; nutritional drink mixes for use as a meal replacement; mineral supplements; nutritional powders; food supplements, tablets and capsules; carbohydrate supplements; amino acid supplements; dietetic and slimming substances.

Class 29: Meat, poultry, game, fish and seafood; products made principally of meat, poultry, game, fish or seafood; extracts of the aforesaid goods; preserved, frozen, dried and cooked fruits and vegetables and food products prepared there from; salads; fruit salads; soup and soup preparations; processed nuts; spreads; dips; crisps; snack foods; jellies, jams; eggs, milk and dairy products; butter; peanut butter; milk shakes; powdered milk; liquid food shakes; cheese and cheese products; edible oils and fats; preserves; pickles; prepared meals; nutrition food bars; food supplements for sports nutrition purposes, whey proteins, milk proteins.

Class 30: Cereals; preparations made from cereals; flour; preparations made from flour; sausage rolls; quiches; sandwiches; confectionery; confectionery bars; cookies; bread; pastry; ices; ice cream; ice cream products and frozen confections; preparations for making ices, ice cream, ice cream products and frozen confections; chocolate; products made or containing chocolate; flapjacks; shortbreads; honey and treacle; sugar; puddings; flavourings other than non-

essential oils;cheese cake; sauces; chutneys; tea products; tea beverages; fruit teas; iced tea; green tea; coffee; cocoa; rice; tapioca; spices; yeast; baking powder; biscuits; cakes; products made primarily from chocolate; pasta; pastry and pastry products; meat pies, vegetable pies, fruit pies; fruit crumbles; snack foods; pie mixes; prepared meals containing pasta, bread, cereals, rice and/or pastry; desserts containing any of the above products; meringues; preserved garden herbs; herbal extracts, other than those for medical purposes.

Class 35: Retail services, online retail services, mail order retail services, department store services, retail services by means of privately run or hosted parties; all in the field of foodstuffs, drinks, clothing, household containers and implements, kitchen containers and implements, nutritional supplements, vitamin supplements, food and drink supplements, meal replacement powders.

2. On 14 February 2025, the contested mark was opposed by Applied Nutrition Limited ("the opponent"). The opposition is brought under Section 3(1)(b) and 3(1)(d) of the Trade Marks Act 1994 ("the Act").[1] In summary, the opponent pleads the following:

    (i) That the contested mark is devoid of distinctive character because "the phrase 'FUEL YOUR' is an incomplete invitation or encouragement to the average consumer to do something positive. In relation to the Contested Goods this could be, for example, to use food or supplements to "fuel your body", "fuel your mind", or "fuel your happiness". The opponent also submits that the phrase "FUEL YOUR" "is an origin neutral value or customer service statement which does not indicate the origin of the goods and services to which it is applied"; and

    (ii) That, when used in relation to the goods and services to which it is applied, the phrase "FUEL YOUR" is one "that the average consumer

[1] The opposition was initially also brought under Section 3(6) of the Act, but the opponent confirmed it no longer intended to rely on this ground by way of an email dated 16 June 2025.

would expect to see in relation to advertising as a value or customer service statement". Consequently, the opponent submits that it is "widely used in the industry and has become customary in the current language, or in the *bona fide* established practices of the trade".

3. The applicant filed a counterstatement denying the claims made in the opposition. Specifically, the applicant denies that the words "FUEL YOUR" alone are widely used in the industry and have become customary in the current language, or in the bona fide established practices of the trade, to refer to value or customer service statements for the applied for goods and services. The applicant also submits that the fact the mark is grammatically illogical supports that the mark is capable of being distinctive and more than capable of functioning as a trade mark as it requires extra mental steps on behalf of the consumer.

4. Both parties filed evidence during these proceedings, which is discussed in further detail below.

THE HEARING AND REPRESENTATION

5. Both parties also requested a hearing and agreed to a short format hearing which took place before me on 25 August 2026 by video conference. Skeleton arguments were filed by both parties prior to the hearing.

6. At the hearing, the applicant was represented by Ashton Chantrielle of 8 New Square Chambers, instructed by HGF LLP, and the opponent was represented by Alan Fiddes of Murgitroyd & Company Limited.

7. This decision is taken following a careful consideration of the papers that have been filed by the parties (which will not be summarised but will be referred to as and where appropriate during this decision) and the submissions made by the parties' representatives at the hearing.

RELEVANCE OF EU LAW

8. 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.

EVIDENCE AND SUBMISSIONS

9. As discussed above, both parties filed witness evidence in this matter. The opponent filed a witness statement from Holly Cameron, in her capacity as a Chartered Trade Mark Attorney at Murgitroyd & Company Limited, along with 13 accompanying exhibits. It should be noted that parts of the evidence submitted by the opponent were either undated or dated after the relevant date and are not therefore relevant for the purpose of this opposition. Accordingly, I make no further reference to such evidence for the purpose of this opposition, and my consideration of the evidence is limited to that which is relevant.

10. In summary, the witness statement of Holly Cameron stipulates the following:

    (i) The word "FUEL" is defined in Collins online dictionary as "something that gives nourishment; food", and the word "YOUR" is a possessive determiner, meaning it shows ownership and so must always be followed by a noun or a noun phrase to make grammatical sense.[2]

    (ii) The concept of food as fuel is often referred to in publications and articles online. In support of this assertion the opponent exhibited screenshots from three articles dated between 8 March 2017 and 17 July 2024, as

[2] Exhibit HC5 and HC7

well as screenshots advertising two books for sale which were published in August 2021 and 1 May 2023 referencing food as a type of fuel.[3]

(iii) That the words “FUEL YOUR” is used followed by various words related to health and fitness. In support of this assertion the opponent exhibited screenshots of four articles dated between 6 April 2021 and 3 July 2024 in which the words “FUEL YOUR” are used in combination with other words in the title.

(iv) That, as at the relevant date, there had been 52 trade mark applications filed that contain the words “FUEL YOUR” for goods and services in classes 5, 29, 30 and 32. It is noted, that the opponent has also provided the following, in exhibit HC12:

- A screen shot of an article titled “Fuelling Everyone’s Best: MISFITS Health” dated 7 December 2018 advertising “protein products” utilising the “FUEL YOUR BEST” mark for sale; and

- A screenshot of a post from the “an.supps” Instagram page dated 24 June 2024 containing the “FUEL YOUR FIGHT” mark. However, there does not appear to be any reference to any of the goods or services in issue on that post. There are some screenshots of other posts showing drinks and sweet products, but these are undated and I cannot therefore confirm whether these were posted prior to or after the relevant date.

11. It is also noted that the opponent has provided evidence of the words “FUEL YOUR” in combination with other words in the entrepreneurship, business, creative and mental wellness industries. However, for the reason outlined in detail below, my considerations in this matter will be limited to a consideration of whether the words “FUEL YOUR” is registerable for the goods and services in issue. Accordingly, as evidence of use of the words “FUEL YOUR” in respect of

[3] Exhibit HC6

goods and services other than those in issue in these proceedings is not relevant to this opposition, this evidence has been disregarded.

12. The applicant also filed evidence in these proceedings in the form of a witness statement dated 18 August 2025 signed by Lauren Richardson in her capacity as a Trade Mark Attorney at HGF Limited, the legal representative for the Applicant. This witness statement was filed alongside 6 corresponding exhibits (namely, exhibits LR1 to LR6). Once again, parts of the evidence submitted by the applicant were either undated or dated after the relevant date and are not therefore relevant for the purpose of this opposition. Accordingly, I make no further reference to such evidence for the purpose of this opposition, and my consideration of the evidence is limited to that which is relevant.

13. It is also noted that some of the evidence produced by the applicant makes reference to extracts taken from the Manual of Trade Marks Practice or previous decisions of the Tribunal. For the avoidance of doubt, whilst this information has been considered in making this decision, I will make no further reference to this information in my summary of the witness evidence.

14. Noting the above, the witness statement of Lauren Richardson stipulates the following:

    (i) That the application “FUEL YOUR” was accepted by the UKIPO in the ex officio examination stage; and

    (ii) That the “FUEL YOUR” mark has been accepted in other territories (specifically in the United States on 20 May 2025 and the EUIPO on 23 April 2025) as being inherently distinctive.

DECISION

Section 3(1)

15. This opposition is based upon sections 3(1)(b) and 3(1)(d) of the Act which read as follows:

> "3(1) The following shall not be registered –
>
> (a) […]
> (b) trade marks which are devoid of any distinctive character,
> (c) […]
> (d) trade marks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade:
>
> Provided that, a trade mark shall not be refused registration by virtue of paragraph (b), (c) or (d) above if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it."

16. The relevant date for assessment under 3(1)(b) and 3(1)(d) is the date of the filing of the contested mark, i.e., 29 October 2024.

17. The position under the above grounds must be assessed from the perspective of the average consumer, who is deemed to be reasonably observant and circumspect: *Matratzen Concord AG v Hukla Germany SA*.[4] The average consumer varies depending on the particular goods and services concerned. In this case, the goods and services in issue are fairly wide ranging.

18. For all of the goods and services in issue, I consider that the average consumer is likely to be members of the general public.

[4] Case C-421/04

Section 3(1)(b)

19. Section 3(1)(b) of the Act prevents registration of marks which are devoid of distinctive character. The principles to be applied under article 7(1)(b) of the CTM Regulation (which is now article 7(1)(b) of the EUTM Regulation, and is identical to article 3(1)(b) of the Trade Marks Directive and s.3(1)(b) of the Act) were conveniently summarised by the CJEU in OHIM v BORCO-Marken-Import Matthiesen GmbH & Co KG (C-265/09 P) as follows

> "29..... the fact that a sign is, in general, capable of constituting a trade mark does not mean that the sign necessarily has distinctive character for the purposes of Article 7(1)(b) of the regulation in relation to a specific product or service (Joined Cases C-456/01 P and C-457/01 P Henkel v OHIM [2004] ECR I-5089, paragraph 32).
>
> 30. Under that provision, marks which are devoid of any distinctive character are not to be registered.
>
> 31. According to settled case-law, for a trade mark to possess distinctive character for the purposes of that provision, it must serve to identify the product in respect of which registration is applied for as originating from a particular undertaking, and thus to distinguish that product from those of other undertakings (Henkel v OHIM, paragraph 34; Case C-304/06 P Eurohypo v OHIM [2008] ECR I-3297, paragraph 66; and Case C-398/08 P Audi v OHIM [2010] ECR I-0000, paragraph 33).
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> 32. It is settled case-law that that distinctive character must be assessed, first, by reference to the goods or services in respect of which registration has been applied for and, second, by reference to the perception of them by the relevant public (Storck v OHIM, paragraph 25; Henkel v OHIM, paragraph 35; and Eurohypo v OHIM, paragraph 67). Furthermore, the Court has held, as OHIM points out in its appeal, that that method of assessment is also applicable to an analysis of the distinctive character of signs consisting solely of a colour per se, three-dimensional marks and slogans (see, to that effect, respectively,

Case C 447/02 P KWS Saat v OHIM [2004] ECR I-10107, paragraph 78; Storck v OHIM, paragraph 26; and Audi v OHIM, paragraphs 35 and 36).

33. However, while the criteria for the assessment of distinctive character are the same for different categories of marks, it may be that, for the purposes of applying those criteria, the relevant public's perception is not necessarily the same in relation to each of those categories and it could therefore prove more difficult to establish distinctiveness in relation to marks of certain categories as compared with marks of other categories (see Joined Cases C-473/01 P and C-474/01 P Proctor & Gamble v OHIM [2004] ECR I-5173, paragraph 36; Case C-64/02 P OHIM v Erpo Möbelwerk [2004] ECR I-10031, paragraph 34; Henkel v OHIM, paragraphs 36 and 38; and Audi v OHIM, paragraph 37)."

The Parties' Arguments

20. Whilst I do not intend to reiterate the entirety of the parties' submissions made at the hearing on 25 August 2026, in summary, I note that Mr Fiddes submitted that the contested mark is devoid of distinctive character because the phrase "Fuel Your" is an incomplete advertisement for the consumer to do something positive. In support of this assertion the opponent relies upon the decision of Geoffrey Hobbs KC, acting in his capacity as Appointed Person, in the *Cycling Is...* case [2002] R.P.C. 37 (*Cycling Is)*. In that decision Geoffrey Hobbs KC upheld the previous decision of the hearing officer refusing registration of the following two signs. Specifically, he determined that "the perceptions and recollections the signs would trigger in the mind of the average consumer of the specified goods and services would be origin neutral (relating to the general commercial context of the relevant trading activities), rather than origin specific":



21. Mr Fiddes submitted that this matter was *Cycling Is* revisited and submitted that the phrase "Fuel Your" would be seen as an informal statement, rather than a badge of origin. Mr Fiddes further stipulated that this is supported by the fact that lots of other companies use this phrase in combination with other words.

22. In response, Ms Chantrielle denied that the contested mark was devoid of distinctive character and specifically asserted that *Cycling Is* does not apply in this instance. This is because, in *Cycling Is* the Appointed Person determined that the word "Cycling" was descriptive of the goods in issue, and there was nothing else in the mark to pull it away from that and to denote trade origin. In that regard, Ms Chantrielle submitted that there has been no suggestion by the opponent that the phrase "Fuel Your" is descriptive of the goods and services in issue in this matter.

23. Further, Ms Chantrielle submitted that *Cycling Is* had a very specific set of facts and has been wrongly afforded a wider application by the opponent. Specifically, Ms Chantrielle submitted that it did not establish the principle that unfinished phrases are non-distinctive, as has been suggested by the opponent, as there has been no further application of such a principle in case law since that decision.

Assessment of the Contested Mark's Inherent Distinctiveness

24. As a preliminary point, it is worth noting that the parties are in agreement as to the meaning of the words "Fuel" and "Your". Specifically, they agree that the word "Fuel" "refers to substances that provide energy, which includes food",[5] and that "Your" is a "possessive determiner, meaning its shows ownership and so must always be followed by a noun or a noun phrase to make sense grammatically".[6]

25. Noting the above, I will begin by addressing the applicability of *Cycling Is* in this matter. I agree that there has been no argument advanced by the opponent that the phrase "Fuel Your" is wholly descriptive of the goods and services in issue,

[5] Please see paragraph 5 of the opponent's skeleton argument, and paragraph 16.1 of the applicant's skeleton argument.
[6] Please see paragraph 11 of the opponent's skeleton argument, and paragraph 16.2 of the applicant's skeleton argument.

albeit the applicant does submit that “Fuel Your” is devoid of distinctive character for all of the goods and services in issue.

26. Turning to the *Cycling Is* decision itself, whilst I have fully considered the submissions made by Ms Chantrielle, I do not accept that the *Cycling Is* decision is not applicable in this instance. In fact, I note that Geoffrey Hobbs KC makes clear in the *Cycling Is* decision that the fact that a mark is not descriptive of the goods and services in issue does not automatically result in it being distinctive. Specifically, in paragraph 44 of the *Cycling Is* decision, when discussing the comments made in paragraphs 39 and 40 of the *Baby-Dry* judgment, Geoffrey Hobbs KC expressly stipulates the following:

> “44. Taken out of context, these statements might be thought to indicate that signs which are not wholly descriptive should, for that reason, be regarded as distinctive and therefore eligible for registration. However, I do not think that the Court can be taken to have adopted that position for the following reasons:
>
> […]
>
> (iv) […] to hold that a sign or indication must be regarded as distinctive for the purposes of registration if it is not wholly descriptive of the relevant goods or services would be to ignore the reality of everyday experience: distinctiveness is a matter of fact and degree and signs which are not wholly descriptive do not always or necessarily possess a distinctive character;”

27. Further on in the *Cycling Is* decision Geoffrey Hobbs KC also made clear that:

> “53. It thus appears to be legitimate, when assessing whether a sign is sufficiently distinctive to qualify for registration, to consider whether it can indeed be presumed that independent use of the same sign by different suppliers of goods or services of the kind specified in the application for registration would be likely to cause the relevant class of persons or at least a significant proportion thereof, to believe that the goods or services on offer

to them came from the same undertaking or economically-linked undertakings."

28. As discussed above, the opponent submits that the words "FUEL YOUR" are commonly used, in conjunction with other words, as an informal statement, rather than a badge of origin, and that this is supported by the evidence filed by the opponent. However, as Ms Chantrielle correctly submits, Floyd J in *Nude Brands Ltd v Stella McCartney Ltd* made clear that the question is not what other traders have done with a mark, it is the inherent qualities of the mark which matter under section 3(1)(b).[7]

29. Weighing up all of the above, I consider it to be quite common parlance for people to refer to food and drinks, and dietary and nutritional supplements, as fuel for your body. In that regard, I also note that both parties accept that food is a type of fuel. Consequently, in my view, the word "Fuel" is non-distinctive for food and drink related goods and services. Having said that, I also note that it is the appraisal of the mark as a whole (i.e., an appraisal of "Fuel Your" in combination) which is relevant here.[8] However, in my view, there is nothing in the addition of the "your" element of the mark which assists in making the contested mark distinctive.

30. In the light of the above, I do not consider that "Fuel Your", when used in relation to food and drink related goods and services, or dietary and nutritional supplements, would enable the average consumer to immediately distinguish such goods and services as originating from a particular undertaking, which is the essential function of a trade mark.

31. Accordingly, I find "Fuel Your" to be devoid of distinctive character for all of the class 5, class 29 and class 30 goods in issue. For the same reason, I also consider it to be devoid of distinctive character for the applicant's various types of retail services in the field of foodstuff, drinks, nutritional supplements, vitamin

[7] [2009] EWHC 2154 Ch
[8] *Celltech R&D Ltd v OHIM*, Case C273-/05 P

supplements, food and drink supplements and meal replacement powders. Whilst I appreciate that the contested mark was accepted at examination stage, and that “Fuel Your” may also have been found to be inherently distinctive in other territories, I note that I am not bound by such decisions, and for the reasons outlined above, I do not agree with that position.

32. Having said that, I do not consider that to be the case for the applicant’s various types of retails services in the field of “clothing, household containers and implements, kitchen containers and implements”. This is because, I consider there to be either no link, or too tenuous a link for me to be satisfied that “Fuel Your” used in relation to such services would be incapable of indicating trade origin.

33. The ground under section 3(1)(b) succeeds in relation to the following goods and services:

> **Class 5:** Dietary supplements; dietary food supplements; nutritional supplements; dietetic and slimming foodstuffs and substances; mineral food-supplements; food-supplements based on vitamins, minerals and raw products from plants; health food supplements; vitamin preparations; slimming aids; herbal supplements and herbal extracts; herbal beverages; meal replacement powders; nutritional drink mixes for use as a meal replacement; mineral supplements; nutritional powders; food supplements, tablets and capsules; carbohydrate supplements; amino acid supplements; dietetic and slimming substances.
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> **Class 29:** Meat, poultry, game, fish and seafood; products made principally of meat, poultry, game, fish or seafood; extracts of the aforesaid goods; preserved, frozen, dried and cooked fruits and vegetables and food products prepared there from; salads; fruit salads; soup and soup preparations; processed nuts; spreads; dips; crisps; snack foods; jellies, jams; eggs, milk and dairy products; butter; peanut butter; milk shakes; powdered milk; liquid food shakes; cheese and cheese products; edible oils

and fats; preserves; pickles; prepared meals; nutrition food bars; food supplements for sports nutrition purposes, whey proteins, milk proteins.

Class 30: Cereals; preparations made from cereals; flour; preparations made from flour; sausage rolls; quiches; sandwiches; confectionery; confectionery bars; cookies; bread; pastry; ices; ice cream; ice cream products and frozen confections; preparations for making ices, ice cream, ice cream products and frozen confections; chocolate; products made or containing chocolate; flapjacks; shortbreads; honey and treacle; sugar; puddings; flavourings other than non-essential oils;cheese cake; sauces; chutneys; tea products; tea beverages; fruit teas; iced tea; green tea; coffee; cocoa; rice; tapioca; spices; yeast; baking powder; biscuits; cakes; products made primarily from chocolate; pasta; pastry and pastry products; meat pies, vegetable pies, fruit pies; fruit crumbles; snack foods; pie mixes; prepared meals containing pasta, bread, cereals, rice and/or pastry; desserts containing any of the above products; meringues; preserved garden herbs; herbal extracts, other than those for medical purposes.

Class 35: Retail services, online retail services, mail order retail services, department store services, retail services by means of privately run or hosted parties; all in the field of foodstuffs, drinks, nutritional supplements, vitamin supplements, food and drink supplements, meal replacement powders.

34. However, the ground under section 3(1)(b) fails in relation to the following services:

Class 35: Retail services, online retail services, mail order retail services, department store services, retail services by means of privately run or hosted parties; all in the field of clothing, household containers and implements, kitchen containers and implements.

Section 3(1)(d)

35. For completeness, I will now also consider the opposition under Section 3(1)(d) of the Act.

36. In *Telefon & Buch Verlagsgesellschaft GmbH v OHIM*, Case T-322/03, the General Court ("GC") summarised the case law of the Court of Justice under the equivalent of s.3(1)(d) of the Act, as follows:

> "49. Article 7(1)(d) of Regulation No 40/94 must be interpreted as precluding registration of a trade mark only where the signs or indications of which the mark is exclusively composed have become customary in the current language or in the bona fide and established practices of the trade to designate the goods or services in respect of which registration of that mark is sought (see, by analogy, Case C-517/99 Merz & Krell [2001] ECR I-6959, paragraph 31, and Case T-237/01 Alcon v OHIM – Dr. Robert Winzer Pharma (BSS) [2003] ECR II-411, paragraph 37). Accordingly, whether a mark is customary can only be assessed, firstly, by reference to the goods or services in respect of which registration is sought, even though the provision in question does not explicitly refer to those goods or services, and, secondly, on the basis of the target public's perception of the mark (BSS, paragraph 37).
>
> 50. With regard to the target public, the question whether a sign is customary must be assessed by taking account of the expectations which the average consumer, who is deemed to be reasonably well informed and reasonably observant and circumspect, is presumed to have in respect of the type of goods in question (BSS, paragraph 38).
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> 51. Furthermore, although there is a clear overlap between the scope of Article 7(1)(c) and Article 7(1)(d) of Regulation No 40/94, marks covered by Article 7(1)(d) are excluded from registration not on the basis that they are descriptive, but on the basis of current usage in trade sectors covering trade

in the goods or services for which the marks are sought to be registered (see, by analogy, Merz & Krell, paragraph 35, and BSS, paragraph 39).

52. Finally, signs or indications constituting a trade mark which have become customary in the current language or in the bona fide and established practices of the trade to designate the goods or services covered by that mark are not capable of distinguishing the goods or services of one undertaking from those of other undertakings and do not therefore fulfil the essential function of a trade mark (see, by analogy, Merz & Krell, paragraph 37, and BSS, paragraph 40)."

37. Proving this ground requires the filing of evidence of fact supporting the claim that it was customary for other traders to use the words 'FUEL YOUR' at the relevant date, but not in a trade mark sense.[9] There is a relatively high evidential bar: in *Affinity Leasing Limited v Total Motion Limited*, Mr Daniel Alexander QC (as he then was), sitting as the Appointed Person reviewed the authorities and concluded that the overall message was that section 3(1)(d) "requires specific evidence that it is specifically customary."[10]

38. I need to make the assessment taking into account the expectations of relevant average consumers in deciding whether, at the date of the application, a mark had become 'customary in the current language or in the bona fide and established practices of the trade'. Although where intermediaries influence decisions to purchase goods or services their views should also be taken into account, as I have already set out above, in the present case, the average consumer for the contested goods and services is the general public, and it is their views which are likely to be of decisive importance.[11]

39. In *Stash Ltd v Samurai Sportswear Ltd*, Professor Annand, sitting as the Appointed Person, stated that it was sufficient if a mark offended either limb of

[9]Nude Brands Ltd v Stella McCartney Ltd, [2009] EWHC 2154 Ch.
[10] Case BL O/522/20, at [22].
[11] 21 CJEU, Case C-371/02 Björnekulla Fruktindustrier AB v Procordia Food AB, paragraphs 24 and 25..

s.3(1)(d).[12] That is to say, that (at the relevant date) the mark had become customary (a) 'in the current language', or b) 'in the bona fide and established practices of the trade'. The words 'of the trade' should not be construed as applying to both limbs. Basing herself on the Oxford English Reference Dictionary, 1995, Professor Annand took 'customary' (in the language) to mean 'usual; in accordance with custom'.

Assessment

40. The pertinent question is whether, at the relevant date (29 October 2024), the mark 'FUEL YOUR' had, based on the perception of the average consumer of the goods and services at issue, in the UK, 'become customary in the current language or in the bona fide and established practices of the trade to designate the goods or services covered by that mark'.

41. During the hearing, Ms Chantrielle provided detailed submissions challenging the evidence submitted by the opponent, and it is noted that Mr Fiddes subsequently accepted that some of the individual elements of the evidence filed by the opponent may be open to criticism. I have fully considered these submissions and also undertaken an independent examination of the evidence filed by the opponent. Having done so, I note that the opponent has provided no evidence of use of the words "FUEL YOUR" as a standalone mark. The opponent has provided evidence of use of the words "FUEL YOUR" within other marks in exhibits HC12 and HC13. However, as discussed above, much of this evidence is either undated, dated after the relevant date, or relates to goods and services other than those in issue here. It is also noted that some of the evidence appears to relate to use of marks containing the words "FUEL YOUR" outside of the United Kingdom,[13] and is not therefore relevant to this opposition.

42. The opponent has only actually provided one example of use of the words "FUEL YOUR" in combination with other words within a mark in the food and drink or

[12] BL O/281/04.
[13] For example, in Exhibit HC12, the contact address on the Bang Energy website is in California, and all of the products being sold on the RNWY website are being advertised for sale in dollars, rather than sterling.

dietary and nutritional supplements markets prior to the relevant date.[14] I also appreciate that the opponent has provided seven examples of the word "fuel" being used in article titles which discuss food being utilised to fuel the body during the relevant period (albeit these are not examples of the words being used as a trade mark). It has also provided two examples of, what appears to me to be, nutritional books published prior to the relevant date with "Food is Fuel" or "Food as Fuel" in the title. However, I am not satisfied that this evidence, even in its totality, can be considered sufficient to demonstrate that use of the phrase "FUEL YOUR" is "usual" either in the current language or in the bona fide and established practice of the trade. Consequently, the opponent's evidence does not meet the high evidential bar for this ground and so the section 3(1)(d) ground fails in its entirety.

CONCLUSION

43. The opposition partially succeeds under section 3(1)(b) and, subject to any successful appeal of my decision, the contested mark may proceed to registration.

COSTS

44. The opponent has been partially 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 line with that TPN, I award costs to the opponent as follows:

Official Fee:	£200
Preparing a statement and considering the other side's statement:	£200[15]
Preparing evidence and considering and commenting on the other side's	

[14] As referenced in paragraph 10 (iv) of this decision.
[15] Reduced to reflect the fact that the opposition was only partially successful.

evidence	£200[16]
Preparing for an attending a hearing:	£1,000[17]
Total:	**£1,600**

45. I order THG Nutrition Limited to pay Applied Nutrition Limited the sum of £1,600. This sum should be paid within twenty-one 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 30th day of October 2026

B Hartland
For the Registrar

[16] Whilst I appreciate this is below the minimum set out in TPN1/2023, this has been reduced to reflect the fact that the opposition was only partially successful and given the relevance of much of the evidence filed.
[17] Reduced to reflect the fact that the opposition as only partially successful.