

O/0980/25

TRADE MARKS ACT 1994

IN THE MATTER OF TRADE MARK APPLICATION NO. 4031494

BY GENHIGH TECH CO., LIMITED

IN RESPECT OF THE TRADE MARK:

neakasa

IN CLASS 31

AND

IN THE MATTER OF THE OPPOSITION THERETO

UNDER NO. 447969

BY K+S MINERALS AND AGRICULTURE GMBH

BACKGROUND AND PLEADINGS

1. On 27 March 2024, GenHigh Tech Co., 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 12 April 2024, and registration is sought for the class 31 goods set out in ‘Annex 1’ to this decision.

2. On 12 June 2024, K+S Minerals and Agriculture GmbH (“the opponent”), partially opposed the application based upon section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). The opposition was directed at some of the applicant’s goods in class 31 (the details of which are set out in ‘Annex 1’ to this decision). The opponent relies upon the following three earlier comparable United Kingdom Trade Marks (“UKTM”)¹ for its opposition:

i) UKTM 905230925 (“the First Earlier Mark”)



Filing date: 31 July 2006;

Registration date: 2 August 2007;

Registered in class 31;

For the purpose of these proceedings the opponent relies upon all its class 31 goods.²

ii) UKTM 905231766 (“the Second Earlier Mark”)



Filing date: 31 July 2006;

Registration date: 10 August 2007;

Priority date: 3 May 2006;³

Registered in class 31;

¹ 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 a 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.

² See ‘Annex 2’ to this decision.

³ SWITZERLAND(CH) 54000.

For the purpose of these proceedings the opponent relies upon all its class 31 goods.⁴

iii) UKTM 913296413 (“the Third Earlier Mark”)

‘KaSa’

Filing date: 25 September 2014;

Registration date: 4 February 2015;

Priority date: 2 April 2014;⁵

Registered in classes 5 and 31;

For the purpose of these proceedings the opponent relies upon all its class 5 and 31 goods.⁶

3. The opponent claims that the marks are similar and the goods at issue are identical, resulting in a likelihood of confusion on the part of the public, which includes a likelihood of association.

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

5. The opponent is not put to proof of use of its marks (i), (ii) and (iii) above, which are potentially subject to proof of use under section 6A of the Act as a result of having been registered for five years or more at the date on which the contested application was filed. The applicant expressly ticked ‘no’ on its 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 identified in its pleadings.⁷

6. Only the opponent filed evidence and, in doing so, also filed written submissions. Both parties were given the option of an oral hearing but neither requested to be heard

⁴ See ‘Annex 2’ to this decision.

⁵ GERMANY(DE) 302014043100.

⁶ See ‘Annex 2’ to this decision.

⁷ An official letter dated 17 October 2024, was sent to the parties confirming that the opponent was not required to file proof of use evidence. In this regard, the letter stated, inter alia, the following: *the applicant has now ticked the box to advise that ‘proof of use’ evidence is not required, this is confirmed in the cover email dated 17 September 2024. Even though a request for proof of use evidence remains in the counterstatement, due to the ticking of the box at Question 7 of the TM8 and comments given in the covering email, I can confirm that proof of use evidence on behalf of the opponent is not required.*

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.

7. The opponent, originally represented by Bromhead Johnson LLP, is now represented by Abel & Imray LLP;⁸ the applicant is represented by Pablo Albert Catala.

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 noted above, the opponent filed evidence in the form of the witness statement of Mr Ross Manaton, dated 18 November 2024, together with four exhibits (Exhibits RTM 1 to RTM 4). Mr Manaton is a chartered Trade Mark Attorney, Member of the Chartered Institute of Trade Mark Attorneys, and a partner in the opponent's representative's firm (as it then was), Bromhead Johnson LLP. The purpose of the evidence is to demonstrate the meaning of the prefix 'neo-'. A summary of the evidence is as follows:

- Exhibit RTM 1 – printout from the free online encyclopaedia 'Wikipedia', entitled 'List of Greek and Latin roots in English/N' featuring a definition of the prefixes 'ne-/neo-';
- Exhibit RTM 2 – a printout from the free online dictionary 'Wiktionary', entitled "νέος", featuring a definition of 'néos';
- Exhibit RTM 3 – a printout from the online dictionary 'The Britannica Dictionary' entitled 'neo-' featuring a definition of that prefix;
- Exhibit RTM 4 – a printout from the online dictionary, "dictionary.com", entry entitled 'NEO' featuring a definition of that word.

⁸ The opponent's representatives were changed following the filing of a form TM33, on 10 June 2025.

10. As noted above, the opponent filed written submissions, dated 18 November 2024.

11. I have taken the evidence and submissions into account in reaching this decision and will refer to them below, where necessary. This decision is taken following a careful review of the papers.

PRELIMINARY ISSUES

12. In its counterstatement, the applicant points to the differing target markets of the respective parties and submits that this will prevent a likelihood of confusion. For the avoidance of doubt, I must carry out a notional assessment based upon the parties' respective marks and the goods contained in their specifications. The actual activities carried out by the parties are not relevant to my assessment.⁹

13. The applicant, in its counterstatement, makes reference to section 5(1) of the Act, stating that there is no likelihood of confusion between the marks and the goods at issue under this ground. However, the opposition is based on section 5(2)(b) only, and therefore the applicant was not required to provide any submissions in relation to the section 5(1) ground. Accordingly, I will say no more on the matter of section 5(1).

DECISION

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

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

“(2) A trade mark shall not be registered if because-

(a) [...]

⁹ *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C-533/06 at [66]; *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 at [22]

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

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

15. I am guided by the following principles, gleaned from the decisions of the Court of Justice of the European Union (“CJEU”) in *SABEL BV v Puma AG* (Case C-251/95), *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* (Case C-39/97), *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel BV* (Case C-342/97), *Marca Mode CV v Adidas AG & Adidas Benelux BV* (Case C-425/98), *Matratzen Concord GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)* (Case C-3/03), *Medion AG v Thomson Multimedia Sales Germany & Austria GmbH* (Case C-120/04), *Shaker di L. Laudato & C. Sas v OHIM* (Case C-334/05 P) and *Bimbo SA v OHIM* (Case C-519/12 P):

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

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, 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

16. The goods to be compared are set out in the Annexes to this decision.

17. 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.”

18. The contested *pet food; edible pet treats; pet foods in the form of chews; and animal feed*, all fall within the broader term *foodstuffs for animals* contained in the specifications of the First, Second and Third Earlier Marks. The goods are therefore identical on the principle outlined in *Meric*.

The average consumer and the nature of the purchasing act

19. 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).

20. 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.”

21. The average consumer for the parties' goods at issue will be a member of the general public. The goods are likely to be purchased frequently, at low cost. The main focus of attention will likely be ingredients, although some attention may also be paid to nutritional information, etc. I find that the average consumer will pay a medium degree of attention during the purchasing process. The goods will be purchased primarily visually, selected from the shelves of a retail outlet or from an online equivalent. That said, I do not discount that there may be an aural component to the purchase of the goods given that advice may be sought from a sales assistant.



Comparison of the marks

22. 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.”

23. 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.

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

The opponent's marks	The applicant's mark
<p data-bbox="300 322 742 434">i)  ("the First Earlier Mark")</p> <p data-bbox="300 506 788 618">ii)  ("the Second Earlier Mark")</p> <p data-bbox="300 696 751 808">iii) 'KaSa' ("the Third Earlier Mark")</p>	<p data-bbox="1002 490 1126 517">neakasa</p>

25. With regard to the similarity of the marks, in its counterstatement and defence, the applicant states the following:

"The Applicant's mark "neakasa" is visually distinct from the Opponent's marks "KaSa" and "KaSaK99." The prefix "nea-" significantly alters its appearance and pronunciation. Consumers typically perceive the initial part of a trademark as the most important for recognition, which strongly differentiates neakasa from the Opponent's marks.

In trademark comparison, the beginning of the word is often the first element noticed by consumers and carries more weight in determining similarity. "neakasa" and "KaSa" start with entirely different sounds ("nea-" versus "Ka-"), creating a clear distinction."

26. In its written submissions,¹⁰ the opponent states the following with regards to the similarity of the marks:

"The distinctive content of the Opponent's earlier mark is the letter KASA. The Applicant's mark consists of the same letters, preceded by the letters NEA-. In

¹⁰ Dated 18 November 2024.

the context of the mark applied for, the letters NEA- are liable to be understood as a prefix applied to the letters -KASA. This is likely, given the significance of the prefix NEA- (and the closely similar prefix NEO-), as explained below.

As shown in the Opponent's evidence, NEO- is an established and well recognised prefix, derived from Greek, meaning "new".¹¹ The prefix indicates "a new and different form of something that existed in the past"¹² and constitutes "a combining form meaning 'new', 'recent', 'revived', 'modified', used in the formation of compound words".¹³ Examples of such compound words include: neolithic, neologism, neon, neonate, neophyte, neoDarwinism and neoorthodoxy.¹⁴ NEA- is very closely similar to NEO- and is, in fact, the feminine equivalent deriving from the same Greek stem as the masculine form NEO-.¹⁵

The first three letters of the Applicant's mark are accordingly liable to be understood by a member of the relevant purchasing public as indicating something new or updated. This is admitted by the Applicant in its Statement of Grounds, which states: "Conceptually, the Applicant's mark suggests novelty through the prefix 'nea-'.¹⁶

It is, therefore, believed to be common ground that the first three letters of the Applicant's mark are likely to be understood as meaning, or at least suggesting, "new". The only question, then, is "new what?". Obviously, from the form of the Applicant's mark, the answer to that question can only be "new KASA".

Accordingly, the Applicant's mark is highly similar to the Opponent's earlier mark, from a conceptual perspective. There is also, self-evidently, a high degree of visual and phonetic similarity – not least because the Applicant's mark contains the totality of the Opponent's mark as a recognisable element. In short, the marks are highly similar to each other, whether considered visually, phonetically or conceptually."

¹¹ Exhibit RTM 1 and paragraph 3 of witness statement.

¹² Exhibit RTM 3 and paragraph 5 of witness statement.

¹³ Exhibit RTM 4 and paragraph 6 of witness statement.

¹⁴ Exhibits RTM 1, RTM 4 and paragraphs 3 & 6 of witness statement.

¹⁵ Exhibit RTM 2 and paragraph 4 of witness statement.

¹⁶ paragraph 7 of the Applicant's Statement of Grounds

27. Whilst I agree with the opponent's viewpoint that 'neo-' is an established and recognised prefix, derived from Greek, meaning 'new', I find that this fact is irrelevant in the present case on the basis that the applicant's mark does not contain the word/prefix 'neo-', but rather, contains the three letters 'nea'.

28. On this point, I note from the opponent's written submissions and evidence, as detailed above, that "in the context of the mark applied for, the letters NEA- are liable to be understood as a prefix applied to the letters -KASA. This is likely, given the significance of the prefix NEA- (and the closely similar prefix NEO-)" and "NEA- is very closely similar to NEO- and is, in fact, the feminine equivalent deriving from the same Greek stem as the masculine form NEO".

29. However, I have no evidence before me to suggest that 'nea' would be understood as a prefix to 'kasa'. Whilst I note from the opponent's submissions that 'nea' is the feminine equivalent of the masculine form 'neo' derived from the same Greek stem, I am not able to establish this from the opponent's submissions, nor its evidence, despite Mr Manaton stating in his witness statement that exhibit RTM 2 demonstrates this point. Exhibit RTM 2 contains a printout from the free online dictionary 'Wiktionary' entitled 'νέος', which merely contains the following definition:

Adjective

νέος • (néos) m (feminine νέᾱ, neuter νέον); first/second declension

...

3. new, fresh

30. Accordingly, even in the case that 'nea-' is a prefix derived from 'neo-', I have nothing before me to suggest that it would be recognised as such by the average consumer in the UK, nor do I consider that it would be so recognised. Furthermore, I am of the view that the average consumer is unlikely to dissect the mark as 'nea-kasa', but rather will perceive it as a whole, namely as the invented word 'neakasa'. But, even if the average consumer does seek to dissect the applicant's mark, as implied by the opponent, I am of the view that 'nea' will convey no obvious meaning, nor will 'kasa' for that matter.

Overall impression

The First Earlier Mark

31. The figurative mark comprises the word, letter and number combination 'KaSa K99'. 'KaSa' is presented in a large blue stylised upper and lowercase font and sits just above the letters and number element 'K99', which is presented in a slightly smaller, red stylised font and its position is right justified in comparison to 'KaSa'. In my view, it is the 'KaSa' element that plays the greater role in the overall impression due to its size and position within the mark, with the letter and number element 'K99' playing a slightly lesser role. The stylisation and colour present in the mark, whilst not negligible, makes a relatively minor contribution.

The Second Earlier Mark

32. The figurative mark comprises the words and number combination 'KaSa Mag98'. 'KaSa' is presented in a large blue stylised upper and lowercase font and sits above the word and number element 'Mag98', which is presented in a slightly smaller, green stylised font, and its position is right justified in comparison to 'KaSa'. Again, in my view, it is the 'KaSa' element that plays the greater role in the overall impression due to its size and position within the mark, with the word and number element 'Mag98' playing a slightly lesser role. The stylisation and colour present in the mark, whilst not negligible, makes a relatively minor contribution.

The Third Earlier Mark

33. The mark comprises the word 'KaSa', presented in a standard upper and lowercase typeface. The overall impression resides in this single element.

The applicant's mark

34. The applicant's mark comprises the word 'neakasa', presented in a standard, lowercase typeface. The overall impression resides in this single element.

Visual comparison

35. The First and Second Earlier marks and the applicant's mark overlap in the presence of the same four letters 'KaSa/kasa'. However, they differ in the presence of the additional elements 'K99' in the First Earlier Mark and 'Mag98' in the Second Earlier Mark, neither of which are replicated in the applicant's mark, and the additional letters 'n-e-a' present at the beginning of the applicant's mark which are not replicated in the earlier marks. Further, the use of stylisation/colour in the Earlier Marks is an additional point of difference. In my view, any similarity between the marks is at a low degree.

36. The Third Earlier Mark and the applicant's mark overlap in the presence of the same four letters 'KaSa/kasa'. However, they differ in the presence of the additional letters 'n-e-a' present at the beginning of the applicant's mark which are not replicated in the Third Earlier Mark. I consider the marks to be visually similar to between a low to medium degree.

Aural comparison

37. The opponent's First Earlier Mark is likely to be pronounced 'ka-sa-kay-nine-tee-nine', whereas the applicant's mark is likely to be pronounced 'nee-ka-sa' or 'ne-ah-ka-sa'. Accordingly, I find that any similarity between the marks arising from the common letters 'KaSa/kasa' is at a low degree.

38. The opponent's Second Earlier Mark is likely to be pronounced 'ka-sa-mag-nine-tee-eight', whereas the applicant's mark is likely to be pronounced 'nee-ka-sa' or 'ne-ah-ka-sa'. Again, I find that any similarity between the marks arising from the common letters 'KaSa/kasa' is at a low degree.

39. The opponent's Third Earlier Mark is likely to be pronounced 'ka-sa', whereas the applicant's mark is likely to be pronounced 'nee-ka-sa' or 'ne-ah-ka-sa'. Overall, I find the marks aurally similar to between a low to medium degree.

Conceptual comparison

40. 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.

41. I consider it unlikely that the earlier marks 'KaSa K99', 'KaSa Mag98' and 'KaSa', and the applicant's mark 'neakasa' will convey any conceptual message to the average consumer, on the basis that they all appear to be invented, with no clear meaning. Consequently, the conceptual position for all the marks is neutral.

Distinctive character of the opponent's marks

42. 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).”

43. 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.

44. 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 marks. Consequently, I have only the inherent position to consider

45. The First, Second and Third Earlier Marks, namely the stylised marks ‘KaSa K99’, ‘KaSa Mag98’ and the word mark ‘KaSa’, all appear to be invented with no clear meaning or relationship to the goods relied upon. Consequently, I consider all of the earlier marks to be inherently highly distinctive.

Likelihood of confusion

46. 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.

47. 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.

48. I have found as follows:

- The parties' goods are identical under the principle outlined in *Meric*.
- The average consumer for the goods is a member of the general public, who will pay a medium degree of attention during the purchasing process.
- The purchasing process is predominantly visual, although I do not discount an aural component.
- The marks are visually and aurally similar to either a low or low to medium degree, and conceptually neutral.
- The three earlier marks are inherently distinctive to a high degree.

49. Taking all the above into account and even bearing in mind the principle of imperfect recollection, and that the average consumer will rarely have the opportunity to compare the marks side-by-side, I am not convinced that the marks would be mistakenly recalled or misremembered for one another. Whilst I appreciate that the parties' marks contain the letters 'KaSa/kasa' (and taking account of the fact that where the marks in question are word marks they can be rendered in any case through normal and fair use), I bear in mind the stated visual, and aural differences between the marks, which in my view will allow the average consumer to correctly recall and

remember the marks, even when used on identical goods, particularly keeping in mind that the beginnings of marks tend to make more of an impact than the ends.¹⁷ Notwithstanding that the opponent's marks are inherently highly distinctive, I find that the stated clear differences between the marks will be noticed. Consequently, I do not consider there to be any likelihood of direct confusion.

50. I will now consider whether there is a likelihood of indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis QC (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).

¹⁷ *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184

(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).”

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

52. 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.

53. Further, a finding of indirect confusion should not be made merely because the two marks share a common element, and it is not sufficient that a mark merely calls to mind another mark,¹⁸ this is mere association not indirect confusion.

54. In order to find indirect confusion in this case, it would be necessary to conclude that the average consumer will notice the common element ‘KaSa/kasa’ in the marks, while at the same time recalling the differences between them and assume that the marks are from the same or related undertaking. However, I do not think this is likely. To my mind, ‘neakasa’ is not a logical brand extension, sub-brand or rebrand, etc., of ‘KaSa K99’, ‘KaSa Mag98’ or ‘KaSa’ (or vice versa). Even taking the identical goods at issue into account, I find the distance between the marks is simply too great for a likelihood of indirect confusion to arise. The differences between them clearly point away from the marks originating from the same or economically linked undertakings.

¹⁸ *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17

Accordingly, in my view, none of the examples of indirect confusion in *LA Sugar* apply, nor can I see any other basis for finding indirect confusion. Even if the average consumer, upon being confronted by the applicant's mark on goods that are identical, were to call to mind the opponent's marks, this is mere association not indirect confusion. Rather, it is my view that the average consumer would put the presence of the common element 'KaSa/kasa' in the marks, down to coincidence rather than economic connection.

CONCLUSION

55. The partial opposition based upon section 5(2)(b) of the Act has been unsuccessful and the contested mark may proceed to registration in full.

COSTS

56. The applicant has been successful and is entitled to a contribution towards its costs in line with the scale set out in Tribunal Practice Notice (TPN) 1/2023. In the circumstances, I award the applicant the sum of £550 as a contribution towards the costs of the proceedings. The sum is calculated as follows:

Considering the notice of opposition and preparing the counterstatement:	£250
Considering the other side's written submissions and evidence: ¹⁹	£300
Total:	£550

57. I therefore order K+S Minerals and Agriculture GmbH to pay GenHigh Tech Co., Limited, the sum of £550. The above 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.

¹⁹ The level of this amount takes into account that the applicant did not comment on the opponent's written submissions or evidence.

Dated this 21st day of October 2025

**Sam Congreve
For the Registrar**

ANNEX 1

UKTM 917655978 – application

(The opposed goods are underlined)

Class 31 Pet food; Pet beverages; Edible pet treats; Sanded paper for pets [litter]; Pet foods in the form of chews; Pets (Aromatic sand for -) [litter]; Animal feed; Animal litter; Cat litter; Paper for use as animal bedding; Cat litter and litter for small animals; Canned foodstuffs for cats; Canned foodstuffs for dogs.

ANNEX 2

The First Earlier Mark - UKTM 905230925

Class 31 Foodstuffs for animals and additives for foodstuffs for animals (not for medical purposes).

The Second Earlier Mark - UKTM 905231766

Class 31 Foodstuffs for animals and additives for foodstuffs for animals (not for medical purposes).

The Third Earlier Mark - UKTM 913296413

Class 5 Nutritional supplements; Medicated supplements for foodstuffs for animals.

Class 31 Foodstuffs for animals.