

O/1116/25

TRADE MARKS ACT 1994

IN THE MATTER OF UK TRADE MARK APPLICATION NUMBER 4095587

**BY CARDOWAN CREAMERIES LIMITED
TO REGISTER THE FOLLOWING TRADE MARK:**

SOVEREIGN

IN CLASSES 29 AND 30

AND

IN THE OPPOSITION THERETO

UNDER NUMBER 451450

SYMCO, INCORPORATED

BACKGROUND & PLEADINGS

1. On 4 September 2024, Cardowan Creameries 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 20 September 2024 in respect of the goods outlined in Annex 1 of this decision.¹
2. On 18 December 2024, the contested mark was opposed by Symco, Incorporated Limited (“the opponent”). The opposition is brought under Section 5(2)(b) of the Trade Marks Act 1994 (“the Act”).
3. For the purposes of its opposition, the opponent relies upon the following word mark (“the earlier mark”):

SOVEREIGN LABORATORIES

Trade mark number: UK00003964497

Filing Date: 6 October 2023

Registration Date: 29 December 2023

Priority date: 21 July 2023 (US)

4. The opponent relies upon all of the goods for which its earlier mark is registered, namely:

Class 5: Dietary supplements.

5. An earlier trade mark is defined in section 6 of the Act, the relevant parts of which state:

¹ The contested mark was also initially published in respect of goods in class 5. However, a Form TM21b was filed on 10 January 2025 requesting to remove the class 5 goods from the contested mark’s specification. This amendment to the specification was made by the Registry and, by way of official letter dated 30 January 2025, the opponent was given the opportunity to confirm whether it would like to withdraw the opposition in light of the same. No response to this letter was received from the opponent, so the opposition was maintained in respect of the contested mark’s class 29 and 30 goods only, and this was confirmed to the parties by way of an official letter dated 5 March 2025.

“(6)(1) In this Act an “earlier trade mark” means –

a registered trade mark or international trade mark (UK) which has a date of application for registration earlier than that of the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks.

6. The mark identified in paragraph 3 qualifies as an earlier trade mark under the above provisions. As the earlier mark had not completed its registration process more than five years before the relevant date, it is not subject to proof of use requirements. Consequently, the opponent may rely on the goods highlighted in paragraph 4 of this decision for the purposes of this opposition.
7. The opponent submits that the marks in issue are very similar, and the goods covered by the marks in issue “are also related to each other and potential customers can rightly believe that the Opponent has simply broaden (sic) the variety of its products by including various food items.”
8. The applicant filed a counterstatement denying the claims made against it. Specifically, the applicant denies that the marks in issue are similar, or that the goods for which the marks are applied for/registered are identical or similar. The applicant therefore submits that the opposition should be “unsuccessful on all grounds”, and requests that an award of costs should be made in its favour.
9. The opponent is represented by Katarzyna Binder-Sony, and the applicant is represented by Walker Morris LLP. In this case, neither party filed evidence. No hearing was requested, but both parties filed written submissions in lieu of a hearing. This decision is therefore 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.
10. 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.

DECISION

Section 5(2)(b)

11. This opposition is based upon section 5(2)(b) of the Act which stipulates the following:

“5(2) A trade mark shall not be registered if because-

(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”.

12. Section 5A of the Act stipulates that where “grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

13. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*,² *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* (“Canon”),³ *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.*,⁴ *Marca Mode CV v Adidas AG & Adidas Benelux BV*,⁵ *Matratzen Concord GmbH v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (“OHIM”),⁶

² Case C-251/95

³ Case C-39/97

⁴ Case C-342/97

⁵ Case C425/98

⁶ Case C-3/03

Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH,⁷ *Shaker di L. Laudato & C. Sas v OHIM*⁸ and *Bimbo SA v OHIM*⁹:

- 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 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;

⁷ Case C-120/04

⁸ Case C-334/05P

⁹ Case C-591/12P

- 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;
- k. if the association between the marks creates a risk that the public might believe that the respective services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of Goods

- 14. The competing goods are outlined in Annex 1 and paragraph 4 of this decision.
- 15. The applicant submits that there is no similarity between the opponent's goods and the applicant's goods. By contrast, the opponent submits that goods in issue are "distributed through the same distribution channels and are likely to be purchased by the same customers", and that the opponent's dietary supplements are "easily available not only in drug store, but also in supermarkets" and grocery stores.
- 16. As a preliminary point, it should be noted that section 60A of the Act provides that goods and services are not to be regarded as being similar to each other on the ground that they appear in the same class under the Nice Classification¹⁰, or

¹⁰ "Nice Classification" means the system of classification under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957.

dissimilar on the ground that they appear in different classes under the Nice Classification.”

17. In *Canon*, the Court of Justice of the European Union (“CJEU”) stated (at paragraph 23) that, when making the comparison, “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”.
18. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case¹¹, for assessing similarity were:
 - a. The uses of the respective goods;
 - b. The users of the respective goods;
 - c. The physical nature of the goods;
 - d. The respective trade channels through which the goods reach the market;
 - e. In the case of self-serve consumer items, where in practice they are respectively found or likely to be, found in supermarkets and in particular whether they are, or are likely to be, found on the same or different shelves;
 - f. The extent to which the respective goods are competitive. This inquiry may take into account how those in trade classify goods, for instance whether market research companies, who of course act for industry, put the goods in the same or different sectors.

¹¹ [1996] R.P.C. 281

19. In *Gérard Meric v OHIM*, the General Court confirmed that even if goods are not worded identically, they can still be considered identical if one term falls within the scope of another (or vice versa)¹²:

“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.”

20. As per the case of *Separode*,¹³ I also bear in mind that it is permissible to group the goods together, for the purpose of comparison, where they are sufficiently comparable to be assessable in essentially the same way for the same reasons.

Eggs; milk and milk products; dairy products; dairy spreads; dairy-based spreads; low fat dairy spreads; butter; butter preparations; butter substitutes; concentrated butter; blended butter; savoury butters; seed butters; butter made from nuts; cocoa butter; powdered nut butters; margarine; margarine substitutes; edible fat-based spreads for bread; cream; sour cream; cream powder; artificial cream (dairy product substitutes); cream alternatives and substitutes; non-dairy milk and cream; dips; dairy-based dips; meat substitutes; preserved, frozen, dried and cooked fruits and vegetables; vegetable and plant- based meat substitutes; vegetable spreads; vegetable-based spreads; vegetable- based snack foods; cheese spreads; cheese-based snack foods; nut paste spreads; nut-based spreads; spreads consisting mainly of fruits; fruit-based snack food; fruit snacks; dairy-based beverages; drinks made from dairy products; cream, being dairy products; non-dairy creamer; dairy whiteners for beverages; dairy-based whipped topping; dairy puddings and desserts; yoghurt; yoghurts; yoghurt beverages and drinks; yoghurt-based beverages and drinks; drinking yoghurt; yoghurt dessert; soya yoghurt; flavoured yoghurt; custard-style yoghurts; low fat yoghurt; preparations for making yoghurt; yoghurt made with goats milk; milk products; butter milk; butter

¹² Case T-133/05

¹³ BL O/399/10, Mr Geoffrey Hobbs QC, sitting as the Appointed Person

cream; milk; milkshakes; sour milk; milk curds; flavoured milks; milk solids; dried milk; milk powder; soya milk; milk beverages and drinks; milk based beverages and drinks; flavoured milk beverages and drinks; milk beverages, milk predominating; rice milk; sheep milk; goat milk; cows' milk; fermented milk; evaporated milk; oat milk; milk substitutes; milk based snacks; artificial milk based desserts.

21. All of the above referenced goods are types of food or drink. They are either consumed as a stand-alone product or are added as an ingredient to other meals or drinks (for example, to provide additional flavour to the meal/drink).

22. I compare the above referenced goods to the opponent's "dietary supplements". I note that there is some generic overlap in method of use and purpose between these goods, in that they can all be consumed and have nutritional/health benefits. However, the primary purpose of the applicant's above referenced goods is to be consumed to fuel the body, and the purpose of the dietary supplements is purely to supplement the consumer's diet nutritionally. A consumer cannot, of course, survive on dietary supplements alone, and so one is not an alternative for the other. Accordingly, there is no competition between these goods, and I cannot see any basis for finding them to be complementary given that they are neither important nor indispensable from one another, nor has any basis for such a finding been provided by the opponent.¹⁴

23. Whilst dietary supplements come in many forms (be that as capsules, powders or liquids), and the physical nature of the above referenced applicant's goods varies considerably, the compared goods clearly differ in nutritional content. This is because, unlike the above referenced applicant's goods, dietary supplements are intentionally concentrated to ensure they provide a particular quantity (usually a recommended daily intake) of one or more vitamin, mineral, herb, botanical, amino acid or probiotic.

24. Whilst I accept that all of these goods could be sold in the same stores (such as supermarkets), I note that they will be sold in entirely different aisles of those

¹⁴ Boston Scientific Ltd v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), Case T-325/06

stores, with the opponent's goods sold in the health aisle, separate from the general food and drink aisles. Whilst I also note that the users of the applicant's above referenced goods and the opponent's dietary supplements will be the same, this is not really pertinent because they are general consumer goods and so this overlap is at a very superficial level.

25. Whilst, for the reasons outlined above, I accept that there is some generic overlap between the goods, I do not consider these factors alone to be sufficient to reach of finding of similarity. In that regard, I note the comments of Iain Purvis KC *Unicorn Studio Inc v Veronese* that "any finding of similarity in the end requires the exercise of common sense and requires the hearing officer to stand back and consider the overall question" rather than by engaging "in a box-ticking exercise, asking how many of the factors identified in *TREAT* or in *Canon* could be said to have been satisfied".¹⁵
26. For all of the above reasons, I consider the above referenced goods to be dissimilar to the opponent's dietary supplements.

Milk powder for nutritional purposes:

27. I note that the applicant's "milk powder" is expressly stipulated to be "for nutritional purposes" and that this, on the face of it, appears to be more akin to the opponent's "dietary supplements" (which I accept may also come in powder form). However, it must be noted that the applicant's milk powder is listed in class 29. Whilst I appreciate that, for the reasons outlined in paragraph 16 of this decision, goods are not to be regarded as dissimilar purely on the ground that they appear in different classes, it is important to note that class 29 expressly excludes "dietary supplements". Consequently, the wording "for nutritional purposes" therefore does nothing but make explicit what is implicit for the other class 29 terms (i.e., that they have a nutritional benefit by virtue of the fact that they are food or drink products). Despite the phrasing of the applicant's term, it is clear from its classification that this is simply milk powder in class 29 and not a powdered dietary supplement.

¹⁵ [2024] EWHC 1098 (Ch)

28. In light of the above, I consider that my reasoning and subsequent findings outlined in paragraphs 21 to 26 above apply equally when considering the similarity, or lack thereof, between the applicant's "milk powder for nutritional purposes" and the opponent's "dietary supplements". Consequently, I find them to be dissimilar.

Protein Milk

29. I note that the above referenced good is expressly stipulated to be "protein milk". However, I have no evidence before me as to whether this is milk with a naturally occurring higher level of protein than other types of milk, or whether this is milk which has in some way been fortified with additional protein. In either case, I consider there to be a general overlap in user/method of use between the applicant's protein milk and the opponent's dietary supplements on the basis that they are consumed through the mouth and by the general public. However, this overlap is at a very superficial level and, noting the comments of Iain Purvis KC referenced in paragraph 25 above, I do not consider this alone to be a sufficient basis for a finding of similarity.
30. I also have no evidence before me to suggest that businesses that sell dietary supplements will also sell fortified food products, and I have no basis for making such a finding in the absence of such evidence. Whilst I appreciate that protein milk and dietary supplements may both be available to purchase in supermarkets, they will be sold in entirely separate aisles. I do not therefore consider there to be an overlap in trade channels.
31. Further, for the same reasons discussed in paragraph 23 above, I consider these goods to differ in nutritional content and therefore nature. Whilst there is an overlap in general purpose on the basis that both of these goods have a nutritional benefit, these goods differ in specific purpose. The purpose of protein milk is to be consumed to fuel the body, whereas the purpose of dietary supplements is to be taken as a supplement to a balanced diet. Given these

differences, I can see no basis for finding these goods to be competitive or complementary. Overall, I therefore find these goods to be dissimilar.

Oils and fats for food; edible oils and fats; cooking oils; nut oils; vegetable oils for food; coconut oil and fat for food; flavoured oils; olive oils; spiced oils; butter oil; blended oils for food; hydrogenated oils for food; hardened oils; clarified butter; butter for use in cooking; ghee;

32. All of the above referenced goods are types of edible oils or fats, which I compare with the opponent's dietary supplements. Dietary supplements come in a variety of forms (be that as a capsule, powder or liquid) and can, of course, include oils as an ingredient. However, as discussed above, dietary supplements are intentionally highly concentrated, the compared goods will therefore clearly differ in nature given their differing nutritional content.
33. Whilst I, once again, appreciate that there is some very general overlap in these goods on the basis that they all have nutritional benefits, the goods differ in specific purpose, with the purpose of the applicant's above referenced goods being to add as an ingredient to a meal or assist with cooking, and the purpose of the opponent's dietary supplements being to supplement a diet nutritionally. Given their differing primary purpose, I can see no basis for finding that you would purchase any of the applicant's various types of edible oils in place of the opponent's dietary supplements, nor do I consider either of these goods to be important or indispensable from one another. Consequently, I do not consider these goods to be competitive or complementary.
34. I do not accept that there is an overlap in trade channels as, whilst I accept that they could all be purchased from general supermarkets, they will be located in entirely different aisles. Further, whilst there is, once again, some generic overlap in user, this is not really pertinent because they are general consumer goods.
35. For all of the above reasons, I consider the applicant's oil goods to be dissimilar to the opponent's dietary supplements.

Coffee, tea, cocoa and artificial coffee; cappuccino; chocolate-based beverages; cocoa-based beverages; coffee-based beverages; pastries and confectionery; pastries, cakes, tarts and biscuits (cookies); dessert soufflés; mousses; prepared desserts [confectionery]; dessert mousses [confectionery]; puddings; sugar, honey, treacle; yeast, baking-powder; salt; mustard; vinegar; spices; fruit sauces; sauces; flavourings, other than essential oils for foodstuffs, except etheric essences and essential oils; preparations for stiffening whipped cream; thickening agents for cooking foodstuffs; edible ices; sherbets [ices]; ice cream; binding agents for ice cream; powders for ice cream; frozen yoghurt [confectionery ices]; frozen yogurt cakes; ice milk bars; fruit ice bars; frozen confectionery containing ice cream; frozen dairy confections; ice beverages with a chocolate base; ice beverages with a coffee base; ice beverages with a cocoa base; cheese curls [snacks]; cheese-flavoured biscuits.

36. Once again, all of the above referenced goods are types of food and drink, which are either consumed as a stand-alone product or are added as an ingredient to other foods or drinks (for example, to assist with baking, or to provide additional flavour). I compare the above referenced goods with the opponent's dietary supplements. Whilst all of the compared goods can be purchased in general supermarkets, they will be located in entirely separate sections/aisles. Consequently, I do not accept that there is an overlap in trade channels.
37. Further, whilst all of the compared goods have some level of nutritional benefit, for the same reasons outlined in paragraph 22 above, the primary purpose of these goods differs. Given the difference in primary purpose, I see no basis for finding that the applicant's above referenced goods would be purchased as an alternative to the opponent's dietary supplements, nor do I consider these goods to be important to or indispensable from one another. As such, I do not consider these goods to be competitive or complementary.
38. Whilst the compared goods cover a broad category of goods, for the same reasons outlined in paragraph 23, they clearly differ in nutritional content, and therefore nature.

39. There is, once again, some very generic overlap in method of use and user between the compared goods in that they are consumed through the mouth and will be purchased by the general public. However, I am once again conscious of the comments of Iain Purvis KC outlined in paragraph 25 above, and therefore do not consider these factors to be sufficient to make a finding of similarity between these goods. Overall, I consider the applicant's above referenced goods to be dissimilar to the opponent's dietary supplements.
40. For all of the reasons outlined above, I can see no basis for a finding of similarity between the opponent's goods and the applicant's goods. I also note that beyond a submission from the opponent that these goods overlap in users (being the "general population"), which I do not consider to be sufficient to make a finding of similarity, and trade channels, which I do not accept, I have not been provided with any submissions or evidence from the parties that would support a finding of similarity. As I do not consider these goods to be similar, I am bound to find that the opposition fails in its entirety under section 5(2)(b) of the Act, and that, subject to any successful appeal, the application may proceed to registration for all goods.

Final Remarks

41. Even if I had found there to be a very low degree of similarity between the goods (which, in my view, is the opponent's best possible case), this would not have changed the outcome of my decision. This is because, whilst there is plainly a high degree of similarity between the marks, the similarity between the marks would have been offset by the distance between the parties' respective goods. The earlier mark consists of two dictionary words which would result in it being distinctive to no more than a medium degree (and there is no evidence before me to suggest any enhancements). Taking all of this into account, I would have found no likelihood of direct or indirect confusion in any event.

CONCLUSION

42. The opposition fails, and the contested mark, subject to any successful appeal of my decision, may proceed to registration.

COSTS

43. As the applicant has been successful it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Note 1/2023. In the circumstances, I award the applicant the sum of £600 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

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| Preparing a Defence and Counterstatement and considering the other side's statement: | £250 |
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| Preparing submissions-in-lieu of a hearing: | £350 |
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| <u>Total:</u> | <u>£600</u> |
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44. I therefore order Symco, Incorporated Limited to pay Cardowan Creameries Limited the sum of £600. 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.

Dated this 27th day of November 2025

B Hartland
For the Registrar

Annex 1

Class 29

Eggs; milk and milk products; oils and fats for food; dairy products; dairy spreads; dairy-based spreads; low fat dairy spreads; butter; butter preparations; butter substitutes; concentrated butter; blended butter; savoury butters; seed butters; butter made from nuts; cocoa butter; powdered nut butters; margarine; margarine substitutes; edible fat-based spreads for bread; cream; sour cream; cream powder; artificial cream (dairy product substitutes); cream alternatives and substitutes; non-dairy milk and cream; edible oils and fats; cooking oils; nut oils; vegetable oils for food; coconut oil and fat for food; flavoured oils; olive oils; spiced oils; butter oil; blended oils for food; hydrogenated oils for food; hardened oils; clarified butter; butter for use in cooking; ghee; dips; dairy-based dips; meat substitutes; preserved, frozen, dried and cooked fruits and vegetables; vegetable and plant-based meat substitutes; vegetable spreads; vegetable-based spreads; vegetable-based snack foods; cheese spreads; cheese-based snack foods; nut paste spreads; nut-based spreads; spreads consisting mainly of fruits; fruit-based snack food; fruit snacks; dairy-based beverages; drinks made from dairy products; protein milk; cream, being dairy products; non-dairy creamer; dairy whiteners for beverages; milk powder for nutritional purposes; dairy-based whipped topping; dairy puddings and desserts; yoghurt; yoghurts; yoghurt beverages and drinks; yoghurt-based beverages and drinks; drinking yoghurt; yoghurt dessert; soya yoghurt; flavoured yoghurt; custard-style yoghurts; low fat yoghurt; preparations for making yoghurt; yoghurt made with goats milk; milk products; butter milk; butter cream; milk; milkshakes; sour milk; milk curds; flavoured milks; milk solids; dried milk; milk powder; soya milk; milk beverages and drinks; milk based beverages and drinks; flavoured milk beverages and drinks; milk beverages, milk predominating; rice milk; sheep milk; goat milk; cows' milk; fermented milk; evaporated milk; oat milk; milk substitutes; milk based snacks; artificial milk based desserts.

Class 30

Coffee, tea, cocoa and artificial coffee; cappuccino; chocolate-based beverages; cocoa-based beverages; coffee-based beverages; pastries and confectionery; pastries, cakes, tarts and biscuits (cookies); dessert soufflés; mousses; prepared desserts [confectionery]; dessert mousses [confectionery]; puddings; sugar, honey,

treacle; yeast, baking-powder; salt; mustard; vinegar; spices; fruit sauces; sauces; flavourings, other than essential oils for foodstuffs, except etheric essences and essential oils; preparations for stiffening whipped cream; thickening agents for cooking foodstuffs; edible ices; sherbets [ices]; ice cream; binding agents for ice cream; powders for ice cream; frozen yoghurt [confectionery ices]; frozen yogurt cakes; ice milk bars; fruit ice bars; frozen confectionery containing ice cream; frozen dairy confections; ice beverages with a chocolate base; ice beverages with a coffee base; ice beverages with a cocoa base; cheese curls [snacks]; cheese-flavoured biscuits.