

O/1212/25

TRADE MARKS ACT 1994

CONSOLIDATED PROCEEDINGS

IN THE MATTER OF APPLICATION NOS. UK00004050128 & UK00004058848  
BY JONATHAN CASSILLIS TO REGISTER:

VITADOG

AS A TRADE MARK IN CLASS 31

AND

VITADOG

AS A TRADE MARK IN CLASS 5

IN THE MATTER OF THE OPPOSITIONS THERETO  
UNDER NOS OP600003420 & OP600003421  
BY PETS CHOICE LIMITED

## **BACKGROUND AND PLEADINGS**

1. On 10 May 2024 and 2 June 2024, Jonathan Cassillis (“the applicant”) applied to register in the UK the trade marks UK00004050128, “VITADOG” (“the applicant’s first mark”) and UK00004058848, “VITADOG” (“the applicant’s second mark”), respectively.
2. The applicant’s first mark was accepted and published for opposition purposes on 31 May 2024 and registration is sought for the following goods:

### Class 31

Dog food; Food for dogs; Pet food for dogs; Pet food; Dog foods; Food for cats; Animal food; Foodstuff for dogs; Pet foods; Dog biscuits; Dog treats [edible]; Canned foods for dogs; Beverages for dogs; Pet beverages; Edible chews for dogs; Food products for animals; Pet foods in the form of chews; Biscuits for dogs; Meal for animals; Edible pet treats.

3. The applicant’s second mark was accepted and published for opposition purposes on 14 June 2024 and registration is sought for the following goods:

### Class 5

Dietary pet supplements in the form of pet treats; Dietary supplements for pets; Vitamin and mineral supplements for pets; Dietary supplements for animals; Vitamins for pets; Food supplements; Vitamin supplements for animals; Food supplements for veterinary use; Mineral dietary supplements for animals; Medicated supplements for animal feedstuffs; Nutritional supplements for veterinary use; Dietary supplements for pets in the nature of a powdered drink mix; Dietary food supplements; Dietary supplements; Antibiotic food supplements for animals; Homeopathic supplements; Protein supplements for animals; Medicated food supplements; Nutritional supplements; Herbal supplements; Probiotic supplements; Flaxseed dietary supplements; Feed supplements for veterinary use; Nutraceuticals for use as a dietary supplement;

Anti-oxidant food supplements; Vitamin supplements; Liquid dietary supplements; Mineral dietary supplements; Mineral supplements for feeding livestock; Nutritional supplements for livestock feed; Vitamin and mineral food supplements; Medicated supplements for foodstuffs for animals; Calcium supplements; Chlorella dietary supplements; Dietary and nutritional supplements; Acai powder dietary supplements; Mineral nutritional supplements; Liquid nutritional supplements; Propolis dietary supplements; Health food supplements made principally of vitamins; Lecithin dietary supplements; Colostrum supplements; Protein dietary supplements; Dietary supplements consisting of vitamins; Linseed dietary supplements; Vitamin preparations in the nature of food supplements; Zinc dietary supplements; Protein supplements; Casein dietary supplements; Food supplements for dietetic use; Dietary supplements for medical use; Enzyme dietary supplements; Liquid herbal supplements; Pollen dietary supplements; Flaxseed oil dietary supplements; Attractants for pet animals; Dietary supplements with a cosmetic effect; Calcium tablets as a food supplement; Yeast dietary supplements; Albumin dietary supplements; Liquid vitamin supplements; Prebiotic supplements; Vitamin and mineral supplements; Protein powder dietary supplements; Dietary supplements in powder form; Alginate dietary supplements; Health food supplements made principally of minerals; Food supplements for medical purposes; Anti-oxidant supplements; Food supplements in liquid form; Wheat dietary supplements; Medicated shampoos for pets; Dietary supplement drinks; Glucose dietary supplements; Food supplements for non-medical purposes; Whey protein dietary supplements; Dog lotions for veterinary purposes; Dietary supplements for human beings and animals; Health-aid foods supplements containing ginseng; Soy protein dietary supplements; Dietary supplements and dietetic preparations; Fodder supplements for veterinary purposes.

4. On 22 August 2024, Pets Choice Limited (“the opponent”) filed an opposition opposing both applications in full under section 5(2)(b) of the Trade Marks Act 1994 (“the Act”). In both oppositions, the opponent relies upon the following mark:

VITAPET

UK registration no. UK00003957852

Filing date 18 September 2023; registration date 23 February 2024.

Relying on all goods, being those goods listed in Annex 1 of this decision.

5. The opponent's case is that the marks at issue are visually similar at least to a medium degree, phonetically similar to a medium degree and conceptually highly similar. The opponent submits that the goods of the parties are all identical or highly similar in terms of their nature, purpose, channels of trade and complementary natures. Consequently, the opponent submits that these similarities result in a likelihood of confusion.
6. The applicant filed counterstatements denying all claims made against him.
7. Upon the filing of the applicant's counterstatements and in accordance with Rule 62(1)(g) of the Trade Mark Rules 2008, the Tribunal consolidated the oppositions. This was confirmed in writing to the parties on 19 November 2024.
8. Rule 6 of the Trade Marks (Fast Track Opposition) (Amendment) Rules 2013, S.I. 2013 2235, disapplies paragraphs 1-3 of Rule 20 of the Trade Mark Rules 2008 but provides that Rule 20(4) shall continue to apply. Rule 20(4) states that:

“(4) The registrar may, at any time, give leave to either party to file evidence upon such terms as the registrar thinks fit.”
9. The net effect of these changes is to require the parties to seek leave in order to file evidence in fast track oppositions. On this point, it is noted that neither the applicant nor opponent has filed evidence in these proceedings.
10. The opponent is represented by Hiddleston Trade Marks. The applicant is not represented. Rule 62(5) (as amended) states that arguments in fast track proceedings shall be heard orally only if (i) the Office requests it or (ii) either party to the proceedings requests it and the registrar considers that oral proceedings are necessary to deal with the case justly and at proportionate cost; otherwise, written

arguments will be taken. In this case, a hearing was neither requested nor considered necessary. I also note that only the opponent has filed written submissions in lieu of a hearing.

11. 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.

## **PRELIMINARY ISSUE**

12. The applicant filed two Form TM8's both dated 4 November 2024. One Form TM8 is in respect of trade mark UK00004050128 and opposition number OP600003421. The other is in respect of trade mark UK00004058848 and opposition number OP60003421. The Registry wrote to the applicant on 28 July 2025 stating that it appears that the defence filed for application UK00004050128 contains the incorrect opposition number. The Registry stated they required this to be amended accordingly within 14 days, being on or before 11 August 2025, before the proceedings could continue and failure to do so would result in this application being treated as undefended.
13. The Registry did not receive a response from the applicant on or before 11 August 2025. Having reviewed the proceedings again it appeared that the Form TM8 in respect of trademark UK00004050128 contained a typographical error of one number in the opposition number, stating OP600003421 instead of OP600003420. As a result, the Registry wrote to the parties on 11 September 2025 stating on the basis that two oppositions were filed against two of the applications (which were subsequently consolidated), it is clear that the applicant inadvertently included the same opposition number on both Form TM8s. Whilst a corrected version was requested for the case file, the consequence of not doing so is not that the application will be deemed withdrawn or abandoned. The Registry stated they would proceed to issue a final decision in these proceedings on the basis that the

opposition number OP600003421 on Form TM8 in relation to application number UK00004050128 should have referred to opposition number OP600003420.

14. The Registry received a letter from the opponent's representative on 18 September 2025 stating that the opponent does not object to the rectification of the counterstatement on behalf of the applicant.

## **DECISION**

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

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

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

(a) ...

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

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

16. Section 5A of the Act states as follows:

“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.”

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

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

(a) 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.

18. The opponent’s mark qualifies as an earlier trade mark under the above provisions. As the opponent’s mark had not completed its registration process more than five years before the filing date of the applicant’s mark, it is not subject to proof of use pursuant to section 6A of the Act. Consequently, the opponent may rely on the goods highlighted in its notices of opposition.

19. The following principles are 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 B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v Office for Harmonization 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-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

(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

20. The goods for the applicant's first mark are listed at paragraph 2 above. The goods for the applicant's second mark are listed at paragraph 3 above. The opponent's goods are listed in Annex 1 of this decision.

21. When making the comparison, all relevant factors relating to the goods and services in the specifications should be taken into account, as per *Canon*, where the CJEU stated at paragraph 23 of its judgement:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

22. The relevant factors identified by Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, for assessing similarity were:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services 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 or services 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 or services in the same or different sectors.

23. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court 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.”

24. In *YouView TV Ltd v Total Ltd*, [2012] EWHC 3158 (Ch), paragraph 12, Floyd J (as he then was) gave the following guidance on construing the words used in specifications:

“[...] Trade mark registrations should not be allowed such a liberal interpretation that their limits become fuzzy and imprecise: see the observations of the CJEU in Case C-307/10 *The Chartered Institute of Patent Attorneys (Trademarks) (IP TRANSLATOR)* [2012] ETMR 42 at [47]-[49]. Nevertheless, the principle should not be taken too far. Treat was decided the way it was because the ordinary and natural, or core, meaning of ‘dessert sauce’ did not include jam, or because the ordinary and natural description of jam was not ‘a dessert sauce’. Each involved a straining of the relevant language, which is incorrect. Where words or phrases in their ordinary and natural meaning are apt to cover the category of goods in question, there is equally no justification for straining the language unnaturally so as to produce a narrow meaning which does not cover the goods in question.”

25. I bear in mind that it is permissible to group goods together for the purposes of assessment: *Separode Trade Mark*.<sup>1</sup>

26. In making the following comparison, I remind myself of Section 60A(1)(b) of the Act which sets out that goods or services are not to be regarded as dissimilar from each other solely on the ground that they appear in different classes under the Nice Classification.

27. I have given due consideration to the comments and submissions of the parties and while I do not intend to discuss these in full, there is one point I do wish to discuss further at this point. This relates to the applicant's comments in his counterstatements that:

“[T]he opponent's mark would be in the same class, but claims on this comparison claiming identical or highly similar sale channel is misleading, we did not start advertising until one week after receiving the TM7F so impossible to know. The sales channel would not be the same as VITADOG is online DTC and VITAPET is brick and mortar retail”.

28. This submission of the applicant has no effect. When considering the likelihood of confusion under section 5(2)(b) the assessment must be based, in fact, on the concept of 'notional and fair use' which involves carrying out the comparison of the goods based on the specifications before me, not the goods effectively provided by the parties.<sup>2</sup>

#### Class 31 – Applicant's first mark

*Dog food; Food for dogs; Pet food for dogs; Pet food; Dog foods; Food for cats; Animal food; Foodstuff for dogs; Pet foods; Dog biscuits; Canned foods for dogs; Food products for animals; Biscuits for dogs; Meal for animals.*

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<sup>1</sup> BL O-399-10 (AP)

<sup>2</sup> *O2 Holdings Limited, O2 (UK) Limited v Hutchison 3G UK Limited*, Case C-533/06 at [66] and *Compass Publishing BV v Compass Logistics Ltd* [2004] RPC 41 at [22]

29. The above terms fall within the opponent's broader terms of "Foodstuffs and fodder for animals" and "animal foodstuffs". As a result, I find that these goods are identical under the principle outlined in *Meric*.

*Beverages for dogs; Pet beverages.*

30. The above terms fall within the opponent's broader term of "animal beverages". As a result, I find that these goods are identical under the principle outlined in *Meric*.

*Dog treats [edible]; Edible pet treats.*

31. The above terms fall within the opponent's broader term of "animal snacks and treats". As a result, I find that these goods are identical under the principle outlined in *Meric*.

*Edible chews for dogs; Pet foods in the form of chews.*

32. The above terms fall within the opponent's broader term of "edible chews for animals". They could also fall within the opponent's term of "dental chews for animals". As a result, I find that these goods are identical under the principle outlined in *Meric*.

#### Class 5 – Applicant's second mark

*Dietary food supplements; Dietary supplements; Flaxseed dietary supplements; Nutraceuticals for use as a dietary supplement; Liquid dietary supplements; Mineral dietary supplements; Chlorella dietary supplements; Dietary and nutritional supplements; Acai powder dietary supplements; Propolis dietary supplements; Lecithin dietary supplements; Protein dietary supplements; Dietary supplements consisting of vitamins; Linseed dietary supplements; Zinc dietary supplements; Casein dietary supplements; Dietary supplements for medical use; Enzyme dietary supplements; Pollen dietary supplements; Flaxseed oil dietary supplements; Dietary supplements with a cosmetic effect; Yeast dietary supplements; Albumin dietary supplements; Protein powder dietary supplements; Dietary supplements in powder*

*form; Alginate dietary supplements; Wheat dietary supplements; Dietary supplement drinks; Glucose dietary supplements; Whey protein dietary supplements; Soy protein dietary supplements; Dietary supplements and dietetic preparations; Food supplements for dietetic use.*

33. The above goods are dietary supplements that are not limited by user. Given they are not limited in this manner they can be used by both humans and animals. As a result, I find the above terms are identical to the opponent's terms "dietary supplements for animals and birds" and "dietetic substances for animals and birds" under the principle outlined in *Meric*.

*Vitamin supplements; Vitamin and mineral food supplements; Vitamin preparations in the nature of food supplements; Liquid vitamin supplements; Vitamin and mineral supplements.*

34. The above goods are vitamin supplements that are not limited by user. Given they are not limited in this way, they can be used by both humans and animals. Consequently, I find the above applicant's terms are identical to the opponent's terms "vitamin and mineral preparations, all for animals and birds", "vitamin and mineral preparations for animals and birds" and "vitamin and mineral-based additives for animal and bird foodstuffs". As a result, I find that these goods are identical under the principle outlined in *Meric*.

*Nutritional supplements; Mineral nutritional supplements; Liquid nutritional supplements.*

35. The above goods are nutritional supplements that are not limited by user. Given they are not limited in this way, they can be used by both humans and animals. Consequently, I find the above applicant's terms are identical to the opponent's terms "nutritional supplements for animals and birds" and "nutritional supplements for joints and to assist mobility". As a result, I find that these goods are identical under the principle outlined in *Meric*.

*Food supplements; Anti-oxidant food supplements; Health food supplements made principally of vitamins; Health food supplements made principally of minerals; Food supplements for medical purposes; Food supplements in liquid form; Food supplements for non-medical purposes; Health-aid foods supplements containing ginseng; Calcium tablets as a food supplement; Protein supplements; Medicated food supplements; Calcium supplements.*

36. The above goods are all food supplements that are not limited by user. Given they are not limited in this way, they can be used by both humans and animals. Food supplements are commonly dietary or nutritional in nature. Consequently, I find the above applicant's terms are identical to the opponent's terms "nutritional supplements for animals and birds" and "dietary supplements for animals and birds". As a result, I find that these goods are identical under the principle outlined in *Meric*.

*Homeopathic supplements; Herbal supplements; Probiotic supplements; Colostrum supplements; Liquid herbal supplements; Prebiotic supplements; Anti-oxidant supplements.*

37. While the ingredients used in the applicant's goods above are different from the applicant's goods in the preceding paragraph, as far as I am aware, the above applicant's goods are all dietary or nutritional supplements and will, therefore, fall within the opponent's terms "nutritional supplements for animals and birds" and "dietary supplements for animals and birds". As a result, I find that these goods are identical under the principle outlined in *Meric*.

*Dietary pet supplements in the form of pet treats; Dietary supplements for pets; Dietary supplements for animals; Mineral dietary supplements for animals; Dietary supplements for pets in the nature of a powdered drink mix; Dietary supplements for human beings and animals.*

38. The above terms fall within the opponent's broader terms of "dietary supplements for animals and birds" and "dietetic substances for animals and birds". As a result, I find that these goods are identical under the principle outlined in *Meric*.

*Vitamin and mineral supplements for pets; Vitamins for pets; Vitamin supplements for animals; Mineral supplements for feeding livestock.*

39. The above terms fall within the opponent's broader terms of "vitamin and mineral preparations, all for animals and birds", "vitamin and mineral preparations for animals and birds" and "vitamin and mineral-based additives for animal and bird foodstuffs". As a result, I find that these goods are identical under the principle outlined in *Meric*.

*Nutritional supplements for veterinary use; Nutritional supplements for livestock feed.*

40. Under the principle outlined in *Meric*, the above applicant's goods are identical to the opponent's terms of "nutritional supplements for animals and birds", "nutritional supplements for joints and to assist mobility" and "veterinary preparations and substances".

*Food supplements for veterinary use; Feed supplements for veterinary use; Protein supplements for animals.*

41. The above terms fall within the opponent's terms of "dietetic substances for animals and birds", "nutritional supplements for animals and birds" and "dietary supplements for animals and birds". Even though two of the above applicant's terms are reserved for "veterinary use", this does not affect my similarity finding as these applicant's terms still fall within the opponent's terms specified. As a result, I find that these goods are identical under the principle outlined in *Meric*.

*Medicated supplements for animal feedstuffs; Antibiotic food supplements for animals; Medicated supplements for foodstuffs for animals.*

42. The above applicants terms all fall within the opponent's broader term of "veterinary preparations and substances". The term "veterinary" refers to and includes medical goods for animals. Consequently, the terms "medicated" and "veterinary" describe

the same terms. As a result, I find that these goods are identical under the principle outlined in *Meric*.

*Medicated shampoos for pets.*

43. The above applicant's term falls within the opponent's broader term of "disinfectants and medicated soaps and shampoos, all for animals and birds" in class 3 and "disinfectants, deodorants and medicated cleansing products and grooming products, all for animals and birds" in class 5. As a result, I find that these goods are identical under the principle outlined in *Meric*.

*Dog lotions for veterinary purposes.*

44. The above applicant's term falls within the broader opponent's term of "ointments and lotions, all for use on animals and birds". As a result, I find that these goods are identical under the principle outlined in *Meric*.

*Fodder supplements for veterinary purposes.*

45. It is my understanding that the above term is a supplement for animal feed for veterinary purposes. Given this, the above applicant's term falls within the broader opponent's term of "veterinary preparations and substances" and "nutritional supplements for animals and birds". As a result, I find that these goods are identical under the principle outlined in *Meric*.

*Attractants for pet animals.*

46. It is my understanding that the above term is something that attracts pets, being the opposite of repel. I understand that attractants attract pets to a certain place or attract them to eat food or medicine. The closest comparable term in the opponent's specification is "dietetic substances for animals and birds" or "nutritional supplements for animals and birds". I consider that the above applicant's good will have the same users (members of the general public, pet/animal owners or medical professionals) as the opponent's goods. As for purpose, there is a degree of

overlap as the goods will all be added to the pet's food leading to better health in pets through increased palatability and increased nutrients. I am also of the view that these goods will have the same trade channels (i.e., they will be purchased through retail stores for animals or by veterinary procurement departments). Taking all of this into account, I am of the view that the goods are similar to a medium degree.

### **The average consumer and the nature of the purchasing act**

47. The case law, as set out earlier, requires that I determine who the average consumer is for the respective parties' goods. I must then decide the manner in which these goods are likely to be selected by the average consumer in the course of trade. 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.”

48. I have no submissions from the opponent or the applicant as to who the average consumer for the goods at issue will be. I consider that the average consumer for the goods will be members of the general public, pet/animal owners or medical professionals. When selected by pet owners or members of the general public, the goods will, for the most part, be subject to self-selection from the shelves of retail establishments such as supermarkets or specialist pet/animal stores and their online or catalogue equivalents (where available). When the selection takes place online or via a catalogue, the goods will be selected after viewing an image of them on a webpage or in a catalogue. This means that the mark will be seen and so the

visual element of the mark will be the most significant,<sup>3</sup> though I do not discount the aural component entirely as suggestions may come from word-of-mouth recommendations or advice from sales assistants. The goods are generally inexpensive items purchased fairly frequently, even where they are medical in nature. That said, consumers will be alive to factors such as ingredients, suitability and, where medical in nature, the ailment they are intended to treat. For these goods, I consider that a medium degree of attention will be paid.

49. Turning to the goods selected by medical professionals, the goods are likely to be purchased from suppliers and manufacturers, whereby the selection process would be a combination of visual and aural. Information about the products is likely to be sought primarily from brochures and websites, though medical professionals may also engage in verbal discussions with sales representatives. The medical professional is likely to select the goods relatively frequently. I do not consider the purchasing act for any of the goods to be merely casual. The level of attention for medical or pharmaceutical products will be medium to high as selecting the correct goods will be important as they will thereafter be recommending or prescribing the use of the goods for medical treatment.

### **Comparison of marks**

50. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a 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 marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components.

51. The CJEU stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

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<sup>3</sup> *New Look Limited v OHIM*, Joined cases T-117/03 to T-119/03 and T-171/03, paragraph 50

“.....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.”

52. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

53. As the applicant’s marks are identical, I will refer only to “the applicant’s mark” from this point in this decision.

54. The respective trade marks are shown below:

<b>The opponent’s mark</b>	<b>The applicant’s mark</b>
VITAPET	VITADOG

55. I have submissions from both parties in respect of the comparison of the marks. While these are noted, I do not intend to repeat them in full here. Instead, I will, where necessary, discuss them further below. For the avoidance of doubt, however, I can confirm that I have taken these submissions into account in making the following comparison.

Overall impression

56. The applicant’s mark is a word only mark consisting of “VITADOG” in uppercase. Firstly, while the applicant’s mark is one invented word, I consider that consumers will view the mark as the conjoining of two elements, being “VITA” and “DOG”.

57. As for the opponent's mark, this is a word only mark which consists of the word "VITAPET" in uppercase. As per the preceding paragraph, I consider that consumers will view it as the conjoining of two elements, being "VITA" and "PET".

58. Whilst the opponent submits that "PET" and "DOG" are clearly descriptive and devoid of distinctive character and the relevant consumer is likely to give most weight to the prefix of the respective marks, I consider that "PET" and "DOG" are allusive of the goods at issue i.e., they allude to goods that will be for pets or dogs, as opposed to describing them. In respect of both marks, I have given consideration as to the meaning associated with 'VITA'. While it shares the first four letters of the word "VITAMINS", I have nothing before me to suggest that "VITA" is a common abbreviation for "VITAMINS" to the point that consumers would grasp that "VITA" was connected to that word, even in respect of vitamin goods. As I have stated previously, the "PET" and "DOG" elements of each mark will be seen as allusive so while both marks are conjoined words, it is "VITA" that plays the strongest role in both marks.

#### Visual comparison

59. Visually, both marks consist of seven letters and overlap through the use of the first four letters, being "VITA". As a result, the only points of visual difference that apply here are the last three letters of each mark, being "DOG" in the applicant's mark and "PET" in the opponent's mark. Regardless of the various roles these elements play in their respective marks, they all contribute as points of visual difference between the marks. Overall, bearing in mind the shared use of the first four letters in both marks being "VITA" but also reminding myself that consumers tend to focus on the beginnings of marks,<sup>4</sup> I find that the marks are visually similar to a medium degree.

#### Aural comparison

60. In comparing the marks, I note that both marks have three ways that they could be pronounced. For the applicant's mark these could include "VIGH-TA-DOG", "VI-

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<sup>4</sup> *El Corte Inglés, SA v OHIM*, Cases T-183/02 and T-184/02

TA-DOG” or “VEET-A-DOG”. As for the opponent’s mark, this may also be pronounced in three different ways, being “VIGH-TA-PET”, “VI-TA-PET” or “VEET-A-PET”. While the marks have a variety of pronunciations, I am of the view that if a consumer pronounces the applicant’s mark as “VIGH-TA-DOG” they are likely to pronounce the opponent’s mark as “VIGH-TA-PET” and so on. Regardless of how the marks will be pronounced, both marks have three syllables, two of which are identical at the same points in the respective marks and result in the marks having the same beginnings, which is where the consumers tend to focus. Overall, I find that the marks are aurally similar to a medium to high degree.

### Conceptual comparison

61. Conceptually, the opponent submits that the marks are highly similar as both marks consist of “VITA” which alludes to “vitality” combined with an ordinary English word referring to, in the case of “pet” a household domesticated animal or in the case of “dog”, a canine animal. The opponent also states that “VITA” is a commonly known word in Latin meaning “life” and moreover, “VITA” is likely to be recognised by the relevant consumer as referring to the ordinary English word “vital” or “vitality”. The opponent states a dog is a common domestic pet in the UK and as such both marks conjure up the same image of a vital, lively or healthy domestic pet. The opponent submits that “PET” and “DOG” are clearly descriptive and devoid of distinctive character in relation to both the opponent’s goods and the applicant’s goods, and accordingly the dominant and distinctive elements of the marks is “VITA”. Accordingly, the opponent submits that the respective marks are highly similar conceptually.

62. The applicant does not provide any submissions regarding the conceptual comparison of the marks.

63. The opponent’s mark consists solely of the word “VITAPET”. While it is technically an invented word, it is my view that consumers will identify the mark as the conjoining of “VITA” and the ordinary dictionary word “PET”. I say this because “PET” is clearly a well-known word and, as such, the consumer will view it as such, therefore leaving the letters “VITA” to be considered as a separate element. Firstly,

I do not believe that the majority of consumers will be aware that “VITA” is a commonly known word in Latin meaning “Life”. Secondly, I do not think the majority of consumers would think “VITA” is referring to “vital” or “vitality” as it is not common practice to shorten “vital” or “vitality” to “VITA”. Lastly, I do not think the majority of consumers would think “VITA” is referring to “vitamins” as “vitamins” is not commonly shortened or abbreviated to “VITA”. I am of the view that consumers will understand the word “PET” as referring to a common domesticated animal. Although the word “PET” could be considered to be allusive in relation to the goods at issue, taking all of the factors into consideration, consumers will, evoke the concept of goods for pets when faced with the opponent’s mark.

64. The applicant’s mark consists solely of the word “VITADOG”. This will evoke a similar concept as that of the opponent’s mark. The only difference being reference to a specific domesticated animal being a “DOG” instead of reference to all domesticated animals being “PET”. It could be considered that the word “DOG” is allusive of the goods at issue. The same reasoning applies to the word “VITA” as per the preceding paragraph.

65. Overall, “VITA” has no obvious meaning so will act as a point of conceptual neutrality. That being said, the shared concept of a pet (being a pet generally or a dog) is such that it does give rise to some degree of conceptual similarity between the marks. Therefore, I find the marks to be conceptually similar to a medium degree.

### **Distinctive character of the opponent’s mark**

66. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 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).”

67. 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 or services, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it. The opponent has not pleaded that its mark has obtained an enhanced level of distinctiveness and no evidence has been filed to that effect. The opponent’s position is that its mark has no direct significance in relation to the opponent’s goods and it should be afforded at least a normal level of distinctive character. However, in the statement of grounds the opponent states that the opponent’s mark should be viewed as having a strong inherent distinctive character as the opponent’s mark has no direct significance in relation to the opponent’s goods. Despite the different levels of distinctive character pleaded by the opponent, I only have the inherent position to consider.

68. The opponent’s mark comprises the word “VITAPET”. As previously outlined in my comparison of the marks, despite the opponent’s mark being an invented word, the majority of consumers will perceive it as the conjoining of “VITA” and the dictionary defined word “PET”. I consider that “PET” is allusive of the goods upon which the opponent relies and “VITA” has an unknown meaning. Despite the unknown

meaning of “VITA”, the consumer would view the mark as a whole and take away an association with the fact that the goods relied upon are for pets. Therefore, I am of the view that it is inherently distinctive to a low to medium degree.

### **Likelihood of confusion**

69. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods and services down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the 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 opponent’s mark, the average consumer for the goods and services and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that they have retained in their mind.

70. Whilst conducting a global assessment of the likelihood of confusion I must be aware of the fact that not all aspects of the respective marks will necessarily have the same impact. For example, the importance of the respective visual, aural and conceptual aspects will be dependent on factors such as the way the goods at issue are marketed, and in which type of store/platform they are made available.

71. Throughout the course of this decision, I have found the respective goods to range from being identical to similar to a medium degree. The average consumer for the goods are members of the general public, pet/animal owners or medical professionals. When the goods are selected by pet owners or members of the general public, I found that the visual component will dominate the selection process for the goods, though I do not discount the aural component entirely as suggestions may come from word-of-mouth recommendations or advice from sales

assistants. I found the purchasing process for goods selected by medical professionals is likely to be a combination of visual and aural means. I have concluded that, depending on what goods are being selected and by who, the average consumer will pay either a medium or medium to high degree of attention during the selection process. I have found the marks to be visually similar to a medium degree, aurally similar to a medium to high degree and conceptually similar to a medium degree. I have found the opponent's mark to possess a low to medium degree of inherent distinctive character.

72. Taking all of these factors into account, I acknowledge that the competing marks coincide in their shared use of "VITA". Nevertheless, the applicant's mark ends with the word "DOG" and the opponent's mark ends with the word "PET". Even though consumers pay more attention to the beginning of the marks as stated previously which is where the marks are identical, I consider that the differences between the marks are likely to be sufficient for the consumer, paying a medium or medium to high degree of attention to distinguish between them and avoid mistaking one for the other. Especially when the consumer is looking to buy a good for a pet that is not a dog. This consumer will differentiate between the marks discounting the applicant's mark believing it is for a dog and choose the opponent's mark. As such, notwithstanding the principles of imperfect recollection and interdependency, I find that there is no likelihood of direct confusion, even when considered on identical goods.

73. That leaves indirect confusion to be considered. In respect of such, I remind myself of the case of *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, wherein Mr Iain Purvis Q.C., as the Appointed Person, explained that:

"16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms,

is something along the following lines: ‘The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark’.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

(a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).

(b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension (‘FAT FACE’ to ‘BRAT FACE’ for example”).

74. 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*,<sup>5</sup> 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.

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<sup>5</sup> BL O/219/16

75. The types of cases set out in paragraph 17 of Mr Purvis's decision *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10 set out at paragraph 73 above are not exhaustive. However, they are the most usual circumstances where indirect confusion may arise. In the present circumstances, I consider it likely that consumers would, when confronted by the parties' marks, believe them to originate from the same or economically connected undertakings. In my view the substitution of the word "PET" with the word "DOG" will be seen as a logical substitution that consumers would consider to be consistent with a brand extension. For example, the applicants mark will be seen as a sub-brand of "VITAPET" that offers goods specifically for dogs instead of pets in general. Taking all of this into consideration, I consider there to be a likelihood of indirect confusion, even in circumstances where the consumer pays a higher degree of attention.

## **CONCLUSION**

76. The opposition succeeds in full and, subject to any successful appeal, the applicant's marks are refused registration for all goods for which protection was sought.

## **COSTS**

77. As the opponent has been successful in opposing both the applicant's first mark and the applicant's second mark, it is entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice 1/2023 which governs costs in Fast Track proceedings issued after 1 February 2023. In the circumstances, I award the opponent the sum of £800 as a contribution towards the cost of the proceedings. The sum is calculated as follows:

Official fee (x2):	£200
Preparing a statement and considering the other side's statement:	£250
Filing written submissions in lieu:	£350
<b>Total:</b>	<b>£800</b>

78.I therefore order Jonathan Cassillis to pay Pets Choice Limited the sum of £800.

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 23<sup>rd</sup> day of December 2025**

**N Barratt  
For the Registrar**

## **Annex 1 – Opponent's goods**

### Class 3

Animal cleansing products; animal grooming products; wet wipes; soaps, shampoos, conditioners, dry-cleaning powders and grooming products, all for animals and birds; skin care and cosmetic products for animals and birds; disinfectants and medicated soaps and shampoos, all for animals and birds; cleaning liquids, stain removers and wipes for use in the home and on pet equipment; pet and home hygiene products; toothpaste, mouthwash, plaque-removing products and fresh breath deodorant tablets for animals; disposable cleansing wipes.

### Class 5

Veterinary preparations and substances; veterinary preparations and substances for joints and to assist mobility; dietetic substances for animals and birds; antiseptics and disinfectants; ointments and lotions, all for use on animals and birds; vitamin and mineral preparations, all for animals and birds; nutritional supplements for joints and to assist mobility; nutritional supplements for animals and birds; puppy pads; air deodorisers; deodorisers for safe application to animal and home; deodorising products, odour removers, disinfectants for use in the home and on pet equipment; bandages (dressings) for animals and birds; disinfectants, deodorants and medicated cleansing products and grooming products, all for animals and birds; bacteriological, fungicidal, biological, chemical and insecticidal preparations, all for veterinary use; insecticides and parasiticides for animals and birds; insect repelling tags; anti-parasitic collars, preparations and substances; flea and tick spot-on treatments; deworming preparations for animals; flea tablets for oral administration; flea collars; flea sprays; flea powders; flea bombs; vitamin and mineral preparations for animals and birds; nutritional supplements for animals and birds; vitamin and mineral-based additives for animal and bird foodstuffs; deodorants for animal litter; diapers for pets; dietary supplements for animals and birds; dietary supplements for animals and birds for joints and to assist mobility; edible and drinkable preparations used to prevent lawn burn due to canine urine ; chew stops, namely preparations used to deter animals from chewing objects; disposable sanitising and antiseptic wipes.

## Class 31

Foodstuffs and fodder for animals; bedding and litter for animals; animal foodstuffs; animal beverages; foodstuffs for fish; bird foods; animal snacks and treats; ingredients for animal foodstuffs; flavouring products for animal foodstuffs; additives and supplements for animal, bird and fish foods; additives and supplements for animal and birds for joints and to assist mobility; cuttle bones for birds; edible chews for animals; dental chews for animals; animal litter; additives and clumping materials for animal litter; additives for pets' drinking water; sand and grit for pets; sanded and gritted sheets for birds and pets; aromatic sand for pets [litter]; bedding for animals; bedding materials for animals.