

**O/614/20**

**TRADE MARKS ACT 1994**

**IN THE MATTER OF THE APPLICATION FOR TRADE MARK NO. 3425396  
IN THE NAME OF APPSCALE LIMITED FOR THE TRADE MARK**



**IN CLASS 5**

**AND**

**THE OPPOSITION THERETO UNDER NUMBER 418937**

**BY**

**HUMERA KASHIF**

## Background

1. On 2 September 2019, Appscale Limited (“the applicant”) applied for the trade mark shown on the cover page of this decision for the following goods in class 5:

*Dietary and nutritional supplements; hemp protein powder for use as a nutritional supplement; meal replacement powders for medical purposes, meal replacement bars for medical purposes, meal replacement drink mixes for medical purposes and dietary supplement drink mixes, nutraceuticals for use as a dietary supplement, topical creams, gels, salves, sprays, balms and ointments for analgesic purposes; nutrition supplements in drop form, capsule form and in liquid form; edible hemp oil for use as a dietary supplement; hemp protein powder for use as a nutritional food additive for medical purposes; hemp oil as a nutritional supplement; hemp protein powder for use as a nutritional food additive for culinary purposes; fruit-based meal replacement powders, not for medical purposes; Dietary supplements and dietetic preparations containing CBD oil.*

2. The application was published for opposition purposes in the *Trade Marks Journal*, on 27 September 2019. Humera Kashif opposes the application under sections 5(2)(b) and 5(4)(a) of the Trade Marks Act 1994 (“the Act”). The section 5(2)(b) ground is founded upon the following earlier trade mark registration:

(i) 3400667 (filing date: 20 May 2019; registered 10 January 2020)

Golden Oil

Class 3: *Perfumery; creams; lotions; massage waxes; massage creams; massage gels (cosmetic); lotions, creams for treatment of stretch marks and scar tissue (non-medicated).*


Class 10: *Physical therapy equipment; massage apparatus; massage appliances; manual massage instruments; massage chairs; massage mitts; gloves for massage; massage beds; parts, fittings and accessories for all the aforesaid goods.*

Class 35: *Retail services connected with the sale of perfumery, creams, lotions, massage waxes, massage creams, massage gels (cosmetic), lotions, creams for treatment of stretch marks and scar tissue (non-medicated), physical therapy equipment, massage apparatus, massage appliances, manual massage instruments, massage chairs, massage mitts, gloves for massage, massage beds, parts, fittings and accessories for all the aforesaid goods; wholesale services connected with the sale of perfumery, creams, lotions, massage waxes, massage creams, massage gels (cosmetic), lotions, creams for treatment of stretch marks and scar tissue (non-medicated), physical therapy equipment, massage apparatus, massage appliances, manual massage instruments, massage chairs, massage mitts, gloves for massage, massage beds, parts, fittings and accessories for all the aforesaid goods; consultancy, advisory and information in connection with all the aforesaid services.*

Class 44: *Human hygiene and beauty care; massage treatments; massage; deep tissue massage; hot stone massage; massage for the treatment of stretch marks and scar tissue; beauty treatments; consultancy, advisory and information in connection with all the aforesaid services.*

3. Ms Kashif claims that the similarity between the marks and the parties' goods and services will lead to a likelihood of confusion. She relies upon her use of the signs



GOLDEN OIL and , under section 5(4)(a). The notice of opposition states that these signs have been used since 2016, in the UK, in relation to 'Preparations for the skin; topical preparations; creams; lotions; gels; oils; massage related goods; therapy related goods; services in relation to all the aforesaid'. However, the statement of grounds attached to the notice of opposition says that the signs have been used since at least February 2018. Ms Kashif claims her goodwill entitles her to prevent the use of the applicant's mark under the law of passing off.

4. The applicant filed a notice of defence and counterstatement, denying the grounds. It states that it is a retailer of CBD oil for human consumption and that its mark is not similar to Ms Kashif's mark/signs. The applicant also refers to numerous prior

registrations containing the words Golden Oil for similar and identical goods and services to those of Ms Kashif.

5. Ms Kashif filed evidence and submissions during the evidence rounds. I will refer to this at the appropriate points in this decision. Following the serving of the counterstatement and defence upon Ms Kashif, the applicant sent an email to the Tribunal containing a number of email links to third-party websites. The Tribunal informed the applicant that a) the proceedings had not yet reached the point at which the applicant would be invited to file evidence; and b) the evidence was inadmissible because it had not been filed as a witness statement, affidavit or statutory declaration. Furthermore, the Tribunal would not click the links: any material relied upon should be filed in full. Consequently, what the applicant had filed was inadmissible. No regularised evidence was filed by the applicant.

6. Ms Kashif is represented by Appleyard Lees IP LLP. The applicant is represented by Trademark-r Limited. Neither party asked to be heard and neither filed written submissions in lieu of attendance at a hearing. I make this decision after careful consideration of all the papers admitted to the proceedings.

7. As the earlier mark had not been registered for more than five years on the date on which the contested application was filed, there is no requirement for Ms Kashif to prove that genuine use has been made of the mark in relation to the goods and services for which it is registered. As a result, the earlier registration may be considered across its range of goods and services on the basis that it has or could be used on any or all of them.<sup>1</sup>

8. The applicant has not provided any evidence that it was trading prior to the date on which it filed its application, 2 September 2019. This means that this is the relevant date at which Ms Kashif must demonstrate that she owned sufficient goodwill in the business identified by the earlier signs, in relation to the goods and services relied upon, for the purposes of section 5(4)(a) of the Act.

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<sup>1</sup> Section 6A of the Act.

## Section 5(2)(b) of the Act

9. Section 5(2)(b) of the Act states:

“(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.”

10. 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 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-591/12 P.

### The principles

(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 and services

11. In comparing the respective specifications, all relevant factors should be considered, as per *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.* where the CJEU stated at paragraph 23 of its judgment:

“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.”

12. In *Kurt Hesse v Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM)*, Case C-50/15 P, the CJEU stated that complementarity is capable of being the sole basis for the existence of similarity between goods. In *Boston Scientific Ltd v OHIM*, Case T-325/06, the General Court (“GC”) stated that “complementary” means:

“82 ... there is a close connection between [the goods], in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for those goods lies with the same undertaking...”.

13. Additionally, the criteria identified in *British Sugar Plc v James Robertson & Sons Limited (“Treat”)* [1996] R.P.C. 281 for assessing similarity between goods and services also include an assessment of the channels of trade of the respective goods or services.

14. In *YouView TV Ltd v Total Ltd* [2012] EWHC 3158 (Ch) at [12] Floyd J said:

"... 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."

15. The parties' respective goods and services are:

Earlier mark	Application
<p>Class 3: <i>Perfumery; creams; lotions; massage waxes; massage creams; massage gels (cosmetic); lotions, creams for treatment of stretch marks and scar tissue (non-medicated).</i></p> <p>Class 10: <i>Physical therapy equipment; massage apparatus; massage appliances; manual massage instruments; massage chairs; massage mitts; gloves for massage; massage beds; parts, fittings and accessories for all the aforesaid goods.</i></p> <p>Class 35: <i>Retail services connected with the sale of perfumery, creams, lotions, massage waxes, massage</i></p>	<p>Class 5: <i>Dietary and nutritional supplements; hemp protein powder for use as a nutritional supplement; meal replacement powders for medical purposes, meal replacement bars for medical purposes, meal replacement drink mixes for medical purposes and dietary supplement drink mixes, nutraceuticals for use as a dietary supplement, topical creams, gels, salves, sprays, balms and ointments for analgesic purposes; nutrition supplements in drop form, capsule form and in liquid form; edible hemp oil for use as a dietary supplement; hemp protein powder for use as a nutritional food additive for medical purposes;</i></p>



*creams, massage gels (cosmetic), lotions, creams for treatment of stretch marks and scar tissue (non-medicated), physical therapy equipment, massage apparatus, massage appliances, manual massage instruments, massage chairs, massage mitts, gloves for massage, massage beds, parts, fittings and accessories for all the aforesaid goods; wholesale services connected with the sale of perfumery, creams, lotions, massage waxes, massage creams, massage gels (cosmetic), lotions, creams for treatment of stretch marks and scar tissue (non-medicated), physical therapy equipment, massage apparatus, massage appliances, manual massage instruments, massage chairs, massage mitts, gloves for massage, massage beds, parts, fittings and accessories for all the aforesaid goods; consultancy, advisory and information in connection with all the aforesaid services.*

*Class 44: Human hygiene and beauty care; massage treatments; massage; deep tissue massage; hot stone massage; massage for the treatment of stretch marks and scar tissue; beauty treatments; consultancy, advisory and information in connection with all the aforesaid services.*

*hemp oil as a nutritional supplement; hemp protein powder for use as a nutritional food additive for culinary purposes; fruit-based meal replacement powders, not for medical purposes; Dietary supplements and dietetic preparations containing CBD oil.*

16. The applicant has cover for *topical creams, gels, salves, sprays, balms and ointments for analgesic purposes*. These goods are identical in nature and method of use to Ms Kashif's *creams; lotions; massage gels (cosmetic); lotions, creams for treatment of stretch marks and scar tissue*. The purpose is not the same, as Ms Kashif's goods are cosmetic, for improving appearance, whereas the applicant's goods are analgesics, for pain relief. However, there could be an element of complementarity. Physiotherapists, for example, use massage and massage oils and creams to reduce pain and inflammation, and someone wishing to reduce scar discomfort may also wish to reduce the visibility of the scar. All these goods could be sold within the same outlets, such as pharmacies and health shops. I find the goods are highly similar.

17. The next group of goods in the applicant's specification which may be considered together are *Dietary and nutritional supplements; hemp protein powder for use as a nutritional supplement; nutraceuticals for use as a dietary supplement, nutrition supplements in drop form, capsule form and in liquid form; edible hemp oil for use as a dietary supplement; hemp protein powder for use as a nutritional food additive for medical purposes; hemp oil as a nutritional supplement; Dietary supplements and dietetic preparations containing CBD oil*.

18. Part of Ms Kashif's evidence relates to the market for the parties' goods and services, thereby seeking to establish that there are similarities between her class 3 goods and the applicant's nutritional goods. Ms Kashif states that it is her experience that the same businesses sell health and wellbeing goods such as massage creams and nutritional supplements, side by side and/or under the same brands. To support her statement, Ms Kashif exhibits a selection of images from Holland & Barrett, Boots, Nature's Best, Neal's Yard Remedies, Superdrug, John Lewis, Look Fantastic, Weleda, Vitality, Colladeen, Hair Burst, Murad and Elizabeth Arden, including the following examples<sup>2</sup>:

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<sup>2</sup> Annex HK3

<https://www.hollandandbarrett.com/shop/product/weleda-calc.-carb-30c-60020498?skuid=020498>

## Weleda Calc. Carb 30c 125 Tablets

★★★★★ 5.0 (1) Write a review



Si

24  
SK



C

Zoom

<https://www.hollandandbarrett.com/shop/product/weleda-lip-balm-60054000?skuid=054000&brandId=130>

## Weleda Lip Balm 4g £4.95

★★★★☆ 4.2 (9) Write a review



Zoom

<https://www.naturesbest.co.uk/colladeen/colladeen-original/?src=govits>



## Colladeen® Original

Helps to protect and repair the body's collagen

★★★★★ (136) READ REVIEWS

- High strength anthocyanidins. help protect and natural collagen
- Taken by thousands of women every day
- Repeat purchases show that customers are satisfied
- Notice the difference or your money back

Product ID: 551

60 TABLETS | £15.95

1

ADD TO BASKET

<https://www.naturesbest.co.uk/colladeen/colladeen-visage-body-oil/?src=govits>



## Colladeen™ Visage Body Oil

A beautifully scented blend of powerful natural oils to help hydrate and lock in moisture.

★★★★★ (6) READ REVIEWS

- Contains 100% pure and natural essential oils
- Suitable for all skin types including delicate skin
- Non-greasy, light formula
- Delicately scented

Product ID: 230

100ML BODY OIL PLUS FREE HAND CREAM | £8.95

1

ADD TO BASKET

This item is in stock and will be despatched in 1 - 2 days.

<https://www.nealsyardremedies.com/wellbeing/supplements/vitamins/5419.html>



## Multi Vitamin & Mineral Boost

★★★★★ 2 Reviews

£15.00

Size 60capsules PLU 5419

ADD TO BAG

Add to Wishlist

### Description

Nutritional support for optimum health.

Our synergistic blend of essential nutrients and vitamin wheat grass, vitamins A, B1, B2, C, D, zinc and selenium general health and provides daily nutritional support

60 super-nutrient capsules.

Benefits:

- Nutritional support for general health maintenance

<https://www.nealsyardremedies.com/aromatherapy/aromatherapy-oils-and-blends/massage-oils/1312.html>



## Soothing Massage Oil

★★★★★ 5 Reviews

£14.00

Size 100ml PLU 1312

ADD TO BAG

Add to Wishlist

### Description

This soothing massage oil is a blend skin-softening base of vegetable oils your mind. The conditioning base of oil is fragranced with balancing geranium, relaxing lavender and bergamot to help

- For all skin types
- Promotes relaxation and a deep sleep

### How to use

<https://www.superdrug.com/Health/Vitamins-%26-Supplements/Hair%2C-Skin-and-Nails-Vitamins/Hairburst-Vegan-Unicorn-Hair-Vitamins/p/785215>

### Hairburst Vegan Unicorn Hair Vitamins

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<https://www.superdrug.com/Make-Up/Eye-Makeup/Eyelash-Serum/Hairburst-Lash-%26-Brow-Enhancing-Serum/p/761453>

### Hairburst Lash & Brow Enhancing Serum

View all [Hairburst](#)



<https://www.johnlewis.com/murad-youth-builder-food-supplement-120-tablets/p3703053>



Murad Youth Builder Food Supplement, 120 tablets

£50.00

★★★★☆ (1)

Free standard delivery  
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[View product details](#)

Quantity



£50.00

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<https://www.johnlewis.com/murad-resurgence-skincare-gift-set/p4809566>



Murad Resurgence Skincare Gift Set

£145.00, £97.15

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Free standard delivery  
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Quantity



£97.15

Currently in stock online

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19. Ms Kashif states that the packaging for supplements and cosmetics is often interchangeable. She shows some examples in Annex HK4, some of which include her products and some the applicant's products. Others are third party goods. The point Ms Kashif appears to be making through the examples in Annex HK4 is that it is common to find nutritional oils and cosmetic oils in bottles with a pipette applicator. However, it is not possible to ascertain from several of the pictures whether these goods are applied topically or ingested.

20. Annex HK6 purports to show that body creams, oils and nutritional tablets are sold under the same brand. Examples from Annex HK6 include the following:

<https://www.hollandandbarrett.com/shop/product/weleda-arnica-30c-tablets-60020494?skuid=020494>

## Weleda Arnica 30c 125 Tablets

★★★★★ 4.4 (10) Write a review



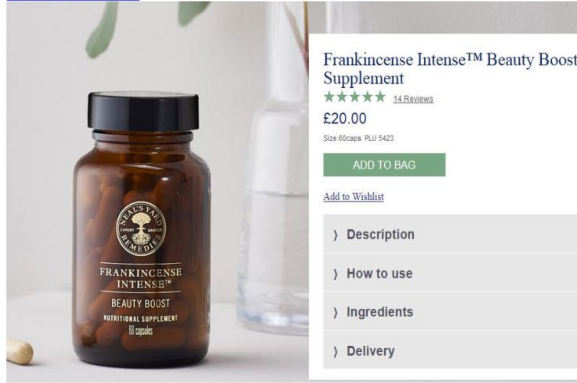
<https://www.hollandandbarrett.com/shop/product/weleda-arnica-massage-oil-60053758?skuid=053758>

## Weleda Arnica Massage Oil 100ml

★★★★★ 4.0 (7) Write a review



<https://www.nealsyardremedies.com/wellbeing/supplements/vitamins/5423.html>



<https://www.nealsyardremedies.com/skincare/organic-facial-skincare/facial-moisturisers/0520.html>



<https://www.boots.com/boots-vitamin-c-food-supplement---30-tablets-10259786>



### Boots Vitamin C Food Supplement - 30 Tablets

★★★★★  
£0.99  
30 Unit | £0.03 per 1Unit 83380  
> 3 for 2 on selected vitamins, supplements, health foods and complementary medicines - cheapest free

Stock coming soon  
We're sorry this product is temporarily out of stock. Most products are back in stock within two weeks so please keep checking back.  
[Check store stock](#)  
[Add to favourites](#)

<https://www.boots.com/boots-vitamin-c-moisturising-cream-10271985>



### Boots Vitamin C Brightening Moisturising Cream

★★★★★ (16)  
£4.00  
50 ML | £0.00 per 100ML

Stock coming soon  
We're sorry, this product is temporarily out of st products are back in stock within two weeks so checking back.  
[Collect 16 points with this purchase](#)  
[Find in store](#)

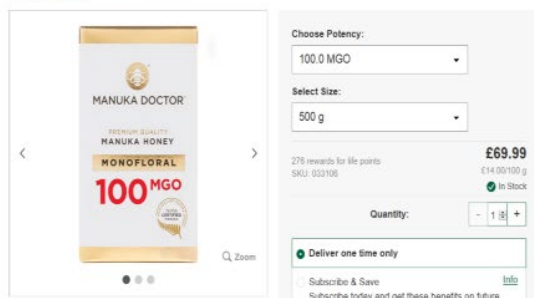
<https://www.hollandandbarrett.com/shop/product/manuka-doctor-premium-monofloral-manuka-honey-mgo-100-60048767?skuid=033106>

<https://www.hollandandbarrett.com/shop/product/manuka-doctor-apiclear-blemish-cream-60076887?skuid=076887>

### Manuka Doctor Premium Monofloral Manuka Honey MGO 100 500g

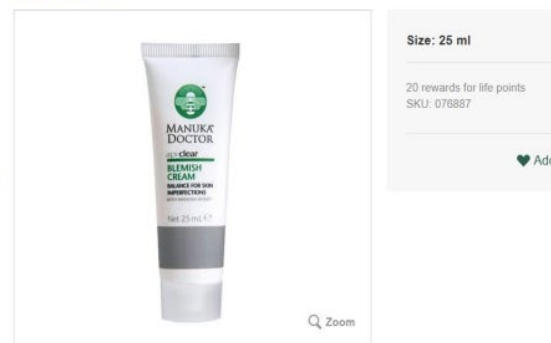
£69.99 • Free Next Day Delivery

★★★★★ 4.7 (28) Write a review



### Manuka Doctor ApiClear Blemish Cream 25ml

★★★★★ 4.5 (22) Write a review



21. CBD (cannabidiol) goods comprise the whole of Annex HK5. I have not referred to them because the sale of CBD-based cosmetics and food supplements is a relatively recent phenomenon and I consider it unsafe to find that CBD goods were commonplace in retail outlets on or before 2 September 2019. However, although the annexes are undated, there is no reason to doubt that vitamin supplements and cosmetics were sold at the relevant date in the major stores listed above. It is common knowledge that stores such as Boots, Superdrug and Holland & Barrett have sold nutritional supplements and cosmetics for a long time. Even without the evidence, it is common knowledge that the trade channels are the same, although the goods may not be cheek-by-jowl on shelves. The Weleda, Neal's Yard, Boots and Manuka Doctor examples in Annex HK 6 do show, however, that the same brand can be involved in food supplements and body creams and oils. There is a cross-over in purpose between nutritional supplements and Ms Kashif's goods as consumers may purchase both types of goods to improve their skin.

22. Ms Kashif has included in Annex HK2 images of what she states are the applicant's goods. It is clear from the images that the applicant's trade mark appears on the packaging:

<https://www.amazon.co.uk/Golden-Oil-Extracts-Grapeseed-Supplement/dp/B07SM862VD>

amazon.co.uk  
Beauty

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### Golden Oil Extracts 30% 30ml Gold Hemp Oil Liquid Drops High Strength Aid & Relief | 3000mg | Grapeseed Oil Infused Supplement with Vitamins & Omega 3, 6 & 9

by Golden Oil Extracts

89 ratings  
9 answered questions

Price: **£12.99** (€43.30 / 100 ml) & **FREE Delivery** on orders dispatched by Amazon over £20.00 .  
Delivery Details

Note: This item is eligible for **click and collect**. Details  
Size: **30 ml**

30 ml	60 ml
<b>£12.99</b> (€43.30 / 100 ml)	£24.99 (€41.65 / 100 ml)

- 100% Satisfaction Guarantee We Redesigned Our Formula to Confidently Promise our Supplement is Always of Superior Quality and the Highest Strength and Concentration Available
- Liquid Gold Not Only is Our Bottle and Oil Truly Golden but Our Products are Produced to the UK, EU and US FDA Supplement Specifications as well
- Support Aid & Relief Our Hemp Oil is Infused with Grapeseed Oil and Contains Omega 3,6 & 9 Fish Oil Fats and Vitamins. Our Products are Vegan & Gluten Free
- Easy to Use We Recommend Placing One Full Dropper Under your Tongue. Hold for 30 Seconds, Then Swallow. Alternatively, You May Place the Oil in Your Drink or Food. Best to Always Start With a Smaller Dosage and Increase as Needed
- Made to Impress Our Products Are Natural, Organic & Regularly Third Party Tested to Provide You with the Highest Strength, Purity and Concentration Oil

Compare with similar items

<https://www.ebay.co.uk/itm/4in1-Golden-Oil-Extracts-12-000mg-60ml-High-Strength-Hemp-Liquid-Drops/313009060500?trkparms=aid%3D1110001%26algo%3DSPLICE.SIM%26ao%3D1%26asc%3D20160323102634%26meid%3D04dfb854a981407da91bcbcfefbb6bc%26pid%3D100623%26rk%3D2%26rkt%3D5%26sd%3D113934259410%26itm%3D313009060500%26pmt%3D0%26noa%3D1%26pg%3D2047675&trksid=p2047675.c100623.m-1>

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### 4in1 Golden Oil Extracts 12,000mg 60ml High Strength Liquid Hemp

**£34.99**  
Free postage

Get it by **Thu, 16 Apr - Fri, 17 Apr** from Solihull, United Kingdom

- New condition
- 30 day returns - Buyer pays return postage | Returns policy

"Double the size and the concentration! Shake well before use. Always start with a smaller dose and increase as needed. Use the pipette to collect the..."  
Read full description  
See details and exclusions

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Vitamins, Minerals & Supplements > Essential Fatty Acids > Omega Oils > Omega 3-6-9

### Golden Oil Extracts 30% 30ml Gold Hemp Oil Liquid Drops High Strength Aid & Relief | 3000mg | Grapeseed Oil Infused Supplement with Vitamins & Omega 3, 6 & 9

by Golden Oil Extracts



- ◇ Anxiety relief
- ◇ Enhanced mental clarity
- ◇ Relieves pain and discomfort
- ◇ Nourishes skin and body
- ◇ Natural anti-inflammatory relief
- ◇ Protects bones and joints
- ◇ Calming and relaxing

GOLDEN OIL EXTRACTS

Roll over image to zoom in

★★★★☆ 89 ratings  
9 answered questions

Price: **£12.99** (€43.30 / 100 ml) & **FREE Delivery** on orders dispatched by Amazon over £20.00 .  
[Delivery Details](#)


**Note:** This item is eligible for **click and collect**. [Details](#)  
Size: **30 ml**

<b>30 ml</b> £12.99 (€43.30 / 100 ml)	<b>60 ml</b> £24.99 (€41.65 / 100 ml)
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- 100% Satisfaction Guarantee We Redesigned Our Formula to Confidently Promise our Supplement is Always of Superior Quality and the Highest Strength and Concentration Available
- Liquid Gold Not Only is Our Bottle and Oil Truly Golden but Our Products are Produced to the UK, EU and US FDA Supplement Specifications as well
- Support Aid & Relief Our Hemp Oil is Infused with Grapeseed Oil and Contains Omega 3,6 & 9 Fish Oil Fats and Vitamins. Our Products are Vegan & Gluten Free
- Easy to Use We Recommend Placing One Full Dropper Under your Tongue. Hold for 30 Seconds, Then Swallow. Alternatively, You May Place the Oil in Your Drink or Food. Best to Always Start With a Smaller Dosage and Increase as Needed
- Made to Impress Our Products Are Natural, Organic & Regularly Third Party Tested To Provide You with the Highest Strength, Purity and Concentration Oil

[Compare with similar items](#)

[https://www.amazon.co.uk/Golden-Oil-Extracts-Grapeseed-Supplement/product-reviews/B07SM862VD/ref=cm\\_cr\\_getr\\_d\\_paging\\_btm\\_next\\_5?ie=UTF8&reviewerType=all\\_reviews&pageNumber=5](https://www.amazon.co.uk/Golden-Oil-Extracts-Grapeseed-Supplement/product-reviews/B07SM862VD/ref=cm_cr_getr_d_paging_btm_next_5?ie=UTF8&reviewerType=all_reviews&pageNumber=5)

 rhia antisoda **TOP 500 REVIEWER**

★★★★★ **Happy and thank you**  
Reviewed in the United Kingdom on 24 August 2019  
Size: 30 ml | **Verified Purchase**

I am happy to buy this hemp oil, been long time I am looking online to buy a kind of oil for my back ache, and now I found a good one, every time I ask my husband to massage my arm Ang back he used this hemp oil, I like the smell and the oil is effective, even into my legs after work I massage into them, I was so happy on this,happy and thank you

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23. It can be seen from these images that the goods are for general health, including for relieving pain and for nourishing the skin. Further, the review indicates that the goods in the images can also be used as a massage oil.



24. Although there is no similarity in nature between dietary supplements in tablet form and Ms Kashif's goods, the applicant's goods show that dietary supplements are also sold in liquid form; specifically, in this case, as an oil. This format is similar in nature to Ms Kashif's creams, gels and lotions. If used as a massage oil, the method of use will be highly similar to Ms Kashif's goods. If ingested, the method of use is different. The users will be the same: those wishing to improve their wellbeing and enhance their skin appearance. The evidence shows that the goods share common trade channels and there is also evidence of common branding. It is possible that the goods may be competitive, but I suspect that they are more likely to be used together. I find that there is a medium level of similarity between the goods.

25. This leaves the third category of goods in the applicant's specification: *meal replacement powders for medical purposes, meal replacement bars for medical purposes, meal replacement drink mixes for medical purposes and dietary supplement drink mixes, hemp protein powder for use as a nutritional food additive for culinary purposes; fruit-based meal replacement powders, not for medical purposes.*

26. All these goods are substitutes for meals and/or for adding to food for culinary purposes. "Culinary" means "concerned with cooking".<sup>3</sup> The average consumer would not associate cooking with cosmetics or massage goods or services. Meals are eaten to satiate hunger. Replacement meals may be for consumers who are unable to eat conventional food, or they may be used as part of a weight-control programme, such as shakes. None of these goods are similar within the parameters of the caselaw with any of Ms Kashif's goods and services.

#### The average consumer and the purchasing process

27. 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: *Lloyd Schuhfabrik Meyer*, Case C-342/97.

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<sup>3</sup> *Collins online dictionary.*

28. The average consumer will be the general public. The applicant's goods cover a wide range of supplements, from everyday multivitamins to specialist supplements for particular medical conditions. There is a corresponding range of attention levels during purchase. Both parties' creams, gels and lotions are likely to be purchased reasonably frequently and will cause an average degree of attention to be paid during purchase. All the goods are likely to be perceived primarily visually during the purchasing process; for example, when selected from shelves, websites, or catalogues. Advice and personal recommendation may play a part, as I recognise that there may be an aural perception of the marks whilst purchasing is taking place.


### Comparison of marks

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

“.....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.”

30. 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.

31. The marks to be compared are:

Earlier mark	Applicant's mark
Golden Oil	

32. The earlier mark consists of two words, the first of which is the adjective (Golden) which describes the noun (Oil). The overall impression resides in the whole, with neither word dominating. The later mark consists of a central golden droplet flanked by two horizontal lines which extend along the breadth of the words GOLDEN OIL EXTRACTS, the words appearing beneath the device and the horizontal lines. The background is black. The eye is drawn to the centre of the mark which is where the device is located. However, the words are proportionately larger. I find that neither the words nor the device dominate; the overall impression is a combination of all the elements. As with the earlier mark, GOLDEN describes OIL. EXTRACTS is a description of something derived or extracted from the GOLDEN OIL.

33. The first two of the three words in the later mark comprise the whole of the earlier mark. The device, lines and the word EXTRACTS are absent from the earlier mark. There is a medium level of visual similarity between the marks. The device and lines will not be articulated which means that the only difference is the third word, EXTRACTS. The first two words are exactly the same. I find that, aurally, there is a medium to high level of similarity.

34. There is a high degree of conceptual similarity between the marks. Both contain words which create the concept of 'golden oil', albeit with the added concept of golden oil extracts in the later mark. Additionally, there is a golden droplet in the later mark which, together with the words, reinforces the idea of golden oil.

## Distinctive character of the earlier mark

35. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV* the CJEU stated that:<sup>4</sup>

“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).”

36. For the goods which I have found to be similar to the applicant’s goods, the mark has a low degree of inherent distinctive character. This is because oil can be a component of the goods, or at least would be perceived to be one, such as goods for massage. Golden simply describes the colour or has laudatory connotations.

37. One of the principles which must be taken into account in deciding whether there is a likelihood of confusion is that 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

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<sup>4</sup> Case C-342/97.

has been made of it. Ms Kashif claims that her mark has acquired a reputation in the fields of health and wellbeing. I do not consider that the evidence supports such a claim. I note the following from the evidence:

- The goods and services have been sold since February 2018 (not 2016, as stated in the notice of opposition). This is less than two years prior to the relevant date, which is the date of application of the contested mark.
- There are no turnover figures.
- The mark has a presence on social media which Ms Kashif states is “in the thousands”. Annex HK1 includes some examples of positive comments about the goods and services.
- Annex HK1 includes screenshots from Ms Kashif’s website and from her business’s Facebook, Instagram and Twitter pages, with posts dated in 2018 and 2019. One of the tweets says “106 Following” and “47 Followers”. An Instagram page says “1,207 followers” and “3,406 following”. The latter figure represents the number that Ms Kashif’s business is following, not the number which follows her business, which is 1,207. This page is undated.
- Some of the evidence relates to the USA. This is not relevant to whether the UK average consumer is aware of the mark and whether its distinctive character has become enhanced in the UK through its use.

38. The evidence comes nowhere near to establishing that the mark has achieved an enhancement to its inherent distinctiveness through the use made of it. The evidence gives no picture at the relevant date as to how well known the mark was, what level of turnover had been achieved, or how many customers had bought the goods and/or services. The mark had been used for less than two years at the relevant date. For use over such a short space of time, much more solid and cogent evidence would be required. It is not possible to know from the evidence whether the 1,207 followers were followers prior to the relevant date. Further, followers do not necessarily equate to customers. There is a distinct lack of exhibits which can corroborate each other and show a picture which might enable me to gauge the level of use. I find that the mark has not achieved an enhanced level of distinctiveness through the use made of it.

## Likelihood of confusion

39. Deciding whether there is a likelihood of confusion is not scientific; it is a matter of considering all the factors, weighing them and looking at their combined effect, in accordance with the authorities set out earlier in this decision. One of those principles states that a lesser degree of similarity between goods and services may be offset by a greater degree of similarity between the trade marks, and vice versa. I found that some of the applicant's goods were not similar to the earlier mark's goods and services. If there is no similarity between the goods and services, there is no likelihood of confusion (*per Canon*, paragraph 23). The section 5(2)(b) ground fails in relation to:

*Meal replacement powders for medical purposes, meal replacement bars for medical purposes, meal replacement drink mixes for medical purposes and dietary supplement drink mixes, hemp protein powder for use as a nutritional food additive for culinary purposes; fruit-based meal replacement powders, not for medical purposes.*

40. I found that the applicant's *topical creams, gels, salves, sprays, balms and ointments for analgesic purposes* are highly similar to Ms Kashif's goods, and *dietary and nutritional supplements; hemp protein powder for use as a nutritional supplement; nutraceuticals for use as a dietary supplement, nutrition supplements in drop form, capsule form and in liquid form; edible hemp oil for use as a dietary supplement; hemp protein powder for use as a nutritional food additive for medical purposes; hemp oil as a nutritional supplement; Dietary supplements and dietetic preparations containing CBD oil* are similar to a medium degree. This level of similarity points in Ms Kashif's favour, as does the medium visual similarity, the medium to high aural similarity and the high level of conceptual similarity. The marks share the same dominant components. What points away from Ms Kashif is the low level of distinctive character of her mark. However, a low level of distinctive character does not necessarily preclude a likelihood of confusion, depending upon the other factors. In *L'Oréal SA v OHIM*, Case C-235/05 P, the CJEU found that:

“45. The applicant’s approach would have the effect of disregarding the notion of the similarity of the marks in favour of one based on the distinctive character of the earlier mark, which would then be given undue importance. The result would be that where the earlier mark is only of weak distinctive character a likelihood of confusion would exist only where there was a complete reproduction of that mark by the mark applied for, whatever the degree of similarity between the marks in question. If that were the case, it would be possible to register a complex mark, one of the elements of which was identical with or similar to those of an earlier mark with a weak distinctive character, even where the other elements of that complex mark were still less distinctive than the common element and notwithstanding a likelihood that consumers would believe that the slight difference between the signs reflected a variation in the nature of the products or stemmed from marketing considerations and not that that difference denoted goods from different traders.”

41. In fact, in the present case, there is a complete reproduction of the earlier mark in the later mark. The concept of both parties’ marks is highly similar to the point of being almost identical because ‘extracts’ is a descriptive word denoting extracts of golden oil. The coloured words in the later mark make no difference because registration of the earlier mark notionally covers the same colour; and, they are golden, which is a concept in the earlier mark.<sup>5</sup> The coloured device does not serve to put enough distance between the marks because a) it reinforces the concept of ‘golden oil’, and b) the device is low in distinctive character. I find that the combination of the similarity between the marks and the goods, even assuming a heightened level of attention during purchase, will lead to a likelihood of confusion. It will not be direct confusion; i.e. the marks will not be mistaken for one another because the additional components in the later mark will be noticed. However, the common element GOLDEN OIL, the descriptive word EXTRACTS and the device of a drop of golden oil will cause the average consumer to assume that either mark is a brand extension or another mark from the same or an economically linked undertaking.<sup>6</sup>

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<sup>5</sup> *Specsavers International Healthcare Limited & Others v Asda Stores Limited*, Case C-252/12, CJEU.

<sup>6</sup> See the comments of Mr Iain Purvis QC, sitting as the Appointed Person, in *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10.

## **Section 5(2)(b) outcome**

42. The section 5(2)(b) ground succeeds in respect of *topical creams, gels, salves, sprays, balms and ointments for analgesic purposes; dietary and nutritional supplements; hemp protein powder for use as a nutritional supplement; nutraceuticals for use as a dietary supplement, nutrition supplements in drop form, capsule form and in liquid form; edible hemp oil for use as a dietary supplement; hemp protein powder for use as a nutritional food additive for medical purposes; hemp oil as a nutritional supplement; Dietary supplements and dietetic preparations containing CBD oil.*

43. The section 5(2)(b) ground fails in respect of *meal replacement powders for medical purposes, meal replacement bars for medical purposes, meal replacement drink mixes for medical purposes and dietary supplement drink mixes, hemp protein powder for use as a nutritional food additive for culinary purposes; fruit-based meal replacement powders, not for medical purposes.*

## **Section 5(4)(a) of the Act: passing off**

44. Section 5(4)(a) states:

“A trade mark shall not be registered if, or to the extent that, its use in the United Kingdom is liable to be prevented –

(a) by virtue of any rule of law (in particular, the law of passing off) protecting an unregistered trade mark or other sign used in the course of trade, or

(b)...

A person thus entitled to prevent the use of a trade mark is referred to in this Act as the proprietor of “an earlier right” in relation to the trade mark.”

45. The three elements which the opponent must show are well known. In *Discount Outlet v Feel Good UK*, [2017] EWHC 1400 (IPEC), Her Honour Judge Melissa Clarke,



sitting as a deputy Judge of the High Court, conveniently summarised the essential requirements of the law of passing off as follows:

“55. The elements necessary to reach a finding of passing off are the ‘classical trinity’ of that tort as described by Lord Oliver in the *Jif Lemon* case (*Reckitt & Colman Product v Borden* [1990] 1 WLR 491 HL, [1990] RPC 341, HL), namely goodwill or reputation; misrepresentation leading to deception or a likelihood of deception; and damage resulting from the misrepresentation. The burden is on the Claimants to satisfy me of all three limbs.

56 In relation to deception, the court must assess whether “*a substantial number*” of the Claimants’ customers or potential customers are deceived, but it is not necessary to show that all or even most of them are deceived (per *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501, [2013] FSR 21).”

46. Guidance is given in paragraphs 184 to 188 of Halsbury’s Laws of England (4th Edition) Vol. 48 (1995 reissue) with regard to establishing the likelihood of deception or confusion. In paragraph 184 it is noted (with footnotes omitted) that:

“To establish a likelihood of deception or confusion in an action for passing off where there has been no direct misrepresentation generally requires the presence of two factual elements:

(1) that a name, mark or other distinctive feature used by the plaintiff has acquired a reputation among a relevant class of persons; and

(2) that members of that class will mistakenly infer from the defendant’s use of a name, mark or other feature which is the same or sufficiently similar that the defendant’s goods or business are from the same source or are connected.

While it is helpful to think of these two factual elements as successive hurdles which the plaintiff must surmount, consideration of these two aspects cannot

be completely separated from each other, as whether deception or confusion is likely is ultimately a single question of fact.

In arriving at the conclusion of fact as to whether deception or confusion is likely, the court will have regard to:

(a) the nature and extent of the reputation relied upon;

(b) the closeness or otherwise of the respective fields of activity in which the plaintiff and the defendant carry on business;

(c) the similarity of the mark, name etc. used by the defendant to that of the plaintiff;

(d) the manner in which the defendant makes use of the name, mark etc. complained of and collateral factors; and

(e) the manner in which the particular trade is carried on, the class of persons who it is alleged is likely to be deceived and all other surrounding circumstances.”

In assessing whether confusion or deception is likely, the court attaches importance to the question whether the defendant can be shown to have acted with a fraudulent intent, although a fraudulent intent is not a necessary part of the cause of action.”

47. The date when the applicant applied to register its trade mark, 2 September 2019, is the relevant date for the purposes of section 5(4)(a) of the Act.

48. The concept of goodwill was explained in *Inland Revenue Commissioners v Muller & Co's Margarine Ltd* [1901] AC 217 at 223:

“What is goodwill? It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation and connection of a

business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start.”

49. I have already commented upon the lack of evidence earlier in this decision. In *Advanced Perimeter Systems Limited v Multisys Computers Limited*, BL O/410/11, Mr Daniel Alexander QC, sitting as the Appointed Person, said, in connection with sufficiency of evidence:

“17. Key does not dispute the correctness of these principles or criticise the Hearing Officer for applying them. Instead, relying on the decision of Richard Arnold QC, Appointed Person, in *Pan World Brands v. Tripp (Pan World)* [2008] RPC 2, Key submits that if evidence is given about goodwill which is not obviously incredible and is unchallenged by countervailing evidence or by cross-examination, it is not open to the Hearing Officer to reject it. Key refers to Tribunal Practice Note TPN 5/2007 which is to similar effect. Key submits that this is the position here and that the Hearing Officer was therefore wrong to have concluded that Key’s goodwill was insufficient to found a s.5(4)(a) attack. It is therefore necessary first to consider what *Pan World* was and was not saying.

18. In *Pan World*, the Appointed Person said that, although documentary records of use were not required, mere assertion of use of a mark by a witness did not constitute evidence sufficient to defeat an application for revocation for non-use (see [31]). He did not regard a tribunal evaluating the evidence as bound to accept everything said by a witness without analysing what it amounts to. He pointed out at [37] that Hearing Officers were entitled to assess evidence critically and referred to the observations of Wilberforce J in *NODOZ Trade Mark* [1962] RPC 1 at 7:

“...in a case where one single act is relied on it does seem to me that that single act ought to be established by, if not conclusive proof, at any rate overwhelmingly convincing proof. It seems to me that the fewer the acts relied on the more solidly ought they to be established.”

19. *Pan World* and *NODOZ* were applications for revocation for non-use. The approach to use is not the same as in a s.5(4)(a) case. As Floyd J said in *Minimax*, it is possible for a party to have made no real use of a mark for a period of five years but to retain goodwill sufficient to support a passing off action. Conversely, use sufficient to prevent revocation for non-use may be insufficient to found a case of passing off.

20. However, the approach to evaluation of evidence of use is similar: the less extensive the evidence of use relied on, the more solid it must be. The Registrar is not obliged to accept – and in some circumstances may be obliged to reject – a conclusory assertion by a witness that it has a given goodwill at the relevant date or that the use by a third party of a similar mark would amount to misrepresentation, when the material relied upon in support does not bear that out.

21. That point was also made by Laddie J in *DIXY FRIED CHICKEN TM* [2003] EWHC 2902 (Ch) and, more recently, in *Williams and Williams v. Canaries Seaschool SLU (CLUB SAIL)* [2010] RPC 32, Geoffrey Hobbs QC, Appointed Person, said at [38]:

“...it is not obligatory to regard the written evidence of any particular witness as sufficient, in the absence of cross-examination, to establish the fact or matter (s)he was seeking to establish.”

22. Overall, the adequacy of evidence falls to be assessed by reference to the Lord Mansfield’s aphorism from *Blatch v. Archer* (1774) 1 Cowp 63 at 65, cited, inter alia by Lord Bingham in *Fairchild v. Glenhaven Financial Services Ltd* [2002] UKHL 22 [2203] 1 AC 32 and in *CLUB SAIL*:

“...all evidence is to be weighed according to the proof which it was in the power of one side to have produced, and in the power of the other to have contradicted.”

50. In my view, the evidence falls well short of what it required to demonstrate goodwill in the signs relied upon at the relevant date. In *Smart Planet Technologies, Inc. v Rajinda Sharm*, BL O/304/20, Mr Thomas Mitcheson QC, sitting as the Appointed Person, reviewed the following authorities about the establishment of goodwill for the purposes of passing-off: *Starbucks (HK) Ltd v British Sky Broadcasting Group Plc* [2015] UKSC 31, paragraph 52, *Reckitt & Colman Product v Borden* [1990] RPC 341, HL and *Erven Warnink B.V. v. J. Townend & Sons (Hull) Ltd* [1980] R.P.C. 31. Mr Mitcheson concluded that:

“.. a successful claimant in a passing off claim needs to demonstrate more than nominal goodwill. It needs to demonstrate significant or substantial goodwill and at the very least sufficient goodwill to be able to conclude that there would be substantial damage on the basis of the misrepresentation relied upon.”

51. A feature of that case was the size of the market for disposable cups which, like the present case for cosmetic creams, is large. The evidence does not provide turnover or customer figures, so it is impossible to assess the extent of any goodwill. The signs relied upon in the present case had been used for less than two years at the relevant date, which is not a long length of time. Commensurately stronger evidence would be required to demonstrate significant or substantial goodwill. A further point is the low distinctiveness of the signs relied upon. In the *RECUP* case, Mr Mitcheson said, after finding the evidence in that case did not establish sufficient goodwill for the passing off claim, that:

“41. This conclusion is fortified by the submissions of Party B relating to the distinctiveness of the sign in issue. Recup obviously alludes to a recycled, reusable or recyclable cup, and Party B adduced evidence that other entities around the world had sought to register it for similar goods around the same time. The element of descriptiveness in the sign sought to be used means that it will take longer to carry out sufficient trade with customers to establish sufficient goodwill in that sign so as to make it distinctive of Party A's goods.”

52. Although there is no evidence in this case that Golden Oil is a term of art or a popular trade mark for such goods, the ordinary meanings of the words reveal them to be low in distinctive character for the reasons given earlier in this decision.

53. As there is insufficient goodwill to support the section 5(4)(a) ground, I find that the ground fails. However, even if I had found that the evidence took Ms Kashif over the line between insufficient and sufficient goodwill, the outcome would have been no different to the section 5(2)(b) ground. For goods which are highly similar or similar to a medium degree, there would be misrepresentation and damage would follow. For goods which were not similar under the section 5(2)(b) caselaw, there would not be misrepresentation. Even though there is no requirement under section 5(4)(a) that the services be similar, the further the distance between them, the more of a task the opponent faces to prove misrepresentation and damage; per *Harrods Limited v Harrodian School Limited* [1996] RPC 697 and *LUMOS* [2013] EWCA Civ 590. The test for misrepresentation requires a substantial number of customers of the earlier signs to be deceived.<sup>7</sup> The level of goodwill and the length of trading to generate goodwill would not be strong enough to bridge the gap between Ms Kashif's goods and services and the applicant's *meal replacement powders for medical purposes, meal replacement bars for medical purposes, meal replacement drink mixes for medical purposes and dietary supplement drink mixes, hemp protein powder for use as a nutritional food additive for culinary purposes; fruit-based meal replacement powders, not for medical purposes.*

#### **Section 5(4)(a) outcome**

54. The section 5(4)(a) ground fails.

#### **Overall outcome**

55. The opposition succeeds in respect of *topical creams, gels, salves, sprays, balms and ointments for analgesic purposes; dietary and nutritional supplements; hemp protein powder for use as a nutritional supplement; nutraceuticals for use as a dietary*

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<sup>7</sup> *Neutrogena Corporation and Another v Golden Limited and Another* [1996] RPC 473.

*supplement, nutrition supplements in drop form, capsule form and in liquid form; edible hemp oil for use as a dietary supplement; hemp protein powder for use as a nutritional food additive for medical purposes; hemp oil as a nutritional supplement; Dietary supplements and dietetic preparations containing CBD oil.*

56. The application is refused for these goods.

57. The opposition fails in respect of *meal replacement powders for medical purposes, meal replacement bars for medical purposes, meal replacement drink mixes for medical purposes and dietary supplement drink mixes, hemp protein powder for use as a nutritional food additive for culinary purposes; fruit-based meal replacement powders, not for medical purposes.*

58. The application may proceed to registration for these goods.

## **Costs**

59. Both sides have achieved a measure of success, but Ms Kashif more so. She is entitled to a proportionate contribution towards her costs, based upon the scale of costs, published in Tribunal Practice Notice 2/2016. I will reduce the award I would have made for total success by a third, to take account of the proportion of the opposition which the applicant successfully defended.

Statutory fee	£200
Preparing a statement and considering the applicant's counterstatement	£300
Filing evidence and submissions	£600
Total (reduced by a third)	£730

60. I order Appscale Limited to pay to Humera Kashif the sum of **£730**. This sum is to be paid within twenty-one days of the expiry of the appeal period or within twenty-one days of the final determination of this case if any appeal against this decision is unsuccessful.

**Dated this 8th day of December 2020**

**Judi Pike**

**For the Registrar,  
the Comptroller-General**