

Oatly defends 'Post Milk Generation' trademark in UK court battle with Dairy UK

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By [Abhishek Kumar](#)

Oatly AB defended its 'Post Milk Generation' trademark at the UK Court of Appeals today. The dispute centers on whether the mark violates a European Union regulation aimed at protecting consumers from misleading labeling. Oatly argued the mark is distinctive and understood by consumers as referring to people who have moved away from dairy products. Dairy UK countered saying the use of the word 'milk' in the trademark was unacceptable for non-dairy products.

Oatly AB told a London court today its word mark 'Post Milk Generation' is distinctive and did not violate a European Union regulation in a trademark dispute with UK trade association Dairy UK.

EU Regulation 1308/2013 is part of a broader food labeling and consumer protection law that aims to protect consumers from misleading labeling and provides for a common organization of markets for agricultural products in the European Union.

Oatly AB seeks review by the UK Court of Appeals of a January 2023 decision by the UK Intellectual Property Office that invalidated 'Post Milk Generation' for goods under three classes.

"It is an unchallenged fact that the Mark is distinctive, and the corollary is that it is not descriptive, of any of the goods for which it is registered," Michael Edenborough KC, a lawyer for Oatly said in opening arguments today at the UK Court of Appeals in London.

He countered Dairy UK's argument that the mark was deceptive and said consumers could easily understand that the mark refers to people who no longer consume dairy milk.

"The average consumer will view the mark as an ironic way of saying its goods have moved on from conventional milk and are for consumers of a 'post-milk generation' who no longer consume dairy milk," Edenborough said.

Edenborough said the mark should be considered as a whole rather than breaking it into parts when determining its validity and distinctiveness. Even if the mark is held to be a designation, it would still be permitted as it clearly describes a characteristic of the product being milk-free, he added.

Counsel for Dairy UK said because the word 'milk' appears in the mark, it can only be used for goods falling within the classes of milk from animals, products derived from animal milk, and composite products where milk is essential as per the EU regulation.

Dairy UK said 'Post Milk Generation' did not clearly refer to moving away from milk and could refer to another dairy product that is part milk.

Oatly applied for 'Post Milk Generation' for its oats-based products with the UKIPO in November 2019 under four classes: 25, 29, 30, and 32, clothing, meats and processed foods, staple foods and, light beverages.

Dairy UK filed a formal opposition with the UK's Intellectual Property Office, or IPO in January 2023, claiming the mark was deceptive and runs afoul of EU Regulation 1308/2013.

The UKIPO found the trademark not deceptive but held it invalid under the EU Regulation, which is applicable in the UK under Trade Marks (Amendment etc.) (EU Exit) Regulations 2019.

The UKIPO did not invalidate the trademark under class 25, clothing, as it was deemed outside the scope of the agricultural products regulation.

Oatly's appeal was allowed by the UK High Court in a December 2023 judgment, which held that the UKIPO had wrongly interpreted the EU regulation and the trademark did not offend the UK's Trade Marks Act, 1994.

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Areas of Interest: Intellectual Property

Industries: Retail & Wholesale Trade

Geographies: Europe, Northern Europe, United Kingdom

Topics:

Trademarks