Press Summary

11 February 2026

Dairy UK Ltd (Respondent) *v* Oatly AB (Appellant)

[2026] UKSC 4

On appeal from [2024] EWCA Civ 1453

Justices: Lord Hodge (Deputy President), Lord Briggs, Lord Hamblen, Lord Burrows and Lord Stephens

Background to the Appeal

The appellant, Oatly AB ("**Oatly**"), is a Swedish company whose business involves the manufacture and sale of oat-based food and drink products as alternatives to dairy products. The respondent, Dairy UK Ltd ("**Dairy**"), is the trade association for the UK dairy industry.

In April 2021, Oatly registered the trade mark "POST MILK GENERATION" for use in relation to certain categories of products. The issue on this appeal is the validity of that trade mark in relation to oat-based food and drink products.

In November 2021, Dairy applied for a declaration that the registration of the trade mark was invalid due to section 3(4) of the Trade Marks Act 1994 which prevents the registration of any trade mark where its "*use is prohibited in the United Kingdom by any enactment or rule of law other than law relating to trade marks*". Dairy argued that Parliament and Council Regulation (EU) No.1308/2013 of 17 December 2013 establishing a common organisation of the markets in agricultural products (the "**2013 Regulation**") contained such a prohibition. Following Brexit, the 2013 Regulation became "assimilated law" and, with minor subsequent amendments, continues to have effect in domestic law.

Point 5 in Part III of Annex VII referred to in Article 78 of the 2013 Regulation ("**Point 5 of the 2013 Regulation**") provides that the "*designations*" of "*milk*" and "*milk products*" cannot be used for any product other than those set out. There is then a proviso which reads that "*this provision shall not apply to the designation of products … when the designations are clearly used to describe a characteristic quality of the product.*"

The hearing officer in the Intellectual Property Office held that the trade mark "POST MILK GENERATION" was invalid in respect of oat-based food and drink as the prohibition in Point 5 of the 2013 Regulation applied. This prohibition, however, was held not to apply in respect of any non-agricultural products, such as T-shirts, as those products manifestly fell outside the scope of the 2013 Regulation. That decision in respect of oat-based food and drink was appealed by Oatly and overturned by the High Court. The Court of Appeal disagreed with the

High Court and held that the registration of the trade mark was invalid. Oatly now appeals to the Supreme Court.

The appeal to the Supreme Court raises two issues as to the validity of the trade mark "POST MILK GENERATION" when used in relation to oat-based food and drink products.

First, does "POST MILK GENERATION" use the term "*milk*" as a "*designation*" within the meaning of Point 5 of the 2013 Regulation? (**Issue 1**).

Secondly, if so, is "POST MILK GENERATION" nevertheless valid when used as a trade mark in relation to those products because it clearly describes a characteristic quality of the contested products such that it is saved by the proviso to Point 5 of the 2013 Regulation? (**Issue 2**).

Judgment

The Supreme Court unanimously dismisses Oatly's appeal. The Supreme Court holds that "POST MILK GENERATION" does use the term "*milk*" as a "*designation"* within the meaning of Point 5 of the 2013 Regulation, and it is not clearly being used to describe a characteristic quality of the contested products. The trade mark is therefore invalid when used in relation to oat-based food and drink. Lord Hamblen and Lord Burrows give the judgment with which Lord Hodge, Lord Briggs and Lord Stephens agree.

Reasons for the Judgment

Issue 1: Does "POST MILK GENERATION" use the term "milk" as a "designation" within the meaning of Point 5 of the 2013 Regulation?

The Supreme Court holds that the term "*designation"* in the 2013 Regulation has a broad meaning and is referring to its use in respect of a food or drink rather than the naming of a food or drink. The prohibition bites where the designation has been used for a relevant product, and it is not necessary that it has been used as the name of the product **[31]**. This meaning is consistent with the natural meaning of the words and with the purpose of Point 5 of the 2013 Regulation, which (in respect of milk as a product) is to set out fair standards of competition **[32]**. Oatly's submission that "*designation"* means the name of a food or drink is inconsistent with certain other elements of the 2013 Regulation, including that a different term, "*sales description*", is defined at the beginning of Annex VII as meaning "*the name of the food*" **[29] – [30]**. The interpretation of "*designation*" has to be determined based on the 2013 Regulation itself and its particular context. It would be potentially misleading to look back at historic versions of this legislation, which are different in significant respects, as an aid to interpreting "*designation*" in the 2013 Regulation **[33]**.

"POST MILK GENERATION" therefore falls within the scope of Point 5 of the 2013 Regulation on the basis that it uses the term "*milk*" as a "*designation"* **[34]**.

Issue 2: Is the term "POST MILK GENERATION", when used in relation to oat-based food and drink, clearly being used to describe a characteristic quality of those products?

This turns on the proviso to Point 5 of the 2013 Regulation. The Supreme Court holds that the trade mark "POST MILK GENERATION" does not clearly describe a characteristic quality of oat-based food and drink products and therefore falls outside the proviso.

The trade mark "POST MILK GENERATION" is focused on describing the targeted consumers (particularly those younger consumers who may be said to belong to a generation for whom there are widespread concerns about the production and consumption of milk) **[40]**. The trade mark is not "*clearly*" describing any characteristic of the contested products.

Even insofar as the trade mark can be regarded as referring to a characteristic quality of the products (namely, the characteristic of being milk-free), it is doing so in an oblique and obscure way and is certainly not doing so "*clearly*" **[40]**. In particular, it does not make clear whether the product is entirely free of milk, or only that the milk content is low **[41]**.

Consequently, the trade mark is not saved by the proviso to Point 5 with the result that the trade mark "POST MILK GENERATION" is invalid in respect of oat-based food and drink.

The appeal is dismissed.

References in square brackets are to paragraphs in the judgment.