

Gough Square Chambers: Food Law Column

Ian Thomas and **Stuart Jessop** are specialist food law barristers at Gough Square Chambers and editors of the Food Law Column. Together with contributions from other members of chambers, they provide expert commentary and analysis on topical developments and key issues in the field of food regulation and policy.

In the May 2026 edition of the column, **Jonathan Goulding** and **Jack Brady** consider the Supreme Court's judgment in *Dairy UK Ltd v Oatly AB* [2026] UKSC 4. The decision concerned the validity of Oatly's 'POST MILK GENERATION' trade mark when used in relation to oat-based food and drink products.



Milk designation in a post milk generation

By **Jonathan Goulding and Jack Brady**, Gough Square Chambers

Background

At Plant-based alternatives to milk and other dairy products are big business. In an article published by The Guardian last year,^[1] it was said that almost 35% of UK households consume plant-based drinks, with oat 'milk' being UK consumers' favoured choice over its soya, almond and other nut-based competitors. The Swedish company, Oatly, is one of the bestselling oat 'milk' brands on supermarket shelves. After its appeal to the Supreme Court, Oatly's brand has also become well recognised by food lawyers, albeit for its trade marking rather than its taste.

Parliament and Council Regulation (EU) No. 1308/2013

In April 2021, Oatly registered the trade mark 'POST MILK GENERATION' for use in relation to certain categories of products. That registration was subsequently challenged by Dairy UK Ltd, the trade association for the UK's dairy industry, on the grounds that it was invalid because its use was prohibited by Parliament and Council Regulation (EU) No. 1308/2013 ('**the 2013 Regulation**'), which regulates, among many other things, the use of dairy terms such as 'milk' and 'cheese' in the organisation of the markets in agricultural products.

The appeal to the Supreme Court concerned the proper interpretation of the 2013 Regulation, in particular Point 5 in Part III of Annex VII (as referenced in Article 78 of the 2013 Regulation) ('Point 5'). Point 5 provides that the 'designations' of 'milk' and 'milk products' can only be used for specific listed products, but contains a proviso relied upon by Oatly that it does not apply where designations are 'clearly used to describe a characteristic quality of the product' ('**the Proviso**').

The issues before the Supreme Court

Having made its way from the Intellectual Property Office, which found that the trade mark was invalid in respect of oat-based food and drink, to the High Court and then to the Court of Appeal, on each occasion the appellate court reversing the decision below, the matter came before the Supreme Court in the form of two issues:

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

2. If so, is 'POST MILK GENERATION' nevertheless valid when used as a trade mark in relation to oat-based food and drink products because it 'clearly describes a characteristic quality' of those products?

In short, the Supreme Court concluded that the answer to the first question was 'yes' but the answer to the second question was 'no': 'POST MILK GENERATION' uses the term 'milk' as a 'designation' but does not 'clearly describe a characteristic quality' of the oat-based food and drink products it is marketing. Oatly's appeal was therefore dismissed. In what follows, we consider three interesting points arising from the judgment.

The word 'designation'

As highlighted above, the first issue considered by the Supreme Court was the proper interpretation of the term 'designation' in Point 5 of the 2013 Regulation: does it mean simply the name of a product such as 'yoghurt' or 'cream' as Oatly contended, or does it mean any use of such a term when referring to a relevant product as Dairy UK argued?

The Court's decision that the latter interpretation of Point 5 was correct has the significant effect of including within the scope of the prohibition (subject to the Proviso) any case where the designation (in this case, 'milk') is used to refer to the product in any way. For example, a slogan on an oat milk carton that reads: *'The perfect milk for your morning coffee!'* To that end, the prohibition is not limited to the narrower circumstance whereby the designation has been used as the name of the product itself; it has a broad meaning and refers to its use in respect of a relevant product.

'Milk Free'

Of interest to many food lawyers and manufacturers of plant-based drinks will be the brief discussion of the hypothetical trade mark 'milk-free', which is a designation likely to be used in respect of plant-based milk alternatives about which the Court of Appeal did

not reach a view. The Supreme Court indicated that, while the term 'milk-free' would be a designation under Point 5, it would be saved by the Proviso because it would clearly be used to describe a characteristic of the product, namely that it did not contain milk. This hypothetical example provides lawyers and manufacturers with a useful contrast to the 'POST MILK GENERATION' term under review so as to assist in determining whether a particular designation is likely to be saved by the Proviso. Of course, each designation will fall to be considered on its own facts against Point 5 of the 2013 Regulation.

From 'POST MILK' to 'Beyond Meat'

Plant-based products are as common an alternative to meat products as they are for dairy goods. The issue of banning meat-based descriptors for plant-based alternatives has been subject to much consideration in France where reforms were sought to be introduced by Decree No. 2024-144, which prohibited the use of terms like 'steak' for plant-based products made in France. On 28 January 2025, however, months after the Court of Justice of the European Union determined that the proposed ban was unlawful unless a legal designation for plant-based proteins was established, the Conseil d'État annulled Decree No. 2024-144. The annulment by France's highest court represented a considerable victory for those that had contested the French government's attempted reforms, including the American company Beyond Meat.

That was not the end of the matter. In October 2025, after amendments proposed by French MEP Céline Imart to various EU regulations including the 2013 Regulation, MEPs voted to reserve terms such as 'steak' and 'bacon' for use in relation to meat products. Consequently, on 5 March 2026, it was announced that the Council for the EU had reached a provisional agreement with the European Parliament on the proposed amendments, including the introduction of 31 protected 'meat terms'.^[1] The UK's position on restricting the use of meat wo-

rds remains to be seen. Should it follow the EU's approach, food lawyers may be treated to a meaty sequel of the Oatly appeal!

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Footnotes

[1] Wood Z. (2025). Oat milk rises to top as Britain's preferred plant-based drink. [Online]. The Guardian. Last Updated: 19 April 2025. Available at: <https://www.theguardian.com/business/2025/apr/19/oat-milk-rises-to-top-as-britains-preferred-plant-based-drink> [Accessed 22 April 2026].

[2] Council of the European Union. (2026). Council and Parliament reach provisional agreement to give farmers a stronger negotiating position in the food supply ch. [Online]. Council of the European Union. Last Updated: 5 March 2026. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2026/03/05/council-and-parliament-reach-provisional-agreement-to-give-farmers-a-stronger-negotiating-position-in-the-food-supply-chain/> [Accessed 25 April 2026].

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