



BENELUX OFFICE FOR INTELLECTUAL PROPERTY

OPPOSITION DECISION

N° 2011516

of 24 August 2017

Opponent: **ALEXANDRE DE PARIS INTERNATIONAL**

Park Hill D - Jan Emiel Mommaertslaan 22
1831 Diegem
Belgium

Representative: **Office Kirkpatrick S.A.**

Avenue Wolfers 32
1310 La Hulpe
Belgium

Invoked right 1: **EU trademark 7004501**



Invoked right 2: **EU trademark 11736428**

ALEXANDRE DE PARIS

against

Defendant: **CKL Holdings N.V.**

Leeuwenstraat 4
2000 Antwerp
Belgium

Representative: /

Contested trademark: Benelux application 1319328

Alexander

I. FACTS AND PROCEEDINGS

A. Facts

1. On 20 October 2015 the defendant filed an application for a trademark in the Benelux for the word mark "Alexander" for goods in classes 18, 20 and 25. This application was processed under number 1319328 and was published on 21 October 2015.

2. On 21 December 2015 the opponent filed an opposition against the registration of the application. The opposition is based on the following earlier trademarks:



- EU trademark 7004501 of the combined word/figurative mark filed on 19 June 2008 and registered on 13 May 2009 for goods and services in classes 3, 8, 9, 14, 16, 18, 20, 21, 24, 25, 26, 35, 38 and 41;
- EU trademark 11736428 of the word mark ALEXANDRE DE PARIS, filed on 12 April 2013 and registered on 6 September 2013 for goods in classes 14, 18 and 26.

3. According to the register the opponent is the actual holder of the trademarks invoked.

4. The opposition is directed against all goods in classes 18 and 25 and part of the goods in class 20 of the contested application and is based on some of the goods and services of the trademarks invoked.

5. The grounds for opposition are those laid down in article 2.14, 1 (a) the Benelux Convention on Intellectual Property (hereinafter: "BCIP").

6. The language of the proceedings is English.

B. Chronological order of the proceedings

7. The opposition is admissible and was notified to the parties on 23 December 2015. During the administrative phase of the proceedings both parties filed arguments and at the request of the defendant proof of use was filed. All of the documents submitted meet the requirements as stated in the BCIP and the Implementing Regulations (hereinafter "IR"). The administrative phase was completed on 25 November 2016.

II. ARGUMENTS

8. The opponent filed an opposition at the Benelux Office for Intellectual Property (hereinafter: "the Office") under article 2.14, 1 (a) BCIP, in accordance with the provisions of article 2.3 (b) BCIP: the likelihood of confusion

based on the identity or similarity of the relevant marks and the identity or similarity of the goods or services concerned.

A. Arguments of the opponent

9. The opponent argues that the goods of the defendant have been found to be identical or at least similar to the opponent's goods and that they are directed at the same public at large.

10. Visually the dominant and distinctive elements in the signs at issue appear to be "ALEXANDRE" in the rights invoked and "ALEXANDER" in the contested sign. These denominations are nearly identical both being first names with only an inversion of the final two letters. Furthermore, the first name "ALEXANDRE" enjoys a real reputation in the French territory for hair accessories and hair products and services in general. The opponent states that the addition of "de Paris" at the end of the opponent's trademarks is not sufficient to dismiss the existing high similarity between the signs as the inversion of two letters at the end of the contested sign is almost not noticeable by the average consumer. Aurally, the opponent explains that the respective trademarks are pronounced in the same way and the inversion from "-re" to "-er" at the end of the first name is not sufficient to modify this conclusion. Besides, the pronunciation of both signs will be most of the time limited to "ALEXANDRE" vs. "ALEXANDER" as these constitute the main part of the signs, the addition of "de Paris" being only a kind of "added value" indication of origin in the fashion world. This addition will therefore not dismiss the aural similarity between the respective signs. Conceptually the respective denominations are nearly identical first names, the second being only the English version of the first one. Both signs are therefore similar to a high degree. The opponent concludes that the signs offer a strong visual and aural similarity as well as an identical conceptual reference.

11. Considering all of the above, the opponent is of the opinion that the average consumer with a normal degree of attention will certainly believe that the goods and services come from the same undertaking or from economically-linked undertakings. Consequently, the opponent requests that the Office does not register the contested sign and that the defendant bears all costs incurred by the opponent in filing this procedure.

12. At the request of the defendant the opponent filed proof of use.

B. Arguments of the defendant

13. The defendant states that the goods of the contested sign are dissimilar to the goods of the opponent and that no risk of a likelihood of confusion exists.

14. As for the comparison of the signs, the defendant first compares the contested sign with the complex right invoked. Visually the signs differ significantly according to the defendant. The number of shared letters is negated by the fact that the font as well as the size of the letters and the use of a logo in the right invoked make it highly stylized and visually dissimilar from the contested sign overall. As such the use of this image within the right invoked is the dominant element of the trademark since it is visually outstanding in comparison to its other elements. The logo element of the earlier trademark is most likely to remain in the mind of the average consumer and, as such, mitigate the chances of it being confused with other trademarks such as the contested sign. Furthermore, the defendant argues that the addition of the "de Paris" element in the rights invoked is a significant consideration in dismissing similarity between the signs. Aurally the signs also differ significantly. First the number and rhythm of syllables in the contested sign and the earlier right differ. The relevant consumer will instantly

recognize the earlier trademark as a French name and therefore apply the necessary pronunciation. This will clearly differ from the English name "Alexander". Further, the addition of "de Paris" to the earlier right totally alters the aural structure. Conceptually the signs at issue also differ significantly. The additional element "de Paris" in the earlier right significantly alters its conceptual meaning. As French is one of the main languages in the Benelux, it is clear that the relevant consumer would understand the word element of the right invoked as "Alexandre of Paris" or Alexandre belonging to Paris" reinforcing the idea that the right invoked "Alexandre" is a French name. This is in stark contrast to the contested sign which is simply a common first name in the English language. The defendant concludes that the signs at issue are not similar and that no likelihood of confusion exists.

15. The defendant also argues that it cannot be the case that an entity trading under the "Alexandre" or "Alexander" name claims a monopoly over the entire marketplace, simply by providing goods in a number of extremely niche markets. As with any name, the possible meanings behind the trademark are numerous and, therefore, other entities should be free to use the mark for their own specified goods and services. Even if the Office were to conclude that the goods specified are similar, the substantial differences between the signs are such that the requirements of a likelihood of confusion cannot be met and as such the opposition should be rejected in its entirety.

16. With regard to the submitted proof of use, the defendant argues that the opponent has failed to prove genuine use of the earlier trademark.

17. Considering the above, the defendant requests that the opposition at hand be rejected in its entirety as unfounded, that the contested sign is registered and that the opponent is ordered to bear all costs and fees arising in connection with these proceedings.

III. DECISION

A.1 Proof of use

18. Articles 2.16, 3 (a) and 2.26, 2 (a) BCIP and rule 1.29 IR stipulate that the right invoked should be put to genuine use for a continuous period of five years prior to the publication date of the sign against which the opposition is lodged.

19. Given the fact that the complex right invoked was registered more than five years prior to the publication date of the contested sign, the defendant's request that proof of use is submitted is legitimate.

20. The contested sign was published on 21 October 2015. Therefore the opponent was required to show use of the right invoked, during the period from 21 October 2010 to 21 October 2015 ('the relevant period').

21. Following rule 1.29 IR the proof of use should contain evidence of the place, duration, extent and manner of use of the earlier trademark for the goods and services on which the opposition is based.

In general

22. In accordance with the decision of the European Court of Justice (hereinafter referred to as "ECJ") of 11 March 2003 (ECJ, Ansul, C-40/01) there is genuine use of a trademark where the mark is used in accordance with its essential function, which is to guarantee the identity of the origin of the goods or services for which it is registered. This is done in order to create or preserve an outlet for those goods or services. Genuine use does not include token use for the sole purpose of preserving the rights conferred by the mark. In that regard, the condition

relating to genuine use of the trademark requires that the mark, as protected in the relevant territory, be used publicly and outwardly (see also General Court of the European Union (hereinafter referred to as “EGC”), *Silk Cocoon*, T-174/01, 12 March 2003; *EGC, Vitafruit*, T-203/02, 8 July 2004; *EGC, Charlott*, T-169/06, 8 November 2007).

23. The EGC held that use of the earlier mark need not always be quantitatively significant for it to be deemed genuine (*EGC, Hipoviton*, T-334/01, 8 July 2004; *EGC, Sonia-Sonia Rykiel*, T-131/06, 30 April 2008). The purpose of the notion of genuine use is not to assess commercial success or to review the economic strategy of an undertaking, nor is it intended to restrict trademark protection to the cases where large-scale commercial use has been made of the mark (*EGC, Vitafruit*, already referred to above).

24. In addition the EGC held that genuine use of a trademark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trademark in the market concerned (see *EGC, Hiwatt*, T-39/01, 12 December 2002; *EGC, Vitakraft*, already referred to above and *EGC, Sonia-Sonia Rykiel*, already referred to above).

25. The trademark invoked is an EU trademark. Hence the obligation to use the trademark is administered by article 15 of the Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (hereinafter “EUTMR”). This article, entitled “Use of European Union trademarks”, stipulates:

“If, within a period of five years following registration, the proprietor has not put the European Union trade mark to genuine use in the Union in connection with the goods or services in respect of which it is registered, or if such use has been suspended during an uninterrupted period of five years, the European Union trade mark shall be subject to the sanctions provided for in this Regulation, unless there are proper reasons for nonuse.”¹

26. In its decision of 19 December 2012 (case C-149/11, *Onel*), the ECJ explained this provision. The ECJ considers, regarding the concept “in the Community”, that there is a difference between the territorial extent of the protection conferred on national trademarks and the extent of the protection conferred on EU trademarks. From a territorial point of view, an EU trademark enjoys a more extensive scope of protection than a national trademark. As a consequence it may reasonably be expected that an EU trademark can be used in a larger area, except for the (exceptional) case where the market for the goods and services at issue has been territorially restricted. Abstraction should be made here of the boundaries of the territory of the Member States. The ECJ concludes:

“A Community trade mark is put to ‘genuine use’ within the meaning of Article 15(1) of Regulation No 207/2009 when it is used in accordance with its essential function and for the purpose of maintaining or creating market share within the Community for the goods or services covered by it. It is for the referring court to assess whether the conditions are met in the main proceedings, taking account of all the relevant facts and circumstances, including the characteristics of the market concerned, the nature of the goods or services protected by the trade mark and the territorial extent and the scale of the use as well as its frequency and regularity.”

27. The threshold for genuine use of an EU trademark is therefore in principle higher than that for genuine use of a national (or Benelux) trademark. It should be demonstrated that the trademark is used for the purpose of maintaining or creating market share within the EU taking into account all relevant facts and circumstances.

¹ The EUTMR was adapted by the Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015. This did not change the first paragraph of article 15, except for the replacement of the terms “Community trade mark” and “Community” by respectively “European Union trade mark” and “Union”.

Analysis of the proof of use

28. The opponent submitted the following exhibits in order to demonstrate genuine use of the right invoked:

1. Seven invoices dated 2010, 2011, 2012 and 2013, all directed to SLMC BVBA situated in Belgium, as well as extracts from "Alexandre de Paris" catalogues showing the goods referenced in the invoices;
2. Extract from the catalogue "Alexandre de Paris, Basic Collection, Fall Winter 2015" showing goods that are referenced in the invoices mentioned in paragraph 1 here;
3. Invoice dated 2016 to a UK customer as well as an extract of a catalogue showing a mirror referenced in the aforementioned invoice.

29. When assessing whether certain use of the trademark is genuine, all the facts and circumstances relevant to establishing whether the commercial use of the mark is real in the course of trade must be taken into account. In particular it is of importance whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark. Also of importance are the nature of those goods or services, the characteristics of the market and the scale and frequency of use of the mark (see ECJ, *La Mer Technology*, C-259/02, 27 January 2004). However, the smaller the commercial volume of the exploitation of the mark, the more necessary it is for the party opposing new registration to produce additional evidence to dispel possible doubts as to the genuineness of the right invoked (ECJ, *VOGUE*, T-382/08, 18 January 2011).

30. After an analysis of the exhibits at hand the Office finds that the proof of use provided as a whole is not sufficient to establish that the trademark invoked is used for the purpose of maintaining or creating market share within the EU for the goods and services at issue.

31. The Office considers that the opponent only produces eight invoices as proof of use of the right invoked. Seven of them are directed to one and the same company in Belgium (exhibit 1). One other invoice is directed to a customer in the UK (exhibit 3). These invoices are supported by extracts of "Alexandre de Paris" catalogues carrying the right invoked. The extracts show the goods that are referenced in the respective invoices. The seven invoices to the Belgian customer all date from within the relevant period. They mention amounts ranging from approximately 7.000 to 12.000 euros. As for the invoice to the UK customer, which mentions an amount of about 6.700 euros, the Office considers that it dates from after the relevant period. However, it should be noted here that the possibility that some of the proof of use falls outside of the relevant period, does not necessarily mean that these exhibits cannot be taken into consideration. They can still serve to support other proof that was submitted or can contribute to a better analysis of the scope of the use of the right invoked in the relevant period (see ECJ, *La Mer Technology*, C-259/02, 27 January 2004; ECJ, *Alcon*, C-192/03 P, 5 October 2004 and the case law referred to there and ECJ, *Aire Limpio*, T-168/04, 7 September 2006). Nevertheless, the Office finds that even if this UK invoice could already serve to support the other proof here that was submitted, the evidence considered as a whole would still not be sufficient to demonstrate that the right invoked has been put to genuine use in the EU. The invoice amounts are insufficient to establish genuine use for the goods and services in question, which are by their nature directed at all consumers in Europe, from young to old. Besides that, as already explained above, the threshold for genuine use of an EU trademark is in principle higher than that for genuine use of a national (or Benelux) trademark. Only eight invoices directed to two customers in two countries (Belgium and the UK) are not enough to demonstrate that the right invoked has been used for the purpose of maintaining or creating market share within the EU.

Conclusion

32. It follows from the foregoing that the evidence the opponent filed with the Office, even when assessed overall, does not demonstrate genuine use of the trademark invoked for the goods and services for which it is registered within the EU in the relevant period. Because of the lack of sufficient proof of use, the Office will not proceed to an analysis of the likelihood of confusion in relation to this right invoked. Below the Office will analyse whether there is a likelihood of confusion in relation to the other right invoked for which no obligation of use exists.

A.2 Likelihood of confusion

33. In accordance with article 2.14, 1 BCIP, the applicant or holder of a prior trademark may submit a written opposition to the Office, within a period of two months to be calculated from the publication of the application, against a trademark which in the order of priority, ranks after its own in accordance with Article 2.3 (a) and (b) BCIP.

34. Article 2.3 (a) and (b) BCIP stipulates that *“In determining the order of priority for filings, account shall be taken of rights, existing at the time of filing and maintained at the time of the litigation, in: a. identical trademarks filed for identical goods or services; b. identical or similar trademarks filed for identical or similar goods or services, where there exists on the part of the public a likelihood of confusion that includes the likelihood of association with the prior trademark.”*

35. According to case law of the Court of Justice of the European Union concerning the interpretation of Directive 2008/95/EG of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trademarks (hereinafter: “Directive”), the likelihood of confusion of the public, which is defined as the risk that the public might believe that the goods or services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, must be appreciated globally taking into account all factors relevant to the circumstances of the case (CJEU, Canon, C-39/97, 29 September 1998; Lloyd Schuhfabrik Meyer, C-342/97, 22 June 1999; CJBen, Brouwerij Haacht/Grandes Sources belges, A 98/3, 2 October 2000; Marca Mode/Adidas, A 98/5, 7 June 2002; Supreme Court of the Netherlands, Flügel-bottle, C02/133HR, 14 November 2003; Brussels, N-20060227-1, 27 February 2006).

Comparison of the goods

36. In assessing the similarity of the goods and services concerned, all the relevant factors relating to these goods or services themselves should be taken into account. These factors include, inter alia, their nature, their end users and their method of use and whether they are in competition with each other or are complementary (Canon, already cited).

37. In the comparison of the goods of the trademark invoked and the goods against which the opposition is filed, the goods are considered only on the basis of what is expressed in the register or as indicated in the trademark application.

38. The goods to be compared are the following:

Opposition based on:	Opposition directed against:
CI 14 Jewellery, bijoux and watches; Hair decorations of precious metals; Tie clips; Badges of precious metal; Cuff links; Medals; Ornamental hair pins of precious metals; Hat ornaments of precious metal; Semi-precious stones; Precious stones; Paste jewellery.	
CI 18 Leather and imitations of leather, and goods made of these materials and not included in other classes; Leather goods namely: Handbags, Evening bags, Evening pouches of leather or imitations of leather; Vanity cases, toiletry cases; Purses; Pocket wallets; Boxes of leather or leather board; Leather laces; Leather straps; Leather twist; Trimmings of leather for hair ornaments; Travelling bags; Umbrellas.	CI 18 Leather; trunks and suitcases; travelling cases; handbags; purses; wallets; umbrellas; parasols; walking sticks; whips; harness; saddlery.
	CI 20 Mirrors.
	CI 25 Clothing; footwear; headgear; swimwear; sportswear; leisurewear.
CI 26 Lace and embroideries; Ribbons and braid, Buttons, Hooks and eyes, Pins and needles, Hair curling pins; Clothing accessories, in particular feathers, Beads other than for making jewelry; Artificial flowers, artificial fruit; Hair ornaments, Elastic ribbons; Hair pins, Hair slides, loop clips, Hair bands; Bows for the hair; Ornaments for hats.	

Class 18

39. The goods "*Leather; handbags; purses; umbrellas*" are mentioned *expressis verbis* in both lists of goods and are thus identical.

40. The goods "*wallets*" of the defendant are identical to the goods "*pocket wallets*" of the opponent. The goods offered by the defendant are a broad, general category that cover the aforementioned specific type of wallets offered by the opponent. Therefore they are considered to be identical (EGC, Metabiomax, T-281/13, 11 June 2014).

41. The goods "*trunks and suitcases; travelling cases*" of the defendant are similar to the opponent's "*travelling bags*". All these goods are used by people for carrying different items, in order to take these items with them when they are travelling or "on their way". Therefore, their nature and purpose is the same. Furthermore, these goods could be offered to the public by the same stores, thus the consumer could assume that these products originate from the same undertaking (reference is made to BOIP, opposition decision 2005550, Only, 9 December 2011).

42. The goods "*parasols; walking sticks*" of the defendant are similar to the goods "*umbrellas*" of the opponent. The defendant's parasols share the same purpose and nature as umbrellas. Both are folding canopies supported by wooden or metal ribs, which are usually mounted on a wooden, metal, or plastic

pole and are designed to protect a person against rain or sunlight.² Furthermore these goods can coincide in producer, end user and distribution channels. As for the defendant's walking sticks, they are canes or other staffs used as an aid in walking. As already mentioned the opponent's umbrellas are devices for protection from the weather consisting of a collapsible canopy mounted on a central rod. Even though the purpose of walking sticks and umbrellas is different, since the mechanism of umbrellas allows their use also as walking sticks, some umbrellas are designed to have this double function, their handles being the same as in a walking stick. Thus these goods can be in competition to each other. Moreover, umbrellas and walking sticks can be offered to the same public at the same establishments and they can also be produced by the same companies.

43. The goods "*whips; harness; saddlery*" of the defendant are dissimilar to the goods of the opponent. These goods of the defendant are not similar to the goods in class 18 of the opponent. The mere fact that leather can be used for the manufacture of the goods of the defendant is not sufficient in itself to conclude that the goods are similar, as their nature, purpose and relevant public are quite distinct: raw materials, like leather and imitations of leather of the opponent, are intended for use in industry rather than for direct purchase by the final consumer. Furthermore the defendant's goods are also not similar to the goods in classes 14 and 26 of the opponent. They are of a different nature and their method of use is different from that of the right invoked. Finally, these goods are also not in competition with each other, nor are they complementary. Therefore, these goods of the defendant are not similar to the goods of the opponent.

Class 20

44. The "*mirrors*" of the defendant are not similar to any of the goods of the opponent. The goods of the defendant constitute furniture. They are of a different nature and have a different intended purpose and method of use than the opponent's goods. They also target a different public and thus cannot be complementary either.

Class 25

45. The goods "*clothing; leisurewear*" of the defendant are similar to a certain degree to the opponent's "*clothing accessories, in particular feathers, beads other than for making jewelry*". The defendant's goods are clothing in general and leisurewear, which is a specific category of clothing that is worn when not at work, for example at weekends or on holidays. It is not uncommon for clothing and leisurewear articles to be decorated with beads or feathers. The goods "*headgear*" of the defendant are similar to a certain degree to the goods "*ornaments for hats*" of the opponent. All of the opponent's goods constitute accessories and ornaments that are specifically intended to be used together with the defendant's goods. These accessories and ornaments can be produced by the manufacturer of the main product, either clothing, leisurewear and headgear, and they may all be distributed by the same or linked manufacturers to the same end consumer. Consequently, the consumer may expect that the main product and the accessories are produced under the control of the same entity. Furthermore the Office finds that the goods of the defendant are often coordinated with the opponent's accessories and therefore these goods are also likely to be considered by the consumers as aesthetically complementary goods as well.

46. The goods "*footwear; swimwear; sportswear*" of the defendant are not similar to the goods of the opponent. Even though the goods of the opponent might have some distant link to the fashion market, the mere fact that someone might want to match the goods of the opponent and the defendant is not sufficient to conclude

² <https://en.wikipedia.org/wiki/Umbrella>.

that these goods are complementary and therefore similar. Furthermore these goods have a different nature, purpose and method of use. The production of these goods involves different know-how, they do not belong to the same category of goods and they are not regarded as components of a general array of goods that potentially have the same commercial origin. The goods are also not in competition with each other.

Conclusion

47. The goods of the defendant are identical, similar, similar to a certain degree or not similar to the goods of the opponent.

Comparison of the signs

48. The wording of Article 4, 1 (b) of the Directive (cf. article 2.3, (b) BCIP) “there exists a likelihood of confusion on the part of the public” shows that the perception of marks in the mind of the average consumer of the type of goods or services in question plays a decisive role in the global assessment of the likelihood of confusion. The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (CJEU, Sabel, C-251/95, 11 November 1997).

49. Global assessment of the visual, aural or conceptual similarity of the marks in question must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components (CJEU, Sabel and Lloyd, already cited).

50. The signs to be compared are the following:

Opposition based on:	Opposition directed against:
ALEXANDRE DE PARIS	Alexander

Conceptual comparison

51. Although both signs refer to the name of a person (ALEXANDRE in the right invoked and ALEXANDER, in the contested sign) this does not in any way mean that the signs are conceptually similar. Neither does it mean that a sign that (partly) consists of a personal name has an established meaning (see BOIP, Rachel, opposition decision 2002674, 1 July 2009), except maybe when it concerns a very renowned name (ECJ, Picasso, C-361/04, 12 January 2006 and BOIP, Amadeus Fire, opposition decision 2002041, 30 July 2010). However, in the present case, this is not under discussion.

52. The elements “DE PARIS” in the right invoked will be perceived by the public as an indication of origin referring to the capital city of France, meaning “from Paris”. This element is descriptive, because it may serve to indicate the geographical origin of the goods concerned, which is all the more likely given that the goods concerned are all fashion items. For this reason, the public will not consider this element as the distinctive and dominant element of the overall impression conveyed by that trademark (EGC, Budmen, T-129/01, 3 July 2003). The dominant element of the right invoked is thus ALEXANDRE.

53. The trademark invoked and the contested sign, considered as a whole, have no established meaning and for this reason, a conceptual comparison is not possible.

Visual comparison

54. The right invoked is a word mark, consisting of three word elements of respectively nine, two and five letters: ALEXANDRE DE PARIS. The contested sign is also a word mark, consisting of one word of nine letters, "Alexander". The trademark invoked is displayed in capital letters and in the contested sign, only the first letter is a capital letter. However the difference between the signs with regard to the use of capital letters or lower case letters is not relevant for the visual comparison between two word marks (reference is made to EGC case, Babilu, T-66/11, 31 January 2013).

55. In this case the first word of the right invoked "ALEXANDRE" and the contested sign are practically identical as they both contain the same nine letters of which seven are placed identically in the same order, ALEXAND-, and only the last two letters are inverted, -RE in the right invoked and -ER in the contested sign. The signs differ because of the addition of the words "DE PARIS" in the right invoked.

56. It is also of importance that the consumer normally attaches more value to the first part of a sign (EGC, Mundicor, T-183/02 and T-184/02, 17 March 2004). In this case, the contested sign is almost identical to the most dominant element of the trademark invoked, ALEXANDRE. Due to this, the Office considers that there is an overall visual similarity.

Aural comparison

57. The right invoked consists of three words of respectively four, one and two syllables: A-LEX-AN-DRE DE PA-RIS. The contested sign consists of one word consisting of four syllables: A-LEX-AN-DER.

58. Aurally the first three syllables of the signs are identical. The fourth syllable is pronounced slightly differently, given the inversion of the last two letters, -RE vs. -ER. However the Office considers that a part of the public will also pronounce the fourth syllable of the right invoked identically to the last syllable of the contested sign and thus as -DER. The Dutch speaking part of the public in particular might not be familiar with the correct French pronunciation of the first word of the right invoked and would therefore also pronounce it as A-LEX-AN-DER. The pronunciation of the first word of the right invoked and the contested sign will thus be highly similar or even identical. The pronunciation of the signs differs in the pronunciation of the words "DE PARIS" in the right invoked, which have no counterpart in the contested sign. However, a trademark consisting of a number of terms will generally be abbreviated in order to make it easier to pronounce (EGC, BROTHERS by CAMPER, T-43/05, 30 November 2006). The Office finds that the possibility cannot be excluded that a part of the public, when referring to the right invoked, will only pronounce the first word ALEXANDRE without mentioning the descriptive words "DE PARIS". Furthermore, in the light of the descriptiveness of the words "DE PARIS" in the right invoked, the Office considers that the aural attention will be focused on the dominant element "ALEXANDRE". Besides that, as already mentioned, consumers generally take more note of the beginning of a sign than of its end (Mundicor, already cited).

59. For the reasons mentioned above, the Office considers that the signs are aurally similar.

Conclusion

60. The right invoked and the contested sign are visually and aurally similar. A conceptual comparison is not relevant here.

A.3 Global assessment

61. When assessing the likelihood of confusion, in particular the level of attention of the relevant public, the similarity of the goods and services in question and the similarity of the signs are important factors.

62. The average consumer is deemed to be reasonably well-informed and reasonably observant and circumspect (case Lloyd, already cited). It should also be borne in mind that the average consumer's level of attention is likely to vary in accordance with the category of goods or services in question. The present case concerns goods which are targeted at the public in general. For these goods the average level of attention of the public concerned may be deemed normal.

63. The global assessment of the likelihood of confusion assumes that there is a certain degree of interdependence between the factors to be taken into account, particularly between the level of similarity of the signs and of the goods or services which they cover. A lesser degree of similarity between the relevant goods or services can be offset by a greater degree of similarity between the trademarks, and vice versa (Canon and Lloyd, already cited).

64. It should also be taken into consideration here that normally, the average consumer perceives a mark as a whole and does not proceed to an analysis of its various details (Sabel and Lloyd, already cited). Furthermore, it is of importance that the average consumer only rarely has the chance to make a direct comparison between the different trademarks but must place his trust in the imperfect picture of them that he has kept in his mind.

65. The more distinctive the earlier trademark, the greater the likelihood of confusion. Marks with a highly distinctive character, either *per se* or because of the reputation they possess on the market, enjoy broader protection than marks with a less distinctive character (Canon, Sabel and Lloyd, already cited). In the present case, the trademark invoked has a normal level of distinctiveness, as it is not descriptive of the goods concerned. The opponent also argues that the trademark invoked has a reputation and therefore possesses an enhanced distinctiveness (paragraph 10). However, it is not necessary to discuss this argument, because it has no influence on the outcome of these proceedings.

66. The right invoked and the contested sign are visually and aurally similar. A conceptual comparison is not relevant. The goods of the defendant are identical, similar, similar to a certain degree or not similar to the goods of the opponent. Given these circumstances, the Office finds that the relevant public might believe that the goods in question that are identical, similar or similar to a certain degree originate from the same undertaking or from economically-linked undertakings.

B. Other factors

67. With reference to the request that the other party should bear all costs of the proceedings (see paragraphs 11 and 17), the Office considers that opposition proceedings with the Office provide for an allocation of

the costs of the proceedings to the losing party. Article 2.16, 5 BCIP, as well as rule 1.32, 3 IR, only stipulates in this respect that an amount equalling the basic opposition fee shall be borne by the losing party.

C. Conclusion

68. Based on the foregoing the Office concludes that there exists a likelihood of confusion for the goods that are considered identical, similar or similar to a certain degree.

IV. DECISION

69. The opposition with number 2011516 is partly justified.

70. Benelux application with number 1319328 will not be registered for the following goods:

- Class 18: Leather; trunks and suitcases; travelling cases; handbags; purses; wallets; umbrellas; parasols; walking sticks.
- Class 25: Clothing; headgear; leisurewear.

71. Benelux application with number 1319328 will be registered for the following goods:

- Class 18: Whips; harness; saddlery.
- Class 20: All goods.
- Class 25: Footwear; swimwear; sportswear.

72. Neither of the parties shall pay the costs in accordance with article 2.16(5) BCIP in conjunction with rule 1.32(3) IR, as the opposition is partly justified.

The Hague, 24 August 2017

Tineke Van Hoey
(*rapporteur*)

Diter Wuytens

Camille Janssen

Administrative officer: Jeanette Scheerhoorn