

**BENELUX-OFFICE FOR INTELLECTUAL PROPERTY**

**OPPOSITION DECISION**

**N° 2012216**

**of 22 May 2018**

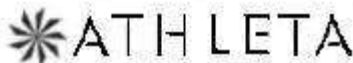
**Opponent :** **Athleta (ITM) Inc.**  
Folsom Street 2  
94105 San Francisco  
United States of America

**Representative:** **NautaDutilh, SPRL**  
Terhulpesteenweg 120  
1000 Brussel  
Belgium

**Invoked right 1:** **EU trademark 7234503**

ATHLETA

**Invoked right 2:** **EU trademark 7234628**



**Invoked right 3:** **EU trademark 7234529**



**Invoked right 4:** **EU trademark 7561665**

ATHLETA

**Invoked right 5:** **EU trademark 13631833**

ATHLETA

*against*

**Defendant:** **MODA INTERNATIONAL LLC**, Indiana  
626 North Illinois Street STE 300  
Indianapolis, Indiana 46204  
United States of America

**Representative:** **Fashion One (Europe) N.V.**  
Leeuwenstraat 4  
2000 Antwerpen  
Belgium

**Contested trademark:** Benelux application 1333381  
  
Athlia

## I. FACTS AND PROCEEDINGS

### A. Facts

1. On 1 June 2016 the defendant filed a Benelux trademark application for the word trademark **Athlia** for goods and services in Classes 3, 25 and 35. This application was processed under number 1333381 and was published on 3 June 2016.

2. On 2 August 2016 the opponent filed an opposition against this application. The opposition is based on the following earlier trademarks:

- European Union trademark 7234503 for the word trademark **ATHLETA**, filed on 15 September 2008 and registered on 4 August 2009 for goods and services in Classes 3, 9, 14, 18, 25, 28 and 35;

- European Union trademark 7234628 for the combined word and figurative trademark



filed on 15 September 2008 and registered on 14 May 2009 for goods and services in Classes 18, 25 and 35;

- European Union trademark 7234529 for the combined word and figurative trademark,



filed on 15 September 2008 and registered on 27 May 2009 for goods and services in Classes 3, 9, 14, 18, 25, 28 and 35;

- European Union trademark 7561665 for the word trademark **ATHLETA**, filed on 30 January 2009 and registered on 10 November 2009 for services in Class 35;

- European Union trademark 13631833 for the word trademark **ATHLETA**, filed on 12 January 2015 and registered on 24 April 2015 for goods in Classes 24 and 26.

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

4. The opposition is directed against all the goods and services of the contested application and was based, at first, on all the goods and services of the trademarks invoked, but in his arguments the opponent confines them to those in Classes 3, 24, 25, 26 and 35.

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

6. The language of the proceedings is English.

### B. Proceedings

7. The opposition is admissible and the Benelux Office for Intellectual Property (hereinafter referred to as: "the Office") notified the parties on 4 August 2016. During the administrative phase of the proceedings both parties filed arguments and, at the request of the defendant, the opponent provided proof of use of the rights invoked. All of the documents submitted meet the requirements as stated in the BCIP and the Implementing

Regulations (hereinafter referred to as : "IR"). The administrative phase of the procedure was completed on 14 June 2017.

## **II. ARGUMENTS OF THE PARTIES**

8. The opponent filed an opposition at 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 trademarks and the identity or similarity of the goods or services concerned.

### **A. Opponent's arguments**

9. According to the opponent, all the goods and services covered by the contested sign are identical to those for which the rights invoked are registered.

10. The opponent observes that the trademarks at hand cover everyday consumer goods and services relating to these goods. Therefore, he is of the opinion that the relevant public consists of the average consumer with a normal level of attention.

11. The rights invoked and the contested sign are composed of respectively seven and six letters, five of which are identical, including four at the beginning of the signs and they are also in the same order. According to the opponent, this results in a very high degree of visual similarity.

12. Aurally, the signs involved count three syllables and they begin with the same sound [ath], followed by an identical sound [i] and end with the same sound [a]. The opponent is of the opinion that the vowels E and I in the middle of the signs could both be pronounced as [i] by part of the public. He concludes that this results in a high degree of aural similarity.

13. In the opponent's opinion, the trademarks at issue have no meaning for the relevant public. As a consequence, the conceptual comparison can have no influence on the assessment of the similarity of the signs.

14. The opponent concludes that the opposition should be considered justified in its entirety and he therefore requests that the Office rejects the registration of the contested sign in full.

15. At the request of the defendant, the opponent provided proof of use of the rights invoked.

### **B. Defendant's arguments**

16. Together with his arguments, the defendant requested proof of use of the rights invoked, but he did not respond to the proof provided by the opponent.

17. The defendant acknowledges that there are some similarities in the specifications of the goods and services, however, there are some clear differences between the specifications.

18. The defendant observes that the signs at hand are not of the same length and the elements in the middle are also different. Therefore, he is of the opinion that the signs are visually and phonetically dissimilar. As the signs have no meaning, he thinks no conceptual comparison should be made in the present case.

19. In the light of the above mentioned, it is determined that the opposition at hand is unfounded and the defendant requests that it be rejected in its entirety and that the fees arising in connection with these proceedings be imposed on the opponent.

### III. DECISION

#### A.1 Proof of use

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

21. Given the fact that four of the rights invoked were 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 with regard to these rights.

22. The contested sign was published on 3 June 2016. Therefore, the opponent was required to show use of the rights invoked during the period from 3 June 2011 to 3 June 2016 ('the relevant period').

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

24. The defendant has not responded to the proof of use furnished by the opponent. Therefore, the Office will not proceed with the examination of the proof of use. In accordance with Rule 1.29 (4) IR, the defendant may withdraw his request to provide proof of use or deem the evidence provided as adequate. Rule 1.25 (d) IR stipulates that the facts to which the other party did not respond will be deemed undisputed. The Office holds the view that both parties clearly agree on the genuine use of the rights invoked, as the defendant did not question the proof of use furnished by the opponent.

#### A.2 Likelihood of confusion

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

26. 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 a likelihood of confusion on the part of the public that includes the likelihood of association with the prior trademark.*"

27. According to case law of the Court of Justice of the European Union (hereinafter referred to as: the "CJEU") 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 referred to as: "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, ECLI:EU:C:1998:442; Lloyd Schuhfabrik Meyer, C-342/97, 22 June 1999, ECLI:EU:C:1999:323; 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 signs**

28. 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, ECLI:EU:C:1997:528).

29. 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).

30. The signs to be compared are the following:

*With regard to the first, the fourth and the fifth rights invoked (European Union trademarks 7234503, 7561665 and 13631833, hereinafter referred to as: “the right invoked”), which are identical, and therefore can be compared together:*

<b>Opposition based on:</b>	<b>Opposition directed against:</b>
<b>ATHLETA</b>	<b>Athlia</b>

*Visual comparison*

31. Both signs are purely verbal trademarks and consist of one word of seven and six letters respectively; except for one letter, they are thus of the same length. Moreover, the first four letters are identical and appear in exactly the same order. In addition, the very last letter of the signs is identical as well. Besides, it should be mentioned that the fact that the former is represented in capital letters, whereas the latter is represented in lower-case letters, is irrelevant for the purposes of a visual comparison of these marks (EGC, *Babilu*, T-66/11, 31 January 2013, ECLI:EU:T:2013:48).

32. The consumer normally attaches more importance to the first part of a sign (EGC, *Mundicor*, T-183/02 and T-184/02, 17 March 2004, ECLI:EU:T:2004:79). In the case at hand, the first four letters are identical and the last letter is as well. The only difference resides in the letters ET and I at the end of the signs. This difference is insufficient to make the signs different in their overall impression.

33. Visually, the signs are similar in their overall impression.

*Aural comparison*

34. As the signs are approximately of the same length, their rhythm and intonation are the same.

35. The first syllable [ath] is pronounced identically and so are the first letter of the second syllable [l] as well as the last letter [a]. Again, the only difference between the signs resides in the different letters ET in the right invoked and I in the contested sign towards the end of the signs. However, the Office is of the opinion that these differences do not entirely outweigh the similarities between the signs.

36. Aurally, the signs are, to a certain degree, similar.

*Conceptual comparison*

37. Although the right invoked might refer to "athlete", neither of the signs has an established meaning and therefore a conceptual comparison is not possible.

*Conclusion*

38. Visually, the signs are similar, aurally they are, to a certain degree, similar and a conceptual comparison does not apply.

**Comparison of the goods and services**

39. 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 or complementary to each other (Canon, already cited).

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

41. The goods and services to be compared are the following:

<b>Opposition based on:</b>	<b>Opposition directed against:</b>
<p><b><u>E7234503</u></b></p> <p>Class 3 Personal care products, toilet preparations, cosmetics, make-up products, perfume and fragrance products, oils, soaps, lotions, creams, powders, balms and gels, bath products, fragranced products for the home, room sprays, potpourri, hair care preparations, sun care products, detergents and cleaning preparations.</p>	<p>Class 3 Perfumery; essential oils; cosmetics; make-up; eye make-up; eyeliners; blushers; lipsticks; hair lotions; soaps.</p>
<p><b><u>E13631833</u></b></p> <p>Class 24 Textiles and textile goods; Bed covers; Table covers; Napkins, of cloth, for removing make-up; Bath linen, except clothing; Banners; Bed clothes; Bed linen; Covers [loose] for furniture; Billiard cloth; Dimity; Brocades; Bolting cloth; Calico; Canvas for tapestry or embroidery; Chenille fabric; Cheviots [cloth]; Crepe [fabric]; Damask; Bed blankets; Bed covers of paper; Door curtains; Fabric of imitation animal skins; Cloth; Eiderdowns [down coverlets]; Shower curtains of textile or plastic; Drugget; Frieze [cloth]; Elastic woven material; Esparto fabric; Filtering materials of textile; Flannel [fabric]; Velvet; Gauze [cloth]; Fabric, impervious to gases, for aeronautical balloons; Knitted fabric; Gummed cloth, other than for stationery; Fibreglass fabrics for textile use; Curtains of textile or plastic; Curtain holders of textile material; Crépon; Towels of textile; Face towels of textile; Hemp cloth; Hemp fabric; Pillow shams; Household linen; Jersey [fabric]; Jute fabric; Cheese cloth; Cotton fabrics; Mosquito nets; Pillowcases; Labels of cloth; Sheets [textile]; Sleeping bags [sheeting]; Shrouds; Diapered linen; Linen cloth; Marabouts [cloth]; Mattress covers;</p>	

<p>Ticks [mattress covers]; Furniture coverings of textile; Upholstery fabrics; Moleskin [fabric]; Non-woven textile fabrics; Coasters [table linen]; Haircloth [sackcloth]; Fitted toilet lid covers of fabric; Printers' blankets of textile; Place mats, not of paper; Travelling rugs [lap robes]; Furniture coverings of plastic; Plastic material [substitute for fabrics]; Ramie fabric; Rayon fabric; Covers for cushions; Calico cloth (Printed -); Quilts; Woollen cloth; Tablecloths, not of paper; Oilcloth for use as tablecloths; Table linen, not of paper; Table runners; Tablemats, not of paper; Serviettes of textile; Taffeta [cloth]; Material (Textile -); Glass cloths [towels]; Tick [linen]; Trellis [cloth]; Tulle; Felt; Net curtains; Flags, not of paper; Bunting; Hat linings, of textile, in the piece; Buckram; Linings [textile]; Lining fabric for shoes; Traced cloths for embroidery; Wall hangings of textile; Washing mitts; Sanitary flannel; Fabric; Adhesive fabric for application by heat; Silk fabrics for printing patterns; Lingerie fabric; Fabric for footwear; Fabrics for textile use; Handkerchiefs of textile; Zephyr [cloth]; Silk [cloth].</p>	
<p><b><u>E7234503</u></b></p> <p>Class 25 Clothing, footwear, headgear and clothing accessories.</p>	<p>Class 25 Clothing; footwear; headgear; swimwear; sportswear; leisurewear.</p>
<p><b><u>E13631833</u></b></p> <p>Class 26 Lace and embroidery, ribbons and braid; Buttons, hooks and eyes, pins and needles; Artificial flowers; Brassards; Ornamental novelty badges [buttons]; Collar supports; Binding needles; Braids; Edgings for clothing; Embroidery; Knitting needles; Fastenings for suspenders; Trouser clips for cyclists; Chenille [passementerie]; Monogram tabs for marking linen; Numerals for marking linen; Bows for the hair; Snap fasteners; Elastic ribbons; Festoons [embroidery]; Haberdashery, except thread; Fringes; Lace for edgings; Buckles [clothing accessories]; Belt clasps; Gold embroidery; Hooks [haberdashery]; Embroidering crochet hooks; Hair extensions; Hair bands; Barrettes [hair-slides]; Hair curlers, other than hand implements; Hair curling pins; Hair nets; Hair grips [slides]; Hair pins; Plaited hair; Badges for wear, not of precious metal; Skirt flounces; Frills [lacework]; Hook and pile fastening tapes; Bobbins for retaining embroidery floss or wool [not parts of machines]; Buttons; Cords for rimming, for clothing; Cords for clothing; Corset busks; Hooks for corsets; Beads other than for making jewelry; Wreaths of artificial flowers; Artificial flowers; Artificial fruit; Tassels [haberdashery]; Decoration of textile articles (Heat adhesive patches for -) [haberdashery]; Heat adhesive patches for repairing textile articles; Letters for marking linen; Ribbons [haberdashery]; Orsedew [trimmings for clothing]; Darning lasts; Human hair; Expanding bands for holding sleeves; Hair coloring caps; Sewing boxes; Sewing needles; Needles; Shuttles for making fishing nets; Needles for wool combing machines; Needle cases; Boxes for needles; Needle cushions; Eyelets for clothing; Shoe eyelets; Mica spangles; Spangles for clothing; Hair curling papers; Passementerie; Trimmings for clothing; Picot [lace]; Tapes for curtain headings; Top-knots [pompoms]; Prize ribbons; Wigs; Bodkins; Zippers; Slide locks for bags; Rosettes [haberdashery]; Frills</p>	



<p>for clothing; Competitors' numbers; Shoe buckles; Shoe hooks; Shoemakers' needles; Shoe laces; Shoulder pads for clothing; Artificial garlands; Blouse fasteners; Dress fastenings; Shoe fasteners; Pins, other than jewellery; Brooches [clothing accessories]; Pin cushions; False hems; Darning needles; Ostrich feathers [clothing accessories]; Rug hooks; Toupees; Reins for guiding children; False hair; False beards; False moustaches; Feathers [clothing accessories]; Hair ornaments; Hat ornaments, not of precious metal; Shoe ornaments, not of precious metal; Sewing thimbles; Birds' feathers [clothing accessories]; Woolen laces; Saddlers' needles; Silver embroidery.</p>	
<p><b><u>E7234503</u></b></p> <p>Class 35 Retail store services in the field of a wide variety of general merchandise, clothing, footwear, headgear, clothing accessories, bags, leather goods, sunglasses, jewellery, hair accessories, cosmetics, toiletries, fragrances and personal care products, toys and games, and sporting goods; promotional services in the fashion field including counselling on the selection and matching of fashion products and accessories; management of retail store services in relation to clothing and a variety of other merchandise; advertising and marketing services; operation of consumer loyalty programs; promoting the goods and services of others by placing advertisements and promotional displays on an electronic site accessible through a computer network; providing on-line retail services and on-line ordering services in the field of a wide variety of general merchandise; namely clothing, footwear, headgear, clothing accessories, bags, leather goods, sunglasses, jewelry, hair accessories, cosmetics, toiletries, fragrances and personal care products, toys and games and sporting goods; promotional services in the fashion field including counselling on the selection and matching of fashion products and accessories; mail order catalogue services; computer on-line ordering services.</p> <p><b><u>E7561665</u></b></p> <p>Class 35 Advertising and marketing services, namely issuing gift cards and gift certificates that may then be redeemed for goods.</p>	<p>Class 35 Provision of information and advice to consumers regarding the selection of products and items to be purchased; provision of business and commercial information; business consultancy services; assistance and advice regarding business organization and management; advertising; advertising particularly services for the promotion of goods; arranging of contracts for the purchase and sale of goods and services, for others; market research and marketing studies; compilation of computer databases; office functions; retail services relating to furniture; retail services connected with the sale of clothing and clothing accessories; online retail store services in relation to clothing.</p>

### Class 3

42. The goods *cosmetics* and *soaps* are mentioned *expressis verbis* in both lists of goods and are therefore identical.

43. The goods *perfumery* of the contested sign and *perfume and fragrance products* of the right invoked are synonymous and are therefore identical. The goods *essential oils* of the contested sign are covered by the goods *oils* of the right invoked and are therefore identical. Indeed, according to established case law, if the goods of the earlier trademark also contain goods that are mentioned in the application for the contested sign, these goods are considered identical (see EGC, Fifties, T-104/01, 23 October 2002, ECLI:EU:T:2002:262; Arthur et Félicie, T-346/04, 24 November 2005, ECLI:EU:T:2005:420 and Prazol, T-95/07, 21 October 2008, ECLI:EU:T:2008:455). The goods *make-up*, *eye make-up*, *eyeliners*, *blushers* and *lipsticks* of the contested sign are covered by the

goods *make-up products* of the right invoked and are therefore identical. The goods *hair lotions* of the contested sign are covered by de goods *lotions* of the right invoked and are therefore identical.

#### Class 25

44. The goods *clothing, footwear and headgear* are mentioned *expressis verbis* in both lists of goods and are therefore identical.

45. The goods *swimwear, sportswear and leisurewear* of the contested sign are covered by the goods *clothing* of the right invoked and are therefore identical.

#### Class 35

46. The services *advertising and advertising particularly services for the promotion of goods* of the contested sign are identical to the *advertising services* of the right invoked.

47. The services *market research and marketing studies* of the contested sign are covered by the *marketing services* of the right invoked and are therefore identical.

48. The *retail services connected with the sale of clothing and clothing accessories* of the contested sign are identical to the *retail store services in the field of clothing and clothing accessories* of the right invoked.

49. The *online retail store services in relation to clothing* of the contested sign are identical to the *on-line retailing services in the field of clothing* covered by the right invoked.

50. The *retail services relating to furniture* of the contested sign is covered by the *retail store services in the field of a wide variety of general merchandise* covered by the right invoked.

51. The service *provision of information and advice to consumers regarding the selection of products and items to be purchased* of the contested sign is similar to the *promotional services in the fashion field including counselling on the selection and matching of fashion products and accessories* of the right invoked. Indeed, the purpose of these services is the same, namely informing, advising and counselling consumers with regard to products to be purchased.

52. The service *arranging of contracts for the purchase and sale of goods and services for others* of the contested sign are similar to the *retail store services and the on-line retailing services and on-line ordering services* of the right invoked. Indeed, one of the (important) aspects of retail services will be the arranging of a deed of purchase.

53. The service *compilation of computer databases* of the contested sign is, to a certain degree, similar to the *mail order catalogue services and computer on-line ordering services* of the right invoked. Indeed, to provide the mail and on-line ordering services, the provider will need a computer database to inform the public about its products.

54. The services *provision of business and commercial information, business consultancy services, assistance and advice regarding business organization and management* of the contested sign are typically business-to-business services, provided by specialised companies to help in the management of the business affairs or commercial functions of an industrial or commercial enterprise.<sup>1</sup> These services target another public

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<sup>1</sup> J.N. Roberts, *International Trademark Classification. A Guide to the Nice Agreement*, Oxford, 2012, p. 215-216.

than the services of the right invoked. Furthermore, these services are neither complementary to nor in competition with the services of the right invoked. For all these reasons, these services are dissimilar.

55. The *office functions* of the contested sign consist of the day-to-day operations that are required by a business to achieve its commercial purpose. Office functions, if performed for a business by another entity, are activities that assist in the performance of a commercial enterprise.<sup>2</sup> These services have a different nature than those of the services covered by the right invoked. Furthermore, these services target a different public and they are not provided by the same companies. Finally, these services are neither complementary to nor in competition with those of the opponent.

### *Conclusion*

56. The goods and services of the contested sign are partly identical, partly similar and partly dissimilar to the goods and services of the right invoked.

### **A.3 Global assessment**

57. 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.

58. The average consumer is deemed to be reasonably well-informed and reasonably observant and circumspect (case Lloyd, already cited). It should also be considered 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 and services which are targeted at the public in general. For these goods and services the average level of attention of the public concerned may be deemed normal.

59. The global assessment of the likelihood of confusion assumes that there is a certain degree of interdependence between the factors that have 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).

60. It should also be taken into consideration that the average consumer usually 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 and must place their trust in the imperfect picture of those that they have kept in mind.

61. 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 trademarks invoked have a normal level of distinctiveness, as they are not descriptive of the goods and services concerned.

62. The signs are visually similar, they are also to a certain degree, phonetically similar and a conceptual comparison does not apply. The goods and services concerned are partly identical, partly similar and partly dissimilar. Based on these grounds, and given the interdependence between all the circumstances that have to be taken into account, the Office finds that the relevant public might believe that the identical and similar goods originate from the same undertaking or from economically-linked undertakings.

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<sup>2</sup> Idem.

**B. Other factors**

63. The defendant asks that the fees arising in connection with these proceedings be imposed on the opponent (see point 19). However, Rule 1.32 (3) IR clearly stipulates that the costs referred to in Article 2.16 (5) BCIP are determined at an amount equalling the basic opposition fee (in the case that the opposition is totally upheld or rejected). The defendant's request can therefore not be honoured.

**C. Conclusion**

64. The Office holds that a likelihood of confusion for the identical and similar goods and services exists.

65. The opposition partly succeeds based on the considered rights invoked. Since the remaining rights invoked are registered for exactly the same goods and services in Classes 3, 25 and 35, there is no need to examine the likelihood of confusion with regard to them.

**IV. DECISION**

66. The opposition with number 2012216 is partially upheld.

67. The Benelux application with number 1333381 will not be registered for the following goods and services:

Class 3 (*All goods*).

Class 25 (*All goods*).

Class 35 Provision of information and advice to consumers regarding the selection of products and items to be purchased; advertising; advertising particularly services for the promotion of goods; arranging of contracts for the purchase and sale of goods and services, for others; market research and marketing studies; compilation of computer databases; retail services relating to furniture; retail services connected with the sale of clothing and clothing accessories; online retail store services in relation to clothing.

68. The Benelux application with number 1333381 will be registered for the following services, which were found to be dissimilar:

Class 35 Provision of business and commercial information; business consultancy services; assistance and advice regarding business organization and management; office functions.

69. 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, 22 May 2018

Willy Neys  
*Rapporteur*

Eline Schiebroek

Saskia Smits

Administrative officer:

Raphaëlle Gérard