

**BENELUX OFFICE FOR INTELLECTUAL PROPERTY
OPPOSITION DECISION
N° 2012844
of 31 May 2021**

Opponent: **MEDION AG**
Am Zehnthof 77
45307 Essen
Germany

Representative: **Octrooibureau Vriesendorp & Gaade B.V.**
Koninginnegracht 19
2514 AB Den Haag
Netherlands

Invoked right : **EU trademark 4585295**

LIFE

against

Defendant: **Turkcell İletişim hizmetleri anonim Şirketi**
Aydınevler Mah. İnönü Cad. 20 Küçükalyalı Ofispark
Maltepe, İstanbul
Turkey

Representative: **NLO Shieldmark B.V.**
New Babylon City Offices Anna van Buerenplein 21 A
2595 DA Den Haag
Netherlands

Contested trademark: Benelux application 1342075

LIFE BOX

I. FACTS AND PROCEEDINGS

A. Facts

1. On 2 November 2016 the defendant filed an application for a trademark in the Benelux for the wordmark LIFE BOX for goods and services in classes 9, 35, 38, 41 and 42. This application was processed under number 1342075 and was published on 22 December 2016.

2. On 17 February 2017 the opponent filed an opposition against the registration of the application. The opposition is based on EU trademark registration 4585295 of the wordmark LIFE, filed on 10 August 2005 and registered on 9 February 2015 for goods and services in classes 7, 8, 9, 10, 11, 16, 28 and 42.

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

4. The opposition is directed against part of the goods and services in classes 9, 38 and 42 of the contested application and is based on all goods and services in classes 9 and 42 of the trademark invoked.

5. The grounds for opposition are those laid down in article 2.14, 2 (a) of the Benelux Convention on Intellectual Property (hereinafter: "BCIP").¹

6. The language of the proceedings is English.

B. Course of the proceedings

7. The opposition is admissible and was notified by the Benelux Office for Intellectual Property (hereinafter: "the Office") to the parties on 21 February 2017. During the administrative phase of the proceedings both parties filed arguments. The course of the proceedings meets the requirements as stated in the BCIP and the Implementing Regulations (hereinafter: "IR"). The administrative phase was completed on 20 September 2017. In addition, the proceedings were suspended ex-officio due to a cancellation action (including an appeal) directed against the trademark invoked. The action being rejected, the suspension ended on 9 March 2021.

II. ARGUMENTS

8. The opponent filed an opposition at the Office under article 2.14, 2 (a) BCIP, in accordance with the provisions of article 2.2ter, 1 (b) BCIP: the likelihood of confusion based on the identity or similarity of trademarks and of the goods or services concerned.

A. Opponent's arguments

9. The opponent argues that the trademark invoked is completely incorporated in the contested trademark. In the contested trademark, the word element LIFE is the dominant part. According to the opponent, the indication BOX is descriptive as it could refer to characteristics of the goods and services concerned. Therefore, the trademarks are visually similar.

¹ This decision shall always refer to the laws and regulations applicable on the date of the decision, except in the case of provisions which have undergone a material change during the proceedings and which are relevant to the decision.

10. With regard to the aural comparison, the opponent states that the pronunciation of the first word LIFE is identical and holds an independent place in the contested trademark. For this reason, the trademarks are aurally similar.

11. The opponent argues that the word LIFE means 'being', 'living things', 'existence' and that the word BOX in the contested trademark is the equivalent of the English word 'container, case, carton'. Conceptually neither trademark considered as a whole has a specific meaning in relation to the goods and services concerned. However, according to the opponent, the visual and aural similarity is not counteracted by any explicit conceptual difference.

12. The opponent states that the goods and services of the trademark invoked are similar to the goods and services of the contested trademark.

13. Furthermore, according to the opponent, the consumer is regularly confronted with the goods and services concerned and the level of attention of the average consumer may be regarded as at least reasonably observant.

14. The opponent concludes that there exists a risk of confusion and requests that the Office grants the opposition.

B. Defendant's arguments

15. The defendant argues that the trademarks are not identical. According to the defendant, the trademark invoked is a short mark and therefore the scope of protection is limited. The defendant states that the contested trademark is clearly longer than the trademark invoked, because it also contains the additional word BOX. Furthermore, the contested trademark will be perceived by the public as a two word mark in which both words are equally dominant. The defendant rejects the opponent's argument that the element LIFE in the contested trademark holds an independent distinctive place. The defendant argues that the mere fact that the trademark invoked is included in the contested trademark by itself is not sufficient to conclude similarity between the trademarks, because they must be examined in their entirety. The defendant also states that the trademarks differ in the second element of the contested trademark and are therefore visually and aurally similar to an average or low degree.

16. With regard to the conceptual comparison, the defendant argues that both trademarks are similar to the extent that they refer to the concept of life. According to the defendant, the word BOX does not have a specific meaning in relation to the goods and services of the contested trademark. The combination of the words LIFE and BOX conveys an impression that conceptually differs from the concept of 'life' alone. Therefore, the trademarks are conceptually different.

17. The defendant concludes that the trademarks, considered as a whole, show clear visual, aural and conceptual differences.

18. The defendant concludes that the services in class 38 of the contested trademark are not similar to the goods and services of the classes 9 and 42 of the trademark invoked. Irrespective of the possible similarity of the other goods and services, the defendant is of the opinion that the opposition should be rejected based on the fact that the trademarks LIFE and LIFE BOX are not similar.

19. With regard to the level of attention of the public, the defendant states that this will vary from average to higher than average.

20. According to the defendant, the trademark invoked not only has a limited scope of protection because it is a short mark, but it is also weak due to its descriptive nature regarding the goods and services concerned. The defendant argues that the word LIFE refers to the time between birth and death and can therefore be seen as describing the nature or qualities of these goods and services. Furthermore, the public has become accustomed to various undertakings offering goods under trademarks containing the word LIFE and therefore any differences in such trademarks will be more prominent. To substantiate this argument, the defendant refers to a long list of trademark registrations in classes 9 or 42 which contain the word element LIFE.

21. The defendant concludes that there is no likelihood of confusion between the trademarks and requests that the Office rejects the opposition.

III. DECISION

A.1 Likelihood of confusion

22. In accordance with article 2.14 BCIP, the 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 date of the application, against a trademark which in the order of priority, ranks after its own in accordance with Article 2.2ter BCIP.

23. Article 2.2ter, para. 1 BCIP stipulates that, *"A trademark shall, in case an opposition is filed, not be registered (...) where: b. because of its identity with, or similarity to, the earlier trademark and the identity or similarity of the goods or services covered by the trademarks, there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association with the earlier trademark."*

24. According to case law of the Court of Justice of the European Union (hereinafter: the "CJEU") concerning the interpretation of Directive 2015/2436 of the European Parliament and of the Council of 16 December 2015 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, 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, ECLI:NL:HR:2003:AK4818; Court of Appeal Brussels, N-20060227-1, 27 February 2006).

Comparison of the goods and services

25. 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).

26. With the comparison of the goods and services of the trademark invoked and the goods and services 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.

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

Opposition based on:	Opposition directed against:
CI 9 Magnetic encoders; magnetic data carriers; optical data media; data-processing apparatus; optical character readers; writing and/or reading implements (data processing); magnetic data carriers; mouse (data processing equipment); optical data carriers; disc exchangers (for computers); scanners [data processing equipment]; memories for data processing installations, processors (central processing units); compact discs (read-only memory); compact discs (audio-video); computers; recorded computer programs; computer software [recorded]; games programs for computers; computer operating programs (recorded); computer peripheral devices; computer programs (downloadable); computer keyboards; printers for use with computers; wrist rests for use with computers; interfaces [for computers]; laptops (computers); floppy disc drives; monitors for computers; monitors (computer hardware), navigation apparatus (computer programs) for vehicles (onboard computers); notebooks (computers); computer peripheral devices; computer programs; computer software (recorded); computer game programs; keyboards for computers; make-up removing appliances, electric; grids for electric accumulators, chargers for electric accumulators, plates for electric accumulators, electric accumulators; alarm bells, electric; connection boxes (electricity), display apparatus (electric); electronic display panels; batteries, electric; flat irons, electric; theft prevention installations, electric; electric wires; electrodynamic apparatus for the remote control of railway points; electric cables; electric capacitors; electromagnetic coils; electronic publications [downloadable]; electronic pens [visual display units]; discharge tubes, electric, other than for lighting; anti-interference devices (electricity); batteries, electric, for vehicles; electrodynamic signal	CI 9 Measurement apparatus and equipment including those for scientific, nautical, topographic, meteorological, industrial and laboratory purposes namely, thermometers, not for medical purposes, barometers, ammeters, voltmeters, hygrometers, testing apparatus not for medical purposes, telescopes, periscopes, directional compasses; speed indicators; laboratory apparatus namely, microscopes, magnifying glasses [optics], stills for laboratory experiments, furnaces for laboratory use; apparatus for recording, transmission or reproduction of sound or images namely cameras [photography], camcorders, television apparatus, video recorders, CD and DVD players and recorders, MP3 players, computers, desktop computers, tablet computers, microphones, loudspeakers, earphones; telecommunication apparatus and apparatus for the reproduction of sound or images and computer peripheral devices namely, cell phones and covers for cell phones, telephone apparatus, telephone switchboards, computer printers, scanners [data processing equipment], photocopiers [photographic, electrostatic, thermic]; magnetic and optical data media and computer software and programmes recorded thereto; downloadable electronic publications; encoded magnetic and optic cards; antennas, satellite antennas, amplifiers for antennas; ticket dispensers, automatic teller machines(ATM); electronic components used in the electronic parts of machines and apparatus namely, semiconductors, electronic circuits, integrated circuits, chips [integrated circuits], diodes, transistors [electronic], magnetic heads for electronic apparatus, deflectors (devices used for modifying the path of stream of charged particles by the use of an electric field); electronic locks, photocells, remote control apparatus for opening and closing doors, optical sensors; counters and quantity indicators for measuring quantity of consumption, automatic time switches; clothing for protection against accidents, irradiation and fire, safety vests and life-saving apparatus and equipment; eyeglasses, sunglasses, optical lenses and cases, containers, parts and

remote control apparatus; photocopiers (photographic, electrostatic, thermic); inductance coils (electricity); electric devices for attracting and killing insects; wire connectors (electricity); door bells (electric); chargers for electric batteries; hair-curlers, electrically heated; welding apparatus, electric; soldering irons, electric; solenoid valves (electromagnetic switches); measuring devices, electric; electrically heated hair curlers; locks (electric); transmitters of electronic signals; electronic security tags for goods; socks, electrically heated; electronic pens (visual display units); buzzers electric; electronic pocket translators; electronic organisers; electric door bells; door openers, electric; door closers, electric; monitoring apparatus, electric; compact discs (audio-video); receivers (audio and video); tone arms for record players; head cleaning tapes [recording]; tone arms for record players; sound recording apparatus; tape-recorders; sound locating instruments; sound carriers; sound transmitting apparatus; sound amplifiers; sound-reproducing apparatus; amusement apparatus adapted for use with television receivers; temperature indicators; video telephones; loudspeaker boxes; letter scales; compact disc players; television apparatus; telephone apparatus; motion picture cameras; film cutting apparatus; radiotelephony sets; signalling bells; altimeters; cassette players; compasses; headphones; laser pointers (luminous pointers); microphones; mobile telephones; modems; navigational instruments; lenses (optics); mouse pads (mouse mats); plotters; projection apparatus; projection screens; slide projectors, radios; smartcards (cards with integrated circuits); video games adapted for use with television receivers only; walkie talkies; video cameras; video recorders; safety helmets for sports; none of the aforesaid goods being or featuring educational and/or entertainment content intended for general circulation; the aforementioned goods exclusive of board game programs for computers, computer board games and video board games for use with television receivers only, electronic board games, video board games for a connection to a

components thereof; apparatus and instruments for conducting, transforming, accumulating or controlling electricity, namely electric plugs, junction boxes [electricity], electric switches, circuit breakers, fuses, lighting ballasts, starter cables for motors, electrical circuit boards, electric resistances, electric sockets, transformers [electricity], electrical adapters, battery chargers, electric door bells, electric and electronic cables, batteries, electric accumulators; alarms and anti-theft alarms, other than for vehicles, electric bells; signalling apparatus and instruments, luminous or mechanical signs for traffic use; fire extinguishing apparatus, fire engines, fire hose and fire hose nozzles; radar apparatus, sonars, night vision apparatus and instruments; decorative magnets; metronomes.

television, board games software, cards/discs/tapes/wires/circuits for bearing or bearing board games and/or games software and/or arcade board games, board gaming machines including slot machines.	
	CI 38 Telecommunication services; providing access to internet.
CI 42 Computer programming; conversion of data or documents from physical to electronic media; hiring out data-processing equipment; recovery of computer data; updating of computer software; computer consultancy; copying of computer programs; updating of computer software; computer software design; rental of computer software; consultancy in the field of computers; recovery of computer data; installation of computer programs, maintenance of computer software; computer systems design; systems analysis; design of computer systems; computer software design; design of computer systems; installation of computer programs; conversion of computer programmes and data (other than physical alteration); copying of computer programs; computer software rental; maintenance of computer software; recovery of computer data; conversion of data or documents from physical to electronic media; design and maintenance of websites for third parties.	CI 42 Computer services, namely, computer programming, computer virus protection services, computer system design, creating, maintaining and updating websites for others, computer software design, updating and rental of computer software, providing search engines for the internet, hosting websites, computer hardware consultancy, rental of computer hardware.

Class 9

28. The contested goods "*television apparatus, video recorders, computers, microphones, computer peripheral devices; telephone apparatus; photocopiers [photographic, electrostatic, thermic]; magnetic and optical data media; computer software and programmes recorded thereto; downloadable electronic publications*" are mentioned expressis verbis in both lists of goods and services and are therefore identical.

29. The contested goods "*Measurement apparatus and equipment including those for scientific, nautical, topographic, meteorological, industrial and laboratory purposes namely, thermometers, not for medical purposes, barometers, ammeters, voltmeters, hygrometers, testing apparatus not for medical purposes, telescopes, periscopes, directional compasses*" are either identical or highly similar to the goods "measuring devices, electric" as well as "temperature indicators" and "navigational instruments" mentioned in class 9 of the trademark invoked. All these goods have the same purpose, which is to measure, observe or indicate certain (weather)conditions and/or to assist with navigation.

30. The contested goods "*speed indicators*" are identical to the goods "measuring devices, electric" of the trademark invoked, because a speed indicator is also a measuring device. According to established case law, if the goods and services of the earlier trademark also contain goods and services that are mentioned in the application for the contested trademark, these goods and services 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).

31. The contested goods "*apparatus for recording, transmission or reproduction of sound or images namely cameras [photography], camcorders, CD and DVD players and recorders, MP3 players, desktop computers, tablet computers, loudspeakers, earphones*" are either identical or similar to the goods "optical data carriers; compact discs (read-only memory); compact discs (audio-video); computers; cassette players; loudspeaker boxes; headphones; television apparatus; motion picture cameras; video cameras; video recorders" mentioned in class 9 of the trademark invoked. All these goods have the same purpose, which is to record, transmit or reproduce sound or images.

32. The contested goods "*telecommunication apparatus and apparatus for the reproduction of sound or images namely, cell phones and covers for cell phones, telephone switchboards, computer printers, scanners [data processing equipment]*" are either identical or similar to the goods "printers for use with computers; scanners [data processing equipment]; sound recording apparatus; sound transmitting apparatus; mobile telephones" mentioned in class 9 of the trademark invoked. All these goods are devices meant for telecommunication and/or the reproduction of sound or images.

33. The contested goods "*encoded magnetic and optic cards*" fall under the broad category "magnetic encoders; magnetic data carriers; optical data media" mentioned in class 9 of the trademark invoked and are therefore identical.

34. The contested goods "*antennas, satellite antennas, amplifiers for antennas*" are also "transmitters of electronic signals", mentioned in class 9 of the trademark invoked and are therefore identical.

35. The contested "*ticket dispensers*" are machines that produce tickets. Such devices are normally used on train stations, in the metro, bus or tram or to facilitate paid parking. In order to use a ticket dispenser, a user must use the display interface to select the type and quantity of ticket. The method of payment is usually electronic. Such electronic devices are in fact a computer or data-processing apparatus. The contested "*automated teller machines (ATM)*", are electronic devices that, inter alia, facilitate cash withdrawals, deposits and balance checks. In the light of the method of use and the nature of these goods, there is a connection between the contested ticket dispensers and ATMs and the opponent's computers and data-processing apparatus. Moreover, the goods can share the same commercial origin and target the same relevant public. Therefore, the goods are at least similar to a low degree.

36. The contested goods "*electronic components used in the electronic parts of machines and apparatus namely, semiconductors, electronic circuits, integrated circuits, chips [integrated circuits], diodes, transistors [electronic], magnetic heads for electronic apparatus, deflectors (devices used for modifying the path of stream of charged particles by the use of an electric field)*" and "*apparatus and instruments for conducting, transforming, accumulating or controlling electricity, namely electric plugs, junction boxes [electricity], electric switches, circuit breakers, fuses, lighting ballasts, starter cables for motors, electrical circuit boards, electric resistances, electric sockets, transformers [electricity], electrical adapters, battery chargers, electric door bells, electric and electronic cables, batteries, electric accumulators*" are similar to the goods "grids for electric accumulators, chargers for electric accumulators, plates for electric accumulators, electric accumulators; connection boxes (electricity), display apparatus (electric); electronic display panels; electric cables; electric capacitors; electromagnetic coils", because all these goods are all meant to be used for the same technical purpose, which is to control, direct, modify

and connect electricity. Furthermore, these goods can be used in combination, share the same distribution channels, target the same relevant public and often be produced by the same manufacturers.

37. The contested goods "*electronic locks, photocells, remote control apparatus for opening and closing doors, optical sensors*" are highly similar to the goods "door openers, electric; door closers, electric; monitoring apparatus, electric; theft prevention installations, electric; door bells (electric) alarm bells (electric)" of the trademark invoked, because these goods have the same purpose, which is to control the opening and closing of doors and the monitoring thereof in order to prevent unauthorized entry. Furthermore, these goods can be used in combination, share the same distribution channels, target the same relevant public and often be produced by the same manufacturers.

38. The contested goods "*counters and quantity indicators for measuring quantity of consumption, automatic time switches*" are also measuring devices and for this reason, the goods are identical to the goods "measuring devices, electric" mentioned in class 9 of the trademark invoked.

39. The contested goods "*eyeglasses, sunglasses, optical lenses and cases, containers, parts and components thereof*" are either identical or similar to the good "lenses (optics)" of the trademark invoked. Lenses, as well as eyeglasses and sunglasses have the same purpose, which is to improve vision. Furthermore, glasses and lenses are in competition with each other, share the same distribution channels and target the same relevant public.

40. The Office finds that the contested goods "*magnifying glasses [optics]*" are also similar to the opponent's "lenses (optics)". Even though the specific purpose of the goods at issue is not the same, there is, nevertheless, some degree of similarity insofar as their basic nature and general purpose of facilitating or improving vision is the same.

41. The contested goods "*apparatus and instruments for conducting, transforming, accumulating or controlling electricity, namely electric plugs, junction boxes [electricity], electric switches, circuit breakers, fuses, lighting ballasts, starter cables for motors, electrical circuit boards, electric resistances, electric sockets, transformers [electricity], electrical adapters, battery chargers, electric door bells, electric and electronic cables, batteries, electric accumulators*" are similar to the goods "grids for electric accumulators, chargers for electric accumulators, plates for electric accumulators, electric accumulators; connection boxes (electricity), display apparatus (electric); electronic display panels; electric cables; electric capacitors; electromagnetic coils", because all these goods are meant to be used for the same technical purpose, which is to control, direct, modify and connect electricity. Furthermore, these goods can be used in combination, share the same distribution channels, target the same relevant public and often be produced by the same manufacturers.

42. The contested goods "*alarms and anti- theft alarms, other than for vehicles, electric bells*" are identical to the goods "alarm bells, electric; theft prevention installations, electric; signalling bells", because all of these goods concern a specific type of bell, with the purpose of raising an alarm.

43. The contested goods "*signalling apparatus and instruments, luminous or mechanical signs for traffic use*" are similar to the "electrodynamic apparatus for the remote control of railway points", because these goods share the same purpose, which is to control (rail) traffic without any person present. Furthermore, these goods could share the same distribution channels, target the same relevant public and are often produced by the same manufacturers.

44. The contested goods "*radar apparatus, sonars, night vision apparatus and instruments*" are similar to the goods "sound locating instruments; sound transmitting apparatus; navigational instruments". These goods share the same purpose, which is to provide sound and visual reference, as well as other information about one's surroundings, in a situation where normal visibility is not sufficient and/or possible.

45. The contested goods "*metronomes*" are a type of measuring device and are therefore identical to the goods "measuring devices, electric" of the trademark invoked.

46. The Office finds that the contested "*laboratory apparatus namely, microscopes, stills for laboratory experiments, furnaces for laboratory use*" are not similar to the goods and services of the contested trademark. These goods include various kinds of devices that can be used in a laboratory in order to conduct experiments. Although certain types of microscope are highly technological and could be connected to a computer, in the opinion of the Office, this does not establish a sufficient connection to consider them similar to the opponent's computer and electrical products. The goods have a different nature, purpose and method of use compared to the opponent's goods and services. Furthermore, these goods and services have different consumers and distribution channels.

47. The contested goods "*clothing for protection against accidents, irradiation and fire, safety vests and life-saving apparatus and equipment*" as well as the goods "*fire extinguishing apparatus, fire engines, fire hose and fire hose nozzles*" and "*decorative magnets*" are also not similar to the goods and services of the opponent, because these goods have a different nature, purpose and method of use. Furthermore, the goods also differ in consumers and distribution channels.

Class 38

48. The contested "*Telecommunication services; providing access to internet*" refer to long distance communication with the help of electronic means in order to connect people with information or with other people. The services mentioned in class 42 of the trademark invoked, such as computer programming, are necessary to provide such telecommunication services. Therefore, these services have a complementary character. Furthermore, the contested services in class 38 are similar to the opponent's "*computers; television receivers; telephone apparatus; radiotelephony sets; mobile telephones; modems*" mentioned in class 9. These goods and services have a complementary character. Although their nature is different, their purpose and distribution channels are the same (EGC, Q2web, T-242/07, 12 November 2008, ECLI:EU:T:2008:488). For these reasons, these goods and services are similar.

Class 42

49. The contested "*Computer services, namely, computer programming*" are identical to the "computer programming" services mentioned in class 42 of the trademark invoked.

50. With regard to the contested "*computer virus protection services*", the Office finds that these services could also include the opponent's services "recovery of computer data; updating of computer software; installation of computer programs". For this reason, these services are identical or highly similar.

51. The contested services "*computer system design, creating, maintaining and updating websites for others, computer software design, updating and rental of computer software*" are (nearly) identical to the services "computer systems design; design and maintenance of websites for third parties; updating of computer software; computer software design; rental of computer software".

52. The contested services "*providing search engines for the internet, hosting websites*" are highly similar to the opponent's services "design and maintenance of websites for third parties", because all of these services relate to website maintenance.

53. With regard to the contested services "*computer hardware consultancy, rental of computer hardware*", the Office finds that these services are similar to the opponent's "rental of computer software" and could also include the opponent's services "hiring out data-processing equipment". Furthermore, the contested services could be part of the services "consultancy in the field of computers" mentioned in class 42 of the trademark invoked. For these reasons, the services are (highly) similar.

Conclusion

54. The goods and services are partly identical, partly (highly) similar or similar to a low degree and partly not similar.

Comparison of the trademarks

55. The wording of Article 5, 1 (b) of the Directive (cf. article 2.2ter, 1 (b) BCIP) according to which "there exists a likelihood of confusion on the part of the public including the likelihood of association with the earlier trademark" 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).

56. 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).

57. The overall impression created in the memory of the relevant public by a complex mark might, in certain circumstances, be dominated by one or more components of that mark (CJEU, Limonchello, C-334/05 P, 12 June 2007, ECLI:EU:C:2007:333). With regard to the assessment of the dominant characteristics of one or more components of a complex trademark, account must be taken, in particular, of the intrinsic qualities of each of these components by comparing them with those of other components. In addition, account may be taken of the relative position of the various components within the arrangement of the complex mark (EGC, Matratzen, T-6/01, 23 October 2002, ECLI:EU:T:2002:261 and El Charcutero Artesano, T-242/06, 13 December 2007, ECLI:EU:T:2007:391).

58. The trademarks to be compared are the following:

Opposition based on:	Opposition directed against:
LIFE	LIFE BOX

59. According to relevant case-law, two marks are similar when, from the point of view of the relevant public, they are at least partially identical as regards one or more relevant aspects, inter alia the visual, aural and conceptual aspects (reference is made to Matratzen and Sabel, already cited). The fact that a mark consists exclusively of the earlier mark, to which another word has been added, is an indication that the two trademarks are similar (EGC, ECOBLUE, T-281/07, 12 November 2008, ECLI:EU:T:2008:489). This is especially the case when the element that the trademarks have in common still has an independent

distinctive role in the composed trademark (CJEU, THOMSON LIFE, C-120/04, 6 October 2005, ECLI:EU:C:2005:594).

60. In addition, according to the case-law, when a complex mark consists of an element juxtaposed with another trade mark, that latter mark, even where it is not the dominant component in the complex mark, may still have an independent distinctive role in the complex mark. In such a case, the complex mark and the other mark can be regarded as similar (EGC, Life Blog, T-460/07, 20 January 2010, ECLI:EU:T:2010:18).

Conceptual comparison

61. The Office considers that the words 'Life' and 'Box' are part of the basic vocabulary of the English language and will be understood by the Benelux public. The noun LIFE, inter alia, refers to living things and their activity.² The noun BOX indicates a container with a flat base and sides, typically square or rectangular and having a lid. This word could also refer to a television or a casing containing a computer.³ For this reason, the Office considers that the word 'box' is descriptive, because it could indicate the shape of the contested goods mentioned in class 9, or the goods to which the services in class 42 relate. Generally, the public will not consider a descriptive element forming part of a complex mark as the distinctive and dominant element of the overall impression conveyed by that mark (EGC, Budmen, T-129/01, 3 July 2003, ECLI:EU:T:2003:184).

62. Both trademarks contain the word LIFE, which is conceptually identical. The only difference lies in the descriptive word BOX. For this reason, the trademarks are conceptually highly similar.

Visual comparison

63. Both trademarks are purely verbal marks. The trademark invoked consists of a single word of four letters, LIFE. The contested trademark consists of two words of four and three letters, LIFE BOX.

64. The consumer normally attaches more importance to the first part of words (MUNDICOR, T-183/02 and T-184/02, 17 March 2004, ECLI:EU:T:2004:79). Both trademarks contain the identical word LIFE at the beginning. The trademarks differ because of the addition of the word BOX. However, the trademark invoked is completely included in the beginning of the contested trademark and it still has an independent distinctive role (EGC, Life Blog, already cited).

65. In the light of the above, the trademarks are visually similar.

Aural comparison

66. The trademark invoked consists of one syllable, LIFE and will be pronounced as [laɪf]. The contested trademark consists of two syllables, LIFE BOX, which will be pronounced as [laɪf bɒks]. Both trademarks contain the identical word LIFE at the beginning. As considered above, the public will attach more importance to the beginning of the signs, which is identical.

67. Therefore, the trademarks are aurally also similar.

Conclusion

² <https://en.oxforddictionaries.com/definition/life>

³ <https://en.oxforddictionaries.com/definition/box>

68. The trademarks are conceptually highly similar. Visually and aurally, they are similar.

A.2 Global assessment

69. 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.

70. 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 according to the category of goods or services in question. In the present case, the goods and services concerned could be intended for both the professional and the general public. Therefore the lowest level of attention must be taken into account. The general public is deemed to have a normal level of attention.

71. 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 trademarks 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).

72. 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 distinctiveness *per se*, because, contrary to the defendant's point of view (paragraph 20) it does not designate any characteristics of the goods and services for which it is registered.

73. However, even if the Office assumed that the trademark invoked has a weak distinctive character, it is of importance that, according to European case law, a weak distinctive character does not, by definition, mean that there is no likelihood of confusion. Although the distinctive character of the marks must be taken into account with the assessment of the likelihood of confusion, it is only one of a number of elements concerning that assessment (CJEU, Ferromix, C-579/08, 15 January 2010, ECLI:EU:T:2008:444). Even in a case involving an earlier mark of weak distinctive character, there may be a likelihood of confusion on account, in particular, of a similarity between the trademarks and between the goods or services covered (EGC, Flexi Air, T-112/03, 16 March 2005, ECLI:EU:T:2005:102 and CJEU, Kompressor, C-43/15, 8 November 2016, ECLI:EU:C:2016:837 and the case law cited there).

74. Account must also be taken of the circumstance that normally, the average consumer perceives a mark as a whole and does not proceed to analyse 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 marks but must place his trust in the imperfect picture of them that he has kept in his mind.

75. The trademarks are conceptually highly similar. Visually and aurally they are similar. The goods and services concerned are partly identical, partly similar and partly not similar. Based on these grounds, and given the interdependence between all the circumstances to be taken into account, the Office finds that the relevant public might believe that the identical and similar goods and services originate from the same undertaking or from economically-linked undertakings.

B. Other factors

76. With regard to the defendant's argument that the trademark invoked is weak, since it is also part of several other trademark registrations in relation to the goods and services in the classes 9 or 42 (paragraph 20), the Office considers that the possibility cannot be entirely excluded that, in certain cases, the coexistence of earlier marks on the market could reduce the likelihood of confusion between the two marks at issue. However, that possibility can be taken into consideration only if, at the very least, during the proceedings before the Office, the defendant has duly demonstrated that such coexistence is based upon the absence of any likelihood of confusion on the part of the relevant public between the earlier marks upon which it relies and the opponent's earlier mark on which the opposition is based, and provided that the earlier marks concerned and the marks at issue are identical (see EGC Top iX, Case T-57/06, 7 November 2007, ECLI:EU:T:2007:333 and Life Blog, already cited). However, in this case the evidence that coexisting registrations on the market were identical has not been submitted. Furthermore, the defendant has not shown that any coexistence was based on the absence of a likelihood of confusion.

C. Conclusion

77. Based on the foregoing the Office concludes that there exists a likelihood of confusion for the identical and similar goods and services.

IV. CONSEQUENCE(S)

78. The opposition with number 2012844 is partly justified.

79. Benelux application with number 1342075 will not be registered for the following goods and services which are similar:

- Class 9: Measurement apparatus and equipment including those for scientific, nautical, topographic, meteorological, industrial and laboratory purposes namely, thermometers, not for medical purposes, barometers, ammeters, voltmeters, hygrometers, testing apparatus not for medical purposes, telescopes, periscopes, directional compasses; speed indicators; magnifying glasses [optics]; apparatus for recording, transmission or reproduction of sound or images namely cameras [photography], camcorders, television apparatus, video recorders, CD and DVD players and recorders, MP3 players, computers, desktop computers, tablet computers, microphones, loudspeakers, earphones; telecommunication apparatus and apparatus for the reproduction of sound or images and computer peripheral devices namely, cell phones and covers for cell phones, telephone apparatus, telephone switchboards, computer printers, scanners [data processing equipment], photocopiers [photographic, electrostatic, thermic]; magnetic and optical data media and computer software and programmes recorded thereto; downloadable electronic publications; encoded magnetic and optic cards; antennas, satellite antennas, amplifiers for antennas; ticket dispensers, automatic teller machines(ATM); electronic components used in the electronic parts of machines and apparatus namely, semiconductors, electronic circuits, integrated circuits, chips [integrated circuits], diodes, transistors [electronic], magnetic heads for electronic apparatus, deflectors (devices used for modifying the path of stream of charged particles by the use of an electric field); electronic locks, photocells, remote control apparatus for opening and closing doors, optical sensors; counters and quantity indicators for measuring quantity of consumption, automatic time switches; eyeglasses, sunglasses, optical lenses and cases, containers, parts and components thereof; apparatus and instruments for conducting, transforming, accumulating or

controlling electricity, namely electric plugs, junction boxes [electricity], electric switches, circuit breakers, fuses, lighting ballasts, starter cables for motors, electrical circuit boards, electric resistances, electric sockets, transformers [electricity], electrical adapters, battery chargers, electric door bells, electric and electronic cables, batteries, electric accumulators; alarms and anti-theft alarms, other than for vehicles, electric bells; signalling apparatus and instruments, luminous or mechanical signs for traffic use; radar apparatus, sonars, night vision apparatus and instruments; metronomes.

- Class 38 Telecommunication services; providing access to internet.
- Class 42 Computer services, namely, computer programming, computer virus protection services, computer system design, creating, maintaining and updating websites for others, computer software design, updating and rental of computer software, providing search engines for the internet, hosting websites, computer hardware consultancy, rental of computer hardware.

80. Benelux application with number 1342075 will be registered for the following goods and services which are not similar, or against which the opposition was not directed:

- Class 9: Laboratory apparatus namely, microscopes, stills for laboratory experiments, furnaces for laboratory use; clothing for protection against accidents, irradiation and fire, safety vests and life-saving apparatus and equipment; fire extinguishing apparatus, fire engines, fire hose and fire hose nozzles; decorative magnets.
- Class 35 (*all services*)
- Class 38 Radio and television broadcasting services.
- Class 41 (*all services*)
- Class 42 Scientific and industrial analysis and research services; engineering; engineering and architectural design services; testing services for the certification of quality and standards; industrial design services, other than engineering, computer and architectural design; graphic arts designing; authenticating works of art.

81. Neither of the parties shall pay the costs in accordance with article 2.16(5) BCIP, as the opposition is partly justified.

The Hague, 31 May 2021

Eline Schiebroek
(*rapporteur*)

Diter Wuytens

Willy Neys



Administrative officer: Simonne Stevens-Vermeire