

BENELUX-OFFICE FOR INTELLECTUAL PROPERTY
OPPOSITION DECISION
N° 2013275
of 11 June 2019

Opponent : **Emil Lux GmbH & Co. KG**
Emil-Lux-Str. 1
42929 Wermelskirchen
Germany

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

Invoked right 1: **EU trademark 11147345**



Invoked right 2: **EU trademark 11147361**
LUX

against

Defendant: **DER KREIS Nederland B.V.**
Randweg 2
8061 RW Hasselt
Netherlands

Representative: **Novagraaf Nederland B.V.**
Hoogoorddreef 5
1101 BA Amsterdam
Netherlands

Contested trademark: **Benelux application 1353362**



I. FACTS AND PROCEEDINGS


A. Facts

1. On 5 May 2017 the defendant filed a Benelux trademark application for the combined word and




figurative trademark for goods and services in Classes 11, 20 and 37. This application was processed under number 1353362 and was published on 19 May 2017.

2. On 17 July 2017 the opponent filed an opposition against this application. The opposition was initially based on the following earlier trademarks:

- European Union trademark 4355558 for the combined word and figurative trademark , filed on 22 March 2005 and registered on 17 November 2008 for goods in Classes 1, 3, 4, 6, 7, 8, 9, 11, 12, 16, 17, 18, 20, 21, 22, 24, 25 and 26;
- European Union trademark 4355574 for the word trademark LUX-TOOLS, filed on 22 March 2005 and registered on 19 November 2007 for goods in Classes 1, 3, 4, 6, 7, 8, 9, 11, 12, 16, 17, 18, 20, 21, 22, 24, 25 and 26;



- European Union trademark 11147345 for the combined word and figurative trademark , filed on 29 August 2012 and registered on 9 April 2014 for goods in Classes 1, 3, 4, 6, 7, 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 24, 25 and 26;
- European Union trademark 11147361 for the word trademark LUX, filed on 29 August 2012 and registered on 27 February 2016 for goods in Classes 1, 3, 4, 6, 7, 8, 9, 10, 12, 16, 17, 18, 19, 20, 21, 22 and 26.

3. At the time of the filing of his arguments, the opponent requested the invoked rights to be limited to the third and the fourth rights invoked only.

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

5. The opposition is directed against all the goods and services of the contested application and is based on all the goods of the trademarks invoked.

6. The grounds for opposition are those laid down in Article 2.14, 2 (a) Benelux Convention on Intellectual Property (hereinafter referred to as: "BCIP").¹

7. The language of the proceedings is English.

B. Proceedings

¹ This decision refers to the laws and regulations applicable at the date of the decision, unless it concerns provisions that have undergone a material change relevant to the decision during the proceedings.

8. The opposition is admissible and the Benelux Office for Intellectual Property (hereinafter referred to as: "the Office") notified the parties on 20 July 2017. During the administrative phase of the proceedings both parties filed arguments. 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 5 March 2018.

II. ARGUMENTS OF THE PARTIES

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

A. Opponent's arguments

10. According to the opponent, the figurative elements of the first right invoked and the contested sign are ordinary geometric figures and will mainly be perceived by the relevant audience as decoration and layout. They are therefore not the most distinctive and dominant components of the overall impression created by the signs. Therefore the most dominant and distinctive element of the right invoked is the word element LUX.

11. Due to the fact that the word "Küchen" is descriptive in relation to the goods and services of the contested application, it will not be considered by the public as the distinctive and dominant element of the overall impression conveyed by the sign. Therefore the element LUX is to be regarded as the most dominant part of the contested application.

12. The most dominant and distinctive element of the rights invoked is wholly incorporated in the contested sign. The opponent concludes that the signs are visually similar.

13. Due to the descriptive character of the elements TOOLS in the first right invoked and "Küchen" in the contested sign, chances are high that the public will not pronounce these elements and will refer to the signs as "LUX". Therefore the opponent is of the opinion that the rights invoked and the contested sign are phonetically highly similar.

14. Even though the element LUX in the rights invoked may have a certain conceptual meaning, the element LUX in the contested sign does not and thus a conceptual comparison cannot be made, according to the opponent.

15. The opponent observes that the goods in class 11 of the contested application are identical to the goods in the same class of the first right invoked and are similar and complementary to the goods in classes 17, 19 and 21 of both rights invoked. Likewise, according to the opponent, the goods in class 20 of the contested application are identical to the goods in the same class and are similar and complementary to the goods in classes 6 and 24 of the rights invoked. Finally, the services in class 37 of the contested sign are similar and complementary to the goods of the earlier marks.

16. The opponent concludes that there exists a likelihood of confusion and for this reason he requests that the Office grants the opposition.

B. Defendant's arguments

17. The defendant points out that the element LUX is a well-known abbreviation for luxury, which is a common positive denomination that is often used in relation to the relevant goods and services.

Therefore, the defendant concludes that the word element LUX has a low distinctive character in relation to the goods and services to be considered.

18. Contrary to what the opponent states, the defendant is of the opinion that the device element in the contested sign is not an ordinary geometric figure. Due to the use of the various geometric figures in different colours and the size of this figure, it is the most distinctive part of the sign.

19. According to the defendant, the mere fact that the contested application encompasses the somewhat descriptive indication LUX does not automatically lead to similarity in the signs, since the word elements together are sufficiently dissimilar. The use of two X's is visually striking because the letter X is not often used twice. The typeface used in the trademarks and the sign is also entirely different.

20. Furthermore, the device elements of the signs are entirely different. As a whole, it has to be concluded that the signs are not similar from a visual point of view, according to the defendant.

21. Contrary to what the opponent states, the defendant points out that the elements "küchen" and "luxx" are equally distinctive and have to be weighed evenly in the aural comparison. The addition of the word element "küchen" at the beginning of the contested application causes it to be sufficiently distinctive from the rights invoked.

22. Since the word element "luxx" does not have a clear conceptual meaning in Dutch, French or in English, a conceptual comparison cannot be made.

23. The defendant acknowledges that part of the goods of the contested sign are identical or similar to the goods of the rights invoked. However, the remaining goods and the services in class 37 of the contested application are not similar to any of the goods of the rights invoked.

24. The defendant concludes that there exists no likelihood of confusion and therefore requests that the Office rejects the opposition and accepts the contested application.

III. DECISION

A. Likelihood of confusion

25. 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.

26. 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.*"

27. According to case law of the Court of Justice of the European Union (hereinafter: the "CJEU") concerning the interpretation of Directive (EU) 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 signs and of the goods and services


28. 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).

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 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, C334/05 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).

31. The signs to be compared are the following:

With regard to the second right invoked (European Union trademark 11147361):

Opposition based on:	Opposition directed against:
LUX	
Class 1 Tempering and soldering preparations; Adhesives used in industry.	
Class 3 Cleaning, polishing and abrasive preparations; Abrasive paper.	
Class 4 Industrial oils and greases; Lubricants; Dust absorbing, wetting and binding compositions; Fuels (including motor spirit) and illuminants.	
Class 6 Common metals and their alloys; Materials of metal for railway tracks; Ores; Metal building materials; Transportable buildings of metal; Non-electric cables and wires of common metal; Ironmongery, small items of metal hardware; Pipes and tubes of metal; Goods of metal, included in class 6; Garage doors of metal; Tool chests of metal (empty); Safes; Locks (other than electric) of metal;	

<p>Padlocks; Hoppers (non-mechanical) of metal; Ladders of metal, stepladders of metal; Pegs of metal; Wall plugs of metal; Fittings of metal for building; Fittings of metal for furniture; Tensioning and lashing straps; Rods of metal for brazing and welding; Soldering wire of metal; Posts of metal; Wire rope; Workshop equipment, As far as included in international class 06, Including tool holders (aforesaid goods of metal); Tool boxes of metal (empty); Handles of metal for tools and garden implements; Carry straps of metal; Oil cans, special-purpose containers, included in class 06 (the aforesaid goods being of metal); Posts of metal for attaching marking aids, in particular barrier tapes and warning tapes; Gates of metal; Locksets; Pegs of metal; Wall plugs of metal; Trellis and Espaliers; Clips; Clips and nails for hand tackers; Metal garage door rollers; Rollers of metal for sliding doors; none of the aforementioned goods being blinds, shutters, windows, skylights, roof-windows or accessories hereto.</p>	
<p>Class 7 Machines and machine tools, Machine coupling and transmission components (except for land vehicles); Agricultural implements other than hand-operated; Machines and machine tools, Namely colour mixing machines, Building machines, In class 7; Mechanical tools for construction, horticultural and craft purposes, mechanical horticultural and agricultural equipment; Compressors [machines]; Spray guns for paint, Compressed air guns for the extrusion of mastics, Electric glue guns, electric power staplers; Pistols and pumps for applying paints, mastics and other viscous preparations; Gas-powered soldering irons; Drill chucks (parts of machines), Drilling machines, Electric hand drills, Nut-tapping machines, Drill stands for electric hand drills; Planing machines; Trueing machines, Grinding discs (being a machine part), Cutting discs (parts of machines), Grinding wheels (parts of machines); Saws (machines), Chain saws; Current generators; Welding apparatus, gas-operated; Welding machines, electric; Lawnmowers (machines), Scarifiers (other than hand-operated); Tillers (other than hand-operated); Soil ventilators (other than hand-operated); Snow blowers (other than hand-operated); Snow shovels (other than hand-operated); Snow sweepers (other than hand-operated); Parts for motors and engines, namely spark plugs for internal combustion engines, mufflers for motors and engines (exhausts), petrol and oil filters, filters for cleaning cooling air for motors and engines, cylinders for motors and engines, cylinder heads for motors and engines, pistons for motors and engines, piston rings; Electric drives for garage doors; Elevators, In particular hoists; Electric arc welding apparatus; Lathes (machine tools); Electric turning machines; Electric straw cutting machines, motorised straw cutting machines; Grindstones (machine parts); Machines for tile laying, gas concrete and dry construction, stone, screed and concrete works, electrical and sanitary installation, masonry, parquet floor,</p>	

<p>laminare and carpet laying, plastering, painting, wallpapering and welding; Electric tools for construction and DIY, including tool bits therefor; Cordless screwdrivers, chainsaws, grinders, polishers; Drilling hammers, Electric planers, Tile cutting machines, small electric tools, Electric staplers, Electric milling machines; Mechanical garden implements, including lawnmowers and grass-trimming machines; Border shears and chainsaws, and accessories for mechanical garden equipment, namely collecting devices and apparatus covers; Spare parts for mechanical garden tools, included in class 7; Driving machines for tools; Mobile generators; Soldering and welding machines (gas-operated); Compressed air tools; Lathes (machine-operated); Wood-turning lathes (machine-operated); Pressure spraying devices (machine-operated); Couplings other than for land vehicles; Grinding inserts, grindstones and replacement parts for the aforesaid goods; Rollers and wheels for machines; Soldering irons, electric; Welding apparatus; none of the aforementioned goods being blinds, shutters, windows, skylights, roof-windows or accessories hereto.</p>	
<p>Class 8 Manually operated tools; Hand-operated implements for agricultural, horticultural and forestry purposes, and for structural engineering; Hand-operated vaporisers; Hand-operated guns for applying paints, mastics and other thick fluid products, Guns, hand-operated, for the extrusion of mastics; Spatulas [hand tools]; Snow shovels (hand tools); Ice scrapers; Sharpening stones; Tackers (hand-operated); Hand-operated riveting tools; Trowels; Saws (hand tools); Files [hand tools]; Clamps for carpenters or coopers; Tongs [hand tools]; Screwdrivers; Wrenches (hand tools); Hammers (hand tools); Axes; Lawn clippers (hand instruments); Border shears; Planes; Stationery scissors; Riveting pincers; Scraping tools (hand tools); Hand tools for tile laying, gas concrete and dry mortarless construction, stone, screed and concrete works, electrical and sanitary installation, masonry, parquet floor, laminate and carpet laying, plastering; Painting and welding; Hand tools, including cutting, separating, embossing and striking tools, in particular Japanese chisels, borers, rasps, thread cutters, planes, trowels, chisels, screwdrivers, socket wrenches and socket wrench sets, vices, pliers, tool holders, hand-operated grippers and carrying equipment, including stone-carrying equipment, sanding blocks, ferrules of metal, hand riveters, eyelet pliers; Hand-operated tile-cutting apparatus, knives, in particular pocket knives, cutter blades, glass cutters, carpet knives, blades, cutters; Scissors, including household scissors, secateurs, branch, tree and hedge clippers, hand-operated garden implements, including forks, hoes, spades, shovels, rakes, sickles, scythes, trimmers and hand-operated lawnmowers; Hand-operated vaporisers; Hand-operated pneumatic apparatus; Spare parts for the aforesaid goods; electric flat irons.</p>	

<p>Class 9 Signalling, life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; Fire-extinguishing apparatus; Electric installation material (included in class 9), Namely electric cables and Electrical wire; Material for electricity mains (wires, cables); Lustre terminals; Plugs, sockets and other contacts [electric connections]; Covers for electric outlets; Cable ducts; Volt meters; Electric welding apparatus; Welding electrode; Solderers' helmets; Time switches, automatic; Electronic security systems, namely motion detectors, gas, smoke and carbon monoxide detectors, electric theft prevention installations, bells (warning devices), optical data media, video cassettes; Solar energy collectors for electricity generation; Electric batteries, battery charging equipment; Thermostats; Thermometers (not for medical purposes); Scales; Work protection clothing (included in class 9); Protective helmets, protective sports helmets, Arm, knee and wrist guards (work safety); Gloves for protection against accidents; Locks, electric; Gloves for protection; Protective goggles and masks; Safety belts and fastening belts, except for vehicle seats, included in class 9; Voltage detectors; Intercommunication systems; Marking aids, in particular barrier tapes and warning tapes; none of the aforementioned goods being blinds, shutters, windows, skylights, roof-windows or accessories hereto.</p>	
<p>Class 10 Hearing protectors.</p>	
	<p>Klasse 11 Verlichtings-, verwarmings-, stoomopwekkings-, kook-, koel-, droog-, ventilatie- en waterleidingsapparaten en sanitaire installaties; afzuigkappen voor keukens; keukenboilers; keukenfornuizen. <i>Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; Extractor hoods for kitchens; Heaters for sink water; Kitchen ranges [ovens].</i></p>
<p>Class 12 Load and transport rollers; Rollers and Wheels for vehicles; Hose carts; Rollers and Wheels for barrows and Sack-barrows.</p>	
<p>Class 16 Printed matter; Bookbinding material; Photographs; Adhesives for stationery or household purposes; Artists' materials; Paintbrushes; Typewriters and office requisites (except furniture); Instructional and teaching material (except apparatus).</p>	
<p>Class 17 Flexible pipes, not of metal; Insulating gloves; none of the aforementioned goods being blinds, shutters, windows, skylights, roof-windows or accessories hereto.</p>	
<p>Class 18 Tool bags (empty); Tool chests of leather (empty); Tool bags (empty), not of metal, not of leather.</p>	
<p>Class 19 Building materials (non-metallic); Non-metallic rigid pipes for building; Asphalt, pitch and bitumen; none of the aforementioned goods being blinds, shutters, windows, skylights, roof-windows or accessories hereto.</p>	
<p>Class 20 Dowels, not of metal; Wall plugs, not</p>	<p>Klasse 20 Meubelen, met name keukenmeubelen,</p>

<p>of metal; Locks (other than electric), not of metal; Pasting tables; Racks [furniture]; Tool stands, Not of metal; Door stoppers, not of metal; Workshop equipment, included in class 20, including tool cabinets, small parts storage boxes, open storage boxes, sorting boxes, tool holders, machine tables, tool stands, workbenches (the aforesaid goods not of metal); Workshop equipment (furniture), including tool cabinets, storage boxes for small parts, open storage boxes, sorting boxes, machine tables, tool stands, workbenches (the aforesaid goods being of metal); Paste tables, clamping tables; Tool boxes and tool chests (empty), not of metal, not of leather; Handles for tools and garden implements, not of metal; Plastic chains, rope and chain clamps, bolts, plugs, screws, nuts, washers, hooks, rivets (the aforesaid goods all not of metal); Transport pallets; Special-purpose containers, not of masonry, not of metal, included in class 20; Ladders of wood or plastic, stepladders, not of metal; Furniture glides of felt and plastic; Coat hangers; Casters of metal for beds; Casters, not of metal, for beds; none of the aforementioned goods being blinds, shutters, windows, skylights, roof-windows or accessories hereto.</p>	<p>keukenkastjes, keukenblokken, spiegels, lijsten; van hout, kurk, riet, bies, teen, hoorn, been, ivoor, balein, schildpad, barnsteen, parelmoer, meerschium, vervangingsmiddelen van al deze stoffen of van plastic vervaardigde producten voor zover niet begrepen in andere klassen. <i>Furniture, especially kitchen furniture, kitchen cabinets, kitchen units, mirrors (silvered glass), picture frames; Goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschium and substitutes for all these materials, or of plastics.</i></p>
<p>Class 21 Sponges; Articles for cleaning purposes; Steel wool; Brooms; Funnels.</p>	
<p>Class 22 Ropes, string, nets, tents, tarpaulins, sails, sacks and bags (so far as included in class 22); Raw fibrous textile materials; Tensioning and lashing straps, not of metal; none of the aforementioned goods being blinds, shutters, windows, skylights, roof-windows or accessories hereto.</p>	
<p>Class 26 Hooks and eyes, pins and needles; Velcro.</p>	
	<p>Klasse 37 Reparatie, onderhoud, montage en installatie van keukens. <i>Repair, maintenance, construction and installation of kitchens.</i></p>
	<p><i>P.S. The original language of this application is Dutch. The English translation has been added for reasons of readability of this decision.</i></p>

32. The right invoked is a purely verbal trademark, consisting of one word of three letters. The contested application is a combined word/figurative trademark, consisting of a device element of various squares and rectangles in the colours blue, purple, yellow and green. Underneath this device element are depicted the words "Küchen" in a standard typeface in black and the word "Luxx" in elegant handwriting in purple.

33. The word LUX may be perceived as an abbreviation for Luxembourg, in which case it might allude to the geographical origin of the goods for which the trademark is registered. It may also be recognized as the unit of illuminance and, more in general, as the Latin word for "light", in which case it strongly refers to the goods that have to do with lighting. Finally, as the opponent points out, the word can be seen as an abbreviation for "luxury", indicating in a laudatory way the quality of the goods at hand.

34. 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 is in all its possible meanings descriptive of the goods concerned and has therefore a weak distinctive character.



35. The word "Küchen" in the contested sign will be recognized by the relevant public as the German word for "kitchen". Indeed, it is a common German word and it looks much like its English, Dutch and French equivalents ("kitchen", "keuken" and "cuisine" respectively). It is settled case law that, as a general rule, the public will not consider a descriptive element forming part of a complex mark to be the distinctive and dominant element in the overall impression conveyed by that mark (TEU, Budmen, T-129/01, 3 July 2003, ECLI:EU:T:2003:184). In the present case, the word *Küchen* directly evokes, in the mind of the relevant consumer, goods and services in connection with kitchens. This element of the contested sign is therefore highly descriptive of the goods and services covered by that sign.

36. The other verbal element of the contested sign has no clear conceptual meaning as it is, unlike the right invoked, written with two X's. As this combination rarely exists in any language, it will catch the eye. But the most striking element of the contested sign is of course the other figurative element consisting of a device of a variety of geometrical patterns in different colours. The Office is of the opinion that this device is the visually dominant element of the contested sign and that it in no respect resembles the right invoked.

Conclusion

37. The signs are dissimilar in their overall impression.

With regard to the first right invoked (European Union trademark 11147345):

Opposition based on:	Opposition directed against:
	
Class 1 Tempering and soldering preparations; Adhesives used in industry.	
Class 3 Cleaning, polishing and abrasive preparations; Abrasive paper.	
Class 4 Industrial oils and greases; Lubricants; Dust absorbing, wetting and binding compositions; Fuels (including motor spirit) and illuminants; Candles and wicks for lighting.	
Class 6 Common metals and their alloys; Materials of metal for railway tracks; Ores; Metal building materials; Transportable buildings of metal; Non-electric cables and wires of common metal; Ironmongery, small items of metal hardware; Pipes and tubes of metal; Goods of metal, included in class 6; Garage doors of metal; Tool chests of metal (empty); Statues of common metal; Safes; Fences of metal; Bird houses of metal; Locks (other than electric) of metal; Padlocks; Chains of metal; Hoppers (non-mechanical) of metal; Ladders of metal, stepladders of metal; Pegs of metal; Wall plugs of metal; Fittings of metal for building;	

<p>Fittings of metal for windows; Fittings of metal for furniture; Door fittings, of metal; Metal door stops; Tensioning and lashing straps; Rods of metal for brazing and welding; Soldering wire of metal; Posts of metal; Wire rope; Workshop equipment, As far as included in international class 06, Including tool holders (aforesaid goods of metal); Tool boxes of metal (empty); Handles of metal for tools and garden implements; Carry straps of metal; Oil cans, special-purpose containers, included in class 6 (the aforesaid goods being of metal); Posts of metal for attaching marking aids, in particular barrier tapes and warning tapes; Gates of metal; metal window screens; Locksets; Pegs of metal; Wall plugs of metal; Trellis and Espaliers; Clips; Clips and nails for hand tackers; Metal legs for furniture and Aluminium; Metal garage door rollers; Rollers of metal for sliding doors; Furniture casters of metal.</p>	
<p>Class 7 Machines and machine tools, Machine coupling and transmission components (except for land vehicles); Agricultural implements other than hand-operated; Machines and machine tools, Namely colour mixing machines, Building machines, In class 7; Mechanical tools for construction, horticultural and craft purposes, mechanical horticultural and agricultural equipment; Compressors [machines]; Spray guns for paint, Compressed air guns for the extrusion of mastics, Electric glue guns, electric power staplers; Pistols and pumps for applying paints, mastics and other viscous preparations; Gas-powered soldering irons; Drill chucks (parts of machines), Drilling machines, Electric hand drills, Nut-tapping machines, Drill stands for electric hand drills; Planing machines; Trueing machines, Grinding discs (being a machine part), Cutting discs (parts of machines), Grinding wheels (parts of machines); Saws (machines), Chain saws; Current generators; Welding apparatus, gas-operated; Welding machines, electric; Lawnmowers (machines), Scarifiers (other than hand-operated); Tillers (other than hand-operated); Soil ventilators (other than hand-operated); Snow blowers (other than hand-operated); Snow shovels (other than hand-operated); Snow sweepers (other than hand-operated); Parts for motors and engines, namely spark plugs for internal combustion engines, mufflers for motors and engines (exhausts), petrol and oil filters, filters for cleaning cooling air for motors and engines, cylinders for motors and engines, cylinder heads for motors and engines, pistons for motors and engines, piston rings; Electric roller blind drives, Electric drives for garage doors; Elevators, In particular hoists; Electric arc welding apparatus; Lathes (machine tools); Electric turning machines; Electric straw cutting machines, motorised straw cutting machines; Grindstones (machine parts); Machines for tile laying, gas concrete and dry construction, stone, screed and concrete works, electrical and sanitary installation, masonry, parquet floor, laminate and carpet laying, plastering, painting, wallpapering and welding; Electric tools for</p>	

<p>construction and DIY, including tool bits therefor; Cordless screwdrivers, chainsaws, grinders, polishers; Drilling hammers, Electric planers, Tile cutting machines, small electric tools, Electric staplers, Electric milling machines; Mechanical garden implements, including lawnmowers and grass-trimming machines; Border shears and chainsaws, and accessories for mechanical garden equipment, namely collecting devices and apparatus covers; Spare parts for mechanical garden tools, included in class 7; Driving machines for tools; Mobile generators; Soldering and welding machines (gas-operated); Compressed air tools; Lathes (machine-operated); Wood-turning lathes (machine-operated); Pressure spraying devices (machine-operated); Couplings other than for land vehicles; Grinding inserts, grindstones and replacement parts for the aforesaid goods; Rollers and wheels for machines; Soldering irons, electric; Welding apparatus.</p>	
<p>Class 8 Manually operated tools; Hand-operated implements for agricultural, horticultural and forestry purposes, and for structural engineering; Hand-operated vaporisers; Hand-operated guns for applying paints, mastics and other thick fluid products, Guns, hand-operated, for the extrusion of mastics; Spatulas [hand tools]; Cuttlery, cutlery of plastic or metal; Silver plate (cutlery); Snow shovels (hand tools); Ice scrapers; Sharpening stones; Tackers (hand-operated); Hand-operated riveting tools; Trowels; Saws (hand tools); Files [hand tools]; Clamps for carpenters or coopers; Tongs [hand tools]; Screwdrivers; Wrenches (hand tools); Hammers (hand tools); Axes; Lawn clippers (hand instruments); Border shears; Planes; Stationery scissors; Riveting pincers; Scraping tools (hand tools); Hand tools for tile laying, gas concrete and dry mortarless construction, stone, screed and concrete works, electrical and sanitary installation, masonry, parquet floor, laminate and carpet laying, plastering; Painting and welding; Hand tools, including cutting, separating, embossing and striking tools, in particular Japanese chisels, borers, rasps, thread cutters, planes, trowels, chisels, screwdrivers, socket wrenches and socket wrench sets, vices, pliers, tool holders, hand-operated grippers and carrying equipment, including stone-carrying equipment, sanding blocks, ferrules of metal, hand riveters, eyelet pliers; Hand-operated tile-cutting apparatus, knives, in particular pocket knives, cutter blades, glass cutters, carpet knives, blades, cutters; Scissors, including household scissors, secateurs, branch, tree and hedge clippers, hand-operated garden implements, including forks, hoes, spades, shovels, rakes, sickles, scythes, trimmers and hand-operated lawnmowers; Hand-operated vaporisers; Hand-operated pneumatic apparatus; Spare parts for the aforesaid goods; electric flat irons.</p>	
<p>Class 9 Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, checking</p>	

<p>(supervision), life-saving and teaching apparatus and instruments; Apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; Apparatus for recording, transmission or reproduction of sound or images; Fire-extinguishing apparatus; Electric installation material (included in class 9), Namely electric cables and Electrical wire; Material for electricity mains (wires, cables); Lustre terminals; Plugs, sockets and other contacts [electric connections]; Covers for electric outlets; Cable ducts; Volt meters; Electric welding apparatus; Welding electrode; Solderers' helmets; Electronic control systems for shutters, Time switches, automatic; Electronic monitoring and measuring apparatus, electronic security systems, namely motion detectors, gas, smoke and carbon monoxide alarms, radio transmitters and receivers for controlling light, electric burglar alarm installations, bells (alarm installations), door phones, telephone apparatus; Portable telephones; Answering machines; Vehicle radios, Compact disc players (CDP), Aerials and aerial accessories (included in class 09); Satellite receiving apparatus and aerials, optical data media, video cassettes; Bicycle computers; Solar energy collectors for electricity generation; Electric batteries, battery charging equipment; Measuring apparatus; Measuring tools; Thermostats; Thermometers (not for medical purposes); Scales; Signs, luminous; Work protection clothing (included in class 9); Protective helmets, protective sports helmets, Arm, knee and wrist guards (work safety); Gloves for protection against accidents; Locks, electric; Gloves for protection; Protective goggles and masks; Safety belts and fastening belts, except for vehicle seats, included in class 9; Voltage detectors; Intercommunication systems; Marking aids, in particular barrier tapes and warning tapes.</p>	
<p>Class 10 Hearing protectors.</p>	
<p>Class 11 Apparatus for lighting heating steam generating cooking refrigerating drying ventilating water supply and sanitary purposes; Sanitary apparatus.</p>	<p>Klasse 11 Verlichtings-, verwarmings-, stoomopwekkings-, kook-, koel-, droog-, ventilatie- en waterleidingsapparaten en sanitaire installaties; afzuigkappen voor keukens; keukenboilers; keukenfornuizen. <i>Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; Extractor hoods for kitchens; Heaters for sink water; Kitchen ranges [ovens].</i></p>
<p>Class 12 Vehicles; Apparatus for locomotion by land, air or water; Load and transport rollers; Rollers and Wheels for vehicles; Hose carts; Rollers and Wheels for barrows and Sack-barrows.</p>	
<p>Class 16 Paper, cardboard and goods made from these materials (included in class 16); Printed matter; Bookbinding material; Photographs; Stationery; Adhesives for stationery or household purposes; Artists' materials; Paintbrushes; Typewriters and office requisites (except furniture); Instructional and teaching material (except apparatus); Plastic materials</p>	

for packaging, included in class 16.	
Class 17 Rubber, gutta-percha, gum, mica and goods made from these materials and not included in other classes; Packing, stopping and insulating materials; Flexible pipes, not of metal; Insulating gloves; Self-adhesive tapes, other than stationery and not for medical or household purposes; Plastic film, Namely pond liners and Building membranes.	
Class 18 Leather and imitations of leather, and goods made of these materials and not included in other classes; Saddlery; Tool bags (empty); Tool chests of leather (empty); Tool bags (empty), not of metal, not of leather.	
Class 19 Building materials (non-metallic); Non-metallic rigid pipes for building; Asphalt, pitch and bitumen; Non-metallic transportable buildings; Monuments, not of metal.	
Class 20 Furniture, mirrors, picture frames; Goods (not including in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerscham and substitutes for all these materials, or of plastics; Dowels, not of metal; Wall plugs, not of metal; Window fittings, not of metal; Furniture fittings, not of metal; Door fittings, not of metal; Locks (other than electric), not of metal; Pasting tables; Racks [furniture]; Tool stands, Not of metal; Door stoppers, not of metal; Workshop equipment, included in class 20, including tool cabinets, small parts storage boxes, open storage boxes, sorting boxes, tool holders, machine tables, tool stands, workbenches (the aforesaid goods not of metal); Workshop equipment (furniture), including tool cabinets, storage boxes for small parts, open storage boxes, sorting boxes, machine tables, tool stands, workbenches (the aforesaid goods being of metal); Paste tables, clamping tables; Tool boxes and tool chests (empty), not of metal, not of leather; Handles for tools and garden implements, not of metal; Plastic chains, rope and chain clamps, bolts, plugs, screws, nuts, washers, hooks, rivets (the aforesaid goods all not of metal); Transport pallets; Special-purpose containers, not of masonry, not of metal, included in class 20; Ladders of wood or plastic, stepladders, not of metal; Furniture glides of felt and plastic; Furniture feet of wood and plastic; Coat hangers; Casters of metal for beds; Casters, not of metal, for beds; Furniture casters, not of metal.	Klasse 20 Meubelen, met name keukenmeubelen, keukenkastjes, keukenblokken, spiegels, lijsten; van hout, kurk, riet, bies, teen, hoorn, been, ivoor, balein, schildpad, barnsteen, parelmoer, meerscham, vervangingsmiddelen van al deze stoffen of van plastic vervaardigde producten voor zover niet begrepen in andere klassen. <i>Furniture, especially kitchen furniture, kitchen cabinets, kitchen units, mirrors (silvered glass), picture frames; Goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerscham and substitutes for all these materials, or of plastics.</i>
Class 21 Household or kitchen utensils and containers (not of precious metal or coated therewith); Combs and sponges; Brushes (except paint brushes); Articles for cleaning purposes; Steel wool; Brooms; Funnels.	
Class 22 Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (so far as included in class 22); Raw fibrous textile materials; Tensioning and lashing straps, not of metal.	
Class 24 Textiles and textile goods, not included in other classes.	
Class 25 Clothing, footwear, headgear.	

Class 26 Ribbons and braid; Buttons, hooks and eyes, pins and needles; Velcro.	
	Klasse 37 Reparatie, onderhoud, montage en installatie van keukens. <i>Repair, maintenance, construction and installation of kitchens.</i>

38. This right invoked is a combined word/figurative trademark. Again it contains the word LUX, depicted horizontally as well as vertically in white letters and placed in a circle on a blue rectangular background. Underneath the circle is the verbal element TOOLS, also in white letters.

39. What has been stated above also applies to this right invoked. In addition, the specific representation of the element LUX is completely different from the element "Luxx" in the contested sign and the other figurative elements in no way resemble each other.

Conclusion

40. The signs are not similar in their overall impression.

41. As neither of the rights invoked is similar to the contested sign, the Office will not proceed to the comparison of the goods and services.

A.3 Global assessment

42. 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.

43. 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.

44. 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).

45. 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 their mind.

B. Conclusion

46. On the basis of the foregoing, the Office comes to the conclusion that the trademarks invoked and the contested sign are not sufficiently similar to lead to a likelihood of confusion, even if the goods

and services were identical. For this reason, there is no need to compare de goods and services (see TEU, YoKaNa, T-103/06, 13 April 2010, ECLI:EU:T:2010:137).

IV. DECISION

47. The opposition with number 2013275 is rejected.

48. The Benelux application with number 1353362 will be registered for all the goods and services it has been applied for.

49. The opponent is under obligation to pay the defendant EUR 1,045 euros in accordance with article 2.16, 5 BCIP in conjunction with rule 1.32, 3 IR, as the opposition is not justified in its entirety. This decision constitutes an enforceable order pursuant to article 2.16, 5 BCIP.

The Hague, 11 June 2019

Willy Neys
rapporteur

Tineke van Hoey

Diter Wuytens



Administrative officer:

Rudolf Wiersinga