

BENELUX OFFICE FOR INTELLECTUAL PROPERTY
OPPOSITION DECISION
N° 2014093
of 7 August 2019

Opponent: **SOS International A/S**

Nitivej 6
2000 Frederiksberg
Denmark

Representative: **Hoogenraad & Haak Advertising & IP Advocaten**

Emerald House, Jozef Israëlkade 48 G
1072 SB Amsterdam
The Netherlands

Invoked right 1: **EU trademark 6862072**



Invoked right 2: **EU trademark 15082894**



against

Defendant: **S.O.S. INTERNATIONAL AMBULANS SERVİSİ ANONİM ŞİRKETİ**

Çobançesme Mh. Sanayi Caddesi
Nish Istanbul A Blok 10, Kat 53
BÖLÜM BAHÇELİEVLER İSTANBUL
Turkey

Representative: BAP IP bvba – Brandsandpatents

Charles de Kerchovelaan 17

9000 Gent

Belgium

Contested trademark: International application 1163301




I. FACTS AND PROCEEDINGS


A. Facts


1. On 29 March 2013 the defendant filed an international trademark application, designating the



Benelux as of 14 February 2018, for the combined word/figurative mark  for services in class 39. This application was processed under number 1163301 and the subsequent designation for the Benelux was published on 1 March 2018 in the WIPO Gazette of International Marks 2018/7.

2. On 23 April 2018 the opponent filed an opposition against the registration of the application. The opposition is based on the following earlier trademarks:

- EU trademark 6862072 of the combined word/figurative mark  filed on 24 April 2008 and registered on 7 January 2013 for services in classes 36, 39, 44 and 45;

- EU trademark 15082894 of the combined word/figurative mark  **SOS** INTERNATIONAL filed on 5 February 2016 and registered on 6 June 2016 for services in classes 35, 36, 37, 39, 41, 42, 43, 44 and 45.

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

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

5. The grounds for opposition are those laid down in article 2.18 in conjunction with 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 to the parties on 25 April 2018. 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 "IR"). The administrative phase was completed on 8 January 2019.

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.

II. ARGUMENTS

8. The opponent filed an opposition at the Benelux Office for Intellectual Property (hereinafter: "the Office") under article 2.18 in conjunction with 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. Arguments of the opponent

9. The opponent explains that he has used the sign SOS International as a primary name and trademark for its global assistance services since its foundation in 1961. Through extensive use the earlier trademark SOS International enjoys an enhanced scope of protection.

10. As for the comparison of the services, the opponent is of the opinion that the services of the defendant in class 39 are identical or at least highly similar to the services of the opponent.

11. When comparing the signs, the first element SOS is the most distinctive and dominant element in both signs. The words INTERNATIONAL and AIR can be seen as general and descriptive elements. Furthermore, both signs contain a figurative element that represents a depiction of the Morse code for SOS. Although the figurative element and the weak descriptive additional verbal elements of both signs are different, these differences are not sufficient to offset the prevailing visual similarity.

12. Aurally, the first word of the signs is pronounced identically. Due to this identical and dominant first element, there is aural similarity, according to the opponent.

13. Both signs share the international signal for emergency SOS, in writing as well as in Morse code. As the mutual dominant element of the signs has the same meaning, the signs are also conceptually similar. The opponent also refers to an earlier decision from the European Union Intellectual Property Office (in short 'EUIPO') in order to argue the distinctiveness of the word SOS.

14. Based on the foregoing, the opponent finds that the overall impression of the signs is highly similar.

15. The opponent states that the high degree of similarity between the respective services offsets any differences between the signs. The average consumer of the specific services has an average degree of attention. As such this consumer will not consider the respective signs in detail, but will focus on the identical word elements. The same goes for the group of professionals. Therefore, there exists a likelihood of confusion between the contested sign and the earlier trademarks. The opponent requests that the Office grants this opposition, refuses the registration of the contested sign and orders the defendant to pay the costs of the opposition.

B. Arguments of the defendant

16. The defendant does not contest that its services could be considered similar to some of the opponent's services.

17. With regard to the relevant public and degree of attention, the defendant argues that the relevant public here are medical professionals. The ambulance services are delivered in the context of a regulated environment and in execution of framework agreements that are the result of long and intense negotiations. The degree of attention is consequently very high.

18. Before assessing the similarity of the signs, the defendant observes that the word SOS in both signs will be recognised as the international signal used in case of emergency. This element is obviously descriptive for services relating to emergency transport. The defendant refers to the earlier refusal of a similar trademark consisting of the word elements INTERNATIONAL SOS on the ground of descriptiveness in order to support his argument. The sole coincidence in one element with no or little distinctiveness, as is the case here with the word SOS, tends to lower the degree of similarity. On the other hand the difference in the distinctive elements of the signs, in particular the red circle logo in the rights invoked, diminishes the degree of similarity and thus the likelihood of confusion, according to the defendant.

19. Visually, the signs only coincide in the descriptive element SOS. The signs are therefore only similar to a low degree.

20. Aurally, the signs differ in length. They only coincide in their first part SOS. Despite identical beginnings, the degree of similarity will be lower here, as the weak elements in the signs have a clearly different meaning. Thus the signs are aurally similar to a low degree.

21. Conceptually, both signs refer in part to the internationally recognized distress signal SOS and therefore they are similar in this respect. However, this conceptual similarity is only based on the descriptive element SOS and is offset by the visual and aural differences between the signs.

22. The defendant argues that the distinctiveness of the earlier rights as a whole must be seen as normal. Nevertheless, the verbal elements of the rights invoked are descriptive for the relevant services. Therefore they do not add to the distinctiveness of the earlier marks, which is therefore only based on the distinctive red circle logo, which has no counterpart in the contested sign.

23. Taking into account the visual and aural differences between the signs as well as the very high degree of attention of the relevant public in relation to ambulance services, the defendant considers that the signs are different enough to prevent any likelihood of confusion, even for similar services. Thus he requests that the Office rejects the opposition, accepts the contested sign and orders the opponent to pay the costs of the opposition.

III. DECISION

A.1 Likelihood of confusion

24. In accordance with article 2.14 BCIP, the applicant or holder of a prior trademark may submit a written opposition to the Office, within a period of two months to be calculated from the publication of the application, against a trademark which in the order of priority, ranks after its own in accordance with article 2.2ter BCIP.

25. Article 2.2ter, 1 BCIP stipulates, in so far as relevant, that *"A trademark shall, in case an opposition is filed, not be registered or, if registered, shall be liable to be declared invalid 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."

26. According to case law of the Court of Justice of the European Union concerning the interpretation of Directive 2015/2436/EG 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; Brussels, N-20060227-1, 27 February 2006).

Comparison of the services

27. 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).

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

29. The services to be compared are the following:

Opposition based on:	Opposition directed against:
KI 35 Advertising; business management; business administration; assistance in management of business activities; business management assistance for commercial or industrial companies; office functions; office function assistance; procurement services for others (purchasing goods and services for others); price comparison services; personnel recruitment, including recruitment and provision of medical personnel; psychological testing for the selection of personnel; advice about customer services; arranging subscriptions to telecommunication services for others; computerised file management; systemization of information into computer databases; invoicing; commercial information agencies; market research; cost price analysis; outsourcing services (business assistance); sales promotion for others; compilation of statistics; economic forecasting; advisory services and	

<p>information on all the aforesaid services. (EU trademark 15082894)</p>	
<p>KI 36 Insurance, including handling claims for travelling, health and accident insurances of other insurance companies; financial affairs; monetary affairs; excluding real estate developments. (EU trademark 6862072)</p> <p>KI 36 Insurance; financial affairs; monetary affairs; insurance services in the form of insurance assistance services; handling claims for travel, medical, health and accident insurances of other insurance companies; insurance claim assessments, handling and administration; appraisals for insurance purposes; insurance claim valuation; underwriting; insurance claims adjustment; insurance brokerage; consulting and information concerning insurance; provision of emergency cash for travellers or expats; electronic transfer of funds; provision of credit; loans (financing); financial evaluation (insurance, banking, real estate); advisory services and information on all services mentioned. (EU trademark 15082894)</p>	
<p>KI 37 Installation of automobile accessories; assembly (installation) of parts for vehicles; assembly (installation) of accessories for vehicles; vehicle maintenance and repair; repair information on vehicles. (EU trademark 15082894)</p>	
<p>KI 39 Transport, including home transportation from abroad of sick and injured travellers as well as of wrecked cars, excluding transport of foodstuffs; travel arrangement. (EU trademark 6862072)</p> <p>KI 39 Transport; packaging and storage of goods; travel arrangement; arranging of air transport; ambulance transport; air ambulance services; home transportation from abroad of sick or injured travellers or expats as well as of wrecked motor vehicles; vehicle breakdown assistance (towing), including emergency automobile towing; arranging of passenger transport; escorting of travellers; arranging the emergency replacement of airline tickets; seat reservation services for travel; freighting; delivery of</p>	<p>KI 39 Ambulance transport.</p>

<p>goods, including replacement parts and medical devices and equipment; underwater salvage; salvage operations (transport); salvaging; travel and transport reservation services; information and consultancy services relating to travel, traffic and transport; rental of vehicles for locomotion on land; physical storage of documents or data stored on electronic media. <i>(EU trademark 15082894)</i></p>	
<p>KI 41 Education; providing of training; entertainment; sporting and cultural activities; conducting recreative activities; arranging and conducting of concerts, conferences, congresses, seminars, symposiums and of workshops (education); publication of books; publishing services; provision of online publications, not downloadable; translation and language interpretation services; providing recreative facilities; recreation information; advisory services and information on all services mentioned; none of the aforementioned services related to education or training of young people or children in children's villages. <i>(EU trademark 15082894)</i></p>	
<p>KI 42 Scientific and technological services; development of computer hardware and software; computer programming; rental of computer software; biological research; scientific laboratory services. <i>(EU trademark 15082894)</i></p>	
<p>KI 43 Services for providing food and drink; temporary accommodation; emergency shelter services (providing temporary housing); tourist homes and boarding houses; holiday camp services (lodging); agencies providing temporary accommodation; reservation of temporary accommodation, including room reservation services in hotels, motels and boarding houses; rental of temporary accommodation; rental of portable buildings and tents; none of the aforementioned services related to children's villages. <i>(EU trademark 15082894)</i></p>	
<p>KI 44 Medical services, including consultancy and management of medical and surgical treatment of injured and sick travellers abroad. <i>(EU trademark 6862072)</i></p>	

<p>KI 44 Medical services; medical services, including arranging, consultancy and management of medical and surgical treatment of injured or sick travellers or expats; services of a psychologist; emergency services of a psychologist, namely provision of help and assistance of a psychologist in connection with emergencies, unexpected events and crises; medical services, including emergency medical assistance; nursing care; alternative health treatment; chiropractics; medical clinic services; health centres; health care services; physical therapy; therapy services; telemedicine services; psychological treatment and counselling via telecommunications; medical information and advisory services; services for the provision of treatment in hospitals or medical clinics of injured or sick travellers or expats; monitoring of patients; health risk assessment surveys; medical evaluation services for health, provision of reports relating to the medical examinations of individuals; arranging of accommodation in sanatoria and convalescent homes; none of the aforementioned services related to care of young people or children in children's villages.</p> <p><i>(EU trademark 15082894)</i></p>	
<p>KI 45 Personal and social services rendered by others to meet the needs of individuals during travels, including emergency relief, security service related to the protection of valuables and individuals; monitoring centre activities; legal advice.</p> <p><i>(EU trademark 6862072)</i></p> <p>KI 45 Legal services; legal advice; security services for the protection of property and individuals; guards; security consultancy; security advice and safety evaluation; guard services for the protection of valuables and individuals; personal and social services rendered by others to meet the needs of individuals during travels, namely rescue (not transport) of people (travellers) and assistance in connection with lost property and baggage; security services for the protection of valuables and individuals; monitoring centre activities; licensing of computer software (legal assistance).</p> <p><i>(EU trademark 15082894)</i></p>	




30. The services *Ambulance transport* are mentioned *expressis verbis* in the list of services of the defendant as well as in the list of services of the second right invoked and are thus identical. Furthermore the defendant's services are also identical to the services *Transport, including home transportation from abroad of sick and injured travellers as well as of wrecked cars, excluding transport of foodstuffs* of the opponent in the first right invoked. According to established case law, if the services of the earlier trademark also contain services that are mentioned in the application for the contested sign, these 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). The ambulance transport services of the defendant can be considered a specific type of transport service that fall under the scope of the transport services mentioned in the first right invoked and they can thus be considered identical.

Conclusion

31. The services of the defendant are identical to the opponent's services.

Comparison of the signs

32. The signs to be compared are the following:

Opposition based on:	Opposition directed against:
	
	

33. The wording of Article 5, 1 (b) of the Directive (cf. article 2.2ter, 1 (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).

34. 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).

35. 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).

36. 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).

37. The rights invoked are both combined word/figurative marks. They consist of two words, SOS INTERNATIONAL, preceded by a red circle composed of lines and small cubes. The red circle is placed either above the words or to the left of them. The contested sign is also a combined word/figurative mark consisting of two words, SOS AIR. SOS is written in blue and AIR in red. SOS is placed above the word AIR. Both words are separated by three dots followed by three dashes followed again by three dots, all of these dots and dashes represented in black. This figurative element in the contested sign is the representation of the Morse code for the letters SOS.

38. Generally, the public will not consider a descriptive element forming part of a 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). This is the case here for the word elements of the signs. The word SOS, that all signs have in common, refers to an international code signal of extreme distress². This term belongs to the basic knowledge of the Benelux consumer. It will immediately be understood in relation to ambulance transport services as a description that these services are called upon in times of distress. It will therefore not be perceived as a designation of commercial origin. The word INTERNATIONAL in the rights invoked is descriptive too as it indicates that these services are provided in different countries. The word AIR in the contested sign can also be perceived as descriptive as it can refer to the use of air transportation for these ambulance transport services. As the word elements of the signs are descriptive, the figurative elements of the signs, the red circle in the invoked rights and the dashes and lines (Morse code) in the contested sign, will be considered as the dominant elements and will thus draw the consumer's attention instead of the word elements.

39. The Office finds that the public will perceive these dominant figurative elements, a red circle in the rights invoked versus a combination of black dashes and dots in the contested sign, as different. The mere fact that both images are made up of several lines and dots (in the contested sign) or small cubes (in the invoked rights) is insufficient to establish an overall visual similarity between them. The overall shape, colour and position of the figurative elements differ. Moreover, although the figurative element of the right invoked – after a very thorough examination – could also be seen as a very stylized way of representing the Morse code for SOS, the Office however finds that the figurative element of the right invoked will be perceived by the relevant public as an abstract circular figure without any further meaning, whereas the figurative element of the contested sign has a clear meaning, namely the Morse code for SOS.

40. The average consumer is deemed to be reasonably well-informed and reasonably observant and circumspect (case Lloyd, already cited). It should also be borne in mind that the average consumer's level of attention is likely to vary in accordance with the category of goods or services in question. In the

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

present case, the services concerned are specialist services that require a medical training and are normally performed by medical professionals, either independent or as part of larger organizations like a first aid squad or ambulance services. On the whole these services entail specialized knowledge, skills, organisation and equipment, performed by highly trained professionals. Thus, the public's degree of attention is considered higher than average.

41. Taking into account the higher level of attention with the relevant public for ambulance transport services, the Office considers that there will be no likelihood of confusion even if the services are deemed identical. The signs contain clear visual differences, such as the use of figurative elements as well as a different composition of these elements. Furthermore, apart from the identical element SOS, the additional word elements in the signs, respectively INTERNATIONAL and AIR, have a clear and precise different meaning. These differences between the signs are sufficient to neutralize the limited points of similarity.

Conclusion

42. Therefore, in the light of the foregoing, including the higher level of attention of the specialist public for the services concerned, the Office considers that there will be no likelihood of confusion even if the services are deemed identical given that the overall impression of the signs is different.

B. Other factors

43. The opponent states that the earlier trademarks enjoy an enhanced scope of protection due to extensive use (point 9). However he did not submit any evidence to substantiate this claim. Therefore the Office cannot take into account this argument when assessing the present case.

44. The opponent refers to a similar opposition procedure before the EUIPO in order to support his arguments in this case (point 13). The Office would like to point out that it is not bound by other and/or its previous decisions. Each case has to be dealt with separately and with regard to its particularities (see, by analogy with, GEU, Curon, T-353/04, 13 February 2007, ECLI:EU:T:2007:47). For the sake of completeness, the Office would like to point out that the relevant services in the EUIPO case concerned services in classes 35 and 41, whereas the relevant services here are services in class 39.

C. Conclusion

45. Based on the foregoing, the Office is of the opinion that there is no likelihood of confusion.

IV. DECISION

46. The opposition with number 2014093 is rejected.

47. International application with number 1163301 will be registered in the Benelux.

48. The opponent shall pay the defendant 1,045 euros in accordance with article 2.16, 5 BCIP in conjunction with rule 1.28, 3 IR, as the opposition is rejected in its entirety. This decision constitutes an enforceable order pursuant to article 2.16, 5 BCIP.

The Hague, 7 August 2019

Tineke Van Hoey
(*rapporteur*)

Tomas Westenbroek

Diter Wuytens



Administrative officer: Jeanette Scheerhoorn