

**BENELUX OFFICE FOR INTELLECTUAL PROPERTY**  
**OPPOSITION DECISION**  
**N° 2017390**  
**of 30 September 2022**

**Opponent:** **Loveland Events B.V.**  
Helicopterstraat 25  
1059 CE Amsterdam  
Netherlands

**Representative:** **Leopold Meijnen Oosterbaan Advocaten**  
Raadhuisstraat 52 C  
1016 DG Amsterdam  
Netherlands

**Invoked trademark 1: Benelux trademark registration 651598**

LOVELAND

**Invoked trademark 2: Benelux trademark registration 747971**



**Invoked trademark 3: EU trademark registration 010740959**

LOVELAND

*against*

**Defendant:** **Nima Schmidt**  
Rue Philippe le Bon 12  
1000 Bruxelles  
Belgium

**Contested mark:** **Benelux trademark application 1449618**

Loveland Parade

## **I. FACTS AND PROCEEDINGS**

### **A. Facts**

1. On 3 September 2021 the defendant filed a Benelux trademark application for a wordmark "Loveland Parade" filed for services in class 41. This application was processed under number 1449618 and was published on 24 September 2021.

2. On 27 September 2021 the opponent filed an opposition against the registration of the application. The opposition is based on:

- Benelux trademark registration 651598 of the word mark LOVELAND, filed on 27 August 1999 and registered for goods and services in classes 9, 35 and 41;
- Benelux trademark registration 747971 of the combined word/figurative mark



- , filed on 10 December 2003 and registered for goods and services in classes 9, 16, 25, 35, 38, 39, 41, 42 and 43;
- EU trademark registration 010740959 of the word mark LOVELAND filed on 20 March 2012 and registered on 2 February 2013 for goods and services in classes 9, 35 and 41.

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

4. The opposition is directed against all the services covered by the contested application and is based on all of the goods and services covered by the trademarks 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").

6. The language of the proceedings is English.

### **B. Proceedings**

7. The opposition is admissible and was notified by the Benelux Office for Intellectual Property (hereinafter: "the Office" or "BOIP") to the parties on 28 September 2021. During the administrative phase of the proceedings both parties filed arguments and the opponent submitted documents to prove use of the invoked rights, for which proof of use was requested. 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 1 July 2022.

## **II. LEGAL GROUNDS AND ARGUMENTS OF THE PARTIES**

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

**A. Opponent's arguments**

9. The opponent starts his arguments with the comparison of the services covered by the contested sign and the goods and services covered by the earlier trademarks invoked. Comparing the goods and services involved, the opponent finds that the contested sign covers services identical or highly similar to the goods and services covered by the earlier trademarks invoked.

10. The earlier trademarks invoked and the sign coincide in their distinctive and therefore dominant element LOVELAND. Because of its lack of distinctive character, due to its meaning, the word element PARADE will not be perceived by the relevant public to be part of the contested sign. The word element PARADE in the contested sign will be seen by the relevant public as a mere reference to the goods and services, relating to a "parade". Therefore the earlier trademarks invoked and the contested sign are visually identical or similar to a high degree, according to the opponent.

11. Phonetically, the first and dominant element of the involved signs, being LOVELAND, is identical and has the same pronunciation. This is emphasized by the fact that LOVELAND concerns an alliteration. The element PARADE is descriptive and will not be uttered. With regard to the phonetic comparison the opponent concludes that the trademarks and the sign are identical or similar.

12. LOVELAND means 'land of love'. The invoked earlier trademarks LOVELAND, and the dominant element in the contested sign "Loveland Parade" being LOVELAND, are identical and conceptually have the same meaning. The butterfly image in the invoked word/figurative trademark has no specific meaning and only functions as an illustration. The word element PARADE is descriptive and has no other meaning than designating the services of the contested mark. According to the opponent the signs are therefore conceptually identical.

13. According to the opponent the invoked trademarks are distinctive, since they have no direct meaning with regard to the goods and services involved. The invoked trademarks serve to identify the goods and services for which they are registered, as originating from the opponent and thus to distinguish those goods and services from those of other undertakings. The opponent includes examples of use of the invoked LOVELAND trademarks through the years.

14. There exists double identity with regard to the two invoked wordmarks LOVELAND, according to the opponent, since the application reproduces all the elements constituting the two invoked wordmarks and the involved services are identical.

15. There exists likelihood of confusion with regard to all three invoked LOVELAND trademarks, according to the opponent, since the signs are similar and the goods and services are identical or similar.

16. As a result, the opponent asks the Office to reject registration of the sign applied for.

17. Following the request by the defendant to provide proof of use for "Loveland Parade", the opponent submitted proof of use for the invoked LOVELAND trademarks.

**B. Defendant's arguments**

18. The defendant starts by stating that she officially changed her name from 'Morteza Issawand' to 'Nima Schmidt' and notes that her Dance Music Organisation NASA (Nice And Safe Attitude) has been

involved in recording, merchandising, event organizing and promotion since 1991 and that it is one of the founders of the Dance Music Movement.

19. According to the defendant the opponent never scratched the boundaries of defendant's worldwide success and subsequently lists events (amongst which "loveland" events) the defendant has organized, dates and places where the events were held and other related information.

20. The defendant notes that the opponent has never managed to expand to neighbouring countries such as Germany, France and Belgium.

21. The defendant notes that the opponent has started applying for trademark registration a week after the event of the defendant "Loveland Festival/Expo 2000" was cancelled.

22. The defendant argues that she has prior common rights to the brands LOVELAND EVENTS, LOVELAND FESTIVAL and LOVELAND PARADE. This prior use of the brands can be confirmed by an online search. These brands have been in constant use. Defendant states that the opposition is not honest since the opponent should have also opposed defendant's Benelux trademark registration for "Loveland The Parade". In this opposition a comparison should have also been made by the opponent between the invoked trademarks and defendant's other registered trademark "Loveland the Parade". Defendant also states that the opponent is in bad faith since registering a trademark does not entitle anyone to other combined words or concepts. Finally the defendant argues that there is a code of honour in the world of music following which it is not allowed to use somebody else's brand without consent.

23. In support of her arguments, the defendant includes weblinks, documents and overviews showing use of LOVELAND and LOVELAND PARADE by the defendant and other information.

24. The defendant notes that she is considering asking for an injunction and she is open to negotiations. In conclusion, the defendant argues that the element PARADE is not a descriptive addition and that two festivals with the same name cannot coexist and one has to go.

25. The defendant asks the opponent to provide proof of use for the sign LOVELAND PARADE.

26. Following the proof of use submitted by the opponent in support of their invoked LOVELAND trademarks, the defendant argues that the opponent has not used LOVELAND PARADE, which is why the opponent cannot provide proof of use for LOVELAND PARADE. This shows the opposition is unfounded, according to the defendant.

### **III. DECISION**

#### **A.1 Proof of use**

27. In accordance with article 2.16bis BCIP the opponent, at the request of the defendant, shall furnish proof that the trademark invoked has been put to genuine use as provided for in article 2.23bis BCIP. Or that proper reasons for non-use existed. The evidence must show genuine use in a period of five years prior to the filing date of the trademark against which the opposition is lodged.

28. Given the fact that the invoked trademarks were registered more than five years prior to the filing date of the contested sign, a request that proof of use is submitted is legitimate.

29. In defendant's response to the submitted proof of use, the defendant argues that the opponent has never used "Loveland Parade" and argues that the defendant cannot provide proof of use for "Loveland Parade" (see paragraph 26).

30. Having regard to the principle of hearing both sides, the opposition proceedings are limited to the arguments, facts and evidence put forward by the parties.<sup>1</sup> The defendant does not dispute the proof of use submitted in support of the invoked LOVELAND trademarks, but only argues that opponent has never used "Loveland Parade". Genuine use of the invoked LOVELAND trademarks is thus manifestly *in confesso*, so that the Office does not need to examine the proof of use further.

## **A.2 Likelihood of confusion**

31. In accordance with article 2.14, 1 BCIP, the applicant or holder of a prior trademark may submit a written opposition to the Office, within a period of two months following 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, 2 BCIP.

32. Article 2.2ter (1) BCIP stipulates insofar as relevant that, "A trademark shall, in case an opposition is filed, not be registered (...): a. In case of identical trademarks filed for identical goods or services; 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."<sup>2</sup>

33. A likelihood of confusion within the meaning of this provision exists if the public may believe that the goods or services designated by that trademark and those covered by the trademark applied for come from the same undertaking or, where appropriate, from undertakings which are economically linked.<sup>3</sup>

34. According to settled case-law of the CJEU, the existence of a likelihood of confusion in the mind of the public must be assessed globally, considering all the relevant circumstances of the individual case, including the degree of similarity between the signs at issue and the goods or services concerned, the degree of recognition of the earlier trademark and the degree of distinctiveness – inherent or acquired through use – of the earlier trademark.<sup>4</sup>

### **Comparison of the goods and services**

35. With the comparison of the goods and services of the earlier trademarks invoked and the services against which the opposition is filed, the goods and services are considered only on the basis of what is expressed in the register.

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

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<sup>1</sup> Article 2.16, 1 BCIP and rule 1.21 IR.

<sup>2</sup> Article 2.2ter, 1 (b) BCIP implements article 5, 1 (b) 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. A similar provision can be found in article 8, 1 (b) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trademark.

<sup>3</sup> CJEU 11 June 2020, C-115/19 P, ECLI:EU:C:2020:469, point 54 (China Construction Bank).

<sup>4</sup> CJEU 4 March 2020, C-328/18 P, ECLI:EU:C:2020:156, point 57 (Equivalenza) and the case-law mentioned there.

| <b>Opposition based on:</b>  | <b>Opposition directed against:</b> |
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| <p><b>Benelux trademark registration 651598</b></p> <p>Cl 9 Geluidsdragers.</p> <p>Translation:<br/>Cl 9 Sound recording carriers.</p> <p><b>Benelux trademark registration 747971</b></p> <p>Cl 9 Audiovisuele en muzikale producties al dan niet vastgelegd op geluidsdragers; magnetische gegevensdragers; (schijfvormige) geluidsdragers waaronder vinyl platen, cd's, cd-rom's, cd-i's, dvd's; geluidsdragers</p> <p>Translation:<br/>Cl 9 Audiovisual and musical productions whether recorded on sound carriers or not; magnetic data carriers; (disk-shaped) sound carriers including vinyl records, CDs, CD-ROMs, CD-Is, DVDs; sound carriers.</p> <p><b>EU trademark registration 010740959</b></p> <p>Cl 9 Music recordings; Audio visual recordings.</p> |                                     |
| <p><b>Benelux trademark registration 747971</b></p> <p>Cl 16 Drukwerken; boeken; magazines, tijdschriften; flyers, posters, kaarten en andere promotionele leaflets; illustraties; foto's; reproducties; papier, karton en hieruit vervaardigde producten voor zover niet begrepen in andere klassen.</p> <p>Translation:<br/>Cl 16 Printed matter; books; magazines, periodicals; flyers, posters, cards and other promotional leaflets; illustrations; photographs; reproductions; paper, cardboard and goods made from these not included in other classes.</p>   |                                     |
| <p><b>Benelux trademark registration 747971</b></p> <p>Cl 25 Kleding, schoeisel, hoofddeksels.</p> <p>Translation:<br/>Cl 25 Clothing, footwear, headgear</p>  |                                     |

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| <p><b>Benelux trademark registration 651598</b></p> <p>CI 35 Organisatie van evenementen voor commerciële doeleinden; publiciteit ten doel hebbende het promoten van evenementen.</p> <p>Translation:<br/>CI 35 Organization of events for commercial purposes; publicity for the purpose of promoting events.</p> <p><b>Benelux trademark registration 747971</b></p> <p>CI 35 Publiciteit en promotie; publiciteit en promotie voor artiesten; publiciteit en promotie voor dansevenementen; organisatie van commerciële evenementen; publiciteit en promotie van evenementen; verspreiding van reclamemateriaal; zakelijke dienstverlening; beheer van commerciële zaken, marktwerking, -onderzoek en -analyse; professionele leiding over artistieke zaken; detachering van artiesten; merchandising; zakelijke bemiddeling bij de aankoop en verkoop van producten en diensten via Internet zogenaamde e-commerce activiteiten en advisering terzake; reclame en promotie via Internet.</p> <p>Translation:<br/>CI 35 Publicity and promotion; publicity and promotion for artists; publicity and promotion for dance events; organization of commercial events; publicity and promotion of events; distribution of advertising material; business services; management of commercial affairs, market processing, research and analysis; professional direction of artistic affairs; secondment of artists; merchandising; business mediation in the purchase and sale of products and services through the Internet so-called e-commerce activities and consulting in this regard; advertising and promotion through the Internet.</p> <p><b>EU trademark registration 010740959</b></p> |  |
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| <p>CI 35 Organization of events, exhibitions, fairs and shows for commercial, promotional and advertising purposes.</p>  |  |
| <p><b>Benelux trademark registration 747971</b></p> <p>CI 38 Uitzenden van radio- en televisieprogramma's; overbrengen van geluid en beeld via satelliet; telex-, telegraaf-, telefoon- en radiotelefonie diensten ook via Internet; persagentschappen; telecommunicatie ook via Internet.</p> <p>Translation:<br/>CI 38 Broadcasting of radio and television programs; transmission of sound and images via satellite; telex, telegraph, telephone and radio telephony services also via Internet; press agencies; telecommunications also via Internet.</p>  |  |
| <p><b>Benelux trademark registration 747971</b></p> <p>CI 39 Organiseren van reizen; reizigersbegeleiding.</p> <p>Translation:<br/>CI 39 Organizing travel; traveler assistance.</p>   |  |
| <p><b>Benelux trademark registration 651598</b></p> <p>CI 41 Organisatie van culturele, muzikale en educatieve evenementen; organisatie van clubavonden; vastleggen van geluid op dragers; produceren van muziek.</p> <p>Translation:<br/>CI 41 Organization of cultural, musical and educational events; organization of club nights; recording of sound on media; production of music.</p> <p><b>Benelux trademark registration 747971</b></p> <p>CI 41 Uitvoeren van muziek en van amusementsprogramma's, ook via radio en televisie; organiseren van educatieve, culturele, muzikale en recreatieve evenementen alsmede het reserveren van plaatsen hiervoor; het organiseren van dansevenementen; organisatie</p> | <p>CI 41 Organising events for entertainment purposes.</p> |



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| <p>van clubavonden (ontspanning); diensten van discotheken; diensten van uitvoerend artiesten; productie van muziek; samenstellen van programma's voor muziekavonden en -evenementen; uitlenen en verspreiden van boeken en tijdschriften; publiceren en uitgeven van boeken, kranten en tijdschriften; muziekwitgeverij; diensten van platenmaatschappij en opnamestudio; produceren van film en videoclips.</p> <p>Translation:<br/> CI 41 Performance of music and of entertainment programs, also through radio and television; organization of educational, cultural, musical and recreational events as well as reservation of places for these; organization of dance events; organization of club nights (entertainment); services of discotheques; services of performing artists; production of music; compilation of programs for music nights and events; lending and distribution of books and magazines; publishing and publishing of books, newspapers and magazines; music publishing; services of record company and recording studio; production of film and video clips.</p> <p><b>EU trademark registration 010740959</b></p> <p>CI 41 Organization of events for cultural purposes; Production of sound recordings.</p> |  |
| <p><b>Benelux trademark registration 747971</b></p> <p>CI 42 Beheer en exploitatie van intellectuele eigendomsrechten, waaronder auteursrechten, merkrechten en naburige rechten.</p> <p>Translation:<br/> CI 42 Management and exploitation of intellectual property rights, including copyrights, trademark rights and related rights.</p>   |  |
| <p><b>Benelux trademark registration 747971</b></p> <p>CI 43 Horecadiensten; restauratie (het verstrekken van voedsel en dranken).</p>   |  |


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| <p>Translation:<br/>         CI 43 Hospitality services; restoration (providing food and beverages).</p>   |  |
| <p><i>Note: The list of goods and services of the trademarks invoked is in Dutch. The English translation is added for the sole purpose of readability of this decision.</i></p> |  |

37. Having regard to the principle of hearing both sides, the opposition proceedings are limited to the arguments, facts and evidence put forward by the parties.<sup>5</sup> The opponent argues that the services in class 41 of the contested sign and the services in class 41 of the invoked trademarks are identical and that the services in class 41 of the contested sign are similar to the remaining goods and services of the earlier trademarks invoked (see paragraph 9). The defendant does not dispute the identity or similarity of the goods and services. The similarity of the goods and services concerned is thus manifestly in confesso, so that the Office need not examine it further. For what it's worth, the services in class 41 of the contested sign are similar to i.a. the services 'organization of cultural, musical and educational events; performance of music and of entertainment programs, also through radio and television; organization of educational, cultural, musical and recreational events as well as reservation of places for these; organization of dance events' in the invoked trademarks since they correspond in their nature, purpose and origin.

#### **Comparison of the signs**

38. To assess the degree of similarity between the conflicting signs, their visual, phonetic and conceptual similarity should be determined. The comparison must be based on the overall impression given by those signs. In the assessment, the perception of the signs by the average consumer plays a decisive role. The average consumer normally perceives a mark as a whole and does not engage in an analysis of its various details.

39. The signs to be compared are the following:

| <b>Opposition based on:</b>   | <b>Opposition directed against:</b> |
|---|-------------------------------------|
| <p>LOVELAND</p>  | <p>Loveland Parade</p>              |

<sup>5</sup> Article 2.16, 1 BCIP and rule 1.21 IR.

*Visual comparison*

40. The invoked wordmarks solely consist of the word element LOVELAND composed of eight letters. The invoked combined word/figurative mark consists of the same word element LOVELAND. Under the word element the image of a butterfly is depicted and they are placed within a square frame with rounded corners. Because of its position (upper half of the mark) and size, the word element LOVELAND clearly catches the eye. In addition, in the case of combined word/figurative trademarks, the word element often has a greater impact on the consumer than the figurative element. The reason for this is that the public does not always analyse the signs and often refers to the sign by using the word element.<sup>6</sup> The Office is of the opinion that the relevant public will perceive the verbal element LOVELAND of the invoked combined word/figurative trademark as the dominant element.

41. The contested sign is a wordmark consisting of the two words LOVELAND and PARADE, counting eight respectively six letters. With regard to the visual comparison, the opponent argues that the element LOVELAND is dominant and that the element PARADE is descriptive, non-distinctive and will therefore not be perceived by the public (see paragraph 12) as dominant. The defendant argues that PARADE is not descriptive (see paragraph 24). The word element LOVELAND in the invoked trademarks is incorporated in its entirety in the contested sign LOVELAND PARADE, while the emphasis also lies on the element LOVELAND. In general, consumers attach more importance to the first part of the sign.<sup>7</sup> The remaining elements are not similar. 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.<sup>8</sup> The fact that a sign consists exclusively of the earlier mark, to which another word has been added, is an indication that the two trademarks are similar.<sup>9</sup> This is especially the case when the element that the trademarks have in common still has an independent distinctive role in the composed trademark.<sup>10</sup>

42. In view of the foregoing, the Office considers that the signs are visually similar.

*Phonetic comparison*

43. As regards the phonetic comparison, it must be borne in mind that, strictly speaking, the phonetic representation of a combined word/figurative trademark is the same as that of its word elements, irrespective of the graphical characteristics of those components, which are more subject to examination in the context of the visual aspect of the sign.<sup>11</sup>

44. The invoked combined trademark consists of the word LOVELAND. As this word is the only (word)element of this earlier trademark, the trademark will be pronounced as such.

45. The word element in the trademarks invoked and the first element in the contested sign, LOVELAND, are identical. In general, in phonetic terms, the emphasis also lies on the first element of a sign.<sup>12</sup> In terms of length and rhythm, the pronunciation of the involved signs differs, since the contested

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<sup>6</sup> EGC 9 November 2016, T-290/15, ECLI:EU:T:2016:651, point 36 (Smarter Travel) and the case-law mentioned there.

<sup>7</sup> EGC 17 March 2004, T-183/02 and T-184/02, ECLI:EU:T:2004:79, point 81 (Mundicor).

<sup>8</sup> EGC 23 October 2002, T-6/01, ECLI:EU:T:2002:261, point 30 (Matratzen); CJEU 11 November 1997, C-251/95, ECLI:EU:C:1997:528, point 6 (Sabel).

<sup>9</sup> EGC 12 November 2008, T-281/07, ECLI:EU:T:2008:489, point 28 (Ecoblue).

<sup>10</sup> CJEU 6 October 2005, C-120/04, ECLI:EU:C:2005:594, point 37 (Thomson Life).

<sup>11</sup> EGC 21 April 2010, T-361/08, ECLI:EU:T:2010:152, point 58 (Thai Silk).

<sup>12</sup> EGC 17 March 2004, T-183/02 and T-184/02, ECLI:EU:T:2004:79, point 81 (Mundicor).

sign contains in addition to LOVELAND also the word PARADE. However, the differences do not outweigh the strong similarity due to the identical element LOVELAND.

46. In view of the foregoing, the Office finds that the signs are phonetically similar.

#### *Conceptual comparison*

47. The words 'love' and 'land' are part of the basic vocabulary of the English language and will undoubtedly be understood by the Benelux public. LOVELAND means 'land of love'. The element PARADE means 'a public procession to celebrate an important day or event'.

48. Conceptually, the trademarks are similar in so far as they both refer to the concept 'land of love'.

#### *Conclusion*

49. The trademarks in question are visually, phonetically and conceptually similar.

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

50. The global assessment must be made by reference to the average consumer, who is reasonably well-informed and reasonably observant and circumspect about the goods or services in question. However, account must be taken of the fact that the average consumer only rarely has the opportunity to make a direct comparison between the different trademarks but relies on the imperfect impression left upon him. It must also be borne in mind that the average consumer's level of attention may vary depending on the type of goods or services at issue.<sup>13</sup> In the present case, the services covered are aimed at the public at large for which the level of attention is deemed to be normal.

51. The greater the degree of distinctiveness of the earlier trademark, the greater the likelihood of confusion. Trademarks with a highly distinctive character, either by their nature or because of their reputation on the market, enjoy greater protection than trademarks with a weak distinctive character.<sup>14</sup> In the present case the invoked earlier trademarks have to be considered as having normal distinctiveness for the goods and services concerned, as they do not describe characteristics of the relevant goods and services.

52. The global assessment of the likelihood of confusion presupposes a certain coherence between the factors to be taken into account and, in particular, between the similarity of the conflicting signs and the goods or services to which they relate. Thus, a low degree of similarity between the goods or services in question may be offset by a high degree of similarity between the signs, and vice versa.<sup>15</sup>

53. The opponent filed an opposition under article 2.14 BCIP in conjunction with article 2.2ter, 1 (a) and (b) BCIP. With regard to subparagraph a (double identity of the signs and goods and services) the Office points out that this criteria needs to be interpreted very strictly. A sign is only identical to a trademark when it depicts without alteration or addition all the components of the mark.<sup>16</sup>

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<sup>13</sup> CJEU 22 June 1999, C-342/97, ECLI:EU:C:1999:323, point 26 (Lloyd Schuhfabrik Meyer).

<sup>14</sup> CJEU 29 September 1998, C-39/97, ECLI:EU:C:1998:442, point 18 (Canon).

<sup>15</sup> CJEU 4 March 2020, C-328/18 P, ECLI:EU:C:2020:156, point 59 (Equivalenza) and the case-law mentioned there.

<sup>16</sup> CJEU 20 March 2003, C-291/00, ECLI:EU:C:2003:169, point 54 (LTJ Diffusion).

54. In this case the signs are visually, phonetically and conceptually similar. The similarity of goods and services is in confesso. On the basis of these and the other factors mentioned above, and considering their interdependence, the Office considers that there is a likelihood of confusion in the sense that the public may believe that the goods and services designated by the trademarks relied on and the services to which the contested sign relates come from the same undertaking or, as the case may be, from undertakings which are economically linked.

#### **B. Other factors**

55. With regard to the change of name of the defendant to Nima Schmidt (see paragraph 18) , the Office notes that according to the register and filed arguments the applicant of the contested sign and the defendant are one and the same.

56. The defendant argues that the opponent has not managed to expand use of his mark to neighbouring countries (see paragraph 20). The defendant also includes weblinks and documents showing use of her brand and lists artists and acts that took part in events organized by the defendant. Actual use of a sign cannot be taken into account in opposition proceedings, as the comparison of the signs and goods and services is solely based on the trademark as registered and the sign as applied.<sup>17</sup>

57. The defendant notes that the opponent has started applying for trademark registration a week after the event of the defendant "Loveland Festival/Expo 2000" was cancelled (see paragraph 21) and accuses the opponent of acting in bad faith (see paragraph 22). The Office understands that the defendant questions the validity of the trademarks invoked since defendant is of the opinion they were applied for in bad faith. The Office notes that in opposition proceedings, the validity of the trademarks invoked cannot be disputed.<sup>18</sup> This requires a cancellation action before either the Office or a competent court.

58. With regard to the defendant's invocation of presumed prior (common) rights, following prior use or code of honour in the music industry (see paragraph 22), the Office notes that in opposition proceedings in the Benelux no other rights can be invoked than those that are part of the dispute. Only the invoked trademark registrations and the later sign against which the opposition is directed can be taken into account in opposition proceedings.<sup>19</sup>

59. The defendant argues that the opposition is 'not honest' since the opponent should also have opposed defendant's other Benelux trademark registration for "Loveland The Parade" and comparison should have also been made with regard to this trademark (see paragraph 22). The existence of an earlier (similar) registration by the defendant against which the opponent, for whatever reason, did not act is irrelevant in the context of the present opposition. After all, the opponent is free to file an opposition against a trademark registration that is younger than his mark, if he considers that it may cause a likelihood of confusion amongst the public.<sup>20</sup>

60. The defendant argues that registering a trademark does not entitle anyone to other combined words or concepts (see paragraph 22). The Office notes that the proprietor of a prior registered trademark is, inter alia, entitled to take action against use in the course of trade of an identical or similar sign for identical or similar goods or services if there exists likelihood of confusion.<sup>21</sup>

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<sup>17</sup> CJEU 15 March 2007, C-171/06 P, ECLI:EU:C:2007:171, point 59 (Quantum).

<sup>18</sup> CJEU 24 May 2012, C-196/11 P, ECLI:EU:C:2012:314, point 40 (Formula One Licensing).

<sup>19</sup> EGC 23 October 2002, T-6/01, ECLI:EU:T:2002:261, point 55 (Matratzen); EGC 21 April 2005, T-269/02, ECLI:EU:T:2005:138, point 26 (Ruffles); EGC 13 April 2010, T-103/06, ECLI:EU:T:2010:137 (YoKaNa).

<sup>20</sup> BOIP, 30 June 2009, opposition decision 2002357, point 53 (Benzo).

<sup>21</sup> Article 2.20, 2 (b) BCIP.

**C. Conclusion**

61. Based on the foregoing the Office is of the opinion that there exists a likelihood of confusion.

**IV. DECISION**

62. The opposition with number 2017390 is justified.

63. The Benelux application with number 1449618 will not be registered.

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



The Hague, 30 September 2022

*Yvonne Noorlander*  
(rapporteur)

*Camille Janssen*

*Tomas Westenbroek*

Administrative officer: Vincent Munier