

**BENELUX OFFICE FOR INTELLECTUAL PROPERTY**  
**OPPOSITION DECISION**  
**N° 2017705**  
**of 07 March 2023**

**Opponent:** **Helix Pflanzen GmbH**  
Ludwigsburger Str. 82  
70806 Kornwestheim  
Germany

**Representative:** **Office Freylinger S.A.**  
Route d'Arlon 234  
8010 Strassen  
Luxembourg

**Invoked trademark 1: EU trademark registration 16789042**

HELIX

**Invoked trademark 2: EU trademark registration 7311798**

HELIX

*against*

**Defendant:** **TenCate Grass Holding B.V.**  
G. van der Muelenweg 2  
7443 RE Nijverdal  
Netherlands

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

**Contested sign:** **Benelux trademark application 1451446**

HELIX TECHNOLOGY

## **FACTS AND PROCEEDINGS**

### **A. Facts**

1. On 6 October 2021, the defendant filed a Benelux trademark application for the wordmark HELIX TECHNOLOGY, for goods in classes 17 and 27 and services in class 42 and 44. This application was processed under number 1451446 and was published on 9 November 2021.

2. On 3 January 2022, the opponent filed an opposition against the registration of the application. The opposition is based on the following earlier registrations:

- EU trademark registration 16789042 of the verbal trademark HELIX, filed on 2 June 2017 and registered on 11 December 2017 for services in classes 35, 44 and 45;
- EU trademark registration 7311798 of the verbal trademark HELIX, filed on 14 October 2008 and registered on 20 May 2009 for goods in class 31 and services in class 44.

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

4. The opposition is based on all goods and services of the trademark invoked and directed against all goods and services in class 27 and 44 covered by the contested application. In the course of the proceedings the defendant limited the goods in class 27 and deleted the services in class 44 of the contested application.

5. The language of the proceedings is English.

### **B. Proceedings**

6. The opposition is admissible and was notified by the Benelux Office for Intellectual Property (hereinafter: "the Office") to the parties on 14 January 2022. During the administrative phase of the proceedings both parties filed arguments and at the request of the defendant the opponent submitted proof of use. The course of the proceedings meets the requirements as stated in the Benelux Convention on Intellectual Property (hereinafter: "BCIP") and the Implementing Regulations (hereinafter: "IR"). The administrative phase was completed on 30 September 2022.

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

7. The opponent filed his 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 trademark and sign and of the goods or services concerned.

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

8. The opponent argues that both the trademarks invoked and the contested sign are verbal trademarks containing the identical distinctive element HELIX. According to the opponent, the term "TECHNOLOGY" of the contested sign is descriptive and is therefore not relevant in the comparison. For this reason the signs are visually and aurally highly similar, if not identical.

9. According to the opponent the word HELIX in both signs has no meaning and is to be considered a fanciful term. Consequently, the opponent states that the visual and aural identity between the trademarks invoked and the contested sign is being reinforced.

10. The opponent argues that the "artificial turf for sports purposes" in class 27 of the contested sign is very similar to the products "turf" or "ground-covering plant mats or pillows" of Class 31 of the second trademark invoked. If any difference should be pointed out, it results from the nature of the turf, that is to say artificial material vs natural material. However, all other elements related to both products are identical since the "turfs", being artificial or natural, are provided by the same channels, share the same purpose (covering grounds) and aim at the same end-consumers who wish to cover their grounds with turfs.

11. Furthermore, the goods in class 27 of the contested sign are similar by complementarity with the services of Class 44 of the trademarks invoked, since their respective production, sales or provision may come from the same undertaking to serve the same purpose (covering grounds).

12. In the light of the above, the opponent argues that the consumer might be misled by the contested sign, containing the element "Technology" and believe that the products offered under this trademark are the "technical" artificial variant of the original HELIX products, which the opponent created with lots of research and financial efforts.

13. The opponent concludes that there is a risk of confusion and requests that the Office rejects the contested sign and orders that the defendant should bear the costs.

#### *Proof of use*

14. At the defendant's request, the opponent submits evidence of use for the second trademark invoked. The opponent points out that the first trademark invoked is not yet subject to the genuine use requirement. Furthermore, the opponent argues that the submitted proof of use relates to the relevant goods in class 31 and the relevant services in class 44. The evidence submitted concerns, inter alia, invoices, price lists, brochures and flyers.

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

15. The defendant states that the proof of use submitted mainly relates to the use of Helix as a tradename and not the use of HELIX as a trademark for the goods in class 31. Furthermore, several documents refer to the name 'Hedera Helix', which describes a plant species. The defendant argues that in respect of the ground coverings, the indication 'helix' is used only in combination with Hedera (as Hedera helix in lower case letters) which describes the plant species used for the ground coverings.

16. According to the defendant, the trademarks invoked consist solely of the element HELIX and in respect of the goods in class 31, the sign will clearly bring to mind Hedera helix, being a plant species, namely an ivy. The defendant further argues that the goods of the opponent are mainly fabricated from Hedera Helix, explaining their trademark HELIX. The scope of protection of the trademark HELIX in relation to the goods in class 31, but also the services in classes 35, 44 and 45 is weak since it merely indicates the characteristics of the goods and services for which it is registered. The impact of this element is therefore limited when assessing the likelihood of confusion between the marks. For this reason, the defendant states that it is reasonable to assume that the public will perceive the suffix TECHNOLOGY in the contested sign, as sufficiently distinctive. Furthermore, despite the fact that the signs are partly identical, there is no risk of confusion, because of the dissimilarity between the goods under comparison.

17. The defendant argues that he creates the best and most sustainable synthetic surfaces for the sports industry and that he is an important importer to vendors in the specific industry of artificial turf components, whilst the opponent is active in the development of nature-based solutions creating products such as green walls which provide solutions for landscaping, backyards, noise barriers and building facades.

18. According to the defendant, the nature and purpose of the contested goods are different from the opponent's goods and services and the relevant public is not likely to confuse the goods, because they are different products with very different effects and methods of use. The relevant public will never assume that the goods could come from the same undertaking. Furthermore, it is clear that the channels of trade are different. For these reasons, the goods and services are not similar in nature, purpose, method of use, nor are they complementary or in competition.

19. In the light of the above, the defendant concludes that there does not exist a likelihood of confusion and requests that the Office rejects the opposition and rules that the opponent should pay the costs.

### **III. DECISION**

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

20. 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 or priority date of the trademark against which the opposition is lodged.

21. The filing date of the contested trademark is 6 October 2021. Therefore, the opponent was required to show use of the invoked trademarks during the period from 6 October 2016 to 6 October 2021 ('the relevant period'). Given the fact that the second trademark invoked (EU trademark 7311798) was registered more than five years prior to the filing date of the contested trademark, the defendant's request for proof of use is legitimate only for this earlier trademark.

22. In accordance with the case-law of the European Court of Justice ("CJEU") there is genuine use of a trademark if the mark, in accordance with its essential function, which is to guarantee the identity of the origin of the goods or services for which it is registered, is used in order to create or preserve an outlet for those goods or services, not including token use for the sole purpose of preserving the rights conferred by the mark.<sup>1</sup> When assessing whether use of the trade mark is genuine, regard must be had for all the facts and circumstances relevant to establishing whether the commercial use of the mark is real, particularly the practices regarded as warranted in the relevant economic sector as a means of maintaining or creating market shares for the goods or services protected by the mark, the nature of those goods or services, the characteristics of the market and the scale and frequency of use of the mark.<sup>2</sup> In that regard, the condition relating to genuine use of the trademark requires that the mark, as protected in the relevant territory, be used publicly and outwardly.<sup>3</sup>

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<sup>1</sup> CJEU 3 July 2019, C-668/17, ECLI:EU:C:2019:557, point 38 (Viridis), and CJEU 11 March 2003, C-40/01, ECLI:EU:C:2003:145, point 43 (Ansul).

<sup>2</sup> CJEU 31 January 2019, C-194/17, ECLI:EU:C:2019:-80, point 83 (Pandalis), and CJEU 11 March 2003, C-40/01, ECLI:EU:C:2003:145, point 43 (Ansul).

<sup>3</sup> General Court (EU) 4 April 2019, T-910/16 and T-911/16, ECLI:EU:T:2019:221, point 29 and the case-law mentioned there (Testa Rossa).

23. The General Court held that use of the earlier mark need not always be quantitatively significant for it to be deemed genuine.<sup>4</sup> In interpreting the concept of genuine use, account should be taken of the fact that the *ratio legis* of the requirement that the mark must have been put to genuine use is not to assess commercial success or to review the economic strategy of an undertaking, nor is it to restrict trademark protection to the case where large-scale commercial use has been made of the marks.<sup>5</sup>

24. Genuine use of a trademark cannot be proven by means of probabilities or suppositions but must be demonstrated by solid and objective evidence of effective and sufficient use of the trademark on the market concerned.<sup>6</sup>

25. The trademark invoked is a trademark of the European union. Whilst it is reasonable to expect that an EU trademark should – because it enjoys more extensive territorial protection than a national trade mark – be put to use in a larger area than the territory of a single Member State in order for that use to be capable of being deemed to be ‘genuine use’, it is not necessary that the mark should be used in an extensive geographic area for the use to be deemed genuine, since such a qualification will depend on the characteristics of the product or service concerned on the corresponding market.<sup>7</sup> It should be demonstrated that the trademark is used for the purpose of maintaining or creating market share within the EU, taking into account all relevant facts and circumstances such as characteristics of the market concerned, the nature of the goods or services protected by the trademark and the territorial extent and the scale of the use as well as its frequency and regularity.<sup>8</sup>

26. Following rule 1.25, paragraph 2 IR the proof of use should contain evidence of the place, duration, extent and manner of use of the trademark invoked for the goods on which the opposition is based.

### **Analysis of the proof of use**

27. The opponent submitted the following proof of use:

1. Invoices dated between 2016 - 2021, showing the name ‘HELIX’ on the right upper side of the invoices and describing products named Helix® Rasenplatte (lawn tiles/plates/panels) and Helix® Repen regarding purchasers in the Netherlands and Germany;
2. Price lists from 2016 - 2021, showing prices for products named Helix Rasenplatte and Helix Gründach (green roof);
3. Brochures regarding the services of Helix and showing information about Helix Grass Tiles, Helix Green Roof, Helix Elata, Helix Urbana and Helix Repens;
4. Flyer concerning the participation of Helix on a Conference in Slovenia, dated 17 May 2016, showing information about growing plants in urban areas;
5. Affidavit of Mr Müller, CEO of Helix Pflanzen GmbH & Helix Pflanzensysteme GmbH, confirming the revenues made by the opponent between 2016 - 2021;
6. Screen print of the website [www.helix-pflanzen.de](http://www.helix-pflanzen.de), showing the Hedera helix;
7. Information regarding the website traffic of the opponent’s website.

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<sup>4</sup> General Court (EU) 8 July 2004, T-334/01, ECLI:EU:T:2004:223, point 36 (Hipoviton), and General Court (EU) 30 April 2008, T-131/06, ECLI:EU:T:2008:135, point 41 (Sonia Sonia Rykiel).

<sup>5</sup> General Court (EU) 4 April 2019, T-910/16 and T911/16, ECLI:EU:T:2019:221, point 28 and the case-law mentioned there (Testa Rossa).

<sup>6</sup> General Court (EU) 8 July 2020, T-686/19, ECLI:EU:T:2020:320, point 35 (GNC LIVE WELL).

<sup>7</sup> General Court (EU) 1 June 2022, T-316/21, ECLI:EU:T:2022:310, point 73 (Superior Manufacturing) and CJEU 19 December 2012, C-149/11, ECLI:EU:C:2012:816, points 50 and 54 (ONEL).

<sup>8</sup> CJEU 19 December 2012, C-149/11, ECLI:EU:C:2012:816, point 58 (ONEL).

28. After examination of the evidence, the Office agrees with the defendant that the proof of use does not show genuine use regarding the goods in class 31. However, the invoices, price lists and information in the brochures do show that the opponent provides services regarding greening of inter alia roofs, paths, buildings and urban areas (see nos. 1, 2 and 3). These types of services are part of the broader category of 'Agriculture, horticulture and forestry services' in class 44 for which both trademarks invoked are registered. Thus, to the extent that genuine use is demonstrated, it relates to services that are also part of the services of the first trademark invoked (at the time not yet submitted to the obligation of genuine use).

### *Conclusion*

29. The evidence of use relates to services which are also part of the services for which the first trademark invoked is registered, and which is identical to the second. Due to procedural reasons, the Office will therefore proceed with the comparison of the first trademark invoked with the contested sign.

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

30. 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.

31. Article 2.2ter (1) BCIP stipulates insofar as relevant 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."*<sup>9</sup>

32. 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>10</sup>

33. According to settled case-law of the Court of Justice of the European Union (hereinafter: "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>11</sup>

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

34. In assessing the similarity of the goods and services concerned, account must be taken of all the relevant factors which characterise the relationship between them. 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.<sup>12</sup>

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<sup>9</sup> Art. 2.2ter (1)(b) BCIP implements art. 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 art. 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>10</sup> CJEU 11 June 2020, C-115/19 P, ECLI:EU:C:2020:469, point 54 (China Construction Bank).

<sup>11</sup> CJEU 4 March 2020, C-328/18 P, ECLI:EU:C:2020:156, point 57 (Equivalenza) and the case-law mentioned there.

<sup>12</sup> CJEU 29 September 1998, C-39/97, ECLI:EU:C:1998:442, point 23 (Canon).

35. In comparing the goods and services, the goods and services shall be considered in the terms set out in the register and not the actual or intended use.<sup>13</sup>

36. In his arguments, the opponent only compares the goods of the contested sign to the services in class 44 of the first trademark invoked. The goods and services to be compared are therefore the following:

Opposition based on:	Opposition directed against:
	CI 27 Artificial turf for sports purposes.
CI 44 Agriculture, horticulture and forestry services; Plant care; Landscape architecture and landscape gardening, namely planning and development of the planting and/or populating with plants of transportable buildings of metal; Landscape architecture and landscape gardening, namely planning and development of transportable buildings of metal in the form of a wall or wall elements comprising plant containers and the planting and/or populating with plants thereof; Landscape architecture and landscape gardening, namely planning and development of transportable buildings with plant containers and the planting and/or populating with plants thereof; Landscape architecture and landscape gardening, namely planning and development of transportable platforms of metal with plant containers and the planting and/or populating with plants thereof; Populating with plants and care of transportable buildings of metal in the form of a wall or wall elements comprising plant containers with plants.	

37. The goods covered by the contested sign, namely '*Artificial turf for sports purposes*' relate to artificial grass. The trademark invoked is registered for the broad category of 'horticulture services'. These services may also include services relating to landscape and turf design. This could include turf management for large areas of grass, such as a golf court or other types of sports fields. Furthermore, in the present case, the relationship between the abovementioned services and the services covered by the trademark invoked is close in the sense that the Office finds that it is not uncommon that a company that is involved in laying grass also provides services relating to artificial grass.

38. Therefore, the Office finds that the services of the trademark invoked, which includes landscape architecture, are complementary to the goods required for this purpose. These goods could not only relate to goods in class 31, such as grass, plants or ground cover, but also competing goods such as the very specific goods in class 27 of the contested sign.

39. In addition, regarding the perception of the public, the Office also considers that in situations involving the purchase of artificial turf, prior consideration is usually given to whether the ground in question should be covered with natural grass or artificial grass.

<sup>13</sup> General Court (EU) 16 June 2010, T-487/08, ECLI:EU:T:2010:237, point 71 (Kremezin).

40. The goods and services have a sufficiently close relationship that the public may think that these originate from the same company. For that reason, the Office considers that the contested goods are at least similar to a low degree to the services of the trademark invoked.

### **Comparison of the signs**

41. 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.<sup>14</sup>

42. Although the comparison must be based on the overall impression made by those signs on the relevant public, account must nevertheless be taken of the intrinsic qualities of the signs at issue.<sup>15</sup> The overall impression created in the mind of the relevant public by a complex trademark may, in certain circumstances, be dominated by one or more of its components. Regarding the assessment whether this is the case, account must be taken, in particular, of the intrinsic qualities of each of those components by comparing them with those of other components. In addition and accessorially, account may be taken of the relative position of the various components within the arrangement of the complex mark.<sup>16</sup>

43. The assessment of the similarity between the signs, regarding the visual, aural and conceptual similarity of the signs, must be based on the overall impression created by them, taking into account, inter alia, their distinctive and dominant components.

44. The signs to be compared are the following:

<b>Opposition based on:</b>	<b>Opposition directed against:</b>
HELIX	HELIX TECHNOLOGY

### *Conceptual comparison*

45. The defendant argues that the word 'helix' refers to the 'Hedera helix', which is the Latin name for 'ivy' (a type of plant). However, the Office finds that at least part of the public in the Benelux is not aware of the fact that the word 'HELIX' is part of the name 'Hedera helix', nor that this name refers to ivy.

46. Insofar the public believes that 'Helix' refers to a plant, this would also be the case for the contested sign, which leads to the finding of a conceptual similarity between the signs.

47. The term 'technology' refers to 'scientific knowledge used in practical ways in industry'.<sup>17</sup> The public will perceive this part as less distinctive, because it describes a characteristic of the goods in question.

<sup>14</sup> CJEU 4 March 2020, C-328/18 P, ECLI:EU:C:2020:156, point 58 and the case-law mentioned there (Equivalenza).

<sup>15</sup> CJEU 4 March 2020, C-328/18 P, ECLI:EU:C:2020:156, point 71 and the case-law mentioned there (Equivalenza).

<sup>16</sup> General Court (EU) 23 October 2002, T-6/01, ECLI:EU:T:2002:261, points 34 en 35 (Matratzen) and 13 December 2007, T-242/06, ECLI:EU:T:2007:391, point 47 (El Charcutero Artesano).

<sup>17</sup> <https://www.oxfordlearnersdictionaries.com/definition/english/technology>



48. The Office therefore considers that for part of the public, the word HELIX does not have a clearly established meaning and will be perceived a fantasy word without any meaning. For another part of the public, the signs are conceptually similar, because they both refer to ivy.

#### *Visual comparison*

49. Both the trademark invoked and the contested sign are purely verbal marks. The trademark invoked consists of one five-letter word, HELIX. The contested sign consists of two words of five and ten letters respectively, HELIX TECHNOLOGY.

50. The trademark invoked is fully and independently repeated at the beginning of the contested sign. 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>18</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>19</sup> Furthermore, the similarity lies at the beginning, and this is the part to which the public will pay most attention.<sup>20</sup>

51. Based on the foregoing, the Office finds that the signs are visually highly similar.

#### *Aural comparison*

52. The trademark invoked consists of a word of two syllables: "HE-LIX". The contested sign consists of two words and six syllables: "HE-LIX-TECH-NOL-O-GY". The pronunciation of the first two syllables is identical. The contested sign contains more syllables than the invoked mark. As a result, the pronunciation of the signs differs in length and rhythm. As also mentioned with the visual comparison, the Office finds that the public will pay less attention to the second word 'technology', due to its descriptive character. Furthermore, the similarity lies at the beginning to which the public pay more attention.

53. The Office therefore finds that the signs are aurally highly similar.

#### *Conclusion*

54. A conceptual comparison is not an issue for part of the public. The signs are visually and aurally highly similar.

#### **Global assessment**

55. 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>21</sup> The relevant public for the relevant goods and services consists of both the public at large with an average level of attention and professionals with a higher level of attention. For

<sup>18</sup> EGC 12 November 2008, T-281/07, ECLI:EU:T:2008:489, point 28 (Ecoblue).

<sup>19</sup> CJEU 6 October 2005, C-120/04, ECLI:EU:C:2005:594, point 37 (Thomson Life).

<sup>20</sup> General Court (EU), 17 March 2004, T-183/02 and T-184/02, ECLI:EU:T:2004:79, point 81 (Mundicor).

<sup>21</sup> CJEU 22 June 1999, C-342/97, ECLI:EU:C:1999:323, point 26 (Lloyd Schuhfabrik Meyer).

this reason, the lowest level of attention must be taken into account, which means that the public is deemed to have a normal level of attention.

56. The higher 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>22</sup> In this case, the trademark invoked has a normal distinctiveness, as it is not descriptive for the services concerned.

57. Defendant argues that the distinctive character of 'helix' is weak, because it refers to ivy (see paragraph 16). However, the Office finds that the word 'helix' is not descriptive for the goods and services for which a low degree of similarity has been established. Furthermore, part of the public will perceive 'HELIX' as a fantasy name (see paragraph 43). In this context, the Office notes that confusion among part of the public is sufficient to assign the opposition.<sup>23</sup> In addition, the Office finds that the word 'technology' in the contested sign is merely descriptive. Generally, the public will not consider a descriptive element forming part of a complex mark as the distinctive and dominant element of the overall impression conveyed by that mark.<sup>24</sup> Therefore, the distinctive part of the signs concerned is identical.

58. The global assessment of the likelihood of confusion presupposes a certain coherence between the factors to be considered 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>25</sup>

59. In this case the conflicting signs are visually and aurally highly similar. For part of the public, a conceptual comparison is not an issue. The goods and services are similar to a low degree.

60. On the basis of these factors and the other factors mentioned above, and considering their interdependence, the Office considers that, despite the low degree of similarity between the goods and services, there is a likelihood of confusion in the sense that the public may believe that the services designated by the trademark invoked and the goods against which the opposition is directed originate from the same undertaking or, as the case may be, from undertakings which are economically linked.

## **B. Conclusion**

61. Based on the foregoing, the Office concludes that there is a likelihood of confusion.

## **IV. CONSEQUENCE**

62. The opposition with number 2017705 is justified.

63. The Benelux application with number 1451446 will not be registered for the following goods against which the opposition was directed:

- Class 27 (all goods)

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<sup>22</sup> CJEU 29 September 1998, C-39/97, ECLI:EU:C:1998:442, point 18 (Canon).

<sup>23</sup> General Court (EU) 9 March 2005, T-33/03, ECLI:EU:T:2005:89, point 39 (Hai/Shark).

<sup>24</sup> General Court (EU) 3 July 2003, T-129/01, ECLI:EU:T:2003:184, point 53 (Budmen).

<sup>25</sup> CJEU 4 March 2020, C-328/18 P, ECLI:EU:C:2020:156, point 59 and the case-law mentioned there. (Equivalenza)

64. The Benelux application with number 1451446 will be registered for the following goods and services against which the opposition was not directed:

- Class 17 (all goods)
- Class 42 (all services)

65. 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, 07 March 2023



Eline Schiebroek  
(*rapporteur*)

Willy Neys

Tomas Westenbroek

Administrative officer: Gerda Veltman