

OPPOSITION No B 3 219 579

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a g a i n s t

Moritz Heiden, Reisingerstr. 14, 86159 Augsburg, Germany (applicant).

On 25/03/2025, the Opposition Division takes the following

DECISION:

1. Opposition No B 3 219 579 is upheld for all the contested goods.
2. European Union trade mark application No 19 004 165 is rejected in its entirety.
3. The applicant bears the costs, fixed at EUR 620.

REASONS

On 02/07/2024, the opponent filed an opposition against all the goods of European Union trade mark application No 19 004 165 'CRISPY DYOR' (word mark). The opposition is based

on European Union trade mark registration No 6 463 046 **Dior** (figurative mark). The opponent invoked Article 8(1)(b) and Article 8(5) EUTMR.

LIKELIHOOD OF CONFUSION — ARTICLE 8(1)(b) EUTMR

Pursuant to Article 8(1)(b) EUTMR, a likelihood of confusion exists if there is a risk that the public might believe that the goods or services in question, under the assumption that they bear the marks in question, come from the same undertaking or, as the case may be, from economically linked undertakings. Whether a likelihood of confusion exists depends on the appreciation in a global assessment of several factors, which are interdependent. These factors include the similarity of the signs, the similarity of the goods and services, the distinctiveness of the earlier mark, the distinctive and dominant elements of the conflicting signs, and the relevant public.

a) The goods

The goods on which the opposition is based are the following:

Class 14: Jewellery, genuine and costume jewellery; real and imitation jewellery; genuine and imitation gold and silver ware, and parts therefor; precious and semi-precious stones and imitations thereof, horological and chronometric instruments, precious metals and their alloys and goods in precious metals or coated therewith; coins; works of art of precious metal;

jewel cases; boxes of precious metal; watch cases, straps, chains, springs and glasses; key rings [split rings with trinket or decorative fob]; statues and figurines (statuettes) of precious metal; cases and boxes for clocks and watches; medals; trinkets (jewellery), buckles of precious metal, watch straps; semi-precious stones; watch cases.

Class 25: Clothing, belts (clothing), braces, footwear, soles for footwear, heels, headgear; shirts; clothing made from leather or imitation leather; furs (clothing); gloves (clothing); scarves, neckties, hosiery; socks; slippers; beach shoes, skiing or sports shoes; nappies of textile materials; underwear; clothing, including sports clothing and clothing for children, babies' nappies and napkins, hats and footwear, including boots, shoes, slippers.

The contested goods are the following:

Class 14: *Jewellery.*

Class 25: *Clothing.*

An interpretation of the wording of the list of goods is required to determine the scope of protection of these goods.

The term 'including', used in the opponent's list of goods, indicates that the specific goods are only examples of items included in the category and that protection is not restricted to them. In other words, it introduces a non-exhaustive list of examples (09/04/2003, T-224/01, Nu-Tride / TUFFTRIDE, EU:T:2003:107).

Contested goods in Class 14

The contested goods in Class 14 include, as a broader category the opponent's specify *jewellery, genuine and costume jewellery*. Since the Opposition Division cannot dissect ex officio the broad category of the contested goods, they are considered identical to the opponent's goods.

Contested goods in Class 25

Clothing is identically contained in both lists of goods.



b) Relevant public — degree of attention

The average consumer of the category of products concerned is deemed to be reasonably well informed and reasonably observant and circumspect. It should also be borne in mind that the average consumer's degree of attention is likely to vary according to the category of goods or services in question.

In the present case, the goods found to be identical target the public at large (08/02/2007, T-88/05, EU:T:2007:45, NARS, § 53 for the goods in Class 25). The degree of attention may vary from average to high, depending on the price, sophistication, specialised nature of the goods purchased.

In relation to *jewellery*, in its decision of 09/12/2010, R 900/2010-1, Leo Marco (fig.) / LEO, § 22, the Board held that consumers generally put a certain amount of thought into the selection of these goods. In many cases the goods will be luxury items or will be intended as gifts. A relatively high degree of attention on the part of the consumer may be assumed.

c) The signs

	
Earlier trade mark	Contested sign

The relevant territory is the European Union.

The global appreciation 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 (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 23).

The unitary character of the European Union trade mark means that an earlier European Union trade mark can be relied on in opposition proceedings against any application for registration of a European Union trade mark that would adversely affect the protection of the first mark, even if only in relation to the perception of consumers in part of the European Union (18/09/2008, C-514/06 P, ARMAFOAM / NOMAFOAM, EU:C:2008:511, § 57). . Therefore, a likelihood of confusion for only part of the relevant public of the European Union is sufficient to reject the contested application.

The contested sign is a word mark. The protection of a word mark concerns the word as such. Therefore, it is irrelevant whether the signs are written in lowercase and uppercase or only in uppercase, as they are written in a way that does not deviate from the usual use of capitals.

The element 'CRISPY' in the contested sign will be understood by English-speaking consumers as an adjective commonly used for foods that are firm or crunchy, as claimed by the opponent, referring directly to the word that follows (DYOR). For the rest of the relevant public 'CRISPY' does not carry a clear meaning. In any case, it retains a normal degree of distinctiveness.

The verbal element 'DIOR', will be recognised by part of the relevant public as a surname. For another part of the public, 'D(I/Y)OR' depicted with 'I' or 'Y' will be perceived as a meaningless term. Furthermore, there is no connection between this word and the relevant goods or any of its characteristics, therefore, it is distinctive. The typography in which is depicted the earlier mark is rather standard and is considered decorative. Thus, its role is ancillary in relation to the word element. In fact, the verbal component of the sign usually has a stronger impact on the consumer than the figurative component, in this case, its typography. This is because the public does not tend to analyse signs and will more easily refer to the signs in question by their verbal element than by describing their figurative elements (14/07/2005, T 312/03, Selenium-Ace / SELENIUM SPEZIAL A-C-E (fig.), EU:T:2005:289, § 37).

Considering that pronunciation varies by language, the Opposition Division deems it appropriate to base the comparison of the signs on the parts of the relevant public which will pronounce the verbal elements 'DIOR' and 'DYOR' in the most similar way. For example, Spanish speakers that will pronounce them identically. Moreover, for this public, neither these words nor "CRISPY" have any inherent meaning.

Consumers normally attach more importance to the initial part of a trade mark, however this cannot apply in all cases and call into question the principle that the examination of the similarity of trade marks must be based on the overall impression produced by them. In the present case, there is no reason to believe that average consumers, who are reasonably well informed, observant and circumspect, will systematically disregard the subsequent part of the verbal element of a trade mark to the extent that they only remember the first part (07/06/2023, T-33/22, Porto insignia / Insignia et al., EU:T:2023:316, § 56-57).

Visually, the signs coincide in the sequence of letters 'D*OR' which forms the earlier mark, almost, in its entirety and are reproduced in the contested sign in the same order. They differ in the letter 'Y' of 'DYOR' and the additional word of the contested sign, 'CRISPY'. Visually, the signs differ in the stylisation of the earlier mark which is, however, rather basic and of low impact on consumers, that will not significantly influence their visual perception.

Therefore, the signs are similar to a low degree.

Aurally, the pronunciation of the signs coincides in the sound of the letters 'DI/YOR'. The pronunciation differs in the pronunciation of 'CRISPY' in the contested sign.

The earlier mark is fully included in the contested sign, albeit with 'y' instead of 'i'. According to 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, namely the visual, aural and conceptual aspect (23/10/2002, T 6/01, Matratzen + Matratzenmarkt Concord (fig.), EU:T:2002:261, § 30). Likewise, the fact that the earlier mark is phonetically included in full in the contested sign creates also an aural similarity between them (26/01/2006, T 317/03, Variant, EU:T:2006:27, § 47).

Therefore, the signs are similar to an average degree.

Conceptually, neither of the signs has a meaning for the public in the relevant public under analysis. Since a conceptual comparison is not possible, the conceptual aspect does not influence the assessment of the similarity of the signs.

As the signs have been found similar in at least one aspect of the comparison, the examination of likelihood of confusion will proceed.

d) Distinctiveness of the earlier mark

The distinctiveness of the earlier mark is one of the factors to be taken into account in the global assessment of likelihood of confusion.

According to the opponent, the earlier mark has been extensively used and enjoys an enhanced scope of protection. However, for reasons of procedural economy, the evidence filed by the opponent to prove this claim does not have to be assessed in the present case (see below in 'Global assessment').

Consequently, the assessment of the distinctiveness of the earlier mark will rest on its distinctiveness per se. In the present case, the earlier trade mark has no meaning for any of the goods in question from the perspective of the public in the relevant territory. Therefore, the distinctiveness of the earlier mark must be seen as normal.

e) Global assessment, other arguments and conclusion

The appreciation of a likelihood of confusion on the part of the public depends on numerous elements and, in particular, on the recognition of the trade mark on the market, the association which can be made with the used or registered sign, and the degree of similarity between the trade mark and the sign and between the goods or services identified (recital 8 of the EUTMR). It must be appreciated globally, taking into account all factors relevant to the circumstances of the case (22/06/1999, C 342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 18; 11/11/1997, C 251/95, Sabèl, EU:C:1997:528, § 22).

Such a global assessment of a likelihood of confusion implies some interdependence between the relevant factors and, in particular, a similarity between the marks and between the goods or services. Therefore, a lesser degree of similarity between goods may be offset by a greater degree of similarity between the marks and vice versa (29/09/1998, C-39/97, Canon, EU:C:1998:442, § 17) as in the present case. The applicability of this principle is particularly important in the present case because the conflicting goods are identical.

The goods are identical and they target the public at large whose degree of attention may vary from average to high.

The signs are visually similar to a low degree and aurally similar to an average degree on account of the coinciding verbal element 'DI/YOR', which constitutes the earlier mark and is phonetically fully reproduced in the contested sign and plays an independent distinctive role in both signs. The conceptual aspect, for the relevant public under analysis does not influence the assessment of the similarity of the signs. The earlier mark has a normal degree of distinctiveness.

Account is taken of the fact that average consumers rarely have the chance to make a direct comparison between different marks but must trust in their imperfect recollection of them (22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 26). Even consumers who pay a high degree of attention need to rely on their imperfect recollection of trade marks (21/11/2013, T-443/12, ancotel. (fig.) / ACOTEL (fig.) et al, EU:T:2013:605, § 54).

It cannot be ruled out that, as a consequence of the foregoing, that consumers may perceive the contested sign as a sub-brand or variant of the existing mark configured in a different way according to the type of goods that it designates and assume that the goods covered are from the same or economically linked undertakings (23/10/2002, T-104/01, Miss Fifties (fig.) / Fifties, EU:T:2002:262, § 49).

Considering all the above, there is a likelihood of confusion on the part of the Spanish-speaking part of the public since the aural coincidences are overwhelming. As stated above in section c) of this decision, a likelihood of confusion for only part of the relevant public of the European Union is sufficient to reject the contested application.

Therefore, the opposition is well founded on the basis of the opponent's European Union trade mark registration No 6 463 046. It follows that the contested sign must be rejected for all the contested goods.

Furthermore, since the opposition is fully successful on the basis of the inherent distinctiveness of the earlier mark and on the ground of Article 8(1)(b) EUTMR, there is no need to assess the enhanced degree of distinctiveness of the opposing mark due to its reputation as claimed by the opponent and further examine the other ground of the opposition, namely Article 8(5) EUTMR.

COSTS

According to Article 109(1) EUTMR, the losing party in opposition proceedings must bear the fees and costs incurred by the other party.

Since the applicant is the losing party, it must bear the opposition fee as well as the costs incurred by the opponent in the course of these proceedings.

According to Article 109(1) and (7) EUTMR and Article 18(1)(c)(i) EUTMR, the costs to be paid to the opponent are the opposition fee and the costs of representation, which are to be fixed on the basis of the maximum rate set therein.

**The Opposition Division**

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MATEO PÉREZ

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According to Article 67 EUTMR, any party adversely affected by this decision has a right to appeal against this decision. According to Article 68 EUTMR, notice of appeal must be filed in writing at the Office within two months of the date of notification of this decision. It must be filed in the language of the proceedings in which the decision subject to appeal was taken. Furthermore, a written statement of the grounds for appeal must be filed within four months of the same date. The notice of appeal will be deemed to have been filed only when the appeal fee of EUR 720 has been paid.