

OPPOSITION No B 3 213 061

Patek Philippe SA Geneve, 41, Rue du Rhône, 1204 Geneve, Switzerland (opponent),
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a g a i n s t

Maria Groen, Ooster Vlaerdinge 55, 1704MX Heerhugowaard, Netherlands (applicant).


On 11/04/2025, the Opposition Division takes the following

DECISION:

1. Opposition No B 3 213 061 is rejected in its entirety.
2. The opponent bears the costs.

REASONS

On 29/02/2024, the opponent filed an opposition against some of the goods and services

of European Union trade mark application No 18 959 991  (figurative mark),
namely against all the goods in Class 14 and some of the services in Class 35. The
opposition is based on international trade mark registration designating the European

Union, Croatia and Slovenia No 987 109  (figurative mark) and European Union

trade mark registration No 18 401 008  (figurative mark). The opponent invoked
Article 8(1)(b) 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 and services

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

International trade mark registration No 987 109 (earlier mark 1):

Class 14: *Precious metals and their alloys and goods made of or coated with these materials not included in other classes; jewellery, precious stones; timepieces and chronometric instruments; watches; wrist-watches; chronographs; chronometers; wall clocks; pendulettes; clocks; alarm clocks; watch cases; watch cases; watch bands; watch chains; watch crystals; dials; clock hands (clock and watch making); clock and watch cases; movements for clocks and watches; springs for parts of clocks and watches; medals; medallions.*

European Union trade mark registration No 18 401 008 (earlier mark 2):

Class 14: *Chronometric apparatus and instruments; parts and fittings for chronometric instruments; horological articles; clocks; parts for clocks; watches; chronographs [watches]; watch cases [parts of watches]; watch bands; watch dials; watch clasps; watch glasses; watch chains; watch springs; clock and watch hands; watch movements; fittings for watches; cases for chronometric instruments; cases for clock- and watchmaking; stands for clocks; presentation boxes for watches; jewellery; rings [jewellery]; bracelets [jewellery]; brooches [jewellery]; chains [jewellery]; necklaces [jewellery]; ornaments [jewellery, jewelry (am.)]; jewel pendants; earrings; clasps for jewellery; precious stones; cases [fitted] for jewels; jewellery boxes; jewel cases; presentation boxes for jewellery; works of art of precious metal; objet d'art made of precious stones; key rings of leather; key fobs of precious metals; cuff links; lapel pins [jewellery]; tie clips; tie pins; medals.*

Class 37: *Maintenance and repair of watches; maintenance and repair of horological and chronometric instruments; jewelry repair; remounting of jewellery; polishing of jewellery; providing information relating to the repair or maintenance of clocks and watches; restoration of works of art; repair and maintenance of spectacles; providing information relating to the repair and maintenance of spectacles; clothing repair; leather care, cleaning and repair; shoe repair.*

The contested goods and services are the following:

Class 14: *Jewellery; key rings; watches; presentation boxes for jewellery; pendants; precious metals and their alloys; precious and semi-precious stones; presentation boxes for horological articles; clocks and watches; time instruments; jewellery charms; body costume jewellery.*

Class 35: *Wholesale services in relation to jewellery; online retail services relating to jewelry; advertising, marketing and promotional services; public relations services; retail services in relation to fashion accessories; retail services in relation to jewellery; retail services in relation to time instruments; dissemination of advertisements; purchasing services; arranging the buying of goods for others; commercial information and advice for consumers in the choice of products and services; arranging and conducting of commercial events; providing consumer product advice; import and export services.*

For reasons of procedural economy, the Opposition Division will not undertake a full comparison of the goods and services listed above. The examination of the opposition will proceed as if all the contested goods and services were identical to those of the earlier mark which, for the opponent, is the best light in which the opposition can be examined.

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, contrary to the opponent's claim, the goods and services assumed to be identical target the public at large, as well as business customers with specific professional knowledge or expertise.

The degree of attention may vary from average to high, depending on the specialised nature of the goods, the frequency of purchase and their price. Indeed, in its decision (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 some of the goods in Class 14, as in many cases they will be luxury items or will be intended as gifts. Therefore, a relatively high degree of attention on the part of the consumer may be assumed as far as these goods (or their wholesale/retail) are concerned.

c) The signs

Earlier mark 1



Earlier mark 2



Earlier trade marks

Contested sign

The relevant territory for earlier mark 1 is the European Union, Croatia and Slovenia, while for earlier mark 2 it 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).

Both earlier marks comprise depictions of a shield containing two overlapping, stylised capital letters 'P' inside these shields. The letters are depicted in a thin, elongated typeface, in which the first letter is slightly above the second. Earlier mark 1 is depicted in white, and earlier mark 2 is depicted in black. As the opponent correctly claims, although they are not basic geometrical shapes, the shields will be perceived as rather decorative. As such, they are distinctive to a low degree.

The contested sign comprises two stylised letters 'P', depicted in pink. The first letter is positioned slightly above and to the left of the second one below it, with the bottom-right and upper-left parts adjoining. The letters are depicted in a very bold stroke. These letters are connected by a thin, light pink elliptical line. The elliptical line is a basic geometrical shape. As such, it is non-distinctive.

In both signs, contrary to the applicant's claim, the letters 'PP' bear no relation to the relevant goods and services. Therefore, they are distinctive.

Contrary to the opponent's claim that the letters 'PP' are dominant in the signs, the signs have no elements that stand out due to their position or size. This is because all their elements are perceived at once, as they are centred and occupy a similar space within the signs. Therefore, none of the signs has any element that could be considered more dominant (visually outstanding) than others.

As the opponent claims, when signs consist of both verbal and figurative components, in principle, the verbal component of the sign has a stronger impact on the consumer than the figurative component. However, when assessing short signs, such as those in the present case, the stylisation and additional graphic elements play an important and even decisive role in the overall impression of the signs.

The length of the signs may influence the effect of the differences between them. The shorter a sign, the more easily the public can perceive all of its single elements or features. Therefore, in short signs, small differences may frequently lead to a different overall impression. In contrast, the public is less aware of differences between long signs. In the present case, the signs in conflict are short signs.

It follows from the case-law of the Court that, in the assessment of likelihood of confusion between signs comprising the same single letter, the visual comparison is, in principle, decisive. Even where there is aural and conceptual identity, that identity may be overridden, in the assessment of likelihood of confusion, by sufficient visual differences between the signs.

The abovementioned rule on the importance of visual comparison applies to two-letter/number marks accordingly. The comparison of these signs depends on their stylisation and, especially, on whether the letters are recognisable as such in the sign. Consequently, the overall visual impression of the signs may be different when two conflicting signs, albeit containing or consisting of the same combination of two letters, are stylised in a sufficiently different way or contain a sufficiently different figurative element, so that their different overall graphical depiction eclipses the common verbal element.

Visually, although both marks depict a device that includes the stylised letters 'PP', the depictions of these letters are very different in their positioning, stylisation and colours, as described above. The distinctions in stylisation are readily apparent. The signs also differ in their remaining figurative elements and aspects. Furthermore, as explained

above, these additional and differing figurative elements and characteristics play an important role in the overall impression of the signs.

Consequently, the signs are visually similar to a low degree.

Aurally, irrespective of the different pronunciation rules in different parts of the relevant territory, the pronunciation of the signs coincides in the sound of the letters 'PP', present identically in each sign.

Therefore, the signs are aurally identical.

Conceptually, reference is made to the previous assertions concerning the semantic content conveyed by the marks, namely that the signs will be perceived as two letters without any meaning in relation to the goods and services. The mere fact that there is a generic term consisting of a repeated letter of the alphabet is not a relevant factor in the context of the conceptual comparison. If the signs coincide only in the 'generic concept' of a specific letter of the alphabet, and there are no other (relevant) concepts to be taken into account, the mere fact that the same letter could serve to describe the signs is not, in itself, sufficient to establish a conceptual identity or even similarity between those signs (26/03/2021, R 551/2018-G, Device (fig.) / Device (fig.), § 79, 85).

Therefore, the contested sign has no concept that could influence the assessment of the similarity of the signs, while the earlier marks solely convey the concept of a shield.

Consequently, the signs are conceptually not similar, although this difference has a limited impact on the signs' comparison, as the differing concepts are distinctive to a low degree.

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 marks

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

The opponent claimed that the earlier trade marks enjoy enhanced distinctiveness, but only did so on 20/12/2024. Since the claim and the supporting evidence were submitted after the substantiation time limit, which expired on 10/08/2024, the claim is belated and cannot be taken into account, nor can the evidence submitted to support it.

Consequently, the assessment of the distinctiveness of the earlier marks will rest on their distinctiveness per se. In the present case, the earlier trade marks as a whole have no meaning for any of the goods and services in question from the perspective of the public in the relevant territory. Therefore, the distinctiveness of the earlier marks must be seen as normal, despite the presence of weak elements in the marks, as stated above in section c) of this decision.

e) Global assessment, other arguments and conclusion

The goods and services are assumed to be identical and target the public at large as well as business customers. The degree of attention may vary from average to high. The

earlier marks have a normal degree of distinctiveness. The signs are visually similar to a low degree, aurally identical and conceptually not similar.

The Court has made it clear that the fact that two trade marks consisting of the same letter (or of the same sequence of letters) are found aurally identical is relevant in assessing the existence of a likelihood of confusion. In such cases, it is only when the latter trade mark creates a sufficiently different visual impression that a likelihood of confusion can be safely ruled out (10/05/2011, T-187/10, G (fig.) / G (fig.) et al., EU:T:2011:202, § 60).

Consequently, a likelihood of confusion can be safely excluded when two conflicting signs are stylised in a sufficiently different way, or contain a sufficiently different figurative element, that their different overall graphical representation eclipses the common verbal element.

The similarities between the signs are limited to the fact that they all contain depictions of the letters 'PP'. These depictions, however, as explained above, show important visual differences. Indeed, it is particularly significant that these letters are positioned differently, both in relation to each other and to the other elements of the signs. Moreover, their stylisation and colours are different. The signs also differ in their remaining figurative elements and aspects. Furthermore, for the reasons explained above, the coincidence in the letters 'PP' is not sufficient to establish any conceptual similarity between the signs.

Therefore, the signs create sufficiently different overall impressions, and the visual differences between them (which are clearly perceivable) are sufficient to conclude that consumers would not assume that identical goods and services bearing the marks in question originate from the same or economically linked undertakings.

The opponent refers to previous Office decisions and those of the Court of Justice of the European Union (CJEU) to support its arguments.

The cited CJEU judgments have been considered in the assessment of the distinctiveness of the verbal element 'PP' and the signs' differing figurative elements. However, these judgments are not comparable in the context of the general conclusions on the likelihood of confusion between the signs, as none of them concerns the assessment of signs consisting of two differently stylised letters.

As to the previous decisions of the Office, it is taken into account that the Office is not bound by its previous decisions, as each case must be dealt with separately and with regard to its particularities. This practice has been fully supported by the General Court, which stated that, according to settled case-law, the legality of decisions is to be assessed purely with reference to the EUTMR, and not to the Office's practice in earlier decisions (30/06/2004, T-281/02, *Mehr für Ihr Geld*, EU:T:2004:198). Although previous decisions of the Office are not binding, their reasoning and outcome should still be duly considered when deciding upon a particular case.

Most of the previous Office decisions referred to by the opponent are not relevant to the present proceedings, as they concern either the comparison of a word mark with a figurative mark, or of two figurative marks of which at least one was not stylised. The present case concerns two differently stylised figurative marks. Therefore, these cases are not comparable.

Moreover, while the Office does have a duty to exercise its powers in accordance with the general principles of European Union law, such as the principle of equal treatment and the principle of sound administration, the way in which these principles are applied

must be consistent with respect to legality. It must also be emphasised that each case must be examined on its own individual merits. The outcome of any particular case will depend on specific criteria applicable to the facts of that particular case, including, for example, the parties' assertions, arguments and submissions. Finally, a party in proceedings before the Office may not rely on, or use to its own advantage, a possible unlawful act committed for the benefit of some third party in order to secure an identical decision.

In view of the above, it follows that, even if the previous decisions submitted to the Opposition Division are to some extent factually similar to the present case, the outcome may not be the same.

Considering all the above, even assuming that the goods and services are identical, there is no likelihood of confusion on the part of the public. Therefore, the opposition must be rejected.

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 opponent is the losing party, it must bear the costs incurred by the applicant in the course of these proceedings.

According to Article 109(7) EUTMR and Article 18(1)(c)(i) EUTMR, the costs to be paid to the applicant are the costs of representation, which are to be fixed on the basis of the maximum rate set therein. In the present case, the applicant did not appoint a professional representative within the meaning of Article 120 EUTMR and therefore did not incur representation costs.



The Opposition Division

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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.