

**OPPOSITION No B 3 224 059**

**Chanel**, 135, avenue Charles de Gaulle, 92200 Neuilly sur Seine, France (opponent), represented by **Noelia Martinez**, 135 avenue Charles de Gaulle, 92200 Neuilly sur Seine, France (employee)

a g a i n s t

**Organic Choice Ltd**, 2nd Floor College House, 17 King Edwards Road, Ruislip, HA4 7AE London, United Kingdom (applicant), represented by **Luca Roatis**, Corso Michele Coppino 14, 12051 Alba (CN), Italy (professional representative).

On 24/09/2025, the Opposition Division takes the following


**DECISION:**

1. Opposition No B 3 224 059 is upheld for all the contested goods.
2. European Union trade mark application No 19 038 748 is rejected in its entirety.
3. The applicant bears the costs, fixed at EUR 320.

**REASONS**

On 17/09/2024, the opponent filed an opposition against all the goods of European



Union trade mark application No 19 038 748 **Organic Choice** (figurative mark). The opposition is based on French trade mark registration No 3 977 077  (figurative mark). The opponent invoked Article 8(1)(b) EUTMR 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 3: *Cosmetics, perfumes.*

Class 25: *Clothing, footwear, headgear.*

The contested goods are the following:

Class 3: *Perfumery and fragrances; perfumery; natural perfumery; synthetic perfumery; ethereal oils; hair care lotions; non-medicated cosmetics and toiletry preparations; non-medicated beauty preparations.*

Class 25: *Clothing; shoes; headgear.*

The relevant factors relating to the comparison of the goods or services include, inter alia, their nature, their intended purpose, their method of use and whether they are in competition with each other or are complementary ('the Canon criteria'). It is also necessary to take into account, besides the Canon criteria, other factors, namely distribution channels, the relevant public and the usual origin of the goods or services (02/06/2021, T-177/20, Hispano Suiza / Hispano Suiza, EU:T:2021:312, § 21-22).

**Contested goods in Class 3**

The contested *perfumery* (listed twice) is synonymous with the opponent's *perfumes*. Therefore, they are identical.

The contested *fragrances, natural perfumery, synthetic perfumery* are included in the broad category of, or overlap with, the opponent's *perfumes*. Therefore, they are identical.

The contested *hair care lotions, non-medicated cosmetics and toiletry preparations, non-medicated beauty preparations* are included in the broad category of, or overlap with, the opponent's *cosmetics*. Therefore, they are identical.

The contested *ethereal oils* are similar to the opponent's *perfumes*. *Perfumes* are fragrances used predominately for enhancing the odour or aroma of the body by giving it a pleasant scent, while *ethereal oils* are fragrant liquid aroma compounds (synthetic or organic) that are used (among others) primarily as fragrances for rooms, or in aromatherapy. These goods usually coincide in producer, relevant public and distribution channels.

**Contested goods in Class 25**

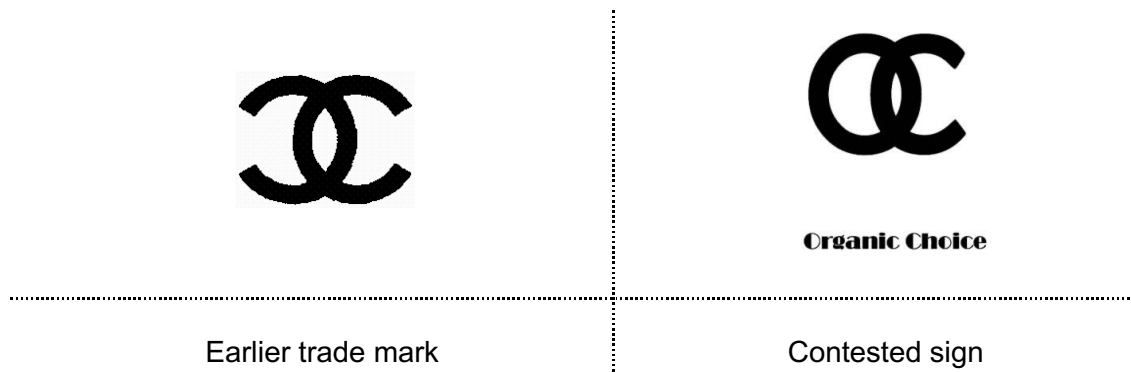
*Clothing, headgear* are identically contained in both lists of goods.

The contested *shoes* are included in the broad category of the opponent's *footwear*. Therefore, they are identical.

**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 (22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 26).

In the present case, the goods found to be identical or similar target the public at large. The degree of attention is average.

**c) The signs**

The relevant territory is France.

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 earlier mark is purely figurative, comprising two interrupted, bold black circles placed mirror like, overlapping in a horizontal position (28/11/2019, R 1041/2019-4, DEVICE OF TWO INTERLOCKING ELEMENTS (fig.) / DEVICE OF TWO BOLD BLACK CIRCLES OVERLAPPING (fig.), § 16). As this figurative element is not basic and is somewhat elaborate, it is distinctive to an average degree.

The earlier mark has no element that could be considered clearly more dominant than other elements.

The contested sign contains a large figurative element comprising a bold black circle on the left, horizontally overlapping with an interrupted bold black circle on the right. Underneath this element there is the much smaller verbal element 'Organic Choice', depicted in relatively common title-case letters.

The contested sign's large figurative element could be perceived either as purely figurative or as the stylised letters 'OC', due to the verbal elements 'Organic Choice' below it, whose first letters are 'O' and 'C'. As the figurative element is not basic and is somewhat elaborate, it is distinctive to an average degree.

The contested sign's verbal elements 'Organic Choice' are English words. 'Organic' refers to 'pesticide-free, natural, chemical-free, additive-free' (information extracted

from *Collins English Dictionary* on 19/09/2025 at <https://www.collinsdictionary.com/dictionary/english/organic>). 'Choice' means 'someone or something that you choose from a range of things' (information extracted from *Collins English Dictionary* on 19/09/2025 at <https://www.collinsdictionary.com/dictionary/english/choice>). The relevant French public will grasp the above meanings, either directly as English words or, as the opponent claimed, as alluding to their quite similar French equivalents, namely '*choix organique*'. Consequently, as the elements 'Organic Choice' indicate that the relevant contested goods have been chosen and are natural or chemical-free, these verbal elements are very weak, if not non-distinctive.

The large figurative element in the contested sign is the dominant element as it is the most eye-catching.

**Visually**, the earlier mark's only element and the contested sign's dominant and most distinctive element are highly similar because they both comprise two bold black horizontally overlapping circles. Their only difference is that in the earlier mark, the circle on the left is interrupted, while the contested sign has a full circle on the left of the figurative element. The slight differences in the specific proportions of the circles or the specific size of the overlapping part are negligible and will go unnoticed by the public.

The marks differ in the contested sign's verbal elements 'Organic Choice', which have no counterpart in the earlier mark. Nevertheless, this difference has a limited impact because the elements are small and very weak, if not non-distinctive.

Therefore, the signs are visually similar to an above-average degree.

Purely figurative signs are not subject to a phonetic assessment. As one of the signs is purely figurative, it is not possible to compare them **aurally**.

**Conceptually**, reference is made to the previous assertions concerning the semantic content conveyed by the marks. The earlier mark is meaningless, whereas the relevant public will perceive the concept of 'Organic Choice' in the contested sign. To that extent, the marks are conceptually not similar. However, this conceptual difference is of very limited relevance in the overall comparison of signs, as it stems from a meaning that is very weak, if not non-distinctive.

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 or reputation. 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 as a whole 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 goods are partly identical and partly similar. They target the public at large, whose degree of attention is average. The earlier mark has a normal degree of distinctiveness per se. The signs are visually similar to an above-average degree and conceptually not similar (although the conceptual difference is of very limited relevance). Aurally, it is not possible to compare the marks.

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).

The goods themselves are fairly ordinary consumer products that are commonly purchased in supermarkets or establishments where goods are arranged on shelves and consumers are guided by the visual impact of the mark they are looking for (15/04/2010, T-488/07, EGLEFRUIT / UGLI fruit (fig.), UGLY, EU:T:2010:145). Therefore, the signs' above-average visual similarity is of particular importance in the present case.

In view of the above findings, it is likely that the public will confuse the commercial origin of the identical and similar goods offered or sold under the respective trade marks.

Considering all the above, there is a likelihood of confusion on the part of the public.

Therefore, the opposition is well founded on the basis of the opponent's French trade mark registration No 3 977 077. It follows that the contested trade mark must be rejected for all the contested goods.

Since the opposition is successful on the basis of the inherent distinctiveness of the earlier mark, there is no need to assess the enhanced degree of distinctiveness of the opponent's mark due to its extensive use and reputation as claimed by the opponent. The result would be the same even if the earlier mark enjoyed an enhanced degree of distinctiveness.

Since the opposition is fully successful on the basis of the ground of Article 8(1)(b) EUTMR, there is no need to 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. In the present case, the

opponent did not appoint a professional representative within the meaning of Article 120 EUTMR and therefore did not incur representation costs.



### **The Opposition Division**

Saida CRABBE

Vít MAHELKA

Christophe DU JARDIN

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.