

OPPOSITION No B 3 226 139

J. Choo Limited, 10 Howick Place, SW1P 1GW London, United Kingdom (opponent),
represented by **Venner Shipley Spain, S.L.U.**, C/ Núñez Morgado 11, 3 B, 28036
Madrid, Spain (professional representative)

a g a i n s t

Xiao Chu, Pelikaanstraat 62, Room 313/314, 2018 Antwerp, Belgium (applicant).

On 04/09/2025, the Opposition Division takes the following

DECISION:

1. Opposition No B 3 226 139 is rejected in its entirety.
2. The opponent bears the costs.

REASONS

On 25/10/2024, the opponent filed an opposition against all the goods of European Union trade mark application No 19 057 106 'CHHU' (word mark). The opposition is based on the following earlier rights:

- international trade mark registration designating the European Union No 1 785 612 'CHOO' (word mark); the opponent invoked Article 8(1)(b) and Article 8(5) EUTMR.
- European Union trade mark registration No 12 062 551
 (figurative mark); the opponent invoked Article 8(1)(b) and Article 8(5) EUTMR.
- European Union trade mark registration No 2 587 830 'JIMMY CHOO' (word mark); the opponent invoked Article 8(1)(b) and Article 8(5) EUTMR.
- international trade mark registration designating the European Union
No 1 443 377  (figurative mark); the opponent invoked Article 8(1)(b) and Article 8(5) EUTMR.
- European Union trade mark registration No 1 662 543 'JIMMY CHOO' (word mark). The opponent invoked Article 8(5) EUTM.

However, in its observations of 28/02/2025, the opponent withdrew the claim based on Article 8(5) EUTMR in relation to all earlier rights invoked. The opponent also withdrew

the claim based on Article 8(1)(b) EUTMR in relation to the earlier rights EUTM No 12 062 551 and EUTM No 2 587 830 and declared that it only wished to pursue the opposition based on Article 8(1)(b) EUTMR in relation to the remaining earlier rights. Therefore, the opposition is examined on the basis of Article 8(1)(b) EUTMR in relation to the following earlier rights:

- international trade mark registration designating the European Union No 1 785 612 'CHOO' (word mark);
- international trade mark registration designating the European Union No 1 443 377  (figurative mark).

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.

The opposition is based on more than one earlier trade mark. The Opposition Division finds it appropriate to first examine the opposition in relation to the opponent's international trade mark registration designating European Union No 1 785 612.

a) The goods, the relevant public and its degree of attention

The goods on which the opposition is based are, inter alia, the following:

Class 14: *Jewellery; ornaments (jewellery).*

The contested goods are the following:

Class 14: *Jewelry; necklaces [jewellery]; necklaces [jewelry]; jewellery, including imitation jewellery and plastic jewellery; bracelets [jewelry]; bracelets [jewellery]; fashion jewellery; ornaments [jewellery]; jewelry brooches; jewellery brooches; brooches being jewelry; brooches [jewelry]; diamond jewelry; personal jewellery; brooches [jewellery]; jewellery; identification bracelets [jewelry].*

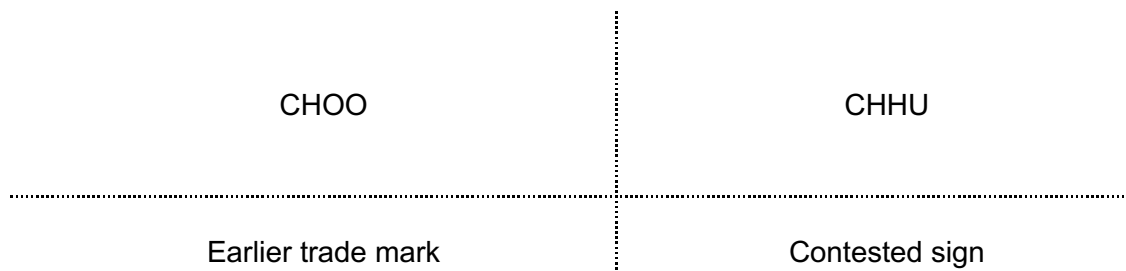
Ornaments [jewellery]; jewellery are identically contained in both lists of goods (including synonyms).

All the remaining contested goods are included in the opponent's *jewellery*. Therefore, they are identical.

In the present case, the goods found to be identical target the public at large and business customers with specific professional knowledge or expertise.

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 the goods, such as jewellery. In many cases the goods will be luxury items or will be intended as gifts, for example, diamond jewellery. A relatively high degree of attention on the part of the consumer may be assumed.

b) The signs and the distinctiveness of the earlier mark



The relevant territory is 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).

In the present case, the Opposition Division considers it appropriate to focus on the English-speaking parts of the relevant public, since from their perspective the signs present additional similarities (i.e. aural) that may not arise from the perspective of the rest of the public.

Both marks are meaningless and, therefore, have an average degree of distinctiveness for the public under focus. Accordingly, due to their lack of meaning/concept, the **conceptual aspect** does **not influence** the assessment of the similarity of the signs.

The opponent did not explicitly claim that its mark is particularly distinctive by virtue of intensive use or reputation. In the present case, the earlier trade mark has no meaning for the goods in question and, therefore, the distinctiveness of the earlier mark must be seen as normal.

The consideration that the consumer normally attaches more importance to the initial part of a trade mark 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. 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 insígnia / Insignia et al.*, EU:T:2023:316, § 56-57).

The length of a sign plays an important role, since in words with a limited number of letters, differences between the signs are more easily perceived by consumers (12/02/2014, T-26/13, *CALDEA / BALEA*, EU:T:2014:70, § 34). Consequently, in cases of relatively short signs – as in this case, where the signs consist of four letters – minor differences could play an important role in their differentiation.

To that regard, the General Court has held that the same number of letters in two marks is not, as such, of any particular significance for the relevant public, even for a specialised public. Since the alphabet is made up of a limited number of letters, which, moreover, are not all used with the same frequency, it is inevitable that many words will have the same number of letters and even share some of them, but they cannot, for that reason alone, be regarded as visually similar. In addition, the public is not, in general, aware of the exact number of letters in a word mark and, consequently, will not notice, in the majority of cases, that two conflicting marks have the same number of letters (25/03/2009, T-402/07, ARCOL / CAPOL, EU:T:2009:85, § 81-82; 04/03/2010, C-193/09 P, ARCOL / CAPOL, EU:C:2010:121).

Visually, the signs coincide in 'CH**' and differ in the sign's endings 'OO' and 'HU', respectively.

As introduced above, the differences in the characters are easy to recognise due to their limited length of four letters each. Furthermore, the letter sequence of the contested sign 'CH' followed by the consonant 'H' resulting in three consonants in a row 'CHH', is unusual for the public under focus. This reduces the likelihood of seeing the first letters 'CH'. Rather, it will be seen as a triple consonant cluster 'C-H-H'.

Therefore, the signs are visually similar to a below-average degree.

Aurally, the repeated 'OO' of the earlier mark will be pronounced as /u/. Although the letter sequence of the contested sign 'CHHU' is not a standard or intuitive cluster for the public under focus, it is likely that consumers will consider dropping the second 'H' and pronounce both signs identically as /chew/.

Therefore, the signs are aurally identical.

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

c) Global assessment, other arguments and conclusion

According to the case-law of the Court of Justice, in determining the existence of likelihood of confusion, trade marks have to be compared by making an overall assessment of the visual, aural and conceptual similarities between the marks. The comparison '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, § 22). Likelihood of confusion must be assessed globally, taking into account all the circumstances of the case.

Such a global assessment of 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 and services 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).

Moreover, in the global assessment of the likelihood of confusion, the visual, phonetic, or conceptual aspects of the opposing signs do not always have the same weight and it is then appropriate to examine the objective conditions under which the marks may be present on the market (23/11/2010, T-35/08, ARTESA NAPA VALLEY (fig.) / ARTESO (fig.), EU:T:2010:476, § 60).

The goods are identical and target the public at large and business customers with specific professional knowledge or expertise, whose degree of attention is relatively high. The earlier mark has a normal degree of distinctiveness. The signs are visually similar to a below-average degree, aurally, they are identical while the conceptual aspect does not influence the assessment of the similarity of the signs.

Another factor to be taken into account is the nature of the goods and the manner in which they are normally sold. Goods such as jewellery and diamond jewellery are not as a rule bought over the telephone. Nor are they ordered orally in a crowded bar against a background of noise. The people who buy these goods are likely to see them first and perceive the marks visually. This enhances the significance of the visual differences between them. Moreover, people 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 level of attention on the part of the consumer may be assumed. This factor reduces the likelihood of confusion.

Therefore, the degree of phonetic similarity between the two marks is of less importance in the case of goods that are marketed in such a way that, when making a purchase, the relevant public usually perceives visually the mark designating those goods (23/01/2008, T-106/06, BAUHOW (fig.) / BAUHAUS (fig.), EU:T:2008:14, § 45). It follows that particular importance must be attached to the visual perception of the signs at issue when assessing the likelihood of confusion on the part of the public.

Although the signs at issue coincide in the two letters in their beginning, those letters are not sufficient to justify the finding of likelihood of confusion, especially taking into account that the level of attention of the relevant public will be relatively high. The letters 'OO' v 'HH' respectively create a clear and unusual difference, especially from the visual point of view.

It follows from the above considerations that the overall below-average degree of visual similarity between the signs cannot be offset, in the context of the global assessment of the likelihood of confusion, by their aural identity, even if the goods concerned are also identical, with the result that there is no likelihood of confusion. Indeed, the visual differences between the signs will not go unnoticed by the relevant public especially when they display a higher degree of attention when purchasing the goods in question. This is so, even if the consumers will have to rely on their imperfect recollection of the signs. Moreover, based on the overall below-average degree of visual similarity between the signs, there is no reason why the relevant consumers would believe that the goods offered under the respective signs originated from the same undertaking, or from economically linked undertakings as the case may be, even if the goods are identical.

Considering all the above, even for the identical goods, there is no likelihood of confusion on the part of the public. Therefore, the opposition must be rejected.

This absence of likelihood of confusion equally applies to the remaining part of the public who will, for instance spell out the contested sign or pronounce it according to the rules in the respective territories/language and, therefore, the signs will be even less similar aurally.

The opponent has also based its opposition on the international trade mark registration

designating the European Union No 1 443 377  (figurative mark); the opponent invoked Article 8(1)(b) EUTMR.

The other earlier right invoked by the opponent is less similar to the contested mark. This is because it contains further stylised elements than in the earlier mark that has already been assessed and that are not present in the contested trade mark. Therefore, even if it covers the same goods in Class 14 as those found to be identical to the contested goods, the outcome cannot be different on the basis of this earlier mark either; no likelihood of confusion exists with respect to those goods.

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

Tzvetelina IANTCHEVA

Michaela POLJOVKOVA

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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.