



BENELUX OFFICE FOR INTELLECTUAL PROPERTY

OPPOSITION DECISION

N° 2009541

1 October 2015

Opponent: **MARKANT Handels- und Service GmbH**
Hanns-Martin-Schleyer-Str. 2
77656 Offenburg
Germany

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

Invoked right 1: (European registration 11705845)



Invoked right 2: (International registration 1044547)

ONE GLOBE

against

Defendant: **Parmentier Tom**
Reutenbeek 10
3090 Overijse
Belgium

Representative: **GEVERS**
Holidaystraat 5
B-1831 Diegem

Belgium

Contested trademark: (Benelux application 1279426)

i.globe

I. FACTS AND PROCEEDINGS**A. Facts**

1. On 23 November 2013, the defendant filed an application in the Benelux for the word mark i.globe for services in classes 38, 41 and 42. This application was dealt with under number 1279426 and was published on 26 November 2013.

2. On 27 January 2014, the opponent introduced an opposition against this application. The opposition is based on the following trademarks:

- European registration 11705845 of the combined word/figurative mark



, filed on 2 April 2013 and registered on 5 January 2014 for goods and services in classes 3, 4, 5, 16, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 42;

- International registration 1044547 of the word mark ONE GLOBE, filed on 29 March 2010 and registered on 2 December 2010 for goods and services in classes 3, 4, 5, 16, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 42.

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

4. The opposition is directed against all the services for which the contested sign is applied for and is based on all the goods and services relating to the rights invoked.

5. The grounds for the opposition are laid down in article 2.14, 1 (a) of the Benelux Convention on Intellectual Property (hereinafter: "BCIP").

6. The language of the procedure is English.

B. Chronological order of the proceedings

7. The opposition is admissible and was notified to the parties on 28 January 2014.

8. After a single request for suspension of the proceedings, the adversarial phase of the procedure commenced on 29 July 2014. The Benelux Office for Intellectual Property (hereinafter: "the Office") sent the notification of the commencement of the proceedings on 31 July 2014 to the parties, giving the opponent the opportunity to substantiate the opposition by submitting supporting arguments and documents no later than 30 September 2014.

9. On 26 September 2014 the opponent submitted supporting arguments to substantiate the opposition. These arguments were sent by the Office to the defendant on 30 September 2014, giving the defendant the opportunity to submit a response no later than 30 November 2014.

10. On 1 December 2014 Gevers was appointed representative for the defendant by request. The Office informed the opponent about this by letter of 5 December 2014

11. The defendant filed his arguments on 1 December 2014. Because of the fact that 30 November 2014 fell on a Sunday, the response was received in due time in accordance with rule 3.9 paragraph 3 of the Implementing Regulations (hereinafter: "IR"). As the arguments were not submitted in duplicate, the Office requested on 11 December 2014 that the defendant should submit a second identical copy, no later than 11 February 2015.

12. Apparently the defendant already submitted a copy of his arguments on 9 December 2014. As a result the arguments were sent by the Office to the defendant on 14 April 2015.

13. Each party filed its observations within the time limits imposed by the Office.

14. The Office has sufficient information to come to a decision on the opposition.

II. ARGUMENTS

15. The opponent filed an opposition at the Office under article 2.14, 1 (a) BCIP, in accordance with the provisions of article 2.3 (b) BCIP: the likelihood of confusion based on the identity or similarity of the relevant marks and the identity or similarity of the goods or services concerned.

A. Opponent's arguments

16. Firstly, the opponent compares the invoked word mark "ONE GLOBE" with the contested sign "i.globe". The opponent argues that the signs are visually almost identical or at least highly similar. The element GLOBE is the dominant element, the generic terms ONE and i. are of minor importance. 'ONE', in the invoked right, can stand for 'only', 'unique' and the number '1', whereas 'i', in the contested sign, might indicate 'interactive' or 'internet'. The identical element 'globe' refers to 'a planet or some other astronomical body, or a sphere on which a map of the world or the heaven is drawn or represented'. The element 'globe' cannot be deemed descriptive or non-distinctive with regard to the goods and services involved, therefore the opponent states that it should be considered dominant and distinctive.

17. From a visual point of view, the opponent states that the right invoked and the contested sign, should be considered as being almost identical or at least highly similar and thus confusingly similar from a visual point of view.

18. Phonetically, the opponent is of the opinion that generic terms are of minor importance, and as a consequence 'GLOBE' should be compared to 'globe'. Therefore, the signs are almost identical or at least highly similar from a phonetic perspective.

19. A conceptual comparison also has to be made between the dominant elements of the right invoked and the contested sign. The opponent is of the opinion that the word 'globe' will be understood

by the Benelux consumer as indicating the planet Earth. Therefore, the opponent concludes that the right invoked and the contested sign are identical or at least highly similar from a conceptual perspective.

20. Because of the fact that in the case of combined (word and device) marks, the word element has a bigger impact on the consumer, the opponent applies the foregoing arguments when comparing the second right invoked with the contested sign.

21. Whereas the goods and services may be intended for both professionals and average customers, the assessment of the likelihood of confusion must take into account an average to low level of attention on the part of the relevant public, according to the opponent.

22. The contested services in classes 38 and 42 are identical to the services in the classes on which the opposition is based. The contested services in class 41 are similar to the services in classes 35 and 39 of the rights invoked.

23. The opponent requests that the Office should deny the contested sign registration.

B. Defendant's arguments

24. The defendant argues that there is a clear distinction between the "ONE GLOBE" and the "i-globe" trademarks from a verbal perspective and due to their intended use. Furthermore, the defendant is of the opinion that many products and services bear the name "ONE GLOBE", potentially resulting in confusion with those (identical) signs, but not with the sign "i.globe", which according to the defendant is also a widely used sign.

25. Concerning the intended use of the signs, the defendant points out that the opponent's trademarks are used for a prospectus which covers different consumer goods and particularly food products. The geographical coverage of the prospectus seems limited to the German market and all of the information is in the German language. Furthermore, the relevant public is limited to in-the-know users and insiders. In contrast, the defendant's sign, 'i-globe', is intended to be used as a brand name for a global news-based social media platform.

26. The defendant is of the opinion that there is a very clear overall distinction between the combined word/figurative mark on the one hand and the contested sign, i.globe, on the other hand. The right invoked displays two different words, separated by a very large number 1, with a presentation of the world (a globe) overlapping the number. The defendant holds the figurative element (the number plus the globe) as the dominant element of the right invoked. The second element of importance is the word ONE because of the fact that it is written in bold letters. The element GLOBE is depicted in a very thin typeface and therefore not the dominant element of the opponent's trademark. In contrast, in the contested sign, i.globe, the word 'globe' is the central and dominant element.

27. The defendant continues the comparison of the signs by comparing both word marks ONE GLOBE and i.globe. As concerning the visual comparison, he stresses the fact that the trademark ONE GLOBE consists of two separate words, likely to be interpreted as 'one world' and the fact that its use is solely aimed at the German consumer (see paragraph 25). In contrast, the sign i.globe consists of a single word.

28. The defendant states that “from a moral point of view, a word (i.e. ‘GLOBE’) used daily by millions of people around the globe, is not to be claimed by a single company”.

29. Phonetically, the defendant finds that there is a clear verbal distinction, both written and spoken between the words “ONE GLOBE” and “i.globe”. They have completely different pronunciations and intonations.

30. As concerning the conceptual comparison, the defendant repeats its argument as mentioned in paragraph 28. Furthermore he states that the contested sign “i.globe” is intended to be used for a social media platform, where the “i” prefix refers to “the technology nature of the product”. Said prefix also stands for “me” in the sense of “I and the globe” or “I, as a world citizen” as a central observer of global events. The sign is thus appropriate for a global news-based social media platform.

31. The relevant public concerned differs in the comparison of the two signs. The invoked rights are primarily business-to-business orientated. The defendant refers to what he said earlier (paragraph 25). This audience are very unlikely to be confused.

32. The goods and services cover completely different activities, according to the defendant. None of the opponent’s services in the classes 35 and 39 are similar to the services of the defendant in class 41.

33. The defendant requests that the Office should reject the opposition and accept the contested sign for all services.

III. DECISION

A.1 Likelihood of confusion

34. In accordance with article 2.14, 1 BCIP, the applicant or 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 of the application, against a trademark which in the order of priority, ranks after its own in accordance with Article 2.3 (a) and (b) BCIP.

35. Article 2.3 (a) and (b) BCIP stipulates “*In determining the order of priority for filings, account shall be taken of rights, existing at the time of filing and maintained at the time of the litigation, in: a. identical trademarks filed for identical goods or services; b. identical or similar trademarks filed for identical or similar goods or services, where there exists on the part of the public a likelihood of confusion that includes the likelihood of association with the prior trademark.*”

36. According to case law of the Court of Justice of the European Union (hereinafter: the “CJEU”) concerning the interpretation of Directive 2008/95/EG of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trademarks (hereinafter: “Directive”), the likelihood of confusion of the public, which is defined as the risk that the public might believe that the goods or services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, must be appreciated globally taking into account all factors relevant to the circumstances of the case (CJEU, Canon, C-39/97, 29 September 1998, Lloyd Schuhfabrik Meyer, C-342/97, 22 June 1999; CJBen, Brouwerij Haacht/Grandes Sources belges, A 98/3,

2 October 2000; Marca Mode/Adidas, A 98/5, 7 June 2002; Supreme Court of the Netherlands, Flügel-bottle, C02/133HR, 14 November 2003; Brussels, N-20060227-1, 27 February 2006).

Comparison of the signs

37. The wording of Article 4, 1 (b) of the Directive (cf. article 2.3, (b) BCIP) "... there exists a likelihood of confusion on the part of the public ..." shows that the perception of marks in the mind of the average consumer of the type of goods or services in question plays a decisive role in the global assessment of the likelihood of confusion. The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (CJEU, Sabel, C-251/95, 11 November 1997).

38. Global assessment 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 (CJEU, Sabel and Lloyd, already cited).

39. For reasons of procedural efficiency the Office will commence the comparison of the signs by comparing the second right invoked (the word mark ONE GLOBE) to the contested sign.

40. The signs to be compared are the following:

Opposition based on:	Opposition directed against:
ONE GLOBE	i.globe

Conceptual comparison

41. Although the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (Lloyd, already cited), the fact remains that, when perceiving a verbal sign, he will break it down into elements which, for him, suggest a concrete meaning or which resemble words known to him (EGC, Respicur, T-256/04, 13 February 2007; Aturion, T-146/06, 13 February 2008 and Galvalloy, T-189/05, 14 February 2008).

42. Conceptually, the right invoked and the contested sign both have the identical element 'globe' in common. According to the Oxford (online) Dictionaries the word 'globe' stands for 'a spherical representation of the earth or of the constellations with a map on the surface' or more generally a 'spherical or rounded object'. The word 'one', being the lowest cardinal number, means single in the sense of unique or in the meaning of 'as a whole'. The right invoked will therefore be perceived as meaning 'one (single or united) earth' or 'one (single) rounded object'. The contested sign will also be perceived as relating to the earth or a spherical object, whilst 'globe' is the central, most dominant and most recognizable element of the sign i.globe.

43. Due to its grammatical positioning, the letter 'i' will presumably be perceived as an abbreviation of the word 'interactive' or 'internet', as referring to a characteristic of the element 'globe'. The punctuation mark separates both elements of the contested sign. The grammatically correct juxtaposition in both signs visually stresses the element 'globe', for it being the noun, whereas the elements 'ONE' and 'i' will be (correctly) perceived as adjectives.

44. Moreover, the “i” in the contested sign could also be seen as the Roman numeral equivalent for ONE (1). This would enhance the level of similarity of the signs to identical.

45. As a result of the fact that the right invoked and the contested element both share the same element ‘globe’ which has a clear meaning to the relevant public, the Office is of the opinion that they are conceptually similar.

Visual comparison

46. Since the earlier mark is a word mark it is, in principle, irrelevant for the purposes of a visual comparison of those marks whether it is represented in upper or lower case (see in that sense EGC, Babilu, T-66/11, 31 January 2013).

47. The right invoked and the contested sign are both purely verbal marks. The right invoked consists of two words namely “ONE” and “GLOBE”. The contested sign is formed by the letter “i”, followed by a punctuation mark which then is followed by the word “globe”.

48. Although it must be taken into account that the consumer normally attaches more importance to the first part of a sign (EGC, Mundicor, T-183/02 and T-184/02, 17 March 2004), the visual attention of the relevant public will undoubtedly be drawn to the common element ‘globe’, as being the dominant and identical element of both signs (see paragraph 42), and which is also the longer of both elements.

49. Because of the fact that both signs have the visually dominant element ‘globe’ in common, the Office is of the opinion that they are visually similar.

Aural comparison

50. The pronunciation of the signs coincides in the sound of the element ‘globe’, present in both the right invoked and the contested sign. To that extent the signs are aurally similar. The pronunciation differs in the sound of the element ‘ONE’ as opposed to the element ‘i’. Although these elements form the first part of both signs, the overall aural impression will be at least that of a certain degree of similarity.

Conclusion

51. The invoked right and the contested sign are conceptually and visually similar. Aurally there exists similarity to a certain extent.

Comparison of the goods and services

52. In assessing the similarity of the goods and services concerned, all the relevant factors relating to the goods or services themselves should be taken into account. 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 (Canon, already cited).

53. The comparison of the goods and services must relate to those covered by the registration of the earlier trademarks in question or by the application of the contested sign (see e.g. EGC, Arthur et Felice, T-346/04, 24 November 2005).

54. The goods and services to be compared are the following, taking into account the extent of the opposition:

Opposition based on:	Opposition directed against:
CI 3 Bleaching preparations and other substances for laundry use; cleaning, polishing and degreasing preparations, soaps, perfumery; cosmetics: hair lotions, dentifrices.	
CI 4 Industrial oils and greases; solid, liquid or gaseous fuels; illuminants, candles, wax lights; nightlights, wicks.	
CI 5 Pharmaceutical and veterinary preparations; chemical preparations for healthcare; dietetic foodstuffs for children and patients for medical purposes; food for babies; plasters, material for dressings; disinfectants; preparations for destroying weed and vermin.	
CI 16 Paper, cardboard and goods made from these materials, included in class 16, especially paper towels, paper table napkins, filter paper, pocket handkerchiefs, toilet paper, paper diapers, packaging containers and sachets; plastic materials for packaging, namely envelopes, bags, foils.	
CI 29 Fresh meat, meat products, sausage products, fresh fish, smoked fish, fish products, bled poultry, game; meat extracts; preserved, dried and cooked fruit and vegetables; meat, fish, fruit and vegetable jellies; jams made with fruit and chocolate; eggs, milk and milk products; edible oils and fats, including margarine; vegetable, meat, fish and fruit preserves, pickles; frozen products, namely bled poultry, meat, meat products, fish, game and game meat, fruit and vegetables; ready-to-serve meals mainly consisting of meat, fish, poultry and/or game; roasted and salted nuts, raisins; fruit slices consisting of fruit paste, nut pulp or marzipan; dietetic foodstuffs for children and patients for non-medical purposes.	

<p>CI 30 Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; malt coffee; flours and cereal preparations (except foodstuffs for animals), prepared whole wheat, rye and oat grains; pasta, including whole grain pasta; muesli made with fruit and whole grains consisting essentially of whole grain cereals, cereal flakes and dry fruit; crushed linseed for food; bread, biscuits, pastry and confectionery; chocolate and chocolate goods, including those for dietetic purposes; whole grain rusks and whole grain snack bars consisting essentially of whole grains and/or honey and/or cocoa and/or chocolate and/or nuts and/or dried and/or prepared fruit; whole grain baking mixtures for bread and cakes; wheat bran for food purposes; natural leaven; chocolates, including those with liquid filling particularly with wines and spirits; sugar confectionery, particularly chewing fudge and chewing gum not for medical purposes; marzipan, edible ice, honey, peanut crème for bread slices; golden syrup; yeast, baking powder; edible salts, including sea salts and herb salts; mustard, pepper; vinegar, including fruit vinegar; sauces, including salad dressings; spices; dietetic foodstuffs for children and patients for non-medical purposes.</p>	
<p>31 Fresh fruits and vegetables; seeds, natural plants and live animals; foodstuffs for animals, malt.</p>	
<p>CI 32 Beers including dietetic beers and beers with reduced alcohol; mineral water and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; vegetable drinks and vegetables juices for cooking; syrups and other preparations for making beverages.</p>	
<p>CI 33 Alcoholic beverages (except beers) included in class 33; alcohol containing dietetic drinks, namely diabetic wines and diabetic sparkling wines.</p>	
<p>CI 34 Tobacco and tobacco products; lighters, pocket devices for rolling cigarettes, cigarette paper, cigarette filters; matches.</p>	

CI 35 Advertising; advertising on the internet for others; television and radio advertising; business management; business administration; business management and organization consultancy; personnel recruitment; price comparison services; office functions; wholesale and retail services as well as online and mail order services included in class 35 in the field of foodstuffs, alcoholic and non-alcoholic beverages, tobacco products, health food articles, goods of a drugstore, cosmetic articles, perfumery, medicines, products of the health sector, hygienic articles, washing and cleaning preparations, household utensils, kitchen equipment, building centre articles, do-it-yourself articles, garden articles, building articles, vehicles and vehicles devices, bicycles, computers, computer software, electric and electronic products / devices and apparatus of the consuming electronics, electric articles and household electric devices, sound and data recording carriers, multimedia apparatus, multimedia accessories, telecommunication apparatus, machines, tools, metal goods, paper products, stationery, printed matters, office articles, handicraft works, decoration articles and school articles, cameras, photo articles, photo devices, jewellery and clocks, music instruments, purse maker and saddle maker products, furniture, fitments and decoration articles, clothing, footwear and accessories, textile products, home textiles and haberdashery, travelling articles, playthings, sport articles, sport and fitness apparatus, leisure articles, camping articles, pet supplies; compilation of goods for others for presentation purposes; presentation of goods on communication media for retail purposes; consultancy and information in trading and business matters (commercial information agencies); consultancy and information for consumers in trading and business matters (consumer advice shops); providing information via internet regarding consumer products, consumer advice shops and consumer service; planning and organisation of trade fairs for commercial or advertising purposes; marketing studies and market analysis; marketing; public relations; sales promotion for others; procurement services for others (purchasing goods and services for other businesses); arranging subscriptions to telecommunication services for others, also via e-commerce; procuring contracts for others regarding provision of services, especially

<p>procuring of abonnements for telecommunication services for others / telecommunication contracts, procuring of mobile communication contracts for others and contracts regarding delivery of ring tones for phones, repair and maintenance, delivery of flowers and plants and electric power supply; procuring of business and economy contacts, also via internet; arranging newspaper subscriptions for others; administrative processing of purchase orders / order processing, delivery order services and accountancy; publication of printed matters (also in electronically) for advertising purposes; conception organisation and conducting of consumer finding and consumer binding methods, especially of mailing, discounting, voucher and bonus programs; sales promotion activities for others; conducting of lotteries and competitions for advertising reasons (included in class 35); updating and dissemination of advertising matters; direct mail advertising; order processing, delivery order services and accountancy via e-commerce; services of a callcenter, namely support via hotlines in the context of administrative processing of purchase orders, telephone answering of consumer questions and/or complaints, organisational consultancy via callcenters; systemization of information into computer databases; shop window dressing; rental and leasing of shop equipment included in class 35, namely office requisites, photocopiers, vending machines, electronic cash register systems, cash desks, sales stalls, advertising spaces.</p>	
<p>CI 36 Insurance; financial affairs; monetary affairs; real estate affairs including real estate management and real estate agencies; rental and leasing of real estates (facility management); rental and leasing of real estates, namely sales areas, handling of bonus and premium programs for binding costumers via issuance (for others) of vouchers, discounting marks, costumer cards with payment function; issuance of data carriers adapted for booking of bonus and premium deals (included in class 36); issuance of credit cards as well as service and bonus cards with payment function; monetary affairs, namely handling of payments, especially cashless and card supported billing; financial information; services regarding monetary transactions, namely clearing (accounting transactions); consultancy in the field of in insurance, financial monetary affairs, real estate</p>	

<p>affairs (included in class 36).</p>	
<p>CI 37 Building construction, repair, namely maintenance and repair in the field of household utensils, kitchen equipment, building centre articles, do-it-yourself articles, garden articles, vehicle devices, bicycles, motorcycles, furniture, camping articles, computer, computer software, devices and apparatus of the consuming electronic, electronic devices, electronic articles and household electronic devices, refrigerators and refrigerating apparatus and machines, multimedia apparatus, multimedia accessories, cameras, telecommunication apparatus, metal goods, especially keys and locks, upholsteries, playthings, leatherwear, clothing, footwear, home textiles, leisure articles, jewellery and clocks; installation services; installation and maintenance of electronic apparatus, especially card readers, cash registers; washing of vehicles; washing, bleaching and cleaning of laundry; cleaning of buildings; rental and leasing of shop equipment included in class 37, namely cleaning machines.</p>	
<p>CI 38 Telecommunication; providing user access to information in the internet; providing of portals in the internet; mobile phone services; telephone services via callcenters; rental and leasing of shop equipment included in class 38, namely telecommunication apparatus, equipment for telecommunication, message sending apparatus.</p>	<p>CI 38 Telecommunications.</p>
<p>CI 39 Transport; packaging and storage of goods; delivering of goods; courier services; car parking; travel arrangement, booking and arranging of voyages, excursions, day tours, tours, city tours; portage; information via hotline or callcenter in the field of tourism; transport of passengers and goods with automobiles, railways, ships and airplanes; escorting of travellers; information regarding voyages; traffic information services; rental, booking and arranging of automobiles, bicycles; services and business of a travel agency (included in class 39); rental and leasing of shop equipment included in class 39, namely refrigerators and refrigerating machines and apparatus, storage containers, motor</p>	

cars, shopping trolleys, sales tables, shelves for storage and presentation of goods.	
	CI 41 Education; providing of training; entertainment; sporting and cultural activities.
CI 42 Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software; providing of platforms in the internet; data processing and maintenance for others (included in class 42), namely server administration [Hosting], electronic data storage; electronic data saving; services of a graphic designer, namely consultancy with regards to form and content of printed or electronic publications; design of printed or electronic publications; digital image processing (graphic arts designing); updating of websites; design and maintenance of websites for others; material testing; quality testing; interior design consulting; consultancy in the field of energy-saving; rental and leasing of shop equipment included in class 42, namely data processing apparatus.	CI 42 Scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software.

Class 38

55. The contested services “*telecommunications*” are identical to the “*telecommunication*” services in the list of goods and services of the opponent’s mark.

Class 41

56. The contested services “*education; providing of training*” are educational services which are provided by educational institutions to a broad general public. Considering the differences in nature and purpose and due to the fact that they are provided by other companies than those who provide the goods and services relating to the right invoked, the Office holds these services to be dissimilar. The Office finds no justification in the opponents claim that educational services should be considered similar to “*wholesale and retail (...) services in the field of school articles*”. After all, these services evidently stem from other providers and the relevant public is well aware of that fact.

57. The contested services “*entertainment; sporting and cultural activities*” are similar to the services “*travel arrangement, booking and arranging of voyages, excursions, day tours, tours, city tours*”.

Both are aimed at providing entertainment for a large public. It is a common phenomenon that, in the world of travelling, specialized cultural and sporting tours are offered, such as cultural city trips to Rome or Amsterdam and sporting trips like golf holidays or surf vacations. These activities will generally be booked in advance through the travel agency and are aimed at the same relevant public (see in that sense BOIP, Evenementsreizen, opposition decision 2003054, 31 December 2009). Therefore the Office considers the services to be similar.

Class 42

58. The contested services “*scientific and technological services and research and design relating thereto; industrial analysis and research services; design and development of computer hardware and software*” are all, in the same wording, included in the list of goods and services relating to the opponent’s mark, and are, as a consequence, identical.

Conclusion

59. The contested services are partly identical, partly similar and partly dissimilar to the earlier goods and services.

A.2 Global assessment

60. When assessing the likelihood of confusion, in particular the level of attention of the relevant public, the similarity of the goods and services in question and the similarity of the signs are important factors.

61. The average consumer is deemed to be reasonably well-informed and reasonably observant and circumspect (case Lloyd, already cited). It should also be borne in mind that the average consumer’s level of attention is likely to vary according to the category of goods or services in question. The present case concerns mostly services which are targeted at the public in general. These services may be used on a regular basis by the average consumer without, necessarily, incurring high costs. However, the services “*design and development of computer hardware and software*” are considered to be expensive or aimed to meet a particular technological need, and consequently the level of attention of the consumer will be higher than average (see ECG, JAVA, T-554/12, 27 March 2014) for those services. For the remaining services the average level of attention of the public concerned may be deemed normal.

62. The global assessment of the likelihood of confusion assumes that there is a certain degree of interdependence between the factors to be taken in account, particularly between the level of similarity of the signs and of the goods or services which they cover. A lesser degree of similarity between the relevant goods or services can be offset by a greater degree of similarity between the trademarks, and vice versa (Canon and Lloyd, already cited).

63. The more distinctive the earlier trademark, the greater the likelihood of confusion. Marks with a highly distinctive character, either *per se* or because of the reputation they possess on the market, enjoy broader protection than marks with a less distinctive character (Canon, Sabel and Lloyd, already cited). No claim for reputation was made by the opponent, so therefore the assessment of the distinctiveness of the earlier mark will rest on its distinctiveness *per se*. In the present case, the right invoked as a whole

has no meaning in relation to any of the goods and services at issue from the perspective of the public in the relevant territory. Consequently, the distinctiveness of the earlier mark must be seen as normal.

64. Furthermore, it is of importance that the average consumer only rarely has the chance to make a direct comparison between the different marks but must place his trust in the imperfect picture of them that he has kept in his mind.

65. Based on the circumstances mentioned above, including the level of similarity of the signs, the fact that some of the services are identical or similar and notwithstanding the partly high level of attention of the public, the Office is of the opinion that the relevant public might believe that the identical and similar services stem from the same undertaking or from economically-linked undertakings.

B. Other factors

66. The defendant points out that the opponent's trademarks are used for a prospectus which covers different consumer goods and particularly food products and that the geographical coverage of the prospectus seems to be limited to the German market to in-the-know users and insiders (see paragraph 25). The opposition procedure leaves no room for considerations concerning the actual use of the signs or the normative issues as mentioned by the defendant (see paragraph 28). The comparison of the signs is solely based on the goods and services as mentioned in the registration, possibly limited by the evidence of genuine use provided by an opponent (CJEU, *Quantum*, C-171/06, 15 March 2007, O2 Holdings Limited, C-533/06, 12 June 2008, EGC, *Ferromix e.a.*, T-305/06-T-307/06, 15 October 2008).

67. Regarding the defendant's observation concerning the fact that many products and services bear the name "ONE GLOBE", potentially resulting in confusion with those (identical) signs, but not with the sign "i.globe", which according to the defendant is also a widely used sign (see paragraph 24), the Office admits that the possibility cannot be entirely excluded that, in certain cases, the coexistence of earlier marks on the market could reduce the likelihood of confusion between the two marks at issue. However, that possibility can be taken into consideration only if, at the very least, during the proceedings, the defendant has duly demonstrated that such coexistence was based upon the absence of any likelihood of confusion on the part of the relevant public between the earlier marks upon which it relies and the opponent's earlier mark on which the opposition is based, and provided that the earlier marks concerned and the marks at issue are identical (see EGC, *Top iX*, T-57/06, 7 November 2007 and *LIFE BLOG*, T-460/07, 20 January 2010). In this case, however, no evidence of such a kind, has been provided by the defendant.

C. Conclusion

68. Based on the foregoing the Office is of the opinion that there exists a likelihood of confusion.

69. The opposition (partly) succeeds, based on the second right invoked, the word mark ONE GLOBE. No comparison to the first right invoked, the combined word/figurative mark ONE GLOBE, has been made by the Office, as it would not alter the outcome of the proceedings, because of the fact that the goods and services pertaining to both rights invoked are substantively identical.

IV. DECISION

70. The opposition with number 2009541 is partly justified.

71. Benelux application with number 1279426 is revoked for the following services:

- Class 38: (*All services*)
- Class 41: Entertainment; sporting and cultural activities.
- Class 42: (*All services*).

72. Benelux application with number 1279426 is upheld the following services:

- Class 41: Education; providing of training.

73. Neither of the parties shall pay the costs in accordance with article 2.16(5) BCIP in conjunction with rule 1.32(3) IR, as the opposition is partly justified. This decision constitutes an enforceable order pursuant to article 2.16 (5) BCIP.

The Hague, 1 October 2015

Tomas Westenbroek
(*rapporteur*)

Saskia Smits

Diter Wuytens

Administrative officer: Hennie Kingma