



BENELUX OFFICE FOR INTELLECTUAL PROPERTY
OPPOSITION DECISION
N° 2010998
of 11 August 2016

Opponent: **“Michèle” Textil-Vertriebsgesellschaft mbH**
Dohrweg 25
41066 Mönchengladbach
Germany

Representative: **BONSMANN · BONSMANN · FRANK**
Kaldenkirchener Str. 35a
41063 Mönchengladbach
Germany

Invoked right: **European registration 9992975**

MICHÈLE

against

Defendant: **CKL HOLDINGS N.V.**
Kaasrui 12
2000 Antwerpen
Belgium

Representative: --

Contested trademark: **Benelux application 1310442**

MICHELLE

I. FACTS AND PROCEEDINGS

A. Facts

1. On 15 May 2015 the defendant filed an application for a trademark in the Benelux for the word mark MICHELLE for goods and services in classes 25, 38 and 41. This application was processed under number 1310442 and was published on 19 May 2015.

2. On 24 June 2015 the opponent filed an opposition against the registration of the application. The opposition is based on European registration 9992975 of the word mark MICHÈLE, filed on 24 May 2011 and registered on 20 November 2011 for goods and services in classes 18, 25 and 35.

3. According to the register the opponent is the actual holder of the trademark invoked.

4. The opposition is directed against all goods in class 25 of the contested application and is based on all goods and services of the trademark invoked.

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

6. The language of the proceedings is English.

B. Course of the proceedings

7. The opposition is admissible and was notified by the Benelux Office for Intellectual Property (hereinafter: "the Office") to the parties on 30 June 2015. During the administrative phase of the proceedings both parties filed arguments. The course of the proceedings meets the requirements as stated in the BCIP and the Implementing Regulations (hereinafter "IR"). The administrative phase was completed on 6 January 2016.

II. ARGUMENTS

8. 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

9. The opponent argues that the signs are aurally identical. The small differences (consisting of the double 'l' in the contested sign and the grave accent in the trademark invoked) do not lead to a different pronunciation. According to the opponent, the signs are visually also very similar. The opponent states that both signs simply consist of writing alternatives for the same word. For this reason, the contested sign is almost identical to the trademark invoked.

10. With regard to the comparison of the goods and services, the opponent states that the goods are partly identical and partly very similar.

11. The opponent concludes that there is a high risk of confusion and he requests that the Office refuses the contested sign and orders the defendant to bear the refundable costs of these proceedings.

B. Defendant's arguments

12. The defendant argues that the goods are not similar. According to the defendant, the goods of the contested sign are specified and this specification is clearly different from the broad category for which the trademark invoked is registered. To substantiate this point of view, the defendant refers to a decision of the General Court (hereinafter: "EGC") in the case MOBILIX (27 October 2005, T-336/03).

13. With regard to the comparison of the signs, the defendant argues that the signs are visually significantly different. According to the defendant, the public will place great emphasis on the 'è' in the trademark invoked. The defendant states that the French-speaking public in the Benelux will recognise the trademark invoked as the French name 'Michèle'. However, according to the defendant, the non-French speakers will simply assess the grave accent letter as a stylization of the trademark invoked. The defendant further states that the additional letter 'l' in the contested sign also creates a difference.

14. The defendant argues that part of the public will pronounce the signs identically. However, according to the defendant, the signs will be pronounced differently by the part of the public which is not aware of the relevance of the grave accent.

15. The defendant also states that the contested sign is a feminine name and the trademark invoked is a male French name. For this reason, the defendant argues that there is no conceptual similarity.

16. The defendant concludes that there is no likelihood of confusion and he requests that the Office rejects the opposition and orders the opponent to bear all costs and fees arising in connection with these proceedings.

III. DECISION

A.1 Likelihood of confusion

17. 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 date 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.

18. Article 2.3 (a) and (b) BCIP stipulates that "*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.*"

19. According to case law of the Court of Justice of the European Union (hereinafter: "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

20. 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).

21. 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).

22. The signs to be compared are the following:

Opposition based on:	Opposition directed against:
MICHÈLE	MICHELLE

Visual comparison

23. Both signs are purely verbal marks and consist of one word. The trademark invoked consists of the word MICHÈLE and the contested sign consists of the word MICHELLE.

24. Both signs contain seven identical letters which are also placed in the same order. The only differences are the second letter L and the grave accent. The Office considers that these small differences are insufficient to evoke a different global visual impression. Furthermore, the Office also considers that 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).

25. For this reason, the Office is of the opinion that the trademark invoked and the contested sign are visually strongly similar.

Aural comparison

26. Aurally the trademark invoked is pronounced in two syllables: MI-CHÈLE. The Office considers that part of the public, which speaks French, could pronounce the contested sign identical as the trademark invoked. The Office also considers that the Dutch-speaking part of the public could pronounce the contested sign in three syllables: MICH-EL-LE. In any case, the latter possible pronunciation is strongly similar to the pronunciation of the

trademark invoked. The Office considers, in line with the visual comparison, that this small aural difference is insufficient to evoke a different global aural impression, especially because the similarity occurs in the first part of the signs (Mundicor, already cited). The Office also points out that risk of confusion with part of the public is sufficient to justify the opposition (see EGC, Hai/Shark, T-33/03, 9 March 2005).

27. For this reason, the signs are aurally strongly similar.

Conceptual comparison

28. Although both signs refer to the name of a person, this does not in any way mean that the signs are conceptually similar. Neither does it mean that a sign that (partly) consists of a personal name has an established meaning (see BOIP, Rachel, opposition decision 2002674, 1 July 2009), except maybe when it concerns a very renowned name (ECJ, Picasso, C-361/04, 12 January 2006 en BOIP, Amadeus Fire, opposition decision 2002041, 30 July 2010). However, in the present case, this is not under discussion.

29. In the light of the foregoing, the trademark invoked and the contested sign have no established meaning and for this reason, a conceptual comparison is not possible.

Conclusion

30. Trademark and sign are visually and aurally strongly similar. A conceptual comparison is not under discussion.

Comparison of the goods and services

31. In assessing the similarity of the goods and services concerned, all the relevant factors relating to these 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).

32. With the comparison of the goods and services of the trademark invoked and the goods and services against which the opposition is filed, the goods and services are considered only on the basis of what is expressed in the register or as indicated in the trademark application.

33. The goods and services to be compared are the following:

Opposition based on:	Opposition directed against:
CI 18 Leather and imitations of leather, and goods made of these materials and not included in other classes; Animal skins, hides; Trunks and travelling bags; Umbrellas, parasols and walking sticks; Whips, harness and saddlery.	
CI 25 Clothing, headgear, belts for clothing.	CI 25 Clothing; footwear and headgear; swimwear; sportswear and leisurewear.
CI 35 Wholesale and retail services, including via the Internet, in relation to clothing, shoes, textile	

goods and leather goods; advertising.	
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34. The goods “*clothing*” and “*headgear*” are mentioned *expressis verbis* in both lists of goods and services and are therefore identical.

35. With regard to the defendant’s goods “*swimwear; sportswear and leisurewear*”, the Office considers that according to established case law, if the goods and services of the earlier trademark also contain goods and services that are mentioned in the application for the contested sign, these goods and services are considered identical (see EGC, Fifties, T-104/01, 23 October 2002; Arthur et Félicie, T-346/04, 24 November 2005 and Prazol, T-95/07, 21 October 2008). The trademark invoked covers all clothing and is, therefore, identical to the defendant’s goods “*swimwear; sportswear and leisurewear*”.

36. With regard to the goods “*footwear*”, the Office considers that these goods are similar to the goods “*clothing*” mentioned in Class 25 of the opponent. Both goods are worn by people in order to cover and protect the body. Furthermore, these goods are often commercialized by the same distribution channels and clothing and shoes are often introduced to the market under the same trademark. The Office is of the opinion that the consumer is aware of this and will assume that these products originate from the same undertaking (reference is made to BOIP, Nano, opposition decision 2002033, 25 May 2009).

Conclusion

37. The contested goods are partly identical and partly similar.

A.2 Global assessment

38. 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.

39. 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 goods which are targeted at the public in general. For these goods the average level of attention of the public concerned may be deemed normal.

40. The global assessment of the likelihood of confusion assumes that there is a certain degree of interdependence between the factors to be taken into 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). In this case the contested goods are identical or similar to the goods of the opponent.

41. 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). In the present case, the trademark invoked has a normal distinctiveness, as it does not describe the goods and services concerned.

42. Account must also be taken of the circumstance that normally, the average consumer perceives a mark as a whole and does not proceed to analyse its various details (Sabel and Lloyd, already cited). 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.

43. For this reason, based on the abovementioned circumstances, the Office is of the opinion that the relevant public might believe that the goods or services in question come from the same undertaking or from economically-linked undertakings.

B. Other factors

44. With reference to the defendant's request that the opponent should bear all costs of the proceedings (see paragraph 16), the Office considers that opposition proceedings with the Office provide for an allocation of the costs of the proceedings to the losing party. Article 2.16, 5 BCIP, as well as rule 1.32, 3 IR, only stipulates in this respect that an amount equaling the basic opposition fee shall be borne by the losing party.

C. Conclusion

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

IV. DECISION

46. The opposition with number 2010998 is justified.

47. Benelux application with number 1310442 will not be registered.

48. The defendant shall pay the opponent 1,000 euros in accordance with article 2.16, 5 BCIP in conjunction with rule 1.32, 3 Implementing Regulations, as the opposition is justified in its entirety. This decision constitutes an enforceable order pursuant to article 2.16, 5 BCIP.

The Hague, 11 August 2016

Eline Schiebroek
(rapporteur)

Saskia Smits

Camille Janssen

Administrative officer: François Veneri