

**BENELUX OFFICE FOR INTELLECTUAL PROPERTY**

**OPPOSITION DECISION**

**N° 2018674**

**of 17 May 2024**

**Opponent:** **The Hut.Com Limited**  
5th Floor, Voyager House, Chicago Avenue, Manchester Airport  
M90 3DQ Manchester  
United Kingdom

**Representative:** **HGF B.V.**  
Gedempt Hamerkanaal 257  
1021 KP Amsterdam  
Netherlands

**Trademark invoked:** **European Union trademark 18378625**  
  
THG Eco  
  
*against*

**Defendant:** **Einrichtungspartnerring VME GmbH & Co. KG**  
An der Wesebreite 2  
33699 Bielefeld  
Germany

**Representative:** **Brinkhof N.V.**  
Grote Bickersstraat 74 -78  
1013 KS Amsterdam  
Netherlands

**Contested trademark:** **International application designating the Benelux 1707127**  
  
TH eCommerce

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

1. The opposition is directed against the international application designating the Benelux for the word trademark 'TH eCommerce' for services in classes 35, 38 and 41. This application was processed under the number 1707127 and published on 12 January 2023.
2. On 17 February 2023, the opponent filed an opposition against this application. The opposition is based on the earlier European Union registration 18378625, for the word trademark 'THG Eco' filed on 19 January 2021 and registered on 21 December 2021 for goods and services in classes 9, 35, 38, 39, 40 and 42.
3. According to the register, the opponent is the actual holder of the trademark invoked.
4. The opposition is directed against all the services of the contested application and is based on all the goods and services of the trademark invoked.
5. The language of the proceedings is English.

**B. Proceedings**

6. The opposition is admissible and the Benelux Office for Intellectual Property (hereinafter referred to as: "the Office") notified the parties on 20 February 2023. During the administrative phase of the proceedings both parties filed arguments. All the documents submitted meet the requirements as stated in the BCIP and the Implementing Regulations (hereinafter referred to as: "IR"). The administrative phase of the procedure was completed on 15 August 2023.

**II. ARGUMENTS OF THE PARTIES**

7. The opponent filed an opposition at the Office under article 2.14 (2)(a) BCIP, in accordance with the provisions of article 2.2ter (1)(b) BCIP: the likelihood of confusion based on the identity or similarity of the relevant trademarks and of the goods or services concerned.

**A. Opponent's arguments**

8. Regarding the comparison of the goods and services, the opponent argues that retail services of specific goods and retail services of other goods have the same nature as both are retail services, the same purpose of allowing consumers to conveniently satisfy different shopping needs, and the same method of use. However, the opponent points out that a similarity can be found between those retail services only where the specific goods concerned are commonly retailed together in the same outlets and they target the same public. The opponent further contends that the listed retail services, covering a wide array of items such as furniture, kitchen utensils, and decorations, are essentially identical to the services covered by the trademark invoked, including online retailing and catalog services. Moreover, the opponent argues that services like advertising, marketing, and demonstrations of goods covered by the contested trademark are highly similar to the marketing-related services covered by the trademark invoked, as they serve the same purpose and target the same end-users. Additionally, the opponent claims that services related to business administration and online commercial information in class 35 are closely similar to the general business services in terms of purpose, distribution channels, and target audience.

9. In class 38, the opponent maintains that services related to internet platforms and communication covered by the contested trademark are identical or highly similar to the services covered by the trademark invoked offering non-downloadable software and online database access, as they either include or overlap with them. The opponent also asserts that the software solutions are indispensable for providing the contested services in this class.

10. In class 41, the opponent argues that the instructional seminars, training courses, and cultural events covered by the contested trademark are similar to the services related to online software and computer databases covered by the trademark invoked in class 38. He suggests that these services share distribution channels, target audiences, and may even complement each other.

11. According to the opponent, the services are identical and similar to varying degrees and are directed at the public at large and business customers with specific professional knowledge or expertise in the IT field. Therefore, he considers that the public's degree of attentiveness may vary from average to high, depending on the price, specialized nature, or terms and conditions of the services purchased.

12. Regarding the comparison of the signs, the opponent argues that both trademarks are word trademarks, and that the protection of a word trademark concerns the word as such. Therefore, he points out that it is irrelevant if one of them is written in upper-case letters and the other in lower-case letters or in a combination thereof in a manner that does not depart from the usual way of writing.

13. Visually, the opponent finds the signs in question to be highly similar. He explains that both trademarks share the sequence 'TH\* ECO', which composes "the sole element of the trademark invoked and is placed at the beginning of the contested trademark". The opponent asserts that consumers generally tend to focus on the beginning of a sign when they encounter a trademark. This is because the public reads from left to right, which makes the part placed at the left of the sign (the initial part) the one that first catches the attention of the reader. This means that the identical beginnings in the signs are particularly relevant. The opponent admits that the signs in question differ in the letter 'G' placed in the third position in the trademark invoked, which is not present in the contested trademark, and in the final letters 'MMERCE' in the contested trademark, which has no counterpart in the trademarks invoked. However, the opponent considers that both will have a limited impact though on the comparison of the signs, due to their position.

14. Phonetically, the pronunciation of the signs coincides in the sound of the letters 'TH\*ECO', present identically in both signs. The pronunciation differs in the sound of the letters 'MMERCE' of the contested trademark and the letter 'G' in the trademark invoked.

15. Conceptually, the opponent finds the two signs to be identical or similar when they are perceived as having the same or analogous semantic content. The opponent explains that the component 'ecommerce' in the contested sign will be associated with 'commercial activity conducted via electronic media'. Bearing in mind that the relevant services are services in classes 35, 38 and 41, which involve activities provided via electronic media and/or creating events or materials that can be marketed through ecommerce, and/or which can be related to education or information about ecommerce, the opponent considers this element to be weak for all of the relevant services, as it refers to their nature, subject matter or purpose. According to the opponent, the trademark invoked as a whole does not have a clear meaning known to the public and the element 'ECO' might be perceived as a diminutive of the word 'ecommerce', particularly given the registered services.

16. In the opponent's point of view, the trademark invoked has no meaning for any of the goods in question from the perspective of the public in the relevant territory. Accordingly, he considers that this trademark is distinctive *per se*, which increases the likelihood of confusion.

17. In light of the above, the fact that the average consumer normally perceives a trademark as a whole and does not proceed to an analysis of its various details and the principle of interdependence, the opponent considers that there is a likelihood of confusion on the part of the relevant public.

18. For the above-mentioned reasons, the opponent requests the Office to fully reject the contested trademark and to order that the defendant shall bear the costs.

## **B. Defendant's arguments**

19. In the context of the comparison of goods and services the defendant asserts, contrary to the opponent's claims, that the contested services of compilation of goods for presentation and sales purposes is not identical to the opponent's broad services of compilation and provision of business information and data. The defendant emphasizes that while both descriptions start with the term "compilation", the nature, intended purpose, and use of the services differ significantly. The defendant's services aim at assembling products to create attractive marketing materials, whereas the opponent's services gather electronic information and data for companies. Hence, the defendant argues that these services are dissimilar. The defendant also disputes the opponent's assertion that various other contested services, such as internet auctions and business administration, are highly similar to the opponent's marketing-related services. The defendant contends that its services target different audiences and serve distinct purposes compared to the opponent's marketing services. For instance, while the defendant's services focus on auctions and administrative tasks, the opponent's services are oriented towards marketing and digital marketing. Hence, the defendant concludes that these services are dissimilar.

20. Regarding the services covered in class 38, the defendant rejects the opponent's claim that providing access to internet platforms is identical to the defendant's provision of non-downloadable computer software. The defendant argues that internet platforms and non-downloadable software serve different functions and have different economic significance. Despite both being internet-related services, they do not compete or complement each other. Therefore, the defendant asserts that these services are dissimilar.

21. Regarding the services covered in class 41, the defendant contests the opponent's assertion that education and training services are similar to the defendant's services related to computer software and database access. The defendant maintains that its services target different audiences and have distinct purposes compared to the opponent's services. Additionally, the defendant argues that the opponent has not demonstrated any complementary relationship between the services. Hence, the defendant concludes that these services are dissimilar.

22. In the context of the comparison of the signs, the defendant argues that although the dominant elements of the trademark invoked and the contested trademark differ slightly, their weakly distinctive components, 'Eco' and 'eCommerce' respectively, should not be considered similar. The element 'Eco' commonly signifies ecological or environmentally friendly, while 'eCommerce' refers to commercial activities conducted online. The defendant contests the opponent's claim that 'Eco' could be perceived as a diminutive of 'ecommerce', stating there's no evidence to support this assertion.

23. Visually, the defendant emphasizes the importance of assessing signs as a whole. While both trademarks share similarities in starting with 'TH', their overall structures differ significantly. The defendant highlights differences in length and placement of components, asserting a low degree of visual similarity between the marks. Even when comparing only dominant elements, such as 'THG' and 'TH', the defendant argues for noticeable differences, particularly in the endings of the elements.

24. Phonetically, the defendant underscores differences in syllable count and pronunciation between the signs in question. Despite the single-letter difference in dominant elements, the defendant contends that the dissimilarity in syllable count affects the overall phonetic perception of the trademarks, resulting in low similarity.

25. Conceptually, the defendant asserts that 'THG' and 'TH' lack independent meanings to the relevant public. However, both trademarks include additional elements, 'Eco' and 'eCommerce', respectively, with distinct connotations. The defendant rejects the opponent's claim that 'Eco' might be perceived as a diminutive of "ecommerce" due to lack of evidence. Ultimately, the defendant concludes that the conceptual dissimilarity of the trademarks, when considered as a whole, supports their argument.

26. Contrary to the opponent's assertions, the defendant argues that the services covered by the contested trademark are dissimilar to those covered by the trademark invoked. He explains that the services in question target a broad spectrum of users, including both the general public and business clients with expertise in the IT field. The defendant emphasizes that the services in question target a specialized public, characterized by its high degree of attentiveness and discernment due to the technical or specific nature of the services offered, making confusion unlikely.

27. Given the significant impact of the differing letters in the dominant elements of the signs, especially for the specialized professional public, the defendant concludes that there is no likelihood of confusion. Furthermore, the defendant highlights that the trademark invoked lacks enhanced distinctiveness, and there's no evidence provided by the opponent to the contrary. Consumers are unlikely to believe that the goods and services offered under the contested trademark originate from the same origin as those marketed under the trademark invoked.

28. In light of these arguments, the defendant asserts that the opposition filed by the opponent should be rejected due to the absence of likelihood of confusion. Additionally, they request that the opponent be ordered to pay the costs as provided for in article 2.16 (5) BCIP.

### **III. DECISION**

#### **A.1 Likelihood of confusion**

29. In accordance with Article 2.14 BCIP, the 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 2.2ter BCIP.

30. Article 2.2ter (1) BCIP stipulates insofar as relevant that "a trademark shall, in case an opposition is filed, not be registered (...) where: b. because of its identity with, or similarity to, the earlier trademark and the identity or similarity of the goods or services covered by the trademarks, there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association with the earlier trademark".<sup>1</sup>

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<sup>1</sup> Art. 2.2ter (1)(b) BTIP implements art. 5 (1)(b) Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trademarks. A similar provision can be found in art. 8 (1)(b) Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trademark.

31. A likelihood of confusion within the meaning of this provision exists if the public may believe that the goods or services designated by that trademark and those covered by the trademark applied for come from the same undertaking or, where appropriate, from undertakings which are economically linked.<sup>2</sup>

32. According to settled case-law of the Court of Justice of the European Union (hereinafter "CJEU"), the existence of a likelihood of confusion in the mind of the public must be assessed globally, considering all the relevant circumstances of the individual case, including the degree of similarity between the signs at issue and the goods or services concerned, the degree of recognition of the earlier trademark and the degree of distinctiveness – inherent or acquired through use – of the earlier trademark.<sup>3</sup>

### **Comparison of the goods and services**

33. In assessing the similarity of the goods and services concerned, account must be taken of all the relevant factors which characterise the relationship between them. 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.<sup>4</sup>

34. In comparing the goods and services, the goods and services shall be considered in the terms set out in the register and not the actual or intended use.<sup>5</sup>

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

<b>Opposition based on:</b>	<b>Opposition directed against:</b>
CI 9 Computer software, for use in relation to ecommerce and online retailing.	
CI 35 Online retail services, relating to toys, games, playthings, soft toys, figurines, puzzles, remote control vehicles, sporting articles, clothing, footwear, headgear, jewellery, watches, clocks, products made from precious metals or coated therewith, namely, pens, statues, badges, cups, mugs, trinkets, tie holders, tie clips, ring holders, jewellery boxes, purses and wallets, key charms, ornamental figurines, bags, leather products, namely, luggage carriers, bags, wallets, purses, belts, footwear, key cases, briefcases, handbags, umbrellas, furniture, glasses, sunglasses, beauty products and accessories, male grooming products; online retail services, relating to perfumes, skin care and hair care products, key rings, electrical and electronic apparatus for storing, transmitting, logging and processing data, electrical hair styling appliances, electrical	CI 35 Administrative processing and organising of mail order services; provision of online business and commercial information; updating and maintenance of data in computer databases; provision of an online marketplace for buyers and sellers of goods and services; provision of information and advisory services relating to e-commerce; providing business information via a web site; retail services in the areas of: furniture and furnishings, kitchens, kitchen utensils, utensils for household purposes, table plates, cooking pot sets, containers for household or kitchen use, table cutlery, kitchen knives, cutting implements for kitchen use, linens, household textile articles, textile material, textile goods and substitutes for textile goods, carpets [textile], decorations, luminaires, fuels and illuminants, festive decorations, chronometric apparatus and

<sup>2</sup> CJEU 11 June 2020, C-115/19 P, ECLI:EU:C:2020:469, point 54 (China Construction Bank).

<sup>3</sup> CJEU 4 March 2020, C-328/18 P, ECLI:EU:C:2020:156, point 57 and the case-law mentioned there (Equivälzenza).

<sup>4</sup> CJEU 29 September 1998, C-39/97, ECLI:EU:C:1998:442, point 23 (Canon).

<sup>5</sup> General Court (EU) 16 June 2010, T-487/08, ECLI:EU:T:2010:237, point 71 (Kremezin).

<p>personal grooming appliances, electrical toothbrushes, audio and visual equipment, computers, computer equipment, computer games, video games, sound recordings, video recordings, books, stationery, printed matter, diaries, prints, posters, photographic prints, food and drink, tobacco and smokers products, household or kitchen equipment, utensils or containers, earthenware, glassware, crockery, table ware; online retail services, relating to textiles and textile goods, bed linen, table linen, towels, curtains, rugs, cutlery, lighting, mirrors, works of art, hair ornaments, cosmetics, beauty products, nutritional products, food supplements; marketing services; marketing consultancy and advisory services; online marketing services; digital marketing services; advertising services; analysis, compilation and provision of business information and data; analysis, compilation and provision of marketing data and information; marketing research services; business research services; information, advisory and consultancy services, all relating to the aforesaid services.</p>	<p>instruments, printed matter, stationery, artificial flowers, artificial plants, other than christmas trees, including by means of electronic media, in particular via the internet; services rendered by a franchisor, namely, assistance in the running or management of industrial or commercial enterprises; development of advertising concepts; business management; assistance in product commercialization within the framework of a franchise contract; provision of business assistance; marketing and promotional services; online retail services or retail services via catalogues in the areas of: furniture and furnishings, kitchens, kitchen utensils, utensils for household purposes, table plates, cooking pot sets, containers for household or kitchen use, table cutlery, kitchen knives, cutting implements for kitchen use, linens, household textile articles, textile material, textile goods and substitutes for textile goods, carpets [textile], decorations, luminaires, fuels and illuminants, festive decorations, chronometric apparatus and instruments, printed matter, stationery, artificial flowers, artificial plants, other than christmas trees; arranging and conducting of advertising events; organization of exhibitions for commercial or advertising purposes; demonstration of goods; presentation of goods on communication media, for retail purposes; presentation of companies and their goods and services on the internet; product demonstrations and product display services; systemization of information into computer databases; business advisory services relating to the establishment and operation of franchises; business administration; arranging and conducting of internet auctions; rental of advertising space on the internet; arranging of commercial and business contacts; arranging of contracts for others for the providing of services; mediation of trade business for third parties; advertising; compilation of information into computer databases; compilation of goods for third parties for presentation and sales purposes in the areas of: furniture and furnishings, kitchens, kitchen utensils, utensils for household purposes, table plates, cooking pot sets, containers</p>
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	for household or kitchen use, table cutlery, kitchen knives, cutting implements for kitchen use, linens, household textile articles, textile material, textile goods and substitutes for textile goods, carpets [textile], decorations, luminaires, fuels and illuminants, festive decorations, chronometric apparatus and instruments, printed matter, stationery, artificial flowers, artificial plants, other than christmas trees, also with the aid of electronic media, in particular via the internet.
CI 38 Providing access to non-downloadable computer software over the internet for use in relation to ecommerce and online retailing; leasing access time to a computer database for use in relation to ecommerce and online retailing.	CI 38 Providing access to platforms and portals on the internet; providing access to e-commerce platforms on the internet; provision of access to an electronic marketplace [portal] on computer networks; providing online forums; providing internet chat rooms; communications services provided over the internet.
	CI 41 Conducting of instructional seminars; conducting courses, seminars and workshops; provision of training courses; production of course materials to be distributed at seminars for professionals; preparation of texts for publication; publication of manuals; editing of written texts; online publishing services; providing online electronic publications, not downloadable; publication of printed matter; arranging and conducting of colloquiums; arranging and conducting of conferences; organisation of training; organisation of events for cultural, entertainment and sporting purposes; entertainment provided via the internet; entertainment services; publication of printed matter in electronic form; publication of material which can be accessed from databases or from the internet.
CI 42 Design and development of computer hardware and software, all for use in relation ecommerce and online retailing; installation, maintenance and repair of computer software, all for use in relation ecommerce and online retailing; design, constructing and providing an internet platform for electronic commerce and online retailing; constructing and providing an IT platform for electronic commerce and internet	



<p>retailing; design, consultancy and advisory services for the development and implementation of Internet web sites and web applications, all for use in online retailing; design, drawing and commissioned writing for the compilation of web sites, all for use in relation ecommerce and online retailing; creating, maintaining and hosting the web sites of others, all in the field of ecommerce and online retailing; consultancy and support services relating to the operation and maintenance of websites, in the fields of ecommerce and online retailing; consultancy and support services relating to the operation and maintenance of retail websites; design and development of computer databases, in the fields of ecommerce and online retailing; information, advisory and consultancy services relating to energy efficiency and energy saving; information, advisory and consultancy services relating to climate change; information, advisory and consultancy services, all relating to the aforesaid services.</p>	
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*Class 35*

36. The defendant's *retail services in the areas of: furniture and furnishings, kitchens, kitchen utensils, utensils for household purposes, table plates, cooking pot sets, containers for household or kitchen use, table cutlery, kitchen knives, cutting implements for kitchen use, linens, household textile articles, textile material, textile goods and substitutes for textile goods, carpets [textile], decorations, luminaires, fuels and illuminants, festive decorations, chronometric apparatus and instruments, printed matter, stationery, artificial flowers, artificial plants, other than christmas trees, including by means of electronic media, in particular via the internet; online retail services or retail services via catalogues in the areas of: furniture and furnishings, kitchens, kitchen utensils, utensils for household purposes, table plates, cooking pot sets, containers for household or kitchen use, table cutlery, kitchen knives, cutting implements for kitchen use, linens, household textile articles, textile material, textile goods and substitutes for textile goods, carpets [textile], decorations, luminaires, fuels and illuminants, festive decorations, chronometric apparatus and instruments, printed matter, stationery, artificial flowers, artificial plants, other than christmas trees; compilation of goods for third parties for presentation and sales purposes in the areas of: furniture and furnishings, kitchens, kitchen utensils, utensils for household purposes, table plates, cooking pot sets, containers for household or kitchen use, table cutlery, kitchen knives, cutting implements for kitchen use, linens, household textile articles, textile material, textile goods and substitutes for textile goods, carpets [textile], decorations, luminaires, fuels and illuminants, festive decorations, chronometric apparatus and instruments, printed matter, stationery, artificial flowers, artificial plants, other than christmas trees, also with the aid of electronic media, in particular via the internet* are highly similar, if not identical, to the *Online retail services, relating to watches, clocks, stationery, printed matter, household or kitchen equipment, utensils or containers, textile goods, bed linen, table linen, to ornamental figurines, posters, photographic prints, earthenware, mirrors, works of art.* These services are either indicated in synonymous

terms, or overlap.<sup>6</sup> The nature of these service is the same, namely retail services, and they concern identical or highly similar goods.

37. The defendant's *demonstration of goods; presentation of goods on communication media, for retail purposes; presentation of companies and their goods and services on the internet; product demonstrations and product display services; advertising concepts; marketing and promotional services; arranging and conducting of advertising events; organization of exhibitions for commercial or advertising purposes; rental of advertising space on the internet; advertising* are identical or at least highly similar to the opponent's *marketing consultancy and advisory services; online marketing services; digital marketing services; advertising services*. These services are included in the general category<sup>7</sup> of advertising and marketing services.

38. The defendant's *provision of information and advisory services relating to e-commerce; provision of online business and commercial information; provision of an online marketplace for buyers and sellers of goods and services; providing business information via a web site; provision of business assistance* are similar to the opponent's *online retail services* and the related *information, advisory and consultancy services* as the latter represent the object of the former. They complement each other as they share a close and compulsory link.

39. The defendant's *arranging of commercial and business contacts; arranging of contracts for others for the providing of services; mediation of trade business for third parties; services rendered by a franchisor, namely, assistance in the running or management of industrial or commercial enterprises; assistance in product commercialization within the framework of a franchise contract; business advisory services relating to the establishment and operation of franchises* are similar to the opponent's *marketing research services; business research services*. The contested services may relate to market research and business analysis, the purpose of which is to help a business to develop and expand its market share, which is similar to the purpose of the opponent's services namely, to reinforce a business position in the market.

40. The defendant's *arranging and conducting of internet auctions* involve the digital facilitation of public sales for goods or property. As a result, these services streamline commercial transactions by connecting buyers and sellers and enabling concurrent sales. There exists a correlation between these services and the opponent's *online retail services related to works of art*, as such goods often undergo bidding processes in the market. Given their shared purpose and potential appeal to similar user groups, these services are similar.

41. The defendant's *Administrative processing and organising of mail order services; updating and maintenance of data in computer databases; business management; systemization of information into computer databases; business administration; compilation of information into computer databases* are similar to the opponent's *compilation and provision of business information and data; analysis, compilation and provision of marketing data and information*. All these services may be useful in the management and administration of a business. They have a similar purpose, they target the same relevant consumers and share the same distribution channel.

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<sup>6</sup> General court (EU) 23 October 2002, T-104/01, ECLI:EU:T:2002:262, point 32 (Fifties); General court (EU) 24 November 2005, T-346/04, ECLI:EU:T:2005:420, point 34 (Arthur et Félicie).

<sup>7</sup> General court (EU) 23 October 2002, T-104/01, ECLI:EU:T:2002:262, point 32 (Fifties); General court (EU) 24 November 2005, T-346/04, ECLI:EU:T:2005:420, point 34 (Arthur et Félicie).

### *Class 38*

42. The defendant's services *Providing access to platforms and portals on the internet; providing access to e-commerce platforms on the internet; provision of access to an electronic marketplace [portal] on computer networks; providing online forums; providing internet chat rooms; communications services provided over the internet* are highly similar, if not identical, to the opponent's services *Providing access to non-downloadable computer software over the internet for use in relation to ecommerce and online retailing; leasing access time to a computer database for use in relation to ecommerce and online retailing*. These services are either indicated in synonymous terms, or overlap, or are included in a more general category<sup>8</sup>. They are the same services for providing access to Internet platforms/software and have the same purpose, namely e-commerce.

### *Class 41*

43. The defendant's services in class 41 are dissimilar to the opponent's services in class 38. The services of the trademark invoked refer to telecommunications services. These services do not have a direct and obligatory link with the contested services which encompass education, training, entertainment, sporting and cultural activities. Their natures, purposes and methods of use are different. They do not coincide in their provider and do not share the same distribution channels. Furthermore, and contrary to the opponent's assertions, these goods are neither complementary nor in competition and they target different end users. Considering otherwise would equate all goods or services utilizing remote communication as telecommunications services. Last but not least, even if some of the opponent's goods and services in classes 9, 35, 38 and 42 relate to a virtual marketplace, those services remain different because they are clearly not provided by the same undertakings and are of a different nature.

### *Conclusion*

44. The services covered by the contested sign are partly identical, partly similar, and partly dissimilar to the goods and services covered by the trademark invoked.

### ***Comparison of the signs***

45. To assess the degree of similarity between the conflicting signs, their visual, phonetic, and conceptual similarity should be determined. The comparison must be based on the overall impression given by those signs. In the assessment, the perception of the signs by the average consumer plays a decisive role. The average consumer normally perceives a mark as a whole and does not engage in an analysis of its various details.<sup>9</sup>

46. Although the comparison must be based on the overall impression made by those signs on the relevant public, account must nevertheless be taken of the intrinsic qualities of the signs at issue.<sup>10</sup> The overall impression created in the mind of the relevant public by a complex trademark may, in certain circumstances, be dominated by one or more of its components. Regarding the assessment of whether this is the case, account must be taken, in particular, of the intrinsic qualities of each of those components by

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<sup>8</sup> General court (EU) 23 October 2002, T-104/01, ECLI:EU:T:2002:262, point 32 (Fifties); General court (EU) 24 November 2005, T-346/04, ECLI:EU:T:2005:420, point 34 (Arthur et Félicie).

<sup>9</sup> CJEU 4 March 2020, C-328/18 P, ECLI:EU:C:2020:156, point 58 and the case-law mentioned there (Equivalenza).

<sup>10</sup> CJEU 4 March 2020, C-328/18 P, ECLI:EU:C:2020:156, point 71 and the case-law mentioned there (Equivalenza).

comparing them with those of other components. In addition and accessorially, account may be taken of the relative position of the various components within the arrangement of the complex mark.<sup>11</sup>

47. The assessment of the similarity between the signs, regarding the visual, phonetical and conceptual similarity of the signs, must be based on the overall impression created by them, taking into account, inter alia, their distinctive and dominant components.

48. The signs to be compared are the following:

<b>Opposition based on:</b>	<b>Opposition directed against:</b>
THG Eco	TH eCommerce

#### *Visual comparison*

49. The trademark invoked is a word trademark consisting of the word elements 'THG' and 'Eco'.

50. The contested trademark is a word trademark consisting of the word elements 'TH' and 'eCommerce'.

51. Given that the trademarks in question are word trademarks, the fact that parts are represented in capital letters and parts are represented in lower-case letters, is irrelevant for the purposes of a visual comparison of those trademarks. The protection offered by the registration of a word trademark applies to the word stated in the application for registration and not to the individual graphic or stylistic characteristics which that trademark might possess.<sup>12</sup>

52. The element 'Eco'<sup>13</sup> in the trademark invoked will be perceived as referring to 'ecological'. Considering that the word 'Eco' can reflect the characteristics of the relevant goods and/or services, this verbal element is considered non-dominant in the trademark invoked.

53. The element 'eCommerce' in the contested trademark will be associated with 'commercial activity conducted via electronic media'<sup>14</sup>. Bearing in mind that the relevant services in Classes 35, 38 and 41 involve activities provided via electronic media and/or creating events or materials that can be marketed through ecommerce, and/or which can be related to education or information about ecommerce, this element is considered non-dominant for all of the relevant services, as it refers to their nature, subject matter or purpose.

54. Visually, the signs coincide in the sequence of letters 'TH\*ECO'. However, the signs are distinguished by their structure namely two words of three letters for the trademark invoked, and a word of two letters and a word of nine letters for the contested trademark. The signs differ by the letter 'G' in the trademark invoked and 'MMERCE' in the contested trademark.

55. As indicated above, the influence of the words elements 'Eco' and 'eCommerce' is reduced by its lesser degree of distinctiveness. Consequently, the relevant public will focus more on the beginning of the

<sup>11</sup> General Court (EU) 23 October 2002, T-6/01, ECLI:EU:T:2002:261, points 34 en 35 (Matratzen) en 13 December 2007, T-242/06, ECLI:EU:T:2007:391, point 47 (El Charcutero Artesano).

<sup>12</sup> General Court (EU) 31 January 2013, T-66/11, ECLI:EU:T:2013:48, point 57 (Babilu).

<sup>13</sup> General Court (EU) 24 April 2012, T-328/11, ECLI:EU:T:2012:197, point 25 (EcoPerfect) ; General Court (EU) 15 January 2013, T-625/11, ECLI:EU:T:2013:14, point 21 (EcoDoor).

<sup>14</sup> Definition taken from the online dictionary Oxford English Dictionary, see <https://www.oed.com/search/dictionary/?scope=Entries&q=ecommerce>.

signs<sup>15</sup>, namely 'THG' and 'TH'. As these elements are also relatively short, the Office considers that the relevant consumer is able to perceive the differences between the two signs, in terms of letters and length.

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

#### *Phonetical comparison*

57. The pronunciation of the signs coincides in the sound of the letters 'TH\*ECO', present identically in both signs. The signs differ in the sound of the letters '-G-' in the trademark invoked and of the letters '-MMERCE' in the contested sign. The trademark invoked will be pronounced as [T-H-G-E-CO], whereas the contested trademark will be pronounced as [T-H-E-COM-MERCE].

58. As explained above, the words elements Eco and eCommerce are less dominant because of the semantic content which it may convey. Moreover, it is settled case-law that consumers generally attach more importance to the first part of a trademark.<sup>16</sup>

59. The dominant elements of the signs, namely 'THG' and 'TH', are short and, consequently, the differences between them will not escape the attention of the relevant consumer, especially since the differences in short signs are more easily noticed by consumers.<sup>17</sup>

60. The signs are phonetically similar to a low degree.

#### *Conceptual comparison*

61. As mentioned in paragraphs 52 and 53, the word elements 'Eco' and 'eCommerce' are to be regarded as weakly distinctive and less dominant in that they may be understood as describing a characteristic of the goods and services at issue. Consequently, the public will focus more on the beginning of the signs, namely 'THG' and 'TH'. The elements THG and TH do not have a precise meaning with regard to the goods and services in question.

62. Given the different meaning of the words Eco and eCommerce, the signs are not conceptually similar.

#### *Conclusion*

63. The trademarks are phonetically similar and visually similar to a low degree. Conceptually, the signs are not similar.

## **A.2 Global assessment**

64. 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 trademarks are important factors.

65. The average consumer is deemed to be reasonably well-informed and reasonably observant and circumspect. It should also be considered that the average consumer's level of attention is likely to vary in accordance with the category of goods or services in question and that the average consumer only rarely

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<sup>15</sup> General Court (EU) 17 March 2004, T-183/02 and T-184/02, ECLI:EU:T:2004:79, point 81 (Mundicor).

<sup>16</sup> General Court (EU) 17 March 2004, T-183/02 and T-184/02, ECLI:EU:T:2004:79, point 81 (Mundicor).

<sup>17</sup> General Court (EU) 23 May 2007, T-342/05, ECLI:EU:T:2007:152 (COR/DOR) ; General Court (EU) 23 September 2009, T-391/06, ECLI:EU:T:2009:348 (S-HE).

has the chance to make a direct comparison between the different trademarks but must place his trust in the imperfect picture of them that he has kept in his mind.<sup>18</sup> In the case at hand, the services considered identical/similar are directed at the public at large, as well as at business customers searching for business solutions. The degree of attention may vary from average to higher than average.

66. The more distinctive the earlier trademark, the greater the likelihood of confusion. Trademarks with a highly distinctive character, either *per se* or because of the reputation they possess on the market, enjoy broader protection than trademarks with a less distinctive character.<sup>19</sup> In the present case, the Office is of the opinion that the trademark invoked has normal distinctive character, given that its dominant element does not describe a characteristic of the goods and services in question.

67. The global assessment of the likelihood of confusion assumes that there is a certain degree of interdependence between the factors that have 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.<sup>20</sup>

68. The trademarks are visually and phonetically similar to a low degree, and conceptually dissimilar. The Office notes that the dominant elements of the signs, THG and TH respectively, have one letter of difference. As these are short elements, the visual and phonetic differences noted above will stand out more than the similarities. The similarities between the signs following from the fact that they both share the element ECO will not go unnoticed, however given that they appear in less dominant descriptive elements at the end of the signs, they will attract less attention.

69. Consequently, and particularly in view of their difference in length and conceptual differences, the Office considers that the signs produce a distinct overall impression and thus concludes that there can be no likelihood of confusion in the mind of the public, even for identical or highly similar services. The signs are safely apart from each other for the relevant consumers with an average degree of attention not to confuse them.

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<sup>18</sup> CJEU 22 June 1999, C-342/97, ECLI:EU:C:1999:323, point 26 (Lloyd Schuhfabrik Meyer).

<sup>19</sup> CJEU 29 September 1998, C-39/97, ECLI:EU:C:1998:442, point 18 (Canon).

<sup>20</sup> CJEU 4 March 2020, C-328/18 P, ECLI:EU:C:2020:156, point 59 and the case-law mentioned there (Equivalenza).

**B. Conclusion**

70. Based on the foregoing the Office concludes that there is no likelihood of confusion.

**IV. CONSEQUENCE**

71. The opposition with number 2018674 is rejected.

72. Benelux application 1707127 is registered.

73. Since the opposition is rejected, the opponent shall pay the defendant 1,045 euros in accordance with article 2.16 (5) BCIP in conjunction with rule 1.28 (3) IR. This decision constitutes an enforceable order pursuant to article 2.16 (5) BCIP.

The Hague, 17 May 2024



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