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OPPOSITION No B 3 238 366

Aloe Private Equity, SAS ,23rueGalilée,75116Paris,France (opponent), represented by **AARPI SzleperHenry Avocats** ,23avenueBosquet,75007 Paris, France (professional representative)

a g a i n s t

Kajihara Design Studio Inc, Kita 5-jo Higashi 2-6, Chuo-ku, 060-0035 Sapporo, Hokkaido, Japan (applicant), represented by **Grünecker Patent- und Rechtsanwälte Partg mbB**, Leopoldstr. 4, 80802 München, Germany (professional representative).

On 03/06/2026, the Opposition Division takes the following

DECISION:

1. Opposition No B 3 238 366 is upheld for all thecontested goods.
2. European Union trade mark application No 19170 729 is rejected in its entirety.
3. The applicant bears the costs, fixed at EUR 620.

REASONS

On 02/05/2025, the opponent filed an opposition against all the goods of European Union



trade mark application No 19 170 729 (figurative mark). The opposition isbased on European Union trade mark registration No 8 883 671 'LE COQ SPORTIF' (word mark). The opponent invoked Article 8(1)(b) and Article 8(5) EUTMR.

LIKELIHOOD OF CONFUSION — ARTICLE 8(1)(b) EUTMR

Pursuant to Article 8(1)(b) EUTMR, a likelihood of confusionexists if there is a risk that the public might believe that the goods or services in question,under the assumption that they bear the marks in question, come from the same undertakingor, as the case may be, from economically linked undertakings. Whether a likelihoodofconfusion exists depends on the appreciation in a global assessment of several factors,which are interdependent. These factors include the similarity of the signs, the similarityofthe goods and services, the distinctiveness of the earlier mark, the distinctive and dominant elements of the conflicting signs, and the relevant public.

a) The goods

The goods onwhich the opposition is based are the following:

Class 18: *Sports bags (except those adapted for the goods they are designed to carry); rucksacks*

Class 25: *Clothing; footwear*

The contested goods are the following:

Class 18: *Attache cases; backpacks;bags; boxes of leather or leatherboard; briefcases; businesscard cases; card cases [notecases]; cases of leather or leatherboard; clothing for pets; wallets; key cases; labels of leather; suitcases; travelling trunks.*

Class 25: *Clothing; clothing for gymnastics; sports jerseys; footwear; boots; clothing of imitations of leather; clothing of leather; clothing of fur; caps being headwear; bandanas [neckerchiefs]; Belts for clothing; coats; gloves [clothing]; shirts; short-sleeve shirts; socks; jackets [clothing]; trousers; underwear; vests; suits; sweaters; scarves.*

As a preliminary remark, it is to be noted that according to Article 33(7) EUTMR, goods or services are not regarded as being similar to or dissimilar from each other on the ground that they appear in the same or different classes under the Nice Classification.

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

Contested goods in Class 18

The contested *backpacks; bags* are included in, or at least overlap with, the opponent's *rucksacks*. Therefore, they are identical.

The contested *attaché cases; boxes of leather or leatherboard; briefcases; business card cases; card cases [notecases]; cases of leather or leatherboard; wallets; key cases; labels of leather; suitcases; travelling trunks* is/are at least similar to a low degree to the opponent's *sports bags (except those adapted for the goods they are designed to carry)* because they are often sold in the same outlets, such as in leather goods shops, they also target the same general public and can originate from the same undertakings.

The contested *clothing for pets* is similar to a low degree to the opponent's *rucksacks*. According to the dictionary 'bags' ~~are flexible containers w~~with an opening at one end', 'by means of shoulder straps' for a rucksack. They are for carrying objects (see, by analogy, 01/09/2021, T-23/20, DoubleF, EU:T:2021:523, § 67), regardless of whether they are for shopping or for carrying animals. The term *rucksacks*, therefore, may also cover bags for carrying animals on the back. Bags for carrying animals (overlapping with rucksacks) are intended to be used in connection with animals and pets which are to be carried by means of those bags. Therefore, these goods are destined to be used in connection with animals, as is the case with clothing for pets. They are therefore sold in the same specialised shops for proprietors of pets or at specialised departments of large department stores, sharing the same distribution channels. They also target the same consumers, namely pet owners, and can be produced by the same undertakings.

Contested goods in Class 25

Clothing; footwear are identically contained in both lists of goods.

The contested *clothing for gymnastics; sports jerseys; clothing of imitations of leather; clothing of leather; clothing of fur; bandanas [neckerchiefs]; belts for clothing; coats; gloves [clothing]; shirts; short-sleeve shirts;socks; jackets[clothing];trousers;underwear; vests; suits;sweaters; scarves* are all included in the opponent's broad category of *clothing*. Therefore, they are identical.

The contested *boots* are included in the opponent's *footwear*. Therefore, they are identical.

The contested *caps being headwear* are similar to the opponent's *clothing*. Indeed, such goods are generally offered in the same outlets, to the same consumers and originate from the same undertakings from the fashion industry.

b) Relevant public — degree of attention

The average consumer of the categoryofproducts concerned is deemed to be reasonably well informed and reasonably observantand circumspect. It should also be borne in mind that the average consumer's degree ofattention is likely to vary according to the category of goods or services in question (22/06/1999,C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 26).

In the present case, the goods found to be identical or similar to various degrees target the public at large displaying an average degree of attention.

c) The signs

LE COQ SPORTIF	COQ KANAKO KAJIHARA
Earlier trade mark	Contested sign

The relevant territory is the European Union.

The global appreciation of the visual, aural or conceptual similarity of the marks in question must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 23).

The unitary character of the European Union trade mark means that an earlier European Union trade mark can be relied on in opposition proceedings against any application for registration of a European Union trade mark that would adversely affect the protection of the first mark, even if only in relation to the perception of consumers in part of the European Union (18/09/2008, C-514/06 P, ARMAFOAM / NOMAFOAM, EU:C:2008:511, § 57). Therefore, a likelihood of confusion for only part of the relevant public of the European Union issufficient to reject the contested application.

The element ‘LE COQ SPORTIF’ of the earlier mark and the element ‘COQ’ of the contested sign are French words as will be explained below. The fact that both will be perceived as conveying the meaning of ‘COQ’ (‘rooster’ in English), this conceptual overlap contributes to the overall similarity between the signs. Therefore, the Opposition Division finds it appropriate to focus the comparison of the signs on the French-speaking part of the public.

The earlier mark is the word mark ‘LE COQ SPORTIF’. The element 'LE' is the French masculine definite article meaning 'the' which, as a purely grammatical and functional word, it is non-distinctive. The element 'COQ', as seen above, will be understood as 'rooster' by the public under analysis, as this meaning has no connection with the goods at issue, it has a normal degree of distinctiveness (see in that sense the definition from the French online dictionary Le Robert on 01/06/2026 at https://dictionnaire.lerobert.com/definition/coq). Finally, the element 'SPORTIF' will be understood as 'sporty' or 'sport-related' by the public under analysis (see in that sense the definition from the French online dictionary Le Robert on 01/06/2026 at https://dictionnaire.lerobert.com/definition/sport), such meaning is allusive to the nature and intended use of clothing, footwear, and all type of bags and other fashion accessories and related goods in Classes 18 and 25, it is at best weak.

The contested sign is a figurative mark consisting of the verbal element 'COQ', displayed prominently in the upper part of the sign, and the verbal element 'KANAKO KAJIHARA', displayed below in a significantly smaller size, all in a rather simple typeface, which therefore has a limited impact on the overall impression. The element 'COQ', as seen above, will be understood as such by the public under analysis. This meaning has no connection with the goods at issue and it has a normal degree of distinctiveness. The elements 'KANAKO' and 'KAJIHARA', have no meanings for the public under analysis, therefore they have a normal degree of distinctiveness. However, these elements, due to their relatively smaller size and less prominent position within the contested mark are secondary, whereas the element 'COQ' is the dominant element as it is the most eye-catching.

Visually, the signs coincide in their common element ‘COQ’, which constitutes the first and dominant element of the contested sign and the most distinctive element of the earlier mark.

The signs differ in that the earlier mark additionally contains the non-distinctive article 'LE' and the at best weak element ‘SPORTIF’, and the contested sign additionally contains the secondary elements ‘KANAKO KAJIHARA’.

Whilst the overall structure and length of the signs differ, the consumer’s attention is drawn to the dominant element ‘COQ’ when viewing the contested sign, which corresponds to the most distinctive element of the earlier mark, reinforcing the visual impact of the coincidence. Therefore, the signs are visually similar to an average degree.

Aurally, the earlier mark will be pronounced as four syllables corresponding to 'LE', 'COQ', and 'SPOR-TIF' and the contested sign as ‘COQ’ only. Indeed, given the secondary character of the elements ‘KANAKO KAJIHARA’, they are unlikely to be pronounced. Case-law confirms that consumers generally refer to the dominant elements while less prominent elements are not pronounced (03/07/2013, T-206/12, LIBERTE american blend (fig.) / La LIBERTAD et al., EU:T:2013:342, § 43-44) and, in any case, consumers tend to shorten marks containing several words. This is because consumers naturally tend to shorten long marks in order to reduce them to the elements that they find easiest to refer to and remember (28/09/2016, T-539/15, SILICIUM ORGANIQUE G5 LLR-G5 (fig.) / Silicium Organique G5- Glycan 5-Si-Glycan-5-Si-G5 et al., EU:T:2016:571, § 56).

The coincidence in the pronunciation of 'COQ' - the most distinctive element of the earlier mark and the element to which consumers are most likely to reduce the contested sign - carries significant aural weight. Therefore, the signs are aurally similar to an average degree.

Conceptually, reference is made to the previous assertions concerning the semantic content conveyed by the marks. As both signs will be associated with the distinctive meaning of ‘COQ’ (rooster) and the earlier mark conveys additional non-distinctive or at best weak meanings, the signs are conceptually highly similar.

d) Distinctiveness of the earlier mark

The distinctiveness of the earlier markis one of the factors to be taken into account in the global assessment of likelihood of confusion.

According to the opponent, the earlier mark has been extensively used and enjoys an enhanced scope of protection. However, for reasons of procedural economy, the evidence filed by the opponent to prove this claim does not have to be assessed in the present case (see below in ‘Global assessment’).

Consequently, the assessment of the distinctiveness of the earlier mark will rest on its distinctiveness per se. In the present case, the earlier trade mark as a whole has no meaning for any of the goods in question from the perspective of the public under assessment. Therefore, the distinctiveness of the earlier mark must be seen as normal, despite the presence of a non-distinctive and an at best weak elements in the mark, as stated above in section c) of this decision.

e) Global assessment, other argumentsandconclusion

The appreciation of likelihood of confusion on thepartofthepublicdepends,interalia,on the recognition of the earlier mark on the market,theassociationthatcanbemadewiththe registered mark, and the degree of similarity betweenthemarksandbetweenthegoodsor services identified. It must be appreciated globally,takingintoaccountallfactorsrelevantto the circumstances of the case (22/06/1999, C-342/97,LloydSchuhfabrik,EU:C:1999:323,§ 18; 11/11/1997, C-251/95, Sabèl, EU:C:1997:528,§22).

In the present case, the conflicting goods arepartlyidenticalandpartlysimilartovarying degrees. They target the public at large, whosedegreeofattentionisaverage.Theearlier mark has a normal degree of inherent distinctiveness.

The signs are visually and aurally similartoanaveragedegreeandconceptuallysimilartoa high degree. The conceptual similarityisparticularlysignificantinthatthesignscoincidein the distinctive concept of ‘rooster’ conveyedbythesharedelement‘COQ’,whichconstitutes the dominant element of the contestedsignandthemostdistinctiveelementoftheearlier mark. The differing conceptual elements-namelythenotionof'sportiness'evokedbytheat best weak element ‘SPORTIF’ intheearliermarkandofthenon-distinctivearticle‘LE’- carry little conceptual weight andareinsufficienttodiminishthestrongconceptual connection created by the sharedelement‘COQ’.

The differences between the signs,whichareconfinedtothenon-distinctivearticle‘LE’and the weak element ‘SPORTIF’ intheearliermark,andthesecondaryelements‘KANAKO KAJIHARA’ in the contested sign,arehenceinsufficienttooutweighthevisual,auraland conceptual similarities arising fromthedominantanddistinctivesharedelement‘COQ’.

Likelihood of confusion covers situationswheretheconsumerdirectlyconfusesthetrade marks themselves, or where the consumermakesaconnectionbetweentheconflicting signs and assumes that the goods/servicescoveredarefromthesameoreconomically

linked undertakings (29/09/1998, C-39/97, Canon, EU:C:1998:442, § 29). In the present case, given that the contested mark incorporates the element 'COQ', which is identical to the most distinctive element of the earlier mark ‘LE COQ SPORTIF’, it is highly conceivable that the relevant consumer will perceive the contested mark as a sub-brand, a variation of the earlier mark, configured in a different way according to the type of goods or services that it designates (23/10/2002, T-104/01, Miss Fifties (fig.) / Fifties, EU:T:2002:262, § 49). This perception is reinforced by the common practice in the relevant market for manufacturers to make variations of their trade marks, for example by altering the typeface or colours, or adding verbal or figurative elements to them, in order to denote new product lines, or to endow their trade mark with a new, fashionable image.

Moreover, evaluating likelihood of confusion implies some interdependence between the relevant factors and, in particular, a similarity between the marks and between the goods or services. Therefore, a lesser degree of similarity between goods and services may be offset by a greater degree of similarity between the marks and vice versa (29/09/1998, C-39/97, Canon, EU:C:1998:442, § 17). In the present case, the strong conceptual similarity and the average visual and aural similarity between the signs are sufficient to offset the lower degree of similarity between some of the goods, leading to a finding of likelihood of confusion even in respect of those goods that are similar only to a low degree.

Considering all the above, there is a likelihood of confusion on the part of the French- speaking part of the public. As stated above in section c) of this decision, a likelihood of confusion for only part of the relevant public of the European Union is sufficient to reject the contested application.

Therefore, the opposition is well founded on the basis of the opponent’s European Union trade mark registration No 8 883 671. It follows that the contested trade mark must be rejected for all the contested goods.

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

In the same line, since the opposition is fully successful on the basis of the ground of Article 8(1)(b) EUTMR, there is no need to further examine the other ground of the opposition, namely Article 8(5) EUTMR.

COSTS

According to Article 109(1) EUTMR, the losing party in opposition proceedings must bear the fees and costs incurred by the other party.

Since the applicant is the losing party, it must bear the opposition fee as well as the costs incurred by the opponent in the course of these proceedings.

According to Article 109(1) and (7) EUTMR and Article 18(1)(c)(i) EUTMIR, the costs to be paid to the opponent are the opposition fee and the costs of representation, which are to be fixed on the basis of the maximum rate set therein.

The Opposition Division

Marine DARTEYRE Cindy BAREL Alexandra KAYHAN

According to Article 67 EUTMR, any party adversely affected by this decision has a right to appeal against this decision. According to Article 68 EUTMR, notice of appeal must be filed in writing at the Office within two months of the date of notification of this decision. It must be filed in the language of the proceedings in which the decision subject to appeal was taken. Furthermore, a written statement of the grounds for appeal must be filed within four months of the same date. The notice of appeal will be deemed to have been filed only when the appeal fee of EUR 720 has been paid.