

DECISION
of the Second Board of Appeal
of 9 December 2021

In case R 848/2021-2

Gürok Turizm ve Madencilik Anonim Sirketi

Inköy Mahallesi, Eskisehir Karayolu

Bulvari, No:96

Merkez, Kütahya

Turkey

Opponent / Appellant

represented by SILEX IP, Poeta Joan Maragall 9, Esc. Izq., 3º Izq., 28020 Madrid,
Spain

v

Hangzhou MiKe Leather Products Co., Ltd.

Room 140, F1 of Block 2, No.7, Keyuan

Road, Gongshu District,

Hangzhou, Zhejiang

People's Republic of China

Applicant / Defendant

represented by Yanyun Zhang, Max-Planck-Str. 6, 63128 Dietzenbach, Germany

APPEAL relating to Opposition Proceedings No B 3 114 026 (European Union trade
mark application No 18 162 309)

THE SECOND BOARD OF APPEAL

composed of S. Stürmann (Chairperson), A. Szanyi Felkl (Rapporteur) and H. Salmi
(Member)

Registrar: H. Dijkema

gives the following

Decision

Summary of the facts

- 1 By an application filed on 6 December 2019, Hangzhou MiKe Leather Products Co., Ltd. ('the applicant') sought to register the figurative mark



for the following list of goods:

Class 21 – Pottery; shoe horns; cloths for cleaning; toothpicks; shoe trees; wine-tasting pipettes; brushes for footwear; brushes; glass flasks [containers]; bottles; containers for household or kitchen use; ceramics for household purposes; drinking vessels; thermally insulated containers for food; cosmetic utensils.

- 2 The application was published on 17 December 2019.
- 3 On 13 March 2020, Gürok Turizm ve Madencilik Anonim Sirketi ('the opponent') filed an opposition against the registration of the published trade mark application for all the above goods.
- 4 The grounds of opposition were those laid down in Article 8(1)(b) EUTMR.
- 5 The opposition was based on the following earlier rights:
 - a) EUTM registration No 15 175 821 for the figurative mark



filed on 3 March 2016 and registered on 7 December 2017 for, inter alia, the following goods on which the opposition is based:

Class 21 – Household or kitchen utensils and containers; combs and sponges; brushes (except paint brushes); brush-making materials; steelwool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes; dishes, jars, cookie jars, glasses, cups, trays, egg cups, coffee cups, saucepans, carafes, cake molds, teapots, tableware (other than knives, forks and spoons) made of glass and porcelain, namely, bowls, mugs, plates, salt and pepper shakers, gravy boats, jugs and vases; statuettes, statues and works of art of glass and porcelain.

- b) EUTM registration No 11 224 771 for the figurative mark

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filed on 28 September 2012 and registered on 25 March 2013 for, inter alia, the following goods on which the opposition is based:

Class 21 – Household or kitchen utensils and containers; combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steelwool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes; dishes, jars, cookie jars, glasses, cups, trays, egg cups, coffee cups, saucepans, carafes, cake molds, teapots, tableware (other than knives, forks and spoons) made of glass and porcelain, namely, bowls, mugs, plates, salt and pepper shakers, gravy boats, jugs and vases; statuettes, statues and works of art of glass and porcelain.

- 6 By decision of 17 March 2021 ('the contested decision'), the Opposition Division rejected the opposition in its entirety and the opponent was ordered to bear the costs. The Opposition Division examined the opposition to the earlier EUTM registration No 15 175 821. It gave, in particular, the following grounds for its decision:
- Some of the contested goods are identical or similar to goods on which the opposition is based. For reasons of procedural economy, a full comparison of the goods will not be undertaken. The examination of the opposition will proceed as if all the contested goods were identical to those of the earlier mark which, for the opponent, is the best light in which the opposition can be examined.
 - The goods are directed at the public at large.
 - The relevant territory is the European Union.
 - The length of the signs may influence the effect of the differences between them. The shorter a sign, the more easily the public is able to perceive all of its single elements. Therefore, in short signs, as in the ones in the case in question, small differences may frequently lead to a different overall impression. In contrast, the public is less aware of differences between long signs.
 - The earlier mark is a figurative sign consisting of the verbal element 'LAV', depicted in slightly stylised black upper-case letters. The stylisation of the verbal element is distinctive to an average degree. For part of the relevant public, the earlier mark is meaningless and therefore distinctive. It may, however, also be associated with a specific meaning for example in English 'lav' is a short for 'lavatory', in Croatian 'lav' means 'lion', animal and

zodiac sign. The contested goods are tableware and containers, articles for the care of clothing and footwear, as well as cleaning articles and cosmetic and household utensils. As none of the above meanings have any connection to the goods in question, the mark is distinctive to an average degree also for the public that will associate the earlier mark with the presented meanings.

- The contested sign is a figurative sign consisting of the verbal element ‘LVV’, depicted in standard, bold, black, upper-case letters. This verbal element is meaningless and distinctive. Although the contested mark is a figurative mark, the typeface in which the contested mark is written is not particularly elaborate or sophisticated, and it will not draw the consumer’s attention away from the elements it embellishes.
- Visually, the signs coincide in the letters ‘L*V’. They differ in the middle letters ‘A’ in the earlier mark and ‘V’ in the contested sign. The signs also differ in the stylisation of the letters in both marks, as well as the colours of the letters of the earlier mark.
- Even though there is an established legal practice according to which the initial part of a sign is the one that first catches the attention of the reader, this consideration cannot prevail in all the cases and cannot undermine the principle that an examination of the similarity of the signs must take account of the overall impression produced by those signs, as an average consumer normally perceives a sign as a whole and does not examine its individual details (27/06/2012, T-344/09, *Cosmobelleza*, EU:T:2012:324, § 52).
- Therefore, the signs are visually similar to a below-average degree.
- Aurally, irrespective of the different pronunciation rules in different parts of the relevant territory, the earlier mark (as it has a vowel in the middle of the sign) will be pronounced as a single word ‘LAV’, while the contested sign (as consisting only of consonants) will be pronounced as the acronym ‘L-V-V’. Therefore, the signs will be pronounced with a different overall rhythm, intonation and will have different lengths. Additionally, in most of the languages in the relevant territory, the coinciding letters will be pronounced differently when they form a word from when they are pronounced as single letters (e.g. in English the earlier mark will be pronounced as ‘læv’, while the contested sign will be read as ‘el-vi-vi’). Therefore, the signs are aurally similar to a low degree.
- Conceptually, neither of the signs has a meaning for a substantial part of the relevant public. For this part of the public, a conceptual comparison is not possible and, therefore, it does not influence the assessment of the similarity of the signs. However, part of the relevant public will perceive the meanings of the earlier mark as described above.
- The assessment of the distinctiveness of the earlier mark will rest on its distinctiveness per se which must be seen as normal.

Global assessment

- Both signs have three letters and the signs are, consequently, short marks. The signs coincide in their first and final letters. They differ in their middle letters, distinctive and non-distinctive figurative aspects. For short marks, the fact that they differ in one letter is relevant when evaluating the likelihood of confusion between the signs. The differing letters are not phonetically similar. Moreover, the fact that one is a vowel and the other one is a consonant indicates that the earlier mark is a word (whatever its meaning) and the contested sign is an acronym. Consequently, even the public with an average degree of attentiveness will perceive the differences between the signs and keep them in mind, especially considering that the signs are short.
 - Furthermore, for part of the relevant public for which the verbal element of the contested sign has a meaning, the signs will be conceptually not similar and it is established case-law that any conceptual differences which may distinguish the marks at issue may counteract to a large extent any visual and aural similarity. For there to be such a counteraction, at least one of the marks at issue must have, from the point of view of the relevant public, a clear and specific meaning, so that the public is capable of immediately grasping it. The fact that one of the marks at issue has such a meaning is sufficient – where the other mark does not have such a meaning or a totally different meaning – to counteract to a large extent the visual and aural similarities between the two marks. Therefore, at least for part of the relevant public, the conceptual differences between the signs may overcome their below-average visual similarity.
 - The opponent also based its opposition on the earlier EUTM registration No 11 224 771, however, it is less similar to the contested mark as the letters are depicted in title case, which strengthens the visual differences between the signs, as the middle letter ‘a’ is visually dissimilar to the letter ‘V’, while, as explained above, the upper-case letters ‘A’ and ‘V’ share a slight visual resemblance. Moreover, this earlier mark covers the same or a narrower scope of the goods. Even assuming that all the contested goods are identical to the goods of the earlier mark, there is no likelihood of confusion on the part of the public. Therefore, the outcome cannot be different with respect to goods for which the opposition has already been rejected and no likelihood of confusion exists with respect to those goods.
- 7 On 12 May 2021, the opponent filed an appeal against the contested decision, requesting that the decision be entirely set aside. The statement of grounds of the appeal was received on 20 May 2021.
- 8 The applicant did not submit any observations in reply.

Submissions and arguments of the opponent

- 9 The arguments raised in the statement of grounds may be summarised as follows:

- This party considers that the signs in conflict are similar to a high degree from a visual point of view. The fact that they share the letters ‘L*V’, in particular the letter ‘L’, which is placed at the beginning of the contested EUTM application, may itself lead to this conclusion as in word marks, the first part of the word element is usually the part which primarily captures the consumer’s attention and the part which will remain in the memory of the relevant public more clearly than the rest of the sign.
- It should be borne in mind that ‘LAV’ and ‘LVV’ are relatively short marks, consisting of only three letters, so that although the consumer is not usually aware of the number of letters in a mark, in this case he/she will be, because the number of letters is easily perceived. Furthermore, the visual similarity between the marks in question is based not only on the number of the letters, as mentioned in the case-law relied on by the Office, but also on the number of syllables (which is identical) and on the chain of the letters ‘L*V’.
- Therefore, as the marks have the same structure (L-letter-V) and the same number of letters and syllables, coupled with the fact that they coincide in two out of the three letters of which they are composed, the only difference being in the middle part of the signs, this party considers that the verbal elements are highly similar. Furthermore, the figurative elements of the signs are not strong enough to compensate the similarities between the marks.
- There is a relevant degree of visual similarity between the signs at hand.
- From a phonetic point of view, there is no reason to assume that the word ‘LAV’ is pronounced as a word and not as an abbreviation, letter by letter, as it is usual for abbreviations to consist of words composed of a few letters, usually 2 or 3, like the word ‘LAV’. Therefore, based on the English language used as example by the examiner, the earlier EUTMs will be pronounced as ‘el-ei-vi’ and the contested sign will be read as ‘el-vi-vi’, all having the same rhythm, intonation and length. Consequently, this party considers that the signs are very similar from a phonetic point of view.
- From a conceptual point of view, this party agrees with the consideration of the Office. As this party has indicated in the opposition filed against EUTM application ‘LVV’, in most of the territories of the European Union the terms ‘LAV’ and ‘LVV’ have no meaning, so that the conceptual comparison could not be carried out.
- The conflicting goods are identical or, at the very least, highly similar.
- All in all, there is a likelihood of confusion among the relevant consumers in the present case, as the trade marks concerned are highly similar.

Reasons

- 10 The appeal complies with Articles 66, 67 and Article 68(1) EUTMR. It is admissible.

European Union trade mark registration No 15 175 821

- 11 The Opposition Division found it appropriate to first examine the application in relation to the applicant's European Union trade mark registration No 15 175 821. The Board will follow the same approach and examine other earlier rights only if necessary.

Article 8(1)(b) EUTMR

- 12 In accordance with Article 8(1)(b) EUTMR, upon opposition by the proprietor of an earlier trade mark, the trade mark applied for shall not be registered if, because of its similarity to the earlier trade mark and the identity or similarity of the goods covered by the trade marks, there exists a likelihood of confusion on the part of the public in the territory in which the earlier trade mark is protected.
- 13 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, constitutes a likelihood of confusion within the meaning of that article (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 16-18; 29/09/1998, C-39/97, Canon, EU:C:1998:442, § 30).
- 14 It is clear from that provision that a likelihood of confusion presupposes both that the mark applied for and the earlier mark are identical or similar, and that the goods or services covered by the application for registration are identical or similar to those in respect of which the earlier mark is registered. Those conditions are cumulative (12/10/2004, C-106/03, Hubert, EU:C:2004:611, § 51).
- 15 The likelihood of confusion must be appreciated globally, taking into account all factors relevant to the circumstances of the case. That 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. The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details. In that perspective, the more distinctive the earlier mark, the greater will be the likelihood of confusion (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 22-24).

Relevant public and relevant territory

- 16 According to the case-law, in the global assessment of the likelihood of confusion, account should be taken of the average consumer of the category of goods concerned, who is reasonably well informed and reasonably observant and circumspect. 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 (13/02/2007, T-256/04, *Respicur*, EU:T:2007:46, § 42 and the case-law cited).



- 17 As correctly held by the Opposition Division, the conflicting goods are directed at the public at large.
- 18 The Opposition Division held that the degree of attention is average.
- 19 The opponent explicitly agrees with the definition of the relevant public, however in its view the level of attention varies between low and average.
- 20 According to the case-law, the level of attention for the relevant goods in Class 21, including low cost goods regularly used in household and cleaning tasks, is average (see, by analogy, 05/10/2016, R 1339/2015-5, *Device of a series of upward pointing elements / Device of a series of upward pointing elements*, § 14; 31/03/2015, R 1874/2014-2, *CASA NOVA (FIG. MARK) / KASA NOVA L'AMANTE DELLA CASA (FIG. MARK) et al.*, § 22).
- 21 Therefore, the Opposition Division was correct to hold, that in the current case, the level of attention of the relevant public is average.
- 22 The relevant territory is the European Union.

Comparison of the goods

- 23 Article 8(1)(b) EUTMR provides that the likelihood of confusion presupposes that the goods or services covered are identical or similar. Therefore, in all cases it is necessary to consider the degree of similarity between the goods or services covered. In relation to the assessment of the similarity of goods or services the following factors, inter alia, should be taken into account: their nature, their purpose and their method of use and whether they are in competition with each other or are complementary (29/09/1998, C-39/97, *Canon*, EU:C:1998:442, § 28). Further relevant factors are the usual origin of the goods, the pertinent distribution channels (in particular sales outlets) and the relevant public.
- 24 In the current case, the Opposition Division did not undertake a full comparison of the conflicting goods and assumed that the conflicting goods are identical.
- 25 For reasons of procedural economy, the Board will follow the same approach and examine the opposition under the assumption that all the contested goods are identical to those of the earlier mark.

Comparison of the marks

26 The signs to be compared are:

| | |
|---|--|
|  |  |
| <p><i>Earlier EUTM</i></p> | <p><i>Contested sign</i></p> |

- 27 The global assessment of the likelihood of confusion, in relation to the visual, aural or conceptual similarity of the signs at issue, must be based on the overall impression given by the signs, account being taken, in particular, of their distinctive and dominant components (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 23). The perception of the marks by the average consumer of the goods or services in question plays a decisive role in the global assessment of that likelihood of confusion. In this regard, the average consumer normally perceives a mark as a whole and does not engage in an analysis of its various details (12/06/2007, C-334/05 P, Limoncello, EU:C:2007:333, § 35 and the case-law cited).
- 28 The assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark. On the contrary, the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components (12/06/2007, C-334/05 P, Limoncello, EU:C:2007:333, § 41 and the case-law cited). It is only if all the other components of the mark are negligible that the assessment of the similarity can be carried out solely on the basis of the dominant element (12/06/2007, C-334/05 P, Limoncello, EU:C:2007:333 § 42).
- 29 In light of the foregoing, before examining whether there is any visual, phonetic and conceptual similarities between the marks at issue, the Board will carry out an assessment of the distinctive and dominant elements of the marks at issue (12/11/2015, T-449/13, WISENT / ŻUBRÓWKA BISON BRAND VODKA, EU:T:2015:839, § 60-61).

Distinctive and dominant elements

- 30 In the present case, the earlier mark is a figurative sign consisting of the verbal element 'LAV', depicted in slightly stylised black upper-case letters. The top of the letter 'A' is depicted in pink and the edge of the letter 'V' is depicted in grey,

albeit hardly visible. The verbal element is juxtaposed against a white background closed in on top, bottom and right borders by a grey frame.

- 31 For a part of the relevant public, the earlier mark is meaningless. For other consumers in the European Union, the word ‘LAV’ may be associated with a specific meaning (e.g., ‘lav’ is a short for ‘lavatory’ in English; in Croatian, ‘lav’ means ‘lion’). Taking into account that the earlier goods in Class 21 are all household-related, none of the above meanings have any connection to the goods. Therefore, the word ‘LAV’ is normally distinctive for all members of the relevant public.
- 32 The contested sign is a figurative sign consisting of the verbal element ‘LVV’, depicted in standard, bold, black, upper-case letters. The verbal element is meaningless in relation to the relevant contested goods. Therefore, it is normally distinctive. The typeface of the contested mark resembles a standard typeface.
- 33 None of the marks has any element that could be considered more dominant (visually eye-catching) than other elements.

Visual comparison

- 34 In the present case, the signs coincide in the sequence of letters ‘L*V’.
- 35 The signs differ in the middle letters ‘A’ in the earlier mark and ‘V’ in the contested sign. The signs also differ in the stylisation of the letters in both marks, as well as the colours of the letters of the earlier mark.
- 36 The opponent is of the view that the conflicting signs are highly similar. To substantiate its argument, the opponent relies on various case-law of the General Court (T-183/02, MUNDICOR; T-412/08, Trubion; and T-109/07, Spa Therapy).
- 37 However, the case-law relied on by the opponent is not applicable to short signs, such as three-letter signs subject to the current appeal. In case of short signs, the similarity assessment follows different rules. These rules were very clearly established by the General Court (and confirmed on several occasions by the Court of Justice) and are binding on the Board.
- 38 In particular, according to the case-law, the shorter a sign, the more easily the public is able to perceive all its single elements. Thus, small differences may frequently lead in short words to a different overall impression (see, to that effect 06/07/2004, T-117/02, Chufafit, EU:T:2004:208, § 48; 20/04/2005, T-273/02, Calpico, EU:T:2005:134, § 48).
- 39 It should also be recalled that, according to the case-law, even insignificant differences between signs are capable of creating a different overall impression where those signs are made up of short words (27/03/2014, T-554/12, AAVA MOBILE/ JAVA, EU:T:2014:158, § 47; 04/02/2015, T-372/12, APRO, EU:T:2015:70, § 34, 12/07/2019, T-698/17, MANDO / MAN (fig.) et al.,

EU:T:2019:524, § 58; see also the assessment of three-letter signs SHE and S-HE in 23/09/2009, T-391/06, S-HE, EU:T:2009:348, § 41).

- 40 Applying the above principles, the General Court held that, e.g., the signs CALPICO and CALYPSO were not visually similar, even though their first three letters were the same, on the basis of their different central letters (20/04/2005, T-273/02, Calpico, EU:T:2005:134, § 39). In the later case-law, the General Court concluded that it cannot be excluded that signs may be considered to be of low similarity, or even different, from a visual point of view, even though they contain a sequence of identical letters (11/12/2013, T-487/12, Panini, EU:T:2013:637, § 42 and 27/02/2019, T-107/18, Dienne (fig.) / ENNE (fig.), EU:T:2019:114, § 48).
- 41 In view of the case-law above and the fact that the conflicting signs are short (consist of only three letters), the difference in the middle letter and the stylistic and figurative differences are of great importance. In particular, due to the fact that the signs differ in their middle letters, ‘A’ and ‘V’ respectively, the different colour-scheme used (black-pink in case of the earlier sign and black in case of the contested sign), the frame used in the earlier sign and not reproduced in the contested sign and the different typeface, there is enough distance between the conflicting signs to create a fairly different overall visual impression. Furthermore, it is immediately perceptible to the relevant public that the contested mark displays an abbreviation, unlike the readable (even if fanciful for most) word of the earlier mark.
- 42 Therefore, the Board agrees with the Opposition Division that the signs are visually similar to a below-average degree.

Phonetic similarity

- 43 Phonetically, although the signs coincide in the consonants ‘L*V’, they will be pronounced very differently.
- 44 The earlier mark will be pronounced as a fanciful word (with the exception of the Croatian and the English speaking public, for whom the word ‘LAV’ is meaningful), in a single syllable, [lav]. The contested sign however is an acronym and will be read accordingly, in a minimum of three syllables: [el-ve-ve] or [el-vi-vi] in most languages. In Spanish, its pronunciation will be even longer: [el-e-u-ve-u-ve], six syllables.
- 45 Therefore, the opponents argument that the conflicting signs have the same number of syllables and have the same rhythm, intonation and length, needs to be dismissed as unfounded.
- 46 As stated above, according to the case-law, in case of short signs, small (even insignificant) differences may frequently lead in short words to a different overall impression (06/07/2004, T-117/02, Chufafit, EU:T:2004:208, § 48; 20/04/2005, T-273/02, Calpico, EU:T:2005:134, § 49). Different central letters may also lead

to a low phonetic similarity or even dissimilarity (see, e.g., the assessment of three-letter signs SHE and S-HE in 23/09/2009, T-391/06, S-HE, EU:T:2009:348, § 46 and the case-law cited above when discussing the visual similarity).

- 47 The differences explained above create a considerable phonetic divergence between the conflicting signs.
- 48 In view of the above, the Board finds the signs are visually similar to a very low degree, if any.

Conceptual comparison

- 49 As correctly held by the Opposition Division and confirmed by the opponent, for the part of the public for which both signs are meaningless, the conceptual comparison is not possible. Still, the earlier mark will be perceived as a fanciful word and the contested sign will be seen as an abbreviation, which will create a certain conceptual distance between the signs, in the Board's opinion.
- 50 For the part of the relevant public for which the earlier sign has a meaning and the contested sign is meaningless, the signs are not conceptually similar.

Distinctiveness of the earlier mark

- 51 In the current case, the opponent did not explicitly claim that its mark is particularly distinctive by virtue of intensive use or reputation.
- 52 The Board agrees with the Opposition Division that the inherent distinctiveness of the earlier mark is normal, as the earlier trade mark as a whole has no meaning for any of the goods in question from the perspective of the public in the relevant territory.

Overall assessment of the likelihood of confusion

- 53 A global assessment of a likelihood of confusion implies some interdependence between the relevant factors, and in particular, the similarity between the trade marks and between the goods or services. Accordingly, a greater degree of similarity between the goods may be offset by a lower degree of similarity between the marks, and vice versa (22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 20; 11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 24; 29/09/1998, C-39/97, Canon, EU:C:1998:442, § 17).
- 54 In the present case, the relevant public consists of the public at large. The level of attention is average. The conflicting goods are assumed to be identical. The signs are visually similar to a below-average degree and phonetically lowly similar at most. The conceptual comparison is either not possible or the signs are conceptually not similar. The distinctiveness of the earlier mark is normal.

- 55 The extent of the similarity or difference between the signs may depend also on the inherent qualities of the signs or the conditions under which the goods or services covered by the opposing signs are marketed. If the goods covered by the mark in question are usually sold in self-service stores, which is the case concerning household articles in Class 21, where consumer choose the product themselves and must therefore rely primarily on the image of the trade mark applied to the product, the visual similarity between the signs will as a general rule be more important. If on the other hand the product covered is primarily sold orally, greater weight will usually be attributed to any aural similarity between the signs (06/10/2004, T-117/03 – T-119/03 & T-171/03, NL, EU:T:2004:293, § 49). In the present case a visual examination of the goods will immediately reveal to the relevant public that the contested mark is an abbreviation and not the fanciful (or meaningful) word, ‘LAV’.
- 56 Under the principle of interdependence the low degree of similarity of the marks would require some degree of enhanced distinctiveness, even for identical goods. Otherwise there would be no room for the factor of enhanced distinctiveness (see 17/04/2008, C-108/07 P, Ferro, EU:C:2008:234, § 58). There can be no automatism for finding a likelihood of confusion in instances where the similarity is only low (22/03/2011, T-486/07, CA, EU:T:2011:104, § 69).
- 57 Consequently, the risk that the relevant public would confuse them with respect to the commercial origin of the goods and services they are used for is sufficiently low to prevent a likelihood of confusion.

EUTM registration No 11 224 771

- 58 The opposition is also based on the EUTM registration No 11 224 771.
- 59 As correctly held by the Opposition Division, this earlier right is even less similar when compared to the contested mark. This is because in this earlier mark, the letters are depicted in lower case, which strengthens the visual differences between the signs, as the middle letter ‘a’ is visually dissimilar to the letter ‘V’, while, as explained above, the upper-case letters ‘A’ and ‘V’ share a slight visual resemblance.
- 60 Therefore, in line with the case-law and the reasoning concerning the European Union trade mark registration No 15 175 821, the likelihood between this earlier right and the contested right is excluded.

Conclusion

- 61 Since the Board found no likelihood of confusion when comparing the EUTM applied for to the earlier opposing marks, the contested decision needs to be upheld and the appeal dismissed.

Costs

- 62 Pursuant to Article 109(1) EUTMR and Article 18 EUTMIR, the opponent, as the losing party, must bear the applicant's costs of the opposition and appeal proceedings.
- 63 These consist of the applicant's costs of professional representation of EUR 550.
- 64 As to the opposition proceedings, the Opposition Division ordered the opponent to bear the applicant's representation costs which were fixed at EUR 300. This decision remains unaffected. The total amount for both proceedings is therefore EUR 850.

Order

On those grounds,

THE BOARD

hereby:

- 1. Dismisses the appeal;**
- 2. Orders the opponent to pay EUR 550 for the applicant's costs in the appeal proceedings. The total amount to be paid by the opponent in the opposition and appeal proceedings is EUR 850.**

Signed

S. Stürmann

Signed

A. Szanyi Felkl

Signed

H. Salmi

Registrar:

Signed

H.Dijkema

