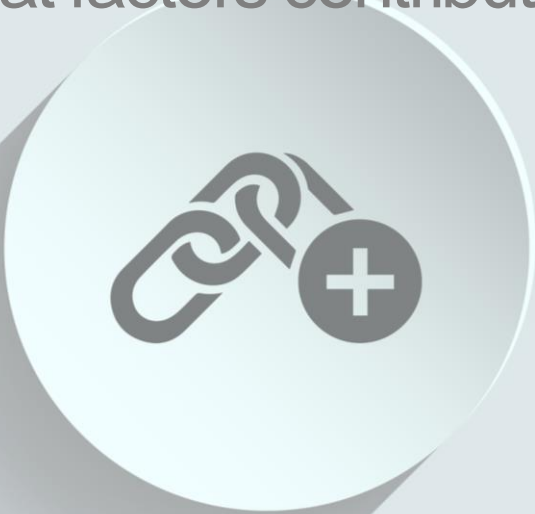


# 'The Link' under Article 8(5) EUTMR

What factors contribute to establishing a link?



## PROGRAMME

**50'**  
**Presentation**

- The basics – the link  
Real case-law examples
- Similarity of the signs
  - Strength of the Reputation
  - Relevant public
  - Goods and services
  - Family of marks

**10'**  
**Questions and answers**



**Vanessa PAGE HOLLAND,**  
Operations Department - EUIPO

# 1 The Basics – The Link



What is the link?

## Similarity of the signs



Similarity of the signs

## **Likelihood of confusion**



Similarity of the signs

**Proximity of the G&S**

Likelihood of confusion





Similarity of the signs

Proximity of the G&S

Likelihood of confusion

**Market Reality**



Similarity of the signs

Proximity of the G&S

**Relevant public**

Likelihood of confusion

Market Reality



Similarity of the signs

Proximity of the G&S

Relevant public

Likelihood of confusion

Market Reality

**Degree of attention**



Similarity of the signs

Proximity of the G&S

Relevant public

**Inherent distinctiveness**

Likelihood of confusion

Market Reality

Degree of attention



Similarity of the signs

Likelihood of confusion

Proximity of the G&S

Market Reality

Relevant public

Degree of attention

Inherent distinctiveness

**Reputation & its strength**



Similarity of the signs

Proximity of the G&S

Relevant public

Inherent distinctiveness

**Family of Marks**

Likelihood of confusion

Market Reality

Degree of attention

Reputation & its strength





Similarity of the signs

Proximity of the G&S

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Reputation & its strength



  
branding

  
internet

  
advertising

DIGITAL  
MARKETING

  
social  
media

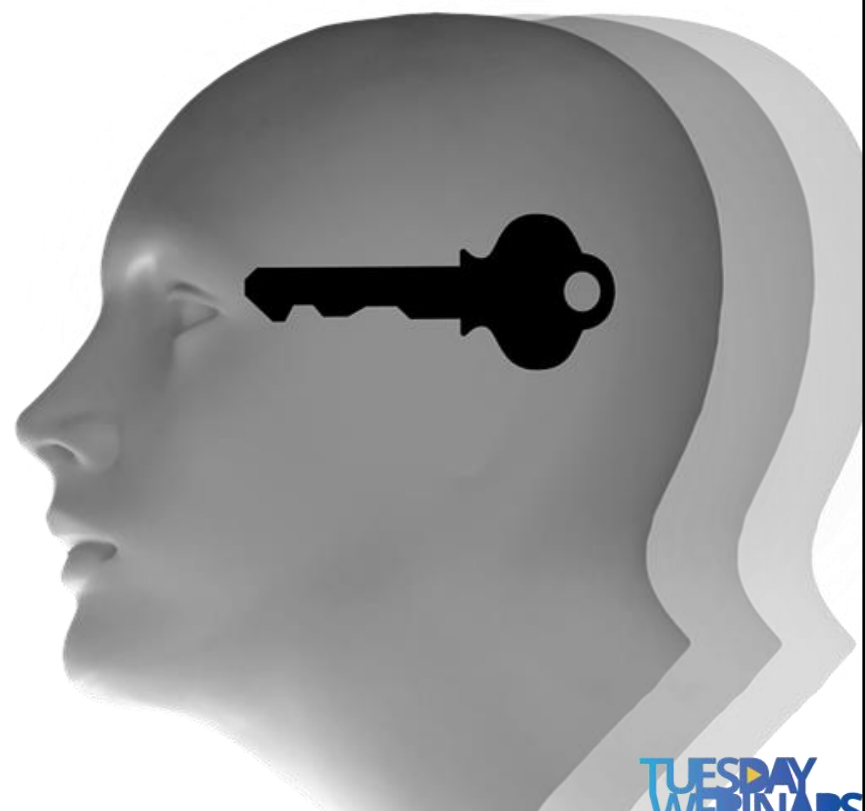
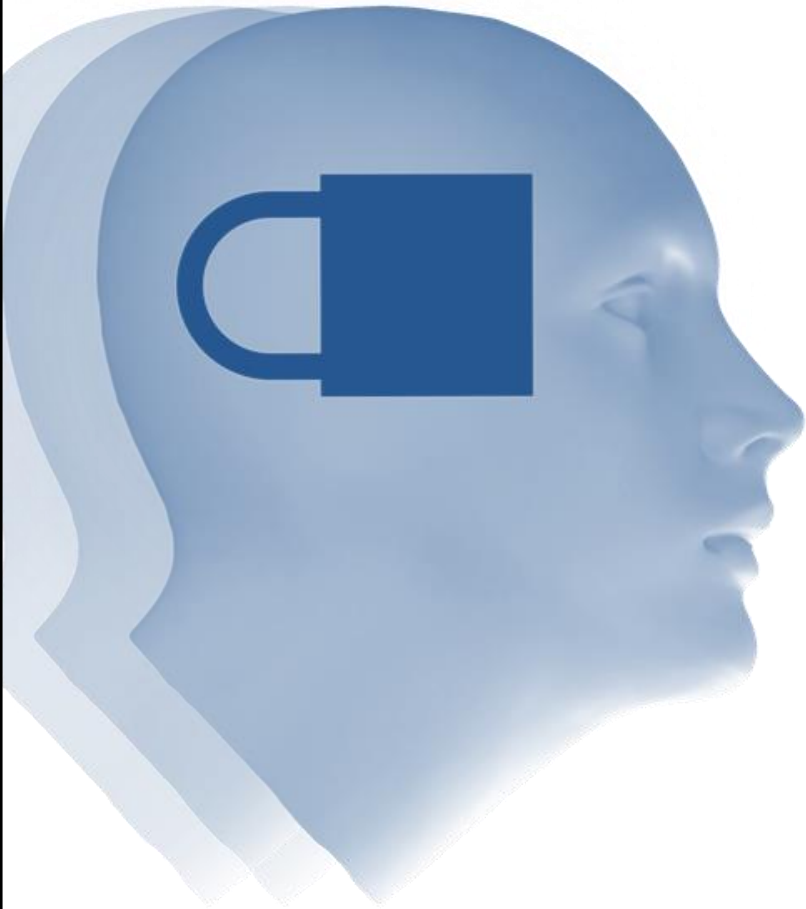
  
target

  
analysis

  
product

content  





## Merchandising



## Merchandising





## Sponsorship



**Market sector**







**Market sector**

## **2** Real case-law examples

## Similarity of the signs

Case reference: T-398/16

**Earlier mark**



**Contested mark**



**Similar appearance?**



## Similarity of the signs

Case reference: T-201/20

**Earlier mark**



**Contested mark**



**Similar?**

## Similarity of the signs

Case reference: T-215/17

**Earlier mark**



**Contested mark**



**Conceptually similar?**

## Similarity of the signs

Case reference: T 8/17 (+ C-582/13, T-437/11, T448/11 )



**Earlier mark**

Ballon d'or

**Contested mark**

Golden  
Balls

**Similar?**

## Strength of the Reputation

The assessment of the link in the minds of the relevant public is likely to **vary according to the strength of the reputation and the distinctive character of the earlier mark** ...although the earlier mark enjoys a certain reputation, no evidence has been adduced supporting the fact that this reputation goes beyond the public concerned with the services for which it was registered (§ 98-99).

*28/04/2021, T-644/19, VertiLight/VERTI“ EU:T:2021:222*

## Strength of the Reputation

The fact that the marks are similar and that the earlier mark has an exceptional reputation **cannot automatically be sufficient** for a link between those marks to be found (§ 71).

This is the case **even if it is established that the specialised public** targeted by the goods protected by the contested mark **is aware of the earlier mark**, whose reputation goes beyond the public of the goods covered by the earlier mark (§ 85).

*10/03/2021, T-71/20, Puma-system / PUMA (fig.), EU:T:2021:121, § 71, 85*

**PUMA**



## Relevant public

Case reference: T-820/19

### Earlier Polish trade mark



High reputation for arranging and conducting of lotteries and cash lotteries in Cl. 41

### Contested mark



Scientific and technological services and research and design relating thereto, industrial analysis and research services in Cl. 42

## Goods and services

Case reference: T-144/19

### Earlier EUTM

ADLON

Well known for services relating to hotels and restoration, namely providing of food and drink and temporary accommodation Cl. 43

### Contested mark

ADLON

Goods in classes 9, 11 and 17 relating to water supply and sanitary apparatus (showers, filters, mixers...)

## Goods and services

Case reference: T-669/19

### Earlier EUTM

PRIMUS

Certain reputation for lager beers (Cl. 32) in Belgium

### Contested mark

PRIMUS

Class 28: Casino fittings (roulette wheels etc) casino games, slot machines, gaming apparatus etc



## Family of marks

Case reference: T-518/13



**Similarity of the signs**

**Proximity of the G&S**

**Relevant public**

**Inherent distinctiveness**

**Family of Marks**

**Likelihood of confusion**

**Market Reality**

**Degree of attention**

**Reputation & its strength**

...

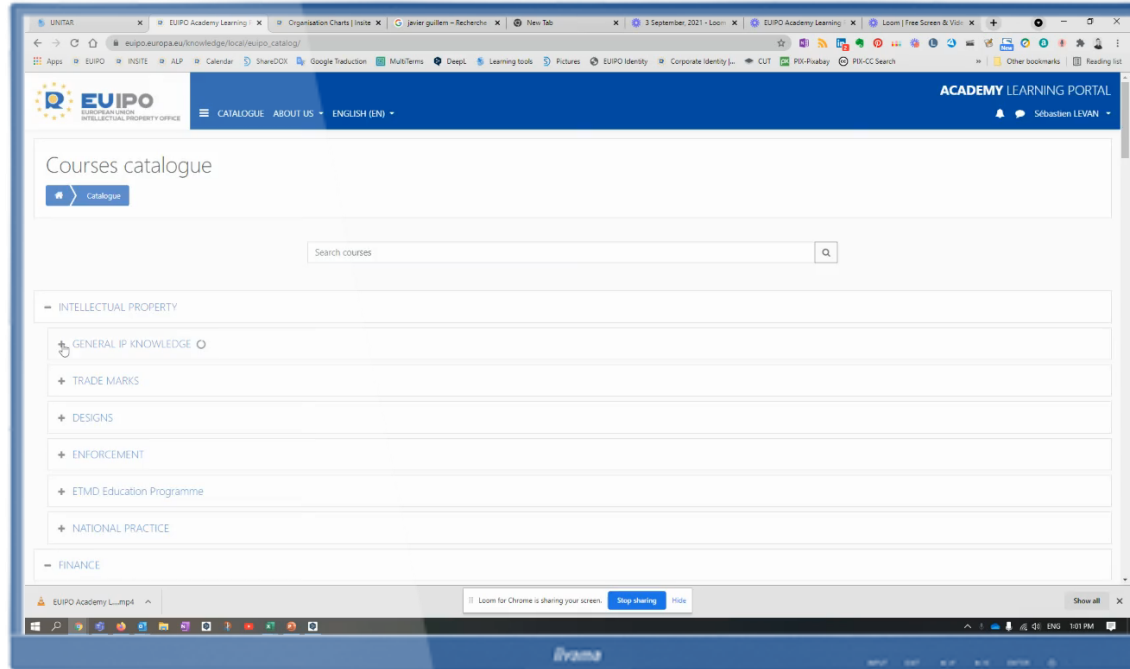


**Let's recap**



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## Keep in touch with EUIPO Academy



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**THANK YOU**