

OPPOSITION No B 3 215 449

Louis Vuitton Malletier, 2 rue du Pont-Neuf, 75001 Paris, France (opponent),
represented by **Spheriens**, Piazza della Libertà 13 - Viale Don Minzoni 1, 50129
Firenze, Italy (professional representative)

a g a i n s t

Millionaire Magazine S.R.L., Largo Della Crocetta, 2, 20122 Milano, Italy (applicant).

On 29/04/2025, the Opposition Division takes the following

DECISION:

1. Opposition No B 3 215 449 is partially upheld, namely for the following contested goods:

Class 9: *Smartglasses; spectacles; 3D spectacles; sunglasses; spectacle cases.*

2. European Union trade mark application No 18 953 007 is rejected for all the above goods. It may proceed for the remaining goods.
3. Each party bears its own costs.

REASONS

On 15/04/2024, the opponent filed an opposition against some of the goods of European

Union trade mark application No 18 953 007 **millionaire** (figurative mark),
namely against some of the goods in Class 9. The opposition is based on French trade
mark registration No 4 463 257 and international trade mark registration No 1 454 621
designating Austria, Belgium, the Czech Republic, Denmark, Finland, Germany, Greece,
Ireland, Italy, Hungary, Luxembourg, the Netherlands, Poland, Portugal, Romania,
Spain, and Sweden, both for the word mark '1.1 MILLIONAIRES'. The opponent invoked
Article 8(1)(b) EUTMR.

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

Pursuant to Article 8(1)(b) EUTMR, a likelihood of confusion exists 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 undertaking or, as the case
may be, from economically linked undertakings. Whether a likelihood of confusion exists
depends on the appreciation in a global assessment of several factors, which are
interdependent. These factors include the similarity of the signs, the similarity of the
goods and services, the distinctiveness of the earlier mark, the distinctive and dominant
elements of the conflicting signs, and the relevant public.

The opposition is based on more than one earlier trade mark. The Opposition Division finds it appropriate to first examine the opposition in relation to the opponent's international trade mark registration designating Ireland No 4 463 257.

a) The goods

The goods on which the opposition is based are the following:

Class 9: *Spectacles, sunglasses, cases for spectacles and sunglasses.*

The contested goods are the following:

Class 9: *Smartglasses; spectacles; 3D spectacles; sunglasses; spectacle cases; virtual reality glasses; optical finders; three dimensional viewers.*

The relevant factors relating to the comparison of the goods or services include, inter alia, the nature and purpose of the goods or services, the distribution channels, the sales outlets, the producers, the method of use and whether they are in competition or complementary.

The contested *spectacles; 3D spectacles; sunglasses cases* are identical to the opponent's *spectacles, cases for spectacles and sunglasses* because either they are identically included in both lists of goods, or the contested goods are included in, or overlap with, the opponent's goods.

The contested *smartglasses* are wearable devices that integrate technology into eyeglasses, providing features like augmented reality, notifications and hands-free communication. They are at least similar to a low degree to the opponent's *spectacles*. They are to some extent of the same nature, as both can be categorised as eyewear. They can be found in the same eyewear stores and may originate from the same producers. Moreover, they target consumers with the same needs.

The contested *virtual reality glasses* are wearable devices that display digital information and interact with the real world, immerse users in a fully digital, simulated environment, or enhance the perception of depth in visual content. The contested *optical finders* are devices for enhanced vision used in photography or sports and the contested *three-dimensional viewers* is a software tool that allows users to interact with 3D models on a digital screen. Key features of a 3D Viewer include interactivity, integration and accessibility. Users can rotate, zoom and pan around the model, providing an immersive and detailed examination of the 3D content. They are dissimilar to the opponent's goods, which are essentially eyewear and cases thereof. The nature of information technology goods (contested goods) and eyewear and cases (opponent's goods) is not the same. Their method of use and purpose are obviously different. Moreover, the know-how required for their production largely differs and, therefore, they originate from different undertakings. They are not complementary or in competition. They are provided through different distribution channels and satisfy different consumer needs.

b) Relevant public – degree of attention

The average consumer of the category of products concerned is deemed to be reasonably well informed and reasonably observant and circumspect. It should also be borne in mind that the average consumer's degree of attention is likely to vary according to the category of goods or services in question.

In the present case, the goods found to be identical and similar to a low degree target the public at large.

The degree of attention may vary from average (e.g. spectacle cases) to above average (e.g. spectacles), as some of the goods have an impact on a person's vision or eye health, might not be purchased frequently and might be rather expensive.

c) The signs

The relevant territory is Ireland.

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 earlier mark is the word mark '1.1 MILLIONAIRES'. The protection of a word mark concerns the word as such. Therefore, it is irrelevant if the earlier mark is depicted in upper case while the contested sign is depicted in upper and lower case, since the signs are written in a manner that does not deviate from the usual way of capitalising words.

The verbal element 'MILLIONAIRES' will be understood as the plural form of the term 'millionaire', a person whose assets are worth at least a million of the standard monetary units of his or her country (information extracted from *Collins Dictionary* on 28/03/2025 at <https://www.collinsdictionary.com/dictionary/english/millionaire>). As it has no relation to the relevant goods, it is distinctive to a normal degree. The element '1.1' will be perceived as a specific product range, version or model number. Therefore, it has low distinctiveness.

The contested figurative sign consists of the verbal element 'millionaire' in bold black lower-case letters. The stylisation is commonplace and decorative and will therefore not attract the attention of consumers away from the term. 'millionaire' will be understood by the public under assessment as explained above and is, therefore, distinctive to a normal degree.

Visually, the signs coincide in the element 'MILLIONAIRE*', albeit in plural form in the earlier mark. However, they differ in the last letter 'S' and element '1.1' preceding the common part of the signs in the earlier mark (of low distinctiveness) and the typeface of the contested sign, which in any case is rather standard.

Therefore, the signs are visually similar to a high degree.

Aurally, the pronunciation of the signs coincides in the sound of the element 'MILLIONAIRE*', differing only in the last 'S' forming the plural in the earlier mark.

The element '1.1' is unlikely to be pronounced, since consumers do not tend to pronounce non-distinctive elements (or, as in the present case, elements of low distinctiveness) (30/11/2011, T-477/10, SE SPORTS EQUIPMENT (fig.) / SE et al., EU:T:2011:707, § 55; 04/02/2013, T-159/11, WALICHNOWY MARKO (fig.) / MAR-KO, EU:T:2013:56, § 44). Moreover, 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).

Therefore, the signs are aurally highly similar.

Conceptually, reference is made to the previous assertions concerning the semantic content conveyed by the marks. The signs are conceptually similar to the extent that both are associated with the concept conveyed by the distinctive term 'MILLIONAIRE(S)'. The element '1.1' is of low distinctive character, so it has a reduced impact in the conceptual comparison. Therefore, the signs are conceptually similar to a high degree.

As the signs have been found similar in at least one aspect of the comparison, the examination of likelihood of confusion will proceed.

d) Distinctiveness of the earlier mark

The distinctiveness of the earlier mark is 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 directly related to any of the goods in question from the perspective of the public under study. Therefore, the distinctiveness of the earlier mark must be seen as normal despite the presence of an element whose distinctiveness is limited, as stated above in section c) of this decision.

e) Global assessment, other arguments and conclusion

Likelihood of confusion covers situations where the consumer directly confuses the trade marks themselves, or where the consumer makes a connection between the conflicting

signs and assumes that the goods covered are from the same or economically linked undertakings.

The goods are partly identical, partly at least similar to a low degree and partly dissimilar, and they target the public at large, whose degree of attention may vary from average to above average. The earlier mark has a normal degree of distinctiveness. The signs are visually, aurally and conceptually similar to a high degree.

In the present case, the contested sign's standard typeface, the final 'S' forming the plural 'MILLIONAIRES' in the earlier mark and its element '1.1.' (of limited distinctiveness), are insufficient to prevent consumers from directly confusing the signs or associating them. Indeed, it is conceivable that consumers may legitimately believe that the contested trade mark is a new version or a brand variation of the opponent's mark (23/10/2002, T-104/01, Fifties / Miss Fifties (fig.), EU:T:2002:262, § 49), as it will be applied to identical and at least similar to a low degree goods to those protected by the earlier trade mark. In other words, it is possible that consumers will, at least, associate the origins of the goods at issue and assume that they come from the same undertaking or from economically linked undertakings. 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).

Considering all the above, there is a likelihood of confusion on the part of the public and, therefore, the opposition is partly well founded on the basis of the opponent's international trade mark registration designating Ireland No 4 463 257.

It follows from the above that the contested trade mark must be rejected for the goods found to be identical and similar to at least a low degree to those of the earlier trade mark.

The rest of the contested goods are dissimilar. As the identity or similarity of goods and services is a necessary condition for the application of Article 8(1)(b) EUTMR, the opposition based on this Article and directed at these goods cannot be successful.

Since the opposition is partially 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 extensive use or reputation as claimed by the opponent nor in relation to the identical and at least similar goods. The result would be the same even if the earlier mark enjoyed an enhanced degree of distinctiveness.

Likewise, there is no need to assess the claimed enhanced degree of distinctiveness of the opponent's mark in relation to dissimilar goods, as the similarity of goods and services is a *sine qua non* for there to be likelihood of confusion. The result would be the same even if the earlier mark enjoyed an enhanced degree of distinctiveness.

The opponent has also based its opposition on French trade mark registration No 4 463 257 and the designations of Austria, Belgium, the Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Spain and Sweden, for the same mark assessed above. Since these marks cover an identical or a narrower list of goods, the outcome cannot be different with respect to the goods for which the opposition has already been rejected. Therefore, no likelihood of confusion exists with respect to the dissimilar goods.

COSTS

According to Article 109(1) EUTMR, the losing party in opposition proceedings must bear the fees and costs incurred by the other party. According to Article 109(3) EUTMR, where each party succeeds on some heads and fails on others, or if reasons of equity so dictate, the Opposition Division will decide a different apportionment of costs.

Since the opposition is successful for only some of the contested goods both parties have succeeded on some heads and failed on others. Consequently, each party has to bear its own costs.

**The Opposition Division**

Julia
GARCIA MURILLO

María del Carmen
COBOS PALOMO

Fernando CÁRDENAS
CHÁVEZ

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.