

EUIPO, 15 July 2016, Natura Cosmetics v Ilja Visser



TRADE MARK LAW

Likelihood of confusion between “Ilja” and “Ilía natura”

- In the present appeal, however, the Board considers the word component ‘NATURA’ in the figurative trade mark ‘ILÍA NATURA’ to be of a weak distinctive character in connection with the goods and services covered by the trade mark applied for (as reasoned above, in paragraphs 27 and 28) and decides that the first word element in the contested sign, namely ‘ILÍA’, being more distinctive, forms the dominant element of the mark.
- The letters ‘J’ and ‘I’ are visually and aurally similar and in the Board’s view, such a difference may not overcome the global visual and aural similarity between the signs in question.

Source: EUIPO

EUIPO, 15 July 2016

(G. Humphreys, V. Melgar and A. Pohlmann)

DECISION

of the Fifth Board of Appeal
of 15 July 2016

In Case R 127812015-5

NATURA COSMÉTICOS S.A.

Avenida Alexandre Colares, no 1188

Vila Jaguará, São Paulo 05106-000

Brasil

THE BOARDS OF APPEAL

Applicant / Appellant

represented by Casalonga Alicante, S.L., Avenida
Maisonave, 41-6C, 03003 Alicante, Spain

v

Ilja Visser Holding B.V.

Prinsengracht 581-583

1 0 16 HT Amsterdam

The Netherlands

Opponent / Respondent

represented by CERTA LEGAL ADVOCATEN B.V.,
Keizersgracht 620, 1017 ER Amsterdam, The
Netherlands

APPEAL relating to Opposition Proceedings No B 2
388 430 (European Union trade mark application No 12
701 629)

THE FIFTH BOARD OF APPEAL

composed of G. Humphreys (Chairperson), V. Melgar
(Rapporteur) and A Pohlmann
(Member)

Registrar: H. Dijkerna

gives the following

Decision

Summary of the facts

1. By an application filed on 17 March 2014,
NATURA COSMÉTICOS S.A. (‘the applicant’) sought to register the figurative mark



for the following list of goods and services:

Class 3 - Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps, perfumery, essential oils, cosmetics, bath and shower gels, bath oils, bath and shower salts, bath beads, skin care preparations, including, lotions, creams, cleansers, scrubs, masks and toners; body oils; hair care and hair styling preparations, including shampoos, conditioners, hair moisturizers, finishing sprays, hair lotions, sprays, waxes, gels, mousses, creams, masks and balms, preparations in aerosol form for hairdressing and haircare, hair lacquers; permanent waving and curling preparations; hair-coloring and hairdecolorizing preparations; personal deodorants; sun-tanning preparations; after-sun preparations (cosmetics); sunscreen; self-tanning preparations; shaving preparations; shaving soap; shaving foam; after-shave preparations; scented room fragrances, incense sticks and incense cones, potpourri and sachets; aromatic preparations and essential oils for use in household products; perfuming preparations for the atmosphere; room perfume sprays; dentifrices; make up and personal care products; cosmetics for animals; cotton for cosmetic purposes; tissues impregnated with cosmetic lotions; moist wipes for sanitary and cosmetic purposes; depilatories, depilatory wax.

Class 5 - Pharmaceutical and veterinary preparations; sanitary preparations, dietetic substances adapted for medical use, food for babies; piasters, materials for dressings, material for stopping teeth, dental wax; disinfectants, preparations for destroying vermin; fungicides, herbicides; healthcare preparations including nutritional supplements, vitamins, food/meal replacements, all for medical purposes; amino acids; protein-based pharmaceuticals for human consumption; pharmaceutical vitamin preparations; mineral supplements and herbal supplements for medical purposes; dietetic food and substances adapted for medical or veterinary use; face and body care

preparations for pharmaceutical and medical use, including, sun-tanning and after-sun creams, lotions, milks, gels, sprays, oils, bodycare lotions and creams; hygiene products for medical purposes; dietary supplements for humans and animals; sanitary preparations for personal hygiene.

Class 44 - Hygienic and beauty care for human beings or animals; physical therapy; massage; beauty salons; health spa services, including, cosmetic body care services; tanning salon services; beauty parlours, hairdressing salons; hygienic and beauty care services for the face and body (at home or at health and beauty centres); beauty institutes, hygiene and beauty care provided in thalassotherapy or balneotherapy institutes; aromatherapy services, manicures; consultancy services related to dietetic and beauty care.

2. The application was published on 6 May 2014.

3. On 5 August 2014, Ilja Visser Holding B.V. ('the opponent') filed an opposition against the registration of the published trade mark application for part of the goods and services, namely:

Class 3 - soaps, perfumery, essential oils, cosmetics, bath and shower gels, bath oils, bath and shower salts, bath beads, skin care preparations, including, lotions, creams, cleansers, scrubs, masks and toners; body oils; hair care and hair styling preparations, including shampoos, conditioners, hair moisturizers, finishing sprays, hair lotions, sprays, waxes, gels, mousses, creams, masks and balms, preparations in aerosol form for hairdressing and haircare, hair lacquers; permanent waving and curling preparations; hair-coloring and hair-decolorizing preparations; personal deodorants; sun-tanning preparations; after-sun preparations (cosmetics); sunscreen; self-tanning preparations; shaving preparations; shaving soap; shaving foam; aftershave preparations; make up and personal care products; cotton for cosmetic purposes; tissues impregnated with cosmetic lotions; moist wipes for sanitary and cosmetic purposes; depilatories, depilatory wax;

Class 5 - face and body care preparations for pharmaceutical and medical use, including, suntanning and after-sun creams, lotions, milks, gels, sprays, oils, bodycare lotions and creams; Class 44 - Hygienic and beauty care for human beings.

4. The grounds of opposition were those laid down in Article 8(1)(b) EUTMR.

5. The opposition was based on the earlier EUTM No 9 710 443, for the word 'ILJA', filed on 20 January 2011 and registered on 29 2011 for 'soaps; perfumery, essential oils, cosmetics, hair lotions', in Class 3.

6. By decision of 21 May 2015 ('the contested decision'), the Opposition Division upheld the opposition for all the contested goods and services on the grounds that there was likelihood of confusion. It gave, in particular, the following grounds for its decision:

The goods and services

- An interpretation of the wording of the list of goods and services is required to determine the scope of protection of these goods and services. The term

'including', used in the applicant list of goods in Classes 3 and 5, indicates that the specific goods are only examples of items included in the category and that protection is not restricted to them. In other words, it introduces a non-exhaustive list of examples (on the use of 'in particular' see judgment of 09/04/2003, T-224/01, 'Nu-Tride' 09/04/2003, T-224/01, EU:T:2003:107). 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 with each other or complementary to each other. Contested goods in Class 3

- The contested 'soaps, perfumery, essential oils, cosmetics' are also covered by the earlier trade mark. Thus, these goods are identical.

- The contested 'hair care and hair styling preparations, including shampoos, conditioners, hair moisturizers, finishing sprays, hair lotions, sprays, waxes, gels, mousses, creams, masks and balms, preparations in aerosol form for hairdressing and haircare, hair lacquers' are included in the broad category of the opponent's 'hair lotions' in Class 3. Therefore, they are considered identical.

- The contested 'bath and shower gels, bath oils, bath and shower salts, bath beads, skin care preparations, including, lotions, creams, cleansers, scrubs, masks and toners; body oils; after-sun preparations (cosmetics); sunscreen; sun-tanning preparations; self-tanning preparations; shaving preparations; shaving foam; after-shave preparations; make up and personal care products; cotton for cosmetic purposes; tissues impregnated with cosmetic lotions; moist wipes for sanitary and cosmetic purposes; depilatories, depilatory wax' are included in the broad category of the opponent's 'cosmetics' in Class 3. Therefore, they are considered identical.

- The contested 'shaving soap' is included in the broad category of the opponent's 'soaps' in Class 3. Therefore, they are considered identical.

- The contested 'personal deodorants' are included in the broad category of the opponent's 'perfumery' in Class 3. Therefore, they are considered identical.

- The contested 'permanent waving and curling preparations; hair-coloring and hair-decolorizing preparations' are included in the broad category of the opponent's 'hair lotions' in Class 3. Therefore, they are considered identical.

Contested goods in Class 5

- The contested 'face and body care preparations for pharmaceutical and medical use, including, sun-tanning and after-sun creams, lotions, milks, gels, sprays, oils, bodycare lotions and creams' are related to the opponent's 'cosmetics' in Class 3. Cosmetics include a list of preparations used to enhance or protect the appearance or odour of the human body. The contested goods, which are for pharmaceutical and medical use comprise products such as skin care preparations with medical properties. They may coincide in purpose with cosmetics. Moreover, they share the same distribution

channels since they can be found in pharmacies or other specialized shops. They are directed at the same public and are often manufactured by the same companies. In view of all these findings, these products are deemed to be similar.

Contested services in Class 44

The contested 'hygienic and beauty care for human beings' are related to the opponent's 'cosmetics' in Class 3 as they may have the same general purpose (providing beauty care) and target the same users. It is common for an undertaking operating in the field of cosmetic treatments and beauty care to provide both products and treatment in the same place (e.g. in a beauty salon or spa). In these centres, the products sold can be the same as those used during a beauty session. Therefore, if the results are satisfactory and regular use of them is recommended, the client will expect to be able to acquire these goods in the beauty salon in question and, therefore, the goods will have the same distribution channels. Moreover, the contested services require use of the opponent's 'cosmetics'. The opponent's goods are essential for the rendering of services in Class 44; therefore, they are complementary. It follows that the contested services are similar to the opponent's cosmetics.

The signs

- The relevant territory is the European Union. For reasons of procedural economy, the Opposition Division will focus the comparison of the signs on the Italian-speaking part of the relevant public.

- The earlier mark is a word mark consisting of the word 'ILJ A'. The contested sign is a figurative sign consisting of the word 'ilia', depicted in ordinary lower case characters, and the word 'natura', depicted using smaller lower case rounded characters, placed under the first verbal element and to the right. The word 'natura' is preceded by a figurative element consisting of an irregular geometrical shape with six rounded sort of sides.

- Visually, the signs are similar to the extent that they coincide in the letters 'IL' and 'A' of the words 'ILJA' and 'ilia'. as the earlier mark is a word mark it is irrelevant, whether it is depicted in upper or lower case letters. However, they differ in the third letter of the words 'ILJA' and 'ilia' and in the additional figurative and verbal elements of the contested mark.

- Aurally, the pronunciation of the signs coincides in the sound of the letters 'I-L-A' and 'i-i-a' which are in part present identically in both signs and in part pronounced identically (the third letters 'J' and 'i'), and to that extent the signs are aurally similar. The pronunciation differs in the sound of the word 'natura' of the contested mark which has no counterpart in the earlier sign.

- Conceptually, while the public in the relevant territory will perceive the word 'natura' of the contested mark as the equivalent of the English word 'nature,' in the sense of, inter alia, 'the whole system of the existence, arrangement, forces, and events of all physical life that are not controlled by man'; 'all natural phenomena and plant and animal life, as distinct from man and his

creations' (See Colfins English Dictionary- Online Edition), the other sign lacks any meaning in that territory. Since one of the signs will not be associated with any meaning, the signs are not conceptually similar.

Distinctive and dominant elements of the signs

- The earlier mark has no element that could be clearly considered more distinctive than other elements.

- The element 'natura' of the contested sign will be associated with, inter alia, all natural phenomena and plant and animal life, as distinct from man and his creations'- The word 'natura' can be perceived as suggestive of something which is existing in or derived from nature; or in accordance with the nature; or having had a minimum of processing or preservative or industrial treatment. Bearing in mind that the relevant goods and services are aimed at beauty, hygiene and health care, it is considered that this element is weak for these goods and services. The relevant public will understand the meaning of that element and will not pay as much attention to this weak element as to the other more distinctive elements of the mark. Consequently, the impact of this weak element is limited when assessing the likelihood of confusion between the marks at issue.

- The marks under comparison have no elements which could be considered clearly more dominant (visually eye-catching) than other elements.

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. The opponent did not explicitly claim that its mark is particularly distinctive by virtue of intensive use or reputation.

- 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 in relation to any of the goods and services at hand from the perspective of the public in the relevant territory. Therefore, the distinctiveness of the earlier mark must be seen as normal.

Relevant public - level of attention

- In the present case, the goods and services found to be identical or similar are directed at the public at large and also at business customers with specific professional knowledge or expertise. The level of attention will be average.

Global assessment, other arguments and conclusion

- The goods and services covered by the trade marks in dispute have been found partly identical and partly similar.

- The conflicting signs are visually and aurally similar. The earlier mark has a normal degree of inherent distinctiveness.

- The earlier mark is reproduced almost exactly in the contested sign as its first element. There is only one small difference between the common element from a visual and aural perspective residing in the third letter 'i' of the contested sign's word 'ilia' and 'J' of the earlier mark 'ILJA'. However, this difference is only

visual, since in Italian these two letters will be pronounced identically.

- The first parts of the conflicting marks are almost identical, with the slight exception seen above. Consumers generally tend to focus on the first element of a sign when being confronted with a trade mark. This is justified by the fact that 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. Consequently, the identical first elements of the marks at issue have to be taken into account when assessing the likelihood of confusion between the marks.

- It is also true that the contested sign contains an additional word, namely 'nature', which leads to visual, aural and conceptual differences. However, the different word element 'nature' do not carry so much weight since it is weak for all of the goods and services.

- Moreover, the fact that the contested sign is a figurative mark does not seem to play a particular role, since the typeface and colour used are ordinary and banal, as well as the geometrical shape that precedes the word 'nature', so that their presence is clearly insufficient to differentiate the contested mark from the earlier mark.

- Furthermore, when signs consist of both verbal and figurative components, in principle, the verbal component of the sign usually has a stronger impact on the consumer than the figurative component. This is because the public does not tend to analyse signs and will more easily refer to the signs in question by their verbal element than by describing their figurative elements Judgment of 14/07/2005, T-312/03 'Selenium- Ace', EU:T:2005:289, § 37; decision of 19/12/2011, R 0233/2011-4, 'Best Tone' § 24; decision of 13/12/2011, R 0053/2011-5 'Jumbo', § 59).

- Consequently, it can safely be concluded that the difference in the third letter of the words 'ILJA' and 'ilia' is not sufficient to rule out similarity at a visual and aural level.

- In fact, the first word element of the contested sign is the element on which more attention will be set, and it is almost identical to the whole of the earlier mark, namely 'ILJA'.

- As a consequence, the Opposition Division finds that the similarity between the signs, resulting from the earlier mark being almost identically incorporated in the contested mark as an independent element, combined with the identity and similarity of the goods and services at issue, is such that the contested sign may give rise to an association with the earlier mark.

- Considering all the above, the Opposition Division finds that there is a likelihood of confusion on the part of the public who speaks Italian.

- It is a result of the unitary character of the European Union trade mark, laid down in Article 1(2) EUTMR, that an earlier European Union trade mark has equal effect in all Member States. Earlier European Union trade marks may therefore be relied upon to challenge any subsequent application for a trade mark which would prejudice their protection, even if this is only in

relation to the perception of consumers in part of the European Union. It follows that the principle laid down in Article 7(2) EUTMR, which provides that it is sufficient that an absolute ground for refusal exists in only part of the European Union for a trade mark application to be refused, applies, by analogy, to a relative ground for refusal under Article 8(1)(b) EUTMR.

- Therefore the opposition is partially well founded on the basis of the opponent's European Union trade mark registration. It follows that the contested trade mark must be rejected for all the contested goods and services.

7. On 1 July 2015, the applicant 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 15 September 2015.

8. In its observations in reply received on 4 December 2015, the opponent requests that the appeal be dismissed.

Submissions and arguments of the parties

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

- In the visual comparison, the applicant notes that the presence of the additional elements in the EUTM applied for creates significant visual dissimilarities with the prior mark.

- Phonetically, the signs differ in the element 'NATURA' in the EUTM applied form, what creates substantial differences. The prior mark contains two syllables IL-JA, and the contested application is composed of two words and 5-6 syllables. The additional syllables also create an important differences in the rhythm of speech and intonation of the two signs.

- Italian consumers due to the unusual accent over the letter 'I' in the contested application will distinguish the coinciding terms.

- Conceptually the Opposition Division stated that the signs are not similar.

- Consequently, the signs in question have a very low degree of similarity on a visual and phonetic basis, further they are conceptually dissimilar.

- The word 'NATURA' in the contested application, contrary to the Opposition Division's findings, is not a weak element of the sign. In particular the applicant argues that it has a EUTM registered for the word 'Natura', No 4 303 426, which was successfully used as a basis for the oppositions.

- In addition, the Opposition Division failed to address the presence of the figurative element in the contested application, consisting of a highly stylized representation of a leaf that retains its distinctive character as it is presented in the central position in the application.

- The Opposition Division wrongly assessed the level of attention of the relevant public, which in the present case should be higher than average, since the products and services in question are applied directly on the skin and therefore directly affects the appearance of the individual.

- The Opposition Division has not assessed the similarity of the short (4-letters) signs in accordance to the well-established case law, in particular, that the public's attention focuses on all letters of the signs; the central elements are as important as the beginning and endings; consumers tend to notice even small/single differences, which may suffice to exclude the similarity; even difference in one letter may be sufficient to distinguish signs.

- Likewise the Opposition Division failed to consider that the visual, phonetic and conceptual aspects of the opposed marks do not always have the same weight but may vary in light of the objective conditions under which the signs may be present on the market. In particular, phonetic similarity between the marks is of a less importance in case of goods marketed in such a way that the public usually perceives visually the mark. In the present case the choice of the relevant goods and services is generally made visually.

The applicant recalls a number of opposition decisions in which the likelihood of confusion was decided based on the similarity of the third letter in the 4-lettered signs.

10. The arguments raised in reply to the appeal may be summarised as follows:

- The Opposition Division correctly assessed the identity and similarity of the contested goods and services, to which the applicant did not contest.

- The Opposition Division properly assessed the similarity of the signs, in particular its visual, aural and conceptual aspects.

- The opponent adds that the stylized 'leaf cannot be regarded as very distinctive element, because it has a meaning in combination with the word 'NATURA' and refers to nature. It is just a confirmation of the descriptiveness of the word 'NATURA'. Because of this figurative element, there is no doubt for the consumer that the word 'NATURA' refers to its natural components.

- While purchasing the items with the contested sign, a consumer will ask for an 'ILIA' product. The reason is that the word element 'ILIA' is placed above left side of the other elements, is bigger than the other elements, and the other elements only have a descriptive meaning. Furthermore the consumer will not always pronounce the complete trademark, but will prefer a short version. The consumer believes that it buys an 'ILIA product' that consists of natural ingredients.

- When confronting both signs, the consumer may believe that the contested mark represents the 'natural product line' of the opposed mark.

- The words 'ILJA' and 'ILIA' are visually almost identical and in most European languages will be pronounced almost identically.

- The element 'NATURA' will be perceived as inter alia 'all natural phenomena and plant and animal life, as distinct from man and his creations'. This word in fact is suggestive of something which is existing in or derived from nature; or having had a minimum of processing or preservative or industrial treatment. The

relevant goods are aimed at beauty and healthcare, therefore this element has to be considered weak.

- The fact that the applicant has a registered EUTM for the word 'NATURA' No 4 303 426, does not necessarily mean that the distinctive power of the word 'NATURA' is strong. It only means that it had enough distinctive power to be included in the register for the goods and services at hand.

- The opposition No B 2 088 634 mentioned by the applicant, only confirms that the signs 'NATURA' and 'NATURA KERATIN' are confusingly similar (see page 4 of the opposition decision) in visual, aural and conceptual aspects. Further the Opposition Division decided that the word 'NATURA' will be associated with nature, the material world of living things (...). The term cannot be said to be entirely descriptive for the goods and services at issue. However, the relevant public will perceive it as alluding to the ingredients of which the relevant goods are made - cosmetics made with natural ingredients, or the fact that the relevant services are provided using natural substances (...) therefore, it is considered that the distinctiveness of this element is limited for a part of the relevant public.

The applicant has not mentioned the decision of the Boards of Appeal on 1/10/2014 in case R-1291/2013-5, NATURA UNA (FIG. MARK) / UNE between the applicant and another company, in which inter alia the Board decided that the element 'NATURA' will be understood as meaning 'nature' and in connection with the perfumery goods will be perceived as an indication of the quality of goods. In fact, it alludes to the natural composition of the goods and methods used in provision of the services in question, or the fact that they are not harmful to the natural environment. The applicant has cited previous EUIPO decisions in similar subject matter and summed up that the picture of a leaf and the word 'NATURA' are not distinctive.

- The earlier mark has no meaning in relation to goods at hand and therefore its distinctiveness is normal. It has not been questioned by the applicant.

- The goods and services are directed at the general public and business consumers with specific professional knowledge and expertise. The level of attention will be average. In this respect the applicant's allegations that the level of attention will be higher than average cannot be sustained, in particular, in the light of the previous EUIPO decisions cited by the applicant in which the Opposition Division confirmed the average level of attention of the relevant public.

- The goods are partially identical and partially similar. The signs are visually and aurally similar.

- The earlier mark is reproduced almost exactly in the contested sign as its first element. The difference is only visual. The first parts of the signs are almost identical. Consumers generally tend to focus on the first elements; and the public read from left to right. The different word 'NATURA' does not carry so much weight since it is weak for all of the goods and services. Further, the figurative elements are ordinary and banal, and are clearly insufficient to differentiate the contested mark from the earlier right. The difference in the third

letter is not sufficient to rule out similarity at a visual and aural level. Therefore, the office finds that there is a likelihood of confusion on the part of the Italian-speaking public.

- The opponent requests the Board to award the costs and fees incurred, namely EUR 300 (representation in the opposition); EUR 550 (representation in the appeal) and EUR 800 (payment of fee in the appeal procedure) to the opponent.

Reasons

11. The appeal complies with Articles 58, 59 and 60(1) EUTMR and Rules 48 and 49 EUTMIR. It is, therefore, admissible.

Likelihood of confusion - Article 8(J)(b) EUTMR

12. It follows from Article 8(1)(b) EUTMR that, upon opposition by the proprietor of an earlier trade mark, the trade mark applied for must not be registered if, because of its identity with or similarity to the earlier trade mark and the identity or similarity of the goods or services 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. The likelihood of confusion includes the likelihood of association with the earlier trade mark.

13. For the purposes of applying Article 8(1)(b) EUTMR, a likelihood of confusion presupposes both that the marks at issue are identical or similar and that the goods or services which they cover are identical or similar. Those conditions are cumulative (see 22/01/2009, T-316/07, *easyHotel*, EU:T:2009:14, § 42 and the case-law cited).

The relevant public and the consumer's level of attention

14. The relevant public for the assessment of the likelihood of confusion is composed of users likely to use both the goods and services covered by the earlier mark and those covered by the mark applied for (see 01.07.2008, T 328/05, *Quartz*, EU:T:2008:238, § 23). The public's attentiveness will vary depending on the kinds of goods and services involved (see [22.06.1999, C 342/97, *Lloyd Schuhfabrik*, EU:C: 1999:323, § 26 and 30/06/2004, T 186/02, *Dieselit*, EU:T:2004: 197, § 38](#)).

15. For the purposes of this global appreciation, the average consumer is deemed to be reasonably well-informed and reasonably observant and circumspect. It should also be borne in mind that the average consumer only rarely has the chance to make a direct comparison between the different marks but has to place his trust in the imperfect picture of them that he has kept in his mind ([22/06/1999, C-342/97, *Lloyd Schuhfabrik*, EU:C: 1999:323, § 26](#)).

16. The relevant territory is the European Union. For reasons of procedural economy, the Board like the Opposition Division will focus the comparison of the signs on the Italian-speaking part of the relevant public.

17. The applicant contests the Opposition Division's finding with regard to the assessment of the level of attention of the relevant public, which in the present case should be higher than average, since the goods and services in question are applied directly on the skin and

therefore directly affect the appearance of the individual and quote the relevant case law (13/06/2007, T-167/05, *Fennel*, EU:T:2007: 176, § 39).

18. The Opposition Division however stated that the goods and services found to be identical/similar are directed to the public at large and also to business customers with specific professional knowledge or expertise and that the level of attention will be average.

19. The contested decision, according to the opponent, remains in line with the previous decision of the Boards of Appeal concerning the applicant's company, and almost the same list of contested goods and services, case of 1/10/2014, no R-1291/2013-5, *NATURA UNA (FIG. MARK) I UNE § 16* (case cited by the applicant), in which the Board decided that the cosmetics, perfumery and toiletries in question and also the care and beauty services targeted by the trade mark application are generally in common use and according to established case-law that, in the case of the goods and services in question, the level of attention of the target public must be deemed to be average.

20. The Board endorses the findings of the contested decision and of the previous Board decisions and considers that the degree of attention displayed during the purchase of the contested goods is likely to be average.

21. Finally, with regard to the previous case law cited by the applicant, it must be noted that the conflicting marks and the specific circumstances in the present case are different from those in the cases referred to (i.e. of 13/06/2007, T-167/05, *Fennel*, EU:T:2007: 176, § 39).

22. The Board cannot see how this decision could alter the above findings in any direction, since the judgment considered different goods (beauty products: compact powder, lipstick, eye-shadow, eye-liner, blusher, nail polish and mascara) and moreover, it only confirmed that the level of attention for beauty products is in fact, average (see § 58).

23. Moreover, the cases referred to are not fully comparable to the present one, it must be recalled that the European Union trade mark regime is an autonomous system and the legality of the decisions of the Boards of Appeal must be assessed solely on the basis of the EUTMR, and not the Office's practice in earlier decisions ([15/09/2005, C-37/03 P, *BioiD*, EU:C:2005:547, § 47](#); 22/06/2005, T-19/04, *Paperlab*, EU:T:2005:247, § 39).

24. In view of the above, although it is correct that the Office should take into account the decisions already taken in respect of similar proceedings and consider with special care whether or not it should be decided in the same way, the decisions cited by the applicant cannot alter the Board's findings in the present case, for the reasons given in this decision.

Comparison of the goods and services

25. It is settled case-law that in assessing the similarity of the goods and services, all the relevant factors relating to those goods and services should be taken into account, including, inter alia, their nature, their intended purpose and their method of use and whether

they are in competition with each other or are complementary (see 29/09/1998, C-39/97, Canon, EU:C: 1998:442, § 23). Other factors may also be taken into account such as, for example, the distribution channels of the goods concerned (see 11.07.2007, T-443/05, Pirañam, EU:T:2007:219, § 37).

26. As far as the comparison of the goods and services at issue is concerned, the applicant does not criticise the decision for stating that the goods and services covered by the wording of the conflicting trade marks were in part identical and in part similar.

27. The Opposition Division's comparative examination is correct. In order to avoid unnecessary repetitions, the Board concurs with the conclusions and the grounds given in the contested decision on this point.

28. The Opposition Division correctly considered the contested goods in Class 3 of the trade marks in question to be identical, while the contested goods in Classes 5 and 44 to be similar, due to the same purpose or method of distribution (goods in Class 5) and complementarity (services in Class 44).

Comparison of the marks

29. In connection with the comparison of the signs, it should be pointed out that, according to established case-law the global appreciation of the likelihood of confusion must, as regards the visual, aural or conceptual similarity of the signs in question, be based on the overall impression created by them, hearing in mind, in particular, their distinctive and dominant components ([11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 23](#); [22.06.1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 25](#)). When determining the degree of visual, aural or conceptual similarity between them, where appropriate the importance to be attached to those different elements should also be assessed, taking account of the category of goods or services in question and the circumstances in which they are marketed ([22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C: 1999:323, § 27](#)).

30. When signs consist of both verbal and figurative components, in principle, the verbal component of the sign usually has a stronger impact on the consumer than the figurative component. This is because the public does not tend to analyse signs and will more easily refer to the signs in question by their verbal element than by describing their figurative elements (judgment of 14/07/2005, T-312/03 'Selenium-Ace', § 37; decision of 19/12/2011, R 023312011-4, 'Best Tone' § 24; decision of 13/12/2011, R 005312011-5 'Jumbo', § 59).

31. The signs to be compared are:

ILJA	
Earlier mark	Contested sign

32. The earlier mark is a word mark 'ILJA' (in uppercase script), whereas the contested mark is a device in black-white, depicting an almost identical word 'ILÍA' (in lowercase script) and underneath a graphic element resembling a leaf and the word 'NATURA' in significantly smaller lowercase script.

33. The applicant argued that the EUTM application consists of a very distinctive figurative element, which combined with the additional word 'NATURA' creates sufficient visual dissimilarities between the signs in question.

34. In the Board's view the image of a leaf merely reinforces the allusion to nature and thus the natural characteristics of the goods and services in question in the abovementioned sense. In addition, the word 'NATURA' in the contested sign, will be perceived as weak for the contested goods and services, as in English it means 'nature', and for the goods and services in question (in beauty and healthcare sector) it will refer to their natural components, suggest the natural origin or having had no or minimum processing or preservative or industrial treatment. This finding is also confirmed in the previous case of 1/10/2014, R-129112013-5, NATURA UNA (FIG. MARK) I UNE § 21, 22).

35. It follows that the distinctive character of the term 'NATURA', and also of the image of the leaf in the contested trade mark, is, in the case at stake, fairly weak and consequently the public will tend to focus its attention on the remaining verbal part of the sign, and in particular the term 'ILÍA' (see, by analogy, decision of 17 January 2011, R 41112010-2, Lisanatura (fig.) I LISA, § 25).

36. The Opposition Division thus rightly concluded that the term 'ILÍA', which has no meaning in Italian, was the most distinctive component in the sign applied for.

37. Visually it should be observed that the earlier mark 'ILJA' is almost entirely reproduced in the contested sign in which it forms the most dominant and distinctive element 'ILÍA'.

38. It is settled case law that the fact that the earlier sign is entirely contained in the sign applied for constitutes an indication that the two signs are similar (21/03/2011, T-372/09, Gold Meister, EU:T:2011:97, § 27). Furthermore, the coincidence between the marks compared is in their initial part, which is normally the part which is more likely to attract the public's attention (16/03/2005, T-112/03, Flexi Air, EU:T:2005:102, § 64-65).

39. Neither the second verbal element of the contested mark, 'NATURA', nor the graphical representation are sufficiently eye-catching to divert the consumers' attention away from the dominant element of the contested sign, which reproduces the opponent's mark. It follows that the signs at issue are visually similar to a certain degree because they both contain the similar elements 'ILJA' and 'ILÍA' (25/04/2013, T-284/11, Metroinvest, EU:T:2013:218, § 41). The marks are therefore visually similar to an above average degree.

40. The applicant also claimed that the accent added to the second letter 'í' in the word 'ILÍA' of the contested

sign will cause the marks to be aurally dissimilar. The Board notes however that the pronunciation of the letters 'J' and 'I' in Italian is almost the same and that added accent to the letter 'Î', which, according to the Italian grammar is optional (accents are only obligatory in the last syllables), does not change its pronunciation in Italian.

41. Therefore the words 'ILJA' and 'ILÎA' in Italian will be pronounced almost identically. As a result the pronunciation of the marks at dispute differs only in the sound of the word 'NATURA' of the contested mark, which has no counterpart in the earlier sign.

42. The word elements 'ILJA' and 'ILÎA' do not describe any of the characteristics of the goods and services applied for in Classes 3, 5 and 44, they are not descriptive or weakly distinctive. In addition, the Board finds that the words in question may be perceived by the part of the relevant public as translation of first names Elijah, or Elias, however without any further association with the goods in question. Only the word element 'NATURA' in the earlier mark 'ILJA NATURA' will be perceived as the equivalent to the English word 'nature'. The Opposition Division therefore rightly stated that since one of the signs (ILÎA) will not be associated with any meaning, the signs are conceptually dissimilar.

43. The applicant maintains that the distinctive character of the 'NATURA' component has been acknowledged by EUIPO, which has registered the European Union word mark No 4 303 426 'NATURA', in respect of goods and services in Classes 3, 5 and 44.

44. In this regard, it should be recalled that, according to established case-law, decisions concerning the registration of a sign as a European Union trade mark, which the Boards of Appeal are required to take under the EUTMR, are adopted in the exercise of circumscribed powers and are not a matter of discretion. Furthermore, in opposition proceedings, it is not possible to find, with regard to a sign identical to a trade mark protected in a Member State, [or by alternative, to earlier EUTM], an absolute ground for refusal, such as the lack of distinctive character, provided by Article 7 (1)(b) of Regulation No 40/94 and Article 3 (1)(b) of Directives 89/104 and 2008/95. In this respect, it should be noted that the characterisation of a sign as descriptive or generic is equivalent to denying its distinctive character ([judgment of 24/05/2012, C-196/11 P, FI-Live, EU:C:2012:314, § 41](#)).

45. It follows that the Board does not question the distinctive character of the earlier EUTMR 'NATURA', which could be possible, for example in the cancellation proceedings before the EUIPO. In the present appeal, however, the Board considers the word component 'NATURA' in the figurative trade mark 'ILÎA NATURA' to be of a weak distinctive character in connection with the goods and services covered by the trade mark applied for (as reasoned above, in paragraphs 27 and 28) and decides that the first word element in the contested sign, namely 'ILÎA', being

more distinctive, forms the dominant element of the mark'

46. Lastly, the applicant claims that the Opposition Division has wrongly failed to assess the similarity of the short (4-letters) signs in accordance with the well-established case law, in particular, that the public's attention focuses on all letters of the signs; the central elements are as important as the beginning and endings; consumers tend to notice even small/single differences, which may suffice to exclude the similarity; even a difference in one letter may be sufficient to distinguish signs.

47. This argument cannot be maintained, since the letters 'J' and 'Î' are visually and aurally similar and in the Board's view, such a difference may not overcome the global visual and aural similarity between the signs in question.

Overall assessment of the likelihood of confusion

48. According to the case-law of the Court of Justice, 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. It follows from the very wording of Article 8(1)(b) EUTMR that the concept of likelihood of association is not an alternative to that of likelihood of confusion, but serves to define its scope ([29/09/1998, C-39/97, Canon, EU:C: 1998:442, § 29](#) and [22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C: 1999:323, § 17](#)).

49. Likelihood of confusion on the part of the public must be assessed globally. That global assessment implies some interdependence between the factors taken into account and in particular similarity between the trade marks and between the goods or services covered. Accordingly, a lesser degree of similarity between these goods or 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](#) and [22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 19](#)). The more distinctive the earlier mark, the greater the risk of confusion, and marks with a highly distinctive character, either per se or because of the reputation they possess on the market, enjoy broader protection than marks with a less distinctive character ([29/09/1998, C-39/97, Canon, EU:C: 1998:442, § 18](#)).

50. Like the contested decision, the Board takes the view that, there is a similarity between the signs, resulting from the earlier mark being almost identically incorporated in the contested mark as an independent element, combined with the identity and similarity of the goods and services at issue, is such that the contested sign may give rise to an association that leads the relevant Italian-speaking part of the public to perceive the undertakings behind the marks as being economically connected or linked.

51. It follows from all the aforesaid considerations that the result of the contested decision should be upheld and the appeal dismissed.

Costs

52. Since the applicant is the losing party within the meaning of Article 85(1) EUTMR, it must bear the costs incurred by the opponent in the opposition and appeal proceedings.

Fixing of costs

53. In accordance with Article 85(6) EUTMR and Rule 94(3), (6) and (7)(d)(i) and (vi) EUTMR, the Board fixes the amount of representation costs to be paid by the applicant to the opponent with respect to the appeal proceedings at EUR 550 and for the opposition proceedings at EUR 300. The applicant has also to reimburse the opposition fee of EUR 350 paid by the opponent. The total amount is EUR 1200.

Order

On those grounds,

THE BOARD

hereby:

1. Dismisses the appeal;
2. Orders the applicant to bear the costs of the opposition and appeal procedure.
3. Fixes the total amount of costs and fees to be paid by the applicant to the opponent for the opposition and appeal proceedings at EUR 1 200.

[signatures]
