

## OPPOSITION No B 3 128 022

**Daum**, 22 rue de la Tremoille, 75008 Paris, France (opponent), represented by **Marguerite Bilalian**, 17 Avenue de Friedland, 75008 Paris, France (professional representative)

a g a i n s t

**Dwarfs Patents and Trademarks B.V**, Computerweg 22, 3542 DR Utrecht, Netherlands (applicant), represented by **IP Lawyers**, De Lairessestraat 107, 1071 NX Amsterdam, Netherlands (professional representative).

On 24/05/2022, the Opposition Division takes the following

### DECISION:

1. Opposition No B 3 128 022 is rejected in its entirety.
2. The opponent bears the costs, fixed at EUR 300.

### REASONS

On 10/08/2020, the opponent filed an opposition against all the goods and services of European Union trade mark application No 18 236 220, 'DAUMONET' (word mark). The opposition is based on French trade mark registration No 3 651 131, 'DAUM' (word mark) and on international trade mark registration designating Austria, Benelux, Croatia, the Czech Republic, Germany, Spain, Hungary, Italy, Portugal, Romania, Slovakia and Slovenia No 228 009, *Daum* (figurative mark). The opponent invoked Article 8(1)(b) EUTMR.

### LIKELIHOOD OF CONFUSION — 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.

#### a) The goods and services

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

#### **French trade mark registration No 3 651 131**

Class 4: *Candles (lighting), scented room candles.*

Class 11: *Lightening devices; chandeliers, lighting lamps, floor lamps, lighting lanterns, ceiling lights, lamp shades; fountains; faucets for washbasins, bathtubs, showers, bidets; shower heads; radiator caps; crystal objects, namely: chandeliers, wall lights for lighting; objects of glass, porcelain, earthenware, terracotta, namely: chandeliers, wall lights for lighting.*

Class 14: *Crystal paste; precious metals and their alloys; jewelry, jewelry and in particular: rings, bracelets, brooches, chains, necklaces, medals, pearls, earrings, rings, pendants; pins; jewelry boxes; cases; tie pins and adornments; cufflinks, hat ornaments (of precious metal); shoe ornaments (of precious metal); horological and chronometric instruments and in particular: clocks, clocks, watches.*

Class 20: *Frames; crystal objects, namely: picture frames; objects of glass, porcelain, earthenware, terracotta, namely: picture frames; mirrors (mirrors); hand-held mirrors (toiletory); glass plates for mirrors, furniture and, in particular: tables, boxes, liquor cabinets, consoles, pedestal tables, armchairs, chairs, stools, screens, planters; furniture fittings (not of metal); works of art of glass, wood, cork, reeds, rush, wicker, horn, bone, ivory, whalebone, scales, amber, mother-of-pearl, meerschaum, plaster, substitutes for all these materials or of plastics; decorative panels, decorative wall lights (not of textile); coat racks (furniture and hooks); hat racks, book racks, towel racks; door handles, not of metal; bottle caps.*

Class 21: *Glassware, crystals, not included in other classes, namely: glass boxes, candlesticks, flowerpot not of paper, porcelain or glass figurines, glass mosaic not for building, opalines, vases, tableware, glasses (containers), bottles, soap dishes, powder compacts, perfume sprayers, perfume sprayers; porcelain and earthenware not included in other classes; glass, porcelain, earthenware, terracotta objects, namely: sculptures, statues, statuettes, figurines, flasks, cups, cups, vases, flutes, drinking glasses, boxes, buckets, candlesticks, carafes, pitchers, pots, tumblers, glass stoppers, cups, plates, knife holders, candy boxes, candlesticks; glassware, porcelain and earthenware for tableware; crystal object namely: sculptures, statues, statuettes, figurines, flasks, cups, cups, vases, flutes, drinking glasses, boxes, buckets, candlesticks, carafes, pitchers, jars, tumblers, cups, plates, knife holders, candy boxes, candlesticks.*

**International trade mark registration designating Austria, Benelux, Croatia, the Czech Republic, Germany, Spain, Hungary, Italy, Portugal, Romania, Slovakia and Slovenia No 228 009**

Class 20: *mirrors*

Class 21: *Glassware, crystals, porcelain, mirrors.*

The contested goods and services are the following:

Class 8: *Knives; household knives; chef knives; kitchen knives; bread knives; bread knives [hand operated]; butcher knives; butchers' knives (non-electric -); butter knives; ceramic knives; cheese knives; carving knives (hand operated -) for household use; fruit knives; knives, forks and spoons; knives being tableware; stainless steel table knives; table knives; tableware [knives, forks and spoons]; forks; spoons; forks being tableware; spoons being tableware; egg slicers; vegetable choppers; vegetable choppers (hand-operated -); apple corers; cutlery; can openers [non-electric]; table cutlery [knives, forks and spoons]; kitchen mandolines; scrapers.*

Class 21: *Knife blocks; household or kitchen utensils; cups; tea cups; coffee cups; bowls; dishes; dishes [household utensils]; plates; wine glasses; kettles [non-electric]; non-electric kettles; frying pans; non-electric frying pans; cooking pots; cooking pots [non-electric]; corkscrews; corkscrews with knives; woks; non-electric woks; earthenware saucepans; casseroles [dishes]; stew-pans; grills [cooking utensils]; trivets; spatulas; spatulas [kitchen utensils]; spatulas for kitchen use; coolers [ice pails]; ice pails; whisks, non-electric, for household purposes; cookie jars; pitchers; salt cellars; pepper pots; garlic presses; saucepan scourers of metal; glassware; kettles, non-electric; dishes not of precious metal; portable coolers; bottle openers; cake plates; chopping boards; hand-operated coffee grinders; coffee grinders, hand-operated; graters; cheese graters; pie servers; pressure cookers; non-electric pressure cookers; cooking pots and pans [non-electric]; non-electric cooking pots and pans; cookware [pots and pans]; wine decanters; wine pourers; champagne buckets; wine buckets; bottle buckets; ice buckets; wine coolers; wine chillers; wine drip collars specially adapted for use around the top of wine bottles to stop drips; cooking utensils; cooking utensils, non-electric; bread bins; carafes; glass carafes; tea infusers; non-electric rice cooking pots; glass pans; metal pans; cooking pans; cooking pans [non-electric]; egg frying pans; frying pans [non-electric]; grill pans made of precious stone; non-electric cooking pans.*

Class 35: *Advertising, marketing and promotional services; advertising, marketing and promotional consultancy, advisory and assistance services; loyalty, incentive and bonus program services; distribution of advertising, marketing and promotional material; product demonstrations and product display services; provision and rental of advertising space, time and media; public relations services; trade show and commercial exhibition services; advertising; business assistance, management and administrative services; advertisements (placing of -); administration relating to marketing; advertising and marketing; advertising, promotional and public relations services.*

For the sake of good order, the Opposition Division recalls that the comparison of the goods and services must be based on the wording indicated in the respective lists of goods/services. Any actual or intended use not stipulated in the list of goods/services is not relevant for this comparison since it is part of the assessment of likelihood of confusion in relation to the goods/services on which the opposition is based and against which it is directed; it is not an assessment of actual confusion or infringement (16/06/2010, T-487/08, *Kremezin*, EU:T:2010:237, § 71). Therefore, the fact that the earlier marks designate a range of luxury products in the field of tableware and interior decoration for more than a century, as alleged by the opponent, has no impact whatsoever on the conclusions below in relation to the relevant goods and services.

Some of the contested goods are identical to the goods on which the opposition is based (e.g. *glassware* in Class 21). For reasons of procedural economy, the Opposition Division will not undertake a full comparison of the goods and services listed above. The examination of the opposition will proceed as if all the contested goods and services were identical to those of the earlier marks, which, for the opponent, is the best light in which the opposition can be examined.

#### **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 and services assumed to be identical are directed at the public at large and at business customers with specific professional knowledge or expertise.

The degree of attention may vary from average to high, depending on the price, sophistication or specialised nature, or terms and conditions of the goods and services purchased.

### c) The signs and distinctive character of the earlier marks

1. French trade mark registration  
No 3 651 131

DAUM

2. International trade mark registration  
designating Austria, Benelux, Croatia,  
the Czech Republic, Germany, Spain,  
Hungary, Italy, Portugal, Romania,  
Slovakia and Slovenia No 228 009

DAUMONET

Earlier trade mark

Contested sign

The relevant territory is France in relation to French trade mark registration No 3 651 131, whereas in relation to earlier international trade mark registration No 228 009, the relevant territory consists of the countries of the Benelux, Austria, Czech Republic, Germany, Spain, Croatia, Hungary, Slovakia, Italy, Portugal, Romania, Slovenia.

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).

In its observations of 14/10/2021, the opponent indicates that the applicant has chosen the word 'DAUMONET' in order to benefit from the notoriety of 'DAUM' and that it considers, for its part, that the word 'DAUM' is distinctive to a high degree. Yet, not only did the opponent not base its opposition on the grounds of Article 8(5) EUTMR within the period of three months following the publication of an EU trade mark application, also, it did not explicitly claim that its mark is particularly distinctive by virtue of intensive use or reputation within the time limit set by the Office for the opponent to substantiate the earlier rights and submit further material which expired on 15/03/2021. On the contrary, in its observations dated 15/03/2021, the opponent specifically indicates that its prior marks are distinctive to a normal degree. The fact that 'DAUM' is registered within the inventory of intangible cultural heritage in France and that it has also had 'the honor of receiving the prestigious *'Entreprise du patrimoine vivant'* label' cannot change anything to this conclusion and in any event, and for the sake of completeness, the additional documents provided by the opponent together with its observations do not provide any information whatsoever as to the degree of recognition of the trade mark by the relevant public.

The applicant indicates that 'DAUM' in the earlier marks is the surname of Jean Daum, the founder of the opponent's company. While this may well be the case, this surname is certainly not a common one in the relevant territories and the Opposition Division considers it unlikely that the public in these territories would perceive 'DAUM' as such. Similarly, the contested sign 'DAUMONET' will be perceived by the public in the relevant territory as a meaningless word with no specific meaning, as also indicated by the applicant. Therefore, the Opposition Division considers that none of the signs at issue have a meaning for the public in the relevant territories. The earlier international trade mark registration is a figurative mark consisting merely of the word 'DAUM' written in a manuscript typeface which has nothing elaborate or sophisticated and merely functions as an embellishment and is not distinctive per se.

In view of all the foregoing, the earlier marks are distinctive to a normal degree, despite the non-distinctive embellishment in earlier international trade mark registration No 228 009 and the contested sign is also distinctive to a normal degree.

Also, since none of the signs at issue have a meaning for the public in the relevant territories, a **conceptual** comparison is not possible, and the conceptual aspect does not influence the assessment of the similarity of the signs.

**Visually and aurally**, irrespective of the different pronunciation rules in different parts of the relevant territory in relation to earlier international trade mark registration No 228 009, the letters/sounds of the earlier marks are reproduced at the beginning of the contested sign which differs from these marks in its remaining letters/sounds 'ONET' (yet, the final 'T' is unlikely to be pronounced in French). Visually, earlier international trade mark registration No 228 009 and the contested sign differ further in the specific typeface of the former. In this respect, the Opposition Division reminds the opponent that the contested sign is a word mark which does not claim any particular figurative element or appearance.

The opponent indicates that the consumer's attention will be immediately drawn to the first part in the contested sign which reproduces the letters composing the earlier marks. However, the Opposition Division points out that while, generally, the beginning of words has a greater impact on the consumer than the ending, this consideration cannot prevail in all cases and cannot, in any event, undermine the principle that an examination of the similarity of the signs must take account of the overall impression produced by those signs, since the 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). While it is true that marks are similar when, from the point of view of the relevant public, they are at least partly identical as regards one or more relevant aspects (23/10/2002, T-6/01, Matratzen + Matratzenmarkt Concord (fig.), EU:T:2002:261, § 30), the coincidence must be 'relevant' from the perspective of the consumer who usually perceives a mark as a whole and does not proceed to analyse its various details (13/02/2008, T-146/06, Aturion, EU:T:2008:33, § 58). In the present case, it should be noted that while the aforementioned coincidences between the signs are certainly relevant, it must also be borne in mind that the length of the signs may influence the effect of the differences between them. The earlier marks are relatively short signs consisting merely of four letters (apart from the embellishment in earlier international trade mark registration No 228 009) whereas the contested sign is a long sign consisting of eight letters (i.e. twice as many as in the earlier marks). In addition, the letters that the signs have in common do not form an independently distinctive element within the contested sign; rather, they will be perceived as belonging to a, indivisible whole. Taking into account the perspective of the consumer who usually perceives a mark as a whole and does not proceed to analyse its various details, the Opposition Division considers that the conspicuous differences in length and in the number of sounds and in syllables between the signs at issue which clearly affect the rhythm and intonation in their respective

pronunciations, have a significant impact on the visual and aural impression that the public has of them. Hence, the signs are visually and aurally similar to a low 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) Global assessment, other arguments and conclusion**

The examination of the opposition was performed on the assumption that the contested goods and services were identical to those of the earlier marks. The goods and services at issue are directed at the public at large and at business customers with specific professional knowledge or expertise and the degree of attention of this public may vary from average to high. The signs at issue are visually and aurally similar but only to a low degree for the reasons indicated above. As also indicated above, a conceptual comparison is not possible and therefore, the conceptual aspect does not influence the assessment of the similarity of the signs. Indeed, the alleged 'French' connotation of the signs at issue, as alleged by the opponent, cannot change anything to the fact that they have no meaning whatsoever for the public in the relevant territories.

The opponent argues that the public has an imperfect recollection of signs and that 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. In addition, the opponent recalls that 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/services covered are from the same or economically linked undertakings. In the opponent's view, the public in the relevant territories would perceive the contested sign as a declination of the word 'DAUM' intended to designate a specific collection sold by the opponent.

Yet, taking further into account that the earlier marks are distinctive to a normal degree, the Opposition Division considers the significant visual and aural differences between the signs at issue in their respective lengths and numbers of sounds and syllables, as explained above, are conspicuous to anyone, even with an imperfect recollection of the signs, and sufficient to exclude any likelihood of confusion, including the likelihood of association, between the marks even in relation to identical goods and services, as assumed in the present case.

Considering all the above, even assuming that the goods and services at issue are identical, there is no likelihood of confusion on the part of the public. Therefore, the opposition must be rejected.

#### **COSTS**

According to Article 109(1) EUTMR, since the opponent is the losing party, it must bear the costs incurred by the applicant in the course of these proceedings.

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

**The Opposition Division**

Gracia TORDESILLAS  
MARTÍNEZ

Martina GALLE

Claudia SCHLIE

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.