

time.

Contrary to double identity cases, in which a violation can be established without having to meet any further requirements, likelihood of confusion on the part of the public must be proven in case the conflicting mark is identical with or similar to the earlier trade mark and the goods or services covered by the marks are identical or similar, Artt. 8(1)(b), 9(1)(b) CTMR. Such a risk of confusion includes the risk of association with the earlier trade mark.⁷⁷⁹

Having to prove likelihood of confusion is reasonable, as the proprietor of a younger mark which does not exactly match the older sign or of a younger mark being identical to the older one but (sought to be) registered for different goods or services shall have freedom to operate unless the older mark is harmed in its main function,⁷⁸⁰ the origin function. Therefore, likelihood of confusion must be understood in light of the origin function as the risk that the relevant public might believe the goods or services in question come from the same undertaking or, if applicable, from economically linked undertakings.⁷⁸¹

Likelihood of confusion on the part of the public must be appreciated globally, taking into account all factors significant to the circumstances of the case.⁷⁸² As Recital seven CTMR explains, assessment of risk of confusion depends on numerous elements, in particular “the recognition of the trade mark on the market, the association which can be made with the used or registered sign, the degree of similarity between the trade mark and the sign and between the goods or services identified”. This global assessment implies some interdependence between the relevant factors and, in particular, the similarity of the trade marks and the similarity of the goods or services identified. 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.⁷⁸³

779 Such likelihood of association is existent if the relevant public assume that the goods or services marked with the similar sign is of the same commercial origin – not because they confuse the signs but because they deem the differences between the signs immaterial, cf. *Fezer*, § 14 no. 136 et seq.

780 Cf. Recital seven CTMR: “... a Community trade mark, the function of which is in particular to guarantee the trade mark as an indication of origin ...”.

781 ECJ, above fn. 125 – *Canon*, para. 29 and above fn. 644 – *Lloyd Schuhfabrik Meyer*, para. 17.

782 Cf. e.g. ECJ, judgment of 11 November 1997, Case C-251/95, [1997] ECR I-6191, *SABEL BV v. Puma AG, Rudolf Dassler Sport – SABEL*, para. 22; above fn. 125 – *Canon*, para. 16; above fn. 644 – *Lloyd Schuhfabrik Meyer*, para. 18.