OPPOSITION No B 3 216 402

Eldria GmbH, Kronacher Str. 41, 96052 Bamberg, Germany (opponent), represented by **Die Patenterie GBR**, Nürnberger Straße 19, 95448 Bayreuth, Germany (professional representative)

a g a i n s t

Ricoh Company, Ltd., 3-6, Nakamagome 1-chome, Ohta-ku, 143-8555 Tokyo, Japan (applicant), represented by **Jak France**, 19 Boulevard Malesherbes, 75008 Paris, France (professional representative).

On 13/06/2025, the Opposition Division takes the following

DECISION:

1. Opposition No B 3 216 402 is upheld for all the contested services.

2. European Union trade mark application No 18 952 384 is rejected in its entirety.

3. The applicant bears the costs, fixed at EUR 620.

REASONS

On 29/04/2024, the opponent filed an opposition against all the services of European Union trade mark application No 18 952 384 ETRIA (word mark). The opposition is based on European Union trade mark registration No 18 843 144 ‘eldria’ (word mark). 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.

a) The services

The services on which the opposition is based are, inter alia, the following:

Class 40: *[…] Custom construction of machines; custom manufacture of tools for others; custom assembling of materials for others; assembly of products for others.*

The contested services are the following:

Class 40: *Manufacturing of Multifunction printers, printers, copiers, facsimile machines, scanners and finishers.*

As a preliminary remark, it is to be noted that according to Article 33(7) EUTMR, goods or services are not regarded as being similar to or dissimilar from each other on the ground that they appear in the same or different classes under the Nice Classification.

The relevant factors relating to the comparison of the goods or services include, inter alia, their nature, their intended purpose, their method of use and whether they are in competition with each other or are complementary ('the Canon criteria'). It is also necessary to take into account, besides the Canon criteria, other factors, namely distribution channels, the relevant public and the usual origin of the goods or services (02/06/2021, T-177/20, Hispano Suiza / Hispano Suiza, EU:T:2021:312, § 21-22).

Contrary to the applicant's assertions, the contested *manufacturing of multifunction printers, printers, copiers, facsimile machines, scanners and finishers* is, if not identical (as including or overlapping), at least similar to the opponent's *assembly of products for others*, which refers to industrial or custom manufacturing services where a business assembles products or parts on behalf of a third party, rather than for its own brand. Similarly, the manufacturing of office devices such as printers, facsimile machines or scanners also involve activities as module design or engineering, testing and final device assembly. Therefore, these services have the same nature and purpose; they may also coincide in providers and distribution channels and be directed at the same end users.

For the sake of completeness, to the extent that the applicant claims that the term 'assembly of products for others' in the specification of the earlier right is an unclear and vague term the Opposition Division clarifies that this is a term expressly listed in the class headings of Class 40 of the Nice Classification. While it is true that some terms of the Nice Classification might nevertheless be considered to be unclear, this does not apply to the term 'assembly of products for others'. According to the 'Common Communication on the Acceptability of Classification Terms and the General Indications of the Nice Class Headings' (CP1) 'assembly of products for others' do not belong to the group of expressly listed unclear terms (in this regard see also the Guidelines for Examination in the Office, Part C Opposition, Point 4.7). In fact, this term is sufficiently clear and precise. According to the Explanatory Note for the Nice Classification this service is included in Class 40 only in cases where it is effected for the account of another person to their order and specification, i.e. the service provider "assembles" the product for the customer but does not commercialize the end product. Considering the above, the applicant's argument is unfounded.

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 (22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 26).

In the present case, the services found to be at least similar target the public at large and business customers with specific professional knowledge or expertise.

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

c) The signs and distinctiveness of the earlier mark

eldria	ETRIA
Earlier trade mark	Contested sign

The relevant territory is the European Union.

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).

Contrary to the applicant's claims, the signs' verbal element 'eldria' and 'ETRIA' have no clear and immediate perceptible meaning for any part of the public in the relevant territory and are, therefore, distinctive in relation to the services in question.

Since the opponent did not explicitly claim that its mark is particularly distinctive by virtue of intensive use or reputation, the assessment of the distinctiveness of the earlier mark will rest on its distinctiveness per se, which in the present case, must be seen as normal.

It should be pointed out that in the case of word marks, it is the words as such that are protected and not their written form. Therefore, it is irrelevant, for the purposes of the comparison of the signs that the verbal element 'eldria' is depicted in lower case letters in the earlier mark whereas the verbal element 'ETRIA' is depicted in upper case in the contested sign insofar as the capitalisation of that word does not depart from the usual way of writing (see to this effect 31/01/2013, T-66/11, babilu / BABIDU, EU:T:2013:48, § 57).

Visually and **aurally**, the signs coincide in the letters 'E**RIA' (and its sound) and differ in the second and third letters 'LD' in the earlier mark versus the second letter 'T' in the contested sign (and their pronunciation).

The applicant claims that the marks are dissimilar because of their different beginnings 'ELD' versus 'ET'. However, it has to be noted that, although consumers generally pay greater attention to the beginning of a mark than to its end, this finding cannot apply in all cases, nor can it call into question the principle that the examination as to whether the marks are similar must take account of the overall impression created by those marks. This is because the average consumer normally perceives a mark as a whole and does not analyse its various details (14/07/2005, T-312/03, Selenium-Ace / SELENIUM SPEZIAL A-C-E (fig.), EU:T:2005:289, § 37).

Moreover, in the present case the signs share their initial letter 'E' and both will be pronounced in the same number of syllables (two or three depending on the part of the public).

As claimed by the opponent, the sound of the additional letter 'L' in the first syllable of the earlier mark does not produce a noticeable difference from a phonetic point of view, as is the case with the letters 'DR' vs 'TR', both pronounced by placing the tongue behind the top front teeth to produce a quick, sharp sound, which is very similar.

In view of the above, the signs are visually similar to an average degree and aurally similar to a high degree.

Conceptually, neither of the signs has a meaning for the public in the relevant territory. Since a conceptual comparison is not possible, the conceptual aspect does not influence the assessment of the similarity of the signs.

d) Global assessment, other arguments and conclusion

The appreciation of likelihood of confusion on the part of the public depends on numerous elements and, in particular, on the recognition of the earlier mark on the market, the association that can be made with the registered mark, and the degree of similarity between the marks, and between the goods or services identified. It must be appreciated globally, taking into account all factors relevant to the circumstances of the case (22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 18; 11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 22).

In the present case, the services are at least similar and they target the public at large and professionals, whose degree of attention varies from average to high. The earlier mark has a normal degree of distinctiveness. The signs are visually similar to an average degree and aurally similar to a high degree, for the reasons explained in section c) above. The differing letters at the middle of the signs (where consumers tend to pay less attention) are insufficient to offset said visual and aural similarity between them when considered in their entirety. Moreover, the signs have no meaning that would help consumers to differentiate between them.

Account is taken of the fact that average consumers rarely have the chance to make a direct comparison between different marks but must trust in their imperfect recollection of them (22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 26). Even consumers who pay a high degree of attention need to rely on their imperfect recollection of trade marks (21/11/2013, T-443/12, ancotel. (fig.) / ACOTEL (fig.) et al, EU:T:2013:605, § 54).

Considering all the above, there is a likelihood of confusion on the part of the public.

Therefore, the opposition is well founded on the basis of the opponent's EUTM registration No 18 843 144. It follows that the contested trade mark must be rejected for all the contested services.

COSTS

According to Article 109(1) EUTMR, the losing party in opposition proceedings must bear the fees and costs incurred by the other party.

Since the applicant is the losing party, it must bear the opposition fee as well as the costs incurred by the opponent in the course of these proceedings.

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

The Opposition Division

Meglena BENOVA	Gracia TORDESILLAS MARTÍNEZ	Katarzyna ZYGMUNT

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.