

JUDGMENT OF THE GENERAL COURT (Third Chamber)

3 October 2019 (*)

(EU trade mark — Opposition proceedings — Application for the EU word mark Meatlove — Earlier EU word mark carnilove — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

In Case T-491/18,

Vafo Praha s.r.o., established in Chrášťany (Czech Republic), represented by M. Vojáček, lawyer,

applicant,

v

European Union Intellectual Property Office (EUIPO), represented by S. Bonne and H. O'Neill, acting as Agents,

defendant,

the other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court, being

Susanne Rutzinger-Kurpas, residing in Spiegelau (Germany), represented by F. Lichtnecker, lawyer,

ACTION brought against the decision of the Fourth Board of Appeal of EUIPO of 12 June 2018 (Case R 264/2018-4), relating to opposition proceedings between Vafo Praha and Ms Rutzinger-Kurpas,

THE GENERAL COURT (Third Chamber),

composed of S. Frimodt Nielsen, President, V. Kreuschitz (Rapporteur) and N. Póltorak, Judges,

Registrar: E. Coulon,

having regard to the application lodged at the Court Registry on 14 August 2018,

having regard to the response of EUIPO lodged at the Court Registry on 31 October 2018,

having regard to the response of the intervener lodged at the Court Registry on 25 October 2018,

having regard to the fact that no request for a hearing was submitted by the parties within 3 weeks after service of notification of the close of the written part of the procedure, and

having decided to rule on the action without an oral part of the procedure, pursuant to Article 106(3) of the Rules of Procedure of the General Court,

gives the following

Judgment

Background to the dispute

1 On 17 June 2016, the intervener, Ms Susanne Rutzinger-Kurpas, filed an application for registration of an EU trade mark with the European Union Intellectual Property Office (EUIPO) pursuant to Council Regulation (EC) No 207/2009 of 26 February 2009 on the European Union trade mark (OJ 2009 L 78, p. 1), as amended (replaced by Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1)).

2 Registration as a mark was sought for the word sign Meatlove.

3 The goods and services in respect of which registration was sought are in Classes 31 and 35 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and correspond, for each of those classes, to, inter alia, the following description:

- Class 31: ‘Foodstuffs and fodder for animals’;
- Class 35: ‘Retail services in relation to fodder for animals; retail services in relation to dietary supplements; wholesale services in relation to dietary supplements; wholesale services in relation to fodder for animals’.

4 The trade mark application was published in *European Union Trade Marks Bulletin* No 130/2016 of 14 July 2016.

5 On 11 October 2016, the applicant, Vafo Praha s.r.o., filed a notice of opposition pursuant to Article 41 of Regulation No 207/2009 (now Article 46 of Regulation 2017/1001) to registration of the mark applied for in respect of the goods and services referred to in paragraph 3 above.

6 The opposition was based on the earlier EU word mark carnilove, which covers, inter alia, goods in Classes 5 and 31 corresponding, for each of those classes, to the following description:

- Class 5: ‘Vitamin and mineral supplements for pets’;
- Class 31: ‘Dry, semi-moist, wet complete and complementary pet food; pet treats’.

7 The ground relied on in support of the opposition was that set out in Article 8(1)(b) of Regulation No 207/2009 (now Article 8(1)(b) of Regulation 2017/1001).

8 On 20 December 2017, the Opposition Division upheld the opposition because it found, inter alia, that the signs at issue were visually and phonetically similar to an average degree and were conceptually identical.

9 On 6 February 2018, the intervener filed a notice of appeal with EUIPO, pursuant to Articles 58 to 64 of Regulation No 207/2009 (now Articles 66 to 71 of Regulation 2017/1001), against the Opposition Division's decision.

10 By decision of 12 June 2018 ('the contested decision'), the Fourth Board of Appeal of EUIPO annulled the Opposition Division's decision and rejected the opposition in its entirety. In particular, it found, first, that the goods and services at issue were aimed mainly at the general public, in the present case animal owners, but also at those for whom raising livestock constituted a business, although the wholesale services were aimed at the professional public consisting of tradespeople, secondly, that the relevant public's level of attention varied from average to high, thirdly, that the relevant public was that in the European Union (paragraph 11 of the contested decision), fourthly, that the goods at issue were identical (paragraph 15 of the contested decision), fifthly, that the services in Class 35 covered by the mark applied for were similar to an average degree to the goods covered by the earlier mark (paragraphs 16 and 17 of the contested decision), sixthly, that the signs at issue were visually and phonetically similar only to a low degree and that it was not possible to compare them conceptually (paragraphs 22 to 24 of the contested decision) and, seventhly and consequently, that, overall, in the light, in particular, of the lack of distinctiveness of the word element in common, 'love', there was no likelihood of confusion between the marks at issue (paragraphs 29 and 30 of the contested decision).

Forms of order sought

11 The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO to pay the costs.

12 EUIPO contends that the Court should:

- dismiss the action;
- order the applicant to pay the costs incurred by EUIPO.

13 The intervener contends that the Court should:

- uphold the contested decision;
- order the applicant to pay the costs (including those incurred by the intervener); in the alternative, if the Court annuls the contested decision, order EUIPO to pay the costs (including those incurred by the intervener).

Law

14 In support of its action, the applicant relies on a single plea in law, alleging, in essence, infringement of Article 8(1)(b) of Regulation No 207/2009. It submits that the Board of Appeal's assessment as to whether the signs at issue were similar is vitiated by errors and that, consequently, the Board of Appeal erred in denying that there was a likelihood of confusion between the marks at issue.

15 EUIPO and the intervener dispute the applicant's arguments. They maintain that the Board of Appeal correctly assessed whether the signs at issue were similar and that it therefore correctly found that there was no likelihood of confusion between the marks at issue.

16 Article 8(1)(b) of Regulation No 207/2009 provides 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.

17 According to settled case-law, the risk that the public may believe that the goods or services in question come from the same undertaking or from economically linked undertakings constitutes a likelihood of confusion. According to the same case-law, the likelihood of confusion must be assessed globally, according to the relevant public's perception of the signs and goods or services in question and taking into account all factors relevant to the circumstances of the case, in particular the interdependence between the similarity of the signs and that of the goods or services covered (see judgment of 9 July 2003, *Laboratorios RTB v OHIM — Giorgio Beverly Hills (GIORGIO BEVERLY HILLS)*, T-162/01, EU:T:2003:199, paragraphs 30 to 33 and the case-law cited).

18 For the purposes of applying Article 8(1)(b) of Regulation No 207/2009, 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 judgment of 22 January 2009, *Commercy v OHIM — easyGroup IP Licensing (easyHotel)*, T-316/07, EU:T:2009:14, paragraph 42 and the case-law cited).

19 Where the protection of the earlier trade mark extends to the entirety of the European Union, it is necessary to take into account the perception of the marks at issue by the consumer of the goods and services in question in that territory. However, as the applicant has stated, it must be borne in mind that, for an EU trade mark to be refused registration, it is sufficient that a relative ground for refusal for the purposes of Article 8(1)(b) of Regulation No 207/2009 exists in part of the European Union (see, to that effect, judgment of 14 December 2006, *Mast-Jägermeister v OHIM — Licorera Zacapaneca (VENADO with frame and others)*, T-81/03, T-82/03 and T-103/03, EU:T:2006:397, paragraph 76 and the case-law cited).

The relevant public

20 According to the case-law, in the global assessment of the likelihood of confusion, account should be taken of the average consumer of the category of goods concerned, who is reasonably well informed and reasonably observant and circumspect. It should also be borne in mind that the average consumer's level of attention is likely to vary according to the

category of goods or services in question (see judgment of 13 February 2007, *Mundipharma v OHIM — Altana Pharma (RESPICUR)*, T-256/04, EU:T:2007:46, paragraph 42 and the case-law cited).

21 The Board of Appeal found, in paragraph 11 of the contested decision, that the goods in Class 31 and the corresponding retail services in Class 35, which are covered by the mark applied for, were aimed mainly at the general public, in the present case animal owners, in particular pet owners. It took the view that the goods in Class 31 were also aimed at those for whom raising livestock constitutes a business. It found that the wholesale services in Class 35, which are also covered by the mark applied for, were aimed at a professional public consisting of tradespeople. According to the Board of Appeal, the relevant public's level of attention varied from average to high. Lastly, since the earlier mark is an EU trade mark, the Board of Appeal found that the relevant territory was the European Union.

22 Unlike the applicant and EUIPO, which do not dispute that assessment, the intervener submits that the goods covered by the earlier mark are aimed at a specialist public that consists of veterinary professionals or pet owners with mainly specific needs, whereas the goods and services covered by the mark applied for are aimed at the average consumer, in the present case pet owners or undertakings such as retailers in that field of business. Consequently, according to the intervener, the relevant public pays a different level of attention to the marks at issue.

23 In the present case, although it is indeed true that the earlier mark is registered in respect of 'vitamin ... supplements for pets' in Class 5, it must be stated that the 'dry, semi-moist, wet complete and complementary pet food [and] pet treats' in Class 31, in respect of which the earlier mark is also registered, include 'dry, semi-moist, wet complete ... pet food' and therefore foodstuffs for animals which do not meet specific nutritional needs on the part of animals. As the Board of Appeal correctly found, those goods are aimed mainly at the general public, in the present case animal owners, and at those for whom raising livestock constitutes a business. The intervener's undifferentiated argument claiming that all the goods covered by the earlier mark are aimed at a specialist public because they meet specific nutritional needs on the part of animals thus has no factual basis.

24 Overall, the Board of Appeal was therefore right in finding that the relevant public's level of attention varies from average to high.

25 The Board of Appeal was also right in finding that the relevant public is that in the whole of the European Union, since the earlier mark is an EU trade mark. Consequently, it cannot be claimed, as the intervener, however, does, that the marks at issue are not aimed at Italian- or Spanish-speaking consumers, but only at a public that understands English.

The comparison of the goods and services

26 According to settled case-law, in assessing the similarity of the goods or services at issue, all the relevant factors relating to those goods or services should be taken into account. Those factors include, in particular, their nature, their intended purpose, their method of use and whether they are in competition with each other or are complementary. Other factors may also be taken into account such as the distribution channels of the goods concerned (see judgment of 11 July 2007, *El Corte Inglés v OHIM — Bolaños Sabri (PiraÑAM diseño original Juan Bolaños)*, T-443/05, EU:T:2007:219, paragraph 37 and the case-law cited).

27 Complementary goods or services are those between which there is a close connection, in the sense that one is indispensable or important for the use of the other with the result that consumers may think that the same undertaking is responsible for manufacturing those goods or for providing those services. By definition, goods or services intended for different publics cannot be complementary (see judgment of 22 January 2009, *easyHotel*, T-316/07, EU:T:2009:14, paragraphs 57 and 58 and the case-law cited).

28 In the first place, in paragraph 15 of the contested decision, the Board of Appeal found that the ‘foodstuffs and fodder for animals’ in Class 31, in respect of which registration of the mark applied for had been sought, were identical to the ‘dry, semi-moist, wet complete and complementary pet food [and] pet treats’, also in Class 31, in respect of which the earlier mark was registered, because those goods fell within the general category of ‘foodstuffs and fodder for animals’.

29 Although the applicant and EUIPO do not dispute that assessment on the part of the Board of Appeal, the intervener submits that the goods in Class 31 covered by the earlier mark constitute only a small fraction of the goods in respect of which she has sought registration of the mark applied for. However, as the Board of Appeal correctly pointed out in paragraph 15 of the contested decision, it is clear from the case-law that goods or services can be regarded as identical where the goods or services covered by the earlier mark are included in a more general category designated by the mark applied for (see judgment of 19 January 2017, *Morgan & Morgan v EUIPO — Grupo Morgan & Morgan (Morgan & Morgan)*, T-399/15, not published, EU:T:2017:17, paragraph 39 and the case-law cited). As the ‘foodstuffs and fodder for animals’ in Class 31 include the ‘dry, semi-moist, wet complete and complementary pet food [and] pet treats’ in that same class, the Board of Appeal was right in finding that they are identical.

30 In the second place, the Board of Appeal was right in pointing out, in essence, in paragraph 16 of the contested decision, that it was apparent from the case-law that, although specific goods differ in terms of their nature and intended purpose from retail or wholesale services in respect of those goods, those goods and sales services are nonetheless indisputably similar since they share the same distribution channels and are complementary. In particular, with regard to the issue of complementarity, it has been held that those goods are indispensable to or, at the very least, important for the provision of those sales services, which are specifically provided when those goods are sold. Furthermore, it has been held that those sales services play, from the point of view of the customer, an important role when he comes to buy the goods which those services are aimed at selling (see, to that effect, judgments of 24 September 2008, *Oakley v OHIM — Venticinque (O STORE)*, T-116/06, EU:T:2008:399, paragraphs 47 to 59; of 16 October 2013, *El Corte Inglés v OHIM — Sohawon (fRee YOUR STYLE.)*, T-282/12, not published, EU:T:2013:533, paragraph 37, and of 9 July 2015, *Nanu-Nana Joachim Hoepf v OHIM — Vincci Hoteles (NANU)*, T-89/11, not published, EU:T:2015:479, paragraph 43).

31 Consequently, first, the Board of Appeal was right in finding, in paragraph 16 of the contested decision, that the ‘retail services in relation to fodder for animals [and the] wholesale services in relation to fodder for animals’ in Class 35, in respect of which the intervener had sought registration of the mark applied for, are similar to an average degree to the ‘dry, semi-moist, wet complete and complementary pet food’ and ‘pet treats’ in Class 31 in respect of which the earlier mark is registered.

32 In that respect, the intervener submits that those goods are very specific, whereas the retail and wholesale services constitute a more general category. As has been stated in paragraph 29 above, the ‘foodstuffs and fodder for animals’ to which, inter alia, the retail and wholesale services in question here relate, are identical to ‘dry, semi-moist, wet complete and complementary pet food [and] pet treats’. The ‘retail services in relation to fodder for animals [and the] wholesale services in relation to fodder for animals’ thus relate to goods which are identical to ‘dry, semi-moist, wet complete and complementary pet food [and] pet treats’. Accordingly, the applicant’s comment is not capable of contradicting the Board of Appeal’s finding that they are similar.

33 Secondly, the Board of Appeal was also right in finding, in paragraph 17 of the contested decision, that, for the same reasons, the ‘retail services in relation to dietary supplements [and] wholesale services in relation to dietary supplements’ in Class 35, in respect of which registration of the mark applied for had been sought, are similar to an average degree to the ‘vitamin and mineral supplements for pets’ in Class 31 in respect of which the earlier mark is registered. In that regard it correctly found that those goods are among the dietary supplements to which the retail and wholesale services relate.

34 In the third place, as regards the intervener’s comment that the ‘management administration of commercial undertakings’ in Class 35 is not similar to the goods covered by the earlier mark, it is sufficient to state that it is clear from the notice of opposition that the applicant did not oppose the registration of the mark applied for in respect of those services.

The comparison of the signs

35 The global assessment of the likelihood of confusion must, so far as concerns the visual, phonetic or conceptual similarity of the signs at issue, be based on the overall impression given by the signs, bearing in mind, in particular, their distinctive and dominant elements. The perception of the marks by the average consumer of the goods or services in question plays a decisive role in the global assessment of that likelihood of confusion. In this regard, the average consumer normally perceives a mark as a whole and does not engage in an analysis of its various details (see judgment of 12 June 2007, *OHIM v Shaker*, C-334/05 P, EU:C:2007:333, paragraph 35 and the case-law cited).

36 Assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark. On the contrary, the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components (see judgment of 12 June 2007, *OHIM v Shaker*, C-334/05 P, EU:C:2007:333, paragraph 41 and the case-law cited). It is only if all the other components of the mark are negligible that the assessment of the similarity can be carried out solely on the basis of the dominant element (judgments of 12 June 2007, *OHIM v Shaker*, C-334/05 P, EU:C:2007:333, paragraph 42, and of 20 September 2007, *Nestlé v OHIM*, C-193/06 P, not published, EU:C:2007:539, paragraph 43).

37 It must be pointed out at the outset that the Board of Appeal found, in paragraph 18 of the contested decision, without being contradicted in that regard by the parties, that both of the signs at issue consisted of one word and that neither had an element more dominant than any other element. Accordingly, in terms of the case-law referred to in paragraph 36 above,

the Board of Appeal was required to base the assessment as to whether the signs were similar on the signs at issue as a whole, as it did in the present case.

38 It must also be borne in mind that it is apparent from the case-law that, where the elements of similarity between two signs are the result of the fact that they have a weakly distinctive component in common, the impact of those elements of similarity on the global assessment of the likelihood of confusion is itself low (see judgment of 30 May 2018, *L'Oréal v EUIPO*, C-519/17 P and C-522/17 P to C-525/17 P, not published, EU:C:2018:348, paragraph 73 and the case-law cited).

The visual similarity

39 As regards the visual similarity of the signs, the Board of Appeal found, in paragraph 22 of the contested decision, that the signs at issue differed as to their beginnings, namely 'meat' in one case and 'carni' in the other. It took the view that the overlap as regards the final element 'love' did not render the signs at issue visually similar to an average degree. It found that, unlike the sign applied for, which would be split into 'meat' and 'love', the earlier sign would not be perceived as the combination of the two words 'carni' and 'love'. In its view, even with regard to consumers who would understand the word element 'love' as a separate element, that element would, in the light of its laudatory connotations, in any case have a lower degree of distinctive character than the word element 'carni'. Consequently, according to the Board of Appeal, the signs at issue were visually similar only to a low degree.

40 The applicant criticises that assessment on the part of the Board of Appeal. It submits that the fact that the signs at issue each contain the word element 'love' associated with prefixes that have the same meaning leads to a visual similarity, particularly because the signs are almost identical in length and structure.

41 EUIPO and the intervener dispute the applicant's arguments.

42 In the present case, it must be stated that the signs at issue are word signs which, from a visual standpoint, correspond only in the word element 'love' at the end. Furthermore, as the applicant correctly submits, the signs are similar in length, namely eight letters in the sign applied for and nine letters in the earlier sign.

43 By contrast, as EUIPO, like the Board of Appeal, rightly points out, from a visual standpoint, the signs at issue differ in their beginnings, which are 'meat' in the sign applied for and 'carni' in the earlier sign. Apart from their lengths, which are similar overall, there is no visual similarity between those two word elements. Since there are no other elements of visual similarity, that aspect cannot suffice to make those word elements visually similar.

44 In so far as the applicant submits that the visual similarity consists, in essence, of the association with the word element in common, 'love', of prefixes that have the same meaning, it is sufficient to state that such a conceptual similarity between word elements of signs at issue, even if established, has no bearing on the assessment of the visual similarity of those word elements, or even of the signs at issue as a whole. That argument on the part of the applicant is therefore irrelevant for the purposes of the visual comparison of the signs at issue.

45 Furthermore, in the light of the case-law referred to in paragraph 38 above, the impact of elements of similarity between two signs that are the result of the fact that they have a weakly distinctive component in common must be analysed only at the stage of the global assessment of the likelihood of confusion.

46 Consequently, even if the word element ‘love’ is actually only weakly distinctive, the Board of Appeal was not justified in minimising the impact of the visual similarity resulting from that word element, which is common to the signs at issue, on account of such a weak distinctive character, as it, however, did in paragraph 22 of the contested decision.

47 However, overall, since the signs at issue differ markedly in their beginnings, namely the word elements ‘meat’ in the sign applied for and ‘carni’ in the earlier sign, and having regard to the fact that the relevant public normally attaches more importance to the first part of words (see, to that effect, judgments of 17 March 2004, *El Corte Inglés v OHIM — González Cabello and Iberia Líneas Aéreas de España (MUNDICOR)*, T-183/02 and T-184/02, EU:T:2004:79, paragraph 81, and of 16 March 2005, *L’Oréal v OHIM — Revlon (FLEXI AIR)*, T-112/03, EU:T:2005:102, paragraphs 64 and 65), the visual similarity between the signs at issue resulting from the word element in common, ‘love’, and their similar lengths can, as the Board of Appeal ultimately found, be categorised only as low in degree.

The phonetic similarity

48 As regards the phonetic similarity of the signs at issue, the Board of Appeal found, in paragraph 23 of the contested decision, that, despite the final syllable in common, ‘love’, the signs at issue differed in that the earlier sign consisted of three syllables whereas the sign applied for consisted of two and in that they had different beginnings. It took the view that the signs at issue are therefore phonetically similar only to a low degree.

49 The applicant submits that the signs at issue each contain the word element ‘love’ associated with prefixes that have the same meaning, which leads, in the light of the almost identical length and structure of those signs, to a phonetic similarity.

50 EUIPO and the intervener dispute the applicant’s arguments.

51 For the reasons stated in paragraph 44 above, the applicant’s argument alleging that the phonetic similarity arises, in particular, out of the association with the word element in common, ‘love’, of prefixes that have the same meaning has no bearing on the assessment of the phonetic similarity of those word elements, or even of the signs at issue as a whole. That argument on the part of the applicant is therefore also irrelevant for the purposes of the phonetic comparison of the signs at issue.

52 Furthermore, the Board of Appeal was right in finding that the signs at issue differ in their beginnings. The word elements ‘meat’ in the sign applied for and ‘carni’ in the earlier sign are phonetically different, not only owing to their totally different pronunciation, but also on account of the fact that the former consists of only one syllable whereas the latter consists of two. The applicant therefore errs in maintaining that the signs at issue are similar in structure.

53 Overall, the Board of Appeal was therefore right in finding that there is only a low degree of phonetic similarity between the signs.

The conceptual similarity

54 As regards the conceptual similarity of the signs, the Board of Appeal found, in paragraph 24 of the contested decision, that they could not be compared since the earlier mark had no meaning as a whole. It found that, even if the relevant public recognised the word element ‘love’ in the signs at issue, it would perceive the signs as being conceptually different because carnilove refers to ‘love of carni(vores)’ and Meatlove refers to ‘love of meat’.

55 The applicant criticises the Board of Appeal’s assessment and submits that the signs at issue are conceptually identical. According to the applicant, like the word element ‘meat’ at the beginning of the sign applied for, the word element ‘carni’ in the earlier sign evokes ‘meat’, at least for the Italian-, Spanish- and English-speaking publics in the European Union. It submits that those publics will clearly and without any doubt understand the meaning of the word ‘meat’, as it is a basic English word, as well as the meaning of the word ‘carni’, due to its relation to ‘carnivore’ or ‘carne’. It maintains that, since the Board of Appeal admitted, in paragraph 24 of the contested decision, that the earlier sign could be understood as meaning ‘love of carni(vores)’ and since ‘carnivore’ means ‘meat-eater’, it is clear that ‘love of meat eater’ is conceptually similar to ‘love of meat’, to which the sign applied for refers.

56 EUIPO and the intervener dispute the applicant’s arguments.

57 It is certainly true that it is clear from the case-law that, despite the fact that whether the signs at issue are similar must as a matter of course be assessed on the basis of the overall impression given by those signs without engaging in an analysis of their various details (see paragraph 35 above), the relevant public will break a word sign down into word elements which, for it, suggest a specific meaning or which resemble words known to it (see judgment of 13 February 2007, *RESPICUR*, T-256/04, EU:T:2007:46, paragraph 57 and the case-law cited).

58 The Board of Appeal was therefore right in finding, in paragraph 20 of the contested decision, that the sign applied for would immediately be understood by the English-speaking relevant public as a combination of the words ‘meat’ and ‘love’ and would be split into those two elements.

59 However, the Board of Appeal was wrong in finding, in paragraph 21 of the contested decision, that such a dissection would not be made of the earlier sign, since the English-speaking relevant public would not understand the word ‘carni’. As the Board of Appeal correctly pointed out in paragraph 20 of the contested decision, the word ‘love’ is such a basic English word that it will be understood throughout the European Union as meaning ‘an intense feeling of deep affection’ or ‘great interest and pleasure’ in something (see, to that effect, judgment of 25 January 2017, *Sun System Kereskedelmi és Szolgáltató v EUIPO — Hollandimpex Kereskedelmi és Szolgáltató (Choco Love)*, T-325/15, not published, EU:T:2017:29, paragraph 57). In such circumstances, it cannot be deduced from the case-law referred to in paragraph 57 above that, where there is a basic word element that is easily understood throughout the European Union, a word sign will be broken down into various word elements only if the word element of which the rest of that sign consists itself suggests

a specific meaning or resembles words that the relevant public knows. On the contrary, faced with such a basic word element that is easily understood throughout the European Union, the relevant public will indeed break down the word sign at issue into two parts, one corresponding to a word that it understands as part of everyday language and the other consisting of the rest of the sign at issue.

60 Consequently, as the applicant in essence submits, the relevant public will indeed break down the earlier sign into two word elements, ‘carni’ and ‘love’. It follows that the Board of Appeal was not justified in dwelling, in paragraph 24 of the contested decision, primarily on the point that the earlier sign had no meaning as a whole.

61 In that paragraph of the contested decision, the Board of Appeal also found that, even if the relevant public recognised the word element ‘love’ in both of the signs at issue, it would still perceive them to be conceptually different, since carnilove refers to ‘love of carni(vores)’ whereas Meatlove refers to ‘love of meat’. Consequently, the Board of Appeal did indeed examine one of the meanings of the word element ‘carni’ suggested by the applicant, namely a reference to the concept of ‘carnivore’. Although it is certainly true that the concepts of ‘love of carnivores/meat eaters’ and ‘love of meat’ are not identical, the fact remains that they both refer to a feeling of affection for or great pleasure in something connected with meat. To that extent, there is, as the applicant also submits, indeed a certain conceptual similarity between the signs at issue, at least for the English-speaking relevant public, a conceptual similarity which can, however, be categorised only as low in degree.

62 By contrast, the Board of Appeal did not examine the other meanings of the word element ‘carni’ that the applicant suggested. In its observations on the appeal brought by the intervener, the applicant stressed that the word ‘carne’ or even ‘carni’ meant ‘meat’ in a certain number of Romance languages. Before the Court, it correctly submits, first, that that word element corresponds to the plural of the word ‘meat’ in Italian and, secondly, that it is very similar to the word ‘carne’ meaning ‘meat’ in Spanish.

63 EUIPO submits, without, however, disputing that understanding of the word element ‘carni’ on the part of the Italian- or Spanish-speaking publics, that, unlike the word ‘love’, the word ‘meat’ is not a basic English word that is understood in all the languages of the European Union.

64 However, by not analysing that meaning of the word element ‘carni’ for the Italian- or Spanish-speaking publics, even though it correctly found, in paragraph 11 of the contested decision, that the relevant public in the present case was that in the whole of the European Union and that it was therefore not only the English-speaking public, but also the Italian- or Spanish-speaking publics that had to be taken into account in the present case (see paragraph 25 above), the Board of Appeal disregarded a potentially relevant factor of conceptual similarity. Rather, it should have analysed that conceptual similarity, which the applicant had alleged existed for the Italian- or Spanish-speaking publics. In that context, the Board of Appeal should also have examined whether those Italian- or Spanish-speaking publics did indeed understand the meaning of the word element ‘meat’ as an English word meaning ‘meat’, if appropriate as a term that forms part of basic English vocabulary and is therefore widely known by consumers throughout the European Union (see judgment of 16 February 2017, *Jaguar Land Rover v EUIPO — Nissan Jidosha (Land Glider)*, T-71/15, not published, EU:T:2017:82, paragraph 43 and the case-law cited), as the applicant submits.

65 If that were the case, it would have to be held that the signs at issue are conceptually similar to a high degree.

The likelihood of confusion

66 A global assessment of the likelihood of confusion implies some interdependence between the factors taken into account and, in particular, between the similarity of the trade marks and that of the goods or services covered. Accordingly, a low degree of similarity between those goods or services may be offset by a high degree of similarity between the marks, and vice versa (judgments of 29 September 1998, *Canon*, C-39/97, EU:C:1998:442, paragraph 17, and of 14 December 2006, *VENADO with frame and others*, T-81/03, T-82/03 and T-103/03, EU:T:2006:397, paragraph 74).

67 As is apparent from recital 8 of Regulation No 207/2009 (now recital 11 of Regulation 2017/1001), the assessment of the likelihood of confusion depends on numerous elements, in particular the public's recognition of the trade mark on the market in question. The more distinctive the trade mark, the greater will be the likelihood of confusion, and therefore marks with a highly distinctive character, either per se or because of their recognition by the public, enjoy broader protection than marks with less distinctive character (see, by analogy, judgments of 11 November 1997, *SABEL*, C-251/95, EU:C:1997:528, paragraph 24; of 29 September 1998, *Canon*, C-39/97, EU:C:1998:442, paragraph 18; and of 22 June 1999, *Lloyd Schuhfabrik Meyer*, C-342/97, EU:C:1999:323, paragraph 20).

68 By contrast, a finding that the earlier mark has a weak distinctive character does not preclude a finding that there is a likelihood of confusion in the present case. Although the distinctive character of the earlier mark must be taken into account in assessing the likelihood of confusion, it is only one factor among others involved in that assessment. Consequently, even in a case involving an earlier mark with a weak distinctive character, there may be a likelihood of confusion on account, in particular, of a similarity between the signs and between the goods or services covered (see judgment of 13 December 2007, *Xentral v OHIM — Pages jaunes (PAGESJAUNES.COM)*, T-134/06, EU:T:2007:387, paragraph 70 and the case-law cited).

69 Furthermore, as has already been stated in paragraph 38 above, it is apparent from the case-law that, where the elements of similarity between two signs are the result of the fact that they have a weakly distinctive component in common, the impact of those elements of similarity on the global assessment of the likelihood of confusion is itself low.

70 In the present case, the Board of Appeal found, in paragraphs 28 to 30 of the contested decision, that the earlier sign had no meaning and that its distinctive character was therefore average. It took the view that, even if that sign were to be perceived as containing the English word 'love', its perceived meaning would be purely laudatory, namely that the goods and services are made or rendered with love or are held in deep affection by the target consumers, and would not be regarded as an indication of commercial origin. According to the Board of Appeal, an overlap between the signs at issue as regards such a non-distinctive element could not result in a likelihood of confusion on the part of the relevant public, which would focus on the distinctive elements in the signs at hand, namely the combined word 'meatlove' as a whole and the word 'carnilove', in which, if it was dissected, the meaningless element 'carni' was the most distinctive element. Accordingly, the Board of Appeal found that the differences in the beginnings of the signs at issue outweighed the overlap in their final letters

'l' 'o', 'v' and 'e', which did not constitute a distinctive element per se in either sign. It took the view that, given the low degree of visual and phonetic similarity that it had found to exist and the average distinctiveness of the earlier sign, there was no likelihood of confusion between the marks at issue, even with regard to the identical goods.

71 Since, first, the Board of Appeal incorrectly found that the earlier sign would not be broken down by the relevant public (see paragraphs 59 and 60 above) and that there was no conceptual similarity between the signs at issue for the English-speaking public (see paragraph 61 above) and, secondly, it did not assess the conceptual similarity for the Italian- or Spanish-speaking publics (see paragraph 64 above), that assessment is necessarily vitiated by errors.

72 If the Board of Appeal had correctly examined whether the signs at issue were conceptually similar, in particular for the Italian- or Spanish-speaking publics, it cannot be ruled out that it would have had to find that there is a likelihood of confusion in the present case.

73 As the single plea in law alleging infringement of Article 8(1)(b) of Regulation No 207/2009 is therefore well founded, the contested decision must be annulled.

Costs

74 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

75 In the present case, EUIPO and the intervener have been unsuccessful. As the applicant has claimed only that EUIPO alone should be ordered to pay the costs, EUIPO must be ordered to bear its own costs and to pay those incurred by the applicant.

76 In so far as the intervener requests, in the alternative, if the Court annuls the contested decision, that EUIPO be ordered to pay the costs (including those incurred by the intervener), it is sufficient to state that there is no legal basis in the Rules of Procedure for ordering a party which has been unsuccessful to pay the costs incurred by another party which has also been unsuccessful.

77 The intervener must therefore be ordered to bear her own costs.

On those grounds,

THE GENERAL COURT (Third Chamber),

hereby:

- 1. Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 12 June 2018 (Case R 264/2018-4);**
- 2. Orders EUIPO to bear its own costs and to pay those incurred by Vafo Praha s.r.o.;**

3. **Orders Ms Susanne Rutzinger-Kurpas to bear her own costs.**

Frimodt Nielsen

Kreuschitz

Póltorak

Delivered in open court in Luxembourg on 3 October 2019.

E. Coulon

V. Tomljenović

Registrar

President

* Language of the case: English.