

**OPPOSITION No B 3 215 537**

**CRN Management B.V.**, Jonckerweg 19, 2201 DZ Noordwijk, Netherlands (opponent), represented by **Dentons Europe LLP**, Gustav Mahlerplein 2, 1082 MA Amsterdam, Netherlands (professional representative)

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**Spotify AB**, Regeringsgatan 19, 111 53 Stockholm, Sweden (applicant), represented by **Taylor Wessing N.V.**, Parnassusweg 803-805a, 1082 LZ Amsterdam, Netherlands (professional representative).

On 29/01/2026, the Opposition Division takes the following

**DECISION:**

1. Opposition No B 3 215 537 is upheld for all the contested services.
2. European Union trade mark application No 18 964 019 is rejected in its entirety.
3. The applicant bears the costs, fixed at EUR 620.

**REASONS**

On 12/04/2024, the opponent filed an opposition against all the services of European Union trade mark application No 18 964 019 'MARROW' (word mark). The opposition is based on, inter alia, Benelux trade mark registration No 1 405 550 'ARROW CLASSIC ROCK CAFÉ' (word mark). The opponent invoked Article 8(1)(b) EUTMR.

**PROOF OF USE**

Proof of use of the earlier Benelux trade mark registrations No 1 212 494 and No 886 493 was requested by the applicant. However, if evidence of use has been requested by the applicant in relation to some of the earlier rights, the Office will normally firstly consider if the opposition can be fully upheld on the basis of one or more earlier rights not subject to the requirement to prove use. In such a case, the EUTM application will be rejected without it being necessary to consider proof of use. Only if no such earlier right is available, will the Office consider those earlier rights for which proof of use was requested. Therefore, at this point, the Opposition Division does not consider it appropriate to undertake an assessment of the evidence of use submitted considering that Benelux trade mark registration No 1 405 550 is not subject to the use requirement (as notified by the Office with communication of 13/11/2024).

Therefore, the Opposition Division will first examine the opposition in relation to the opponent's Benelux trade mark registration No 1 405 550.

**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 41: *Entertainment.*

The contested services are the following:

Class 41: *Entertainment services, namely, providing non-downloadable playback of music in curated playlists via the Internet and other communications networks; entertainment services, namely, curating songs for music playlists; entertainment services, namely, providing music playlists.*

An interpretation of the wording of the services is required to determine the scope of protection of these goods or services.

The General Court has confirmed that the term ‘namely’, used to show the relationship of individual goods or services to a broader category, is exclusive and restricts the scope of protection only to the goods or services specifically listed (04/10/2016, T-549/14, Castello / Castelló et al., EU:T:2016:594, § 71; 31/01/2024, T-581/22, ECE QUALITY OF LIFE (fig.) / ECE (fig.), EU:T:2024:47, § 43). Therefore, the use of this term in the list of services must be interpreted accordingly.

Considering the above, all of the contested services are included in the broad category of the opponent’s *entertainment*. Therefore, they are identical.

**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 identical target the general public.

The applicant alleges that, in light of the services in question, the degree of attention varies from average to high and cites the General Court (06/10/2004, T-117/03 - T-119/03 and T-171/03, NL, EU:T:2004:293, § 25). However, the cited decision, in the context of completely different goods and services, merely states that the general public is targeted in the Court’s case.

Notwithstanding the above, the Opposition Division agrees with the applicant to a certain extent in that music preferences are particularly important to many consumers and part of their personal identity.

Considering this, the relevant general public will display a degree of attention, which varies from average to above-average, depending on the type and subscription model of the services concerned.

### c) The signs

ARROW CLASSIC ROCK CAFÉ	MARROW
Earlier trade mark	Contested sign

The relevant territory is the Benelux.

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).

The unitary character of the Benelux trade mark means that an earlier Benelux trade mark has identical protection in the relevant territories. Earlier Benelux trade marks may therefore be relied upon to challenge any subsequent application for a trade mark that would prejudice their protection, even if this is only in relation to the perception of consumers in part of the Benelux (09/03/2005, T-33/03, Hai / SHARK (fig.), EU:T:2005:89, § 39; 03/03/2004, T-355/02, ZIRH / SIR (fig), EU:T:2004:62, § 36).

The applicant argues that the relevant Benelux territories possess exceptionally high levels of English language proficiency and submits evidence in this regard. Indeed, the English-speaking part of the European Union does not only consist of the countries in which English is an official language, but also of those in which, at the very least, English is widely understood, which, according to the Court, includes, in particular, Denmark, the Netherlands as part of the Benelux public, Finland and Sweden (20/01/2021, T-253/20, It's like milk but made for humans, EU:T:2021:21, § 35). This part of the public may understand the meanings of the signs' verbal elements 'ARROW' and 'MARROW'.

However, there is another part of the public in the Benelux, namely a significant part of the French-speaking Benelux public, to which the Court's above-cited findings do not apply. Regarding the proficiency index submitted by the applicant (**Annex 1**), it fails to demonstrate how English language skills are distributed across Belgium's different linguistic regions. The document merely shows that Belgium as a whole ranks lower in English proficiency than the Netherlands. This evidence cannot establish, for instance, whether the French-speaking population of Wallonia has significantly lower English proficiency compared to Flemish speakers, who may indeed possess better English language skills. Without more detailed regional data, no meaningful conclusions can be drawn about the linguistic divide in English comprehension within Belgium.

Consequently, the Opposition finds that, for a significant part of the French-speaking Benelux public, the verbal elements 'ARROW' and 'MARROW' are meaningless, bearing in mind that the equivalent words in French are not very close (*flèche* and *moelle*). Moreover, the words 'ARROW' and 'MARROW' cannot be considered basic English terms that would be generally understood throughout the relevant territory.

Therefore, a significant part of the French-speaking Benelux public will perceive the verbal elements 'ARROW' and 'MARROW' as meaningless, and they are thus distinctive to an average degree, without yielding a conceptual difference. Consequently, the Opposition Division dismisses the applicant's neutralisation argument and finds it appropriate to focus the comparison of the signs on that part of the public.

For the public under assessment, the earlier mark's verbal element 'CLASSIC ROCK CAFÉ', however, is meaningful. This is because the French equivalent for 'classic' is very close (*classique*), *rock* as abbreviation for rock and roll exists in French, and French *café* is used to refer to coffee, a coffee house or coffee time.<sup>1</sup> For the public under assessment, and in the context of the concerned *entertainment* services, 'CLASSIC ROCK CAFÉ' forms a conceptual unit referring to classic rock music entertainment. This interpretation arises because the term 'café', in English as well as in French, is, contrary to what the applicant claims, commonly used in a metaphorical sense to evoke a casual, welcoming atmosphere, a usage that is widespread across various media and cultural contexts, where it signifies a thematic focus rather than the beverage or an actual physical location, thereby making it likely that consumers would understand 'CLASSIC ROCK CAFÉ' as strongly alluding to the entertainment services' subject matter. Therefore, this verbal element is distinctive to a very low degree.

The consideration that the consumer normally attaches more importance to the initial part of a trade mark cannot apply in all cases and call into question the principle that the examination of the similarity of trade marks must be based on the overall impression produced by them. There is no reason to believe that average consumers, who are reasonably well informed, observant and circumspect, will systematically disregard the subsequent part of the verbal element of a trade mark to the extent that they only remember the first part (07/06/2023, T-33/22, Porto insignia / Insignia et al., EU:T:2023:316, § 56-57).

**Visually** and **aurally**, the signs coincide in (the pronunciation of) their letter sequence '(\*)ARROW' and differ in (the pronunciation of) the earlier mark's additional verbal element 'CLASSIC ROCK CAFÉ' as well as the contested sign's additional first letter 'M', which have no counterparts in the respective other sign.

Therefore, considering that the signs coincide in five of five/six letters of the element, which is the first in the earlier mark and the only one, that is distinctive to a normal degree in both signs, the signs are visually and aurally similar to a below-average degree.

**Conceptually**, reference is made to the previous assertions concerning the semantic content conveyed by the marks. Whereas one of the marks is meaningless, the relevant public will perceive a concept of classic rock music entertainment in the other one. To that extent, the marks are conceptually not similar. However, this conceptual difference is of limited relevance in the overall comparison of signs, as it stems from a meaning, which is distinctive to a very low degree.

#### **d) 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.

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<sup>1</sup> Information extracted from *Larousse* dictionary on 23/01/2026 at [larousse.fr/dictionnaires/francais/classique/16417](https://www.larousse.fr/dictionnaires/francais/classique/16417), [larousse.fr/dictionnaires/francais/rock/69679](https://www.larousse.fr/dictionnaires/francais/rock/69679), and [larousse.fr/dictionnaires/francais/cafe/c3%a9/12081](https://www.larousse.fr/dictionnaires/francais/cafe/c3%a9/12081)

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 for any of the services in question from the perspective of the public in the relevant territory. Therefore, the distinctiveness of the earlier mark must be seen as normal, despite the presence of an element in the mark, which is distinctive to a very low degree, as stated above in section c) of this decision.

#### **e) Global assessment, other arguments and conclusion**

The services are identical and target the public at large with a degree of attention varying from average to above average. The earlier mark has a normal degree of inherent distinctiveness.

The signs are visually and aurally similar to a below-average degree due to the partially coinciding element 'ARROW'/'MARROW', with the latter differing only in its initial letter 'M'. For the French-speaking part of the Benelux public, both these elements will be perceived as meaningless and thus distinctive to an average degree. While the earlier mark contains the additional element 'CLASSIC ROCK CAFÉ', this has very low distinctiveness in relation to the entertainment services at issue, limiting the impact of the resulting conceptual differences as explained above under section c).

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).

Furthermore, 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 (29/09/1998, C-39/97, Canon, EU:C:1998:442, § 29).

Indeed, it is highly conceivable that the public under assessment will imperfectly recollect the signs' partially coinciding elements 'ARROW'/'MARROW', which for them are both similar, foreign, and meaningless terms. This public is likely to perceive the contested mark as a parent brand, a variation of the earlier mark, configured in a different way according to the type of services that it designates (23/10/2002, T-104/01, Miss Fifties (fig.) / Fifties, EU:T:2002:262, § 49). While the earlier mark's element 'CLASSIC ROCK CAFÉ' will not be overlooked, it will be understood as merely describing the thematic focus of the entertainment services. This perception is reinforced by the common practice in the relevant market for service providers to create variations of their trade marks - by altering typeface, adding verbal or figurative elements - to denote new service offerings or to present their brand with a refreshed image.

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 versa (29/09/1998, C-39/97, Canon, EU:C:1998:442, § 17). In the present case, the fact that the signs are conceptually not similar and visually and aurally similar to a below-average degree is offset by the identity of the services.

Considering all the above, there is a likelihood of confusion on a significant part of the French-speaking Benelux public. As stated above in section c) of this decision, a likelihood of confusion for only part of the relevant public of the Benelux is sufficient to reject the contested application.

Therefore, the opposition is well founded on the basis of the opponent's Benelux trade mark registration No 1 405 550. It follows that the contested trade mark must be rejected for all the contested services.

As Benelux trade mark registration No 1 405 550 leads to the success of the opposition and to the rejection of the contested trade mark for all the services against which the opposition was directed, there is no need to examine the other earlier rights invoked by the opponent (16/09/2004, T-342/02, Moser Grupo Media, s.l. / MGM, EU:T:2004:268), and no need to assess the proof of use submitted in relation to these earlier rights.

## **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) EUTMR, 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**

Manuela RUSEVA

Maximilian KIEMLE

Jorge IBOR QUÍLEZ

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.