



**OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)**

OPERATIONS DEPARTMENT

B206b

Notification to the applicant/holder of a decision

Alicante, 24/03/2014

Jan Smolders
Goirkestraat 185-01
NL-5046 GJ Tilburg
PAÍSES BAJOS

Your reference:

Opposition number: **B 002170648**

Contested trade mark number: **011445541**

Name of the applicant/holder: **van Kempen**

Please see the attached decision which ends the abovementioned opposition proceedings. It was taken on **24/03/2014**.

Birgit FILTENBORG

Enclosures (excluding the cover letter): 03 pages.

Please note that the decisions of the Opposition Division will not be signed by the responsible officials, but will only indicate their full name and carry a printed seal of the Office in accordance with Rule 55(1) CTMIR.



OPPOSITION No B 2 170 648

Ubk Correduria De Seguros Y Reaseguros, S.A., Fontanella, 21-23, 3º, 08010 Barcelona, Spain (opponent), represented by **Durán Cuevas, S.L.P.**, Pº de Gracia, 110, 1º, 1ª, 08008 Barcelona, Spain (professional representative)

a g a i n s t

C. J. van Kempen, Vliegertsraat 2, 6005 Pr Weert, The Netherlands (applicant), represented by **Jan Smolders**, Goirkestraat 185-01, 5046 GJ Tilburg, The Netherlands (professional representative).

On 24/03/2014, the Opposition Division takes the following

DECISION:

1. Opposition No B 2 170 648 is rejected in its entirety.
2. The opponent bears the costs, fixed at EUR 300.

REASONS:

The opponent filed an opposition against all the services of Community trade mark application No 11 445 541 for the sign below:



The opposition is based on Spanish trade mark registration No 2962597(1) 'VK SEGUROS'. The opponent invoked Article 8(1)(b) CTMR.

LIKELIHOOD OF CONFUSION – ARTICLE 8(1)(b) CTMR

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 the following:

Class 36: *Insurance; financial operations; banking; real estate affairs.*

The contested services are the following:

Class 35: *Advertising; Business management; Business administration; Office functions.*

The contested *advertising* are services provided by specialised companies which study their client's needs and provide all the necessary information and advice for the marketing of their products and services, and create a personalised strategy regarding the advertising of their goods and services through newspapers, websites, videos, the Internet, etc., whereas *financial operations, banking* are provided by financial institutions (such as commercial banks). Hence, the providers and the nature of the services in dispute are different. The contested *advertising* is, therefore, dissimilar to these services. Likewise, the earlier *insurance* includes services which either promise compensation for potential future losses or provide support for such services. Consequently, the applicant's services have a different nature and purpose and different providers. They are not in competition nor complementary. Consequently, these services are dissimilar. The earlier *real estate affairs* relate to the managing, maintaining and handling of all the day-to-day activities that are centred around a piece of real estate, such as seeking out tenants to occupy the space, collecting monthly rental payment, maintaining the property, etc. They provide assistance in purchasing, selling or renting real estate. This typically involves finding an appropriate house or apartment and making it available for potential buyers, and in essence a real estate agent acts as an intermediary. Since the applicant's *advertising* has no relevant points of contact that could render it similar to the opponent's *real estate affairs*, these services are considered to be dissimilar.

The contested *business management; business administration* are services usually rendered by companies specialised in this specific field, such as business consultants. They gather information and provide tools and expertise to enable their customers to run their business or to provide businesses with the necessary support to develop and expand their market share by means of management and administration strategies, which serve to get people together to achieve desired goals and objectives by means of planning, organising, supervising, etc. The contested *office functions* fall under business management services as they are the practical execution of business management. Even though some elements of managing and administering can be applied in respect of all the opponent's services, this is insufficient to find similarity. Consequently, none of the opponent's services defined above can be found to be similar to the contested services. Neither the purpose nor the nature of the services in dispute is similar. Therefore, these services are considered to be dissimilar to all the opponent's services in Class 36.

b) Conclusion

According to Article 8(1)(b) CTMR, the similarity of the goods or services is a condition for a finding of likelihood of confusion. Since the services are clearly dissimilar, one of the necessary conditions of Article 8(1)(b) CTMR is not fulfilled, and the opposition must be rejected.

COSTS

According to Article 85(1) CTMR, the losing party in opposition proceedings must bear the fees and costs incurred by the other party.

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

According to Rule 94(3) and (7)(d)(ii) CTMIR, 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

Justas IVANAUSKAS

Birgit FILTENBORG

Rhys MORGAN

According to Article 59 CTMR, any party adversely affected by this decision has a right to appeal against this decision. According to Article 60 CTMR, notice of appeal must be filed in writing at the Office within two months of the date of notification of this decision. Furthermore, a written statement of the grounds of appeal must be filed within four months of the same date. The notice of appeal will be deemed to be filed only when the appeal fee of EUR 800 has been paid.

The amount determined in the fixation of the costs may only be reviewed by a decision of the Opposition Division on request. According to Rule 94(4) CTMIR, such a request must be filed within one month from the date of notification of this fixation of costs and shall be deemed to be filed only when the review fee of EUR 100 (Article 2(30) CTMFR) has been paid.