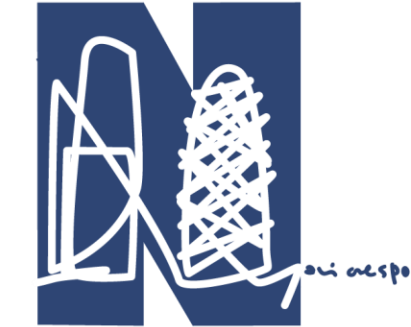


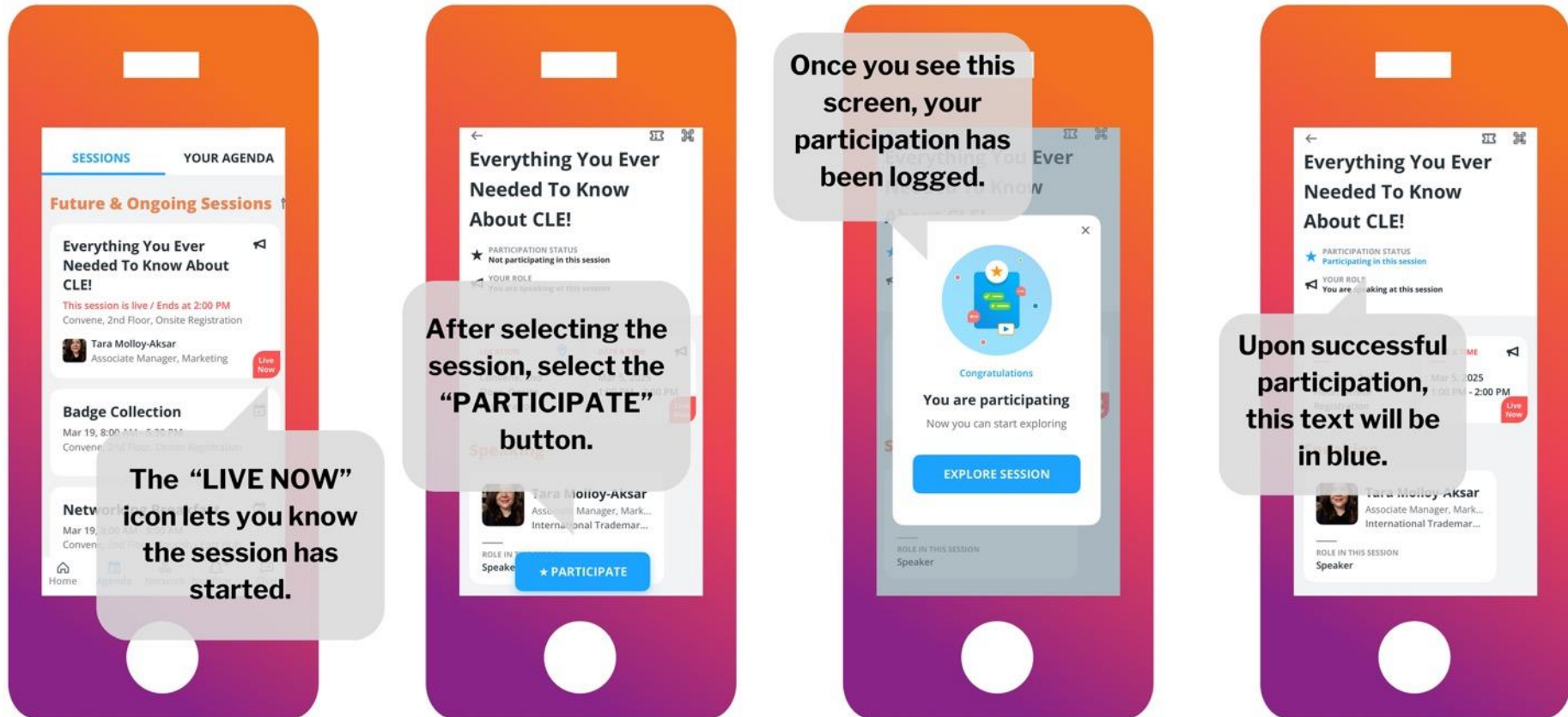
# INTA ANNUAL MEETING

London, England | May 2-6, 2026



Comparison of  
Composite Marks  
in a Likelihood of  
Confusion  
Analysis  
Vanessa Page Holland

# Session Check-in (including CLE)



# Speaker



**Vanessa Page Holland**  
Legal Affairs Department  
EUIPO

A lawyer and linguist who has worked in the EUIPO since 2000. Vanessa has extensive experience in decision taking in both opposition and cancellation as well as quality issues. Vanessa currently works as a Legal Specialist in the Trade Marks & Designs Practice Service which is responsible for the guidelines of the Office.

*The views expressed are my own and do not necessarily reflect those of my organization.*



# Likelihood of confusion

## The Basics



**Article 8(1)(b) EUTMR:** ..the **trade mark applied for** shall 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.

**Whether a likelihood of confusion exists depends on an assessment of several interdependent factors**, including (i) similarity of the goods and services, (ii) the relevant public, (iii) **similarity of the signs**, taking into account their distinctive and dominant elements and (iv) the distinctiveness of the earlier mark

A global appreciation of the **visual, aural or conceptual similarity of** the marks in question must be based on the **overall impression** given by them, bearing in mind their **distinctive** and **dominant** components (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 23).

# Comparison of signs





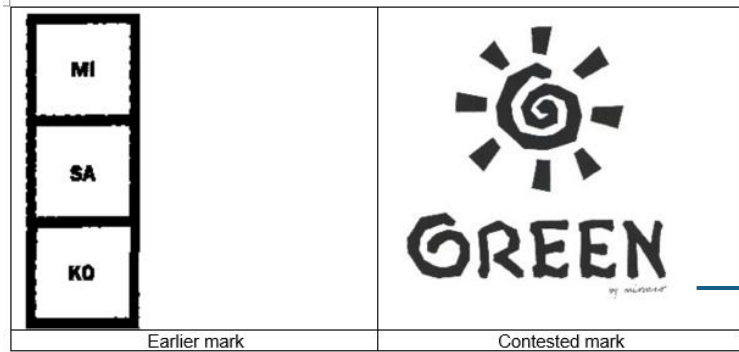
# Relevant territory and language

- The **unitary character** of the EUTM means that an earlier EUTM can be relied on in opposition proceedings against any application for registration of a European Union trade mark that would adversely affect the protection of the first mark, **even if only in relation to the perception of consumers in part of the European Union** (18/09/2008, C-514/06 P, Armafoam, EU:C:2008:511, § 57). Therefore, a **likelihood of confusion for only part of the relevant public of the European Union is sufficient to reject the contested application**. In the present case, the Opposition Division finds it appropriate to focus the comparison of the signs on the **[SPECIFY LANGUAGE]-speaking part of the relevant public**

# Considerations

- Relevant territory and language
- Dominance and Distinctiveness
- The comparison – a weighting exercise
  - Visual, aural and conceptual comparison, determining the degree of similarity ( low, average, high or similar precise terms).

# Figurative elements - Negligible



11/11/2009, T-162/08, EU:T:2009:432

BY MISSAKO

TM ®



# Negligible elements



- a) No 11 594 281- AC
- b) No 10 032 829 -  
AC HOTELS BY MARRIOTT



- c) No 10 026 871



Earlier trade marks


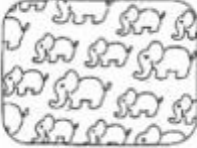


Contested sign

Common element

Class 43: *providing food and drink; temporary accommodation; cafés; cafeterias; tourist homes; restaurants; self-service restaurants; hotels; bar services; food and drink catering; motels; snack-bars.*

# Purely figurative

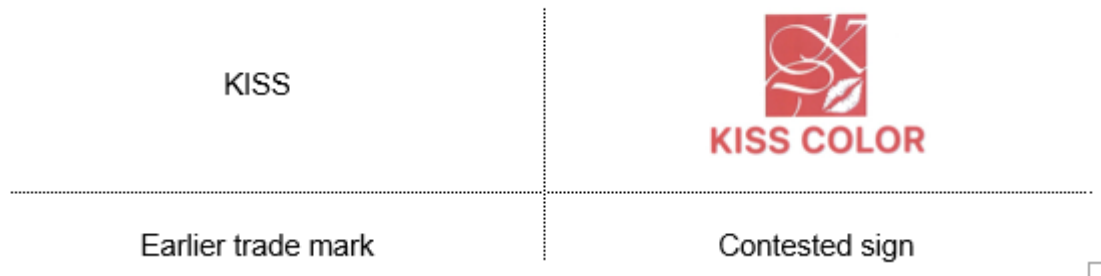
		<p>07/02/2012, <a href="#">EU:T:2012:58</a></p> <p><a href="#">T-424/10</a></p>
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Aural comparison **NOT POSSIBLE**

If the figurative element **has a concept**, a conceptual comparison **can be made**.

Earlier sign	Contested sign	Case No
		<p>30/09/2015, <a href="#">EU:T:2015:738</a></p> <p><a href="#">T-364/13</a></p>

# Word marks vs figurative marks



## Earlier EUTM

*Class 5: Pharmaceuticals; sanitary products for medical use, disinfectants (identical and similar)*

KISS: Understood by English speakers (Ireland, Malta) – other countries?

COLOR: Basic English?

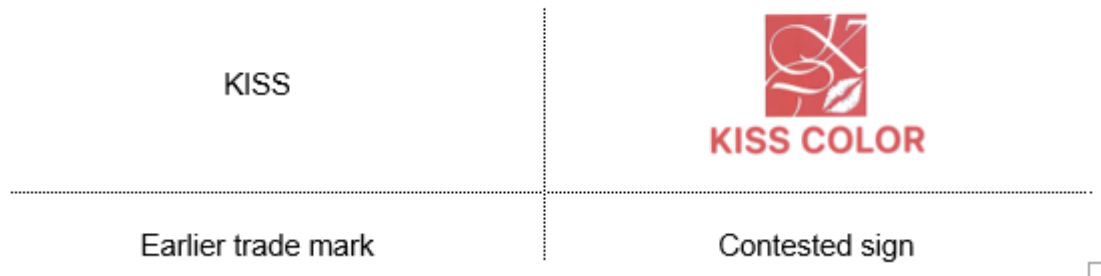
Similar linguistic equivalents?

If not understood – distinctive but if understood is it distinctive?

OR

KISS COLOR: semantic unit?

# Word marks vs figurative marks



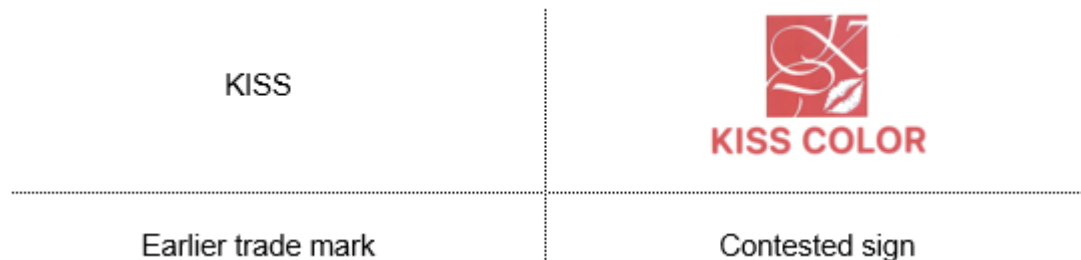
The figurative element of the contested sign is an orange square with the image of lips or a kiss imprint together with white lines which loop and intertwine.

As regards the figurative element of the contested sign, **consumers usually tend to focus less** on the **figurative elements** in a mark **than on the word elements**. Although due to its size and position the figurative element of the contested mark will not be ignored, **its role remains merely decorative**.

The word element 'KISS COLOR' forms the most distinctive part of the mark.

# Comparison

## Likelihood of Confusion (LoC)

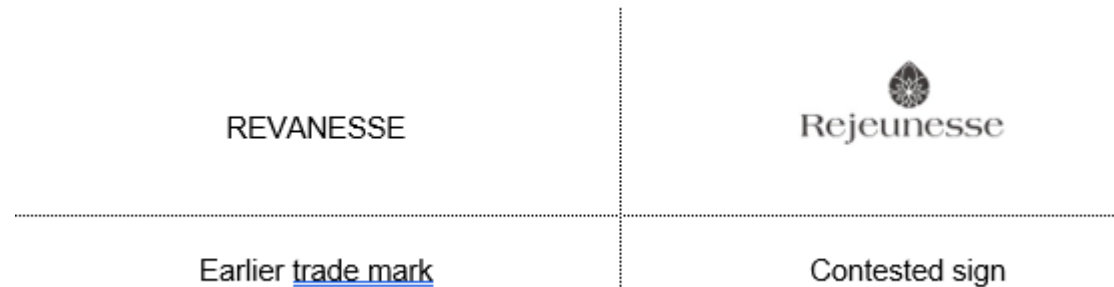


**Visually**, the earlier mark entirely reproduced in the contested mark, where it is placed **at the beginning** and in which it plays an **independent role**. The marks differ in 'COLOR', and in the figurative element (not particularly distinctive), of the contested sign. The marks are **visually similar to an average degree**.

**Aurally**, "KISS" will be pronounced identically to the first word of this verbal part. 'COLOR' of the contested mark has no counterpart in the earlier mark. **The figurative element does not play a role in the aural comparison**. The marks are **aurally similar to an average degree**,

**Conceptually**, 'KISS', conceptually linked to the lip print device in the contested sign, renders the signs **similar to an average degree** for the English-speaking part of the relevant public.

# Word marks vs figurative marks



**Identical goods** in cl. 5: *injectable dermal fillers; injectable pharmaceuticals.*

EU territory but focus on **Spanish** speakers

Rejeunesse dominant and distinctive

**Visually similar to a high degree:** only differ in the central letters ( va – jeu) and the highly stylised flower device which is secondary

**Aurally similar to a higher than average degree**

**Conceptually not similar,** word elements have no meaning, part of the public may perceive a flower device in the contested

**Likelihood of Confusion (LoC)**

# Word marks vs figurative marks

BLINKA

Earlier trade mark



Contested trade mark

Identical and lowly similar services in cl. 35, 38 and 41.

BLINKA no meaning and distinctive

The relevant territory is Germany.

Visual similarity?

Can an aural comparison be made?

Conceptual?

**No LoC**

# Word marks vs figurative marks

Class 3: Cosmetic and toiletry products

Skintegrity



SKINTEGRA  
THE RARE MOLECULE

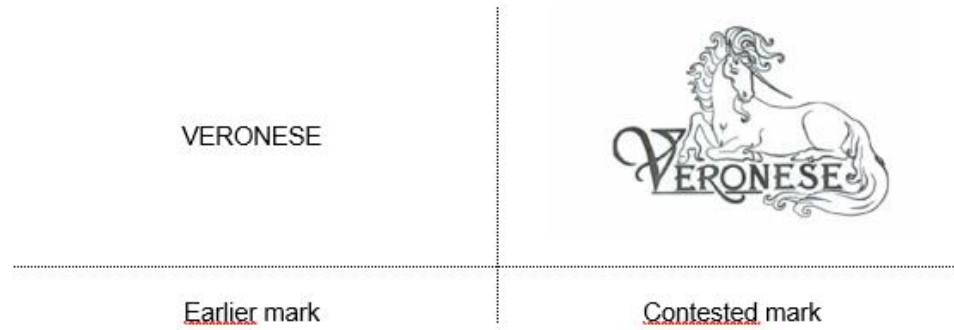
Earlier trade mark

Contested sign

The relevant territory is Germany.

**Likelihood of Confusion (LoC)**

# Word versus figurative



Contested goods in classes 6, 19, 20 and 21 (ornaments, decorative articles) - similar to a low degree


VERONESE: Reference to the Italian city of Verona, descriptive of the geographical origin of the goods.

Visually and conceptually similar to an average degree


Aurally identical

No LoC – visual impact

# Word versus figurative

VERONESE	
<u>Earlier</u> mark	<u>Contested</u> mark

Where a sign consists of both figurative and word elements, it does not automatically follow that the word elements must always be considered to be more distinctive than the figurative elements. In the case of a composite mark, the figurative element may, in particular on account of its shape, size, colour or position in the sign, rank equally to the word element (23/11/2010, T-35/08, Artesa Napa Valley, EU:T:2010:476, § 37, 39) (§ 68, 74, 79, 95).

Earlier Sign	Contested Sign
GIOVANNI	

# No Loc (descriptive, laudatory element)



**WORKSPACE**

Earlier trade mark

UMA WORKSPACE

Contested sign

KING'S

Earlier trade mark



Contested sign

# Figurative vs Figurative



Goods identical and similar

The relevant territory is the Portugal.

Visually lowly similar

Aurally:

- identical for the part of the Portuguese public familiar with English (fo(u)r/ev-er).
- similar to an average degree (cu/a/tro/e/ver vs fo/re/ver)

Conceptually

- For those familiar with English, the signs coincide in the concept of 'without end, eternal'...
- For the other part who do not understand the wording, only the bird will have a concept.

# Figurative vs Figurative



Earlier trade mark



Contested sign

r

*Class 30: Non-medicated chocolate confectionery; Chocolate confectionery containing pralines; Chocolate candies; Non-medicated candy; Chocolate based products; Chocolate; Pastries; Candy; Non-medicated lozenges; Chocolate wafers; Wafers; Chocolate bars; Halvah; Pralines made of chocolate; Chocolate-based beverages; Prepared cocoa and cocoa-based beverages; Cocoa-based beverages; Coffee-based beverages; Fruit jellies [confectionery]; Ice cream.*

Identical, similar

# LoC



Earlier trade mark



Contested sign

→ Pralines

Overall assessment  
Pralines = negligible  
Mieszko = male first name, distinctive  
CHERRISSIMO/CHERRY – figurative element of the cherry  
Distinctive character of Cherry?  
Passion?

Overall composition and structure of the signs extremely similar

Average degree of **visual** similarity (at least)

Aurally, low

Conceptually low

# Key Takeaways

## Territory

- Language
- Understanding
- Distinctiveness

## Overall Assessment

- Negligible elements
- No aural comparison for purely figurative marks/elements

## Words over figurative?

- Words usually more important **but not always!**
- Coincidence in a lowly distinctive element will not normally lead to LoC.
- However, if the non-coinciding components are of a lower distinctiveness or their visual impact is insignificant and they have the same overall impression LoC cannot be excluded.

# Thank you!



**Speaker**  
Vanessa  
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Legal Specialist  
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