

THE PRINCIPLE OF INTERDEPENDENCE IN THE GLOBAL ASSESSMENT OF THE LIKELIHOOD OF CONFUSION IN TRADEMARK LAW*

*Marka Hukukunda Karıştırılma İhtimalinin
Bütünsel Değerlendirilmesinde Karşılıklı Bağımlılık İlkesi*

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Abstract

In determining the likelihood of confusion, the principle of interdependence represents the methodological framework of holistic assessment in trademark law. This principle requires that the visual, aural, and conceptual similarities between the signs, together with the similarity of the goods and services, be evaluated not in isolation but through their mutual interaction. Within this framework, a low degree of similarity between goods or services may be offset by a high degree of similarity between the signs, and conversely, a high degree of similarity between goods may balance a lower similarity between the signs. In this sense, interdependence performs both an *offset* and a *balancing* function. The offset function compensates for weaknesses among the relevant factors, whereas the balancing function prevents any single element of similarity from being given excessive weight. Distinctive strength does not serve as a determinative factor in this assessment but rather as a regulatory one that amplifies or diminishes the influence of the relevant elements. Strong marks tend to broaden the scope of protection, while weak marks are subject to a stricter threshold of examination. In this way, the principle of interdependence prevents an excessively broad or unduly narrow interpretation of the likelihood of confusion, ensuring methodological stability that aligns with the realistic perception of the average consumer.

Key Words: Interdependence, global assessment, likelihood of confusion, offsetting function, the balancing function

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Özet

Karıştırılma ihtimalinin tespitinde **karşılıklı bağımlılık (interdependence)** ilkesi, marka hukukunda bütünsel değerlendirme analizinin metodolojisini gösteren bir ilkedir. İlke, işaretler arasındaki görsel, işitsel ve kavramsal benzerlik unsurlarıyla mal ve hizmet benzerliğinin birbirinden ayrılmadan, etkileşim içinde değerlendirilmesini gerektirir. Bu çerçevede, düşük düzeydeki mal veya hizmet benzerliği yüksek işaret benzerliğiyle telafi edilebilir; aynı şekilde, yüksek mal benzerliği düşük işaret benzerliğini dengeleyebilir. **Interdependence** bu yönüyle hem telafi edici hem de dengeleyici bir işlev görür. Telafi edici işlev, unsurlar arasındaki zayıflıkları giderirken; dengeleyici işlev, herhangi bir benzerlik unsurunun aşırı ağırlık kazanmasını önler. Ayırt edicilik gücü bu değerlendirmede belirleyici değil, unsurların etkisini artıran ya da azaltan bir düzenleyici unsur olarak rol oynar. Güçlü markalar koruma alanını genişletirken, zayıf markalar için daha sıkı bir inceleme eşiği aranır. Böylelikle interdependence, karıştırılma ihtimalinin aşırı geniş veya dar yorumlanmasını engelleyerek, tüketici algısını, kamu yararını ve rekabet serbestisini dengeleyen bir metodolojik istikrar sağlar.

Anahtar Sözcükler: Karşılıklı bağımlılık, bütünsel değerlendirme, karıştırılma ihtimali, telafi edici işlev, dengeleyici işlev

INTRODUCTION

One of the fundamental problem areas of trademark law is the determination of the likelihood of confusion. Both at the stage of registration and in infringement proceedings, the likelihood of confusion plays a decisive role not only in protecting the rights of the proprietor of the earlier mark but also in ensuring fair and sound competition in the marketplace. Therefore, the scope of this concept and the criteria for its assessment have been extensively discussed in both judicial case law and legal doctrine.

In determining the likelihood of confusion, criteria such as the similarity of the signs, the proximity of the goods and services, and the distinctiveness and reputation of the earlier mark are taken as the basis. However, none of these elements is regarded as an absolute criterion in itself; on the contrary, a holistic approach is adopted in which the elements interact with one another.

This approach, doctrinally articulated as the principle of interdependence, posits that a low degree of similarity between goods or services may be compensated by a high degree of similarity between the signs; conversely, marks endowed with a strong distinctive character are entitled to a correspondingly broader scope of legal protection.

In this manner, the doctrine operates as a structural mechanism preventing excessive formalism in the assessment of the likelihood of confusion, thereby ensuring a flexible yet normatively coherent and predictable analytical framework within trademark jurisprudence.

Although the principle of interdependence has been shaped primarily through the jurisprudence of the Court of Justice of the European Union (CJEU), the absence of a comprehensive and systematic academic study devoted exclusively to this subject, and the resulting lack of clarity regarding the scope and weight of the principle, have prompted the present inquiry.

The primary objective of this study is to examine the emergence, legal foundations, and theoretical functions of the principle of interdependence, and ultimately to evaluate its contribution to the analytical framework governing the assessment of the likelihood of confusion between trademarks. Following an exploration of the nature and functions of this principle, the study proceeds to assess—within the framework of the CJEU’s jurisprudence—the impact of distinctive strength and descriptiveness on the application of the interdependence rule. Considering that well-known marks are protected under specific legal provisions, the analysis intentionally excludes the influence of trademark fame on the operation of the interdependence principle.

I. THE CONCEPT OF LIKELIHOOD OF CONFUSION IN TRADEMARK LAW

A. General Overview

The way in which consumers perceive a trademark depends on numerous variables — ranging from whether there exist other marks of a similar appearance in the marketplace to whether such marks are used in connection with similar goods or services.

The CJEU has defined the essential function of a trademark as guaranteeing the identity of origin of the goods or services bearing the mark, by enabling the consumer or end user to distinguish them—without any likelihood of confusion—from goods or services originating from other commercial sources.¹

The proprietor of a trademark has the right to prevent any third party from using, in the course of trade, an identical sign for goods or services identical to those for which the mark has been registered. In such circumstances, it is not necessary to establish the existence of a likelihood of confusion separately.²

The likelihood of confusion arises from the comparison of the elements of similarity. In assessing the likelihood of confusion, the manner in which the consumer perceives the trademarks, as well as the psychological foundations of such perception, play a crucial role.

The value of a trademark is essentially embodied in its “selling power,” which derives not only from the qualities of the goods on which it is used but also from

¹ Case C-206/01, *Arsenal v. Reed*, [2002] E.C.R. I-10273.

² Annette Kur, ‘Trademark Functions in European Union Law’ (Max Planck Institute for Innovation and Competition Research Paper No: 6 2019) 6.

the inherent singularity and uniqueness of the mark itself.³ In this context, the principle of trademark unity⁴ requires the prevention of the use of an identical or confusingly similar sign for identical or similar goods or services.⁵

The granting of exclusive rights to trademark proprietors is fundamentally grounded in the belief that market transparency must be ensured. In a transparent market, consumers can easily distinguish between different products through trademarks and make choices by selecting a particular good or service. Signs that mislead consumers, however, undermine market efficiency, as consumers in such cases inevitably end up purchasing the wrong product.⁶

In European Union trademark law, the concept of “likelihood of confusion” lies at the very core of trademark protection under both Directive (EU) 2015/2436 and Regulation (EU) 2017/1001 on the European Union Trade Mark. The likelihood of confusion does not merely refer to the consumer directly mistaking

³ Frank I. Schechter, ‘The Rational Basis of Trademark Protection’ (1927) 40 *Harvard Law Review* 813,831.

⁴ According to this principle, trademarks must indicate to consumers that a particular product is offered by a specific producer. See, David M Kaye, ‘I’ll Be Your Mirror: Broadening the Concept of Trademark Joint Ownership to Reflect the Developing Collaborative Economy’ (2014) 44**Southwestern Law Review* 59, 61; Schechter (n 3) 817; During the period of the abrogated Decree-Law No. 556, the principle of the unity of trademark ownership—also referred to in Turkish trademark law as “singularity,” “exclusive ownership,” or “the sole proprietorship of a trademark”—was in force. Under this principle, the use of the same trademark by more than one person was considered potentially misleading and deceptive to the public, and thus the principle was regarded as a requirement of public order. See, Cafer Eminoğlu, ‘Marka Sahibinin Tekliği ilkesi ve Bu İlkenin Markanın Devri Bağlamında İncelenmesi (Anayasa Mahkemesi’nin 556 sayılı KHK’nin m. 16/5 Hükmünü İptal Eden Kararı Bağlamında Bir Değerlendirme)’ (2016) 1 *YBHD* 229, 233-234; With the entry into force of the Industrial Property Code No. 6769, scholars have argued that situations such as consent letters, coexistence agreements, loss of rights through acquiescence, and peaceful coexistence constitute mere exceptions, and that the principle of trademark unity continues to prevail. See Sabih Arkan, ‘Sınai Mülkiyet Kanunu’nun 5.3. Maddesiyle İlgili Bazı Düşünceler’ (2017) 33 (3) *BATİDER* 5, 6; In the same vein as Arkan, and for a detailed discussion on this matter, see Buket Gün, *Marka Hukukunda Birlikte Var Olma* (1. Bası, Yetkin Yayınları 2019)48,50; Another view on this matter asserts that the principle of trademark unity has been abandoned as a result of Article 5(3) of the Industrial Property Code See. Rauf Karasu, Cahit Suluk ve Temel Nal, *Fikri Mülkiyet Hukuku* (7. Bası, Seçkin Yayıncılık 2023)201; In our view, the principle of the unity of trademark ownership continues to apply as a general rule, while the consent system constitutes an exception to this fundamental principle.

⁵ Arkan (n 4) 6; Gün (n 4) 35; Eminoğlu (n 4) 233.

⁶ Anette Kur and Martin Senftleben, *European Trade Mark Law. A Commentary* (1st Ed. Oxford University Press 2017) 6–7; Mark P. McKenna ‘The Normative Foundations Of Trademark Law’ (2007) 82(5) *Notre Dame Law Rev* 1839,1844; Stephen L.Carter ‘The Trouble With Trademark’ (1990) 99 *Yale Law Journal* 759,762; Robert G.Bone’, *Hunting Goodwill: A History Of The Concept Of Goodwill In Trademark Law* (2006)86 *Boston Univ Law Rev*,547, 555.

one sign for another; it also encompasses the likelihood of association or the perception of an economic connection between the marks.⁷ Under Turkish law, the likelihood of confusion is regulated both as a relative ground for refusal and invalidation,⁸ and as a ground for infringement.⁹

Recital 16 of the Preamble to Directive (EU) 2015/2436 on the approximation of the laws of the Member States relating to trade marks sets forth the framework for assessing the *likelihood of confusion*. Accordingly: “It is necessary to interpret the concept of similarity in relation to the likelihood of confusion. The likelihood of confusion depends on numerous factors, in particular the recognition of the trade mark on the market, the association which can be made with the sign used or registered, the degree of similarity between the trade mark and the sign, and the degree of similarity between the goods or services designated. Therefore, the likelihood of confusion should constitute a specific condition for such protection.”

In the context of the likelihood of confusion, there exists a risk that the commercial origin of the goods or services may not be distinguished or may be

⁷ Article 10(2)(b) of Directive (EU) 2015/2436 provides that: “Where the sign is identical with, or similar to, the trade mark and is used in relation to goods or services which are identical with, or similar to, those for which the trade mark is registered, and where there exists a likelihood of confusion on the part of the public — which includes the likelihood of association between the sign and the trade mark — the proprietor of the trade mark shall be entitled to prevent all third parties from using such a sign in the course of trade.. Article 8(1)(b) of Regulation (EU) 2017/1001 provides that: “Where there exists identity or similarity between the earlier trademark and the mark applied for, and the goods or services covered by them are identical or similar, registration of the latter shall be refused if there is a likelihood of confusion on the part of the public; such likelihood of confusion includes the likelihood of association between the earlier mark and the later sign. Article 8(2)(b) of Regulation (EU) 2017/1001 provides that: “The proprietor of a trade mark shall be entitled to prevent all third parties not having his consent from using in the course of trade any sign where, because of its identity with, or similarity to, the EU trade mark and the identity or similarity of the goods or services covered by the trade mark and the sign, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the trade mark.”

⁸ Article 6(1) of the Turkish Industrial Property Code (IPC, Law No. 6769) provides that: “*An application for registration shall be refused upon opposition if, because of the identity or similarity of the trademark applied for with an earlier registered trademark or an earlier filed application, and the identity or similarity of the goods or services covered, there exists a likelihood of confusion on the part of the public, including the likelihood of association with the earlier trademark.*” Article 25(1) of the same Code stipulates that: “*Where any of the situations listed in Articles 5 or 6 exists, the court shall declare the trademark invalid.*”

⁹ Article 7(2)(b) provides that: “*Use of any sign which is identical or similar to a registered trademark, in relation to goods or services that are identical or similar to those for which the trademark is registered, and where there exists a likelihood of confusion on the part of the public, including the likelihood of association with the registered trademark, shall be prohibited.*”

incorrectly identified.¹⁰ A direct confusion arises where a new mark used for identical or similar goods or services leads consumers to believe that this new mark originates from the same commercial source as the earlier mark.¹¹ In other words, in cases of direct confusion, the relevant public recognizes that the signs are not identical, yet believes that they belong to the same undertaking.¹²

In cases of indirect confusion, even if the public (consumers) do not actually confuse the commercial origin of the goods or services and recognize that they originate from different undertakings, they may nevertheless believe that the user of the sign is economically or legally connected to the trademark owner, for instance by assuming the existence of a licensing, merchandising, franchising, or sponsorship relationship between them¹³. This situation is also regarded as a likelihood of association.¹⁴

The Court of Justice of the European Union (CJEU), in the **SABEL v. PUMA** judgment, held—based on the wording of the Directive—that the likelihood of association does not constitute an alternative to the likelihood of confusion, but

¹⁰ Paul Torremans and Jon Holyoak, *Intellectual Property Law* (9th. ed. Oxford Press 2019) 455; Paul Maeyaert and Jeroen Muyldermans, ‘Likelihood of Confusion in Trademark Law: A Practical Guide Based on the Case Law in Community Trade Mark Oppositions from 2002 to 2012’ (2013) 103(5) *The Trademark Reporter* 1032; Lionel Bently, Brad Sherman, Dev Gangjee and Phillip Johnson, *Intellectual Property Law* (4th. ed., Oxford 2014) 741-742, 989

¹¹ Hamdi Yasaman, Tolga Ayoğlu, Fülürya Yusufoglu Bilgin, Pınar Memiş Kartal, Sinan H. Yüksel and Zeynep Yasaman, *Sınai Mülkiyet Kanunu Şerhi* (Seçkin Yayıncılık 2021) 963; Shan Zixin, ‘Confusion or likelihood of confusion ?’ (Master’s Thesis 30 ECTS, Upsala University 2018).

¹² M.Emin Bilge, *Ticari Ad ve İşaretler Arasında Karıştırılma Tehlikesi* (1.Bası Yetkin Yayınları 2014).60; Rıza Ayhan ,Hayrettin Çağlar, Burçak Yıldız ve Dilek İmirlioğlu (Çağlar), *Sınai Mülkiyet Hukuku* (1.Bası Adalet Yayınevi 2021) 67; Savaş Bozbel, *Fikri Mülkiyet Hukuku* (1. Bası Oniki Levha Yayıncılık 2015) 67-68.

¹³ Stephen P Ladas, *Patents, Trademarks, and Related Reights National and International Protection* (Harvard University Press 1975) 1082.

¹⁴ PL Roncaglia and GE Sironi, ‘Trademark Functions and Protected Interests in the Decisions of the European Court of Justice’ (2011) 101 *Trademark Reporter* 147 157; Yasaman and Others (n 11) 964; In Turkish legal scholarship, the concept of likelihood of confusion has also been classified in another manner, namely in a *narrow* and a *broad* sense. In its classical, narrow sense, the likelihood of confusion refers to a situation in which the purchaser of a good or service—that is, the public at large—faces the risk of acquiring the same or a similar good or service originating from another undertaking, mistakenly believing it to be the one he or she intended to purchase. In its broader sense, however, even though the public recognizes that the product originates from a different commercial enterprise or producer, it acts under the misapprehension that there exists an *economic connection* between the trusted enterprise and the one from which the product has been purchased. Bkz. Ünal Tekinalp, *Fikri Mülkiyet Hukuku* (5.Bası Oniki Levha Yayıncılık 2012)439-440.

rather serves to clarify and delineate its scope as a complementary element.¹⁵ In certain circumstances, the likelihood of confusion may arise by way of association, where the later mark evokes the earlier one in the perception of the relevant public¹⁶.

The approach adopted in assessing the likelihood of confusion arising from the use of identical or similar signs for identical or similar goods aims to draw attention to the interests of consumers within the protective scope of trademark law. The principal point of reference relied upon in such assessments is the average consumer.¹⁷

Pursuant to the Court of Justice's reasoning in *Gut Springenheide*, the evaluation must proceed on the premise that the average consumer possesses a reasonable level of information, is observant, and acts with circumspection.¹⁸

¹⁵ Case C-251/95 SABEL BV v Puma AG, Rudolf Dassler Sport. [1997] ECR I-06191; In European Union law, scholarly debate has arisen as to whether the *likelihood of association*—that is, the possibility of a mental or economic link being established between the marks—should be regarded as an element encompassed within the *likelihood of confusion*, or as a distinct and autonomous concept. According to one view, the assessment should be undertaken in light of the *origin-indicating function* of the trademark, focusing on whether, in the perception of the relevant public, such a connection between the marks has been established. See: Guy Tritten, *Intellectual Property in Europe* (1st Ed. Sweet&Maxwell 1996) 169; Given that the relevant public must recall the earlier mark upon encountering the later one, it has been argued that the establishment of an association should be regarded solely as a constituent element of the likelihood of confusion, rather than as an independent concept. See: Ilanah Fhima and Dev S Gangjee, *The Confusion Test in European Trade Mark Law* (1st ed, Oxford University Press 2019) 6; Another view, however, maintains that the concept of *likelihood of association* (the possibility of a mental or economic connection being established between the marks) is broader than the concept of *likelihood of confusion*. Contrary to what is suggested in the text of the Directive, it is argued that the notion of association may, in fact, encompass the likelihood of confusion within its scope. See: David T Keeling, *Intellectual Property Rights in EU Law* (Oxford University Press 2003) 181.

¹⁶ The concept of *mental association*—that is, the likelihood that one mark evokes another in the mind of the public—was first articulated within the Benelux trademark law system. See: Uniform Benelux Law On Marks, http://www.uaipit.com/uploads/legislacion/files/0000007431_MARCASBENELUX.pdf, accessed 15.10.2025. In the decision of the Brussels Court of Appeal in the *Monopoly v. Anti-Monopoly* case, the court held that it was not necessary for confusion to exist solely with respect to the origin of the mark. It reasoned that the use of the expression *Anti-Monopoly* would immediately evoke the term *Monopoly* in the minds of the public, and therefore ruled that the company using the *Anti-Monopoly* mark had infringed the trademark rights of the proprietor of *Monopoly*. See: Charles Gielen, 'Harmonization of Trade Mark Law in Europe: The First Trade Mark Harmonization Directive of the European Council' (1992) *European Intellectual Property Review* 266, 266.

¹⁷ Aleksandra Nowak-Gruca, 'Consumer Protection Against Confusion in the Trademark Law' (2018) 5(1) *European Journal of Economics, Law and Politics* 13, 14.

¹⁸ Case C-210/96 Gut Springenheide GmbH and Rudolf Tusky v Oberkreisdirektor des Kreises Steinfurt - Amt für Lebensmittelüberwachung [1998] ECR I-04657.



Although a trademark most often functions as a sign indicating the commercial origin of goods, it need not necessarily bear the seller's name or directly identify the trader. Indeed, in most cases, the average consumer does not know the actual manufacturer of the goods purchased. It suffices that the public generally assumes that goods bearing the same mark originate from the same source. Accordingly, the concept of *confusion as to the origin of goods* does not necessarily presuppose a misunderstanding as to the identity of the actual producer or manufacturer. In certain circumstances, the public may perceive the trader who markets or promotes the goods under the mark as the source of origin itself.¹⁹ In this context, it is not necessary that the likelihood of confusion be established with respect to the entirety of the relevant public. It is sufficient that a significant portion of the relevant consumers is likely to be confused as to the commercial origin of the goods or services.²⁰

In United States trademark law, courts assess the likelihood of confusion by reference to the so-called *Polaroid factors*, derived from the Second Circuit's 1961 decision in *Polaroid Corp. v. Polarad Electronics Corp.*, 287 F.2d 492 (2d Cir. 1961). The court identified eight non-exhaustive factors to be considered in determining whether confusion is likely to occur: (1) the strength of the prior mark; (2) the degree of similarity between the marks; (3) the proximity of the products; (4) the likelihood that the prior mark owner will bridge the gap; (5) evidence of actual consumer confusion; (6) the defendant's intent in adopting the mark; (7) the quality of the defendant's product; and (8) the sophistication and degree of care exercised by consumers.²¹ The tests applied in the analysis of the likelihood of confusion under U.S. trademark law have been the subject of extensive scholarly and judicial debate.²²

¹⁹ Rudolf Callmann, 'Trade-Mark Infringement and Unfair Competition' (1949) 14 *Law and Contemporary Problems* 185, 186–187.

²⁰ David I Bainbridge, *Intellectual Property* (9th edn, Pearson Education 2012) 742; Fhima/Gangjee (n 15) 168; Karasu/Suluk/Nal (n 4) 195.

²¹ Timothy R Koch, 'Own Your Mark: Trademark Law and the Likelihood of Confusion' (2014) 505 *Seton Hall Law, Student Works* 1, 12.

²² For a discussion on the view that the likelihood of confusion test entails a normative gap — in that it focuses solely on the probability of confusion while neglecting the nature of the harm resulting from such confusion and the underlying justifications for its remediation — see: Robert G. Bone, Taking The Confusion Out Of "Likelihood Of Confusion Toward A More Sensible Approach To Trademark Infringement," (2012)106 (3) *Northwestern University Law Review* 1307,1309; For an argument that the analysis should incorporate a *materiality* element — by comparing trademark law with the law of unfair advertising — see: Rebecca Tushnet, 'Running the Gamut from A to B: Federal Trademark and False Advertising Law' (2011)159 *U. Penn. Law Review*. 1305, 1365; For the argument that a new, national multi-factor test should be adopted — one designed to assist the judge in predicting the likely outcome of an "ideal survey" conducted among the relevant consumer group . It is further suggested that the test should not purport to be exhaustive of all possible factors, but, in line with insights

B. THE RULE OF GLOBAL ASSESSMENT IN THE ANALYSIS OF THE LIKELIHOOD OF CONFUSION

In analysing the likelihood of confusion between trademarks, the Court of Justice of the European Union (CJEU) has embraced the global assessment as its fundamental analytical approach. The Court first articulated this principle in *SABEL v. Puma*²³ emphasising that the likelihood of confusion cannot be inferred solely from the similarity between the signs; rather, it must be determined through a comprehensive evaluation that takes into account all relevant factors as a whole.

Except for those consisting of a single element, a trademark is protected as a whole composed of its essential and ancillary components. Accordingly, the assessment of similarity and the likelihood of confusion between trademarks should not be made by isolating and comparing the verbal or figurative elements separately, but rather on the basis of the overall impression created by all the elements that constitute the mark.²⁴

The likelihood of confusion may arise from a complex interplay of multiple variables, including the similarity of goods and services; the degree of aural, visual, conceptual, and semantic resemblance between the signs constituting the marks; the level of distinctiveness and reputation of the earlier mark; the characteristics of the relevant public and the degree of attention and care exercised by its members when purchasing the goods or services; as well as whether the marks being compared belong to a series of marks.²⁵

Consumers rarely have the opportunity to compare trademarks side by side. Typically, they encounter the allegedly infringing mark in the marketplace, while recalling the earlier mark only as it remains in their imperfect memory. Consequently, it is difficult for the average consumer to make a direct and complete comparison between different marks.²⁶

The level of attention of the average consumer may vary depending on the nature of the goods or services concerned. It should also be borne in mind that not all consumers possess the same degree of attentiveness or the same type of memory. Accordingly, certain groups, such as the elderly, may be more prone

from social-science research, should consist of three or four core elements presented as illustrative rather than restrictive in nature. See. Barton Beebe, 'An Empirical Study Of The Multifactor Tests For Trademark Infringements' (2006)94(California Law Review) 1581, 1646.

²³ Case C-251/95 *SABEL BV v Puma AG, Rudolf Dassler Sport*. [1997] ECR I-06191.

²⁴ David I Bainbridge, *Intellectual Property* (6th edn, Longman 2007) 634.

²⁵ Fhima,/Gangjee, (n 15) 8; 634; Bainbridge (n 24) 634.

²⁶ Hedvig K.S. Schmidt, 'Likelihood of Confusion In European Trademarks, Where Are We Now' (2002) 24(10) EIPR 463,465.

to confusion than others.²⁷ This is because consumers perceive all the elements constituting the mark together and act on the basis of the overall impression formed by the combination of those elements.²⁸

In the doctrine, it has been argued that three principles should govern the analysis of similarity between trademarks: (1) marks should be assessed as a whole as they appear in the marketplace; (2) similarity should be measured in terms of appearance, sound, and meaning; and (3) similarities are to be given greater weight than differences. Courts, therefore, determine whether a mark is likely to mislead the public by examining it independently and considering the possibility that similar marks may cause confusion among consumers who do not have both marks before them but retain only a general, vague, or even blurred recollection of the other mark.²⁹

The existence of identical or dominant features does not mean that two marks are automatically similar. Courts determine whether the overall effect created by the two marks is sufficiently alike to give rise to a likelihood of confusion.³⁰ The assessment of similarity is based not merely on the overlap of certain elements, but on the overall perception and awareness that the marks, as a whole, create in the mind of the average consumer.

In assessing the visual, aural, or conceptual similarity of trademarks, the global evaluation of the likelihood of confusion must be based on the overall impression produced by the marks, taking particular account of their distinctive and dominant elements.³¹

In *Calida Holding AG v OHIM*, the General Court upheld the decision of the Fourth Board of Appeal of OHIM, which had found no likelihood of confusion between the figurative mark **DADIDA** and the earlier word mark **CALIDA**. The Court observed, inter alia, that while phonetic similarity alone may in certain circumstances give rise to a likelihood of confusion, such a finding must form part of a **global assessment** encompassing the conceptual, visual and phonetic **similarities** between the signs. In other words, the existence of a likelihood of confusion must be determined on the basis of the perception of the relevant public, taking into account all the circumstances of the particular case.³²

²⁷ Jeremy Phillips, *Trade Mark Law: A Practical Anatomy* (OUP 2003) 23.

²⁸ Catherine Seville, *EU Intellectual Property Law and Policy* (Edward Elgar Publishing Limited 2009) 268.

²⁹ Daryl Lim, 'Trademark Confusion Revealed: An Empirical Analysis' (2022) 71 *American University Law Review* 1285, 1328.

³⁰ Lim (n 29) 1328.

³¹ Case C-3/03 P *Matratzen Concord GmbH v OHIM* [2004] ECR I-03657.

³² Case T-597/13, *Calida Holding AG v Office for Harmonisation in the Internal Market (OHIM)* (2015), ECLI:EU:T:2015:781.

Although the assessment of similarity between trademarks is based on a holistic or global evaluation, it has been argued that this approach should not be understood as an absolute rule. In the case of a composite mark consisting of both figurative and verbal elements, where the figurative component clearly emerges as the dominant element, it has been suggested that the verbal elements may be disregarded and that the analysis may be conducted primarily with reference to the figurative component.³³

The principle of global assessment requires that the likelihood of confusion be evaluated through the mutual interaction of multiple factors, thereby reflecting an approach that does not allow any single element to be determinative on its own. Within this framework, the existence of a likelihood of confusion may be established on the basis of the overall impression created by the mark in the perception of the relevant consumer, through a systematic consideration of all the circumstances of the particular case.

Under the principle of overall assessment, even where certain elements of the two marks differ, the overall image and message conveyed by the marks as a whole may render them similar. Conversely, despite the presence of similarities between particular elements, the overall impression created by the later mark may be sufficient to distinguish it from the earlier one.

The crucial point to be observed here is that, although a flexible approach may be adopted in the global assessment depending on the particular circumstances of each case, developments that would lead to an extraordinary expansion or undue restriction of the concept of likelihood of confusion must be avoided.³⁴

II. THE PRINCIPLE OF INTERDEPENDENCE AS A METHODOLOGICAL APPROACH

A. GENERAL OVERVIEW

The principle of interdependence was first formulated by the Court of Justice of the European Union (CJEU) in *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc.*³⁵ In this judgment, the Court emphasised that the similarity between the goods or services and the similarity between the marks must be assessed in an interdependent manner. The similarity of the marks and that of the goods or services are not to be examined separately but in their reciprocal interaction. Thus, even where the goods or services are only slightly similar, a likelihood of confusion may still arise if the marks themselves are highly similar. The

³³ Arslan Kaya, *Marka Hukuku*(2.Baskı, Vedat Kitapçılık 2024) 263-264.

³⁴ Hanife Dirikkan, *Tanınmış Markanın Korunması*(1.Bası Seçkin Yayınları 2003)187.

³⁵ Case C-39/97, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc.*, formerly Pathe Communications Corporation [1998] ECR I-05507.

interdependence of these factors implies that a lower degree of similarity between the goods or services may be offset by a higher degree of similarity between the marks, and vice versa.³⁶

Indeed, this point is expressly reflected in the EUIPO Guidelines for Examination of European Union Trade Marks. The Guidelines state that:

“The requirement of a global assessment and the principle of interdependence in the analysis of the likelihood of confusion mean that, where the signs and the goods and/or services at issue are at least to some degree similar, the assessment of the likelihood of confusion entails an iterative process in which all relevant factors are taken into account. This process takes place within the section on the global assessment.”³⁷

The Guidelines further state that “*the Court established the fundamental principle that the assessment of the likelihood of confusion entails a certain interdependence between the relevant factors, and in particular between the degree of similarity between the marks and that between the goods or services concerned. Accordingly, a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa (29 September 1998, C-39/97, 1998:442, § 17). This principle of interdependence is of vital importance for the analysis of the likelihood of confusion.*”³⁸ As can be seen, the **interdependence rule** is regarded as one of the methodological approaches underlying the holistic assessment of the likelihood of confusion.

The interdependence principle is not merely an abstract notion of decisive value in judicial case law, but also a methodological principle that guides the concrete process of assessment in the evaluation of the likelihood of confusion.

Under this principle, the identity or similarity of the signs constituting the trademark — including their visual, phonetic, and conceptual similarities — and the similarity of the goods or services are not assessed in isolation, but rather **in light of their mutual interaction**.³⁹ For these factors do not create separate

³⁶ It has also been stated under Turkish law that the greater the similarity between the goods and services covered by the trademark registrations, the lower the degree of similarity required between the signs for a likelihood of confusion to arise. Conversely, as the similarity between the goods and services decreases, a higher level of similarity between the signs is required for the likelihood of confusion to be established. See..Sabih Arkan, *Marka Hukuku C.1* (1. Bası AÜHF Yayınları 1997)97; Dirikkan (n 34) 187.

³⁷ <<https://guidelines.euipo.europa.eu/1803468/1789458/trade-mark-guidelines/2-interdependence-principle>> accessed 10.10.2025.

³⁸ <<https://guidelines.euipo.europa.eu/1803468/1789458/trade-mark-guidelines/2-interdependence-principle>> accessed 10.10.2025.

³⁹ Phillips (n 27) 335-336; Dirikkan (n 34) 186-187; Sevilay Uzunallı, ‘Marka Hukukunda Malların ve/veya Hizmetlerin Benzerliğinin Tespiti Sorunu’ iç H. Ercüment Erdem ve Tolga

perceptions in the mind of the consumer, but rather form a unified overall impression.

In practice, not all factors included in the test for likelihood of confusion are equally decisive, and it is nearly impossible to give full and simultaneous consideration to each of them.⁴⁰ It has been argued that the element of similarity constitutes the most decisive factor in the analysis of the likelihood of confusion, since unless similarity is interpreted in favor of finding a likelihood of confusion, the claimant's chances of success remain rather low regardless of the outcome of the other factors.⁴¹

In the **Lloyd Schuhfabrik** judgment,⁴² The Court stressed that the factors used in the analysis of the likelihood of confusion must not be considered in isolation, but rather within a global assessment that takes into account their mutual interdependence and interaction.

This principle can only be applied where the signs and the goods or services concerned display a certain minimum degree of similarity.⁴³ The relationship between the similarity of the signs and that of the goods or services resembles the two poles of a magnet; for a likelihood of confusion to arise, these two poles must approach each other to a certain degree.⁴⁴

From a theoretical standpoint, the interdependence rule renders the assessment of the likelihood of confusion more realistic and meaningful, as in practice consumers make their purchasing decisions through a multidimensional process of evaluation.⁴⁵ Therefore, the rule prevents a single element of similarity (for instance, phonetic resemblance) from being determinative of the consumer's decision, ensuring instead that all relevant factors are assessed in a balanced

Ayoğlu vd (eds), Prof. Dr. Hamdi Yasaman'a Armağan, (On İki Levha 2017) 675; Tekinalp (n 14) 442; Hayri Bozgeyik ve Sefa Er 'Yargıtay Kararları Işığında İlaç Markalarında Karıştırılma İhtimali' (2024) 10 (1)TFM, 79, 82.

⁴⁰ Michael Grynberg, 'Trademark Litigation as Consumer Conflict' (2008) 83 *NYUL Rev.* 60, 68.

⁴¹ Ariel Fox, Christina J Hayes and James (Hanjun) X, 'Consistency of Confusion? A Fifteen-Year Revisiting of Barton Beebe's Empirical Analysis of Multifactor Tests for Trademark Infringement' (Harvard Law School 2024) 16, Scholars have further observed that the strength of the mark constitutes an important factor in achieving an outcome in favor of the claimant, and that the element of intent becomes decisive for the claimant only insofar as it supports the finding of a likelihood of confusion.

⁴² Case C-342/97 *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, [1999] ECR I-03819.

⁴³ *Fhima/Gangjee* (n 15) 163.

⁴⁴ *Karasu/Suluk ve Nal* (n 4) 217.

⁴⁵ Even when faced with complex decisions, consumers generally reach conclusions by relying on only a few decisive factors. See, for instance *Beebe* (n 22) 1601-02.

manner. Conceptually, the essence of the rule lies in establishing a connection between the various elements of similarity, thereby grounding the assessment of the likelihood of confusion on a foundation consistent with consumer perception.

An important point must be underlined regarding consumer perception. Although consumer perception largely influences judicial decisions, it is equally true that judicial decisions can, in turn, reshape consumer perception. As courts prohibit even those practices that create only a low degree of likelihood of confusion among certain consumers, consumers gradually become accustomed to a marketplace in which such uses are increasingly restricted. Combined with the fact that attentiveness entails cognitive and economic costs, this dynamic ultimately leads consumers, over time, to lower their level of attention in a market environment rendered “safe” for them by trademark law.⁴⁶

In this context, it may be said that the primary role of the interdependence rule in the analysis of the likelihood of confusion is to relax rigid formalism by allowing the elements of similarity between the signs and between the goods or services covered by the registration to balance and compensate for one another. At this point, the interdependence rule performs two distinct functions: a compensatory function and a balancing function.

This dual functional distinction is implicitly present in the case law of the CJEU; however, the doctrine has predominantly emphasized only its compensatory aspect. Yet, the balancing function serves as a corrective mechanism, preventing exaggerated extensions in favor of finding a likelihood of confusion.

B. THE OFFSETTING FUNCTION OF THE INTERDEPENDENCE PRINCIPLE

The offsetting function emerges as the fundamental and determining aspect of the interdependence principle.

Following the **Canon** judgment, in **Lloyd Schuhfabrik Meyer**⁴⁷, it was expressly emphasized that the determination of the likelihood of confusion is based on the principle of a global assessment, which inherently involves interdependence between the relevant factors. According to the Court, a low degree of similarity between the goods or services may be offset by a high degree of similarity between the marks, and conversely, a low degree of similarity between the marks may be balanced by a higher degree of similarity between the goods or services.

⁴⁶ Barton Beebe and Roy Germano and Christopher Jon Sprigman and Joel H. Steckel, ‘Consumer Uncertainty in Trademark Law: An Experimental Investigation’ (2023) 72(3) *Emory Law Journal* 489, 540.

⁴⁷ Case C-342/97 *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*. [1999] ECR I-03819.

Thus, the weaker impact of one factor considered in the analysis of the likelihood of confusion may be offset by the greater weight of another factor, leading to the conclusion that a likelihood of confusion exists.⁴⁸

Within the normative framework of the likelihood of confusion, a structure is envisaged in which the elements of similarity complement one another. In this context, the close connection between the similarity of the signs and the similarity of the goods or services constitutes the focal point of their mutual interaction. Accordingly, “complementation” refers to the joint meaning derived from the interaction of the similarity factors, whereas “offsetting” denotes the capacity of one factor to compensate for the relative weakness of another.

In the **Castellblanch** judgment⁴⁹ The CJEU’s **Castellblanch** case concerned the refusal of registration for the figurative mark “**CRISTAL CASTELLBLANCH**”, on the ground of a likelihood of confusion with the earlier word mark “**CRISTAL**.” The applicant, **Castellblanch SA**, a Spanish producer of *cava* sparkling wine, sought to register its mark as a Community Trade Mark (CTM). However, **Champagne Louis Roederer SA**, the producer of the luxury French champagne “**CRISTAL**” since 1876, filed an opposition. Both the **Opposition Division** and subsequently the **Board of Appeal of OHIM** (now EUIPO) rejected the application, holding that both marks covered the same category of goods (champagne/sparkling wines) and that the term “**CRISTAL**” constituted the distinctive and dominant element of the marks. Castellblanch SA appealed to the **Court of First Instance** (now the General Court), which, in its judgment of **27 October 2005 (T-29/04)**, dismissed all of the applicant’s claims. The applicant then brought an appeal before the **Court of Justice**, which upheld the General Court’s decision. The Court emphasized that the element “**CRISTAL**” represented the dominant and distinctive component of both marks, while “**CASTELLBLANCH**” remained secondary in the perception of the relevant public. Consequently, the Court found that the marks were **visually, phonetically, and conceptually similar**, and given the similarity of the goods, a **likelihood of confusion** was established. Importantly, the Court conducted its reasoning on the basis of a **global assessment** of the likelihood of confusion and expressly referred to the **principle of interdependence** between the relevant factors—holding that even where the similarity between the goods was low, a higher degree of similarity between the signs could **offset** that weakness and increase the likelihood of confusion.

In the **T.I.M.E. ART** judgment⁵⁰ “The dispute concerns the likelihood of confusion between the figurative mark “**QUANTUM**,” filed by **T.I.M.E. ART**

⁴⁸ Dirikkan (n 34) 186-187.

⁴⁹ C131/06 P Castellblanch SA v European Union Intellectual Property Office [2007] I-00063.

⁵⁰ Case C-171/06 P T.I.M.E. ART v OHIM [2007] ECR I-00041.



for watches, and Devinlec’s earlier national word mark “Quantième.” The General Court (Case T-147/03) annulled the OHIM Board of Appeal’s decision rejecting the opposition and held that a likelihood of confusion existed. Upon appeal by T.I.M.E. ART, the Court of Justice upheld the General Court’s ruling. The Court emphasized that the weak distinctive character of the earlier mark does not, in itself, preclude a finding of likelihood of confusion. Rather, visual and phonetic similarities, together with the identity or similarity of the goods, must be assessed as part of a global evaluation. The Court further observed that marketing conditions—such as sales taking place in stores with the assistance of sales personnel—are variable and therefore cannot be given decisive weight in the analysis of likelihood of confusion. Moreover, the Court clarified that for a conceptual difference to “counteract to a large extent” the existing similarities, at least one of the signs must have a clear and specific meaning for the relevant public, and that meaning must be immediately perceptible (which was not the case for QUANTUM and Quantième). Finally, the Court reiterated that in the global assessment, all relevant factors must be considered in a state of “interdependence.”

In our view, the word “**Quantum**” does not immediately evoke the concept of a *watch* in the mind of the average consumer. Accordingly, it cannot be regarded as **descriptive** in relation to goods in Class 14 (watches), and it possesses a certain degree of **inherent distinctiveness**. In this context, although the signs are **visually and phonetically similar**, they exhibit a **degree of conceptual difference**. However, this **conceptual distinction is not sufficient** to neutralize or substantially outweigh the **visual and phonetic similarities** existing between the signs.

In the **HALLOUMI / BBQLOUMI** judgment,⁵¹ A Bulgarian company filed an application for the sign “BBQLOUMI,” which was opposed by the Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi (“Halloumi Foundation”), relying on its earlier EU collective mark “HALLOUMI.” The General Court found that the similarity between the signs was low and held that there were visual, phonetic, and conceptual differences, concluding that there was no likelihood of confusion. However, on appeal, the Court of Justice of the European Union (CJEU) emphasized that since both signs covered the same goods—cheese products—the identity of the goods could constitute an important factor reinforcing the likelihood of confusion, even where the similarity between the signs was low. The judgment demonstrates that in cases involving marks of low distinctiveness, particularly those containing geographical or regional designations, a low degree of similarity between the signs alone does not suffice

⁵¹ Case C-766/18 P Foundation for the Protection of the Traditional Cheese of Cyprus named Halloumi v European Union Intellectual Property Office [2020] ECLI:EU:C:2020:170.

to rule out the likelihood of confusion. Accordingly, the CJEU explicitly applied the offsetting function of the principle of interdependence, holding that a low level of similarity between the signs may be offset by a high degree of similarity or identity between the goods. The Court further advised national courts to adopt a **global assessment** approach in evaluating such cases.

In our view, trademarks that are closely associated with a particular region and also registered as geographical indications tend to evoke, almost reflexively, that specific region in the mind of the average consumer. Therefore, in the present case, the establishment of an offsetting relationship within the framework of the principle of interdependence appears to be well founded.

C. THE BALANCING FUNCTION OF THE PRINCIPLE OF INTERDEPENDENCE

Whether a likelihood of confusion arises in a particular case depends on a global assessment of various factors that are interdependent with one another. It has been stated that the degree of similarity between the goods and services, the similarity between the signs, the relevant public, the presence of distinctive and dominant elements in the conflicting signs, the degree of recognition of the earlier mark, and other relevant factors must all be evaluated with due regard to their relative weight in the specific circumstances of the case.⁵²

In determining the likelihood of confusion, it is not necessary for all the factors under analysis to carry the same weight. Depending on the specific circumstances of each individual case, where one of these factors does not possess sufficient strength, the overall balance may be achieved through the compensating influence of the other factors.⁵³

In the analysis of the likelihood of confusion, the principle of interdependence functions not only as an offsetting mechanism but also as a balancing instrument.⁵⁴

When assessing the likelihood of confusion between trademarks, one of the different dimensions of similarity—visual, phonetic, or conceptual—may appear relatively more dominant from the perspective of the average consumer. Through this function, the analysis prevents any single element (for example, phonetic similarity) from gaining disproportionate importance.

In this way, the principle of interdependence not only establishes an offsetting relationship among the various similarity factors but also ensures that their

⁵² Aleksandra Nowak-Gruca, ‘Consumer Protection Against Confusion in The Trademark Law’ (2018) 5 (1) European Journal of Economics, Law and Politics 1, 13.

⁵³ Dirikkan (n 34) 186-187.

⁵⁴ Özge Ulukapı, Marka Hukukunda Karıştırılma İhtimali (Doktora Tezi, Ankara Üniversitesi 2025); See. Büşra Bıçakcı, <<https://iprgezgini.org/2022/08/12/karistirilma-olasiligi-incelemesinde-karsilikli-bagimlilik-ilkesi/>>.

relative weight remains balanced. This prevents the scope of protection granted to the mark from being unduly broadened or narrowed. The balancing function thus reflects the very essence of the principle of global assessment: none of the individual similarity factors, on its own, should determine the outcome of the decision.

Trademarks may sometimes be visually and phonetically similar, yet convey entirely different meanings at the conceptual level. The CJEU's **PICASSO/PICARO** judgment⁵⁵ provides a clear illustration of how conceptual differentiation may counterbalance visual and phonetic proximity. In that case, **Peugeot** opposed the registration of the mark "PICARO," arguing that it gave rise to a likelihood of confusion with its earlier mark "PICASSO." The word "PICARO" means "rogue" or "rascal" in Spanish, whereas "PICASSO" is the name of the famous painter. Conceptually, therefore, the marks were clearly distinct. The Court acknowledged that the two signs shared a certain degree of **visual and phonetic similarity**, yet emphasized that the name "Picasso" possesses a **strong conceptual resonance**, immediately evoking the well-known artist in the mind of the public. This conceptual difference was deemed sufficient to **neutralize** the effects of visual and phonetic similarity. The CJEU thus **upheld** the General Court's decision and **dismissed Peugeot's appeal**, confirming that the strong conceptual divergence between the signs outweighed their visual and phonetic similarities.

Consequently, it was held that there was no likelihood of confusion capable of preventing the registration of the mark "PICARO." This judgment refers to the **balancing function of the principle of interdependence**, demonstrating that a high degree of visual or phonetic similarity may be neutralized by conceptual differences. Moreover, it can be observed that trademarks consisting of the names of famous individuals possess a particularly strong conceptual force, which carries distinctive weight in the analysis of the likelihood of confusion. Thus, the decision underscores, as a matter of methodology, that **conceptual differentiation** may perform a **balancing function** within the overall assessment.

In the **Medion v. Thomson** judgment⁵⁶ the Court of Justice of the European Union (CJEU) dealt with the likelihood of confusion between the registered mark "LIFE" and the later composite mark "THOMSON LIFE." The earlier mark "LIFE" had been registered alone for electronic goods, while the contested sign combined this element with the word "THOMSON." The Court of First Instance had excluded the likelihood of confusion, reasoning that "THOMSON" was a well-known and dominant element within the composite mark. The CJEU,

⁵⁵ Case C-361/04 P - Ruiz-Picasso and Others v OHIM [2006] ECR I-643.

⁵⁶ Case C-120/04 Medion AG v Thomson multimedia Sales Germany & Austria GmbH [2005] ECR I-08551.

however, found this approach insufficient. It held that, in determining the likelihood of confusion, it is not enough to consider only the dominant element of the composite mark. The Court emphasized that if the earlier mark—although incorporated into a later composite sign—**retains an independent distinctive role** in the perception of the relevant public, a likelihood of confusion may still arise. Accordingly, even if the element “LIFE” appeared secondary beside “THOMSON,” it still possessed the capacity to evoke a separate association in the mind of the consumer. Therefore, it had to be taken into account in the overall assessment of the likelihood of confusion.

This judgment demonstrates that even where the earlier mark consists of a single element, this fact is not in itself decisive in the assessment of the likelihood of confusion. In the present case, the earlier mark was reproduced identically within the later mark. The term “LIFE” possessed distinctiveness in relation to the specific goods covered by its registration. Although the later mark included the element “THOMSON,” this addition was not considered sufficient to differentiate it from the earlier mark. Taking into account that the average consumer exercises a higher degree of attention when purchasing electronic goods, it can be said that the **balancing function** of the principle of interdependence serves here to prevent a **one-sided assessment**, ensuring that neither the dominant element nor the overall impression is overemphasized in the analysis.

In the *OHIM v Shaker (Limoncello)* judgment⁵⁷, *Limiñana y Botella*, the proprietor of the Spanish word mark “LIMONCHELO,” filed an opposition against the figurative mark application submitted by Shaker di L. Laudato, which contained the verbal elements “Limoncello della Costiera Amalfitana” and “shaker.” The General Court accepted that the goods covered by the parties’ marks were identical; however, it confined its similarity assessment solely to the visual dimension. It held that the element consisting of a “round plate decorated with lemons” constituted the dominant component of the contested figurative sign from the perspective of the relevant consumer, whereas the verbal elements “Limoncello della Costiera Amalfitana” and “shaker” occupied a secondary position within the overall impression. Consequently, finding no need to examine phonetic or conceptual similarity, the General Court concluded that the dominant visual element did not resemble the earlier word mark “LIMONCHELO” and therefore ruled out any likelihood of confusion. On appeal, the CJEU set aside the judgment, holding that the General Court’s approach was incompatible with the principle of a global assessment. According to the Court, although a particular component of a composite mark may, in certain circumstances, be dominant, this does not justify disregarding the remaining elements, as the

⁵⁷ Case C-334/05 P *European Union Intellectual Property Office v Shaker di L. Laudato & C. Sas* [2007] ECR I-04529.

consumer's perception is shaped by the overall impression created by the mark as a whole. The CJEU emphasized that limiting the comparison of the signs to the visual aspect, excluding phonetic and conceptual considerations, and analysing the components of the mark in isolation constituted an error of law. Stressing that the likelihood of confusion must be evaluated through a balanced and comprehensive examination of all relevant components, the Court remitted the case back to the General Court for a fresh assessment.

In the **SO...? / SO COUTURE** judgment of the **General Court of the European Union**⁵⁸, the dispute concerned the visual, phonetic, and conceptual similarities between the marks “SO...?” and “SO COUTURE,” both used in relation to cosmetic products. The Court observed that cosmetics are typically purchased in **self-service retail environments**, where **visual perception plays a decisive role** in the consumer's selection process. Consequently, greater weight was attributed to **visual similarity**, while the **limited impact** of phonetic and conceptual similarities was addressed in a **balancing manner** within the framework of the overall assessment. The Court thus held that differences at the phonetic or conceptual level would have only a **limited influence**, and that the possibility of the products being displayed side by side on store shelves would further enhance the impact of visual similarity. The Court also noted that the earlier mark possessed **only** a modest level of distinctiveness, which narrowed the scope of protection it could claim. Conversely, although the term “COUTURE” in the later mark evoked notions of **fashion and elegance**, it did not form a clearly unified conceptual whole with the element “SO” in the perception of the relevant public. Accordingly, despite the existence of **visual similarity**, the **overall impression** created by the signs was sufficiently different, and the Court concluded that **no likelihood of confusion** existed between the two marks.

This judgment illustrates that **actual market conditions** may also be taken into account in the assessment of the likelihood of confusion, in line with the **balancing function** of the principle of interdependence. In the case at hand, the **low conceptual similarity** between the marks was not merely offset by a **high degree of visual similarity**; rather, the Court conducted a more realistic and context-sensitive analysis by considering market realities such as self-service purchasing practices and the side-by-side display of products on store shelves. The decision thus demonstrates that the application of the principle of interdependence can interact dynamically with market circumstances, confirming that the evaluation of the likelihood of confusion should not be abstract or mechanical but grounded in the actual conditions of trade and consumer perception.⁵⁹

⁵⁸ Case T-30/21 L'Oréal v European Union Intellectual Property Office [2022] R 158/2016-5.

⁵⁹ It has been argued in the doctrine that if judges show interest solely in empirical studies aimed at demonstrating the existence of a likelihood of confusion or the reputation of a trademark,

III. THE EFFECT OF DISTINCTIVE CHARACTER ON THE APPLICATION OF THE INTERDEPENDENCE PRINCIPLE

The distinctiveness of the sign constituting the trade mark derives from its originality, its capacity to attract attention, its ability to remain in the memory for an extended period, and the fact that, upon a subsequent encounter with the sign, its details can be recalled rapidly and with clarity.⁶⁰ The closer the sign is to the relevant goods or services, the more its distinctiveness is eroded, whereas the further the sign moves away from the relevant goods or services, the greater its distinctiveness becomes.⁶¹

In cases where a mark possesses a low degree of distinctiveness, the scope of protection may narrow even with respect to the goods or services for which it is registered. This is because even a minor alteration made to the sign may be sufficient to eliminate the likelihood of confusion.⁶²

The scope of trademark protection is proportionate to the degree of a mark's distinctiveness, and this principle serves as a significant factor in determining the likelihood of confusion in infringement proceedings. In assessing such likelihood, the extent of the mark's use in the marketplace, the scale and intensity of its advertising, and its resulting recognition among the relevant public are all taken into account alongside its inherent distinctiveness. Together, these elements form the foundation of the evaluative framework through which courts and trademark authorities calibrate the breadth of legal protection afforded to the mark.⁶³

It is argued that the principle of interdependence operates not only in the assessment of similarity between goods or services and the signs at issue, but

the infringement analysis may become unbalanced. See. Lotte Anemaet, 'The Fairy Tale of the Average Consumer: Why We Should Not Rely on the Real Consumer When Assessing the Likelihood of Confusion' (2020) 69(10) GRUR International, 1008,1008; It has also been stated that the extent to which consumers are able to adapt to the challenges posed by modern marketing systems is of significance, and that courts should not confine the assessment of the "level of consumer awareness" merely to a subordinate stage of the analysis. On the contrary, this element should be addressed at the very outset of the evaluation, and every aspect of the purchasing experience should be examined within this framework. See. Laura A. Heymann, 'Trademark Law and Consumer Constraints' (2022) 2067 Faculty Publications. William & Mary Law School Scholarship Repository 340,381.

⁶⁰ Arkan (n 36) 100; Dilek Cengiz, *Türk Hukukunda İktibas veya İltibas Suretiyle Marka Hakkına Tecavüz* (1. Bası, Beta Yayınevi 1995) 23.

⁶¹ Uğur Çolak, *Türk Marka Hukuku* (5.Bası, Oniki Levha Yayıncılık 2023) 34-35; Hamdi Yasaman ve Zeynep Yasaman Kökçü, 'Kullanım Yoluyla Ayırt Edicilik Kazanan veya Kaybeden Markaların Koruma Kapsamı', (2016) *Fikri Mülkiyet Hukuku Yıllığı* 2014 (Ed. Tekin Memiş) 393,396; Cahit Suluk, *Fikri Mülkiyet Haklarının Koruma Kuvveti* (1.Bası, Seçkin Yayınları 2025) 222.

⁶² Suluk (n 61) 215.

⁶³ Beebe (n 22) 1634-1637.

also across all other factors taken into account in determining the likelihood of confusion.⁶⁴ While this view may appear compatible with the principle of global (holistic) assessment, in our opinion, it does not hold true with respect to the interdependence rule as a methodological construct specifically governing the analysis of similarity.

The degree of distinctiveness is not, in itself, one of the elements directly encompassed by the interdependence rule. Rather than serving as an autonomous criterion of similarity in the assessment of likelihood of confusion, distinctiveness operates as a catalyst that amplifies or attenuates the effect of the similarity factors. A high degree of distinctiveness may lower the threshold of similarity required between the marks, thereby facilitating a finding of likelihood of confusion. Conversely, where a mark possesses weak distinctiveness, a more rigorous threshold of examination is required, particularly regarding the proximity of the signs and the similarity of the goods or services. The same reasoning applies, *mutatis mutandis*, to well-known trademarks.

In the *Canon v. MGM* judgment, the Court of Justice of the European Union (CJEU) held that trademarks possessing a high degree of distinctiveness—whether inherent or acquired through market recognition—are entitled to broader protection than marks of lesser distinctiveness. From this principle it follows that, where the signs are highly similar and the earlier mark, particularly owing to its reputation, enjoys a high degree of distinctiveness, the registration of a later mark may be refused even where the goods or services covered by the two marks are only of a low degree of similarity.⁶⁵

In *Adidas AG v. Marca Mode CV*⁶⁶ the Court of Justice of the European Union (CJEU) first acknowledged that the sign consisting of three parallel stripes was not perceived by consumers merely as a decorative element but rather as an indicator of commercial origin. At this point, the Court affirmed that where a trademark possesses an enhanced distinctive character, it is entitled to a broader scope of protection, such that even minor similarities may suffice to give rise to a likelihood of confusion. However, the Court further clarified that although highly distinctive trademarks enjoy wider protection than marks of weak distinctiveness, this does not imply that the likelihood of confusion is to be presumed automatically or established by way of a legal presumption.

It has likewise been stated in the scholarly literature that a stronger mark is entitled to a broader scope of protection, and that, in circumstances where a senior mark is highly distinctive in comparison with all other marks in the

⁶⁴ Dirikkan (n 34) 186-187.

⁶⁵ C-39/97 *Canon v. MGM* [1998] ECR I-5507, [18] and [19].

⁶⁶ Case C-425/98 *Marca Mode CV v Adidas AG and Adidas Benelux BV*. [2000] ECR I-04861.

marketplace, consumers may be susceptible to confusion upon the emergence of a junior mark that is not as distinctive as the senior mark.⁶⁷

This approach likewise confirms the tendency to accord a broad scope of protection to strong marks. A “strong” trade mark—namely, one possessing a high degree of distinctiveness—benefits from a broader scope of protection in the European Union, the United Kingdom, and the United States compared to weaker marks. However, it has been argued that evidence from psychology and marketing indicates that, in reality, strong marks are less likely to be confused by consumers. Despite this, courts and administrative tribunals have been said to reach findings of likelihood of confusion in cases involving strong marks, even where the factual circumstances do not support such a conclusion.⁶⁸

According to one view, the CJEU’s assumption that the likelihood of confusion increases as the distinctiveness of a mark rises does not constitute an empirical rule; rather, it serves a normative purpose aimed at safeguarding the substantial investments that trade mark owners make in marketing and brand-building activities. Therefore, the CJEU’s approach amounts to a legal fiction that substitutes for empirical evidence in order to protect highly distinctive trade marks.⁶⁹

However, there are also scholarly views that argue to the contrary of this jurisprudential approach. It has been argued that, in certain circumstances, the fact that a mark possesses a high level of market recognition and occupies a fixed and established position in the consumer’s memory may mean that a high degree of distinctiveness does not always increase the likelihood of confusion; on the contrary, in certain instances, it may actually reduce it. In the doctrine, it has been stated that empirical studies demonstrate that when consumers encounter a sign assessed in a relationship of similarity with a well-recognised mark, the probability of confusion arises at a lower level.⁷⁰ In other words, according to this view, the greater the distinctiveness of a trademark, the lower the likelihood of confusion becomes.

⁶⁷ Barton Beebe, ‘The Semiotic Analysis Of Trademark Law’ (2004)621 *Ucla Law Review*, 623,672

⁶⁸ Phillip Johnson, ‘Enhanced Distinctiveness and Why “Strong Marks” Are Causing Us All Confusion’ (2024)55 *IIC*, 185,185.

⁶⁹ Lotta Anemaet, ‘The Many Faces of the Average Consumer: Is It Really So Difficult to Assess Whether Two Stripes Are Similar to Three?’ (2020)51 *IIC* 187,197; Wolfgang Sakulin, *Trademark protection and freedom of expression: an inquiry into the conflict between trademark rights and freedom of expression under European law*. (1st edn, Kluwer Law International, Alphen aan den Rijn 2011) 248.

⁷⁰ Annette Kur and Martin Senftleben, *European Trade Mark Law: A Commentary* (1st edn, Oxford University Press 2017) 326.

It has also been argued that the assumption that “the more distinctive a trademark is, the more likely confusion will arise” may not necessarily align with economic reality. This outcome will depend on the nature of the mark and the type of goods concerned. For instance, when it comes to colour schemes on everyday food products, the close imitation of a highly distinctive colour arrangement on a peanut butter jar may be highly confusing for consumers engaged in routine grocery shopping. Shoppers in such contexts tend to be in a hurry and therefore pay less attention to subtle differences. Conversely, trademarks used for expensive luxury goods are far less likely to be confused with similar marks.⁷¹

It has been argued that as the distinctiveness of a trademark increases, the likelihood of the public being misled about the origin of the goods decreases, whereas the likelihood of an association being made between the marks increases. Although this approach may appear more appealing from the perspective of trademark owners—since the scope of protection expands in proportion to the investment made in the mark—it has been contended that it does not fully align with the essential function of a trademark, namely, the guarantee of origin.⁷²

Trademarks with strong distinctiveness occupy a much more prominent place in consumers’ memory compared to weak marks. This is because the proprietors of such trademarks maximise non-intrusive signals that enhance the exposure of the mark. This, in turn, increases the visibility of the trademark, strengthens its perceived reliability, and encourages consumer preferences toward the associated product.⁷³

A structural divergence appears to exist between empirical consumer behaviour and the logic of judicial protection. The likelihood of confusion test, which under normal circumstances ought to be grounded in consumer perception, has become a tool of normative expansion in relation to marks possessing a high degree of distinctiveness.

In our view, the principle of interdependence applied in the assessment of the likelihood of confusion is, in essence, a methodological principle regulating the relationship between the similarity of goods and services and the similarity of signs, and therefore does not itself constitute a criterion that inherently incorporates the factor of distinctiveness. Nevertheless, as clearly established

⁷¹ Wolfgang Sakulin, ‘Trademark Protection And Freedom Of Expression : An Inquiry Into The Conflict Between Trademark Rights And Freedom Of Expression Under European, German, And Dutch Law’ (Thesis Fully Internal, Universiteit van Amsterdam 2010).

⁷² William Robinson, Giles Pratt, and Ruth Kelly, ‘Trademark Law Harmonization in the European Union: Twenty Years Back and Forth,’ (2013) 23 *Fordham Intell. Prop. Media & Ent. L.J.* 731, 741-742.

⁷³ Kimberlee Weatherall, ‘The Consumer as the Empirical Measure of Trade Mark Law’ (2017) 80 *Modern Law Review* 57, 59.

by the CJEU in *Canon*, *Lloyd*, and *Sabel*, the degree of distinctiveness exerts a “catalysing effect” within the similarity analysis, thereby increasing or decreasing the weight of the similarity factors. In this respect, a high level of distinctiveness enables the likelihood of confusion to arise even where the similarity between the marks occurs at a lower level; in other words, it lowers the threshold of similarity required for a finding of likelihood of confusion.

In light of these assessments, it appears that the protective approach adopted in respect of highly distinctive marks creates a marked tension with the empirical foundations of the likelihood of confusion test. Although the principle of interdependence provides a methodological framework that enables a holistic evaluation of the factors of similarity, the role of distinctiveness within this framework is not an element that can be entirely excluded. This is because the principle acknowledges that the impact of similarity factors on consumer perception may vary depending on the concrete circumstances of the case. In this respect, distinctiveness may be evaluated, in harmony with the holistic structure of the principle, as a complementary factor guiding the analysis of similarity.

IV. THE EFFECT OF DESCRIPTIVENESS WITHIN THE FRAMEWORK OF THE PRINCIPLE OF INTERDEPENDENCE

Descriptive signs may be defined as words or figurative elements that indicate the quality, nature, characteristics, type, kind, quantity, or other attributes of the goods or services for which registration is sought.

Descriptive signs that indicate the kind, type, nature, quality, quantity, or intended purpose of goods or services are signs that may be freely used by all and cannot be monopolized by any single person. To hold otherwise would mean granting exclusive rights to the first applicant over a sign that, by its very nature, should remain available for everyone’s use because it describes the characteristic features of a good or service. Such an outcome would be unacceptable, as it would also run contrary to the fundamental principles of fair competition.⁷⁴ However, where descriptive signs have acquired distinctiveness through long and consistent use over time, there is no obstacle to their registration.⁷⁵

In German trademark law, the INJEKT decision stands out as a significant precedent in which the Federal Court of Justice (BGH) applied the principle of interdependence and declined to disregard a mark merely because of its descriptive character. The dispute concerned the registered mark “INJEKT” for medical syringe products and the sign “INJEX” used for similar goods. Pursuant

⁷⁴ Tobias Cohen Jehoram, Constant van Nispen and Tony Huydecoper, *European Trademark Law* (Wolters Kluwer, Kluwer Law International 2010) 369.

⁷⁵ Bkz. 2015/2436 Sayılı AB Marka Direktifi m.4/4 ve 2017 1001 Sayılı AB Marka Tüzüğü m.7/3; 6769 Sayılı SMK m.5/2.

to §9(I) No. 2 of the German Trademark Act (MarkenG), the Court emphasized that the likelihood of confusion must be assessed within the framework of the “interdependence” of all relevant factors. Although the term “INJEKT” was found to be descriptive and of weak distinctiveness, the Court held that this circumstance did not entirely eliminate protection but merely required a higher degree of similarity to establish confusion. The Court determined that the two signs were highly similar both phonetically and conceptually and that the goods were in the same commercial class and addressed to the same group of consumers. Within this framework, the BGH confirmed that weak distinctiveness does not categorically preclude the likelihood of confusion, as the relevant elements may interact in a compensatory manner. In other words, when the similarity of signs and goods is high, a likelihood of confusion may still arise despite the weak distinctive character of the earlier mark.⁷⁶

It has been argued that the BGH has now clearly moved away from the dogmatic exclusion of descriptive components in the assessment of sign similarity—an approach that effectively pre-limited the scope of protection—and has instead aligned itself with the CJEU’s line of reasoning⁷⁷, which calls for a holistic assessment of the signs as a whole. In practice, this shift may tend to increase the relative value of the same weakly distinctive or descriptive elements, particularly in the case of single-word marks, thereby making similarity assessments more complex where “weak” marks are concerned. Nevertheless, concerns about the indirect monopolisation of descriptive signs are unfounded, since both the BGH and the CJEU have clarified that in proceedings based on absolute grounds for refusal—such as invalidity actions on the basis of descriptiveness—as well as in infringement cases, reliance may still be placed on the defence of descriptive use.⁷⁸

In this context, there is little doubt that descriptive signs generally possess weak inherent distinctiveness. In the BGH’s decision, the single-word mark “INJEKT” exhibited a very low level of distinctiveness in relation to the goods covered by its registration. Where a trademark consists solely of one descriptive and weakly distinctive word, the likelihood of confusion analysis must necessarily be conducted on the basis of that single element. The fact that the mark is composed of a single descriptive component has a narrowing effect on the scope of protection. In my view, applying the offset effect of the similarity factors—akin to the principle of interdependence—to the present case is misguided. Expanding the scope of protection of a mark that would ordinarily constitute

⁷⁶ BGH – “INJEKT / INJEX” [2020] I ZB 21/19 <<https://www.wipo.int/wipolex/en/text/591954>> accessed 24.10.2025.

⁷⁷ See. Case C-108/97 - Windsurfing Chiemsee Produktions- und Vertriebs GmbH (WSC) v Boots- und Segelzubehör Walter Huber and Franz Attenberger- [1999] ECR I-02779.

⁷⁸ <<https://www.boehmert.de/en/german-federal-supreme-court-reorientation-upgrading-of-weakly-distinctive-trademarks-in-case-of-likelihood-of-confusion/>> accessed 25.10.2025.

an absolute ground for refusal to an exaggerated extent would undermine and neutralise the fundamental principles of trademark protection.

In the present case, the following approach would be the most appropriate: both marks under comparison consist of a single element. The earlier mark, “INJEKT,” directly means “to inject” or “to administer by injection” in German and is a descriptive expression, particularly in relation to medical devices, syringes, or injection systems. The word “INJEX,” on the other hand, has no independent or dictionary meaning in German and therefore constitutes an artificial (invented) term. Although the trademarks differ conceptually, they are similar from both visual and phonetic perspectives. Given that they are used for identical goods, and that the term “INJEX” lacks an autonomous meaning, the adoption of such a sign may be regarded as an attempt to create an association with the “INJEKT” mark, and thus as indicative of bad faith. In this context, the likelihood of confusion is evident. However, if the term “INJEX” had an independent meaning, extending the scope of protection of the “INJEKT” mark on the basis of conceptual similarity would not have been a justified approach.

Another decision in which the offset function was found to have led courts to give insufficient weight to the descriptive nature of a sign was delivered by the Court of Appeal of The Hague. According to the court, when the similarity between the sign used and the registered mark is high, and the goods or services are considered almost identical, courts may disregard the fact that the mark is descriptive rather than distinctive. The case concerning the word “Lief” illustrates this point. The term is one of the most common exclamations used in the Netherlands when addressing infants, yet it had been registered as a trademark for baby clothing. In relation to the use of the sign “Lief!” by a third party on baby garments, the Court of Appeal (Hof Den Haag) held that such use gave rise to a likelihood of confusion. The court observed that the fundamental problem lay in the registration of the “Lief” sign as a trademark in the first place. Nevertheless, since the trademark owner had made substantial investments in promoting the sign as a conceptual brand rather than a mere descriptive term, and as the court considered these investments to constitute significant evidence, it held that the owner was entitled to prohibit other producers from using the same descriptive expression on baby clothing. It was subsequently argued that this judgment could not be justified under Article 10(2) of the European Convention on Human Rights, since “Lief!” is clearly a descriptive expression and prohibiting other manufacturers from using a term meaning “sweet” or “dear” in reference to babies—even where the use is legitimate and proportionate—was highly inappropriate.⁷⁹

⁷⁹ Sakulin (n 71).

In the present case, the fact that the word “LIEF” is an expression commonly used when addressing infants does not render it directly descriptive for goods such as baby clothing. The mark may therefore be characterised as a *suggestive* trademark⁸⁰. In this regard, its distinctiveness may be considered low, yet not entirely absent. However, even if the term “LIEF” has been registered in the name of another party, its use by third parties cannot be deemed infringing where such use satisfies the conditions of honest commercial practice.

Particularly in cases where a trademark consists of multiple elements, the degree of distinctiveness of each component may vary. Accordingly, even if a trademark contains weak elements, it may not necessarily be characterised as a weak mark when assessed as a whole. Undoubtedly, as in the case of inherently weak marks, the distinctiveness of the individual elements in a mark that includes weak components also affects the scope of protection. In this regard, the trademark owner may obtain protection under Article 7(2) of the Turkish Industrial Property Code (SMK) with respect to the elements possessing a high degree of distinctiveness, whereas, as a rule, they must tolerate the use of weak elements by third parties.⁸¹

CONCLUSION

The principle of interdependence establishes an analytical framework in which the assessment of the likelihood of confusion between trademarks is not reduced to a mechanical measurement of similarity, but rather is based on a dynamic and holistic evaluation of all relevant factors, including the degree of similarity between the marks and their respective distinctiveness. This methodological approach introduces flexibility both in registration proceedings and in infringement disputes.

This principle, on the one hand, enhances the accuracy of the likelihood of confusion analysis by recognising that a low degree of similarity in one element may be offset by a high degree of similarity in another (the *offset function*). On the other hand, it prevents any single criterion of similarity—such as mere phonetic resemblance—from becoming dominant or determinative. Subjecting all elements of similarity to a balanced and interactive assessment (the *balancing function*) also prevents the scope of protection from being expanded in an exaggerated or disproportionate manner.

⁸⁰ Under United States Trademark Law, *suggestive marks* are presumed to be inherently distinctive by their very nature and are therefore protectable from the moment they are first used in commerce. See Jake Linford, “The False Dichotomy Between Suggestive and Descriptive Trademarks,” *Ohio State Law Journal*, Vol. 76, No. 6 (2015) 1367, 1374.

⁸¹ İfakat Balık ve İbrahim, Bektaş, ‘Markanın Koruma Kapsamının Belirlenmesinde Ayırt Edicilik Gücünün Etkisi Ve Tanınmış Markanın Zayıf Unsurunun Durumu -McDonald’s Kararları Yönünden Bir İnceleme’ (2019) 5(1) TFM 6.

There is no doubt that descriptive signs possess weak inherent distinctiveness. Where a trademark consists solely of one descriptive and weakly distinctive word, the likelihood of confusion must necessarily be assessed on the basis of that single element. The fact that the mark is composed of a single descriptive component has a narrowing effect on the scope of protection. Expanding the protection of a mark that would ordinarily constitute an absolute ground for refusal to an exaggerated extent would undermine and neutralise the fundamental principles of trademark protection. However, where a subsequent mark, applied for in respect of the same class of goods, has no established conceptual meaning and appears to have been deliberately designed to evoke similarity with a prior single-element descriptive mark, such conduct may amount to bad faith, and the existence of a likelihood of confusion may properly be acknowledged.

The distinctiveness of a mark does not operate as a direct criterion of similarity within the application of the principle of interdependence; rather, it functions as a complementary element that amplifies or diminishes the impact of the similarity factors. This “catalytic” role of distinctiveness lowers the threshold of similarity required for a finding of likelihood of confusion in the case of highly distinctive marks, while necessitating a more stringent assessment of similarity for marks possessing weak distinctiveness. Thus, distinctiveness does not constitute an autonomous factor in the assessment but acts as a regulatory element that shapes both the direction and the intensity of the similarity analysis.

Nevertheless, the extended protection afforded to highly distinctive marks generates a degree of tension with the empirical consumer-perception basis on which the likelihood of confusion test is founded. The tendency toward normative expansion does not always align with actual consumer behaviour. However, the principle of interdependence provides a flexible methodological framework that recognises that the influence of similarity factors on consumer perception may vary depending on the specific circumstances of the case.

Within this framework, distinctiveness may be evaluated, in harmony with the holistic structure of the principle, as a complementary factor guiding the similarity analysis. Accordingly, the structure of the principle requires not the exclusion of distinctiveness, but its functional incorporation within reasonable limits—without allowing it to displace similarity analysis or undermine the empirical foundation of the confusion test. In this way, methodological coherence is preserved while ensuring a balanced relationship between the practical reality that highly distinctive marks tend to receive broader protection and the empirical, consumer-oriented nature of the likelihood of confusion assessment.



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