

**INTA ENFORCEMENT COMMITTEE
PROOF OF CONFUSION SUB-COMMITTEE**

Chair: Jay Hines

**SUB-COMMITTEE WORKING GROUP:
TYPES OF EVIDENCE USED TO ESTABLISH LIKELIHOOD OF CONFUSION
WORLD SURVEY**

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Several Working Group members surveyed practitioners around the world on the types of evidence used to establish likelihood of confusion in trademark infringement disputes in their respective jurisdictions.

The Working Group members performed research by communicating with at least one practitioner in each country listed. The Working Group chair collated the information received from each member into the attached report.

The report is provided as a summary reference guide for trademark practitioners, but should not be relied upon as legal advice or the legal opinion of any INTA members.

COUNTRY	LIST OF FACTORS CONSIDERED FOR LIKELIHOOD OF CONFUSION	EVIDENTIARY SUPPORT
Argentina	<p>Factor 1: Similarities between the marks.</p> <p>Factor 2: Overlapping of products to be identified by the marks in conflict.</p> <p>Factor 3: Fame or notoriety of opposing mark.</p> <p>Factor 4: Applicant's bad-faith adoption of the mark ("bridging the gap").</p> <p>Factor 5: Type of consumers involved in the purchase of the products identified by the marks in conflict; consumer sophistication and care</p>	<ul style="list-style-type: none">- A report from the PTO informing about the existence of several marks in a class sharing a diluted term and the coverage of the conflicting signs.- Reports or testimonials from expert witnesses of different professions depending on the nature of the products and/or the case.- PTO certification/declaration.- A report from an accountant expert witness appointed by the Court may be useful to prove factors 2, 3, 4, 5 and 6.

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	<p>(impulse vs. careful purchases).</p> <p>Factor 6: Prior coexistence of the marks in conflict.</p>	<p>- Original documents or certified copies thereof, reports and/or depositions from third parties, that may evidence the circumstances mentioned above.</p>
Australia	<p>Factor 1: How well known is the plaintiff's mark and how distinctive is it?</p> <p>Factor 2: What similarities exist between the plaintiff's mark and the defendant's mark (aural, phonetic and visual)?</p> <p>Factor 3: The types of goods or services the marks are used in connection with.</p> <p>Factor 4: Are the defendant's goods or services and the plaintiff's goods or services similar and/or are they supplied through the same or similar trade channels?</p> <p>Factor 5: Evidence of bad faith by the defendant in adopting its mark.</p> <p>Factor 6: Is there evidence of consumers actually being confused or misled or consumers likely to be confused or misled?</p>	<p>1. Evidence of use in Australia of plaintiff's mark including historical sales, marketing, promotional and advertising evidence. International sales, marketing, promotional and advertising history may be relevant to spill over reputation in Australia.</p> <p>2. Evidence of how the plaintiff's and the defendant's marks are used.</p> <p>3. Evidence of confused or misled consumers or of consumers stating that they are likely to be misled or confused.</p> <p>4. In some circumstances expert marketing evidence and/or survey evidence.</p> <p>5. Evidence of bad faith or conduct by the defendant which is likely to cause consumers to believe or be caused to wonder that the defendant's product/service is that of the plaintiff or connected with the plaintiff.</p>
Austria	<p>Likelihood of confusion has to be assessed globally, taking into account all relevant circumstances of the case, in particular:</p> <p>Factor 1: In case of identity of the conflicting marks and identity of the goods and / or services there is a presumption of law that likelihood of confusion is established.</p> <p>Factor 2: The similarity of the signs, which has to be appreciated according to their overall impression, taking into account</p>	<p>- As a general rule, evidence of actual confusion is not required in Court or in invalidation proceedings based on an earlier mark before the Austrian Patent Office. Establishing whether there is likelihood of confusion (short: "LOC") is a matter of law and resolved in Court, if the everyday experience or an eventual special knowledge of the judge or examiner (of the invalidation division of the Patent Office) is sufficient in order to establish it.</p>

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	<p>the visual, aural or conceptual similarity and, bearing in mind, in particular, the distinctive and dominant components of the respective marks.</p> <p>Factor 3: Identity or degree of similarity of the goods / services</p> <p>Factor 4: Inherent distinctiveness of the mark– eventually acquired distinctiveness (in case of unregistered marks, acquired distinctiveness is a condition for protection under unfair competition law).</p> <p>Factor 5: Increased distinctiveness due to extensive use / reputation, which, in particular, depends on the following factors:</p> <ul style="list-style-type: none"> - market share held by mark - intensity of use, - geographical scope of use - duration of use - amount invested in promoting the mark - recognition of the trade mark on the market <p>There is a certain interdependence between the relevant factors, in particular between factors 2 to 5.</p> <p>Factor 6: Perception and attentiveness of the relevant public.</p> <p>Factor 7: Whether the public concerned will believe that the goods or services in question come from the same undertaking or economically-linked undertakings.</p> <p>Factor 8: Existence of a 'family' or 'series' of trade marks</p> <p>Factor 9: Coexistence of similar or identical marks which are used for similar or identical goods / services on the market, as well</p>	<ul style="list-style-type: none"> - In the assessment of likelihood of confusion, Austrian courts are bound by the uniform and (European) Community-wide standards as concretized in the jurisprudence of the European Court of Justice (e.g. in its decisions CANON, SABEL/PUMA, WINDSURFING CHIEMSEE). <p>The following types of evidence are frequently submitted in order to show acquired or enhanced distinctiveness or reputation:</p> <ul style="list-style-type: none"> - market surveys - expertises / affidavits of chambers of commerce or other professional associations - dealer declarations - sales and advertising figures, annual reports, invoices - advertising material, in particular, advertisements in magazines and newspapers, posters, flyers, advertising letters or emails, TV and radio ads, material showing participation in trade fairs, etc. - point of Sale (POS) material - affidavits, - (offering) witness statements - Evidence must show use of a sign as a trade mark / business identifier, as well as the time, nature, location and extent of use. - N.B. Austrian Courts are not bound by the fact that the Austrian Patent Office has taken the view that the requirements for registering a mark in the Austrian Register are met. Accordingly, Austrian Courts are free to assess the existence and degree of distinctiveness of Austrian registered marks and IR-extensions to Austria. As far as Community trade marks are concerned, there is a presumption of validity as long as it is not put in issue by the defendant with a counterclaim for revocation or for a declaration of invalidity (Art 95 Sec. 1 and 2 CTMR). However,

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	<p>as elements of complex marks, which are commonly used for designating the kind of goods / services in question, can lead to a low distinctiveness of a mark.</p>	<p>in case of an infringement action, the defendant's argument is admissible that the rights of the proprietor of the Community trade mark could be revoked for lack of use or that Community trade mark could be declared invalid on account of an earlier right of the defendant (Art 95 Sec. 3 CTMR).</p>
Bolivia	<p>Factor 1: Similarities between the marks.</p> <p>Factor 2: Affection of identity or prestige of an individual or an enterprise,</p> <p>Factor 3: Violates an intellectual property right.</p> <p>Factor 4: Trademark consists on an indigenous or Afro-American community, cultural expressions.</p> <p>Factor 5: Consists on a reproduction, imitation, translation, total or partial transcription of a well known trademark filed by a different applicant.</p> <p>Factor 6: If there is lack of distinctiveness.</p> <p>Factor 7: Use to identify the quality, quantity, destiny, value, geographic precedence, time production and other characteristics or information or services.</p>	<ul style="list-style-type: none"> - Certificate of registration and/or copies of respective application of similar trademarks. - Copies of the certificates of good standing of the enterprise or the identity card of the individual. - Certificate of Registration of the Intellectual Property right. - Certificate issued by respective entity whereby it appears the reference to an indigenous or Afro-American community, cultural expressions. - Certificate of registration and/or copies of respective application or similar trademarks. - Jurisprudence (i.e. resolutions issued in other countries in connection with the same case. - Certificate issued by competent authorities.
Brazil	<p>Factor 1: Identity between the goods/services.</p> <p>Factor 2: Similarity between goods/service.</p> <p>Factor 3: The market in which the goods/services are found</p> <p>Factor 4: Risk of the average consumers being led to confusion.</p> <p>Factor 5: Channels of trade in which the trademarks are used.</p>	<ul style="list-style-type: none"> - For Factors 1 and 2 samples of the marks, any kind of advertising or publicity material, and fiscal invoices showing on which products/services they appear are sufficient to prove the identity. - Copies of fiscal invoices showing where the products can be found to prove the market in which goods/services are found.

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		<ul style="list-style-type: none"> - In order to prove the risk of confusion a pool among the consumers is enough to evidence such a risk. - To prove the channels of trade in which the trademarks are used, copies of fiscal invoices showing where the products are available are sufficient.
Canada	<p>Factor 1: The inherent distinctiveness of the trade-marks or trade-names and the extent to which they have become known.</p> <p>Factor 2: The length of time the trade-marks and trade-names have been in use.</p> <p>Factor 3: The nature of the wares, services or business.</p> <p>Factor 4: The nature of the trade.</p>	<ol style="list-style-type: none"> 1. Evidence of sales and advertising (invoices, packaging, advertising and promotional materials featuring mark); dollar value of sales and advertising, media plans, evidence of consumer awareness and fame of mark (e.g. expert survey and marketing evidence, mentions in print and electronic media, evidence of foreign advertising spilling into Canada) 2. Evidence of earliest sale/offering for sale in ordinary course of trade (purchase orders/invoices/sales receipts), evidence of earliest date of "making-known" in Canada (through advertisements in print publications or on radio or television in Canada) 3. Sample product or photograph of product, representative documents used to market/sell service, evidence with respect to whether the wares/services are competitive/complimentary in the marketplace, cost of wares/services 4. Evidence of channels of trade including specific stores and/or section in the stores or websites where the wares/services are sold/offered for sale (investigator reports), evidence of typical purchaser and level of sophistication (company records, marketing plans, expert marketing

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	<p>Factor 5: The degree of resemblance between the trade-marks or trade-names in appearance or sound or in the ideas suggested by them.</p> <p>Factor 6: All "surrounding circumstances"</p>	<p>evidence), cost of wares/services</p> <p>5. Expert evidence (survey, marketing and linguistic), dictionary definitions, evidence of confusion or lack of confusion</p> <p>6. Evidence of actual confusion, evidence of intent to cause confusion or trade on good will, evidence of co-existence in the marketplace without confusion, evidence of similarity or dissimilarity in product packaging/marketing materials, evidence of third party use and registration of the same/similar marks (i.e. dilution evidence), evidence of co-existence of same marks in foreign jurisdictions</p>
Chile	<p>Factor 1: Scope of protection.</p> <p>Factor 2: If the compared signs belong to the same products or related products, then the similarities between the marks are considered.</p> <p>Factor 3: Defendant's bad faith adoption of the mark or appropriation of the good name of the opponent's trademark.</p>	<ul style="list-style-type: none"> - Effective use of the mark in the market place (when the opponent has not registered the mark on which the opposition is based (invoices, publicity, foreign registrations, description of goods, etc.) - Visual and phonetic resemblance, syllables in common and elements of common use. Acknowledgements of the ownership of the mark in licenses, mails, contracts etc.; commercial contacts between the parties in conflict and notoriety of the trademark (international registrations, worldwide sales amounts, massive use, publicity, etc.)
China	<p>Factor 1: Appearance of the marks (based on the characteristics of the Chinese language).</p> <p>Factor 2: Sound/pronunciation of the marks.</p> <p>Factor 3: Mental impression/implication of the marks.</p> <p>Factor 4: Channels of trade.</p>	<ul style="list-style-type: none"> - An argument that two marks are similar visually or phonetically, or have similar meanings can be supported by written submission. The Trade Mark Examination Standard, jointly issued by the China Trade Mark Office and Trade Mark Review and Adjudication Board, also provides relevant materials on likelihood of confusion and similarity of marks. Relevant provisions in the Examination Standard can be served as evidentiary support.

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	<p>Factor 5: Similarity of goods/services based on following factors: users and functions of goods/services, their components/ingredients, their sales channels, manufacturers/providers and target customers, whether the goods would only be used by those skilled in that particular field, their usual practice in consumption, and other relevant factors.</p> <p>Factor 6: Distinctiveness and reputation of the marks</p>	<ul style="list-style-type: none"> - Precedent cases can also be submitted in support of an argument on likelihood of confusion - Similarity of goods or services is determined by the Classification Table of Similar Goods and Services issued by the China Trade Mark Office. The Table is persuasive but not binding. - Notarized purchase of goods/services bearing marks concerned in the same shop can be submitted to argue that the co-existence of the marks may cause confusion amongst consumer. - Any other evidence in support the likelihood of confusion is also admissible. The Court/administrative body may then decide the evidential value of the materials submitted. - Investigation reports, market surveys (including those conducted by independent third party), oral submissions, affirmations and other un-notarized evidence are of low evidential value.
Colombia	<p>Factor 1. – Confusion is the result of the overall impression caused by the marks.</p> <p>Factor 2. – Trademarks should be examined successively and not simultaneously.</p> <p>Factor 3. – The judge must take the position of the consumer and consider the nature of the products or services to be identified with the trademarks.</p> <p>Factor 4. – Trademark confusion analysis must consider the resemblances and not the differences among the compared trademarks.</p>	<ul style="list-style-type: none"> - In cases of trademark infringement it is necessary to submit evidence in order to provide better elements for the comparative analysis, mainly, to demonstrate: <ul style="list-style-type: none"> (i) The similarities between the marks (for factors 1, 2 and 4); and, (ii) The type of consumers of the products covered by the marks, if they are specialized or not (for factor 3). - The evidence we normally use consists of technical comparative analysis and market surveys, conducted by specialized companies in market investigation. This evidence is accepted as technical opinion, mainly, since a recent pronouncement of the Council of State in which

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		said Court based its decision on the conclusions of a technical opinion instead of performing an abstract analysis of the confronted marks.
Costa Rica	<p>Factor 1: Similarity between the trademarks.</p> <p>Factor 2: The lack of distinctiveness.</p> <p>Factor 3: Confusion of goods or services, channels of trade and distribution</p> <p>Factor 4: Defendant's bad faith.</p> <p>Factor 5: The consumers to whom they are directed (characteristics, education, idiosyncrasy and culture of the consumers).</p>	<p>- Possibility of using almost any type of evidence that is relevant to the case, it will depend on the corresponding case, for examples: affidavits signed by authorized officers; certifications of local Costa Rican authorities such as the Ministry of Health; local market investigations, among others.</p>
Ecuador	<p>Factor 1: Similarity between marks.</p> <p>Factor 2: Similarity between products/services.</p> <p>Factor 3: Notoriety of a trademark.</p> <p>Factor 4: Coexistence.</p>	<p>- Similarity shall be evaluated based on the capability of distinguishing goods/services on the market.</p> <p>- International Classification of Goods and Services is enacted in Ecuador. One application per class is required for purposes of registration. Same mark may coexist with a similar mark provided that same is registered in other class. Exceptions: Related classes, like 29, 30, 3 and 5 on certain goods, etc.; also, famous marks. In case of famous marks, like Coca-Cola, the authority may reject an application even if desired for other class.</p> <p>- In order to determine whether a distinctive sign is well-known, due account shall be taken of the following criteria: a) the extent to which it is known in the relevant sector of the public in any Member Country; b) the age of the distinctive sign and the size of the geographical area where it is used in and outside any Member Country; c) the age and the size of the geographical area where the distinctive sign is promoted, in or outside any Member Country, including its advertising and</p>

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		<p>presentation at fairs, exhibitions, or other events in connection with the goods or services, the establishment, or the activity to which it is applied; d) the value of all investments made in promoting the distinctive sign or the establishment, activity, goods or services to which it is applied; e) figures for the sales and income of the owner, both at the international level and in the Member Country where protection is being sought in respect of the distinctive sign whose well-known character is alleged; f) the extent of the inherent or acquired asset; h) the volume of orders from persons interested in obtaining a franchise or license to the sign in a specific territory; or i) the existence of significant manufacturing, purchasing, or storage activities by the owner of the sign in the Member Country where protection is being sought; j) the international trade-related aspects; or k) the existence or age of any registration or application for registration of the distinctive sign in the Member Country concerned or in any other country.</p> <p>- Coexistence of a mark could be allowed for related companies or between third parties provided that origin of goods is clearly identified. Authority may study coexistence in each case. Usual coexistence is result of an agreement</p>
El Salvador	<p>Factor 1: Similarities between the marks</p> <p>Factor 2: Defendant's bad-faith adoption of the mark</p> <p>Factor 3: Proximity in channels of trade and marketing.</p> <p>Factor 4: Inferior quality of defendant's products</p> <p>Factor 5: Actual confusion evidence</p> <p>Factor 6: Consumer sophistication and care (impulse vs. careful</p>	<p>- Regarding factor 1, instrumental evidentiary support: registration certificates, advertising. Testimony: Witnesses that are merchants of the same nature of products. Expert Witness: The court appoints expert witnesses to determine the similarity. For Defendant's bad-faith adoption of the mark, Instrumental: For example, communication between both parties.</p> <p>- Proximity in channels of trade and marketing. It will depend on the case in particular.</p>

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	purchases)	<ul style="list-style-type: none"> - Inferior quality of defendant's products may be proven by expert witnesses who can analyze the product to determine its quality. - Actual confusion evidence will depend on the case in particular. - Consumer sophistication and care (impulse vs. Careful purchases). It will depend on the evaluation of the judge of the conditions.
EU	<p>European Court of Justice: Public's likelihood of confusion must be appreciated <u>globally</u>, taking into account all factors relevant to the circumstances of the case, in particular</p> <p>Factor 1: Degree of similarity between the mark and the sign</p> <p>Factor 2: Degree of similarity between the goods or services identified</p> <p>Factor 3: Interdependence between the degree of similarity between the mark and the sign and the degree of similarity between the goods or services identified</p> <p>Factor 4: Strength of the mark</p> <p>Factor 4.1.: Inherent characteristics of the mark (Does it contain descriptive elements?)</p> <p>Factor 4.2: Recognition of the trade mark on the market</p> <p>Factor 4.3: Reputation of the mark</p> <p>Factor 4.3.1: Intensive use</p> <p>Factor 4.3.2: Geographically widespread and long-standing use of the mark</p>	<p>First Council Directive of 21 December 1988 to approximate the laws of the Member States relating to trade marks (89/104/EEC): 'Whereas the ways in which likelihood of confusion may be established, and in particular the onus of proof, are a matter for national Procedural rules which are not prejudiced by the Directive.'</p> <p>This was confirmed by the Court of Justice EC in Adidas v Marca (22 June 2000).</p>

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	<p>Factor 4.3.3: Amount invested in promoting the mark</p> <p>Factor 4.4: Association which can be made with the used or registered sign</p> <p>Factor 4.5: Particular circumstances in which the goods in question are marketed (except in opposition proceedings and cancellation actions)</p> <p>Factor 5: Kind of products and sector concerned</p> <p>Factor 6: Perception of the public concerned</p> <p>Factor 7: Other criteria</p> <p>Factor 7.1: Market share held by mark</p> <p>Factor 7.2:: Existence of a 'family' or 'series' of trade marks</p> <p>Factor 7.3: Coexistence on the market (resulting from the absence of likelihood of confusion between earlier marks; identity between earlier mark and conflicting sign; period of coexistence has been long enough to have influenced the perception of the relevant public)</p>	
France	<p>Two types of infringement:</p> <p>1. “Contrefa con” (counterfeiting) – The use of an exact reproduction of a registered mark. This occurs when a mark is wholly contained in another mark.</p> <p>2. “Imitation illicite” – The use of a mark sufficiently similar to a registered mark that there is a possibility of confusion.</p> <p>Factors include:</p> <p>a. Visual or oral similarities.</p> <p>b. Similarities due to the overall impressions created in the minds of</p>	<p>1. Counterfeiting/Contrefacon – This type of infringement does not require any kind of proof of actual confusion or likelihood of confusion, however the possibility of confusion may aggravate the counterfeiting claim.</p> <p>2. Imitation illicite. Evidentiary support includes:</p> <ul style="list-style-type: none"> - Market survey evidence to demonstrate the repute of a brand among the relevant public. - In judging the similarity of goods, classification is not always a guide. Goods in the same class may be held to be dissimilar, while goods in different classes may be held to be similar. Where the goods or

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	<p>consumers rather than differences in detail.</p> <p>c. Whether the two marks bear the same distinctive and individualistic element. Where each element of a complex mark is distinctive, reproducing one of them is sufficient to claim confusing similarity.</p> <p>d. Translation into a foreign language if the foreign language is known in France and the public could be misled by it.</p> <p>d. If a mark is the French word for another's mark.</p> <p>e. In a drawing or symbol mark, if the similarity is between the distinctive elements of the marks.</p> <p>f. Intellectual proximity of marks – an association of ideas.</p>	<p>services in question are incidental to the goods or services of the registration, there may not be infringement if they are in different economic fields.</p>
Germany	<p>Factor 1: Overall impression of the mark predominates.</p> <p>Factor 2: How the public perceives the mark.</p> <p>Factor 3: If marks are not phonetically, visually nor connotatively similar when the three aspects are viewed separately, marks may be confusingly similar when viewed in their entirety.</p> <p>Factor 4: Secondary meaning of a mark.</p> <p>Factor 5: If a mark is being used as a trade name.</p> <p>Factor 6: If there is a series of related marks used by plaintiff all having the same similar feature.</p> <p>Factor 7: The strength of the mark (determined by whether the trademark owner has permitted the use of similar marks on similar goods).</p> <p>Factor 8: The similarity of meanings of two marks, but similarity of meaning will not control confusion if it is a common meaning or if there</p>	<ul style="list-style-type: none"> - The fact that one component of a mark is similar to a registered mark does not, in itself, imply confusing similarity. - Where only one aspect of a mark is similar, some other determining factor must be present before the marks will be confusingly similar, such as secondary meaning of a mark, the fact that the mark is being used as a trade name, or the fact that a series of related marks are used by plaintiff all having the same similar feature. - A mark in a foreign language will not usually be held confusingly similar with its translation into German. The court need only take into account reasonable pronunciations of the marks and not all possible pronunciations. - A mark which is a given name may also be protected for its nickname. - Evidence regarding whether the goods are similar: The purpose of a product, its usual origin, the type of consumer and the distribution circuits should be taken into account.

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	<p>is some other modification of the mark which is distinctive.</p> <p>Factor 9: The sophistication of the consumer.</p> <p>Factor 10: Whether the goods/services are similar.</p>	<p>- Evidence regarding whether the services are similar: The services are to be compared in view of their economic significance and the nature of their use, and especially with regard to whether the type of enterprises regularly rendering the two services have such close contacts that the average consumer will come to the conclusion that the services originate from the same enterprise.</p>
Greece	<p>Factor 1: Appearance of the marks to the average buyer.</p> <p>Factor 2: Examination of the entire mark and not just its individual elements – the total impression of the mark, particularly its acoustical and optical elements.</p> <p>Factor 3: Sophistication of the buyer.</p> <p>Factor 4: Whether the goods are intended for a similar use and are used by the same circle of consumers.</p> <p>Factor 5: The dominant feature of the marks.</p> <p>Factor 6: Whether the resemblance between non-identical marks could deceive and cause confusion among a wide and substantial proportion of people.</p>	<p>- Survey evidence.</p> <p>- Marks containing letters of the alphabet in common may not be confusingly similar if one of the marks has a dominant feature.</p> <p>- Confusing similarity may not necessarily be found if several goods fall into the same class.</p> <p>- Even if an entire mark is incorporated into another's trademark, as an essential feature of the new mark, confusing similarity may not be found if the goods are so dissimilar that purchasers will not be confused as to origin.</p>
Guatemala	<p>Factor 1: Preference over the one in process or the one that is not registered;</p> <p>Factor 2: Conflict signs must be examined based on the graphic, phonetic and ideological first impression that the produce, as if the judge is in normal consumer position;</p> <p>Factor 3: The comparative exam must be done with emphasis in the non-generic elements;</p>	<p>- Factor 1: Certified document issued by the Trademark office of the correspondent country in order to establish the preference</p> <p>- Factor 2: may be explained with doctrine information in the correspondent document. There is no one specified means of proof for this factor. It is very subjective and it is necessary that the interested party makes a good examination of the signs by describing them in the document but the judge always has the final decision.</p> <p>- Factor 3: can be explained in the document itself. As well as factor 2,</p>

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	<p>Factor 4: The similarities must be more important than the differences;</p> <p>Factor 5: The signs must be examined in the form normally sold and the way services are rendered, considering distribution channels, selling places and kind of consumers;</p> <p>Factor 6: Products or services identified from the same nature or there is an association possibility;</p> <p>Factor 7: It is not necessary that the likelihood of confusion have occurred,</p> <p>Factor 8: Trademarks notoriety, to avoid the possibility of taking advantage of the prestigious or fame of the notorious trademark.</p>	<p>there is no specified means of proof for this factor. The analysis of the signs in conflict must be done by the interested party based in the non-generic words of the sign. Example: ARIEL LIBRE ENJUAGE versus ARI ENJUAGE BUCAL. The comparative exam must be done between the signs ARIEL and ARI denomination, not the non-generic elements of the signs.</p> <ul style="list-style-type: none"> - The examination of the signs done by the interested party in the correspondent document to be filed must have emphasis between the similarities of both signs and not the differences between them. There is no special means of proof for factor 4; it is just explained in the document with strong arguments of the similarities. - It is necessary to demonstrate the similarities of the products that bear the signs in conflict. To do so, it is important to establish if they are sold in the same way, in the same places (supermarkets) or to the same kind of consumers. The means of proof for this factor is a market study made by a specialized public entity (BBDO, McCann Erickson, etc.) or recognized experts in the market field. This study can be done by interviews, investigations, evaluations to measure the confusion level between the products and considering the distribution channels. - It is necessary to establish if the products are from the same nature, it means, that both products are soaps or both are medical products that any consumer might confuse them if they have a lot of similarities and are distributed by the same channels. As some of the other factors, factor 6 is explained by the interested party in the correspondent document, but there is no special means of proof for this factor. - Factor 7 is explained by itself, no means of proof for this factor. - The means of proof for factor 8 is registration certificates of the signs around the world. At least 3 of them which demonstrate that registration dates were done before the sign in conflict. The notoriety is

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		<p>also proved by brochures, publicity or invoices between the parties. There are also some countries that issue a notoriety certification of specified trademarks. We do not have this in Guatemala, but the Registry may accept it as means of proof. A list of the registrations around the world will also help to prove the notoriety of a sign, but mainly, publicity, brochures, etc.</p>
Honduras	<p>Factor 1: Phonetic similarities between marks</p> <p>Factor 2: Graphic similarities between marks</p> <p>Factor 3: Similarity of the main idea of the marks.</p>	<p>- Any means of proof or evidentiary support for likelihood of confusion are admissible.</p>
Hong Kong	<p>Factor 1: first impressions of the marks</p> <p>Factor 2: marks to be compared as a whole, disregarding matters common to the trade</p> <p>Factor 3: aural as well as visual comparison.</p> <p>Factor 4: doctrine of “imperfect” or “sequential recollection”</p> <p>Factor 5: importance of first syllable</p> <p>Factor 6: particularly with device or composite marks, the “idea of mark” or conceptual similarity</p> <p>Factor 7: the nature and composition of the goods or services</p> <p>Factor 8: the trade channel through which they will reach the market</p> <p>Factor 9: the uses to which they will be put</p> <p>Factor 10: the users of the goods</p> <p>Factor 11: if sold in self-service outlets, where they will be positioned</p>	<p>- The visual, aural or conceptual similarity of the marks in question must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components.</p> <p>- Although conceptually similar, word marks that are expressed in different languages are unlikely to be regarded as similar as the overall impression of the marks is likely to be different. However, if the words appear with a device, the device element in the marks may make them similar as a whole.</p> <p>- Despite aural similarities, marks in Chinese characters are unlikely to be regarded as similar to their transliteration in Roman letters because the immediate impression of the marks is likely to be different. However, if the words or characters appear with a device, the device element in the marks may make them similar as a whole.</p> <p>- It is unlikely that word marks and devices will be regarded as similar</p>

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	<p>Factor 12: whether the respective goods or services are in competition with each other or are complementary.</p>	<p>because the immediate impression of the marks is likely to be different.</p>
India	<p>Factor 1: Comparison of the marks both phonetically and visually.</p> <p>Factor 2: Whether goods are in the same category: the nature of the goods, the purpose of the goods, and the channels of trade of the goods.</p> <p>Factor 3: The class/sophistication of purchasers.</p> <p>Factor 4: The composition and nature of each of the words.</p> <p>Factor 5: The tendency to slur over certain syllables, particularly when the two words are pronounced.</p> <p>Factor 6: The overall impression of the marks, rather than placing the marks side by side.</p> <p>Factor 7: Actual conditions in the marketplace.</p> <p>Factor 8: Whether the mark in question is a member of a family of marks of that registered owner.</p>	<p>- Although a common prefix or suffix may increase the likelihood of confusion, if that suffix or prefix is descriptive, the court will discount that aspect of similarity.</p> <p>- When the mark in question is a member of a family of marks of that registered owner, then another's use of a mark having the same common element would inevitably lead to confusion as to the origin of the goods.</p> <p>- Marks may be considered similar if the style of writing is confusingly similar.</p> <p>- In considering similarity in court proceedings, the testimony of witnesses is considered as well as the bad intent of the infringer.</p> <p>- Market survey, accompanied by supporting affidavits may be considered and relied upon at the interlocutory stage.</p>
Israel	<p>Factor 1: Visual similarities between the marks.</p> <p>Factor 2: Phonetic similarities of the marks.</p> <p>Factor 3: The extent for which the specifications are identical or of the same description.</p> <p>Factor 4: The respective goods/services for which the marks are used for.</p> <p>Factor 4: The level of similarity between the consumers and markets of the respective.</p> <p>Factor 5: The similarity in the channels of distribution and sale.</p>	<p>- Evidence that supports the claim of likelihood of confusion such as affidavits, catalogues, publications, commercial advertisements, registrations in other countries and alike.</p> <p>- Survey evidence</p> <p>- Evidence of de facto confusion between the respected marks such as complains by customers.</p> <p>- Usually only evidence of use in Israel will be considered. However, in</p>

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	<p>Factor 6: Other circumstances (determined on a case by case basis).</p>	<p>a recent decision the Registrar has mentioned that evidence that was collected in a country which is frequently visited by Israelis may also be considered appropriate under certain circumstances.</p>
Italy	<p>Factor 1: Visual, aural, and conceptual similarity of the marks, taking into account the degree of inherent distinctiveness of the earlier mark</p> <p>Factor 2: The degree of similarity between the goods or services involved.</p> <p>Factor 3: Perception of the public that the goods or services in question come from the same undertaking or economically-linked undertakings</p> <p>Factor 5: Recognition and use of the mark in the relevant market</p>	<ul style="list-style-type: none"> - Personal perception of the judge based on evidence submitted by the parties. Surveys are rarely used in Italy. Similarities shall be taken more into account than differences. - Personal perception of the judge based on evidence submitted by the parties. Surveys are rarely used in Italy. The nature of goods or services and whether they are perceived as competing by the average consumer. - Personal perception of the judge based on evidence submitted by the parties, sometimes including market surveys. - Evidence of advertising expenditures, market share, market surveys, affidavits of entrepreneurial associations, expert witness
Japan	<p>Factor 1: Similarities between the marks in appearance.</p> <p>Factor 2: Similarities between the marks in pronunciation.</p> <p>Factor 3: Similarities between the marks in meaning.</p> <p>Factor 4: Similarity between goods/services, proximity in channels of trade and distribution in which the trademarks are used.</p> <p>Factor 5: Whether a trademark in question is well-known among traders or consumers.</p> <p>Factor 6: Unfair intention (i.e., intention to gain an unfair profit, intention to cause damage to another person etc.).</p>	<ol style="list-style-type: none"> 1. Samples of trademarks as used in the marketplace 2. Sales, advertising evidence 3. Actual confusion evidence 4. Business plans 5. Any evidence showing a fact that a trademark is well-known among traders or consumers

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Mexico	<p>Factor 1: Identical or similar products or services.</p> <p>Factor 2: Circumstances that lead consumers into confusion or error (same marketing or trade channels, similar prices, etc.).</p> <p>Factor 3: Fall into any (or all) of the following types of confusion: (i) phonetic confusion, (ii) graphic confusion, and/or (iii) conceptual or ideological confusion.</p> <p>Factor 4: Determined based on the similarities and not the differences between both trademarks.</p> <p>In this regard, it is important that within the corresponding analysis the following rules are followed:</p> <ul style="list-style-type: none"> - The similarity must be evaluated considering the trademark as a whole. - The imitation must be evaluated by seeing both trademarks alternatively. - The similarity must be evaluated by taking into consideration that the confusion could be suffered by an average consumer. <p>Factor 5: Effect that the trademarks produce for the consumers. (at first glance or when they are quickly pronounced).</p> <p>Factor 6: The existence of a relevant distinctive element which has been reproduced within a second trademark.</p>	<p>- In order to prove the similarity between two products you may exhibit a physical sample of the products and its labels and/or photographs, and copies and samples of the advertising. If applicable, it would also be advisable to exhibit internal or scientific documents evidencing the nature of the products (its utility, chemical or physical composition). Expert opinions in specific areas (design, chemistry, etc.) about the similarities may also be filed. Also, to prove similarity between two services, you may exhibit a notarial certification in which the nature and specific steps of the services are described. An expert opinion in the area of the service may also be filed to prove that both services have the same characteristics and purposes.</p> <p>- Regarding factor 2, you may file market studies, polls and notarial certifications establishing that the products and services are commercialized in the same markets and target the same consumers which can be confused because of the characteristic of the products.</p> <p>- Factor 3 is a matter of legal argumentation that should result from the elements provided by the type of evidence specified in Factors 1 and 2 above-described. Notwithstanding, in specific cases expert opinions may be filed before the authority to highlight certain similarities that may not be immediately perceived and/or understood.</p> <p>- Factor 4 is certainly not a matter of proof but a matter of judgment and legal argumentation based again on the elements provided in factors 1 and 2 above.</p> <p>- Factor 5 is again a matter of judgment. However, in some cases in the past a poll certified by a Notary Public has been used to try to prove the confusing effect that the similitude between two trademarks may have in the consumer. The Mexican Supreme Court of Justice, notwithstanding, has established that the rules to identify the similarities</p>

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		<p>are a legal method that must be followed by the judges and thus, the Supreme Court has implicitly denied the possibility of judging this matter as a fact subject to proof.</p> <p>- Factor 6 may be strengthened through an expert opinion in the area or field of industry of the product to which the trademark is applied, but it would certainly not be an adequate means of proof (because it is not a matter of proof, but a legal standard).</p>
Netherlands	<p>Factor 1: Visual, aural, and conceptual similarity of the marks.</p> <p>Factor 2: The degree of similarity between the goods or services involved.</p> <p>Factor 3: The degree of distinctiveness of the earlier mark.</p> <p>Factor 4: Recognition of the mark.</p> <p>Factor 5: Use of the mark.</p> <p>Factor 6: Perception of the public concerned at the time when the infringing sign began to be used.</p> <p>Factor 7: Influence of marks on the buying behaviour of the public concerned.</p>	<p>Personal perception of the judge, survey evidence.</p> <p>One must pay attention to the similarities, not so much to the differences.</p> <p>All the goods or services concerned should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.</p> <p>The perception of marks in the mind of the average consumer.</p> <p>Market survey, expert witness. Certain marks have such conceptual meaning that they cannot be confused with similar marks (e.g., 'Picasso' and 'Picaro').</p> <p>Adverts, commercials etc.</p> <p>Survey evidence.</p>

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	<p>Factor 8: The possible belief of the public concerned that the goods or services in question come from the same undertaking or economically-linked undertakings.</p> <p>Factor 9: Impression of the average consumer.</p> <p>Factor 10: The presence of a dominant component in the mark.</p>	<p>Market survey, expert witness.</p> <p>Survey.</p> <p>Survey, expert witness.</p> <p>Market survey, expert witness. One element must dominate consumers' overall impression of the product or service concerned.</p>
New Zealand	<p>Factor 1: Similarity of respective marks—visual, phonetic and conceptual; doctrine of imperfect recollection is recognized.</p> <p>Factor 2: Similarity of goods/services—particularly their nature, respective uses or purpose, trade channels and specific placement within larger retail outlets if applicable.</p> <p>Factor 3: Degree to which earlier trade mark is well-known.</p> <p>Factor 4: Distinctiveness of earlier trade mark.</p> <p>Factor 5: Type of consumers for relevant goods or services.</p> <p>Factor 6: Level of consumer involvement in purchase—for example a greater likelihood of confusion will be recognized in low involvement, low cost purchases as opposed to specialized or expensive goods or services sold to well-informed purchasers.</p> <p>Factor 7: Other circumstances—for example if earlier trade mark owner has a history of line extensions this is likely to be seen as</p>	<ul style="list-style-type: none"> – Personal perception and experience of judge – Affidavits in the case of interlocutory applications and trade mark oppositions, otherwise viva voce evidence with cross-examination. – Survey evidence accepted if it meets tight criteria including disclosure of all underlying data and protocols. – Expert evidence—usually from a marketing expert and on topics such as marketing theory, brand 'equity', the impact of specific circumstances such as type of consumer, degree of involvement in transaction, where and when relevant products are likely to be ordered or selected, etc. – Actual evidence of confusion (though isolated incidents will not carry much weight, not being representative of the market as a whole). – Sales and marketing figures, and evidence of actual promotional activity and reputation.

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	<p>increasing the likelihood of confusion.</p> <p>Factor 8: 'Sharp practice'—if a trader has clearly set out to take advantage of an earlier trade mark, there is a tendency to accept this intention will be achieved.</p>	
Nicaragua	<p>Factor 1: Similarities between the marks, mainly in graphics and phonetic.</p> <p>Factor 2: Proximity in channels of trade and marketing of the products.</p> <p>Factor 3: Consumer sophistication and care.</p> <p>Factor 4: Co-existence of the trademarks in other countries: The Trademark authorities are inclined to disregard the likelihood of confusion when the conflicting trademarks co-exist in other countries.</p>	<p>- For factors 1-3 there are not material means of proof, as they are left to the examiner's opinion.</p> <p>- To determine the likelihood of confusion between two trademarks they are successively compared and if the expert believes there are graphic and/or phonetic similarities between them, the latest application would be rejected. The examiner also takes into account the sales points of the products and how expensive they are, as well as the type of consumer who will be buying the product. All these arguments must be submitted and exemplified by the applicant in his reply to the opposition and/or objection in every particular case.</p> <p>- The only fact that can be considered as a means of proof for factors 1-3 is any previous ruling that had been served in favor of the applicant. If trademarks have had conflict in other country and it was solved in favor of the applicant considering that there is no likelihood of confusion between them, we could use it in our country. Such ruling must be legalized up to the Nicaraguan Consulate at the place of origin.</p> <p>- Regarding Factor 4 (co-existence of trademarks in other countries). It is necessary to submit to our Trademark Office Certificates of Registration for both trademarks in the country(s) where they co-exist, so that we are able to prove that there is not conflict for the owners and therefore trademarks could also co-exist in Nicaragua. The certificates or Registration must be filed authenticated by a Notary Public and</p>

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		<p>Legalized up to the Nicaraguan Consulate at the nearest place of origin.</p> <ul style="list-style-type: none"> - Co-existence of the trademark in other countries is argued, the interested party must submit authenticated and legalized copies of the certificates of registration of both trademarks in the relevant countries.
Paraguay	<p>Factor 1: Similarity.</p> <p>Factor 2: The classes involved.</p> <p>Factor 3: The notoriety of the trademarks involved.</p> <p>Factor 4: Strength of the mark accused of infringement</p> <p>Factor 5: Similarities between the marks</p> <p>Factor 6: Proximity in channels of trade and marketing of the products on which the marks are used</p> <p>Factor 7: Likelihood that plaintiff will expand its mark into defendant's line of business ("bridging the gap")</p> <p>Factor 8: Defendant's bad-faith adoption of the mark</p> <p>Factor 9: Inferior quality of defendant's products.</p>	<ul style="list-style-type: none"> - Visual phonetic, orthographic and ideological identities. - Goods for services covered by each Trademark and the restrictions on each trademark. Also, when some goods may be used as a basis for manufacturing the other products involved. - To prove notoriety of the mark through advertising and promotional material and the priority acquired through the time. Also, by the usage of the mark worldwide and particularly in Paraguay. - Portion of the market occupied by the mark. - Overall view of the Trademarks. - Geographical situation of retail points and media advertising. - Extension of the plaintiff's business and history of past expansions. - Previous knowledge and use of the mark by defendant and other infringements that the defendant may have committed. - Expert witness testimony.
Peru	Factor 1: Similarities between the marks (graphic, phonetic and/or of	- The PTO considers that regarding this point the examination must be

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	<p>meaning)</p> <p>Factor 2: Similarities between the products and services the marks protect</p> <p>Factor 3: Proximity in channels of trade and marketing of the products on which the marks are used</p> <p>Factor 4: Strength of the mark accused of infringement</p> <p>Factor 5: Defendant's bad-faith adoption of the mark, only when the similarities between the marks are too obvious.</p> <p>Factor 6: Actual confusion evidence.</p>	<p>performed respecting the marks as they have been applied/registered, being external factors not applicable to the analysis. Nevertheless, documents such as dictionaries and alike (explaining graphic, phonetic and conceptual similarities) can be produced. Other possible proofs are polls or studies or any other graphic or phonetic material showing (i) how foreign words or letters are pronounced, (ii) how foreign words or letters are pronounced by national consumers, (iii) how a certain word has a certain meaning in Spanish or a foreign language.</p> <p>- It is possible to prove factor 2 with (i) physical samples of the products, labels, packaging as well as (ii) photographs, notarial certifications or any other proof that certain products are commonly commercialized in the same establishments as others and/or side by side.</p> <p>- The proximity in channels of trade and marketing of the products on which marks are used may be proven with material proving external usage of the marks, although not officially accepted, can be useful to demonstrate bad faith or risk of confusion: i.e. packaging or designs accompanying a denominative applied sign, advertisement and any other pertinent material to show the effects in the market of the actual commercialization of a product or service. Points, studies, polls and notarial certifications are possible.</p> <p>- Proofs regarding the portion of the market the other trademark has are possible: polls, commercial reports, studies and alike. Polls are also possible to determine how strong the mark is in the minds of consumers.</p> <p>- It is important to establish: (i) if the other party has antecedents of bad faith: they can be obtained from the PTO, or from independent</p>

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		<p>investigations. (ii) if in this case bad faith exists (comparisons with packaging, trade dress, color combinations and how the complainant differentiates from other competitors' presentation of the goods in the market, so that the copying of the complainant's distinctive elements is a result of bad faith in wanting to profit from the complainant's reputation. (iii) Notoriety of complainant's mark is also important to show that the other party knew or should have known it belonged to another, as well as volume of advertisement and market share. (iv) Polls or studies showing consumers believing both marks/products/services are the same or have the same origin are also pertinent.</p> <p>- Studies or polls demonstrating that regarding certain products or services, the attention of consumers is weaker so risk of confusion is higher. Finally, complaints or any written proof of consumers directed to your company respecting products from the other party are pertinent. In this sense written declarations of distributors/selling establishments or any other material that proves confusion is taking place can be produced.</p>
Poland	<p>Considered factors results from the polish law and jurisprudence:</p> <p>Factor 1: Identity or similarity between trademarks (on a visual, phonetic and semantic plane);</p> <p>Factor 2: Identity or similarity between goods and services (e.g. their nature, properties, circle of consumers and conditions of market);</p> <p>Factor 3: Distinctive character of a trademark;</p> <p>Factor 4: Renown of a trademark and its recognition on the market;</p> <p>Factor 5: Belonging a trademark to a 'family' or 'series';</p> <p>Factor 6: Overall impression given by the trademark, bearing in mind,</p>	<p>- Mostly those factors are assessed at the Polish Patent Office and Polish courts sole discretion. However parties may provide the evidentiary support by submitting the following:</p> <p>- present samples of marks as used in the marketplace to present if dominant component of trademarks are differences or their common features what create a risk of misleading as for origin of goods - the market survey, if available;</p> <p>- comparison of classes of classifications where trademarks are registered;</p>

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	<p>in particular, its dominant components;</p> <p>Factor 7: Existing risk of misleading the average consumer especially by evoking associations with the earlier mark (appreciated globally, taking into account all factors relevant to the circumstances of the case);</p> <p>Factor 8: Acting in good or bad faith;</p>	<ul style="list-style-type: none"> - present any relevant evidences that prove distinctive feature of a trademark (e.g. opinion poll, testimony) - the more distinctive character a trademark possesses the risk of confusion is more likely; - prove the renown of a trademark, especially by evidencing: i) market share (in terms of both volume and value of sales); ii) extent of use (territory and duration); iii) expenditure on promotion of the mark; iv) extent of advertising for a product carrying the mark; v) the value of the mark (assessed by an independent financial institution); vi) whether the mark is used by third parties and to what extent; - evidencing the real use of trademark on a relevant market next to registration numbers of trademarks belonging to a 'family' or 'series'; - actual confusion evidence (testimony of confused witnesses, opinion poll, if available); - any evidence showing a will of obtaining unfair advantage to the applicant or could be recognized as a detrimental to the distinctive character or the repute of the earlier trademark.
Russia	<p>Factor 1: Similarities between the marks.</p> <p>1. 1. Compared marks are considered similar if they bring associations of each other in general despite certain differences in details.</p> <p>1.1.1. The factor includes:</p> <ul style="list-style-type: none"> - Sound/pronunciation similarities - Visual similarities - Similarities of the meanings <p>1.2. Marks with phonetically similar elements may not be deemed</p>	<ol style="list-style-type: none"> 1. For two marks to be deemed confusingly similar, it is enough that there is the risk of confusion and there need not be any real confusion in the consumer's eyes 2. When investigating a danger of confusion between the marks, a court considers the following factors: <ol style="list-style-type: none"> 1) Degree of similarity between the marks 2) Degree of similarity between the goods or goods or services identified 3) Strength of the mark of the plaintiff

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	<p>confusingly similar if phonetically similar elements have different meanings.</p> <p>1.3. If dominating distinguishing elements of complex marks (formed of combinations of words and images) are similar, the compared marks may be deemed confusingly similar.</p> <p>Factor 2: Identical or similar products or services. The factor includes: type (kinds) of goods (services), consumer properties of goods/services and functional purpose (scope and purpose of usage), type of material, of which goods are manufactured, complementary nature or substitutability of goods, conditions and sales (including place of sale, wholesaling and retailing), range of consumers, traditional or preferred kind of usage of the goods</p> <p>Factor 3: Strength of the mark - recognition of the mark on the market (intensive use, advertising, expert survey evidence) - existence of a 'family' or 'series' of trademarks</p>	<p>3. Under the general rule, the issue of marks similarity is to be resolved in court with no expert analysis. Expert analysis may only be requested if special knowledge is required to compare signs.</p> <p>1. Products or services are deemed similar if for the reason of their nature or purpose consumers may attribute the goods to one and the same source of origin.</p> <p>2. In judging the similarity of goods, classification is not always a guide.</p> <p>3. For consumption goods/services (cheap goods) the probability of confusion is greater than for more expensive goods/services</p> <p>The threat of confusion occurs if one mark is perceived as the other or if a consumer understands that the two marks are different but assumes that both marks belong to the same company.</p>
Singapore	<p>Factor 1: Similarities between the marks – visual, aural, conceptual, overall effect</p> <p>Factor 2: Similarities in the goods and services – considering respective uses and users of the goods/services, physical nature of the</p>	<p>1. Annual sales figures and advertising and promotional expenditure figures for a substantial period prior to the date of infringement or filing date of the later trademark, supported by copies of invoices, delivery orders, product samples, catalogues, specimen advertisements and the like</p>

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	<p>goods/services, respective trade channels, manner of marketing and/or trade classification</p> <p>Factor 3: likelihood that there would be confusion by reason of such similarities, taking into account relevant circumstances of the case, e.g. particular nature of the goods/services, circumstances in the market, , expected customer perception, steps taken to differentiate goods/services of later mark from those of the earlier mark</p>	<p>2. market survey, if available</p> <p>3. evidence of actual confusion or customer complaints, if any expert testimony, if appropriate</p>
South Africa	<p>Factor 1: Similarities between the marks – appearance (to the eye), sound (to the ear) and idea (the mental picture).</p> <p>Factor 2: Similarities between the goods.</p> <p>Factor 3: The class of persons who purchase the goods.</p> <p>Factor 4: The existence of other trademarks similar in part or as a whole to the marks applied for and which are in use or common to the trade.</p> <p>Factor 5: The question of distinctiveness or otherwise of the marks as opposed to descriptiveness. Under this heading would be included the doctrine of imperfect recollection and the idea behind the mark.</p>	<p>-- Whether the consumers are sophisticated.</p> <p>-- Whether someone has several registrations having common features or syllables (family of mark doctrine) and another uses a mark having the same feature.</p> <p>--Whether there is a substantially different get-up or shape of the product.</p> <p>-- When survey evidence is introduced to show confusing similarity, the questions must be “fair and so formulated that they preclude a weighted or conditioned response.”</p> <p>-- Whether any additions have been made to a name, even slight additions.</p> <p>-- In determining confusing similarity in two words in the same foreign language, where the public is not aware of their meanings, it is not necessarily decisive of confusion.</p>
Spain	<p>The similarity of marks is judged by their phonetic and graphic similarity and whether such similarity can lead to errors or confusion in the marketplace (composed of ordinary members of the public).</p> <p>Similarity of marks is judged by:</p>	<p>-- Marks are considered phonetically similar when the stressed vowel or syllable is so dominant that it absorbs any previous or following syllable or vowel and the ear perceives only the stressed vowel or syllable of the registered mark.</p>

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	<p>(1) that imitation should be assessed in terms of similarities and not differences;</p> <p>(2) that imitation should be assessed by considering the whole impression created by the marks, that is, by examining them alternatively rather than side by side;</p> <p>(3) that imitation should be assessed on the assumption that the supposed confusion will be suffered by a person of average education or intelligence paying average or ordinary attention.</p>	<p>-- Similarity of an initial word may be neutralized when the aural and visual aspects are considered in their entirety.</p> <p>-- In general, generic prefixes are ignored in judging similarity.</p> <p>-- In assessing similarity, composite marks must be examined in their entirety.</p> <p>-- Similarity is based upon how the mark is pronounced by the Spanish consumer.</p> <p>-- In assessing similarity marks must be compared as a whole but special attention must be given to the most distinctive aspects of the marks – phonetic, graphic and conceptual similarity must be considered.</p> <p>-- Well known (widely known in the relevant sector) and reputed marks (known to the public in general and enjoying prestige from the quality of goods) are accorded special protection.</p> <p>-- Similarity should be judged by the nature, uses and functions of the goods. The classification is merely a guide or index to similar goods and is not binding.</p>
Sweden	<p>Factor 1: Marks are judged confusingly similar only if the goods or services being considered are the same or similar.</p> <p>Factor 2: Confusing similarity may also be found for a mark well-known in Sweden and use of a similar mark would take unfair advantage of or be detrimental to the distinctive character or reputation of the well-known mark.</p>	<p>-- Trademarks must be judged orally as well as visually and every possible pronunciation must be considered.</p> <p>-- Where the consumers are professionals, the court will assume they are more discerning and less likely to be confused.</p> <p>-- Goods within the same class may be found unrelated, while goods in different classes may be held to be related.</p> <p>-- The actual use of the trademark is not decisive in evaluating the</p>

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		<p>similarity of goods in a registration procedure, but rather the kind of goods for which the prior trademark was registered.</p> <p>-- Marks may not be deemed similar where there is a considerable difference between the goods. But, where the distance is considered insignificant, use of a similar name may dilute the plaintiff's trade name.</p>
Switzerland	<p>Factor 1: In judging whether two marks are so likely to be confused as to be misleading, account is taken of the overall impression created by the two marks on the memory of the average purchaser.</p> <p>Factor 2: What also has to be considered is the set of circumstances in which the purchase of articles of the same kind generally takes place.</p> <p>Factor 3: Any figurative elements in a mark usually prevail over the word elements.</p> <p>Factor 4: The purchasers of common articles produced in large quantities for everyday use make their purchases without paying much attention, so that the possibility of confusion must be examined particularly strictly where those articles are concerned.</p>	<p>-- Marks in different languages may be considered similar if the languages are understood by the Swiss public.</p> <p>-- Various factors can affect whether marks will be considered similar. Where only one part of a mark is used by another party, the marks will be considered similar so long as the part of the mark used was a characteristic element set off from the rest of the mark and decisive in the overall appearance.</p> <p>-- While the sight, sound and meaning of the two marks affect similarity, it will be applied differently for different marks.</p> <p>-- Combined marks are to be evaluated according to overall impression.</p> <p>-- The goods upon which the marks are used must also be similar for there to be infringement. But even if goods fall in the same class, they might not be held similar.</p> <p>-- Courts are now giving greater protection to famous marks.</p> <p>-- In deciding similarity, the first letter of acronyms is of paramount importance.</p> <p>-- Where marks are similar in sound but different in meaning they may not be confusingly similar.</p>
Taiwan	<p>Factor 1: Similarity of marks is judged based on the visual, aural and mental impression of the two marks.</p>	<p>-- In determining the similarity of design marks or a design mark and word mark, consideration is given to any phonetic or conceptual</p>

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	<p>Factor 2: In determining the similarity of the marks, the test is the likelihood of confusion when general purchasers of ordinary knowledge and experience apply ordinary attention.</p> <p>Factor 3: Additional factors in the case of goods are production, raw material, usage, function and where the goods are sold.</p> <p>Factor 4: Additional factors for service marks are nature, content, object and place of services.</p> <p>Factor 5: The similarity of the goods should be judged based on the general conception of the public, trade circumstances in the market, the production, materials, use and function of the goods and the sales channels.</p> <p>Factor 6: Aside from the trademark itself, other factors which are to be taken into account include goods, buyers, territory, creativity and use.</p> <p>NOTE: Trademarks composed only of Chinese characters are examined right to left and left to right, as well as trademarks composed of Chinese characters and foreign language characters or devices provided there is no direct relationship to the Chinese characters and foreign language characters or devices.</p> <p>Marks with Chinese characters and foreign language characters or devices having a direct relationship between the Chinese characters and the foreign language characters, examination of the Chinese characters will be in one direction only depending up on the meaning of the entire mark.</p>	<p>similarity.</p> <p>-- A mark in Chinese letters which is the same as a mark in Roman letters with respect to meaning or sound is unregistrable.</p> <p>-- In judging similarity a personal, subjective judgment of the court is a key factor. There are certain arguments which can be used to influence those judgments, such as the degree of similarity in appearance, concept or pronunciation.</p> <p>-- The addition of Chinese characters to a mark will not negate a finding of confusion. Further, a design mark will usually be held similar to the word describing the design.</p> <p>-- In judging the likelihood of consumer confusion, account must be given to the fame of the mark and the similarity of goods. Confusing similarity may be found even if the goods are dissimilar or in a different class.</p> <p>-- There is a complex series of rules about the circumstances under which Chinese character marks will be considered confusingly similar.</p>
Thailand	Factor 1: The criteria for deciding whether two marks are similar include whether the pronunciation and appearance of the two marks are	Actual confusion, the sophistication of the buyer and survey evidence will be considered.

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	<p>similar.</p> <p>Factor 2: In deciding such similarity the courts will take into account the sight, sound and meaning of the marks.</p> <p>Factor 3: The strength of the mark is a factor.</p>	
Turkey	<p>The criteria for deciding whether two marks are similar include likelihood of confusion by the Turkish consumer of average education and knowledge by taking into consideration the visual and phonetic aspects of the marks as well as their meaning and the goods they cover.</p> <p>Strength of the mark is a factor.</p>	<p>-- Actual confusion.</p> <p>-- Sophistication of the buyer.</p> <p>-- Survey evidence may be considered, depending on the circumstances of the case.</p> <p>-- Courts refer the issue of whether there is a likelihood of confusion to a committee of experts for a recommendation.</p>
Ukraine	<p>The criteria for deciding whether two marks are similar include the visual, phonetic and semantic similarities of the marks.</p> <p>Strength of mark is a factor.</p>	<p>-- Sight, sound and meaning of the marks.</p> <p>-- Actual confusion.</p> <p>-- Sophistication of the buyer.</p> <p>-- Survey evidence.</p> <p>-- Where marks are in the same alphabet, the similarity of sound is usually sufficient to determine similarity.</p>
United Arab Emirates	<p>The criteria for deciding whether two marks are similar include whether they are confusingly similar.</p> <p>Strength of mark is a factor.</p>	<p>-- Sight, sound and meaning of the marks.</p> <p>-- Actual confusion.</p> <p>-- Survey evidence.</p>
United Kingdom	<p>Factor 1: Strength of the plaintiff's mark</p> <p>Factor 2: Similarities between the marks</p>	<p>1. Evidence of use of plaintiff's mark including historical sales, marketing, promotional and advertising evidence.</p>

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	<p>Factor 3: Proximity in channels of trade and marketing of the products on which the marks are used</p> <p>Factor 4: Defendant's bad faith in adopting the mark</p> <p>Factor 5: Price of parties' goods and consumer sophistication</p> <p>Factor 6: Actual confusion evidence</p>	<p>2-3. Evidence of how the plaintiff's and the defendant's marks are used in marketplace.</p> <p>4. Evidence of bad faith/deliberate copying of mark by the defendant.</p> <p>5. Evidence of how plaintiff's and defendant's products are priced, and level of sophistication of relevant consumers.</p> <p>6. Evidence of confused or misled consumers or of consumers stating that they are likely to be misled or confused. In some circumstances expert marketing evidence and/or survey evidence (although, greater weight is given to consumer testimony than to survey evidence)</p>
United States	<p>Factor 1: Strength of the plaintiff's mark</p> <p>Factor 2: Similarities between the marks</p> <p>Factor 3: Proximity in channels of trade and marketing of the products on which the marks are used</p> <p>Factor 4: Likelihood that the plaintiff will expand its mark into defendant's line of business ("bridging the gap")</p> <p>Factor 5: Defendant's bad faith in adopting the mark</p> <p>Factor 6: Inferior quality of defendant's products</p> <p>Factor 7: Consumer sophistication and care</p> <p>Factor 8: Actual confusion evidence</p>	<p>1. Sales, advertising, expert survey evidence</p> <p>2. Samples of marks as used in the marketplace</p> <p>3. Marketing personnel/marketing expert testimony re trade outlets, media, trade shows etc.</p> <p>4. Business plans, meeting minutes referencing intent to expand</p> <p>5. Any evidence showing Defendant intended to trade off goodwill in Plaintiff's mark.</p> <p>6. Customer complaints, expert testing, cheaper materials/ingredients</p> <p>7. Evidence of impulse purchasing (or lack thereof), sophistication of buyer (i.e. consumer or medical professional), price of product (lower price = less care)</p> <p>8. actual confusion evidence (testimony of confused witnesses) is strong proof of the fact of a likelihood of confusion, but if only a few</p>

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Uruguay	<p>Factor 1: Similarities between the marks involved</p> <p>Factor 2: Risk of confusion amongst consumers</p> <p>Factor 3: Kind of goods covered by the marks</p> <p>Factor 4: Type of consumer that would purchase the respective products.</p> <p>Factor 5: Applicant's bad-faith adoption of the mark</p> <p>Factor 6: The marks must be analyzed as a whole and by the impression that they create.</p> <p>Factor 7: The marks must be examined one after the other and not at the same time.</p> <p>Factor 8: The person making the decision must place themselves in the position of the presumed purchaser and bear in mind the nature of the product/service.</p> <p>Factor 9: One must take into account the similarities in the marks and not the differences.</p>	<p>instances exist, they may be dismissed as de minimis</p> <ul style="list-style-type: none"> - No documentary evidence is required; a detailed explanation of such similarities is usually included in the appearance at the Trademark Office so as to graphically show them to the Examiner. - As factor 2 and 1 are directly associated, assuming that two marks are similar, they will produce confusion amongst consumers. However, in order to further support such statement, an independent survey between consumers would be a relevant means of proof. - Factor 3 does not require proof as it derives from the Int. classes covered by each mark. However, in case the way in which these products are usually commercialized is to be proved, surveys at sales points and/or photographs of said sale points would be useful. - Also in this case, an independent survey between consumers would be a relevant means of proof. - In case of bad faith, any evidence of such should be filed. For example, any correspondence between the parties showing the prior knowledge of the mark. Also, the type of evidence will depend on the specific circumstances of the case. For instance, the prior knowledge of the mark could be proved by attesting the notoriety of the mark. In that case, certified and legalized copies of the registration certificates of the mark in the region, advertising and brochures of the mark are useful evidence. In case the applicant had a commercial relationship with the legitimate owner (a distribution agreement, for instance), proof of such relationship is required (by means of certified and legalized copy of the agreement, if any, or copy of the correspondence kept between the parties).

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		<p>- No documentary evidence or other type of means of proof is applicable to factors 6, 7, 8 and 9. This is the way in which the Examiner must analyze the signs involved.</p>
Venezuela	<p>Factor 1: Similarities between the marks</p> <p>Factor 2: Defendant's bad-faith adoption of the mark</p> <p>Factor 3: Proximity in channels of trade and marketing of the products on which the marks are used</p> <p>Factor 4: Actual confusion evidence</p>	<ul style="list-style-type: none"> - For Factor 1, it is not necessary to file any proof. What has to be done is the comparison of the marks in all senses: sight, sound and meaning. - It is possible to evidence bad faith in the adoption of the mark by several ways. For instance, if the applicant had a previous commercial relation with the owner of the mark, as a licensee or simply a distributor. In this sense, it will be important to file commercial invoices, communications exchanged, local advertising where the local entity was identified as a distributor, as well as correspondence regarding the acquisition of merchandise or the contracting of services, as well as any copies of any license or distribution agreement signed between the parties. - Normally, factor 3 is worked through market surveys or assessments from consultants in the marketing area, supported by Judicial Inspections to places where the products are sold or the services are being offered in order to prove that both are being commercialized in the same places. Also, it is useful to submit advertising of the product or services in order to demonstrate that both share the same marketing channels. - To prove the actual confusion the best proof is a market research, or focus group with consumers/users.

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Vietnam	<p>Factor 1: The similarities between the marks in terms of <i>composition/structure, presentation (including colours), pronunciation and meaning.</i></p> <p>Factor 2: Whether the goods/services bearing the marks are identical or similar in terms of their <i>nature, function and utility</i> and have the <i>same channels of trade/distribution.</i></p> <p>Factor 3: Defendant's bad faith in adopting the mark may also be considered.</p>	<p>- Affidavits and Exhibits supporting a finding of likelihood of confusion based on the relevant factors, including but not limited to independent survey evidence.</p>