



## European IPR Helpdesk

### Case Study

# *Koalect: trade mark conflicts and the importance of prior searches*

April 2017

*Koalect SA/NV*

*Funding platform*

*Fundraising / crowdfunding*



## 1. Background

Koalect SA is a Belgian start-up that has developed, since October 2014, the largest donation and reward-based crowdfunding software tool in Belgium with over €1,700,000 collected for over 30 social-profit campaigns and organisations. Koalect's activity consists of building online fundraising platforms tailored to the needs and strategies of social-profit organisations, allowing communities and volunteers to collect money in an easy and modern way.

Initially, Koalect SA launched its business project under a different name, "Elefund", with an elephant logo. The company intended to register the brand but, in the meantime, it started to operate under the name "Elefund", launching its website, Facebook page and communicating all materials to third parties under that name. The company started to use this brand to identify itself in the market without previously carrying out a trade mark search in order to ascertain whether a similar or identical trade mark for similar or identical goods and services was registered by a third party. This was certainly an oversight that caused the company a conflict with another company. We explain everything below.

## 2. The problem faced

Once the company started to operate under the name "Elefund" in the area of fundraising

activities, it was soon contacted by the German company Elefunds GmbH, who had two earlier registered EU and German trade marks for "Elefunds", with an elephant logo and in the class corresponding to its activities (class 36, covering fundraising activities). The German company approached the Belgian company and informed it about the conflict between the two trade marks.

At this point, the Belgian Company realised that there were only two possible solutions to this issue: either face court action against Elefunds GmbH, or stop using the name "Elefund" and find a completely new brand, meaning a re-invention from scratch of their corporate identity.

### **3. Possible actions to be undertaken in this situation**

First of all, the Belgium company sought help from their advisory board, which gave a first "strategic" opinion on the matter. The advisory board explained that to stop using "Elefund" and to eventually find a different name would not be a big issue considering, in particular, that the company was very young.

Second of all, they consulted two lawyers specialised in trade mark law. Both lawyers advised that it would be difficult to fight the case and win, but that it would still be worth trying to find an amicable agreement.

Thirdly, the company reached out to Elefunds GmbH in an attempt to negotiate that they could keep their brand "Elefund" and that they would not compete with Elefunds GmbH even if they operated in the same geographic markets. The negotiation was fruitless with Elefunds GmbH giving the now Koalect multiple ultimatums to change its brand name and to close down all its social media communications and e-mail addresses.

At this point, the company understood that, as a young start-up, it could not afford litigation due to its monetary and time costs. As a result, it was decided to change their company name and register a new trade mark.

### **4. Outcome**

The company has changed its name to "Koalect SA" and registered its trade mark, "Koalect", with a koala logo, as a EU trade mark with a completely new brand identity. This new branding keeps the essential feature of their former trade mark: a word game between an animal name and a word making reference to their activity, fundraising, which essentially consists on facilitating "koalecting" money.

### **5. Lessons learned and suggestions**

Maxime Bouckaert, co-founder of Koalect SA, explains that when facing this type of issue he would advise to look at it from different angles (strategic, marketing value, legal, financial, practical options...) and to be as objective as possible about the matter without becoming emotional.

He also considers that in certain circumstances, it is preferable to avoid litigation and, therefore, either adopt a strategy of finding an amicable settlement with the counterparty

or an aggressive strategy to scare the potential litigation procedure away (depending on the position of power that one has in the conflict).

Finally, he emphasises that he would advise start-ups to get some insurance that would cover some legal costs just in case there is an actual process as, otherwise, a start-up may be in its right but not have the time or money to fight for its rights. Furthermore, it is essential to always perform a trade mark search before using or applying for registration of a trade mark. This search allows you to determine whether the trade mark whose registration is intended is available in connection to the goods and/or services whose commercialisation under the trade mark is sought<sup>1</sup>.

---

<sup>1</sup> You will find useful information in our fact sheet on "How to search for trade marks" available in our [Library](#).

## GET IN TOUCH

**For comments, suggestions or further information, please contact**

European IPR Helpdesk  
c/o infeurope S.A.  
62, rue Charles Martel  
L-2134, Luxembourg

Email: [service@iprhelpdesk.eu](mailto:service@iprhelpdesk.eu)

Phone: +352 25 22 33 - 333

Fax: +352 25 22 33 - 334

## ABOUT THE EUROPEAN IPR HELPDESK

The European IPR Helpdesk aims at raising awareness of Intellectual Property (IP) and Intellectual Property Rights (IPR) by providing information, direct advice and training on IP and IPR matters to current and potential participants of EU funded projects. In addition, the European IPR Helpdesk provides IP support to EU SMEs negotiating or concluding transnational partnership agreements, especially through the Enterprise Europe Network. All services provided are free of charge.

**Helpline:** The Helpline service answers your IP queries within three working days. Please contact us via registration on our website – [www.iprhelpdesk.eu](http://www.iprhelpdesk.eu) – phone or fax.

**Website:** On our website you can find extensive information and helpful documents on different aspects of IPR and IP management, especially with regard to specific IP questions in the context of EU funded programmes.

**Newsletter and Bulletin:** Keep track of the latest news on IP and read expert articles and case studies by subscribing to our email newsletter and Bulletin.

**Training:** We have designed a training catalogue consisting of nine different modules. If you are interested in planning a session with us, simply send us an email at [training@iprhelpdesk.eu](mailto:training@iprhelpdesk.eu).

## DISCLAIMER

The European IPR Helpdesk project receives funding from the European Union's Horizon 2020 research and innovation programme under Grant Agreement No 641474. It is managed by the European Commission's Executive Agency for Small and Medium-sized Enterprises (EASME), with policy guidance provided by the European Commission's Internal Market, Industry, Entrepreneurship and SMEs Directorate-General.

Even though this Case Study has been developed with the financial support of the EU, its content is not and shall not be considered as the official position of the EASME or the European Commission. Neither EASME nor the European Commission nor any person acting on behalf of EASME or of the European Commission is responsible for the use which might be made of this content.

Although the European IPR Helpdesk endeavours to deliver a high level service, no guarantee can be given on the correctness or completeness of the content of this Case Study and the European IPR Helpdesk consortium members are not responsible and may not be held accountable for any use which might be made of this content.

The support provided by the European IPR Helpdesk should not be considered as of a legal or advisory nature.

Our complete disclaimer is available at [www.iprhelpdesk.eu](http://www.iprhelpdesk.eu).

© European Union (2017)