

**DECISION**  
**of the Second Board of Appeal**  
**of 20 December 2022**

In case R 2108/2018-2

**Multi Access Limited**  
British Virgin Island

EUTM Proprietor / Appellant

represented by Grünecker Patent- und Rechtsanwälte PartG MbB, München, Germany

V

**Guangzhou Baiyunshan Pharmaceutical Holdings Co., Ltd.**  
Guangzhou, Guangdong  
People's Republic Of China

Cancellation Applicant / Defendant

Represented By Office Kirkpatrick N.V./S.A., La Hulpe - Terhulpen, Belgium

APPEAL relating to Cancellation Proceedings No 13 317 C (European Union trade mark registration No 13 497 102)

**THE SECOND BOARD OF APPEAL**

composed of S. Stürmann (Chairperson and Rapporteur), H. Salmi (Member) and S. Martin (Member)

Registrar: H. Dijkema

gives the following

## Decision

### Summary of the facts

- 1 By an application filed on 25 November 2014, Multi Access Limited ('the EUTM proprietor') sought to register the word mark

### WONG LO KAT

for the following goods:

*Class 5: Chinese medicine and herbs; pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides;*

*Class 30: Tea or herbal tea related products; coffee, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder salt, mustard; vinegar, sauces (condiments); spices; ice;*

*Class 32: Beverages; preparations for making beverages; beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices syrups and other preparations for making beverages.*

- 2 The application was published on 12 December 2014 and the mark was registered on 23 March 2015.
- 3 On 21 July 2016, Guangzhou Baiyunshan Pharmaceutical Holdings Co., Ltd. ('the cancellation applicant') filed a request for a declaration of invalidity for all the above goods.
- 4 The grounds of the request for a declaration of invalidity were those laid down in Article 59(1)(b) EUTMR.
- 5 The cancellation applicant mainly argues that the contested EUTM was filed in bad faith for being a repeat filing of the same EU trade mark No 8 293 755 that the EUTM proprietor already owned merely in order to circumvent the obligation of use of the earlier EUTM and avoid the consequences entailed by total or partial revocation of the earlier mark for non-use. It also claims that one of the shareholders of the EUTM proprietor gave instructions to file the contested EUTM despite the fact that this person had previously been a legal representative for a company established by the cancellation applicant and registered the EUTM after having left the said company. The cancellation applicant further argues that the EUTM proprietor brought opposition proceedings against the cancellation applicant's Benelux application and used the contested EUTM as a basis of this opposition and not its earlier EUTM which would have been subject to use. The cancellation applicant also brings to the Office's attention that it has brought revocation proceedings against the EUTM proprietor's earlier EUTM. It requests

that the EUTM be invalidated in its entirety and in support of its observations, it filed the following evidence:

- Exhibit 1: Business report concerning the cancellation applicant company Guangzhou Baiyunshan Pharmaceutical Holdings and its relationship with its shareholder Guangzhou Pharmaceutical Holdings Limited;
  - Exhibit 2: Business reports concerning the change of name of Guangzhou Pharmaceutical Company Limited to Guangzhou Baiyunshan Pharmaceutical Holdings;
  - Exhibit 3: Business licence reports showing Guangzhou Wonglaoji Pharmaceutical Co., Ltd. where Guangzhou Pharmaceutical Holdings Limited appears as a shareholder and with legal representation from Ms Wang Jianyi;
  - Exhibit 4: Business report on Guangzhou Wonglaoji Pharmaceutical Co., Ltd where the previously mentioned legal representative appears;
  - Exhibit 5: Trade mark licensing agreement and supplementary agreement on the licensing of trade mark in Chinese and with a translation into English;
  - Exhibit 6: Notifications from the Trade Mark Review and Adjudication Board of the State Administration for Industry and Commerce in China regarding oppositions filed against two Chinese trade mark applications WANG LAO JI by a shareholder of the applicant.
- 6 The EUTM proprietor argues that it has not acted in bad faith and that the EUTM was filed in good faith. It states that it historically has the ownership of the mark and argues that the cancellation applicant lacks the capacity to bring the present application. The EUTM proprietor denies that the contested EUTM was a repeat filing and submits evidence to prove the use of the earlier mark. The EUTM proprietor states that the contested EUTM was filed before the expiry of the grace period of the earlier EUTM and before the filing of any actions against the earlier mark. The EUTM proprietor argues that there is no bad faith as it used its earlier EUTM within the five-year period and filed the contested EUTM before the expiry of the grace period. It relies on the Cancellation Division decision of 21/03/2007, No. 1 344 C in this respect. It submits that the extensive use of the earlier EUTM shows that there was no need for a repeat filing. The EUTM proprietor provides a history of the brand dating back to the nineteenth century and a genealogy which it states proves that it has the rights to the brand. The EUTM proprietor denies any dishonest activity and provides evidence of agreements, sales, export and distribution of its products. It contests the evidence submitted by the cancellation applicant and argues that it merely proves the use of the mark by the EUTM proprietor. In support of its observations, the EUTM proprietor filed the following evidence:
- **Attachment 1:** Affidavit of a director of Wong Lo Kat (Enterprises) Limited with the following Annexes:
    - Annex 1: Family tree diagram of Mr. Wong Chak Bong;

- Annex 2: License Agreement between Wong Lo Kat (International) Limited and Hung To (Holdings) Company Limited of 30/01/1996;
  - Annex 3: Assignment Agreement between Wong Lo Kat (International) Ltd. and Wong Lo Kat Limited of 09/08/2004;
  - Annex 4: Assignment Agreement between Wong Lo Kat Ltd. and Multi Access Ltd. of 26/04/2005;
  - Annex 5: Agreement of 24/06/2016 confirming license Agreement between Multi Access Ltd. and Wong Lo Kat (Enterprises) Limited on 01/06/2011;
  - Annex 6-9: Invoices and orders dated between 2013 and 2016 for herbal tea products;
  - Annexes 10-13: Pictures of the packaging of Wong Lo Kat Herbal tea Extract, Instant Herbal Tea, Herbal Tea, Cane and Carrot Juice (instant) and the Honey Herbal (Instant).
- **Attachment 2:** Affidavit of a director of Multi Access Limited and Hung To (Holdings) Limited with the following Annexes:
- Annex 1: Assignment Agreement between Wong Lo Kat Ltd. and Multi Access Ltd. of 26/04/2005;
  - Annex 2: Agreement of 24/06/2016 confirming license Agreement between Multi Access Ltd. and Hung To (Holdings) Company Ltd. of 2005;
  - Annex 3: Agreement of 24/04/2016 confirming license Agreement between Multi Access Ltd. and Wong Lo Kat (Enterprises) Limited on 01/06/2011;
  - Annex 4: Memorandum of 24/06/2016 confirming sub-license Agreement between Hung To (Holdings) Company Ltd. and Guangdong Jiaduobao Drink & Food Co., Ltd. of 26/04/2005;
  - Annex 5: Export quantities of WONG LO KAT canned herbal tea between 2009 and 2015, inter alia for Europe;
  - Annexes 6-9: Invoices and shipping documents for the sales and shipping of WONG LO KAT branded herbal tea cans from 2010 to 2013 to Europe;
  - Annex 10: Packaging pictures of Wong Lo Kat Canned Herbal Tea.
- 7 The cancellation applicant in its reply states that in the parallel revocation proceedings the evidence submitted by the EUTM proprietor to prove the use of the earlier EUTM is clearly insufficient to prove the use in relation to all of the goods for which it is registered. The cancellation applicant thus concludes that the lack of proof explains the reason why the EUTM proprietor has filed the contested EUTM which is to circumvent the use requirement of the earlier EUTM. Moreover, the cancellation applicant points out that in the parallel revocation proceedings

No 13 316 C, the EUTM proprietor stated that it is only using the earlier EUTM in relation to some of the goods. The cancellation applicant repeats its previous arguments and insists that the contested EUTM in the present application was filed in bad faith and that the contested EUTM must be invalidated.

- 8 The EUTM proprietor in its rejoinder confirms and expands its previous arguments. It denies that the EUTM was a repeat filing or that it was filed in bad faith. Moreover, it argues that the cancellation applicant has failed to reach the burden of proof to prove that the EUTM proprietor filed the EUTM in bad faith and concludes that the application must fail. The EUTM proprietor also submits further evidence to prove the use of the earlier EUTM.
- 9 By decision of 31 August 2018 ('the contested decision'), the Cancellation Division upheld the declaration of invalidity. It gave, in particular, the following grounds for its decision:

#### *Admissibility*

- The EUTM proprietor argues that the cancellation applicant lacks the capacity to bring the present application. However, contrary to what the EUTM proprietor contends, Article 63(1)(a) EUTMR does not require the cancellation applicant to show an interest in bringing proceedings. According to Article 63(1)(a) EUTMR, any natural or legal person who under the terms of the law governing it has the capacity in its own name to sue and be sued can file a request for a declaration of invalidity based on Article 59(1)(b) EUTMR. Therefore, this argument must be rejected and the application is deemed to be admissible.

#### *Article 59(1)(b) EUTMR*

- Both parties claim to be the rightful owner of the rights to the WONG LO KAT brand. The EUTM proprietor is the owner of the earlier EUTM No 8 293 755 for the word mark WONG LO KAT identical with the contested EUTM and for identical goods. The cancellation applicant has also taken parallel revocation proceedings against the earlier EUTM of the EUTM proprietor for non-use. The cancellation applicant claims, *inter alia*, that the EUTM proprietor has filed the contested EUTM in bad faith to overcome the non-use of the earlier EUTM and that in the parallel revocation proceedings No 11 316 C the EUTM proprietor's use does not show use for all of the goods of the earlier EUTM, as acknowledged by the EUTM proprietor who does not even mention the goods for which no use has been submitted. The EUTM proprietor denies this argument and claims that it has shown extensive use and reputation of the earlier EUTM and as such the contested EUTM cannot be a repeat filing. Moreover, the EUTM proprietor argues that the contested EUTM was filed before the end of the grace period and as such the filing of the contested EUTM was not made in bad faith. It relies on the Cancellation Division decision of 21/03/2007, No 1 344 C in this respect.
- The EUTM proprietor filed the contested EUTM on 25 November 2014 which is identical with the earlier EUTM No 8 293 755 also registered for identical goods. The earlier EUTM was filed on 12 May 2009 and registered on

1 December 2009. Therefore, the grace period for the earlier EUTM ended on 1 December 2014. The contested EUTM was filed on 25 November 2014 which was only six days prior to the expiry of the grace period of the earlier EUTM.

- The Cancellation Division notes that no element has been added to the contested mark to modernise it, nor has the scope of goods been expanded to show an intention to move into a new business area. There is no business strategy for the repeat filing of this identical mark right before the end of the grace period as it adds nothing new to the EUTM proprietor's rights.
- The EUTM proprietor has submitted evidence to prove the use of the earlier mark. The earlier mark is registered for the same goods as the contested mark in the present application.
- The EUTM proprietor is not under any obligation to prove the use of the contested EUTM in the present application. However, as the EUTM proprietor has argued this point and submitted evidence of use, the Cancellation Division has examined this point. The EUTM proprietor states that it is only using the earlier mark for a small number of the goods for which the EUTM is registered and claims to have proven use for these goods but does not mention the remaining goods nor does it submit any evidence to show use of the remaining goods. Following an in-depth examination of the evidence submitted in the parallel revocation proceedings No. 13 316 C, which involves the same parties and the same evidence of use for the contested EUTM, the Cancellation Division deduces that the earlier EUTM is not being used for all the goods for which it is registered. There is no evidence submitted for most of the goods for which the earlier EUTM is registered. In the revocation proceedings No. 13 316 C, the evidence submitted has been found to show use only in relation to the following goods:

*Class 5: Chinese herbs;*

*Class 30: Tea and herbal tea related products;*

*Class 32: Herbal tea beverages; preparations for making beverages;*

- The same evidence has been submitted in the present case, and after an examination of the evidence on file in the present application, the Cancellation Division does not come to a different finding than that in No. 13 316 C, nor considers that the EUTM proprietor has shown use for any additional goods for which the EUTM is registered in this present case.
- The Cancellation Division concludes from the evidence submitted that the earlier EUTM was being put to use only in relation to a limited number of those goods as outlined above. Moreover, it concludes that the identical mark was filed only six days before the expiry of the grace period, and, as has been demonstrated from the evidence of use, it was filed for many goods for which no use was shown. The filing of this identical mark for identical goods makes no business sense as it does not provide the EUTM proprietor with any new or additional rights and the EUTM proprietor has not put forward any valid or legitimate reason as to why it needed this new filing for an identical mark.

- The Cancellation Division considers that the contested EUTM was filed in bad faith to circumvent the obligation of use of the earlier EUTM and to maintain rights over the sign for goods for which the EUTM proprietor was clearly not using the sign. The EUTM proprietor has denied this line of reasoning but has not provided any legitimate explanation or reason for this second filing, which does not provide it with any additional rights to those already held. Moreover, the Cancellation Division notes that the EUTM proprietor has used the contested EUTM as a basis for an opposition against the cancellation applicant's Benelux application, which is not subject to proof of use and is still within the grace period. The fact that the EUTM proprietor is using this EUTM to attack other marks for a wider spectrum of goods than those for which it is using the EUTM also points towards bad faith and the necessity to circumvent the loss of rights due to lack of use of the earlier EUTM.
- The Cancellation Division reminds that the Office is not bound by its previous decisions in reply to the EUTM proprietor's reference to the Cancellation Division decision of 21 March 2007, No 1 344 C. Even if previous decisions are to some extent factually similar to the present case, the outcome may not be the same. The decision in case No. 1 344 C can be distinguished from the present application in that in the said decision it concerned a case where the second filing had been done only a year after the first mark was filed thus at the beginning of the grace period. In the present application the filing was done only six days prior to the end of the grace period. Therefore, the situation in both cases is not the same and an analogous finding cannot be applied in this present application.
- The Cancellation Division also cites judgment of 13/12/2012, T-136/11, Pelikan, EU:T:2012:689, § 33-34, underlining that in cases where the EUTM proprietor owns more than one trade mark, the mere fact that the differences between the EUTM at issue and the previous EUTM are so insignificant as not to be noticeable to the average consumer cannot establish by itself that the contested EUTM is a mere repeat application made in bad faith. Further on, referring to paragraphs 50 and 51 of the same judgment, it states that the fact that the application of the contested EUTM is filed three months before expiry of the period of grace for the earlier EUTMs is not sufficient to counteract factors that show that the EUTM owner's intention was to file a modernised trade mark covering an updated list of services. Again, the judgment in the Pelikan case may be distinguished from the present application. In the Pelikan case the sign had actually been modernized and there was a valid reason for the updating and filing of a new mark. In the present application, as mentioned above, the filing has been for an identical sign and identical goods for which no use had been found for many of the goods for which it was registered and no legitimate reasons were put forward by the EUTM proprietor as to why it would need to file this identical mark.
- The Cancellation Division considers that the filing of the contested EUTM just before the expiry of the grace period of the earlier EUTM, for an identical sign and identical goods, which provide no additional rights or modernization of an earlier mark, and for goods for which the EUTM proprietor was clearly not using the earlier mark, shows bad faith at the time of filing of the contested EUTM. This filing was done to circumvent the possibility of the EUTM

proprietor losing the rights to the sign for goods for which the EUTM proprietor was not using the mark after the expiry of the grace period.

- The General Court in its judgment of 11/07/2013, T-321/10, Gruppo Salini, EU:T:2013:372, § 48 stated that a positive finding of bad faith at the time of filing of the contested EUTM could only lead to the invalidity of the EUTM in its entirety. The application must be upheld and the contested EUTM must be rejected in its entirety. As the application is successful in its entirety, the Cancellation Division will not examine the other arguments put forward by the cancellation applicant as to why there is bad faith, namely, that the EUTM proprietor had knowledge of the use of a similar mark for similar goods, as this examination will not affect the outcome of the present decision.
- 10 On 30 October 2018, the EUTM proprietor filed an appeal against the contested decision, requesting that the decision be entirely set aside. The statement of grounds of the appeal was received on 12 December 2018.
  - 11 On 31 January 2019, an extension request was requested and accepted on 1 February 2019.
  - 12 In its response received on 23 April 2019, the cancellation applicant requested that the appeal be dismissed.
  - 13 On 9 October 2019 a communication from the Rapporteur suspending the appeal was sent to the parties. The reason was the existence of a similar cancellation case R 1849/2017-2 MONOPOLY appealed to the General Court. Consequently, the appeal was suspended until said case became final.
  - 14 On 18 January 2022, the parties were informed of the resumption of the present proceedings. Later on this year, in view of the Cancellation applicant's arguments and evidence which could be illustrative of a bad faith filing and in view of the legally binding nature of the findings of the above cited MONOPOLY judgment of 21/04/2021, T-663/19, EU:T:2021:211, the Rapporteur in the present case invited the EUTM proprietor by communication to explain the reasons and the purpose of the filing of the contested EUTM. No submissions were sent.

### **Submissions and arguments of the parties**

- 15 The EUTM proprietor claims that the contested mark should be upheld for a number of goods, at least in Class 5 for *Chinese herbs, also for medicinal purposes*, in Class 30 for *Tea and herbal tea related products* and in Class 32 for *Tea and herbal tea beverages; preparations for making beverages*.
- 16 The EUTM proprietor refers to its previous arguments and adds in essence the following:
  - There is no general rule that repetitive filing is done in bad faith. There must be additional objective circumstances that indicate dishonest behavior on behalf of the trade mark proprietor. In the case at hand, these objective circumstances are lacking.



- The EUTM proprietor filed the application for the contested mark before the expiration of the grace period of the earlier mark. The fact that it filed an identical sign for identical goods alone is not sufficient to establish bad faith on behalf of the cancellation applicant of the trade mark, as there were no dishonest intentions.
  - The grace period of the earlier mark was not circumvented since it has been in use for numerous goods in Classes 5, 30 and 32, that is to say for more goods than the contested decision assumed in the parallel revocation proceedings.
  - Since the earlier mark was being genuinely in use and the grace period of the earlier mark had not yet expired, the cancellation applicant has failed to prove bad faith at the time of the filing of the contested EUTM.
- 17 The arguments raised in reply to the appeal by the cancellation applicant may be summarised as follows:
- The cancellation applicant fully agrees with the Cancellation Division’s findings in its Decision No. 3 317 C, which should be fully upheld.
  - As already demonstrated by the cancellation applicant in first instance, the facts at hand show without doubt that the EUTM proprietor acted in bad faith.
  - The EUTM proprietor’s arguments in which it tries to prove genuine use of the earlier EUTM No 8 293 755 are not relevant in the case at hand. The earlier EUTM No 8 293 755 was not genuinely in use for all the goods it was registered.
  - Contrary to the EUTM proprietor’s argument, the full invalidity was justified in the contested decision and must be maintained.

### **Reasons**

- 18 All references made in this decision should be seen as references to the EUTMR (EU) No 2017/1001 (OJ 2017 L 154, p. 1), codifying Regulation (EC) No 207/2009 as amended, unless specifically stated otherwise in this decision.

#### *Admissibility of the appeal*

- 19 The appeal complies with Articles 66, 67 and Article 68(1) EUTMR. It is admissible.

#### *Bad faith – Article 59(1) (b) EUTMR*

- 20 In accordance with Article 59(1)(b) EUTMR, an EU trade mark must be declared invalid where the cancellation applicant for registration was acting in bad faith at the time of filing the application for the trade mark.
- 21 The concept of ‘bad faith’ referred to in Article 59(1)(b) EUTMR is not defined, delimited or even described in any way in the legislation (26/02/2015, T-257/11, COLOURBLIND, EU:T:2015:115, § 64). Its meaning and scope must be

determined by considering its usual meaning in everyday language, whilst also taking into account the context in which it occurs and the objectives pursued by EUTMR (12/09/2019, C-104/18P, *STYLO & KOTON* (fig.), EU:C:2019:724, § 43, 05/07/2016, T-167/15, *NEUSCHWANSTEIN*, EU:T:2016:391, § 51 and the case-law cited).

- 22 The General Court has provided a concise explanation of concept and application of bad faith in particular in its paragraphs 32 to 44 of its judgement dated 21/04/2021, T-663/19, *MONOPOLY*, EU:T:2021:211 which the Board will reproduce below:

32 While, in accordance with its usual meaning in everyday language, the concept of ‘bad faith’ presupposes the presence of a dishonest state of mind or intention, that concept must also be understood in the context of trade mark law, which is that of the course of trade. In that regard, Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), Regulation No 207/2009 and Regulation 2017/1001, which were adopted successively, have the same objective, namely the establishment and functioning of the internal market. The rules on the EU trade mark are aimed, in particular, at contributing to the system of undistorted competition in the European Union, in which each undertaking must, in order to attract and retain customers through the quality of its goods or services, be able to have registered as trade marks signs which enable the consumer, without any possibility of confusion, to distinguish those goods or services from others which have a different origin (12/09/2019, C-104/18P, *STYLO & KOTON* (fig.), EU:C:2019:724, § 45 and the case-law cited).

33 Consequently, the absolute ground for invalidity referred to in Article 52(1)(b) of Regulation No 207/2009 [now Article 59(1)(b) EUTMR] applies where it is apparent from relevant and consistent indicia that the proprietor of an EU trade mark has filed the application for registration of that mark not with the aim of engaging fairly in competition but with the intention of undermining, in a manner inconsistent with honest practices, the interests of third parties, or with the intention of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark, in particular the essential function of indicating origin (12/09/2019, C-104/18P, *STYLO & KOTON* (fig.), EU:C:2019:724, § 46).

34 Furthermore, it must be added that, in the judgment of 11/06/2009, C-529/07, *Lindt Goldhase*, EU:C:2009:361, the Court of Justice provided some clarification regarding the way in which the concept of bad faith, as referred to in Article 52(1)(b) of Regulation No 207/2009 [now Article 59(1)(b) EUTMR], should be interpreted.

35 According to the Court of Justice, in order to determine whether the trade mark applicant is acting in bad faith, within the meaning of Article 52(1)(b) of Regulation No 207/2009 [now Article 59(1)(b) EUTMR], account must be taken of all the relevant factors specific to the particular case which obtained at the time of filing the application for registration of a sign as an EU trade mark, in particular: (i) the fact that the applicant knows or must know that a third party is using, in at least one Member State, an identical or similar sign for an identical or similar product or service capable of being confused with the sign for which registration is sought; (ii) the applicant’s intention to prevent that third party from continuing to use such a sign; and (iii) the degree of legal protection enjoyed by the third party’s sign and by the sign for which registration is sought (11/06/2009, C-529/07, *Lindt Goldhase*, EU:C:2009:361, § 53).

36 That said, it is apparent from the wording used by the Court of Justice in the judgment of 11/06/2009, C-529/07, *Lindt Goldhase*, EU:C:2009:361 that the factors listed in it are

only examples drawn from a number of factors which can be taken into account in order to decide whether an applicant for registration was acting in bad faith at the time when the trade mark application was filed (26/02/2015, T-257/11, COLOURBLIND, EU:T:2015:115, § 67 and the case-law cited). In that judgment, the Court of Justice confined itself to answering the questions of the national court which related, in essence, to the question of whether such factors were relevant (11/06/2009, C-529/07, Lindt Goldhase, EU:C:2009:361, § 22 and 38). Consequently, the fact that any one of those factors is not present does not necessarily preclude, depending on the particular circumstances of the case, a finding that the trade mark applicant acted in bad faith (07/07/2016, T-82/14, LUCEO, EU:T:2016:396, § 147).

37 In that regard, it should be noted that, in point 60 of her Opinion in *Chocoladefabriken Lindt & Sprüngli* (C-529/07, EU:C:2009:148), Advocate General Sharpston pointed out that the concept of bad faith, within the meaning of Article 52(1)(b) of Regulation No 207/2009 [now Article 59(1)(b) EUTMR], cannot be confined to a limited category of specific circumstances. The public interest objective of that provision, which is that of preventing trade mark registrations that are abusive or contrary to honest commercial and business practices, would be compromised if bad faith could be established only in the circumstances exhaustively listed in the judgment of 11/06/2009, C-529/07, *Lindt Goldhase*, EU:C:2009:361 (03/06/2010, C-569/08, &R&E&I&F&E&N&, EU:C:2010:311, § 37).

38 Accordingly, it is settled case-law that, in the context of the overall analysis undertaken pursuant to Article 52(1)(b) of Regulation No 207/2009 [now Article 59(1)(b) EUTMR], account may also be taken of the origin of the contested sign and its use since its creation, the commercial logic underlying the filing of the application for registration of that sign as an EU trade mark, and the chronology of events leading up to that filing (26/02/2015, T-257/11, COLOURBLIND, EU:T:2015:115, § 68 and the case-law cited).

39 Consideration must also be given to the trade mark applicant's intention at the time when he or she filed the application for registration (11/06/2009, C-529/07, *Lindt Goldhase*, EU:C:2009:361, § 41).

40 In that regard, it has been pointed out that the trade mark applicant's intention at the relevant time is a subjective factor which must be determined by reference to the objective circumstances of the particular case (11/06/2009, C-529/07, *Lindt Goldhase*, EU:C:2009:361, § 42).

41 The concept of bad faith thus relates to a subjective motivation on the part of the trade mark applicant, namely a dishonest intention or other sinister motive. It involves conduct which departs from accepted principles of ethical behaviour or honest commercial and business practices (07/07/2016, T-82/14, LUCEO, EU:T:2016:396, § 28).

42 It is up to the applicant for a declaration of invalidity who intends to rely on Article 52(1)(b) of Regulation No 207/2009 [now Article 59(1)(b) EUTMR] to prove the circumstances which make it possible to conclude that an application for registration of an EU trade mark was filed in bad faith, the good faith of the trade mark applicant being presumed until proven otherwise (08/03/2017, T-23/16, *Formata* (fig.), EU:T:2017:149, § 45 and the case-law cited).

43 Where EUIPO finds that the objective circumstances of the particular case which were relied on by the applicant for a declaration of invalidity may lead to the rebuttal of the presumption of good faith which the proprietor of the mark at issue enjoys when he or she files the application for registration of that mark, it is for the proprietor of that mark to

provide plausible explanations regarding the objectives and commercial logic pursued by the application for registration of that mark.

44 The proprietor of the trade mark at issue is best placed to provide EUIPO with information regarding his or her intentions at the time of applying for registration of that mark and to provide it with evidence capable of convincing it that, in spite of the existence of objective circumstances, those intentions were legitimate (05/05/2017, T-132/16, VENMO, EU:T:2017:316, § 51-59; 09/11/2016, T-579/14, DEVICE OF A PATTERN (fig.), EU:T:2016:650, § 136).

- 23 In order to examine the merits of the arguments put forward by the cancellation applicant, it is necessary to refer to the principles which govern EU trade mark law and to the rule relating to proof of use of those marks (21/04/2021, T-663/19, MONOPOLY, EU:T:2021:211, § 49).
- 24 Although it is clear from Article 9(1) EUTMR that the registration of an EU trade mark confers on the proprietor exclusive rights therein, it follows from recital 24 of EUTMR that there is no justification for protecting EU trade marks or, as against them, any trade mark which has been registered before them, except where the trade marks are actually used. An EU trade mark which is not used could obstruct competition by limiting the range of signs which can be registered as trade marks by others and by denying competitors the opportunity to use that trade mark or a similar one when putting onto the internal market goods or services which are identical or similar to those covered by the mark in question. Consequently, non-use of an EU trade mark also risks restricting the free movement of goods and services (19/12/2012, C-149/11, Onel / Omel, EU:C:2012:816, § 32, 21/04/2021, T-663/19, MONOPOLY, EU:T:2021:211, § 50).
- 25 As regards genuine use of an EU trade mark, it must be borne in mind that Article 18(1) EUTMR provides that ‘if, within a period of five years following registration, the proprietor has not put the EU trade mark to genuine use in the Union in connection with the goods or services in respect of which it is registered, or if such use has been suspended during an uninterrupted period of five years, the EU trade mark shall be subject to the sanctions provided for in this Regulation, unless there are proper reasons for non-use’ (21/04/2021, T-663/19, MONOPOLY, EU:T:2021:211, § 51).
- 26 Furthermore, Article 58(1)(a) EUTMR provides that the rights of the proprietor of the EU trade mark shall be declared to be revoked on application to the Office or on the basis of a counterclaim in infringement proceedings, if, within a continuous period of five years, the trade mark has not been put to genuine use in the Union in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use (21/04/2021, T-663/19, MONOPOLY, EU:T:2021:211, § 52).
- 27 In that regard, Article 58(2) EUTMR provides that where the grounds for revocation of rights exist in respect of only some of the goods or services for which the EU trade mark is registered, the rights of the proprietor shall be declared to be revoked in respect of those goods or services only (21/04/2021, T-663/19, MONOPOLY, EU:T:2021:211, § 53).

- 28 It therefore follows from the principles governing EU trade mark law and from the rules relating to proof of use that, although an exclusive right is conferred on the proprietor of a mark, that exclusive right can be protected only if, on expiry of the five-year grace period, that proprietor is able to prove genuine use of its mark. Such a system balances out the legitimate interests of the trade mark proprietor, on the one hand, and those of its competitors, on the other hand (21/04/2021, T-663/19, MONOPOLY, EU:T:2021:211, § 55).
- 29 Although repeat filings of a mark are not prohibited per se, the fact remains that such a filing which is carried out in order to avoid the consequences entailed by non-use of earlier marks may constitute a relevant factor which is capable of establishing bad faith on the part of the person who filed that mark (21/04/2021, T-663/19, MONOPOLY, EU:T:2021:211, § 57; 13/12/2012, T-136/11, Pelikan, EU:T:2012:689, § 43).
- 30 There is no provision in the legislation relating to EU trade marks which prohibits the re-filing of an application for registration of a trade mark and that, consequently, such a filing cannot, in itself, establish that there was bad faith on the part of the trade mark applicant, unless it is coupled with other relevant evidence which is put forward by the applicant for a declaration of invalidity or EUIPO (21/04/2021, T-663/19, MONOPOLY, EU:T:2021:211, § 70).
- 31 However, repetitive conduct can be an indication of bad faith if it reveals an intention contrary to acceptable commercial behaviour, for example, the intention of circumventing the registration system. Where the EUTM proprietor makes repeated applications for the same mark with the intention of avoiding the consequences of revocation for non-use of the earlier EUTM, whether wholly or in part, it is acting in bad faith (13/12/2012, T-136/11, Pelikan, EU:T:2012:689, § 27).
- 32 In this context and taking into account the above, the cancellation applicant had to show that the alleged bad faith existed at the time of filing of the contested EUTM, namely on 25 November 2014.

*The fact of the case*

- 33 The EUTM proprietor filed and registered a word trade mark WONG LO KAT No 8 293 755 filed on 12/05/2009 and registered on 1 December 2009 for the following goods:

*Class 5: Chinese medicine and herbs; pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides;*

*Class 30: Tea or herbal tea related products; coffee, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder salt, mustard; vinegar, sauces (condiments); spices; ice;*

*Class 32: Beverages; preparations for making beverages; beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices syrups and other preparations for making beverages.*

34 Therefore, the end of the five years grace period as mentioned in paragraph 32 above for the earlier EUTM No 8 293 755 ended on 1 December 2014.

35 The EUTM proprietor filed the contested word EUTM WONG LO KAT, for the same list of goods as those indicated above in paragraph 33, on 25/11/2014, namely six days prior to the expiry of the grace period of the earlier EUTM. This means that at the time of the filing of the contested EUTM, the designation of the goods was identical.

36 In parallel to the present case, the cancellation applicant filed revocation proceedings against the earlier EUTM No 8 293 755 of the EUTM proprietor for non-use. In its decision of 16/11/2019 R 2106/2018-2, Wong lo kat, the Second Board partly confirmed the decision No 13 316 C and concluded that genuine use had been established in respect of certain goods only, namely:

*Class 5: Chinese herbs, including those for medical purposes;*

*Class 30: Tea and herbal tea related products; tea and herbal tea beverages;*

*Class 32: Preparations for making non-alcoholic beverages.*

37 Therefore, the EUTM proprietor has shown only partial use of the earlier EUTM. As explained by the Cancellation Division, the contested EUTM was not subject to proof of use at the time of the filing of the present proceedings.

38 In the present case, it is appropriate to examine whether the contested EUTM, which covers at least the goods which are mentioned in paragraph 33 above, is a repeat filing of the EUTM proprietor's earlier EUTM which could amount to a filing in bad faith, should the circumstances of the case indicate such behaviour. What holds true is that the signs are identical and the goods of the earlier EUTM were identical at the time of the filing of the contested mark and in any event, are all included in the contested EUTM following the appeal decision in the revocation proceedings cited above.

*Assessment of bad faith*

39 As previously mentioned, the concept of bad faith stated in Article 59(1)(b) EUTMR leans mainly on the interpretation of case law. The General Court and Court of Justice had already cleared that in the context of trade mark law, bad faith is defined as 'a conduct which departs from accepted principles of ethical behaviour or honest commercial and business practices (11/06/2009, C-529/07, Lindt Goldhase, EU:C:2009:361, § 23, 23/05/2019, T-3/18 & T-4/18, ANN TAYLOR / ANNTAYLOR et al., EU:T:2019:357, § 31; 07/07/2016, T-82/14, LUCEO, EU:T:2016:396, §28).

40 As previously pointed out, the alleged bad faith must be shown to have existed at the time when the application for registration of the contested EUTM was filed, namely on 25 November 2014 (29/06/2017, T-343/14, CIPRIANI / CIPRIANI,

EU:T:2017:458, § 31). Indeed, the question is whether the EUTM proprietor acted in bad faith when it filed the application for registration of the contested mark on the ground that the application was a repeat filing of the earlier mark and was aimed at circumventing the obligation to prove genuine use of its mark (by analogy, 21/04/2021, T-663/19, MONOPOLY, EU:T:2021:211, § 10).

- 41 Recent decisions of the Court of Justice provided additional criteria on the said concept (12/09/2019, C-104/18P, STYLO & KOTON (fig.), EU:C:2019:724, § 46; 29/01/2020, C-371/08, SKY, EU:C:2020:45 §75; MONOPOLY, EU:T:2021:211, § 33) by specifying that Article 59(1)(b) EUTMR applies where it is apparent from relevant and consistent indicia that the proprietor of an EU trade mark has filed the application for registration of that mark not with the aim of engaging fairly in competition but with the intention of undermining, in a manner inconsistent with honest practices, the interests of third parties, or with the intention of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark, in particular the essential function of indicating origin.
- 42 In the context of the overall analysis undertaken pursuant to Article 59(1)(b) EUTMR, account may also be taken of the origin of the contested sign and its use since its creation, the commercial logic underlying the filing of the application for registration of that sign as an EU trade mark, and the chronology of events leading up to that filing (05/05/2017, T-132/16, VENMO, EU:T:2017:316, § 45 and the case-law cited; 13/12/2012, T-136/11, Pelikan, EU:T:2012:689, § 43). The Board will assess these indicative factors in relation to the circumstances of the present case.
- 43 **Firstly**, and further to the above non exhaustive list of factors, as to the origin of the creation of the contested mark, from the outset, the Board notes that the majority of evidence submitted by the parties are marked ‘confidential’ and relate to commercial agreements of various natures relating to EU or non-EU territories (licence, assignment, distribution agreements) between the parties and/or their predecessors in title including an agreement on a geographical split in the commercialization of the products sold under the trade mark in question. Both parties seem to be disputing the ownership of the trade mark before various jurisdictions. The Board also understands that this mark has some historical origins in China.
- 44 **Secondly**, as to the use since its creation, the EUTM proprietor argued that the mark, which is claimed to be owned historically by the proprietor’s family, was in use albeit partially, and showed evidence of use regarding the earlier mark in the parallel revocation proceedings for non-use (R 2106/2018-2 of 16/10/2019). The assessment of the proof of use showed that the EUTM proprietor was a priori not in a position to show genuine use of all the designated goods at the time of the filing of the contested mark, which occurred six days before the expiry of the grace period. In the Board’s opinion, the fact that the earlier mark was in use in relation to only a reduce list of goods and that its life was artificially extended through the filing of the contested mark for the same goods as originally applied for is an objective indication that the filing was a way to distort competition.

- 45 Indeed, an EU trade mark which is not used could obstruct competition by limiting the range of signs which can be registered as trade marks by others and by denying competitors the opportunity to use that trade mark or a similar one when putting onto the internal market goods or services which are identical or similar to those covered by the mark in question. Consequently, non-use of an EU trade mark also risks restricting the free movement of goods and services (19/12/2012, C-149/11, *Onel / Omel*, EU:C:2012:816, § 32; 21/04/2021, T-663/19, *MONOPOLY*, EU:T:2021:211, §50 in fine).
- 46 **Thirdly**, no commercial logic underlying the filing of the contested mark transpires from the case. As expressed before, where the Board finds that the objective circumstances of the particular case relied on by the applicant for a declaration of invalidity may lead to the rebuttal of the presumption of good faith applying to the application for registration of the mark at issue, it is for the proprietor thereof to provide plausible explanations on the objectives and commercial logic pursued by the application for registration of that mark (by analogy, 21/04/2021, T-663/19, *MONOPOLY*, EU:T:2021:211, §43).
- 47 Although the onus of evidence of bad faith leans on the Cancellation applicant, the General Court explained that the EUTM proprietor is best placed to provide the Board with information on his intentions at the time of applying for registration of that mark and in order to provide it with evidence capable of convincing it that, in spite of the existence of objective circumstances, those intentions were legitimate (by analogy, 05/05/2017, T-132/16, *VENMO*, EU:T:2017:316, § 51-59; 21/04/2021, T-663/19, *MONOPOLY*, EU:T:2021:211, §44 and case law cited).
- 48 As a way of examples, the EUTM proprietor could have demonstrated, among other, that the business development justified the need for broader specification of goods or services, or that based on a new business communication strategy the sign had to evolve into a modernized version, etc. As the Cancellation Division correctly held, an EUTM proprietor is highly likely to register an ‘updated’ version of a prior registered trade mark for example, to meet evolving market requirements. The evolution over time of a logo intended as the graphic representation of a mark constitutes normal business practice constitutes normal business practice (13/12/2012, T-136/11, *Pelikan*, EU:T:2012:689, § 36).
- 49 However, this is not the case in the present matter given that the earlier mark and the contested mark are identical in all points.
- 50 The EUTM proprietor who was specifically invited by communication dated 21 June 2022 to provide information, reasons or purposes of the filing in the light of the recent order of the Court of Justice (01/12/2021, C-373/21, *MONOPOLY*, EU:C:2021:983, the appeal against the General Court’s judgement of 21/04/2021, T-663/19, *MONOPOLY* was not allowed to proceed thus rendering the judgement final) did not provide any information whatsoever explaining the filing strategy of the contested mark and its commercial logic. To the contrary, the EUTM proprietor has remained silent throughout the cancellation and appeal proceedings to explain the commercial logic at the time of filing of the contested EUTM.
- 51 **Lastly**, in reference to the factors that may be taken into account in the overall analysis undertaken under Article 59(1)(b) EUTMR (see case law cited in



paragraph 42 above), regarding the chronology of events leading up to the filing of the contested mark, it must be stressed that the EUTM proprietor filed the application for registration of the contested mark six days before the expiry of the five-year grace period relating to the use of the earlier mark. Indeed, the filing of the contested mark took place on a date very close to the one on which the five-year grace period in respect of the earlier mark expired, extending the non-use grace period by another five years at least, namely at least the same duration of the standard five-year grace period (by analogy and *a contrario*, 21/04/2021, T-663/19, MONOPOLY, EU:T:2021:211, § 87-89).

- 52 Although at the time of filing the contested mark the earlier mark was not under obligation of proving use for falling short of six days before the commencement of such obligation, and although the contested mark is not under obligation of proof of use, the mere existence of the contested mark is a vector allowing the artificial prolongation of the earlier mark thus blocking competition.
- 53 Indeed, the Board considers that in practice, the five-year grace period was created to allow the EUTM proprietor to safely organized the commercial launching of its trade mark and, if successful, the economic growth attached to the exploitation of an indefinite monopoly on a sign for designated goods or services - so long as the mark is duly renewed. Further to that grace period, the EUTM proprietor must stand in a position to prove genuine use at the risk of seeing its right unenforceable or revoked if this obligation is not satisfied. In view of these considerations, by filing the same mark (the same sign, the same goods) for the same territorial scope every five years, the trade mark proprietor would thus unfairly benefit from a prolonged, i.e. uninterrupted grace period and its mark would never fall under the obligation of proving genuine use. As a consequence, this filing for the same EU trade mark registration avoids the grace period to lapse thus extending artificially the life of the same sign for the same goods as originally designated in the early mark therefore obtaining the desired advantage of not have to prove use the mark.
- 54 The Board sees in the date of filing of the contested mark within the last days of the five-year grace period of the earlier mark an indication that the EUTM proprietor purposefully intended to perpetuate the earlier mark by avoiding, or, more precisely, circumventing the obligation to prove genuine use of its mark. At least, the EUTM proprietor has not given any explanations why this was not the case.
- 55 The Board understands that the EUTM proprietor submitted the same evidence of proof of use in the present case as those provided in relation to the parallel revocation proceedings No. 13 317 C, mainly to show that the scope of use of the earlier mark was broader than what assessed the Cancellation Division in the said revocation proceedings.
- 56 In any event, the argument to reexamine the evidence is out of scope of the present proceedings which is based on bad faith under Article 59(1)(b) EUTMR and do not extend to a request for declaration of revocation on the ground of non-use pursuant to Article 58 EUTMR. Therefore, in the present case, the evidence is only supporting material to the parties' claims. Besides, the EUTM proprietor already had an opportunity to appeal on this matter within the context of the parallel proceedings No 13 316 C. In any event, the Cancellation Division in the present

case examined the evidence and came to the same conclusion as in the parallel revocation proceedings. It could not conclude to a broader use of the earlier mark in relation to additional goods.

- 57 Moreover, the Board is of the opinion that the partial revocation of the earlier mark as a result of the revocation proceedings (16/10/2019, R 2106/2018-2, Wong lo kat) does not influence the present reasoning other than by showing that the earlier mark is not in use in relation to all the goods it designates thus reinforcing the need for the EUTM proprietor to gain extra time and start using the mark in relation to all the goods in order to secure a market position. This dishonest practice results in a restriction of the free movement of goods and services in the internal market.
- 58 Furthermore, the EUTM proprietor claims that the contested mark should be upheld for the goods for which genuine use has been proven. However, firstly, although the Board agrees with the EUTM proprietor that regarding the alleged repetitive filing no ‘all-or-nothing principles’ applied, it is paramount to take into account the circumstances of each case. Cancellation proceedings based on bad faith are not confined to a limited category of specific circumstances as mentioned before (21/04/2021, T-663/19, MONOPOLY, EU:T:2021:211, § 37). At the time of the filing of the contested goods, the EUTM proprietor designated the same goods in both the earlier mark and the contested mark. This factor is to be taken into account in the circumstances of the case. In the present matter, the fact that the earlier mark and the contested mark designate the same goods is an objective circumstance to be considered.
- 59 For the sake of clarity, the Board underlines that the EUTM proprietor’s claim mentioned above that the contested mark should be upheld for a limited number of goods does not amount to a request for partial surrender pursuant to Article 57 EUTMR as it does not fulfil the requirements under Article 17(7) EUTMDR and under Article 15 EUTMIR. Instead, the EUTM proprietor argued that the re-filing of the contested mark was not an artificial extension of the grace period of the earlier mark and the contested mark should be held at least in relation to the goods for which genuine use was shown.
- 60 The fact that ultimately the EUTM proprietor could only show genuine use of the earlier for part of the goods participates to the circumstance of the case and indicates that the EUTM proprietor’s filing strategy was used with the intention to circumvent the obligation to prove genuine use of the mark. This re-filing was done to circumvent the possibility of the EUTM proprietor losing the rights to the sign for goods for which the EUTM proprietor was not using the mark after the expiry of the grace period. The EUTM proprietor knew that it could not demonstrate use for all the goods, but only for part of them.
- 61 Consequently, it must be held that not only is the filing strategy practised by the EUTM proprietor, which seeks to circumvent the rule relating to proof of use, inconsistent with the objectives pursued by Regulation No 207/2009, but it calls to mind a case of an abuse of law, which is characterised by the fact that, first, despite formal observance of the conditions laid down by the EU rules, the purpose of those rules has not been achieved, and that, secondly, there is an intention to obtain an advantage from those rules by creating artificially the conditions laid down for

obtaining it (by analogy 21/04/2021, T-663/19, MONOPOLY, EU:T:2021:211, § 72).

- 62 In addition, the EUTM proprietor claimed in its appeal statement of grounds that the Benelux mark WONGLO filed by the cancellation applicant was applied for on 29 October 2015 thus after the filing of the EU contested mark and considers that there is no indication that the contested EUTM was filed in order to serve as a basis for the opposition proceedings before the Benelux IP Office. Nevertheless, even if the purpose of the re-filing was not precisely to be the basis of an opposition, the Board notes that the result amounts to a desirable consequence for a trade mark owner, namely to not have to submit proof of use of its opposing trade mark. To this end, the EUTM proprietor benefits from the re-filing by circumventing the proof of genuine use of its EU trade mark (by analogy, 21/04/2021, T-663/19, MONOPOLY, EU:T:2021:211, § 59 and § 74).
- 63 The Board reiterates that the mere re-filing of a trade mark does not amount to bad faith per se. However, such re-filing with the intention of circumventing the consequences of non-use does, especially in the absence of any explanation or commercial logic behind it, taken into account in particular the identity of the sign, the specification of the goods, the timing of such filing and the circumstances around the case such as the existence of precontractual relationships between the parties and the knowledge of the Cancellation applicant's commercial interests.
- 64 In the present case, the Cancellation Division was correct in concluding that in view of the circumstances of the case, the EUTM proprietor intended to avoid the consequences entailed by total or partial revocation of the earlier mark for non-use. Such conduct cannot be held to be lawful conduct, but must be held to be contrary to the objectives of the EUTMR, to the principles governing EU trade mark law and to the rule relating to proof of use, as referred to in paragraphs 23 to 29 above (by analogy 21/04/2021, T-663/19, MONOPOLY, EU:T:2021:211, § 70).
- 65 The EUTM proprietor did not contest the Cancellation Division as to other arguments put forward by the cancellation applicant. The Cancellation Division did not examine these other arguments therefore the Board does not see any reasons to depart from that conclusion, given that the cancellation application is successful in its entirety.
- 66 The above circumstances show that the EUTM proprietor's intention was indeed to take advantage of the EU trade mark system and circumventing the obligation of providing genuine use of its earlier mark through the filing of the contested mark with no business logic behind it. This conclusion is corroborated by the EUTM proprietor's failure to demonstrate genuine use of the earlier EUTM in relation to all the goods in the cancellation proceedings No 13 316C. Consequently, the EUTM proprietor was acting in bad faith by blocking the competition preventing others access to the market knowing that it could not proof the use of some goods yet re-filing another identical sign for the same goods which are not in use.
- 67 The Board cannot see any reasons in the re-filing other than the dishonest intention to perpetuate the monopoly on the mark by circumventing the obligation of use of the earlier mark thus obstructing competition by limiting the range of signs which can be registered as trade marks by others and by denying competitors the

opportunity to use that trade mark or a similar one when putting onto the internal market goods or services which are identical or similar to those covered by the mark in question (see case law cited above). Besides, the EUTM proprietor was given ample opportunities to explain the commercial logic of the filing of the contested EUTM but remained silent.

- 68 Therefore, the application of the contested EUTM, insofar as it included the goods already covered by the earlier registration, namely those mentioned in paragraph 11 above, was made in bad faith.

### *Conclusion*

- 69 Consequently, in application of Article 62(2) EUTMR, the EU trade mark shall be deemed not to have had, as from the outset, the effects specified in the EUTMR, to the extent that the trade mark has been declared invalid.
- 70 The appeal must therefore be dismissed and the contested decision confirmed to the extent that it upheld the application for a declaration of invalidity for all the goods.

### **Costs**

- 71 Pursuant to Article 109(1) EUTMR and Article 18 EUTMIR, the EUTM proprietor, as the losing party, must bear the cancellation applicant's costs of the cancellation and appeal proceedings
- 72 As to the appeal proceedings, these consist of the cancellation applicant's costs of professional representation of EUR 550.
- 73 As to the cancellation proceedings, the Cancellation Division ordered the EUTM proprietor to bear the cancellation applicant's representation costs which were fixed at EUR 450 and the cancellation fee of EUR 630. This decision remains unaffected. The total amount for both proceedings is, therefore, EUR 1 630.

**Order**

On those grounds,

THE BOARD

hereby:

- 1. Dismisses the appeal;**
- 2. Orders the EUTM proprietor to bear the cancellation applicant's costs in the appeal proceedings, which are fixed at EUR 550. The total amount to be paid by the EUTM proprietor in the appeal and cancellation proceedings is EUR 1 630.**

Signed

S. Stürmann

Signed

S. Martin

Signed

H. Salmi

Registrar:

Signed

p.o. N. Granada  
Carpenter

