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Hello, Goodbye.
Apple Corps vince contro Beetles.



Apple Corps Limited, la storica società fondata dai **Beatles** nel 1968 per gestire i diritti legati alla band e alle sue attività commerciali, ha vinto la causa contro Guangxi Liu, ottenendo il rifiuto totale della registrazione del marchio UE **Beetles**.

La decisione si basa su tre punti chiave:

- **Somiglianza** dei marchi: Beetles è troppo simile a Beatles, marchio iconico con una reputazione straordinaria in Europa.
- Rischio di **vantaggio ingiusto**: sfruttando la fama dei Beatles Beetles avrebbe potuto ottenere benefici commerciali.
- **Assenza di giustificazione**: il richiedente non ha dimostrato un motivo valido per l'uso del marchio Beetles.

Di conseguenza, la domanda di marchio è stata respinta e il richiedente dovrà pagare le spese legali.
Come cantavano i Fab Four, "You Can't Do That"!

OPPOSITION No B 3 193 035

Apple Corps Limited, 27 Ovington Square, SW3 1LJ London, United Kingdom (opponent), represented by Dehns, Theresienstr. 6-8, 80333 Munich, Germany (professional representative)

a g a i n s t

Guangxi Liu, Room 202, Unit 1, Building 33, No. 108, Qingyi Road, Fenyi Town, Fenyi County, Xinyu City, Jiangxi, 338000 Xinyu, China (applicant), represented by GLP S.R.L. (Sede di Milano), Via Victor Hugo 2, 20122 Milano, Italy (professional representative).
On 20/01/2025, the Opposition Division takes the following

DECISION:

1. Opposition No B 3 193 035 is upheld for all the contested goods and services.

2. European Union trade mark application No 18 673 044 is rejected in its entirety.

3. The applicant bears the costs, fixed at EUR 620.

REASONS

On 04/04/2023, the opponent filed an opposition against all the goods and services (Classes 2, 3, 4, 8, 9, 11, 14, 16, 18, 20, 21, 24, 25, 26, 27, 35 and 44) of European Union trade mark application (EUTM) No 18 673 044 ‘Beetles’ (word mark). The opposition is based on, inter alia, EUTM registration No 219 048 ‘BEATLES’. The opponent invoked Article 8(1)(b), Article 8(4) and Article 8(5) EUTMR.

REPUTATION — ARTICLE 8(5) EUTMR

In relation to Article 8(5) EUTMR, the opponent invoked earlier EUTM registration No 219 048 and German trade mark registration No 2072741 For reasons of procedural economy, the Opposition Division will first examine the opposition in relation to earlier EUTM registration No 219 048. According to Article 8(5) EUTMR, upon opposition by the proprietor of a registered earlier trade mark within the meaning of Article 8(2) EUTMR, the contested trade mark will not be registered where it is identical with, or similar to, an earlier trade mark, irrespective of whether the goods or services for which it is applied are identical with, similar to or not similar to those for which the earlier trade mark is registered, where, in the case of an earlier European Union trade mark, the trade mark has a reputation in the Union or, in the case of an earlier national trade mark, the trade mark has a reputation in the Member State concerned and where the use without due cause of the contested trade mark would take

unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.
Therefore, the grounds for refusal of Article 8(5) EUTMR are only applicable when the following conditions are met.

- The signs must be either identical or similar. The opponent's trade mark must have a
- reputation. The reputation must also be prior to the filing of the contested trade mark; it must exist in the territory concerned and for the goods and/or services on which the opposition is based. Risk of injury: use of the contested trade mark would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.
-

The abovementioned requirements are cumulative and, therefore, the absence of any one of them will lead to the rejection of the opposition under Article 8(5) EUTMR (16/12/2010, T-357/08, BOTOCYL / BOTOX, EU:T:2010:529, § 41; 16/12/2010, T-345/08, BOTOLIST / BOTOX, EU:T:2010:529, § 41). However, the fulfilment of all the abovementioned conditions may not be sufficient. The opposition may still fail if the applicant establishes due cause for the use of the contested trade mark. In the present case, the applicant did not claim to have due cause for using the contested mark. Therefore, in the absence of any indications to the contrary, it must be assumed that no due cause exists.

a) Reputation of the earlier trade mark

Reputation implies a knowledge threshold that is reached only when the earlier mark is known by a significant part of the relevant public for the goods or services it covers. The relevant public is, depending on the goods or services marketed, either the public at large or a more specialised public. In the present case, the contested trade mark was filed on 17/03/2022. Therefore, the opponent was required to prove that the trade mark on which the opposition is based had acquired a reputation prior to that date. In principle, it is sufficient that the opponent show that its mark already had a reputation on that date. While it follows from the wording of Article 8(5) EUTMR that the conditions for its application also need to be present at the time of taking the decision, and therefore the reputation of the earlier mark must subsist until the decision on the opposition is taken, any subsequent loss of reputation is for the applicant to claim and prove. The evidence must also show that the reputation was acquired for the goods and services for which the opponent has claimed reputation, namely

Class 6:	*Articles of common metal and their alloys not included in other classes; ironmongery; small items of metal hardware; buckles of common metal; key fobs and key rings of common metal; key chains of metal; ornaments, statuettes and figurines, all of common metal; decorative wall hangings of common metal; decorative and commemorative plaques and plates of non- precious metal; signboards of metal; metal containers.*
Class 9:	*Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing*

equipment and computers; fire extinguishing apparatus; sound records, video records, cinematographic films, photographic films; computer software; computer games software; video game software; interactive entertainment software; cartridges and discs for use with electronic games apparatus; games and apparatus for games for use with a television screen, video monitor or electronic display apparatus; amusement apparatus for use with a television screen, video monitor or electronic display apparatus; coin or token operated electrical or electronic amusement apparatus; interactive compact discs; CD-ROMs; encoded telephone cards; sunglasses; magnets; photographic transparencies; frames for photographic transparencies; computer generated images; telephone apparatus; radios; cases adapted for storing cassettes, discs, cartridges and cards for use in bearing sound records, video records, computer software or video games; racks adapted to hold cassettes, discs, cartridges and cards for use in bearing sound records, video records, computer software or video games; electrical and electronic apparatus for generating, processing and reproducing images; mouse pads and wrist pads, all being accessories for keyboards; animated cartoons; eyeglass cases; eyeglass chains; eyeglass cords; eyeglass frames; magnets; spectacle cases; spectacle frames; signs, luminous.

Class 14: *Articles of precious metal and their alloys, and articles coated with precious metal and their alloys, not included in other classes; jewellery, precious stones; horological and chronometric instruments; money clips, belt buckles, coasters, serving trays, jewellery boxes, key rings and key chains, all of precious metal or coated with precious metal; cuff links, brooches, bracelets, bangles, earrings, pendants, medallions, trinkets, charms, rings, watch straps, tie pins, jewellery pins, tie clips, coins; ornaments, statuettes and figurines of precious metal or precious stone, or coated therewith; plates of precious metal or coated therewith; watches and clocks.*

The opposition is directed against the following goods and services:

Class 2: *Aluminium powder for painting; printing ink; paints; anti-corrosive preparations; anti-corrosive bands; natural resins, raw; gum resins; lacquers and varnishes; paint thinner; binding agents for paints; agglutinants for paints and for putty; paint sealers; paint for use in the manufacture of furniture; coating preparations having water repellent properties [paint]; thickeners for paints; coatings [paints]; paint primers; floor paints; metallic powders for use in thermal spraying; paints for use as elastic facade coatings; elastomer waterproof preparations in the nature of paint for preserving asbestos roofs; elastomer waterproof coating preparations [paints]; resinous coatings; epoxy resins for use in covering floors [coatings]; epoxy resins for use in covering walls [coatings]; epoxy resins for use in covering surfaces of buildings [coatings]; spray paint; undercoating for vehicle chassis; sealants [paints]; exterior paints; house paint; luminous paints; rust protecting paints; glazes [paints, lacquers]; architectural paints.*

Class 3: *Shampoos; lacquer-removing preparations; colour-removing preparations; household cleansers; carpet cleaners; stain removers; leather preservatives [polishes]; polishing creams; grinding preparations; glass cloth [abrasive cloth]; essential oils; aromatic essential oils; adhesives for affixing false hair; cosmetics; perfumes; hair oil; cosmetics for children; dentifrices; preparations for cleaning dentures; incense; cosmetics for animals; air fragrancing preparations; scented sachets; scents; moisturizing creams; natural essential oils; oils for cosmetic purposes; essential oils for household use; fumigating incenses (kunko); scented room sprays; wax melts [fragrancing preparations]; air fragrance reed diffusers.*

Class 4: *Wood for use as fuel; wicks for candles; waxes [raw material]; vegetable wax; tapers; paraffin; paraffin wax; greases for thepreservation of leather; grease for machines; all purpose lubricants; base oils; wax for making candles; mineral oil for use in the manufacture of cosmetics and skin care products. Abrading*

Class 8: *instruments [hand instruments]; cuticle nippers; nail files; nail files, electric; fingernail polishers, electric or non-electric; nail clippers, electric or non-electric; files [tools]; manicure sets; manicure sets, electric; emery boards; tweezers; tableware [knives, forks and spoons]; agricultural implements, hand-operated; garden tools, handoperated; electric nail files; nail buffers for use in manicure; disposable razors; manicure implements; graving tools [hand tools]; pliers.*

Class 9: *Calculating machines; punched card machines for offices; tool measuring instruments; computer hardware; counters; biometric identification apparatus; phototelegraphy apparatus; weighing apparatus and instruments; signs, luminous; radios; apparatus for transmission of communication; sound transmitting apparatus; headsets; cameras; surveying instruments; rechargeable batteries; humanoid robots with artificial intelligence for use in scientific research; smartglasses; eyeglasses; spectacles; sun glasses; ski goggles; protective spectacles; optical glasses; diving goggles; anti-dazzle spectacles; antireflection coated eyeglasses; cyclists' glasses; reading glasses; opera glasses; contact lenses; frames for spectacles and sunglasses; cases for eyeglasses and sunglasses; glasses for sports.*

Class 11: *Electric warmers to melt scented wax tarts; nail lamps; ultraviolet ray lamps, not for medical purposes; electric rice cookers; electric pressure cookers; refrigerating cabinets; laundry drying machines; gas scrubbing apparatus; air purifying apparatus and machines; bath installations (sauna -); water flushing installations; radiators, electric; blankets, electric, not for medical purposes; dehumidifiers; electric room deodorizing units; diffusers being parts of lighting apparatus.*

Class 14: *Alloys of precious metal; presentation boxes for jewellery; agates; pearls [jewellery]; jade [jewellery]; pendulums [clock- and watchmaking]; barrels [clock- and watchmaking]; watch bands; diamonds; silver bullion; sapphire; ruby.*

Class 16: *Tracing paper; carbon paper; facsimile transmission paper; toiletpaper; table napkins of paper; place mats of paper; towels of paper; tissues of paper for removing make-up; cardboard; writing paper; stickers [stationery]; aquarelles; stuffing of paper or cardboard; paper boxes; envelope sealing machines for offices; clips for offices; bookends; document files [stationery]; stands for pens and pencils; desktop cabinets for stationery [office requisites]; indian inks; ink; stamps [seals]; marking pens [stationery]; writing instruments; adhesive tape dispensers [office requisites]; gummed tape [stationery]; modelling clay; eraser dusting brushes.*

Class 18: *Imitation leather; moleskin [imitation of leather]; animal skins; attaché cases; compression cubes adapted for luggage; umbrellas; walking sticks; covers for animals; clothing for pets; rawhide chews for dogs; faux fur; leather trimmings for furniture; shoulder straps; bags for umbrellas; carrying cases for documents.*

Class 20: *Work benches; bedding, except linen; indoor window blinds; shells Deodorizing apparatus for personal use; kitchen containers; tea services [tableware]; coffee services [tableware]; sprinklers for watering flowers and*

Class 21:

Class 24: *plants; bobeches; candle drip rings; eyebrow brushes; applicator sticks for applying make-up; facial sponges for applying make-up; foam toe separators for use in pedicures. Upholstery fabrics; gauze [cloth]; silk [cloth]; tulle; velvet; cotton fabrics; gummed cloth, other than for stationery purposes; plastic material [substitute for fabrics]; non-woven textile fabrics; labels of textile; wall hangings of textile; tapestry [wall hangings], of textile; woven silk fabrics; felt; towels of textile; table napkins of textile; bed covers; quilts; household linens; oilcloth for use as tablecloths; tablecloths, not of paper; covers for toilet lids of fabric; washing gloves; lap blankets; furnishing and upholstery fabrics; indoor and outdoor curtains.*

Class 25: *Clothing; trousers; outerclothing; dresses; overcoats; underwear; dressing gowns; pockets for clothing; waterproof clothing; layettes [clothing]; bibs, not of paper; bibs, sleeved, not of paper; cyclists' clothing; bathing suits; clothing for gymnastics; caps being headwear; hoods [clothing]; raincoats; theatrical costumes; footwear; sports shoes; slippers; hosiery; sock suspenders; gloves [clothing]; neckties; scarves; belts [clothing]; girdles.*

Class 26: *Hair bands; edgings for clothing; lace for edgings; hat trimmings; shoe trimmings; zip fasteners; false beards; false hair; plaited hair; tresses of hair; false moustaches; wigs; hair extensions; human hair; needles; artificial flower wreaths; borders and edgings for clothing; trimmings for clothing; cords for trimming; decorative ribbons; hair scrunchies; hair twisters [hair accessories]; feathers for ornamentation; lace trimmings; ornamental adhesive patches for jackets; ornamental bows of textile for decoration; ornamental novelty buttons; ornamental novelty badges; ornamental ribbons made of textiles; flounces (skirt -); sequins; artificial corsages; artificial flowers; artificial garlands and wreaths; artificial plants; artificial trees [other than christmas trees]; artificial fruit; artificial vegetables.*

Class 27: *Carpets; rugs; mats; bath mats; floor coverings; artificial turf; gymnastic mats; gymnasium mats; yoga mats; wallpaper; wall hangings, not of textile; textile wallpaper; cloth wall coverings; floor mats for automobiles; personal sitting mats; non-textile wall coverings; pet feeding mats; non-slip mats; prayer rugs; straw mats; wallcoverings; wall coverings of textile; wallpapers; wall coverings of plastic.*

Class 35: *Conducting virtual trade show exhibitions online; on-line advertising on a computer network; online retail store services relating to cosmetic and beauty products; on-line advertising and marketing services; wholesale services in relation to kitchen knives; wholesale services in relation to cutlery; wholesale services in relation to food cooking equipment; wholesale services in relation to cleaning articles; wholesale services in relation to dietetic preparations; wholesale services in relation to toiletries; retail services in relation to tableware; retail services in relation to toiletries; presentation of goods on communications media, for retail purposes; online advertisements; advertising and advertisement services; arranging commercial transactions, for others, via online shops; wholesale services in relation to horticulture products; wholesale services in relation to computer hardware; business management consultancy; business management assistance; assistance, advisory services and consultancy with regard to business organization; business project management services for construction projects; advertising, marketing and promotion services.*

Class 44: *Cosmetician services; landscape gardening; charitable services, namely, providing medical services to needy persons; beauty salon services; nail care*

services; beautician services; nursing care; voice and speech therapy services; providing medical information; manicuring; pet beauty salon services; on-line make-up consultation services.

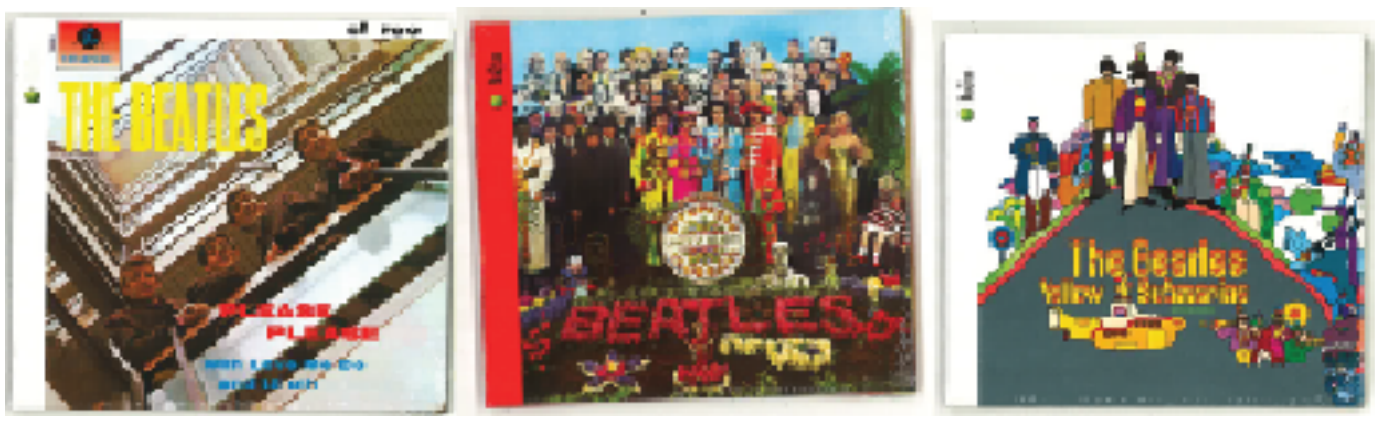
In order to determine the mark's level of reputation, all the relevant facts of the case must be taken into consideration, including, in particular, the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it. On 15/11/2025 the opponent submitted, in particular, the following evidence:

Annex 0: Witness Statement dated 14/11/2023 and signed by the opponent's Chief Financial Officer referring to and attaching annexes 1 to 23 as listed below. He explains that the opponent is a British limited company set up in the 1960s by the members of the music band THE BEATLES, '*inter alia* to own and exploit the rights in the name BEATLES and in BEATLES material'. According to the witness statement, the band rose to prominence in the 1960s and 1970s, held numerous concerts worldwide, including in Europe, and is 'widely held to be the most famous and influential music group that the world has ever seen'. It cites the musician Elvis Costello's 2011 article on the website of the Rolling Stone magazine saying that 'the Beatles achieved a level of fame and recognition known previously only to Charlie Chaplin, Brigitte Bardot and Elvis Presley, along with a little of the airless exclusivity of astronauts, former presidents and other heavyweight champions'. The witness statement then goes on to briefly summarise the group's record history and the opponent's involvement as its label company, including the release and reissue of various music albums, compilations and documentary films. It expressly refers to the compilation '1' released in 2000 and asserts that it sold 32 million copies by 2016 and reached the top of the charts in the United Kingdom and the United States of America. It highlights the release of the band's catalogue for download on the iTunes platform in 2010 as an event triggering enormous press interest and resulting in the worldwide sale of 2 million individual songs and half a million albums within just the first week. According to the witness statement, these numbers rose to 10 and 1.8 million respectively. Between then 2017, the band's music became available for download and streaming also on Spotify, Google Play and Amazon. Between 2013 and 2023, several recordings were released on CD and/or made available for download. These included concert recordings, digitally remastered songs, an anniversary editions of the albums 'Sgt. Pepper's Lonely Hearts Club Band' and the 'White Album', 'Let It Be', 'Abbey Road' and 'Revolver' and the 'new' song 'Now and Then' in which technology was used to combine records made in the 1990s with the vocal records of the band's deceased member John Lennon. According to the witness report the song became the top selling song in Europe and was number one also on the video streaming platform YouTube in Denmark, Ireland and Sweden and number two in Germany and the Netherlands. According to the witness statement, the period from 2012 to 2021 saw worldwide sales of the band's physical records exceed 19 million and downloads reach more than 18 million while worldwide online streams surpassed 24 billion. It cites the NME magazine in saying that the album '1' is 'one of the 50 best-selling albums ever' and 'one of the best-selling albums in Europe in the 21st century, selling over 9 million copies in Europe and

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qualifying for IFPI's Platinum Europe award 9 times over'. With reference to some of the exhibits, the witness statement provides specific data on sales and streaming in the European Union. The witness report also highlights that band was featured in several films in 1960s and 1970s. The animation 'Yellow Submarine' featuring the band members was renovated and released again 1999 and 2012 and re-released theatrically in 2018 on the occasion of its 50th anniversary, including in Germany, Spain, France and Italy. Another documentary film called ''The Beatles: Eight Days a Week' was released in 2016 and was nominated for five Emmy awards. Later, the opponent collaborated with director Sir Peter Jackson on a film which was released on the streaming platform Disney+. In November 2023, a film about the making of the aforementioned song 'Now and Then' was released on the band's YouTube channel and broadcasted on several television channels in the European Union, including in Belgium (VRT, Canvas & VRT Max, RTBF, La Trois), Denmark (DRTV, DR1 & DR2), Finland (YLE, YLE TV2 & YLE Teema), France (France TV, France 4 & Culture Box), Germany (ZDF, ZDR Mediathek), Italy (RTL, RTL 102.5, Radio Freccia, Radio Zeta), Poland (TVN, TVN 24), Spain and Andorra (Telefonica, Movistar Plus). The witness statement reports that 51,643 items of merchandise using the earlier mark have been sold in the EU in the period from 01/01/2016 to 31/03/2018, including products such as tin signs, baseball caps, beanies, fridge magnets, badges, keychains, iron-on patches, mouse mats, umbrellas, neck ties, shopping bags, coasters, bottle openers, mugs, postcards, wrist bands, socks, note books, scarves, bookmarks, pens tote bags, gift bags, trays, dartboards, zipper pulls, money clips, belt buckles and phone charms. Examples of THE BEATLES album covers as released in the 1960s and remastered later. The earlier mark is visible on each of them, albeit with slight variations in its stylisation, and is sometimes accompanied by the definite article 'THE'.

Annex 1:



Annex 2: Materials from online editions of various publications including Billboard, Wikipedia, Rolling Stone, Time Out, The Daily Telegraph, The Mirror, RTE. The articles were published between 07/04/2009 and 05/11/2023. The Billboard articles states as follows: 'To start with the obvious, they were the greatest and most influential act of the rock era, and introduced more innovations into popular music than any other rock band of the 20th century. Moreover, they were among the few artists of any discipline that were simultaneously the best at what they did and the most popular at what they did [...] Their supremacy as rock icons remains unchallenged to this day, decades after their breakup in 1970'. The RTE article refers to THE BEATLES as 'the greatest band of all time' and says that 'the way their music, look and attitude has seeped into the collective

psyche and culture is more akin to a religion'. It adds that the songs *Free as a Bird* and *Real Love* were respectively No 5 and No 8 hits in Ireland.

Annex 3: Articles marking various anniversaries of THE BEATLES, including from the BBC, Rolling Stone, NDR, The Guardian, The Daily Telegraph and Timeout. The articles were published between 10/06/2012 and 13/07/2021. They focus on the band's enduring legacy.

The NDR article is in German and English and says that THE BEATLES' album 'Sgt. Pepper's Lonely Hearts Club Band' was 'for a long time' 'number 1 among the best pop and rock albums in history by "Rolling Stone" magazine'. It adds that the 'music of the Beatles became immortal' with this album.

The BBC article states that '[f]ifty years on, the Beatles live because they give us that most amazing of feelings; the apprehension of a happiness we can hold, like a hand'.

Annex 4: Extracts from the Internet Movie Database (IMDB), Time Magazine, The Guardian, Rotten Tomatoes, The Telegraph, UKMIX, TSORT and the International Federation of the Phonographic Industry (IFPI) about the band's albums and the 'Yellow Submarine' animated film.

The Times article lists the animation 'Yellow Submarine' about the THE BEATLES among the '25 All-TIME Best Animated Films'.

The Guardian article highlights the film's influence on animation and cites the writer of the animated show 'The Simpsons' in saying that 'Shrek, Futurama and Marge and Homer would not have come into being without the Beatles' subversive masterpiece'. The author states that the film 'gave birth to modern animation itself'.

The 2007 UKMIX article states that 'The Beatles mark their massive domination on European album sellers. With strong catalog sales year after year and new releases always successful despite being disbanded for 37 years, The Beatles will be for sure the first act ever to achieve the 100m mark in Europe'. The article also reports that THE BEATLES achieved more album sales in Europe than any other band and this is evidenced, for example, by its 11 number one albums in Germany and Italy and four in France.

An extract from the website of IFPI explains that the IFPI Platinum Europe Awards were launched to honour artists who achieve album sales of one million units across Europe. It indicates that the album '1' by THE BEATLES reached award level 9, the highest in the ranking, making it one of the best-selling albums for the period from 1998 to 2007.

Many of the other articles included in this annex refer to album sales and rankings. However, they do not specify the relevant territory.

Annex 5: Extracts from the website of the BPI (British Phonographic Industry) indicating, inter alia, that in 2017 British artists accounted for over a fifth of music consumption in the Europe (excluding the United Kingdom).

Annex 6: Extract from the website of the IFPI already included in Annex 4 and from www.rolling stone.com and www.tsort.info. The latter reports that the band's compilation album 'The Beatles 1962-1966' is the world's 23th best-selling album and that it went Platinum in Germany.

Annex 8: An extract from Google's Quick Facts about the United Kingdom referring to it as the 'birthplace of Shakespeare and The Beatles'. A report issued in 2016 by the streaming platform Spotify and titled 'Meet the Beatles Data' stating that the

Annex 7: band had, as of the date of the report, over 250 million streams and 'comprised 38 of the 50 songs on our Viral 50 chart' based on a data gathered from 58 countries. Press reports from 2021 and 2023 published by NDR, Euronews, France 24, Diez Minutos, RTE, Le Monde, the German-language edition of the Rolling Stone magazine on the documentary film 'Get Back' by director Peter

Annex 9: Jackson about the THE BEATLES and recently released song 'Now and Then'. With respect to the latter, an excerpt from them website Top40- Charts.com states that it topped German Charts on 11/11/2023 and the YoutTube charts demonstrate that it ranked number one between 03/11/2023 and 09/11/2023 in Denmark, Ireland and Sweden. Unit sales of BEATLES sound recordings in the European Union on a year- by-year basis from 2017 to 2021 indicating a grand total of 1 589 788 physical records sold, 580 020 downloads and 3 239 304 963 streams in the relevant territory. The witness report in Annex 0 explains that the information is compiled from royalty statements provided to the opponent and

Annex 10: related parties. Unit sales of BEATLES video recordings and films in the European Union on a year-by-year basis from 2017 to 2021 indicating 20 175 physical records sold, 2 759 downloads and 281 379 627 streams. The witness report in Annex 0 explains that the information is compiled from royalty statements provided to the opponent and related parties. Unit sales of recordings relating to the albums 'Magical Mystery Tour' and 'Yellow Submarine' in the European Union. Jointly, they amounted to a grand total of 42 637

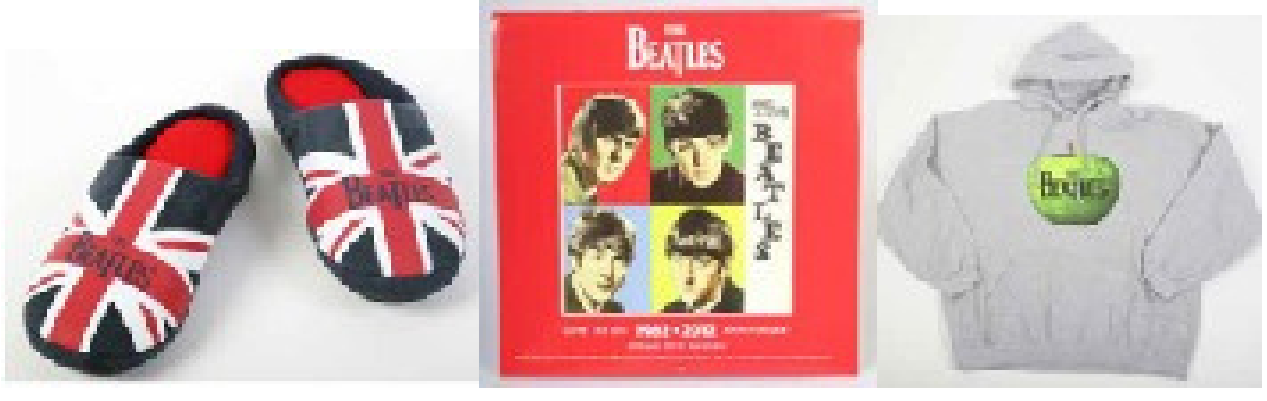
Annex 11: physical records sold, 4 360 physical sales and 24 479 495 streams. The witness report in Annex 0 explains that the information is compiled from royalty statements provided to the opponent and related parties. Examples of royalty statements reported for royalty management purposes. They indicated the relevant country, the sales period, the distributer, the product number, the product type, the sales type and the sales units. For example, page 33 of the

Annex 12: annex indicates 32 entries related to France with unit sales ranging from 665 to 117 910 for the period from July to September 2017. Such data is indicated also with respect to Greece, Cyprus, Germany, Poland, Romania, Luxembourg, Spain, Belgium, Slovenia, the Netherlands, Denmark, Finland, Italy, Spain and other European Union member states. Some of the products are indicated as 'audio track', others as 'LP Venyl long play' and others as 'CD Normal'. Details of certain BEATLES products licensed by the opponent and sold in the European Union by

Annex :13 the opponent's licensees between 01/01/2016 and 31/03/2018. For example, in 2018, a total of 212 items were sold in Austria, including tin signs, headwear, magnets, pin badges, stationary items, bags, bottle openers, apparel and mugs. In Belgium, the sales were 14, in Bulgaria 29, in the Czech Republic 944, in Germany 2769, in Spain 897, in Finland 173, in France 1347, in Greece 41, in Croatia 51, in Hungary 486, in Ireland 133, in Italy 2410, in the Netherlands 1423, in Poland 336, in Portugal 146, in Romania 407, in Sweden 503, in Slovenia 46, in Slovakia 468.

Annex 14:

Annex 15: Document prepared for EU Customs monitoring in 2020 showing details of licensed BEATLES merchandise. It indicates vendors, their addresses and licensed products such as wall clocks, watches, money boxes, apparel, pid badges, jewellery, socks, canvases, notebooks, watches, pens. The addresses indicate, inter alia, Sweden, France, Italy, Germany, Austria. The document also shows some of the merchandising items. The earlier trade mark is visible on each of them.





Annex 16: Screen captures as of October 2020 and June 2021 from THE BEATLES online store at www.thebeatles.com showing CDs and various of the aforementioned merchandising items, each showing the earlier trade mark. The website shows that shipping to the European Union is available and takes between 7 and 10 working days. Prices are indicated in GBP. Various archived pages from the website www.thebeatles.com from 2018 to 2021 showing the earlier trade mark on various items, in concert halls and in the titles of news articles reporting on the activities of the band's surviving members.

Annex 17: Google Analytics data for the website at www.thebeatles.com for the year 2017 indicating that Europe accounted for nearly 35% of the total or 449 609 sessions. This amount includes also the United Kingdom with 113 307 sessions.

Annex 18: Extracts from a BEATLES brand book produced by Apple Corps in 2012. They show CD and various of the aforementioned merchandising items with the earlier mark clearly visible on them. The extracts show also 'brand data', which however does not specify when and in which territory it was collected.

Annex 19: Feature from the business section of the website of the UK national newspaper The Independent about merchandise for the recent Disney film Frozen.

Annex 20: Extract from website at www.zoovu.com entitled 'Impact of Celebrity Endorsement On Consumer Buying Behavior'.

Annex 21:

The affidavit The opponent relies, inter alia, an affidavit by its senior management (Annex 0). Affidavits coming from the sphere of the interested party are generally given less weight because the perception of a party involved in the case may be affected by personal interests in the matter. Consequently, this evidence must be treated as indicative and should be corroborated by other evidence (21/11/2012, T338/11, PHOTOS.COM, EU:T:2012:614, § 51; 28/05/2020, T615/18, D (fig.) / D (fig.) et al., EU:T:2020:223, § 61; 09/12/2014, T278/12, PROFLEX (fig.) / PROFEX, EU:T:2014:1045, § 51; 18/11/2015, T813/14, Cases for portable computers, EU:T:2015:868, § 29). The relevant statements contained in said affidavits are corroborated by the opponent's annexes 1 to 23 to which the affidavit expressly refers as they include data from third parties that confirms said statements or at least makes them highly plausible.

Wikipedia According to settled case-law an extract from Wikipedia lacks certainty as a source of information, since it is drawn from a collective encyclopedia established on the internet, the content of which may be amended at any time and, in certain cases, by any visitor, even anonymously (09/04/2014, T-501/12, Octasa, EU:T:2014:194, § 48).

Evidence from the United Kingdom (UK) and other third countries The opponent has submitted, inter alia, evidence relating to the United Kingdom with a view to demonstrating the reputation of the earlier EUTM. However, it follows from Article 8(5) EUTMR, worded in the present tense, that the conditions for applying it must also be fulfilled at the time of taking the decision. As the UK is no longer a member of the European Union, the evidence relating to its territory cannot be taken into account to prove reputation 'in the EU' (see Communication No 2/20 of the Executive Director of the Office of 10 September 2020 on the impact of the United Kingdom's withdrawal from the European Union on certain aspects of the practice of the Office, Section V 'Earlier rights in inter partes proceedings'). Likewise, evidence related to other third countries such as the United States or Switzerland cannot be considered when assessing the earlier trade mark's reputation in the European Union. Notably, while some of the British or US press articles may not have been widely accessible and influential in the relevant territory, they can still be of relevance to the extent that they describe THE BEATLES' worldwide success.

Evidence after the relevant date Some of the evidence provided related to periods beyond 17/03/2022, that is, the filing date of the contested sign. This relates, in particular, to the release of the song 'Now and Then' and the short documentary film about it as well about the documentary film 'Get Back'. It relates also to various press articles published after the relevant period. While this renders this evidence generally immaterial, the Opposition Division will nevertheless take it into account to the extent that it refers to the enormous reputation that the earlier mark had already built. Moreover, the fact that its success persisted beyond the relevant date serves to reaffirm the Opposition Division's findings below.

Assessment of the earlier marks' reputation

The Court held that all the relevant facts must be considered when assessing the reputation of the earlier mark, 'in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of investment made by the undertaking in promoting it' (14/09/1999, C-375/97, Chevy, EU:C:1999:408, § 25, 27).

In 2013, the Court found that the rock group THE BEATLES had 'a very substantial', even 'exceptional reputation stretching over more than 40 years' as far as it relates to 'sound records, video records, films'. It also found that that its reputation for merchandising products is 'lesser than that (29/03/2012, T-369/10, BEATLE / BEATLES ea, EU:T:2012:177, § 37 *et seq*).

The evidence submitted ten years later in the present proceedings demonstrates that these findings are still valid when it comes to the production of sound and video records. The opponent has continued to release and remaster music and films in various formats on a regular basis and, with every new release, has garnered enormous press interest, including from leading broadcasting companies in the European Union.

The sales data in Annexes 11 to 13, e.g., the sale of more than a million and a half physical records and the billions of streams between 2017 and 2021, leaves no room for doubt that the earlier mark is a household name recognised across the relevant territory. This is reflected also in the ranking provided in Annexes 4 and 6 which provide proof for the sale of nine million copies of a single album under the earlier trade mark and testify to the exceptional popularity that THE BEATLES enjoy in Europe. Moreover, this data demonstrates that they are among the leaders in this industry.

The same is true when it comes to video recordings. Documentary and animated films associated with the earlier mark have emerged from collaboration with highly renowned directors, are available on streaming platforms, have been broadcasted on large European television networks and their release was accompanied by enormous media coverage. The influence of the film 'Yellow Submarine' featuring the members of THE BEATLES on modern animation has been recognised by influential figures in this industry.

Therefore, it is clear from the evidence that the earlier trade mark has been subject to long-standing and intensive use and is known in the relevant market, where it enjoys a consolidated position among the leading brands, as has been attested by diverse independent sources. The sales figures shown by the evidence and the various references in the press to its success all unequivocally show that the mark enjoys an exceptionally high degree of reputation among the relevant public throughout the relevant territory for *sound records, video records, cinematographic films.*

However, the same cannot be said with respect to remaining goods and services. It is true that the evidence, in particular Annexes 14 to 21, demonstrates that the opponent has been using the earlier trade mark on a large portfolio of merchandising goods and has been doing so consistently in the years preceding the contested sing's filing date. However, Annex 14 demonstrates that the actual sales figures remained low. For example, in 2018, the sales of merchandising goods reached four-digit figures only in large countries such as Germany and the Netherlands. Sales in such low quantities are far from enough to justify the finding of reputation. Moreover, there is no data on record putting them in relation to the opponent's competitors and demonstrate their market share.

b) The signs

BEATLES	Beetles

Earlier trade mark	Contested sign

The relevant territory is the European Union.

The global appreciation of 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 (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 23).

The earlier mark 'BEATLES' does not merely refer to the English word 'beat', but integrates that word into a fanciful construction combining the reference to 'beat' with the word 'beetle' in order to create a very distinctive and original combination of the two words. In any event, it must be stated that the term 'beatles' has acquired its own distinctive character separate from the word 'beat' of which it is composed, so that, when faced with the mark BEATLES, the public at large, in particular in the non-English speaking States of the European Union, will immediately think of the eponymous group and, in particular, of the sound records, video records and films of that group, and will not proceed to break the mark down into its constituent parts (29/03/2012, T-369/10, BEATLE / BEATLES ea, EU:T:2012:177, § 57 et seq). The verbal element 'beatles' as such is fanciful and, therefore, distinctive.

The English-speaking part of the relevant public will perceive the contested sign as referring to 'any insect of the order Coleoptera, having biting mouthparts and forewings modified to form shell-like protective elytra' (information extracted from *Collins* dictionary on 16/01/2025 at https://www.collinsdictionary.com/dictionary/english/beetle). This meaning is unrelated to the relevant goods and services and, therefore, is also distinctive.

The same conclusion applies with respect to consumers who do not speak English. They will not recognise any meaning in the contested sign and will perceive it as fanciful. Therefore, for them, it will also be distinctive.

Consumers generally tend to focus on the beginning of a sign when they encounter a trade mark. This is because the public reads from left to right, which makes the part placed at the left of the sign (the initial part) the one that first catches the attention of the reader.

Visually, the signs coincide in 'BE*TLES', that is in all but one of their letters. Notably, they coincide in their beginnings, which the consumers will notice first. Therefore, the signs are visually highly similar.

Aurally, the earlier mark will be pronounced as 'bitəlz' (information extracted from the *Collins* dictionary on 16/01/2025 at www.collinsdictionary.com/dictionary/english/beatles). English-speaking consumers will pronounce the contested sign as 'biːtəlz' (information extracted from *Collins* dictionary on 16/01/2025 at www.collinsdictionary.com/ dictionary/ english/beetle). Therefore, for this part of the relevant public, the signs will be aurally identical. For consumers, who do not speak English but also in two of the three vowels, the signs will coincide in the sound of their consonants, namely 'B', 'T', 'L' and 'S', that is four out of their seven letter, including the sings' beginnings. Therefore, for consumers who do not speak English, the signs will be aurally similar to a high degree.

Conceptually, reference is made to the previous assertions concerning the semantic content conveyed by the marks.

For the part of the relevant public that does not speak English, both sings are fanciful and have no meaning. Since a conceptual comparison is not possible, the conceptual aspect does not influence the assessment of the similarity of the signs.

For the English-speaking part of the public, although the public will perceive the concept of insects as defined above in the contested sign, the earlier mark is fanciful and has no meaning. Since one of the signs will not be associated with any meaning, the signs are conceptually not similar.

Taking into account that the signs have been found similar in at least one aspect of the comparison, the examination of the existence of a risk of injury will proceed.

c) The 'link' between the signs

As seen above, the earlier mark is reputed and the signs are similar to some extent. In order to establish the existence of a risk of injury, it is necessary to demonstrate that, given all the relevant factors, the relevant public will establish a link (or association) between the signs. The necessity of such a 'link' between the conflicting marks in consumers' minds is not explicitly mentioned in Article 8(5) EUTMR but has been confirmed by several judgments (23/10/2003, C-408/01, Adidas, EU:C:2003:582, § 29, 31; 27/11/2008, C-252/07, Intel, EU:C:2008:655, § 66). It is not an additional requirement but merely reflects the need to determine whether the association that the public might establish between the signs is such that either detriment or unfair advantage is likely to occur after all of the factors that are relevant to the particular case have been assessed. Possible relevant factors for the examination of a 'link' include (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 42):

- the degree of similarity between the signs;
- the nature of the goods and services, including the degree of similarity or dissimilarity between those goods or services, and the relevant public;
  the strength of the earlier mark's reputation;
  the degree of the earlier mark's distinctive character, whether inherent or acquired
- through use;
- the existence of likelihood of confusion on the part of the public.
-

This list is not exhaustive and other criteria may be relevant depending on the particular circumstances. Moreover, the existence of a 'link' may be established on the basis of only some of these criteria. In the present case, the earlier mark was found to enjoy exceptionally high degree of
reputation throughout the relevant territory *sound records, video records, cinematographic*
films. The earlier mark consists of a single fanciful verbal component and, therefore, has a normal degree of inherent distinctiveness. For the English-speaking part of the public, the sings are visually highly similar, aurally identical and conceptually not similar. For consumers, who do not speak English, the signs are visually and aurally highly similar and the conceptual comparison is neutral. Notably, the goods for which the earlier marks enjoys reputation are dissimilar to contested goods. Nevertheless, the publics overlap. This is
because the earlier *sound records, video records, cinematographic films* are directed at the general public and therefore can coincide in consumers with the contested goods regardless of whether the latter also target the general public or specialised professional customers. The fact that the goods are different cannot in itself prevent the Opposition Division from establishing a link between the signs. Article 8(5) EUTMR expressly envisages a situation in which an opposition is filed against an application for registration of a mark for goods or services which are not similar to those covered by the earlier marks.

Moreover, the Court of Justice of the European Union (CJEU) has pointed out that certain marks may have acquired such a reputation that it goes beyond the relevant public as regards the goods or services for which they were registered and that, in such a case, the relevant section of the public as regards the goods or services for which the later mark is registered may make a connection between the marks at issue, even though that public is wholly distinct from the relevant section of the public as regards the goods or services for which the earlier mark was registered. The CJEU made these observations with respect to the earlier mark of the present case (14/05/2013, C-294/12 P, BEATLE / BEATLES ea, EU:C:2013:300, § 69). Because of this consideration, it upheld the General Court's conclusion that a link existed between the signs in that case despite the relevant goods being different, namely sound and video recordings on one hand and wheelchairs on the other.

Therefore, it follows from the fact that the signs at issue are similar, the overlap between the relevant sections of the public, the existence of an exceptionally high reputation of the earlier mark, and the normal degree of its inherent distinctiveness that, notwithstanding the difference between the goods in question, there is a link between the signs at issue, because the contested sign will call to mind the earlier mark with a reputation on the part of the relevant public.

However, although a 'link' between the signs is a necessary condition for further assessing whether detriment or unfair advantage are likely, the existence of such a link is not sufficient, in itself, for a finding that there may be one of the forms of damage referred to in Article 8(5) EUTMR (26/09/2012, T-301/09, CITIGATE / CITICORP et al., EU:T:2012:473, § 96).

d) Risk of injury

Use of the contested mark will fall under Article 8(5) EUTMR when any of the following situations arise:

- it takes unfair advantage of the distinctive character or the repute of the earlier mark;
  it is detrimental to the repute of the earlier mark;
- it is detrimental to the distinctive character of the earlier mark.
-

Although detriment or unfair advantage may be only potential in opposition proceedings, a mere possibility is not sufficient for Article 8(5) EUTMR to be applicable. While the proprietor of the earlier mark is not required to demonstrate actual and present harm to its mark, it must 'adduce prima facie evidence of a future risk, which is not hypothetical, of unfair advantage or detriment' (06/07/2012, T-60/10, ROYAL SHAKESPEARE / RSC- ROYAL SHAKESPEARE COMPANY et al., EU:T:2012:348, § 53). It follows that the opponent must establish that detriment or unfair advantage is probable, in the sense that it is foreseeable in the ordinary course of events. For that purpose, the opponent should file evidence, or at least put forward a coherent line of argument demonstrating what the detriment or unfair advantage would consist of and how it would occur, that could lead to the prima facie conclusion that such an event is indeed likely in the ordinary course of events. The opponent claims all three of the aforementioned situations constituting a risk of injury. In other words, the opponent claims that use of the contested trade mark would take unfair advantage of or be detrimental to the distinctive character and the repute of the earlier trade mark.

Unfair advantage (free-riding)

Unfair advantage in the context of Article 8(5) EUTMR covers cases where there is clear exploitation and 'free-riding on the coat-tails' of a famous mark or an attempt to trade upon its reputation. In other words, there is a risk that the image of the mark with a reputation or the characteristics which it projects are transferred to the goods and services covered by the contested trade mark, with the result that the marketing of those goods and services is made easier by their association with the earlier mark with a reputation (06/07/2012, T-60/10, ROYAL SHAKESPEARE / RSC- ROYAL SHAKESPEARE COMPANY et al., EU:T:2012:348, § 48; 22/03/2007, T-215/03, VIPS / VIPS, EU:T:2007:93, § 40).

The proprietor of the earlier mark bases its claim on the following:

The use of the contested sign for the contested goods will call to mind the earlier mark and this will translate into, inter alia, higher sales for applicant.

According to the opponent, the transfer of attributes such as celebrity, personality, artistic merit, vibrancy and fun would not be limited to the goods and services related to image, colour and art. The opponent points out that 'the aura of fame and celebrity' enjoyed by the earlier mark 'increases its attractiveness for virtually any goods' with refers to Annexes 20 and 21 the opponent highlights the potential effects of celebrity endorsement on any kind of good or service.

Annex 20 is an article published in The Independent on 02/12/2014 and reporting on the

Disney's commercially successful use of merchandising for a very large variety of products from wedding dresses to 'apples, grapes, juice, yoghurt, bandages and a complete oral-care line'.

Annex 21 is an article titled 'Impact of Celebrity Endorsement on Consumer Buying

Behavior' published on 04/10/2016 on the product search platform Zoovu. It reports on, inter alia, the findings of a study by the University of Arkansas in collaboration with the Manchester Business School that consumers aged between 18 and 24 take an active role in developing their identities and appearance based upon celebrities and that they are more susceptible to celebrity brand endorsements than other age groups. The annex refers also to a research by the market research agency Nielsen finding that celebrity endorsement resonates with 14% with millennials (age 21-34) and with 16% of Generation Z (age 15-20). The article states that brands are taking advantage of this by 'increasingly utilizing the social media communities of celebrities' and that social media celebrities can be paid up to USD 20 000 for a single tweet.

The opponent refers also to the aforementioned jurisprudence of the CJEU and the General Court establishing the potential of unfair advantage also with respect to completely different products such as wheel chairs (14/05/2013, C-294/12 P, BEATLE / BEATLES ea, EU:C:2013:300, § 71).

The evidence provided by the opponent demonstrates that the earlier mark can be used on

a very large variety of merchandising products, including tin signs, baseball caps, beanies, fridge magnets, badges, keychains, iron-on patches, mouse mats, umbrellas, neck ties, shopping bags, coasters, bottle openers, mugs, postcards, wrist bands, socks, note books, scarves, bookmarks, pens tote bags, gift bags, trays, dartboards, zipper pulls, money clips, belt buckles and phone charms.

Many of the goods and services in these classes are aimed at, inter alia, consumers from

the general public. They will likely use them in their everyday life or make an impact on their everyday life. This is true for the contested cosmetics, perfumes and fragrances in Class 3, hand-operated tools and implements, be they for cosmetic purposes or not, in Class 8, the

information technology in Class 9, the environmental control apparatus and installations in Class 11, jewellery and (semi-) precious stones in Class 14, the paper, cardboard products, ink, stamps, tape, aquarelles in Class 16, umbrellas, bags for umbrellas, carrying and attaché cases and pet-related products in Class 18, the furniture and bedding in Class 20, the utensils and apparatus for household and kitchen use and cosmetic purposes in Class 21, the fabrics in Class 24, the clothing, headgear and footwear in Class 25, the hair decorations, ribbons, laces, buttons, artificial fruit and plants and other goods in Class 26, and the carpets, mats, rugs and wall paper and wall hangings in Class 27, the services in Classes 35 and 44 related to lifestyle, cosmetics, charity, lifestyle, household and gardening. Fans of a band often feel a deep emotional connection to the music and the members. Owning branded merchandise allows them to express this connection tangibly. Consumers will wear such goods on their own clothing, hair, body, will place them in their household/ garden or office environments in order to convey the aura of optimism, dynamism, vibrancy and vigour associated with THE BEATLES to the mundane objects surrounding them and/or to express their identity by associating themselves with the iconic artists, including in particular their life style and the message conveyed through their music. Moreover, wearing or using products with a band's logo can signal membership in a community of like-minded fans. It helps individuals express their identity and find common ground with others. Consumers will likely prefer to purchase goods and services that also identify with this lifestyle and philosophy because they will recognise them as belonging to the same community and sharing a common collective identity. This will likely evoke a sense of familiarity that will translate into a competitive edge on the market. Furthermore, the sale of goods such as metal alloys, on the other hand, will benefit from the association with endurance in success and prestige that span generations as well as the THE BEATLES' reputation as recipients of Platinum awards in Europe. The same is true for services in Class 35 related to business management, advertising and virtual trade shows. Regardless of whether such services can be associated with the lifestyle exhibited and propagated by the band, they will benefit from the aura of phenomenal global success and lasting legacy embedded in the earlier mark as these are qualities that their customers will likely desire for themselves when purchasing such services. Even the sale of paints and resins such as the ones in Classes 2 and the wood, wax, oil and lubricants in Class 4 can benefit from an association with the earlier mark and its allure of creativity, innovation, and timelessness. By aligning with the band, producers of such goods can reach not only traditional industrial buyers but also art enthusiasts and decorators who have a personal connection to the Beatles' music. Furthermore, the earlier trade mark carries a strong sense of quality and trust. Associating with such a reputable name can lend credibility to the goods, this way encouraging consumer confidence in their quality and reliability. According to the Court of Justice of the European Union

> ... as regards injury consisting of unfair advantage taken of the distinctive character or the repute of the earlier mark, in so far as what is prohibited is the drawing of benefit from that mark by the proprietor of the later mark, the existence of such injury must be assessed by reference to average consumers of the goods or services for which the later mark is registered, who are reasonably well informed and reasonably observant and circumspect. (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 36.)

On the basis of the above, it is concluded that the contested trade mark is likely to take unfair advantage of the distinctive character or the repute of the earlier trade mark.

Other types of injury

The opponent also argues that use of the contested trade mark would be detrimental to the distinctive character and repute of the earlier trade mark. As seen above, the existence of a risk of injury is an essential condition for Article 8(5) EUTMR to apply. The risk of injury may be of three different types. For an opposition to be well founded in this respect it is sufficient if only one of these types is found to exist. In the present case, as seen above, the Opposition Division has already concluded that the contested trade mark would take unfair advantage of the distinctive character or repute of the earlier trade mark. It follows that there is no need to examine whether other types also apply.

f) Conclusion

Considering all the above, the opposition is well founded under Article 8(5) EUTMR. Therefore, the contested trade mark must be rejected for all the contested goods and services. Given that the opposition is entirely successful under Article 8(5) EUTMR, it is not necessary to examine the remaining grounds and earlier rights on which the opposition was based.

COSTS

According to Article 109(1) EUTMR, the losing party in opposition proceedings must bear the fees and costs incurred by the other party. Since the applicant is the losing party, it must bear the opposition fee as well as the costs incurred by the opponent in the course of these proceedings. According to Article 109(1) and (7) EUTMR and Article 18(1)(c)(i) EUTMIR, the costs to be paid to the opponent are the opposition fee and the costs of representation, which are to be fixed on the basis of the maximum rate set therein.

The Opposition Division

Konstantinos MITROU Ivan PRANDZHEV Lars HELBERT

According to Article 67 EUTMR, any party adversely affected by this decision has a right to appeal against this decision. According to Article 68 EUTMR, notice of appeal must be filed in writing at the Office within two months of the date of notification of this decision. It must be filed in the language of the proceedings in which the decision subject to appeal was taken. Furthermore, a written statement of the grounds for appeal must be filed within four months of the same date. The notice of appeal will be deemed to have been filed only when the appeal fee of EUR 720 has been paid.