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Ebbasta non basta.

Sfera contro Sfera Ebbasta.



OPPOSITIONNoB 3 235 822

El Corte Ingles, S.A., Hermosilla, 112, 28009Madrid, Spain(opponent), represented by **Elzaburu, S.L.P.**, Edificio Torre de CristalPºde la Castellana 259C, planta 28, 28046 Madrid, Spain (professional representative)

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Cupido S.R.L., Mura Di Porta Saragozza4,40123 Bologna, Italy (holder), represented by **Barzanò & Zanardo S.P.A.**, Via Piemonte, 26, 00187 Roma, Italy (professional representative).

On 02/07/2026, the Opposition Division takes the following

DECISION:

1. Opposition No B 3 235 822 is partially upheld, namely for the following contested goods:

Class 14: *Cabochons; rings [jewellery]; charms for key rings; necklaces [jewellery]; cuff links; jewellery; earrings; wristwatches; precious stones; brooches [jewellery]; time instruments; bracelets; precious and semi-precious stones; synthetic precious stones; jewellery made of glass; watch chains; pendants; scarf clips being jewelry; jewel cases; diadems; imitation precious stones; medallions; ornaments [jewellery, jewelry (Am.)]; natural gem stones; key rings; jewellery boxes.*

Class 18: *Trunks [luggage]; travelling trunks; bags; beach bags; bags for sports; shopping bags; chain mesh purses; tool bags, empty; purses; travelling sets [leatherware]; handbags; school bags; collars for animals; labels of leather; umbrella covers; muzzles; umbrellas; curried skins; chamois leather, other than for cleaning purposes; fur; credit card cases [wallets]; business card cases; card cases [notecases]; music cases; pocket wallets; haversacks; bags for campers; travelling bags; hat boxes of leather; handbag frames; attaché cases; garment bags for travel; rucksacks; luggage; small bags for men; duffel bags; straps for luggage; bumbags; umbrellas and parasols; shoulder belts; toiletry bags sold empty; tool pouches, sold empty; key cases; vanity cases, not fitted; saddlebags; flight bags; saddlebags; towelling bags; bags for umbrellas; leather cord; small clutch purses; clutch bags; shoe bags; garment carriers; leather laces; overnight cases; carriers for suits, shirts and dresses; luggage covers; luggage tags; leads for animals; grips [bags]; rucksacks on castors; valises; suitcases with wheels; travelling sets; pouches; leather purses; clothing for pets.*

Class 24: *Face towels of textile; towels of textile; bath linen, except clothing; linens; bed clothes and blankets; bed linen; table linen, not of paper; diapered linen; bed blankets; lap rugs; rugs (travelling); handkerchiefs of textile; pillowcases; mattress covers; coverings for furniture; covers for cushions; pillow shams; sheets [textile]; sleeping bag liners.*

Class 25: *Clothing for gymnastics; bath robes; bandanas [neckerchiefs]; shirts; dresses; underwear; short-sleeve shirts; hats; coats; bathing suits; neckties; headbands [clothing]; jackets [clothing]; skirts; ready-made clothing; knitwear [clothing]; jerseys [clothing]; hosiery; sweaters; trousers; shoes; neck scarves [mufflers]; overcoats; outerclothing; tank tops; waist belts; face masks [fashion wear]; face mask [clothing]; mackintoshes; baseball caps; menswear; ladies' clothing; imitation leather dresses; leather dresses.*

2. International registration No 1 820 734isrefused protection in respect of the European Union for the contested goodsasreflected above under point 1. of this dictum. It may proceed for the remainingcontested goods and the non-contested goods and services.

3. Each party bears its own costs.

REASONS

On 07/03/2025, the opponent filed an opposition against some of the goods of international trade mark registration designating the European Union No 1 820 734 'SFERA EBBASTA' (word mark), namely against all the goods in Classes 14, 18, 24 and 25. The opposition is based on European Union trade mark registrations No 2 274 629 and No 2 296 358, both for the word mark 'SFERA', and European Union trade mark



registration No 13 579 172 (figurative mark). The opponent invoked Article 8(1)(b) and Article 8(5) EUTMR.

EVIDENCE SUBMITTED TO PROVE REPUTATION AND USE

The outcome of the opposition depends to a great extent on theconclusions in relation to the evidence submitted by the opponent to prove the genuineuse and reputation of the earlier marks. Therefore, in this section, the Opposition Division will first set out the evidence submitted in its entirety and will then determine whetherthe earlier marks have been put to genuine use and whether they have acquired a reputation.

As the opponent requested to keep certain commercial data contained in the evidence confidential vis-à-vis third parties, the Opposition Division will describe the evidence only in the most general terms without divulging any such data.

On 16/07/2025, the opponent submitted the following evidence to support its claim of reputation.

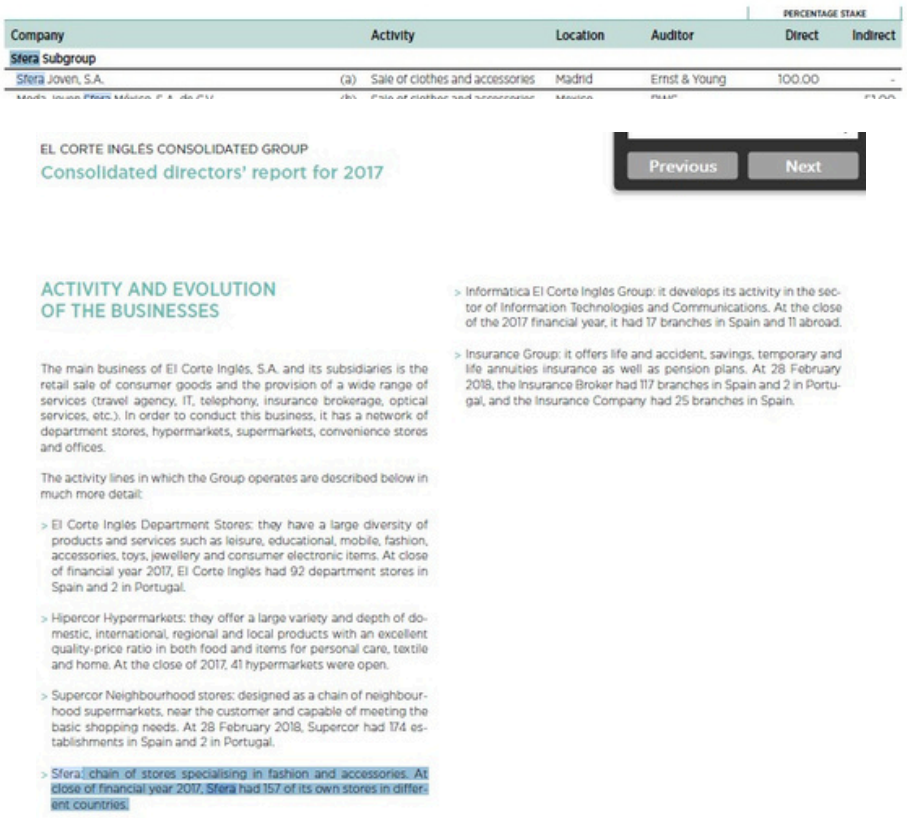
- **Exhibits 1.1 – 1.4**: non-financial reports of El Corte Ingles Group, dated 2017-2023, with references to the 'SFERA' trade marks and financial information on their economic performance.

  As an example, in the report dated 2023, it is indicated that 'Sfera' has a total of 172 stores in Spain, 10 in Portugal and 524 in total. In this report, 'Sfera' is described as:

  > Sfera, which has its own on-street establishments as well as shop-in-shops in our department stores, is our most international private label.

Sfera embodies the latest trends in contemporary and novel designs and updates its women's men's and children's collections constantly. Its clothing and accessories are also sold through the label's proprietary website and app.

- **Exhibits 2.1 – 2.3**: annual reports of the El Corte Inglés Group (of which 'Sfera' belongs), audited by the firms Deloitte SL or Ernst&Young and published between 2015 and 2023. The reports include many references to the 'SFERA' trade mark and revenues of this subsidiary. These reports show, inter alia, the following.
  - Report of 2017



PERCENTAGE STAKE

Company		Activity	Location	Auditor	Direct	Indirect
Sfera Subgroup						
Sfera Joven, S.A.	(a)	Sale of clothes and accessories	Madrid	Ernst & Young	100.00	-

EL CORTE INGLÉS CONSOLIDATED GROUP

Consolidated directors' report for 2017

Previous Next

ACTIVITY AND EVOLUTION OF THE BUSINESSES

The main business of El Corte Inglés, S.A. and its subsidiaries is the retail sale of consumer goods and the provision of a wide range of services (travel agency, IT, telephony, insurance brokerage, optical services, etc.). In order to conduct this business, it has a network of department stores, hypermarkets, supermarkets, convenience stores and offices.

The activity lines in which the Group operates are described below in much more detail:

> El Corte Inglés Department Stores: they have a large diversity of products and services such as leisure, educational, mobile, fashion, accessories, toys, jewellery and consumer electronic items. At close of financial year 2017, El Corte Inglés had 92 department stores in Spain and 2 in Portugal.

> Hipercor Hypermarkets: they offer a large variety and depth of domestic, international, regional and local products with an excellent quality-price ratio in both food and items for personal care, textile and home. At the close of 2017, 41 hypermarkets were open.

> Supercor Neighbourhood stores: designed as a chain of neighbourhood supermarkets, near the customer and capable of meeting the basic shopping needs. At 28 February 2018, Supercor had 174 establishments in Spain and 2 in Portugal.

> Sfera: chain of stores specialising in fashion and accessories. At close of financial year 2017, Sfera had 157 of its own stores in different countries.

> Informática El Corte Inglés Group: it develops its activity in the sector of Information Technologies and Communications. At the close of the 2017 financial year, it had 17 branches in Spain and 11 abroad.

> Insurance Group: it offers life and accident, savings, temporary and life annuities insurance as well as pension plans. At 28 February 2018, the Insurance Broker had 117 branches in Spain and 2 in Portugal, and the Insurance Company had 25 branches in Spain.

  - Report of 2019:

'Sfera: chain of stores specializing in fashion and accessories. At the end of the 2019 financial year, - Hipercor hypermarkets: they offer a great variety and breadth of national products, digital platform. Sfera has 167 own stores distributed throughout different countries'.

  - Report of 2020-2021:

- Sfera: a retail chain specialised in fashion and accessories. At year-end 2020, there were 167 standalone, proprietary Sfera stores in a number of countries, 262 franchised stores abroad and 85 stores within ECI department stores in Spain and Portugal.

- Report of 2023:

  – Sfera stores: a retail chain specialised in fashion and accessories. At 29 February 2024, the Group operated 166 proprietary standalone Sfera brand stores in a number of countries, 287 franchised stores abroad and 71 stores within ECI department stores in Spain and Portugal.

- **Exhibits 3.1 – 3.3**: significant number of press articles dated between 2001 and 2019, published in the most important Spanish newspapers, such as *EL MUNDO*, *EL PAÍS*, *CINCO DÍAS*, *ABC* or *EL ECONOMISTA*, with many references to 'Sfera'. Below are just some extracts from the articles.

  - Articles dated 2016

Sfera, the fashion and accessories chain of El Corte Inglés, has launched its online store in Spain (Peninsula and the Balearic Islands), which confirms the commitment to e-commerce of the Spanish distribution giant, according to sources from the company.

Specifically, www.sfera.com presents a very careful image and offers a continuous renewal of the clothing offer, so customers

ww.eleconomista.es/empresas-finanzas/noticias/7268160/01/16/Sfera-la-cadena-de-moda-de-El-Corte-Ingles-lanza-su-tienda-online-en-Espana.html 1

14:47 Sfera, the El Corte Inglés fashion chain, launches its online store in Spain

will find more than 4,000 references of the women's, casual, lingerie, accessories, babies, children's and man, although the objective of the brand is to include 100% of the offer it has in store.

  - 'Sfera', as can be seen on the clothing chain's website, already has stores in Switzerland, Basel, Greece, the Philippines, the United Arab Emirates, Mexico, Colombia, Peru and Chile. Viajes El Corte Inglés operates in 11 foreign countries, including Italy, France, Peru, Chile, Mexico and the United States of America. According to the group's financial report, the company has travel subsidiaries in all these countries. And the IT division also has subsidiaries in eight countries, most of them in Latin America.

  - In 2017:

Madrid | 9 AUG 2017 - 21:25 CEST

El Corte Inglés has changed the management structure of Sfera, the subsidiary with which it is making the most progress in internationalization. Specifically, the group has created its own board of directors, justifying it by the growth that the company that manages its textile fashion chain is experiencing.

In the fiscal year closed in February 2016 (the last for which the group's accounts are known), Sfera invoiced 230.8 million, 12.5% more, and achieved a profit of 24.4 million euros, 0.3 % plus.

- **Exhibits 4.1 – 4.3**: several articles published in the most important magazines *ELLE*, *VOGUE*, *TENDENCIAS* between 2015 and 2022, in which there are photographs and references to 'Sfera' clothing articles, and, inter alia, homewear articles such as glasses, cushions, straws, mirrors, and lights.

- **Exhibit 5**: posts on social media, such as Instagram, Facebook, Pinterest, Twitter, YouTube, between 2016 and 2025 of the 'Sfera' trade marks in relation to social media advertisement campaigns and promotions for clothing, footwear and fashion accessories. As per these extracts, it can be seen that the 'Sfera' official Instagram

has 572 000 followers, the Facebook page has 1.6 million followers, its Facebook or YouTube videos have thousands of reproductions, etc.

- **Exhibit 6**: copy of the annual reports on the most valuable Spanish brands worldwide in the years 2017 to 2020, published by the independent consultancy Brand Finance. As per these reports, the brand 'Sfera' was ranked 97th in 2017, 85th in 2018, 85th in 2019 and 78th in 2020, and always related to the fashion textile sector.

- **Exhibit 7**: approximately 9 000 e-tickets dated between 2016 and 2020 and addressed to clients in Spain and Portugal, where in some of them it can be seen that they are issued by 'Sfera' shops to consumers. As regards the products sold, the invoices refer to 'casual woman', 'urban woman', 'fashion woman', 'accessories', etc., each identified with a numerical code. As per the opponent's comment, these codes can be found in **Exhibit 8** and therefore the goods can be identified.

  In addition, invoices were included, issued by 'Sfera' to clients in Poland during 2021, for goods sold, which are identified as 'camiseta', 'falda', chaleco', 'jersey', etc.

- **Exhibit 9**: witness statement dated 16/01/2024 issued by the Legal Representative of El Corte Inglés, S.A., indicating the following:

  - El Corte Inglés, S.A. is the owner of the trademark SFERA which offers clothing and accessories, leather goods, footwear, headwear, sportswear and activewear, textile goods and home decoration products, etc. These products are offered both in its own flagship stores and in El Corte Inglés shopping centers. ;

  - turnover figures regarding sales figures for various kind of products in Classes 18, 25 and 35 in the years 2016-2020:

    The turnover figures regarding the products of leather and imitations of leather goods, and goods made of these materials not included in other classes (Class 18), clothing, footwear and headgear (Class 25) and retail sales of these products in Class 35, bearing the trademark SFERA is provided below:

EXERCISE 2016/2017	346.3 - million euro
EXERCISE 2017/2018	361.7 - million euro
EXERCISE 2018/2019	374.4 - million euro
EXERCISE 2019/2020	403.6 - million euro

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- **Exhibit 10**: invoices, some apparently issued by the Asiatic suppliers of 'Sfera' products and addressed to ElCorteingles in Spain, others by a Sfera shop to another Sfera Shop, all in Spain. The invoices are dated between 2018 and 2021, and refer to the sale of, inter alia, 'ladies tank top', 'babies garments', 'men's chino pants', 'Boys jacket', and 'kimono'.

- **Exhibit 11**: copies of decisions of the Spanish Patent and Trademark Office, all regarding earlier cases in which the earlier marks 'Sfera' are involved.

- **Exhibit 12**: copies of decisions of the EUIPO of 26/06/2025 and 22/05/2025 confirming the reputation of the trade marks 'SFERA'.

Furthermore, following the holder's proof of use request, the opponent filed the following evidence to prove use of its trade marks.

As the opponent requested to keep certain commercial data contained in the evidence confidential vis-à-vis third parties, the Opposition Division will describe the evidence only in the most general terms without divulging any such data.

Therefore, on 11/02/2026, the opponent submitted the following evidence.

- **Exhibits 1.1-6 (bis)**: approximately 6 000 e-tickets dated in 2019 and addressed to clients in Spain and Portugal, where in some of them it can be seen that they are issued by 'Sfera' shops to consumers. As regards the products sold, the invoices refer to goods in Classes 14, 18, 24 and 25 such as 'casual woman', 'urban woman', 'fashion woman', 'accessories', etc., each identified with a numerical code.

  As regards e-tickets related to goods in Class 24, the opponent submitted a total of 54 issued in 2019, 82 in 2020, 32 in 2021, 97 in 2022, 43 in 2023, 30 in 2024, all identified under the name of accessories, mainly home decor.

  Moreover, there are also invoices addressed to clients in Poland and always related to goods in Classes 14, 18 and 25.

- **Exhibit 7 (bis)**: several tickets of 'Sfera' purchases issued between 2016 and 2020 in Greece, Spain, Poland and Portugal, and always related to goods in Classes 14, 18 and 25.

- **Exhibit 8 (bis)**: internal document containing product lists with codes and prices for various goods, particularly those reflected in tickets corresponding to the years 2019 to 2020. Selection of tickets to show that they relate to goods in Classes 14, 18 and 25.

- **Exhibit 9 (bis)**:

  1) Witness statement dated 18/12/2025 issued by the Legal Representative of El Corte Inglés, S.A., indicating the following:

     - that the tickets submitted above refer to products sold with codes that refer to the following kinds of goods, always bearing the ‘Sfera’ mark:

Code	Type of goods
320	Shoes
561	Menswear
562	Shirts, blouses and tops
582	Knitted and crocheted clothing
583	T-shirts, bodies, dresses coats and jackets
584	T-shirts
586	Jeans
587	Shoes: zapatería, zapatos
590	Accessories: handbags, shoulder bags, backpacks
932	Lingerie and swimwear

;

     - turnover figures regarding sales figures for various kinds of clothing, fashion accessories, such as jewellery and costume jewellery, bags, footwear, leather and imitation of leather goods, textile products and home decoration items, in the years 2016-2025.

  2) Witness statement dated 27/05/2025 issued by the Legal Representative of El Corte Inglés, S.A., showing turnover figures of ‘Sfera’ products from 2019 to 2024, as well as an indication of the most commonly used codes for the best selling products of the ‘Sfera’ trade mark:

Code	Item
315	**Textiles (cushions, tablecloths, bags, cloths, etc.)**
305	Decorative items (lighting, vases, jewellery boxes, decorative boxes, decorative figurines, lamps, frames, mirrors, artificial plants , pots, etc.)
310	Table (bowls, glasses, cups, trays, bottles, plates, etc.)

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- **Exhibit 10 (bis)**: extracts from the website of El Corte Inglés at https://www.elcorteingles.es/informacioncorporativa/es/, printed in 2024, where it can be read:

  SFERA belongs to El Corte Inglés, group founded in 1940, European leading department store in Europe with a turnover of 13M€. SFERA

> was launched in 2001 as a small project offering good quality fashionable garments at affordable prices in Spain. Today, SFERA has become a truly global lifestyle trade mark with international presence.
>
> The trade mark offers high style designs and fashion basics with compelling values and dynamic store environment. SFERA creates innovative, must-have products. Our aim is to build emotional links with clients through excellent customer service offering them what they are looking for.
>
> The SFERA fashion and accessories chain maintained an upward trend with a contribution to turnover of 426.88 million in 2018. SFERA has established itself as an affordable design chain that is highly valued by consumers thanks to the quality-price-design ratio offered by its collections. In 2018, the care given to details and finishes was stepped up, as this adds substance to the garments. At the same time, during 2018, product exposure at the point of sale was improved by incorporating new furniture and undertaking a plan to refurbish stores in order to improve the customer experience. In terms of own stores, 102 are in Spain, 46 in Mexico, 8 in Portugal and 3 in Greece.

It also includes a screenshot of the Wayback Machine in relation to the 'Sfera' website, where it can be seen that it has been saved at least 141 times between 2001 and 2024, together with some of these pages where the mark 'Sfera' is shown associated to many clothing articles for men, women and children. Moreover, it can be seen the mark is also associated with, inter alia, fashion articles such as bags, shoes, earrings, belts and gloves.

- **Exhibit 11 (bis)**: copy of inspection reports issued by various global testing, inspection and certification services companies, such as Bureau Veritas or Intertek. These exhibits show information regarding the inspection of imported products, mostly of shoes but also of some clothing accessories, bearing the 'Sfera' trade mark and where pictures or drawings of these products can be seen.

- **Exhibit 12 (bis)**: invoices, some apparently issued by the Asiatic suppliers of SFERA products and addressed to ElCorteingles in Spain, others by a Sfera shop to another Sfera Shop, all in Spain. The invoices are dated between 2018 and 2021, and refer to the sale of, inter alia, 'ladies tank top', 'babies garments', 'men's chino pants', 'Boys jacket' and 'kimono'.

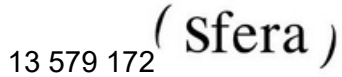
- **Exhibit 13 (bis)**: decisions of the Spanish Patent and Trademark Office dated 23/08/2023 (confirmed by the Appeal Section of the SPTO on 24/04/2024) and 02/02/2024.

ASSESSMENT OF THE PROOFOFUSE

In accordance with Article 47(2)and(3)EUTMR, if the applicant so requests, the opponent must furnish proof that,duringthefive-year period preceding the date of filing or, where applicable, the dateofpriorityofthe contested trade mark, the earlier trade mark has been put to genuineuseintheterritories in which it is protected in connection with the goods or services forwhichitisregistered and which the opponent cites as justification for its opposition,orthatthereare proper reasons for non-use. The earlier mark is subject to the use obligationif,atthatdate, it has been registered for at least five years.

The same provision states that, in the absence of such proof, the opposition will be rejected.

The holder requested that the opponent submit proof of use of European Union trade mark registrations No 2 274 629 and No 2 296 358, both for the word mark ‘Sfera’, and

(figurative mark) European Union trade mark registration No 13 579 172 

The request was submitted in due time and is admissible given that it was submitted as an unconditional request in a separate document and the earlier trade marks were registered more than five years prior to the filing date.

The date of filing of the contested application is 27/05/2024. However, the contested trade mark has a priority date of 17/05/2024. The opponent was therefore required to prove that the earlier trade mark registrations were put to genuine use in the European Union **from 17/05/2019 to 16/05/2024 inclusive**.

Furthermore, the evidence must show use of the trade marks for the goods on which the opposition is based, namely the following:

European Union trade mark registration No 2 274 629

Class 14: *Precious metals andtheiralloysandgoods inprecious metalsor coated therewith, not included in other classes; jewellery, precious stones; horological and chronometric instruments.*

Class 18: *Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; umbrellas, parasols and walking sticks; whips, harness and saddlery, except trunks and travel goods.*

Class 25: *Clothing, footwear,headgear.*

European Union trade mark registration No 2 296 358

Class 24: *Textiles and textile goods, not includedin other classes; bed and table covers.*

European Union trade mark registration No 13 579 172

Class 24: *Textiles andtextilegoods,notincludedinother classes; bed covers; table covers.*

According to Article 10(3) EUTMDR, the evidence of use must consist of indications concerning the place, time, extent and nature of use of the opposing trade mark for the goods or services in respect of which it is registered and on which the opposition is based.

On 08/10/2025, in accordance with Article 10(2) EUTMDR, the Office gave the opponent until 13/12/2025 to submit evidence of use of the earlier trade marks, a deadline that was extended until 13/02/2026. On 11/02/2026, within the time limit, the opponent submitted the evidence of use listed above.

Moreover, as explained above, the opponent had already submitted another batch of evidence with the aim of proving reputation of the earlier marks for the relevant goods, and many documents are relevant for the proof of use assessment, given that they are dated within the relevant period. Any evidence that has been submitted by the opponent at any time during the proceedings before the expiry of the time limit for providing proof of use, even before the holder's request for proof of use, has to be automatically taken into account when assessing proof of use.

Assessment of genuine use–factors

As far as the witness statementsareconcerned, Article 10(4) EUTMDR expressly mentions written statementsreferredtoinArticle 97(1)(f) EUTMR as admissible means of proof of use. Article 97(1)(f)EUTMRlistsmeans of giving evidence, amongst which are sworn or affirmed writtenstatementsorother statements that have a similar effect according to the law of theStateinwhichthey have been drawn up. As far as the probative value of this kindofevidenceisconcerned, statements drawn up by the interested parties themselvesortheiremployees are generally given less weight than independent evidence. Thisisbecausetheperception of the party involved in the dispute may be more or less affectedbyitspersonalinterests in the matter.

However, this does not meanthatsuchstatements do not have any probative value at all.

The final outcome depends on the overall assessment of the evidence in the particular case. This is because, in general, further evidence is necessary to establish use, since such statements have to be considered as having less probative value than physical evidence (labels, packaging, etc.) or evidence originating from independent sources.

Bearing in mind the foregoing, it is necessary to assess the remaining evidence to see whether or not the contents of the declaration are supported by the other items of evidence.

Place of use

The General Court has held on numerous occasions that use of an EUTM in a single Member State (e.g. in Germany, in Spain, or in the United Kingdom), or even in a single city in a Member State of the European Union, is sufficient to satisfy the criterion of territorial scope (07/11/2019, T-380/18, INTAS / INDAS (fig) et al., EU:T:2019:782, § 81 and the case-law cited).

The tickets and invoices, the sales tickets, the various press articles, the brand performance studies, the activity reports and financial reports show that the place of use is mainly Spain but also Poland and Portugal. This can be inferred from the language of the documents (Portuguese, Spanish), the currency mentioned (euro) and the addresses in Spain, Poland and Portugal reflected in the sales tickets or invoices.

Therefore, the evidence relates to the relevant territory.

Time of use

Most of the evidence submitted refers to the relevant period. Some of the evidence in the other batch predates or postdates the relevant period or it is undated. However, there

are other items of evidence, which clearly show the opponent's commercial activity under the earlier marks within the relevant period.

Evidence referring to use made outside the relevant timeframe is disregarded unless it contains conclusive indirect proof that the mark must have been put to genuine use during the relevant period of time as well. Events subsequent to the relevant time period may make it possible to confirm or better assess the extent to which the earlier mark was used during the relevant time period and the real intentions of the trade mark proprietor at that time (27/01/2004, C-259/02, Laboratoire de la mer, EU:C:2004:50). In the present case, bearing in mind the evidence in its entirety, the outdated evidence confirms use of the signs during the period concerned, as it shows continuity, effort, planning and development of the signs in relation to the relevant goods.

Extent of use

As regards the extent of use, all the relevant facts and circumstances must be taken into account, including the nature of the relevant goods and the characteristics of the market concerned, the territorial extent of use, the commercial volume and the duration and frequency of use.

The invoices and tickets of purchases submitted, the huge number of shops mainly in Spain and Portugal, and the sales figures and volumes throughout the relevant period, reflect the awareness and success of the earlier marks and leave no doubt about the extent of use of the earlier marks. The steady nature of those sales can also be inferred from the non-consecutive invoices or e-tickets numbers, which demonstrate that other sales were made in between those submitted. Consequently, it can be deduced that the invoices or e-tickets submitted as evidence are merely a sample of those actually issued by the opponent during the relevant period, thus indicating a larger volume of sales and supporting other sales information provided by the opponent (14/07/2014, T-204/12, Via Vita, EU:T:2014:646, § 29, 31, 36-39). Furthermore, the invoices submitted show that the sales were made to clients throughout the relevant territory.

In addition, the relevant press articles, the activity reports, the economic reports, and the annual reports on the most valuable Spanish brands worldwide provide the Opposition Division with sufficient information concerning the commercial volume, the territorial scope, the duration, and the frequency of use for part of the goods.

Nature of use

In the context of Article 10(3) EUTMDR, the expression 'nature of use' includes evidence of use of the sign in accordance with its function, of use of the mark as registered, or of a variation thereof according to Article 18(1), second subparagraph, point (a) EUTMR, and of its use for the goods and services for which it is registered.

However, the evidence filed by the opponent does not show genuine use of the trade marks for all the goods covered by the earlier trade marks.

The evidence submitted clearly shows that the earlier marks were indeed used to indicate the commercial origin of the following relevant goods:

Class 14: *Jewellery; horological instruments*.

Class 25: *Clothing; footwear*.

The evidence mainly relates to the above listed goods, whereas there is no or little reference to the sales of other goods, including the remaining goods in Classes 14 and 25.

In the present case, the evidence also shows use for *bags* in Class 18. However, the earlier mark is not registered for these goods, since the term *leather and imitations of leather, and goods made of these materials and not included in other classes* does not provide a clear indication of what goods are covered, as it simply states what the goods are made of, and not what the goods are. This category encompasses a wide range of goods that may have different characteristics or purposes, may require very different levels of technical skills and specialised knowledge to be produced or used, and could target different consumers, marketed through different sales channels, and therefore be related to different market sectors.

A registered trade mark for a range of goods and services designated in a vague and imprecise manner can only be protected for the goods and services for which it has been used, which, in the present case, has been established after evaluating the evidence submitted to show use of the earlier marks.

With regard to the *leather and imitations of leather, and goods made of these materials and not included in other classes*, the evidence only demonstrates use in relation to *bags of leather or imitation of leather*.

Therefore, the evidence shows genuine use of the trade marks for the following goods:

Class 14: *Jewellery; horological instruments*.

Class 18: *Bags of leather or imitation of leather.*

Class 25: *Clothing; footwear*.

As regards the earlier goods in Class 24, the opponent indicated the presence of more than 100 e-tickets, which refer to goods in Class 24, and specifically to home décor. Moreover, in Exhibit 9 bis, it indicates the code 315, as the one corresponding in these e-tickets to textiles. However, when analysing the evidence, in these tickets only the word ‘ACCESSORIES’ can be seen, and no reference to the code 315 can be found. As a consequence, it cannot be considered that use has been proven for goods in Class 24, and therefore no use has been proven as regards the earlier European Union trade mark registration No 2 296 358 or the earlier European Union trade mark registration

No 13 579 172 (Sfera) (figurative mark).

As stated above, the factors of time, place, extent and nature of use are cumulative. This means that the evidence must provide sufficient indication of all these factors in order to prove genuine use. Failure to fulfil one of the conditions is sufficient and, as nature of use has not been established, it is not necessary to discuss the other requirements.

The Opposition Division concludes therefore that the evidence furnished by the opponent is insufficient to prove that the earlier European Union trade mark registrations No 2 296 358 and No 13 579 172 were genuinely used in the relevant territory during the relevant period of time. Therefore, the opposition must be rejected pursuant to Article 47(2) EUTMR and Article 10(2) EUTMDR as regards these earlier rights.

According to Article 18(1), second subparagraph, point (a), EUTMR, the following will also constitute use within the meaning of paragraph 1: use of the European Union trade mark in a form differing in elements that do not alter the distinctive character of the mark in the form in which it was registered, regardless of whether or not the trade mark in the form as used is also registered in the name of the proprietor. When examining the use of an earlier registration for the purposes of Article 47(2) and (3) EUTMR, Article 18 may be applied by analogy to assess whether or not the use of the sign constitutes genuine use of the earlier mark as far as its nature is concerned.

The remaining earlier European Union trade mark registration No 2 274 629, for which use for some goods has been proven, is registered as the mark 'SFERA'. The evidence

(Sfera)

relates mainly to the also in its word version. It is true that the earlier mark's registered mark missed the parenthesis, which are nevertheless non-distinctive. The Opposition Division concludes that the evidence submitted by the opponent at first instance is sufficient and shows that the earlier mark has been used in accordance with its functions and in an acceptable variation of its registered form, within the meaning of Article 18(1), second paragraph, point (a) EUTMR.

Therefore, the Opposition Division will only consider the abovementioned European Union trade mark registration No 2 274 629 and the following goods in its further examination of the opposition:

Class 14: *Jewellery; horological instruments*.

Class 18: *Bags of leather or imitation of leather.*

Class 25: *Clothing; footwear*.

REPUTATION – ARTICLE 8(5) EUTMR

AccordingtoArticle8(5)EUTMR,uponoppositionbythe proprietor of a registered earlier trade markwithinthemeaningofArticle8(2)EUTMR,the contested trade mark will not be registeredwhereitisidenticalwith,orsimilarto,anearlier trade mark, irrespective of whetherthegoodsorservicesforwhichitisappliedare identical with, similar to or not similartothoseforwhichtheearliertrademarkisregistered, where, in the case of an earlierEuropeanUniontrademark,thetrademarkhas a reputation in the Union or, in thecaseofanearliernationaltrademark,thetrademark has a reputation in the Member Stateconcernedandwheretheusewithoutduecauseof the contested trade mark would takeunfairadvantageof,orbedetrimentalto,thedistinctive character or the repute of the earlier trade mark.

Therefore,thegroundsforrefusalofArticle8(5)EUTMR are only applicable when the following conditions are met.

- Thesignsmustbeeitheridenticalorsimilar.
- Theopponent'strademarkmusthaveareputation. The reputation must also be priortothefilingofthecontestedtrademark;itmust exist in the territory concerned andforthegoodsand/orservicesonwhichtheopposition 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 holder establishes due cause for the use of the contested trade mark.

In the present case, the holder 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 27/05/2024. However, the contested trade mark has a priority date of 17/05/2024. Therefore, the opponent was required to prove that the trade mark on which the opposition is based and for which use has been proven, 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 holder to claim and prove.

The evidence must also show that the reputation was acquired for the goods for which the opponent has claimed reputation and for which use has been shown, namely:

Class 14: *Jewellery; horological instruments*.

Class 18: *Bags of leather or imitation of leather.*

Class 25: *Clothing; footwear*.

The opposition is directed against the following goods:

Class 14: *Cabochons; rings [jewellery]; charmsfor key rings; necklaces[jewellery];cuff links; jewellery; earrings; wristwatches; precious stones; brooches [jewellery]; time instruments; bracelets; precious metals and their alloys; precious and semi-precious stones; synthetic precious stones; jewellery made of glass; watch chains; pendants; scarf clips being jewelry; jewel cases; diadems; imitation precious stones; medallions; ornaments [jewellery, jewelry (Am.)]; natural gem stones; key rings; jewellery boxes.*

Class 18: *Trunks [luggage]; travelling trunks; bags; beach bags; bags for sports; shopping bags; chain mesh purses; tool bags, empty; purses; travelling sets [leatherware]; handbags; school bags; collars for animals; labels of leather; umbrella covers; muzzles; umbrellas; curried skins; chamois leather, other*

than for cleaning purposes; fur; credit card cases [wallets]; business card cases; card cases [notecases]; music cases; pocket wallets; haversacks; bags for campers; travelling bags; hat boxes of leather; handbag frames; attaché cases; garment bags for travel; rucksacks; luggage; small bags for men; duffel bags; straps for luggage; bumbags; umbrellas and parasols; shoulder belts; toiletry bags sold empty; tool pouches, sold empty; key cases; vanity cases, not fitted; saddlebags; flight bags; saddlebags; towelling bags; bags for umbrellas; leather cord; small clutch purses; clutch bags; shoe bags; garment carriers; leather laces; overnight cases; carriers for suits, shirts and dresses; luggage covers; luggage tags; leads for animals; grips [bags]; rucksacks on castors; valises; suitcases with wheels; travelling sets; pouches; leather purses; clothing for pets.

Class 24: *Face towels of textile; towels of textile; bath linen, except clothing; linens; bed clothes and blankets; bed linen; table linen, not of paper; diapered linen; canvas for tapestry or embroidery; haircloth [sackcloth]; bed covers of paper; bed blankets; lap rugs; rugs (travelling); curtain holders of textile material; fustian; crepe [fabric]; crepon; damask; handkerchiefs of textile; pillowcases; mattress covers; felt; flannel [fabric]; linings [textile]; hat linings, of textile, in the piece; coverings for furniture; covers for cushions; pillow shams; gauze [cloth]; jersey [fabric]; cheviots [cloth]; sheets [textile]; sleeping bag liners; marabouts [cloth]; filtering materials of textile; plastic material [substitute for fabrics]; moleskin [fabric]; drugget; printers' blankets of textile; wall hangings of textile; mural hangings [textile]; door curtains; tick [linen]; furniture coverings of plastic; cloth; furniture coverings of textile; textile material; woollen cloth; taffeta [cloth]; tablecloths, not of paper; hemp cloth; printed calico cloth; ticks [mattress covers]; oilcloth for use as tablecloths; curtains of textile or plastic; textiles; gummed cloth, other than for stationery purposes; hemp fabric; jute fabric; linen cloth; rayon fabric; ramie fabric; silk [cloth]; silk fabrics for printing patterns; esparto fabric; elastic woven fabrics; fabric of imitation animal skins; fibreglass fabrics for textile use; knitted fabric; non-woven fabrics; upholstery fabrics; curtains; velvet; trellis [cloth]; table napkins of textile; frieze [cloth]; chenille fabric; traced cloths for embroidery; fabrics for textile use; lingerie fabric; fabric for footwear; tablemats of textile; place mats made of textile materials; place mats of textile; zephyr [cloth]; shower curtains of textile or plastic; table runners of textile; lining fabric for footwear; eiderdowns [down coverlets]; flags of textile or plastic; sanitary flannel; labels of textile.*

Class 25: *Clothing for gymnastics; bath robes; bandanas [neckerchiefs]; shirts; dresses; underwear; short-sleeve shirts; hats; coats; bathing suits; neckties; headbands [clothing]; jackets [clothing]; skirts; ready-made clothing; knitwear [clothing]; jerseys [clothing]; hosiery; sweaters; trousers; shoes; neck scarves [mufflers]; overcoats; outerclothing; tank tops; waist belts; face masks [fashion wear]; face mask [clothing]; mackintoshes; baseball caps; menswear; ladies' clothing; imitation leather dresses; leather dresses.*

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.

The evidence submitted by the opponent has already been listed above.

Since the evidence submitted within the time limit to substantiate the opposition is sufficient to prove the reputation of the earlier trade mark, the issue of whether or not the Office may exercise the discretion conferred on it by Article 95(2) EUTMR to take into account the evidence submitted to prove use as additional evidence for reputation can remain open.

Taking into consideration the abovementioned principles, after carefully examining all the evidence submitted and considering all the relevant arguments of the opponent, it is clear from the evidence that the earlier trade mark has been subject to long-standing and intensive use and is generally known on the relevant market, where it enjoys a consolidated position among the leading brands, as has been attested by diverse independent sources. The sales figures, marketing expenditure and market share shown by the evidence and the various references in the press to its success all unequivocally show that the mark enjoys a high degree of recognition among the relevant public.

The evidence submitted mentions that Sfera's turnover was EUR 430.6 million in 2019-2020, compared with EUR 374.4 million the previous year, and in the report of 2023 it mentions that Sfera has a total of 172 stores in Spain, 10 in Portugal and 524 in total. These figures may at least be indicative of a significant presence in the fashion sector in Spain on the relevant date. All this, together with the activity reports for the years 2015 to 2023, press articles from some of the main Spanish newspapers and economic press between 2015 and 2022, Spain's Most Valuable and Strongest Brands Annual Report for 2017 to 2020, etc., all unequivocally show that the mark enjoys a high degree of recognition among the relevant public.

It is true that the earlier mark's registered mark missed the parenthesis, however, as indicated above, they are non-distinctive.

Under these circumstances, the Opposition Division finds that, taken as a whole, the evidence indicates that the earlier trade mark enjoys a high degree of recognition among the relevant public, which leads to the conclusion that the earlier trade mark enjoys a high degree of reputation at least in Spain for at least *clothing; footwear* in Class 25.

b) The signs

SFERA	SFERA EBBASTA
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 unitary character of the European Union trade mark means that an earlier European Union trade mark can be relied on in opposition proceedings against any application for registration of a European Union trade mark that would adversely affect the protection of the first mark, even if only in relation to the perception of consumers in part of the European Union (18/09/2008, C-514/06 P, ARMAFOAM / NOMAFOAM,

EU:C:2008:511, § 57). Therefore, a risk of injury, for only part of the relevant public of the European Union is sufficient to reject the contested application. As reputation has been demonstrated mainly in Spain, the analysis below focuses on the Spanish part of the relevant public.

The coinciding word 'SFERA' has no meaning for the relevant public. However, it cannot be ruled out that at least part of the public will see the word 'SFERA' as referring to the three-dimensional surface, due to its resemblance to the Spanish equivalent term *esfera*. Taking into account the relevant goods, this element is considered distinctive, whether perceived as meaningful or meaningless, since it does not convey any particular meaning in relation to them.

The contested mark's additional verbal element 'EBBASTA' is meaningless for the relevant public and, therefore, it is distinctive to an average degree.

Visually and **aurally**, the signs coincide in the distinctive verbal element 'SFERA', which is the entire earlier mark and the first element of the contested mark, and its sound. They differ in the contested sign's distinctive verbal element 'EBBASTA' and its sound.

Consumers generally tend to focus on the beginning of a sign when they encounter a trade mark, so this will not distract the consumers' attention from the abovementioned commonality.

Therefore, the signs are visually and aurally similar to an average degree.

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

For the part of the public for whom the word 'SFERA' has no meaning, neither of the signs has a meaning for the public in the relevant territory. Since a conceptual comparison is not possible, the conceptual aspect does not influence the assessment of the similarity of the signs. For the other part of the public who will perceive the meaning of sphere ('SFERA') in the signs, the marks are conceptually highly similar.

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.

The establishment of such a link, while triggered by similarity (or identity) between the signs, requires that the relevant sections of the public for each of the goods and services covered by the trade marks in dispute are the same or overlap to some extent.

The Court of Justice has also noted that,

> […] certain marks may have acquired such a reputation that it goes beyond the relevant public as regards the goods or services for which those marks were registered. In such a case, it is possible that the relevant section of the public as regards the goods or services for which the later mark is registered will make a connection between the conflicting marks, even though that public is wholly distinct from the relevant section of the public as regards goods or services for which the earlier mark was registered.

(27/11/2008, C-252/07, Intel, EU:C:2008:655, § 51-52.)

Regarding the degree of similarity between the marks at issue, it is clear from the case-law that, the more immediately and strongly the mark is brought to mind by the sign, the greater the likelihood that the current or future use of the sign is taking, or will take, unfair advantage of the distinctive character or the repute of the mark or is, or will be, detrimental to it (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 67-69; 18/06/2009, C-487/07, L'Oréal, EU:C:2009:378, § 44). Moreover, the stronger the distinctive character of the earlier mark, the more likely it is that, when encountering a later, similar mark, the relevant public will associate it with that earlier mark.

Therefore, it is in light of the abovementioned jurisprudence that the opponent's claims must be examined.

The degree of similarity between the signs

The signs are visually and aurally similarto an average degree. The signs are conceptually not similar for a part of the publicand highly similar for the remaining part of the public.

The degree of the earlier mark's distinctive character

The earlier mark has no meaning for the relevant goods and has, overall, a normal degree of inherent distinctiveness.

The strength of the earlier mark's reputation

The earlier mark is widely used on the marketandhas been shown to have a high degree of reputation at least in Spain in relation to, atleast, *clothing; footwear* in Class 25.

As mentioned above, the opposition is directedagainst the following goods:

Class 14: *Cabochons; rings [jewellery]; charms for key rings; necklaces [jewellery]; cuff links; jewellery; earrings; wristwatches; precious stones; brooches [jewellery]; time instruments; bracelets; precious metals and their alloys; precious and semi-precious stones; synthetic precious stones; jewellery made of glass; watch chains; pendants; scarf clips being jewelry; jewel cases; diadems; imitation precious stones; medallions; ornaments [jewellery, jewelry (Am.)]; natural gem stones; key rings; jewellery boxes.*

Class 18: *Trunks [luggage]; travelling trunks; bags; beach bags; bags for sports; shopping bags; chain mesh purses; tool bags, empty; purses; travelling sets [leatherware]; handbags; school bags; collars for animals; labels of leather; umbrella covers; muzzles; umbrellas; curried skins; chamois leather, other than for cleaning purposes; fur; credit card cases [wallets]; business card cases; card cases [notecases]; music cases; pocket wallets; haversacks; bags for campers; travelling bags; hat boxes of leather; handbag frames; attaché cases; garment bags for travel; rucksacks; luggage; small bags for men; duffel bags; straps for luggage; bumbags; umbrellas and parasols; shoulder belts; toiletry bags sold empty; tool pouches, sold empty; key cases; vanity cases, not fitted; saddlebags; flight bags; saddlebags; towelling bags; bags for umbrellas; leather cord; small clutch purses; clutch bags; shoe bags; garment carriers; leather laces; overnight cases; carriers for suits, shirts and dresses; luggage covers; luggage tags; leads for animals; grips [bags]; rucksacks on castors; valises; suitcases with wheels; travelling sets; pouches; leather purses; clothing for pets.*

Class 24: *Face towels of textile; towels of textile; bath linen, except clothing; linens; bed clothes and blankets; bed linen; table linen, not of paper; diapered linen; canvas for tapestry or embroidery; haircloth [sackcloth]; bed covers of paper; bed blankets; lap rugs; rugs (travelling); curtain holders of textile material; fustian; crepe [fabric]; crepon; damask; handkerchiefs of textile; pillowcases; mattress covers; felt; flannel [fabric]; linings [textile]; hat linings, of textile, in the piece; coverings for furniture; covers for cushions; pillow shams; gauze [cloth]; jersey [fabric]; cheviots [cloth]; sheets [textile]; sleeping bag liners; marabouts [cloth]; filtering materials of textile; plastic material [substitute for fabrics]; moleskin bed.*

Class 25: *Clothing for gymnastics; bath robes; bandanas [neckerchiefs]; shirts; dresses; underwear; short-sleeve shirts; hats; coats; bathing suits; neckties; headbands [clothing]; jackets [clothing]; skirts; ready-made clothing; knitwear [clothing]; jerseys [clothing]; hosiery; sweaters; trousers; shoes; neck scarves [mufflers]; overcoats; outerclothing; tank tops; waist belts; face masks [fashion wear]; face mask [clothing]; mackintoshes; baseball caps; menswear; ladies' clothing; imitation leather dresses; leather dresses.*

Another factor to consider when assessing whether there is a 'link' between the signs is the relevant goods and services. An association between the marks is more likely where there is a certain connection between the goods and services covered by the conflicting signs. Furthermore, certain marks may have acquired such a reputation that it goes

beyond the relevant public as regards the goods and services for which those marks were registered (29/11/2018, T-373/17, LV BET ZAKŁADY BUKMACHERSKIE (fig.) / LV (fig.), EU:T:2018:850, § 111).

The relevant public's assessment of the link between the signs at issue is likely to vary according to the strength of the reputation (04/10/2017, T-411/15, GAPPOL (fig.) / GAP et al., EU:T:2017:689, § 197).

As shown by the evidence above, the opponent's sign is very well reputed. Therefore, it is considered that the link is very feasible in relation to goods or sectors that are commonly related to the fashion sector, as listed and explained below. Admittedly, some of the contested goods are dissimilar to the earlier reputed goods (while others may be similar – according to the 'Canon' criteria – or even identical). In any case, having regard to their nature and taking into account and weighing up all the relevant factors of the present case, the Opposition Division concludes that the gap between most of them is not so large and consequently there exists, at least, prima facie, a possibility that when encountering the contested sign the relevant consumers will be likely to associate it with the earlier mark, that is to say, establish a mental 'link' between the signs in relation to most of the contested goods.

The main reason is that most of these contested goods are commonly associated with the fashion industry and/or contribute to fashion-related activities, often provided by fashion brands or in fashion retail contexts, and they are connected to goods in the fashion sector (handbags, clothing, watches, retail of such goods etc.) to a greater or lesser extent.

The contested goods in Class 25 are identical to the goods for which reputation has been shown, and therefore the existence of a link is obvious.

The existence of a link is also obvious when it comes to the following contested goods:

Class 14: *Cabochons; rings [jewellery]; charmsfor key rings; necklaces[jewellery];cuff [jewellery]; time*
links, jewellery; earrings; wristwatches; brooches
instruments; bracelets; jewellery made of glass; synthetic precious stones; watch chains; pendants; scarf clips being jewelry; jewel cases; diadems; imitation precious stones; medallions; ornaments [jewellery, jewelry (Am.)]; key rings; jewellery boxes.

Class 18: *Trunks [luggage]; travelling trunks; bags; beach bags; bags for sports; shopping bags; chain mesh purses; tool bags, empty; purses; travelling sets [leatherware]; handbags; school bags; collars for animals; labels of leather; umbrella covers; muzzles; umbrellas; curried skins; chamois leather, other than for cleaning purposes; fur; credit card cases [wallets]; business card cases; card cases [notecases]; music cases; pocket wallets; haversacks; bags for campers; travelling bags; hat boxes of leather; handbag frames; attaché cases; garment bags for travel; rucksacks; luggage; small bags for men; duffel bags; straps for luggage; bumbags; umbrellas and parasols; shoulder belts; toiletry bags sold empty; tool pouches, sold empty; key cases; vanity cases, not fitted; saddlebags; flight bags; saddlebags; towelling bags; bags for umbrellas; leather cord; small clutch purses; clutch bags; shoe bags; garment carriers; leather laces; overnight cases; carriers for suits, shirts and dresses; luggage covers; luggage tags; leads for animals; grips [bags]; rucksacks on castors; valises; suitcases with wheels; travelling sets; pouches; leather purses; clothing for pets.*

Class 24: *Face towels of textile; towels of textile; bath linen, except clothing; linens; bed clothes and blankets; bed linen; table linen, not of paper; diapered linen; bed blankets; lap rugs; rugs (travelling); handkerchiefs of textile; pillowcases; mattress covers; coverings for furniture; covers for cushions; pillowshams; sheets [textile]; sleepingbag liners.*

These goods and the opponent'sreputedgoodscanhaveatleastthesamerelevant public and distribution channelsandbelongto,generallyspeaking,thefashion-related sector. This holds true includinginrelationto,interalia,*travelling bags*,sinceitisnot uncommon for successfulclothingdesignerstolaunchsuchproductlines.The opponent's goods have alsosufficientproximitywiththecontestedjewelleryandtime instruments and their partsandaccessoriesinClass14,sinceitiscommoninthefashion industry for big fashion companiestoputonthemarketjewellery,watchesetc.The market reality shows thatthemostsuccessfulclothingbrandsalsodevelopseparate product lines for the home(textiles,householdutensilsandcontainers,homedecoration, drinkware and tableware).Therefore,alinkwithgoodssuchas*face towels of textile; towels of textile; bath linen, except clothing; linens; bed clothes and blankets; bed linen; table linen, not of paper* inClass24cannotbesafelyexcluded.Regarding*collars for animals; muzzles; curried skins; chamois leather, other than for cleaning purposes; saddlebags; leads for animals*,fashioncompaniesmayalsoofferequestrianapparelor animal clothing or accessories,and,therefore,customersarelikelytobelievethatthe opponent may also offer thecontestedgoods(24/11/2021,R1597/2020-2,FABIO RICCI (fig.) / Nina ricci et al., §55).Therefore,alinkcouldalsobeestablishedbetween the marks in relation to such goodsinClass18.

In conclusion, these contested goodscanplausiblyrepresentastrategicprogressionin the range of goods offered by the opponent,namelyaprogression,forexample,to leather goods, inter alia, animals apparelaimedatenlarginganddiversifyingthe opponent's production lines and, in doing so,reachingawiderpublic.

However, a similar reasoning cannot be appliedtothefollowingremainingcontested goods:

Class 14: ———

Precious stones; preciousmetalsandtheiralloys;preciousandsemi- precious stones; naturalgemstones.

Class 24: *Canvas for tapestry or embroidery; haircloth [sackcloth]; bed covers of paper; curtain holders of textile material; fustian; crepe [fabric]; crepon; damask; handkerchiefs of textile; felt; flannel [fabric]; linings [textile]; hat linings, of textile, in the piece; gauze [cloth]; jersey [fabric]; cheviots [cloth]; marabouts [cloth]; filtering materials of textile; plastic material [substitute for fabrics]; moleskin bed.*

This is because the establishment of such a link, while triggered by similarity (or identity) between the signs, requires that the relevant sections of the public for each of the goods covered by the trade marks in dispute are the same or overlap to some extent.

According to the Court of Justice of the European Union,

> It is therefore conceivable that the relevant section of the public as regards the goods or services for which the earlier mark was registered is completely distinct from the relevant section of the public as regards the goods or services for which the later mark was registered and that the earlier mark, although it has a reputation, is not known to the public targeted by the later mark. In such a case, the public targeted by each of the two marks may never

be confronted with the other mark, so that it will not establish any link between those marks.

(27/11/2008, C-252/07, Intel, EU:C:2008:655, § 48.)

In the present case, there is no overlap between the relevant sections of the public for the trade marks in dispute. Each trade mark targets a different type of public. Insofar as the remaining goods in Class 14 are concerned, it is clear that the signs do not target the same consumers in the present case (more on the professional side in the case of Class 14). Consequently, there is no overlap in the public in the present case. For the remaining contested goods in Class 24, in a natural way, there will be no obvious association created in the mind of consumers confronted with the various items of the contested goods in Class 24 and the opponent's reputed goods in Class 25. They do not coincide in nature, purpose, methods of use, distribution channels, relevant public or producers. The market sectors concerned by the goods are very remote, in the sense that a connection between the respective segments of the public is not obvious.

The absolute dissimilarity of the opponent's goods in Class 25 and the above listed goods in Classes 14 and 24 and the totally distinct sections of their respective public eclipse all the other factors that may contribute to the establishment of a link, such as the similarity between the conflicting marks and the degree of reputation of the earlier mark (23/08/2012, R 1330/2011-4, AF (fig,)/ A & F, § 36).

Therefore, taking into account and weighing up all the relevant factors of the present case, the Opposition Division concludes that it is unlikely that the relevant public will make a mental connection between the signs in dispute, that is to say, establish a 'link' between them, in relation to these remaining goods.

The outcome would not be different for the remaining part of the public, namely the non-Spanish-speaking part of the public in the European Union. A not insignificant part of the public would not understand the verbal elements of the signs, and even for them, a link would not be established.

Therefore, the opposition based on Article 8(5) EUTMR and directed at these goods is not well founded and must be rejected for:

Class 14: *Precious stones; preciousmetalsandtheiralloys;preciousandsemi- precious stones; naturalgemstones.*

Class 24: *Canvas for tapestry or embroidery; haircloth [sackcloth]; bed covers of paper; curtain holders of textile material; fustian; crepe [fabric]; crepon; damask; handkerchiefs of textile; felt; flannel [fabric]; linings [textile]; hat linings, of textile, in the piece; gauze [cloth]; jersey [fabric]; cheviots [cloth]; marabouts [cloth]; filtering materials of textile; plastic material [substitute for fabrics]; moleskin bed.*

The analysis will continue for the other goods, for which a link between the signs has been established, namely:

Class 14: *Cabochons; rings [jewellery]; charmsfor key rings; necklaces[jewellery];cuff links; jewellery; earrings; wristwatches; brooches[jewellery]; time instruments; bracelets; jewellery made of glass; synthetic precious stones; watch chains; pendants; scarf clips being jewelry; jewel cases; diadems; imitation precious stones; medallions; ornaments [jewellery, jewelry (Am.)]; key rings; jewellery boxes.*

Class 18: *Trunks [luggage]; travelling trunks; bags; beach bags; bags for sports; shopping bags; chain mesh purses; tool bags, empty; purses; travelling sets [leatherware]; handbags; school bags; collars for animals; labels of leather; umbrella covers; muzzles; umbrellas; curried skins; chamois leather, other than for cleaning purposes; fur; credit card cases [wallets]; business card cases; card cases [notecases]; music cases; pocket wallets; haversacks; bags for campers; travelling bags; hat boxes of leather; handbag frames; attaché cases; garment bags for travel; rucksacks; luggage; small bags for men; duffel bags; straps for luggage; bumbags; umbrellas and parasols; shoulder belts; toiletry bags sold empty; tool pouches, sold empty; key cases; vanity cases, not fitted; saddlebags; flight bags; saddlebags; towelling bags; bags for umbrellas; leather cord; small clutch purses; clutch bags; shoe bags; garment carriers; leather laces; overnight cases; carriers for suits, shirts and dresses; luggage covers; luggage tags; leads for animals; grips [bags]; rucksacks on castors; valises; suitcases with wheels; travelling sets; pouches; leather purses; clothing for pets.*

Class 24: *Face towels of textile; towels of textile; bath linen, except clothing; linens; bed clothes and blankets; bed linen; table linen, not of paper; diapered linen; bed blankets; lap rugs; rugs (travelling); pillowcases; mattress covers; coverings for furniture; covers for cushions; pillow shams; sheets [textile]; sleeping bag liners.*

Class 25: *Clothing for gymnastics; bath robes; bandanas [neckerchiefs]; shirts; dresses; underwear; short-sleeve shirts; hats; coats; bathing suits; neckties; headbands [clothing]; jackets [clothing]; skirts; ready-made clothing; knitwear [clothing]; jerseys [clothing]; hosiery; sweaters; trousers; shoes; neck scarves [mufflers]; overcoats; outerclothing; tank tops; waist belts; face masks [fashion wear]; face mask [clothing]; mackintoshes; baseball caps; menswear; ladies' clothing; imitation leather dresses; leather dresses.*

d) Risk of injury

Use of the contestedmark 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 that use of the contested trade mark would take unfair advantage of, or be detrimental to, the distinctive character of the earlier trade marks.

Unfair advantage(free-riding)

Unfair advantage in the contextofArticle8(5)EUTMRcoverscaseswherethereisclear exploitation and 'free-riding onthecoat-tails'ofafamousmarkoranattempttotrade upon its reputation. In other words,thereisariskthattheimageofthemarkwitha reputation or the characteristicswhichitprojectsaretransferredtothegoodsand services covered by the contestedtrademark,withtheresultthatthemarketingofthose goods and services is madeeasierbytheirassociationwiththeearliermarkwitha reputation (06/07/2012, T-60/10, ROYAL SHAKESPEARE / RSC-ROYAL SHAKESPEARE COMPANYetal.,EU:T:2012:348,§48;22/03/2007,T-215/03,VIPS/ VIPS, EU:T:2007:93,§40).

The opponentbasesitsclaimonthefollowing.

- There isatransferoftheimageofthetrademarkandthecharacteristicsitprojects towards the goods identified by the highly similar signs ('SFERA' / 'SFERA EBBASTA', both for goods in Classes 14, 18, 24 and 25). 'SFERA EBBASTA' tries to placeitselfinthewakeoftherenownedtrademark'SFERA',inordertobenefit from itsgoodname,usingthetrademarkwithoutpayinganyeconomic compensation for the commercial effort made by El Corte Inglés to create and maintain the image of the latter.

- Given thesimilaritybetweenthesigns'SFERAEBBASTA'/'SFERA',consumers who askfororpurchasea'SFERAEBBASTA'productmayrelateittothemark with reputation'SFERA'.Consumerswillestablishalinkbetweentheproducts identified by the respective trade marks. In such circumstances, 'SFERA EBBASTA would be taking unfair advantage of the fame and reputation of the trade mark 'SFERA'.

- In suchcircumstances,'SFERAEBBASTA'wouldbetakingunfairadvantageof the fameandreputationofthetrademark'SFERA'.Moreover,itisclearthat,if consumers were to verbally refer to the mark 'SFERA EBBASTA' with respect to clothing or fashion accessories, any third party would understand that they were talking about the well-known mark 'SFERA', and not 'SFERA EBBASTA', given its very phoneticsimilarityandthereputationoftheElCorteInglésmark,achieved through years of hard work.

- Moreover,consumerstendtorembermarksimperfectlyandarethereforevery likely to thinkthattwosignsthatareassimilaras'SFERAEBBASTA'and'SFERA' are related.Therefore,themark'SFERAEBBASTA'wouldundulybenefitfromthe reputationacquiredbytheearliermark'SFERA'.

According to theCourtofJusticeoftheEuropeanUnion

> … as regardsinjuryconsistingofunfairadvantagetakenofthedistinctive character or thereputeoftheearliermark,insofaraswhatisprohibitedis the drawing ofbenefitfromthatmarkbytheproprietorofthelatermark,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).

To determine whether the use of a sign takes unfair advantage of the distinctive character or the repute of the mark, it is necessary to undertake an overall assessment that takes into account all the factors relevant to the circumstances of the case (10/05/2007, T-47/06, NASDAQ (fig.) / NASDAQ, EU:T:2007:131, § 53; 12/03/2009, C-320/07 P, NASDAQ (fig.) / NASDAQ, EU:C:2009:146; 23/10/2003, C-408/01, Adidas, EU:C:2003:582, § 29, 30, 38; 27/11/2008, C-252/07, Intel, EU:C:2008:655, § 57-58, 66; 24/03/2011, C-552/09 P, TiMiKiNDERJOGHURT (fig.) / KINDER, EU:C:2011:177, § 53).

The opponent must prove that there is a serious risk that such an injury will occur in the future, or at least adduce prima facie evidence of a future risk of unfair advantage, which is not hypothetical (27/11/2008, C-252/07, Intel EU:C:2008:655, § 38; 25/05/2005, T-67/04, SPA-FINDERS / SPA, EU:T:2005:179, § 40; 22/03/2007, T-215/03, VIPS / VIPS, EU:T:2007:93, § 46).

The Opposition Division accepts the opponent's arguments regarding the risk of unfair advantage as being serious and not merely hypothetical. These arguments are duly substantiated and go beyond a mere citing of the norm text.

The earlier mark has built up a reputation among the relevant public, which has translated into the earlier mark capturing a substantial portion of consumer spending and awareness on clothing and the clothing retail market. In the context of the contested goods, the Opposition Division agrees with the opponent that the image of the earlier trade mark as a go-to one-stop-shop for the contested goods across all ages, styles and occasions, will be transferred to the contested sign.

The reputation of the earlier mark could positively influence the choice of consumers as regards the goods of other producers. The use of the contested sign can lead to a situation where consumers prefer the holder's goods to those of other competitors in the same market precisely because the contested sign brings to mind the earlier mark.

Therefore, the Opposition Division accepts the opponent's claim that the reputation of the opponent's trade mark can be transferred to the contested trade mark. That may stimulate the sales of the holder's goods and the use of the holder's goods to an extent that may be disproportionately high in comparison with the size of its own promotional investment and thus lead to the unacceptable situation where the holder is allowed to take a 'free-ride' on the investment of the opponent in promoting and building-up the value of the earlier mark.

On the basis of the above, in view of the exposure of the relevant public to the opponent's earlier mark in relation to the goods for which reputation has been found, the Opposition Division concludes that the contested trade mark is likely to take unfair advantage of the distinctive character or the repute of the earlier trade mark in the perception of the relevant public at least in Spain. As stated above, a risk of injury for only part of the relevant public of the European Union is sufficient to reject the contested application.

Other types of injury

The opponent also argues that use of the contested trade mark would be detrimental to the 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 theabove, the opposition is well founded under Article 8(5) EUTMR insofar as it is directed against the following goods:

Class 14: *Cabochons; rings [jewellery]; charms for key rings; necklaces[jewellery];cuff [jewellery]; time [jewellery]; earrings; wristwatches; brooches instruments; bracelets; jewellery made of glass; synthetic precious stones; watch chains; pendants; scarf clips being jewelry; jewel cases; diadems; imitation precious stones; medallions; ornaments [jewellery, jewelry (Am.)]; key rings; jewellery boxes.*

Class 18: *Trunks [luggage]; travelling trunks; bags; beach bags; bags for sports; shopping bags; chain mesh purses; tool bags, empty; purses; travelling sets [leatherware]; handbags; school bags; collars for animals; labels of leather; umbrella covers; muzzles; umbrellas; curried skins; chamois leather, other than for cleaning purposes; fur; credit card cases [wallets]; business card cases; card cases [notecases]; music cases; pocket wallets; haversacks; bags for campers; travelling bags; hat boxes of leather; handbag frames; attaché cases; garment bags for travel; rucksacks; luggage; small bags for men; duffel bags; straps for luggage; bumbags; umbrellas and parasols; shoulder belts; toiletry bags sold empty; tool pouches, sold empty; key cases; vanity cases, not fitted; saddlebags; flight bags; saddlebags; towelling bags; bags for umbrellas; leather cord; small clutch purses; clutch bags; shoe bags; garment carriers; leather laces; overnight cases; carriers for suits, shirts and dresses; luggage covers; luggage tags; leads for animals; grips [bags]; rucksacks on castors; valises; suitcases with wheels; travelling sets; pouches; leather purses; clothing for pets.*

Class 24: *Face towels of textile; towels of textile; bath linen, except clothing; linens; bed clothes and blankets; bed linen; table linen, not of paper; diapered linen; bed blankets; lap rugs; rugs (travelling); pillowcases; mattress covers; coverings for furniture; covers for cushions; pillow shams; sheets [textile]; sleeping bag liners.*

Class 25: *Clothing for gymnastics; bath robes; bandanas [neckerchiefs]; shirts; dresses; underwear; short-sleeve shirts; hats; coats; bathing suits; neckties; headbands [clothing]; jackets [clothing]; skirts; ready-made clothing; knitwear [clothing]; jerseys [clothing]; hosiery; sweaters; trousers; shoes; neck scarves [mufflers]; overcoats; outerclothing; tank tops; waist belts; face*

masks [fashion wear]; face mask [clothing]; mackintoshes; baseball caps; menswear; ladies' clothing; imitation leather dresses; leather dresses.

The opposition has to be rejected as far as it is based on this ground, in relation to the goods for which no link was found.

The Opposition Division will now continue with the examination on the ground of Article 8(1)(b) EUTMR in relation to the remaining goods in Classes 14 and 24, for which the opposition under Article 8(5) was not successful.

LIKELIHOOD OF CONFUSION – ARTICLE 8(1)(b) EUTMR

Alikelihood of confusion exists if there is a risk that the public might believe that the goods or services in question, under the assumption that they bear the marks in question, come from the same undertaking or, as the case may be, from economically linked undertakings. Whether a likelihood of confusion exists depends on the appreciation in a global assessment of several factors, which are interdependent. These factors include the similarity of the signs, the similarity of the goods and services, the distinctiveness of the earlier mark, the distinctive and dominant elements of the conflicting signs, and the relevant public.

a) The goods and services

As concluded above, the earliermark for which genuine use has been proven and for the following goods, is:

European Union trade mark registration No 2 274 629

Class 14: *Jewellery; horological instruments*.

Class 18: *Bags of leather or imitation of leather.*

Class 25: *Clothing; footwear*.

The remaining contested goods are the following:

Class 14: *Precious stones; preciousmetalsandtheiralloys;preciousandsemi- precious stones; naturalgemstones.*

Class 24: *Canvas for tapestry or embroidery; haircloth [sackcloth]; bed covers of paper; curtain holders of textile material; fustian; crepe [fabric]; crepon; damask; handkerchiefs of textile; felt; flannel [fabric]; linings [textile]; hat linings, of textile, in the piece; gauze [cloth]; jersey [fabric]; cheviots [cloth]; marabouts [cloth]; filtering materials of textile; plastic material [substitute for fabrics]; moleskin bed.*

The relevant factors relating to the comparison of the goods or services include, inter alia, the nature and purpose of the goods or services, the distribution channels, the sales outlets, the producers, the method of use and whether they are in competition with each other or complementary to each other.

Contested goods in Class 14

The contested*precious stones; precious and semi-precious stones; natural gem stones* are similartotheopponent's*jewellery*becausetheycoincide in producer, end user and distribution channels.

Thecontested*precious metals and their alloys*arebasically raw materials. They are dissimilartotheopponent's*jewellery*,sincethemerefact that one product is used for themanufactureofanotherwillnotbesufficientinitself to show that the goods are similar,astheirnatures,purposes,relevantpublicsand distribution channels may be quitedistinct.Thesameappliesinrelationtotheearlier*horological instruments*, although theycanbemanufactureusingthecontested*precious metals and their alloys,* these goodsaredissimilar,astheydonothavethesameorigins. Furthermore, they do not havethesameusersandarenotcomplementaryinthestrict sense or in competition.

Finally,thecontested*precious metals and their alloys*also have a different nature and main purposefromtheopponent's*bags of leather or imitation of leather* in Class 18 and *clothing, footwear* inClass25.Thesegoodsdonothave the same manufacturers and distribution channels.Inaddition,theyareneitherincompetition nor complementary. The goods can onlybeconsideredtobecomplementaryif there is a close connection between them,inthesensethatoneisindispensableorimportant for the use of the other and is not merelyancillary.Althoughsomeclothingdesigners nowadays also sell accessories suchasjewelleryandwatchesundertheirmarks, this is not the norm and generally appliesonlyto(economically)successfuldesigners. Therefore, these goods are dissimilar.

Contested goods in Class24

The contested goods in thisclass are various kinds of textiles, bed covers of paper, curtains, filtering materialsoftextile and moleskin beds. These goods have a different nature, purpose and methodofuse from the earlier goods at issue in Classes 14, 18 and 25. Also, those categoriesofgoods do not have the same distribution channels. Furthermore, the manufacturersof those goods are not generally the same and the use of one is not necessary orimportant to the use of the other. Therefore, these goods are neither complementary norincompetition (08/09/2021, T-493/20, Sfora wear / Sfera (fig.) et al., EU:T:2021:540, § 45)andare dissimilar.

b) Relevant public – degree of attention

The average consumer of the category ofproducts concerned is deemed to be reasonably well informed and reasonably observant and circumspect. It should also be borne in mind that the average consumer's degree of attention is likely to vary according to the category of goods or services in question.

In the present case, the goods found to be similar target both the general public and professionals.

In the case of precious or semi-precious stones, such as the contested *precious stones; precious and semi-precious stones; natural gem stones*, the Office's Board of Appeal has held that consumers generally put a certain amount of thought into the selection of these goods. In many cases, the goods will be luxury items or will be intended as gifts. A relatively high degree of attention on the part of the consumer may be assumed (09/12/2010, R 900/2010-1, Leo Marco (fig.) / LEO, § 22).

c) The signs

The signs havealready been compared above under the grounds of Article 8(5) EUTMR. Reference is made to those findings, which are equally valid for Article 8(1)(b) EUTMR.

d) Distinctiveness of the earliermark

The distinctiveness of the earlier markisoneofthe factors to be taken into account in the global assessment of likelihoodofconfusion.

According to the opponent, theearliermarkhasbeen extensively used and enjoys an enhanced scope of protection.Theevidencesubmitted by the opponent to prove this claim has already been assessedaboveunderthe 'Reputation' section. The Opposition Division has already concludedthattheevidence submitted by the opponent shows reputation for at least *clothing; footwear*inClass25. Therefore, it does not demonstrate that the earlier trade mark acquiredahighdegree of distinctiveness through its use or reputation in relation to the opponent'sgoodsfound similar to the contested goods above.

Consequently, the assessment of the distinctiveness of the earlier mark will rest on its distinctiveness per se. In the present case, the earlier trade mark as a whole has no descriptive meaning for any of the goods in question from the perspective of the public in the relevant territory. Therefore, the distinctiveness of the earlier marks must be seen as normal.

e) Global assessment, other arguments and conclusion

Evaluating likelihood of confusion implies some interdependence between the relevant factors and, in particular, a similarity between the marks and between the goods. Therefore, a lesser degree of similarity between goods and services may be offset by a greater degree of similarity between the marks and vice versa (29/09/1998, C-39/97, Canon, EU:C:1998:442, § 17).

Likelihood of confusion covers situations where the consumer directly confuses the trade marks themselves, or where the consumer makes a connection between the conflicting signs and assumes that the goods covered are from the same or economically linked undertakings.

In the present case, the goods are partly similar and partly dissimilar. The similar goods target the general public and the professional public with a relatively high degree of attention.

The earlier mark enjoys a normal degree of distinctiveness.

The signs are visually and aurally similar to an average degree. The signs are conceptually not similar for a part of the public and highly similar for the remaining part of the public.

In the present case, the Opposition Division considers that the similarities between the marks at issue, due to the coincidence in the distinctive element 'SFERA', which is,

moreover, the only element in the earlier mark, outweigh the differences arising from the element ‘EBBASTA’ of the contested sign.

Additionally, although the contested sign introduces the additional verbal element ‘EBBASTA’, which is not present in the earlier mark, the coinciding verbal element ‘SFERA’ is distinctive to a normal degree for the relevant public and plays an independent distinctive role in the contested sign without necessarily constituting the dominant element (06/10/2005, C-120/04, Thomson Life, EU:C:2005:594, § 30).

Therefore, it is highly conceivable that the relevant consumer will perceive the contested mark as a sub-brand, a variation of the earlier mark, configured in a different way according to the type of goods that it designates (23/10/2002, T-104/01, Fifties, EU:T:2002:262, § 49).

Considering all the above, the Opposition Division finds that there is a likelihood of confusion on the part of the Spanish-speaking part of the public and therefore the opposition is partly well founded on the basis of the opponent’s European Union trade mark registration. As stated above in section c) of this decision, a likelihood of confusion for only part of the relevant public of the European Union is sufficient to reject the contested application.

It follows from the above that the contested trade mark must be rejected for the goods found to be similar to those of the earlier trade mark.

The rest of the contested goods are dissimilar. As similarity of goods and services is a necessary condition for the application of Article 8(1) EUTMR, the opposition based on this Article and directed at these goods cannot be successful.

COSTS

According to Article 109(1) EUTMR, the losing party in opposition proceedings must bear the fees and costs incurred by the other party. According to Article 109(3) EUTMR, where each party succeeds on some heads and fails on others, or if reasons of equity so dictate, the Opposition Division will decide a different apportionment of costs.

Since the opposition is successful for only some of the contested goods, both parties have succeeded on some heads and failed on others. Consequently, each party has to bear its own costs.

The Opposition Division

Victoria DAFAUCE Cristina CRESPO MOLTO Philipp HOMANN

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.