



## Reports of Cases

### **Judgment of the General Court (Fifth Chamber) of 26 July 2023 – Apart v EUIPO – S. Tous (Representation of the outline of a bear)**

(Case T-638/21)<sup>1</sup>

(EU trade mark – Revocation proceedings – EU figurative mark representing the outline of a bear – Partial revocation – Genuine use of the trade mark – Article 51(1)(a) of Regulation (EC) No 207/2009 (now Article 58(1)(a) of Regulation (EU) 2017/1001) – Proof of genuine use)

1. *EU trade mark – Appeals procedure – Appeal brought against a decision by the Cancellation Division of EUIPO – Decision of the Board of Appeal going beyond the subject matter of the application for revocation – Unlawfulness*

*(European Parliament and Council Regulation 2017/1001, Arts 64(5), first sentence, 71(1), first sentence, and 95(1); Commission Regulation 2018/625, Art. 21(1)(e))*

*(see paragraph 23)*

2. *EU trade mark – Procedural provisions – Revocation proceedings – Facts and evidence not submitted within the prescribed time limit – Account taken – Discretion of the Board of Appeal*

*(European Parliament and Council Regulation 2017/1001, Art. 95(2); Council Regulation No 207/2009, Art. 51(1)(a); Commission Regulation No 2868/95, Art. 1, Rule 40(5))*

*(see paragraphs 31-34)*

3. *EU trade mark – Procedural provisions – Statement of reasons for decisions – First sentence of Article 94(1) of Regulation 2017/1001 – Scope identical to that of Article 296 TFEU*

*(Art. 296 TFEU; European Parliament and Council Regulation 2017/1001, Art. 94(1), first sentence)*

*(see paragraphs 47, 48)*

4. *Judicial proceedings – Application initiating proceedings – Formal requirements – Brief statement of the pleas in law on which the application is based – Abstract statement – Inadmissibility*

<sup>1</sup> OJ C 481, 29.11.2021.

*(Statute of the Court of Justice, Arts 21, first para., and 53, first para.; Rules of Procedure of the General Court, Art. 177(1)(d))*

*(see paragraphs 58, 136)*

5. *EU trade mark – Surrender, revocation and invalidity – Examination of the application – Proof of use of the earlier mark – Probative value of the evidence – Criteria for assessment*

*(Council Regulation No 207/2009, Arts 15(1) and 51(1)(a))*

*(see paragraph 64)*

6. *EU trade mark – Surrender, revocation and invalidity – Grounds for revocation – Lack of genuine use of the mark – Figurative mark representing the outline of a bear*

*(Council Regulation No 207/2009, Arts 15(1) and 51(1)(a))*

*(see paragraphs 67, 83-86, 96, 109, 112, 125)*

7. *EU trade mark – Surrender, revocation and invalidity – Grounds for revocation – Lack of genuine use of the mark – Proof of use – Genuine use – Concept – Criteria for assessment*

*(Council Regulation No 207/2009, Art. 15(1))*

*(see paragraphs 72-75, 82)*

8. *EU trade mark – Surrender, revocation and invalidity – Grounds for revocation – Lack of genuine use of the mark – Use of the mark in a form differing in elements which do not alter the distinctive character of the mark – Subject matter and scope of point (a) of the second subparagraph of Article 15(1) of Regulation No 207/2009 – Examination of alteration of distinctive character*

*(Council Regulation No 207/2009, Arts 15(1), second subpara., point (a), and 51(1)(a))*

*(see paragraphs 102, 103)*

9. *EU trade mark – Surrender, revocation and invalidity – Absolute grounds for invalidity – Marks devoid of distinctive character – Three-dimensional trade marks consisting of the shape of the product itself – Distinctive character – Criteria for assessment*

*(Council Regulation No 207/2009, Art. 7(1)(b))*

*(see paragraphs 119-122)*

10. *EU law – Principles – Equal treatment – Concept – Difference in treatment for situations which are factually different and, accordingly, not comparable – No infringement*

*(see paragraph 128)*

### **Operative part**

The Court:

1. Dismisses the action;
2. Orders Apart sp. z o.o. to pay the costs.