

**DECISION
of the First Board of Appeal
of 27 March 2026**

In case R 102/2024-1

UNIUNEA NAȚIONALĂ A COLUMBOFILILOR DIN ROMÂNIA "COLUMBA"

Str.Fagaras Nr.14, sector 1
010898 Bucuresti
Romania

EUTM Proprietor / Appellant

represented by Carmen - Augustina Neacsu, 12/3 Rozelor Street, 430293 Baia Mare,
Maramures, Romania

v

Comité International Olympique (Association)

Château de Vidy
1007 Lausanne
Switzerland

Cancellation Applicant / Defendant

represented by BIRD AND BIRD (Belgium) LLP, Avenue Louise 235 box 1, 1050 Brussels,
Belgium

APPEAL relating to Cancellation Proceedings No 52 869C (European Union trade mark
registration No 18 055 262)

THE FIRST BOARD OF APPEAL

composed of G. Humphreys Bacon (Chairperson), M. Bra (Rapporteur) and E. Fink (Member)

Acting Registrar: K. Zajfert

gives the following

Decision

Summary of the facts

- 1 By an application filed on 24 April 2019, the predecessor of Uniunea Federatiilor Columbofile din Romania "COLUMBA" ('the EUTM proprietor') sought to register the figurative mark



for the goods and services, as limited on 15 August 2019:

Class 31: *Live animals, organisms for breeding; Fodder.*

Class 35: *Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Retail services relating to live animals; Retail services in relation to animal grooming preparations; Wholesale services in relation to animal grooming preparations; Wholesale services in relation to veterinary preparations and articles.*

Class 41: *Animal exhibitions.*

- 2 The application was published on 29 May 2019, and the mark was registered on 3 February 2022.
- 3 On 8 February 2022, the Comité International Olympique (Association) ('the cancellation applicant') filed an application for a declaration of invalidity of the registered mark for all the above goods and services pursuant to Article 60(1)(a) EUTMR in conjunction with Article 8(1)(b) EUTMR and Article 8(5) EUTMR.
- 4 The application for a declaration of invalidity was based, amongst others, on international registration designating the EU No 1 128 501A for the word mark

OLYMPIC

filed and registered on 8 November 2011 for the following services:

Class 31: *Agricultural, horticultural, forestry and seed products, not included in other classes; Live animals; Fresh fruits and vegetables; seeds, plants and natural flowers; Foodstuffs for animals, malt.*

Class 35: *Advertising; broadcasting of advertisements through all media, particularly in the form of thematic messages centered on human values; sponsorship advertising; Business management; Business administration; Clerical services; promotion of products and services of third parties, by means of contractual agreements, in particular partnerships (sponsoring) and licenses, offering them an additional notoriety and/or image and/or a surge of sympathy derived from the notoriety and/or image of cultural and sporting events, in particular international ones, and/or from the surge of sympathy provoked by them; promotion of the products and services of third parties by means of the so-called initial interest factor leading the public to consider, among a multitude of competitors, products or services that are presented to it with signs, emblems or messages that are likely to capture its attention; promotion of third party products and services by means of image transfer; rental of advertising space of all kinds and on all media, digital or not; commercial administration of the participation of national teams in international athletic competition, and promotion of support for such teams to the public and interested parties; inventory management services; advice on inventory control services; direct marketing advertising for third parties consisting of database marketing; advice on direct marketing advertising for third parties consisting of database marketing; business reorganization consulting services; truck and car fleet management services, i.e. invoicing via a global computer network; consulting services for truck and car fleet management; business administration consulting services; management of third-party power plants; advice on power plant management; commercial services, i.e. administration of repair and overhaul contracts; supply chain management and consulting services for the purchase and procurement of chemical products and services; supply management and product inventory, cost containment; consulting, marketing, price and cost analysis of electrochemical liquid purification devices for industrial use; administrative, commercial and technical management of computer files; Data entry and data processing; IT management consulting; management of computer servers and value-added data transmission networks (multimedia systems, interactive videography, global telecommunications networks); retailing services for electrical and electronic equipment and machinery (assembling, for third parties, a series of products to allow customers to view and purchase these products at their convenience in an electrical retail store); information on the sale of raw materials; commercial information, commercial information agencies; photocopier rental; promotion of the sale of third party products and services including advertisements, promotional contests, discounts and premiums in the form of sweepstakes, rebates, discount points, and value-added offers made in connection with the use of payment cards; promotion of sports competitions and events for the use of third parties; promotion of concerts and cultural events of third parties; Organization of exhibitions for commercial or advertising purposes; supply of documentation, i.e. direct mail, distribution of advertising material, distribution of samples; Document reproduction; advertisements concerning the promotion of commercial sales of products and services at the retail level; e-commerce information provision services and electronic retailing; providing information about the purchase of products and services online via the Internet and other computer networks; tourist information services, i.e. advertising for transport, travel, hotels, accommodation, food and meals, sports, entertainment and sightseeing, tourist agency services; maintenance of computerized databases.*

Class 41: *Teaching; Coaching; Entertainment services; sports and cultural activities, televised cultural and sports entertainment; Organisation of exhibitions for cultural and educational purposes; organization of lotteries and competitions; Betting and gaming services relating to or in conjunction with sports; entertainment services provided at or related to sporting events; organization of sports and cultural activities and events; organization of real or virtual sports competitions; Operation of sports facilities; Rental services for audio and video equipment; production, presentation, distribution of films, video and sound recordings; film, video and sound recording rentals; rental and/or provision through a computer network of interactive educational and entertainment products, i.e. interactive CDs, CD-ROMs, computer games; entertainment, i.e. presentation of educational and interactive entertainment products, i.e. interactive CDs, CD-ROMs, computer games; coverage of radio and television sports events; radio and television program and video tape production services; cartoon production; production of animated programs for television; ticket reservation services for shows and sporting events; Timing of sports events; Arranging of beauty contests; Interactive entertainment; On-line gambling services; provision of games on the Internet; provision of raffle services; information about entertainment or education provided online from a database or the Internet; Electronic game services provided by means of the internet; Providing on-line electronic publications; publication of*

books, magazines, texts (other than advertising texts) and periodicals; publication of books, magazines, texts (other than advertising texts) and electronic periodicals online; provision of digital music from the Internet; provision of digital music from Internet MP3 websites; provision of sports results; information services concerning sports and sports events; rental of recorded sounds and images; audio production services; sports event information services provided online from a computer database or the Internet; editing and publishing services; provision of digital music (not downloadable); digital music offer by telecommunications; services for publishing statistics on sports results and audience measurements of sports competitions; training in the use and operation of signaling and crossing notification systems for the transit and railway industries; educational services in the field of medical imaging and diagnostics, i.e. conducting seminars, conferences, symposia or workshops related to the pharmaceutical industry for physicians and employees of pharmaceutical companies; educational services, i.e. conducting seminars, conferences, symposia or workshops in the field of life sciences and biotechnology for scientists and researchers; Conducting seminars on industrial water treatment problems; training services in all of the above areas; management and medical training services through the use of online instructions and demonstrations, via the Internet, Intranets and Extranets; educational services, i.e., conducting hands-on training workshops, courses and seminars including medical and management demonstrations; design, realization and animation of courses, seminars and all training actions in the computer field; organization and realization of concerts; reservation of seats for shows; film presentations; Entertainment information; Film production services; Production of shows; Theater productions; Providing golf facilities; Health club services; Sport camp services; Presentation of live performances; film screenings; organization of shows (impresario services); Holiday camp services [entertainment]; Film studios; News reporters services; provision of online, non-downloadable electronic publications; Music-halls; educational services, i.e. conducting courses, seminars, presentations, video presentations, providing educational materials, i.e. disseminating materials in the field of financial literacy; education services in the field of tourism; information services in the field of tourism, i.e. information services on booking tickets for entertainment events; information services in the field of tourism, i.e. entertainment information services; information services in the field of tourism, i.e. information services on the calendar of sports, cultural and entertainment activities; entertainment services for tourist assistance; tourist reservation services, i.e. activity and entertainment reservation services; assistance to tourists in booking tickets for entertainment events; assistance to tourists regarding the calendar of sports, cultural and entertainment activities.

The cancellation applicant claimed reputation in the EU for the following services:

Class 41: Entertainment; sporting and cultural activities, televised sporting and cultural entertainment; entertainment services provided during sporting events or concerning sporting events; organization of sporting and cultural events and activities; organization of real or virtual sporting competitions; covering televised and broadcast sporting events; reservation of tickets for sporting events and shows; timing of sports events; provision of sporting results; information services concerning sports and sporting events; information services concerning sporting events provided on line from a computer database or the Internet.

5 On 27 May 2022, the cancellation applicant submitted, among others, the following evidence to prove reputation:

- Annexes 1-3: Registrations of the earlier trade mark ‘OLYMPIC’ by various Offices throughout the world;
- Annex 4: Extracts from various publications such as the BBC or Wikipedia explaining the history of the Olympic Games, since 1948;
- Annex 5: Media and marketing guides and reports of the London 2012 Olympic Games;

- Annex 6: Media and marketing guides and reports of the Sochi 2014 Olympic Games;
- Annex 7: Media and marketing guides and reports of the Rio 2016 Olympic Games;
- Annex 8: Media and marketing guides and reports of the PyeongChang 2018 Olympic Games:
- Annex 9: Audience & Insight and marketing guides and reports of the Olympic Games of Tokyo 2020;
- Annex 10: IOC Annual Report for the year 2018 including a chart with the philosophy of life, vision and values of the Olympics, a chapter about the social development through sport, as well as the culture and education and financial figures audited by experts;
- Annex 11: Coverage and audience reports from Publicis Media Sport & Entertainment;
- Annex 12: Reports, among others, a report called ‘Olympic Trademark’ dated 27 August 2020 including the number of pageviews/users of the web olympic.org per EU countries from 2019 to 2020, as well as the number of posts published from ‘OLYMPIC’ in social media (Facebook, Instagram, Twitter, YouTube) from 2016 to 2020;
- Annex 13: Report of Publicis Sport & Entertainment called ‘Olympic Tracker January 2020’:
- Annex 14: A report ‘IOC Research Sochi 2014’ of the external communication agency Kantar (with a presentation of Kantar Media) about the awareness and appeal of sports and entertainment properties where the Olympic Games have more than 90% of awareness.
- Annex 15: Extracts showing the earlier trade mark on social media;
- Annex 16: Presentation and marketing campaigns of ‘The Olympic Partner’ (TOPs) of the IOC of the following companies: Bridgestone, Coca-Cola, Panasonic, Samsung, Omega, and Procter & Gamble;
- Annex 17: Decisions from national Courts (with English translation) recognizing the reputation of the earlier trade mark, namely judgment of 7 June 2018 of the Tribunal de Grande Instance de Paris; of 31 December 2006, of the French Supreme Court; judgment of 23 January 2006 of the Court of Venice;

- Annex 18: Extracts/screen prints of the website of the International Colombophile Federation FCI Pigeon Olympiad (2019);
- Annex 19: Information about the participation of animals at the Olympic Games:
 - a. Equestrian as Olympic sport;
 - b. Pigeon racing at the 1900 Summer Olympics in Paris.
- Annex 20: Extracts/screen prints of the proprietor's website and a letter sent by the cancellation applicant to the proprietor with a view for searching an amicable solution;
- Annex 21: Exchange of correspondence between the parties;
- Annex 22: Extract from the holder's website www.olympiad.ro – 'The 37th edition of the Racing Pigeon Olympiad– The first major world event after the Covid 19 pandemic', dated 2022;
- Annex 23: Extract from the proprietor's website www.olympiad.ro – 'Short history of Racing Pigeon Sport';
- Annex 24: Extract from the proprietor's website www.olympiad.ro – 'Standard pigeons judged for the Budapest Olympics';
- Annex 25: Extract from the proprietor's website www.olympiad.ro – 'The 'fever' of the Oradea Racing pigeons Olympiad includes the entire racing pigeons world!';
- Annex 26: Extract from the proprietor's website www.olympiad.ro – 'It has been launched the official shop of the Racing Pigeon Olympiad';
- Annex 27: Extract from the proprietor's website www.olympiad.ro – 'About'.

6 In its observations the EUTM proprietor disputed, in particular, the similarity of the signs, arguing that the word 'OLIMPIC' is a general expression to suggest a world-wide area of use for goods or services. In support of its observations, the proprietor filed, among others, an extract from TMview showing the list of marks including the term 'OLIMPIAD*' (Annex 4), an extract from TMview showing the list of marks including the term 'OLYMPIC' (Annex 5) as well as a report survey (Annex 6).

7 By decision of 16 November 2023 ('the contested decision'), the Cancellation Division upheld the application for a declaration of invalidity in its entirety and declared the contested EUTM invalid for all the goods and services. It gave, in particular, the following grounds for its decision:

Article 60(1)(a) in conjunction with Article 8(5) EUTMR

- The evidence shows that the earlier trade mark has been subject to long-standing and intensive use and is generally known in the relevant market, where it enjoys a

consolidated position, as it is clear from the evidence, including independent sources. The evidence unequivocally shows that the marks enjoy a high degree of recognition among the relevant public for sports and sports competitions, as confirmed by the Boards (01/03/2004, R 145/2003-2 T CARD OLYMPICS (FIG. MARK) / OLYMPIC, § 17).

- The majority of the documents show the signs ‘OLYMPIC’ and ‘OLYMPIC GAMES’. The colours and additional elements are decorative or non-distinctive such as the element ‘GAMES’, which indicates the subject matter of the services.
- The evidence shows that the area of activity of the cancellation applicant mainly consists of services within the broad categories of entertainment, sporting activities and is highly reputed, at least, for these services. It must be concluded that the earlier trade mark enjoys reputation for, at least, the services ‘*entertainment; sporting activities*’ in Class 41.

The signs

- It is appropriate to focus the comparison of the signs on the English-speaking part of the relevant public.
- The word element ‘OLYMPIC’ of the earlier mark is related to the ‘Olympic Games’, which are a set of international sports competitions taking place every four years, each time in a different country and is thus, at most, weak in relation to the relevant services in Class 41. The word ‘OLIMPIAD’ in the contested mark does not exist, as such, in English, however it will be perceived by the relevant public as a close variation of the term ‘OLYMPIAD’ which refers to a staging of the modern Olympic Games or the four-year period between consecutive celebrations of the Olympic Games; and it is also, at most, weakly distinctive in relation to the relevant services in Class 41, as stated above, whereas it is inherently distinctive for the goods and services in Classes 31 and 35. ‘RACING’ refers to races (competitions) between animals, especially horses, or between vehicles. ‘PIGEONS’ is the plural form of a bird, usually grey in colour (all definitions according to www.collinsdictionary.com). Most likely the terms ‘RACING PIGEONS OLIMPIAD’ will be seen as a meaningful expression referring to competitions between pigeons, which take place every four years. The expression is descriptive or, at most, weak in relation to the ‘animal exhibitions’ in Class 41, since it refers to their nature or purpose, but it is normally distinctive for the contested goods and services in Classes 31 and 35. The representation of the silhouette of a pigeon, reinforces the concept of the term ‘PIGEONS’ and is descriptive in relation to the relevant goods and services. The representation of the globes is also non-distinctive since it merely indicates that the goods and services have an international or a worldwide scope. The element ‘FCI’, has an average degree of distinctiveness in relation to the relevant goods and services.
- Visually, aurally and conceptually, the signs are similar to a low degree.

The 'link'

- The signs are similar to the extent that they coincide in ‘OLYMPIC’ and ‘OLIMPIAD’ but differ in the remaining verbal and figurative elements of the contested mark. The earlier mark enjoys a high level of reputation for, at least, ‘entertainment; sporting activities’ in Class 41. There is an overlap between the relevant publics of the marks in conflict for the goods and services. Therefore, it is plausible that the contested goods and services will evoke the earlier mark when consumers choose to purchase them, to the extent that, it is quite common to have sporting activities and competitions involving animals. The cancellation applicant’s Annex 19 includes information about the participation of animals at the Olympic Games: Equestrian as Olympic sport and pigeon racing at the 1900 Summer Olympics in Paris. Thus, some connection might be established by the relevant consumers on account of the earlier reputed services and the goods and services of the broad categories of the contested mark in Classes 31, 35 and 41. Although some of the goods and services may seem far apart, the target public could be attracted by the said goods and services because they bear a trade mark very similar to the cancellation applicant’s earlier trade mark, which has a high level of reputation. Since the earlier mark consists of the word ‘OLYMPIC’ while the contested mark includes the letters ‘OLIMPIAD’, it is plausible that the public will identify this coincidence and will associate it with the earlier sign.

Risk of injury

- The cancellation applicant substantiated the claim of unfair advantage. It claimed and proved the sufficiently high reputation and the relevant position of its mark in the relevant market and its special image (respect, sports, excellence and tradition). In view of this, it is probable that a transfer of the image qualities associated with the earlier trade mark to the contested goods and services might occur. Given the high level of recognition of the earlier mark and the overall similarity between the marks, it is foreseeable that the cancellation applicant may benefit from the special image of the earlier reputed trade mark (synonym of tradition, respect, excellence and sports). The earlier mark has acquired a very substantial reputation and a highly respected image, which make it attractive to leading industry companies from many market sectors, including those designated by the contested mark. Thus, the use of the proprietor’s mark for the goods and services in Classes 31, 35 and 41 would lead the public to believe that the proprietor has a close commercial relationship with the cancellation applicant, allowing it to free ride on the repute of the earlier mark.

Due cause

- The EUTM proprietor did not claim any due cause for using the contested mark. It must be assumed that no due cause exists.

Conclusion

- The application is well founded in its entirety, under Article 60(1)(a) in conjunction with Article 8(5) EUTMR, based on this earlier mark for the English-speaking part

of the public. Consequently, there is no need to continue the assessment in relation to the remaining part of the public. Since the application is entirely successful under this legal basis, it is not necessary to examine the remaining ground on which the application was based, that is, under Article 60(1)(a) in conjunction with Article 8(1)(b) EUTMR, in relation to this earlier mark.

- 8 On 15 January 2024, the EUTM proprietor filed an appeal against the contested decision, requesting that the decision be entirely set aside. The statement of grounds of the appeal was received on 12 March 2024.
- 9 In its response received on 10 May 2024, the cancellation applicant requested that the appeal be dismissed.

Submissions and arguments of the parties

- 10 The arguments raised by the EUTM proprietor in its statement of grounds may be summarised as follows:

Comparison of the trade marks

- The contested mark is composed of four words and a figurative element which is much bigger (90% of the mark) than the verbal element (10% of the mark). The figurative element consists of two globes with the letters F, C and I in their intersection, and a pigeon above the letter F, underneath is written RACING PIGEONS OLIMPIAD.
- There is no risk of confusion between the contested mark and the two (*sic*) IRs on which the cancellation is based. The latter are exclusively verbal and consists of only one word, respectively, OLYMPIC and OLYMPIAN. The contested mark consists of 4 words with a total of 24 letters, while the earlier word marks consist of 7 or 8 letters, respectively. Considering the figurative element of the contested mark where the verbal element only represents 10%, the marks have only 3% in common. This cannot represent a risk of confusion for the public.
- The trade mark OLYMPIAN (IR 1496460/26.06.2019) is not an earlier right and the opposition based on it was rejected.

Comparison of the goods

- After a limitation filed in the course of the first instance proceedings, the contested EUTM only covers goods and services that are strictly and exclusively related to ‘animals’. The cancellation applicant’s services are not related to animals.
- There is no conflict between the goods and services. The marks OLYMPIC and OLYMPIAN are used of sports games for humans, the contested mark is used for pigeon’s competitions and for goods for animals.
- The word OLIMPIC is a general term used world-wide for goods, services, sports, people, etc. Many competitions in the field of education, around the world, are

called OLYMPIAD (e.g. The Chemistry Olympiad, The Physics Olympiad, The Mathematics Olympiad, The Philosophy Olympiad, etc.), in Class 41.

- The TMView database shows 86 results for the search term *OLIMPIAD* in Classes 16 and 41, and 159 results in Classes 16, 31 and 41 (Annex 4). A search made in 2022 on the term *OLYMPIC* in Classes 16, 31 and 41, brings about 164 trademarks filed or registered by the EUIPO (Annex 5). This speaks against the uniqueness claimed by the cancellation applicant.

Other aspects

- The Pigeons Racing Olimpiad organized in Oradea, on 12-14 August 2022 was supervised by the cancellation applicant's lawyers, whose attitude and insistence was close to intolerable, almost illegal (see Minutes established on 12 August 2022 by Mr. Ardelean Felix Florin, in Romanian and English Annex 6).
- The event organised by the EUTM proprietor under the name OLIMPIADA is held every two years. The cancellation applicant acknowledges that the 37th edition of this event was held in Oradea, and that these events started in 1949 (Annex 7). Annex 8, is a document dated 1939 (in French and English), related to the first international exhibition with 10 nations participating, including the Romanian delegation. Annex 9 (in French and English) refers to the Congres Colombophil International, held in Gotteburg in January 1938, by the same OLYMPIADE COLOMBOPHILE. The name exists since 1937 (Annex 7). The cancellation applicant did not challenge the use of the word OLYMPIADE till now.
- The cancellation applicant does not have any relation with animals. Although a pigeon competition was held in Paris in 1900, however, after that and up to 2024, that is during 124 years, the cancellation applicant never organised any competition for animals. The launch of white pigeons in the air, to which the cancellation applicant refers, is a show and a symbol of peace, which has been used all over the world at many sport events without any relation with racing pigeons.
- The parties in these proceedings have nothing in common: they have different objectives, different public, they work with different tools (people and animals) and there cannot be any notoriousness transfer between the ancient Greek Peoples' Olympiad and the pigeon exhibition, nor vice versa.
- There is no conflict between the marks, as there can be no confusion either regarding the marks themselves or the activities performed under these marks.
- The word OLIMPIC / OLIMPIAD cannot be monopolised for all living creatures as far as there are so many marks registered with these words.
- The following evidence was filed:
 - Annex 1: WIPO extract regarding trade mark OLYMPIC (IR 1128501);
 - Annex 2: WIPO extract regarding trade mark OLYMPIAN (IR 1496460);
 - Annex 3: Extract from TMView, regarding the contested EUTM;

- Annex 4: Search from TMView database, regarding marks ‘OLIMPIAD’ / ‘OLYMPIAD’ in Classes 31, 35, 41;
- Annex 5: Search from TMView database, regarding mark OLYMPIC, Classes 16, 31, 41;
- Annex 6: Report survey Bird & Bird;
- Annex 7: Excerpt from the webpage www/pigeonsfci.net/history;
- Annex 8: First International exhibition 1939 ;
- Annex 9: Information about the Congres Colombophil International held in Gotteburg in January 1938.

11 The arguments raised in reply to the appeal by the cancellation applicant may be summarised as follows:

Inadmissibility of the appeal

- The statement of appeal does not contain, a clear and unambiguous identification of the grounds of the appeal (Article 22(1)(b) EUTMDR). While indeed the contested decision only examined one of the grounds of invalidity invoked, under Article 60(1)(a) EUTMR in conjunction with Article 8(5) EUTMR, the EUTM proprietor systematically argues that there is no risk of confusion but does not argue that there is no risk of prejudice to the reputation of the earlier mark. Hence, it does in fact not dispute the Contested Decision.
- The EUTM proprietor still refers to the EU designation of the IR Nr. 14964606 OLYMPIAN, which is no longer a basis of the application for a declaration of invalidity.

Unfair competition

- Any argument based on the existence and/or content of settlement discussions between the parties is outside of the EUIPO’s legal remit of the present cancellation proceedings. In course of the ongoing dispute between the parties, it is true that the cancellation applicant instructed a judicial officer to attend the competition ‘Pigeons Racing Olimpiad’ in Oradea, in order to describe in a report and gather evidence of breach of its trade mark rights. This is a perfectly lawful and reasonable measure complying with the requirements under the applicable national law, by communicating this report of the judicial officer to the EUTM proprietor (Annex 6 to the appeal).

Evidence filed for the first time on appeal is inadmissible.

- Annexes 7 to 9 were filed for the first time before the Boards of Appeal and are meant to establish that the EUTM proprietor was already active under a name containing the sign OLYMPIAD/OLIMPIAD as of 1937. This is obviously not a new fact and the EUTM proprietor was already aware of it during the first instance

proceedings before the Cancellation Division. Moreover, these documents which were already available to the EUTM proprietor before the contested decision was issued. The evidence is not supplementing relevant facts or evidence which had been submitted in due time (as this alleged fact of long-standing use was not raised in first instance and no evidence was provided in that respect). These documents have not been filed to contest findings made or examined by the first instance of its own motion in the contested decision and no valid reason was provided for their inclusion in the appeal proceedings. These documents should be disregarded pursuant to Article 54 of the Rules of Procedure of the Boards of Appeal.

Comparison of the signs

- Under Article 60(1)(a) EUTMR in conjunction with Article 8(5) EUTMR, risk of confusion is not a criterion. It suffices that a link is established between the conflicting signs. The EUTM proprietor is completely silent on this link. For this reason, already, the appeal should be dismissed.
- The differentiating elements are not of such nature as to (completely) neutralise or offset the similarity between the conflicting signs. The figurative components of the contested mark are descriptive for the goods and services in question, or for a characteristic thereof, and will as such barely be attributed any trade mark significance, despite being displayed in a larger size than the verbal components. The graphic representation of a pigeon is descriptive in relation to among others ‘live animals’ in class 31 and ‘animal exhibitions’ in class 41, while the graphic representation of two globes merely describes or at least emphasises the global nature of the EUTM proprietor’s activities. The initials FCI will be recognised by the relevant public as the acronym of the leading organisation/federation in racing pigeons ‘Fédération Colombophile Internationale’ (www.pigeonsfci.org) (in English, ‘International Colombophile Federation’), which is clearly descriptive in relation to among other the goods ‘live animals’ in class 31 and the services ‘animal exhibitions’ in class 41 as it informs about the nature, purpose, features and/or characteristics of these goods and services. The relevant consumers will thus not perceive and remember the acronym FCI independently. Instead, the public will attribute more trade mark significance to the verbal component RACING PIGEONS OLIMPIAD.
- Although the words RACING PIGEONS are placed at the beginning these do not bear more importance than the word OLIMPIAD in the overall visual impression of the contested mark. The terms RACING PIGEONS will be considered by the relevant public as descriptive of the goods and services in question (e.g., ‘live animals’ in class 31 and ‘animal exhibitions’ in class 41), namely that it concerns (exhibitions of) racing pigeons. Consequently, the impact, if any, of these verbal elements RACING PIGEONS is reduced to (very) limited distinctive character and is not of such nature as to outweigh the similarities between the conflicting signs as a result of the near identity between the earlier mark and the most distinctive element of the contested mark, namely the verbal element OLIMPIAD.
- In any event, the conflicting signs are similar to the extent that the public may either be led to believe that the goods and services originate from identical or economically linked undertakings (Article 60(1)(a) EUTMR in conjunction with

Article 8(1)(b) EUTMR), or at least that said public shall make a connection between the conflicting signs (Article 60(1)(a) EUTMR in conjunction with Article 8(5) EUTMR).

Reputation of the earlier mark

- The EUTM proprietor does not dispute the reputation of the earlier mark.

Link between the conflicting signs

- There is a clear connection between, on the one hand, the contested animal related goods and services in classes 31, 35 and 41 of the contested mark and, on the other hand, the services in class 41 – in particular services of ‘(organization of) sporting activities (and events); organization of sporting competitions’ for which the earlier mark enjoys an extraordinary reputation, to the extent that it is quite common to have sporting activities and competitions involving animals. For instance, there are currently three equestrian disciplines in which horses compete, namely jumping, dressage and eventing. Even if pigeon races were no longer held after the Olympic Games of Paris in 1900, this does not exclude a link between the contested goods and services and the reputed services of the earlier mark. The contested goods and services are not limited to ‘pigeons’. The relevant public is indeed accustomed to, or at least not surprised by, this phenomenon of inclusion/participation of animals in the Olympic Games. Companies active in among others pet food act also as a sponsor of the Olympic Games, and more generally of sporting events. For instance, TOP sponsor Procter & Gamble previously had a leading pet food division. The use by the of the earlier mark by the sponsors of the Olympic Games is relevant for the assessment of the existence of a link as well as the of unfair advantage of, or detriment to, the reputation of the earlier marks under Article 8(5) EUTMR, as clearly shown by the EUIPO’s case-law in both OLYMPIC and non-OLYMPIC related oppositions (10/11/2010, R 1797/2008-2, The Academy of Motion Picture Arts and Sciences / The Compliance Register, § 59-61; 07/10/2004, B 378 580, Comité International Olympique (Association) / X)

Risk of injury

- The earlier mark is one of those rare iconic trademarks that everyone knows: as a result of the extremely intensive and repeated use for more than 120 years it has reached over the last decade several hundred million people throughout Europe. The contested mark resembles the earlier one. Moreover, there is a clear connection between, on the one hand, the services in Class 41 for which the earlier mark enjoys extraordinary reputation and, on the other hand, the contested animal related goods and services in Classes 31, 35 and 41. When seeing a very similar sign on the goods and services that can be linked, directly or indirectly, to the reputed services, the relevant public would naturally perceive it as (i) a brand extension, (ii) a sporting competition or event related to the Olympic Games, and/or (iii) a sponsor partner of the Olympic Games.
- This is even more so in the present case, where until being notified by the cancellation applicant of an infringement of its trade mark rights, the EUTM

proprietor was displaying on its website www.olympiad.ro the logo which includes



an imitation of the Olympic Rings . The latter admitted it was a ‘mistake’ but this indicates the intention to take unfair advantage of the distinctiveness or reputation of the earlier mark. The EUTM proprietor regularly designates on its own website www.olympiad.ro its competition also as the ‘Olympics’ or the ‘Pigeon Olympics’, its participants as ‘Olympic pigeon’ or even ‘Olympic champions’ and never lets an opportunity to make such a (parasitic or even confusion inducing) association with the cancellation applicant (e.g., by using terms such as ‘Olympic Awards Ceremony’ or ‘Olympic Pigeon Exhibition and Products Fair’).

Other allegations of the EUTM proprietor

- The EUTM proprietor submits that ‘the word OLYMPIC is a general expression to suggest a world-wide area of use for goods, or services, or sports, or people, etc. and the word OLYMPIC/OLYMPIAD ‘cannot be monopolized for all living creatures as far as there are so many trademarks registered with these words.’. It submits (new) evidence showing that pigeon races have been organized since 1939 by the International Colombophile Association under a name containing the sign OLYMPIAD/OLIMPIAD.
- The sign OLYMPIC is not a general expression nor is it part of the public domain. This allegation is in contradiction with well-established case-law of the EUIPO on the distinctive character of the term OLYMPIC, in relation to services in Class 41 according to which this term ‘has currently no meaning in relation to the opponent’s services for which reputation has at least been proved because even if originally it stemmed from the place where the sports event was celebrated, nowadays, ‘OLYMPIC’ is identified with a particular undertaking origin, namely, the opponent (03/04/2023, B 3 161 899, *Comité International Olympique / J.S.*, 20/10/2022, B 3 154 251, *Comité International Olympique (Association) / ΤΖΙΩΤΗΣ ΔΗΜΗΤΡΙΟΣ*). In relation to the goods and services in other Classes, the EUIPO has further ruled that the distinctiveness of the earlier mark must be seen ‘at least as normal since the meaning of the expression ‘THE OLYMPICS’ in the languages of the relevant territory (as related to the Olympic Games), has no relation with the other goods and services (16.3.2010, B 1 394 545, *Comité International Olympique (Association) / Ontario LTD*). The mere existence of an allegedly large number of registered trademarks containing the word element OLYMPIAD/OLIMPIAD/OLYMPIC has no particular probative value as it does not necessarily reflect the market reality. Therefore, the earlier mark’s inherent distinctive character must be seen as (at least) normal, while this distinctive character was enhanced through extensive and long-standing use. It enjoys worldwide reputation, including in the European Union, in relation to the organization of sporting, cultural, educational and entertainment events in class 41.
- The mere fact that the International Colombophile Association organized pigeon races since 1937 does not qualify as a due cause and has no legal bearing or impact on the outcome of the present appeal proceedings. The EUTM proprietor did not show any actual and real use of a sign identical to the contested mark by itself (or

even by a third party) before the earlier mark was filed or acquired reputation. The evidence does not pertain to use of the contested mark throughout the territory of the European Union. In fact, Annex 8 even mentions that the title OLYMPIADE COLOMBOPHILE is abandoned and replaced by the title EXPOSITION COLOMBOPHILE INTERNATIONALE, namely a sign that does not even contain the sign(s) OLYMPIAD/OLIMPIAD.

Reasons

Admissibility of the appeal

- 12 The appeal complies with Articles 66, 67 and Article 68(1) EUTMR.
- 13 The cancellation applicant considers the appeal inadmissible, arguing that the statement of grounds does not contain, in accordance with Article 22(1)(b) EUTMDR, a clear and unambiguous identification of the grounds on the basis of which the annulment is requested. It adds that the decision under appeal has only examined one of the grounds invoked in the application for a declaration of invalidity, namely Article 8(5) EUTMR, but the EUTM proprietor contests the risk of confusion and does not argue against the assessment of Article 8(5) EUTMR. According to the cancellation applicant, the EUTM proprietor does in fact not dispute the contested decision.
- 14 Pursuant to Article 23(1)(e) EUTMDR the Board of Appeal shall reject an appeal as inadmissible where the statement of grounds does not comply with the requirements laid down in Article 22(1)(a) and (b) EUTMDR. Pursuant to Article 22(1)(b) EUTMDR a statement setting out the grounds of appeal shall contain a clear and unambiguous identification of the grounds of appeal on which the annulment of the contested decision is requested. Furthermore, pursuant to Article 22(1)(c) EUTMDR the statement setting out the grounds of appeal shall contain a clear and unambiguous identification of the facts, the evidence and the arguments in support of the grounds invoked.
- 15 In this case, in its statement of grounds of the appeal, the EUTM proprietor raises various arguments which are relevant both under Article 8(1)(b) and 8(5), stressing that the goods and services are in very different areas and disputing the uniqueness of ‘Olympic’ and also that ‘there cannot be any notoriousness transfer between the ancient Greek Peoples’ Olympiad and the pigeon exhibition, nor vice versa’, which is of relevance for the existence of a link for the purposes of Article 8(5) EUTMR. Thus, it is clear from the statement of grounds, that the EUTM proprietor disputes the decision under appeal with regard to both grounds on which the cancellation was based, in accordance with Article 23(1)(e) EUTMDR in conjunction with Article 22 (1)(b) EUTMDR. Whether the reasons provided can lead to the success of the appeal, is a matter which must be examined with the merits of the appeal.
- 16 It is first noted that the cancellation was based on two grounds, Article 8(1)(b) EUTMR and Article 8(5) EUTMR. The Board of Appeal has the power to examine both of these grounds, even if the Cancellation Decision only examined Art 8(5) EUTMR. Therefore, it was the EUTM proprietor’s good right to submit its observations regarding the likelihood of confusion.

New arguments and admissibility of further evidence

- 17 Pursuant to Article 95(2) EUTMR, the Office may disregard ‘facts or evidence which are not submitted in due time by the parties concerned’. That provision grants the Board discretion to decide, while giving reasons for its decision, whether or not to take into account facts and evidence submitted out of time (13/03/2007, C-29/05 P, Arcol, EU:C:2007:162, § 43).
- 18 In accordance with settled case-law (13/03/2007, C-29/05 P, ARCOL / CAPOL, EU:C:2007:162, § 44; 11/12/2014, T-235/12, Grass in bottle (other), EU:T:2014:1058, § 62 and the case-law cited), which is now enshrined in Article 27(4) EUTMDR, the Board of Appeal may accept facts or evidence submitted for the first time before it only where (a) those facts or evidence are on the face of it, likely to be relevant for the outcome of the case and (b) they have not been produced in due time for valid reasons, in particular where they are merely supplementing relevant facts and evidence which had already been submitted in due time, or are filed to contest findings made or examined by the first instance of its own motion in the decision subject to appeal.
- 19 Together with its statement of grounds of appeal, the EUTM proprietor submitted for the first time in the appeal the following documents: an excerpt from the webpage www.pigeonsfci.net/history (Annex 7), information about the First International exhibition in 1939 (Annex 8) and an information about the Congrès Colombophile International held in Gotteburg in January 1938 (Annex 9).
- 20 The cancellation applicant claims that this evidence (Annexes 7-9), aiming to show that pigeon races have been organised since 1939, by the International Colombophile Association under a name containing the sign OLYMPIAD/OLIMPIAD, should not be admitted by the Board as this evidence is new, not supplementary and does not correspond to an argument raised in the first instance or in the contested decision, and there is no valid reason why it was not filed in due time.
- 21 In this respect, the Board notes that indeed, in its statement of grounds of appeal, the EUTM Proprietor seems to be raising the argument of longstanding coexistence of the parties’ respective events under the marks, which was not raised in the first instance. The cancellation applicant does not dispute the EUTM Proprietor is entitled to raise new arguments in exercising its rights of defence, nor the relevance of the argument raised for the case at hand, but disputes nevertheless the admissibility of the relative evidence.
- 22 However, as correctly noted by the EUTM proprietor in its statement of grounds, the historical background regarding the organisation of the EUTM Proprietor’s event, was provided in the cancellation applicant’s own file, in the first instance. For instance, from the Extract from the EUTM holder’s website www.olympiad.ro, concerning ‘The 37th Olympiad of Racing Pigeons, in Oradea, Romania, in 2022, filed by the cancellation applicant (Annex 20.a, 4th screenshot, ‘About’), it results that the EUTM Proprietor’s bi-yearly event, has been organised for approximately 74 years.
- 23 Therefore, Annexes 7-9 of the EUTM Proprietor in the appeal, were not totally new evidence, but were aimed at supplementing and clarifying evidence filed by the cancellation applicant itself in both instances before the Office, in support of the EUTM Proprietor’s further defense argument.

- 24 Pursuant to Article 95(1) EUTMR, in inter partes proceeding, the examination of the Board is in principle restricted to the facts, evidence and arguments provided by the parties and the relief sought. Pursuant to Article 95(2), the Board may disregard ‘facts or evidence’ which are not submitted in due time by the parties. This latter provision as well as Article 27(4) EUTMDR, concern the submission of ‘facts and evidence’, which were not submitted in due time, but they do not prohibit the parties, in particular the defendant, to raise new arguments for the defense of its case, for the first time in the appeal stage. Rather, pursuant to Article 27(2) EUTMDR, in inter partes proceedings, the examination of the appeal must include the grounds invoked by the parties in the statement of grounds of appeal. Thus, it belongs to the Board to examine all relevant arguments, including new arguments raised by the defendant in the statement of grounds of appeal, with the exception of certain claims specifically enumerated in points a) to c) of Article 27(3) EUTMDR, which cannot be raised for the first time in the appeal.
- 25 Therefore, the evidence provided by the EUTM proprietor with the statement of grounds, is not new but complementary to evidence which was already in the file. The Board deems it appropriate to take them into account, all the more since these clarifications may be useful for the Board to decide on arguments raised in the statement of grounds of appeal, which are relevant for the application of Article 8(5) EUTMR.

Article 60(1)(a) in conjunction with Article 8(5) EUTMR

- 26 Pursuant to Article 60(1)(a) EUTMR, an EU trade mark shall be declared invalid where there is an earlier trademark and the conditions of Article 8(5) EUTMR are fulfilled.
- 27 Under Article 8(5) EUTMR, upon opposition by the proprietor of an earlier trade mark, the mark applied for shall not be registered where it is identical with, or similar to, the earlier trade mark and is to be registered for goods or services which are not similar to those for which the earlier trade mark is registered, where, in the case of an earlier EUTM, the trade mark has a reputation in the European Union and, in the case of an earlier national trade mark, the trade mark has a reputation in the Member State concerned and where the use without due cause of the trade mark applied for would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.
- 28 Although it is true that the primary function of a trade mark is that of an indication of origin, every trade mark also has an inherent economic value which is independent of and separate from that of the goods and services for which it has been registered. Consequently, Article 8(5) EUTMR ensures that a trade mark with a reputation is protected with regard to any application for an identical or similar trade mark which might adversely affect its image, even if the goods covered by the trade mark applied for are not similar to those for which the earlier trade mark has been registered (26/09/2018, T-62/16, PUMA (fig.) / PUMA (fig.) et al., EU:T:2018:604, § 17; 22/03/2007, T-215/03, Vips, EU:T:2007:93, § 35; 08/12/2011, T-586/10, Only Givenchy, EU:T:2011:722, § 58).
- 29 It follows from the wording of Article 8(5) EUTMR that the application of that provision is subject to three conditions: first, the identity of or similarity between the signs at issue; secondly, the existence of a reputation of the earlier trade mark relied on in support of the opposition; and, thirdly, the existence of a risk that the use without due cause of the

trade mark applied for would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark. Those conditions are cumulative, and failure to satisfy one of them is sufficient to render the provision inapplicable (26/09/2018, T-62/16, PUMA (fig.) / PUMA (fig.) et al., EU:T:2018:604, § 18; 22/03/2007, T-215/03, Vips, EU:T:2007:93, § 34).

- 30 The assessment proceeds only on the basis of the earlier international registration designating the EU No 1 128 501A for the word mark OLYMPIC. The trade mark OLYMPIAN (IR 1496460/26.06.2019), on which the cancellation was originally based is not an earlier right and the rejection of the cancellation based on it has become final.

Reputation of the earlier mark

- 31 According to the case-law of the Court of Justice, reputation is a knowledge threshold requirement. This implies that it must be principally assessed on the basis of quantitative criteria. In order to satisfy the requirement of reputation, the earlier mark must be known by a significant part of the target public for the goods or services covered by that trade mark (14/09/1999, C-375/97, Chevy, EU:C:1999:408, § 22-23; 25/05/2005, T-67/04, Spa-Finders, EU:T:2005:179, § 34). The requirement of reputation implies a certain degree of knowledge of the earlier trade mark among the public. It is only where there is a sufficient degree of knowledge of that mark that the public, when encountering the later trade mark, may possibly make an association between the two trade marks and that the earlier mark may consequently be damaged (14/09/1999, C-375/97, Chevy, EU:C:1999:408, § 23).
- 32 The cancellation applicant claimed reputation for '*Class 41: Entertainment; sporting and cultural activities, televised sporting and cultural entertainment; entertainment services provided during sporting events or concerning sporting events; organization of sporting and cultural events and activities; organization of real or virtual sporting competitions; covering televised and broadcast sporting events; reservation of tickets for sporting events and shows; timing of sports events; provision of sporting results; information services concerning sports and sporting events; information services concerning sporting events provided on line from a computer database or the Internet*' and submitted before the Cancellation Division Annexes 2-27 to prove it.
- 33 The contested decision found that the earlier mark 'OLIMPICS' enjoys a high level of reputation prior to the filing date of the contested mark (24 April 2019) which continued to exist at the time of filing of the application for a declaration of invalidity (8 February 2022) within the European Union for 'at least, the services entertainment; sporting activities in Class 41'.
- 34 The EUTM proprietor does not dispute these findings. The Board sees no reason to depart from these undisputed findings.

Relevant public

- 35 The definition of the relevant public is a necessary prerequisite for the purposes of applying Article 8(5) EUTMR since it is with regard to that public that it must be assessed whether there is any similarity between the signs at issue, any reputation of the earlier trade mark, any link between the trade marks at issue and finally any detriment to the

reputation or to the distinctive character of the earlier trade mark or any unfair advantage being taken of the reputation or the distinctive character of that trade mark (26/09/2018, T-62/16, PUMA (fig.) / PUMA (fig.) et al., EU:T:2018:604, § 31).

- 36 In accordance with the case-law, the public to be taken into account for the purposes of assessing whether one of the injuries referred to in Article 8(5) EUTMR exists will vary according to the type of injury alleged by the proprietor of the earlier trade mark. Thus, the relevant public with regard to whom the assessment of whether any unfair advantage has been taken of the distinctive character or the repute of the earlier trade mark must be made, consists of average consumers of the goods or services for which the later trade mark seeks protection, who are reasonably well informed and reasonably observant and circumspect (12/03/2009, C-320/07 P, Nasdaq, EU:C:2009:146, § 46-48). By contrast, the public with regard to whom the assessment of whether there is any detriment to the distinctive character or the repute of the earlier mark must be made, consists of the average consumers of the goods or services for which that mark is registered, who are reasonably well informed and reasonably observant and circumspect (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 35).
- 37 Since the Opposition Division based its assessment of Article 8(5) EUTMR on a finding of unfair advantage, the public to be taken into account consists of the average consumers of the contested goods and services (12/03/2009, C-320/07 P, Nasdaq, EU:C:2009:146, § 46-48). The contested goods and services in Classes 31, 35 and 41 target the general public, thus average consumers who would display an average degree of attention, as well as professionals (e.g. wholesale services, in Class 35) who must be deemed to be of a higher degree of attention.
- 38 Since the earlier mark is an international registration designating the EU, the assessment must be based on the territory of the European Union. It follows from the unitary character of the EUTM that an opposition is already successful if the relative ground for refusal exists only in part of the European Union (18/11/2014, T-510/12, EuroSky, EU:T:2014:966, § 34; 14/12/2006, T-81/03, T-82/03 & T-103/03, Venado, EU:T:2006:397, § 76). Therefore, following the approach taken by the Cancellation Division, without being disputed by the parties, the Board will focus on the perception of the relevant public in the English-speaking part of the European Union.

The degree of similarity between the signs

- 39 The similarity of the signs under Article 8(5) EUTMR must be assessed according to the same criteria as those which apply in the context of Article 8(1)(b) EUTMR and, consequently, taking into account the elements of visual, aural or conceptual similarity (24/03/2011, C-552/09, PTiMiKinderjoghurt, EU:C:2011:177, § 52, 54; 28/02/2019, C-505/17, PSO' BiO etic (FIG. MARK)/SO...? et al., EU:C:2019:157, § 79).
- 40 In order to satisfy the condition relating to the similarity between the marks which is laid down by Article 8(5) EUTMR, it is sufficient for the degree of similarity between the earlier mark with a reputation and the contested sign to have the effect that the relevant public establishes a link between them, even though it does not confuse them (27/10/2016, T-625/15, Spa Village, EU:T:2016:631, § 34).
- 41 The more similar they are, the more likely it is that the later mark will bring the earlier mark with a reputation to the relevant public's mind. Furthermore, the stronger the

distinctive character of the earlier mark, whether inherent or acquired through the use which has been made of it, the more likely it is that, faced with an identical or similar later mark, the relevant public will make a link with that earlier mark (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 44, 54).

42 According to the case-law, if there is some similarity, even faint, between the marks at issue the Board must carry out an overall assessment in order to ascertain whether, notwithstanding the low degree of similarity between them, there is, on account of the presence of other relevant factors such as the renown or reputation enjoyed by the earlier mark, a likelihood of confusion or a link made between those marks on the part of the relevant public (15/10/2018, T-164/17, WILD PINK, EU:T:2018:678, § 99; 13/09/2018, T-104/17, apo, EU:T:2018:536, § 21; 24/03/2011, C-552/09 P, TiMi Kinderjoghurt, EU:C:2011:177, § 66; 20/11/2014, C-581/13 P & C-582/13 P, Golden balls, EU:C:2014:2387, § 73).

43 The following signs have to be compared:

 <p style="text-align: center;"><i>Contested sign</i></p>	<p style="text-align: center;">OLYMPIC</p> <p style="text-align: center;"><i>Earlier mark</i></p>

44 The earlier mark is a word mark consisting of the term ‘OLYMPIC’. The contested sign is a complex mark composed of several verbal and figurative elements, namely the highly stylized letters ‘FCI’, of which the letters ‘C’ and ‘F’ are intertwined, whereas the letter ‘I’ is positioned between two white dots. At the background, there is a representation of two globes as well as the depiction of a black pigeon on top of the letter ‘F’, looking to the left. At the bottom of the sign, there are the words ‘RACING PIGEONS OLIMPIAD’ written in standard characters in a relatively smaller size. Although the said verbal elements are written in a smaller size, the Board concurs with the contested decision’s undisputed finding that the mark has no elements that could be considered clearly more dominant than other elements.

45 The term ‘OLYMPIC’ of which the earlier mark consists means of or relating to the ‘Olympic Games’ (<https://www.collinsdictionary.com/dictionary/english/olympic>) which are a set of international sports competitions which take place every four years, each time in a different country (<https://www.collinsdictionary.com/dictionary/english/olympic-games>). The Board endorses the contested decision’s undisputed finding that ‘OLYMPIC’ is, at most, inherently weak in relation to the relevant services in Class 41 since it will be perceived as a certain sports event that takes place every four years.

- 46 Insofar as the verbal elements of the contested sign are concerned, the cancellation applicant claims that the letters ‘FCI’ represent the acronym of the full descriptive meaning ‘Fédération Colombophile Internationale’. In this respect, the Board concurs with the contested decision that in the absence of evidence in this respect it is not plausible to assume that the relevant public will directly associate the acronym with the above meaning. Therefore, the combination of letters ‘FCI’ is normally distinctive for the goods and services at issue.
- 47 The term ‘Olimpiad’ as such, placed at the end of the sequence ‘Racing Pigeons Olimpiad’, is not a word of the English language. However, given its close resemblance with the word ‘OLYMPIAD’, it is likely to be understood by an average, reasonably well-informed consumer, in its more common usage in modern parlance, as referring to academic or competitive contests (e.g. Math Olympiad or Physics Olympiad). Consumers knowledgeable in Ancient Greek history would understand it as referring to the historical period of four years between two celebrations of Olympic games in ancient Greece, which has been improperly used to refer to the games themselves (e.g. Sochi 2014). In the context of the goods and services at issue, the sequence ‘Racing Pigeons Olympiad’ will be perceived as a reference to an event, a contest or competition of racing pigeons and thus, it is, at best, weak in relation to the relevant goods and services, since it refers to their nature or purpose.
- 48 As regards the representation of the silhouette of a pigeon, it reinforces the concept of the abovementioned term ‘PIGEONS’ and it is descriptive in relation to the relevant goods and services. Furthermore, the representation of the globes is also a non-distinctive element since it is merely perceived as indicating that the goods and services have an international or a worldwide scope.
- 49 The contested decision found the marks under comparison visually, phonetically and conceptually similar to a low degree.
- 50 The EUTM proprietor disputes this finding, arguing that the contested mark is composed of four verbal elements and a dominant figurative element, which represents approximately 90% of the sign, while the verbal elements account for only around 10%. The figurative element consists of two globes featuring the letters ‘F’, ‘C’ and ‘I’ at their intersection, together with a pigeon positioned above the letter ‘F’, with the words ‘RACING PIGEONS OLIMPIAD’ appearing below. The contested mark contains four words comprising a total of twenty-four letters, whereas the earlier marks consist solely of word elements of seven or eight letters. In view of the predominance of the figurative element and the limited contribution of the verbal elements, the common elements between the marks are secondary and cannot give rise to any relevant similarity between them.
- 51 It should be recalled that two marks are similar when, from the point of view of the relevant public, they are at least partly identical as regards one or more relevant aspects (23/10/2002, T-6/01, Matratzen + Matratzenmarkt Concord (fig.), EU:T:2002:261, § 30). The coincidence must be, therefore, ‘relevant’ from the perspective of the consumer who usually perceives a mark as a whole and does not proceed to analyse its various details (13/02/2008, T-146/06, Aturion, EU:T:2008:33, § 58).
- 52 The Board confirms the finding of the contested decision that the signs coincide visually only in the string of letters ‘ol*mpi**’ however, they differ their letters ‘I’ versus ‘Y’

and in their final letter's 'C' vs 'AD'. The signs also differ in the remaining verbal and figurative elements of the contested mark, as well as in the graphical representation of the elements within it. The contested mark includes additional elements, some of which are descriptive or, at most, weak at least for part of the goods and services. Whether the word 'OLYMPIC', which constitutes the only element of the earlier mark, and the word element 'OLIMPIAD' of the contested mark can be associated, is not relevant for the visual, but rather for the conceptual comparison. Visually the only factor of similarity is the overlap in some letters, which are not even combined ('ol*mpi**').

- 53 Therefore, the visual similarity is, at the most, very low.
- 54 Aurally, the signs coincide in the sound 'OLYMPI*'/ 'OLIMPI*', which may be pronounced identically, but differ in the sound of their final letters ('C- vs '-AD'). Furthermore, the remaining verbal elements of the contested mark (/racing-pigeons/, which are descriptive or, at most, weak, at least for part of the goods and services), and in the acronym 'FCI' which will be spelled as three letters by the relevant public does not have any counterpart in the earlier mark. Accordingly, the lengths and rhythm of the conflicting marks, when pronounced, is different.
- 55 Therefore, the signs are aurally similar to, at the most, very low degree.
- 56 From a semantic perspective, the term 'OLYMPIC' in the earlier mark conveys amongst others, the meaning of something related to the sporting event, the Olympic games, organised in ancient Greece and revived, in modern times (e.g. the Olympic flame). By contrast, the sequence 'RACING PIGEONS OLIMPIAD' in the contested sign will be perceived as referring to an event, such as a contest or competition of racing pigeons, a perception further reinforced by the graphic elements depicting two globes and the silhouette of a pigeon.
- 57 In the present case, the earlier mark refers to the renowned Olympic Games, originating in Ancient Greece and revived in the 20th century by the cancellation applicant. By contrast, as explained in paragraph 46, the term 'OLYMPIAD' is commonly used to designate a wide variety of competitions, including academic contests and other (non-) sporting events, which are not necessarily connected to sport and still less to the Olympic Games. Even where the term is used in a sporting context, competitions described as 'olympiads' are not, in the perception of the relevant public, automatically associated with the Olympic Games, and certainly not with the Olympic Games revived in the 20th century by the cancellation applicant.
- 58 The contested sign, moreover, refers specifically to a pigeon racing competition. Neither the ancient Olympic Games nor their revival version has ever included pigeon racing as a discipline. That clear thematic divergence increases the conceptual distinction between the signs.
- 59 Consequently, any semantic overlap relating to the general notion of contest or competition must be afforded very limited weight, as it is overly broad and does not establish a relevant connection between the signs.
- 60 Overall, the signs are similar to at the most, very low degree.

Link between the marks in conflict

- 61 According to the case-law, the various infringements covered by Article 8(5) EUTMR are the consequence of a certain degree of similarity between the earlier mark and the mark applied for, by virtue of which the relevant section of the public makes a connection between them, even though it does not necessarily confuse them. The existence of a link between the mark applied for and the earlier mark, which must be appreciated globally, taking into account all factors relevant to the circumstances of the case, is therefore an essential condition for the application of that provision (12/03/2009, C-320/07 P, *Nasdaq*, EU:C:2009:146, § 28, 53; 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, § 33, 57-58, 66; 24/03/2011, C552/09 P, *TiMi Kinderjoghurt*, EU:C:2011:177, § 53).
- 62 Those factors include the degree of similarity between the conflicting marks; the nature of the goods or services for which the conflicting marks were registered or applied for, including the degree of closeness or dissimilarity between those goods and services, and the relevant section of the public; the strength of the earlier mark's reputation; the degree of the earlier mark's distinctive character, whether inherent or acquired through use and the existence of a likelihood of confusion on the part of the public (27/11/2008, C-252/07, *Intel*, EU:C:2008:655, § 42).
- 63 The Cancellation Division affirmed the existence of a link between the marks at issue, reasoning as follows: 'The signs are similar to the extent that they coincide in 'OLYMPIC' and 'OLIMPIAD' however, they differ in the remaining verbal and figurative elements of the contested mark. (...) Even though some of the goods and services may seem remote, the target public could be attracted by the said goods and services because they bear a trade mark very similar to the cancellation applicant's earlier trade mark, which has a high level of reputation' (emphasis added).
- 64 As a preliminary point, the Board first notes that the reasoning provided in the contested decision in this respect, is inconsistent with the findings of the contested decision where the marks were considered similar to a low degree, and not very similar. Therefore, the contested decision's assessment of the link is vitiated by an error.
- 65 In accordance with Article 71(1) EUTMR, the Board of Appeal may either exercise any power within the competence of the department responsible for the decision appealed against or remit the case to that department for further prosecution.
- 66 In this case, the finding of the contested decision regarding the similarity of the signs were corrected above by the Board. Overall, the Board found the marks similar to, at the most, a very low degree.
- 67 Since some similarity between the marks was confirmed (albeit at the most of very low degree), it has to be examined whether this faint similarity will cause the relevant public to establish a link (or association) between them.
- 68 As confirmed in paragraphs 30–31, the earlier mark enjoys a high degree of reputation, at least in relation to the services of entertainment and sporting activities in Class 41.
- 69 However, as explained in paragraph 42, the inherent distinctive character of the earlier trade mark in respect of those services is very weak.

- 70 The General Court has repeatedly held that the existence of a reputation does not, in itself, suffice to establish a link where the common element between the signs is weak or descriptive. In particular, in the judgement 12/06/2024, T-604/22, TOUR DE X (fig.)/TOUR DE FRANCE et al., EU:T:2024:377, § 83, no link was found despite a particularly high degree of reputation, since the shared element ‘tour de’ had a low degree of distinctive character in the context of cycling competitions. The same reasoning was followed in, among others, 31/05/2017, T-637/15, SOTTO IL SOLE ITALIANO SOTTO il Sole (fig.)/VImats A SOL et al., EU:T:2017:371, § 63, 77-78; 14/06/2016, T-789/14, MEISSEN (fig.)/Meissen et al., EU:T:2016:349, § 77, 120; 25/02/2016, T-402/14, AQUALOGY (fig.)/AQUALIA et al., EU:T:2016:100, § 97-99; 26/09/2014, T-490/12, Grazia/Grazia (fig.) et al., EU:T:2014:840, § 78.
- 71 It follows from that case-law that a weak, or as in the present case very weak, inherent distinctive character of the earlier trade mark may significantly reduce, or even exclude, the likelihood that the relevant public will establish a link between the signs, despite the existence of a reputation, in particular given the overall very low degree of similarity between the marks on account of additional differentiating elements of the challenged mark.
- 72 In that context, the Board recalls that the more distinctive and unique the earlier mark, either inherently or as a consequence of the use made of it, the more likely it is that, when confronted with a later identical or similar mark, the relevant public will call the earlier mark to mind (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 54).
- 73 This distinction reflects the established legal principle underlying Article 8(5) EUTMR, pursuant to which protection is afforded to marks with a reputation not on the basis of their generic or descriptive meaning (in this case, as the reference to the Olympic Games of classical antiquity, from which it derived its modern meaning), but rather on account of the success and renown they have acquired on the market, irrespective of any historical or contemporary connotations associated with the sign.
- 74 In this regard, as the cancellation applicant itself acknowledges, it uses the word ‘OLYMPIC’ as an adjective qualifying ‘Games’, namely ‘Olympic Games’. In that specific and limited context, the cancellation applicant has acquired a high degree of reputation, at least, in relation to the entertainment services; sporting activities in Class 41.
- 75 Consequently, for the purposes of assessing whether a link within the meaning of Article 8(5) EUTMR is plausible, only the use of the sign as an identifier of the cancellation applicant’s event the modern Olympic games and related entertainment and sporting activities services, may be taken into account.
- 76 In that regard, in so far as the ability of a trade mark to identify the goods or services for which it is registered and used as coming from the proprietor of that mark and, therefore, its distinctive character are all the stronger if that mark is unique (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 56). That is to say, as regards a word mark, if the word of which it consists has not been used by anyone for any goods or services other than by the proprietor of the mark for the goods and services it markets, the earlier mark is unique (12/03/2009, C-320/07 P, NASDAQ (fig.) / NASDAQ, EU:C:2009:146, § 26).

- 77 This is obviously not the case here. As also acknowledged by the Board in R 145/2003-2, T CARD OLYMPICS (FIG. MARK) / OLYMPIC (01/03/2004, R 145/2003-2, T CARD OLYMPICS (FIG. MARK) / OLYMPIC, § 17), the term OLYMPIC, as such has a double meaning. According to the Concise Oxford Dictionary it refers to, and identifies, both the Olympic Games of classical antiquity, for which the word was first used and is still used today, and the modern Olympic games, conceived as a revival of the spirit of the ancient Olympic games and named after them i.e. the event covered by the opponent's registration and for which reputation of the earlier mark 'Olympics' is claimed. Therefore, the term 'OLYMPIC' cannot be considered as unique.
- 78 The earlier trade mark is not a unique fanciful designation used exclusively by the cancellation applicant, but rather an insignificant modification of an ancient Olympic Games which, in its slight variation, also appears common in modern usage, as reference to academic or competitive contests (e.g. Math Olympiad or Physics Olympiad).
- 79 It follows from 10/03/2021, T-71/20, Puma system/PUMA (fig.) et al., EU:T:2021:121, § 71 that even in the case of a trade mark which is extraordinarily well known on account of its high reputation but is not unique, i.e. is not a fanciful designation invented by the cancellation applicant (trade mark proprietor), the conceptual association is not as great as may be the case with fanciful designations (12/09/2024, R 1541/2023-2, T-chain/T et al., § 123; 11/07/2025, R 2252/2024-2, Erfolglöwen (fig.)/höhle DER Löwen et al., § 141).
- 80 Indeed, according to the case-law, whether the earlier reputed mark consists of a fanciful word or, to the contrary, of one that has a semantic content is a factor that comes into play in the assessment of the potential link between the marks within the meaning of Article 8(5) EUTMR. In particular, where the identity or similarity of the signs at issue results from the presence of a word which has a specific meaning, that meaning could become apparent to the relevant public when the similar mark is used in a commercial context which is fundamentally different from that in which the earlier mark has a reputation. In that regard, it has been accepted that the standard of proof required to establish a link between the marks at issue was more demanding where the earlier mark was composed not of a fanciful word but of a common noun referring to a specific concept (4/12/2024, T-30/24, Li Puma Design/PUMA (fig.) et al., EU:T:2024:30, § 53), in this case a competitive event, the Olympic Games, which existed in the ancient times and was revived in modern times by the cancellation applicant's event.
- 81 That conclusion is all the more true in the light of the additional elements forming part of the contested sign, in particular the explicit reference to pigeon racing. Those elements introduce a specific and concrete subject matter which is conceptually remote from the Olympic Games and from the Olympic movement more broadly. They further individualise the contested sign and anchor it in a distinct, specific thematic field. In those circumstances, the relevant public would perceive the sign as designating a competition relating to racing pigeons, rather than as evoking the Olympic Games, thereby further reducing – if not altogether excluding – the plausibility of the link.
- 82 Therefore, notwithstanding the fact that the contested sign 'FCI RACING PIGEONS OLIMPIAD' bears certain sporting competitive connotation, the fact relied upon by the cancellation applicant that pigeons were once featured in the Olympic Games over 100 years ago is unlikely to be known by an average reasonably well informed average

consumer and in the absence of any evidence in this respect, it cannot be assumed to influence the perception of the relevant public.

- 83 While it is correct that equestrian sport today comprises several distinct disciplines, as relied by the cancellation applicant, that comparison is misplaced in the present case. Unlike equestrianism, which is a discipline that has been continuously included in the Olympic games program, pigeon racing has not been included, as a discipline, neither in the Olympic games (since 1900), nor in comparable sporting events. The mere historical fact that pigeon races once took place does not establish a current or meaningful link between the marks at issue. Link must be assessed with regard to contemporary public perception, not obsolete or discontinued activities.
- 84 Likewise, the fact that one of the TOP sponsors of the cancellation applicant's Olympic games is Procter & Gamble – which previously produced pet food amongst a vast array of different goods – does not even prove that the public has even been exposed to sponsorship use of the earlier mark for pet foodstuff, in particular.
- 85 Given that the earlier mark is neither unique but enjoys at best low degree of inherent distinctiveness, despite the high reputation in relation to cancellation applicant's modern Olympic games, the association does not, if at all, go far beyond the sector for which the reputation exists.
- 86 Therefore, even if the earlier mark's high reputation had been proven for all the claimed services in Class 41, namely 'Entertainment; sporting and cultural activities, televised sporting and cultural entertainment; entertainment services provided during sporting events or concerning sporting events; organization of sporting and cultural events and activities; organization of real or virtual sporting competitions; covering televised and broadcast sporting events; reservation of tickets for sporting events and shows; timing of sports events; provision of sporting results; information services concerning sports and sporting events; information services concerning sporting events provided on line from a computer database or the Internet', cannot be automatically transposed in respect of the challenged mark's goods and services in Classes 31 ('Live animals, organisms for breeding; Fodder'), 35 ('Retail or wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; Retail services relating to live animals; Retail services in relation to animal grooming preparations; Wholesale services in relation to animal grooming preparations; Wholesale services in relation to veterinary preparations and articles') and 41('Animal exhibitions').
- 87 This is all the more true in the present case given a very low degree of the overall similarity between the marks on account of the additional differentiating elements of the challenged mark.

Overall assessment of the existence of a link

- 88 Taking into account all the circumstances explained above, the Board finds that the relevant public, comprising average reasonably well-informed observant and circumspect consumers, and in part, also professionals will not establish a link between the signs at issue.
- 89 The services covered by the contested EUTM are in part directed to professionals ('wholesale services for pharmaceutical, veterinary and sanitary preparations and

medical supplies; wholesale services in relation to animal grooming preparations; Wholesale services in relation to veterinary preparations and articles’). It is highly unlikely that professionals, when looking for goods and contracting services covered by the EUTM, which are related to animals, would link these to the earlier IR, notwithstanding its high degree of reputation for the Olympic games organised since 1900. According to the case-law, where the goods and services designated by the marks address the general public on the one hand, and a specialised public on the other, the mere fact that members of the specialised public are necessarily part of the general public is not conclusive as to the existence of a link. Whilst the specialised public may be familiar with the earlier mark covering goods or services aimed at the general public, this is not sufficient to demonstrate this public will establish a link between the marks at issue (26/09/2018, T-62/16, PUMA (fig.) / PUMA (fig.) et al., EU:T:2018:604, § 45-46).

- 90 The remaining goods and services of the contested EUTM are mainly directed to the general public, as are the services for which the earlier IR is reputed. However, even for these goods and services, despite the overlap in the relevant public, the very remote similarity between the mark is not sufficient to conclude that this public would establish a link, in this case.
- 91 Indeed, the assessment of the existence of such a link must be assessed globally, taking into account all factors relevant to the circumstances of the case. In this case, both parties draw arguments from the longstanding organization of their respective events, decades before the registration of the respective marks. The cancellation applicant invokes the organization of the Olympic Games, for over a century, and the repute acquired by this event over that period, while the EUTM proprietor invokes the organization of its Pigeons Olympiad event, for over 75 years. The fact the Olympic games are not known for pigeons’ races, and that the term Olympiad is also commonly used for a variety of events such as Math Olympiad or Physics Olympiad, may explain the longstanding coexistence of the respective events which have been organized by the parties for many decades. All these additional circumstances further support the view that the relevant public is unlikely to have established in the past, or to establish in the future, a link between the contested EUTM and the cancellation applicant’s reputed mark.
- 92 Finally, the cancellation applicant’s allegations concerning an instance of allegedly infringing conduct are inconclusive, since the EUTM proprietor’s conduct at the occasion of one event (at the occasion of the 37th edition of the Racing Pigeon Olympiad, in 2022), which was in addition voluntarily remedied, is insufficient to prove an alleged intent and, in any event, is not sufficient to prove that the public will establish a link between the signs. The cancellation applicant itself underlines in its observations in the appeal, that deciding on that instance of alleged unfair competition, is outside of the EUIPO’s legal remit of the present cancellation proceedings.
- 93 With a view to all the above, in the Board’s view, the relevant public is unlikely to establish a link between the contested EUTM and the cancellation applicant’s reputed mark. In the absence of a link between the marks, the use of the mark applied for is unlikely to take unfair advantage of, or be detrimental to, the distinctive character or the repute of earlier mark. Therefore, the cancellation based on Article 8(5) EUTMR must be rejected.
- 94 For the sake of completeness, the Board further notes that a likelihood of confusion between the marks at issue is unlikely to occur, for the reasons explained below.

Article 60(1)(a) EUTMR in conjunction with Article 8(1)(b) EUTMR

- 95 Pursuant to Article 60(1)(a) EUTMR, an EU trade mark shall be declared invalid where there is an earlier trademark and the conditions of Article 8(1)(b) EUTMR are fulfilled.
- 96 According to Article 8(1)(b) EUTMR, upon opposition by the proprietor of an earlier trade mark, the trade mark applied for shall not be registered, if because of its identity with, or similarity to, the earlier trade mark and the identity or similarity of the goods or services covered by the trade marks there exists a likelihood of confusion on the part of the public in the territory in which the earlier trade mark is protected.
- 97 The risk that the public might believe that the goods or services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, constitutes a likelihood of confusion within the meaning of that Article (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 16-18; 29/09/1998, C-39/97, Canon, EU:C:1998:442, § 30).
- 98 A likelihood of confusion must be assessed globally, taking into account all factors relevant to the circumstances of the case (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 22; 29/09/1998, C-39/97, Canon, EU:C:1998:442, § 16; 22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 18).
- 99 Those factors include, inter alia, the degree of similarity between the signs at issue and the goods or services in question and also the strength of the earlier mark's reputation and its degree of distinctive character, whether inherent or acquired through use (24/03/2011, C-552/09 P, TiMiKinderjoghurt, EU:C:2011:177, § 64; 04/03/2020, C-328/18 P, BLACK LABEL BY EQUIVALENZA (fig.) / LABELL (fig.) et al., EU:C:2020:156, § 57; 11/06/2020, C-115/19 P, CCB (fig.) / CB (fig.) et al., EU:C:2020:469, § 55).
- 100 In this case it is not disputed that the earlier mark enjoys reputation with regard to services in Class 41 ('at least, for the services *entertainment; sporting activities* in Class 41'), which enhances its distinctive character. Trade marks with a highly distinctive character, either per se or because of the reputation they possess on the market, enjoy broader protection than marks with a less distinctive character (29/09/1998, C-39/97, Canon, EU:C:1998:442, § 18, 24).
- 101 This being said, in an overall impression, the relevant consumers will perceive the signs in conflict, on the one hand 'FCI RACING PIGEONS OLIMPIAD' of the contested sign and on the other, a word 'OLYMPIC', as referring to on the one hand, a general famous sporting event, and on the other, a pigeon racing, stressed by the different length and structure of the contested sign. As a result of these clear differences, which are unlikely to pass unnoticed by the relevant consumers – all the more those displaying a higher degree of attention – the signs under comparison convey different overall impressions which are likely to clearly distinguish the signs.
- 102 Even assuming identity of the goods and services and enhanced distinctiveness of the earlier mark, the very low degree of overall similarity between the signs given the additional differentiating elements of the contested sign and a tenuous conceptual overlap, for the reasons given in para. 56 above, is sufficient for the average consumer, and even more so for the highly attentive consumer, to perceive the signs as unrelated.

- 103 Overall, the signs at issue have the necessary distance between them, so that a likelihood of confusion, or association, can be safely excluded, even for identical goods and any consideration of the impact of imperfect recollection on that public's perception would not change that conclusion.
- 104 For all the reasons previously explained (see comparison of the signs, under Article 60(1)(a) EUTMR in conjunction with Article 8(5) EUTMR), the mere coincidence in some letters of the last word element of the contested complex EUTM, with the earlier word mark, even enjoying enhanced distinctiveness for the 'Olympic' games sports event, is unlikely to cause the public to believe that the services covered by the marks may originate from the same or from commercially linked undertakings.
- 105 This finding holds all the more true for the non-English speaking public who will perceive the additional verbal elements of the contested sign as meaningless. In these circumstances, any similarity between the marks is further diminished by the distinctiveness of the additional verbal elements and by the figurative elements of the complex figurative contested EUTM.

Costs

- 106 Pursuant to Article 109(1) EUTMR and Article 18 EUTMR, the cancellation applicant, as the losing party, must bear the EUTM proprietor's costs of the cancellation and appeal proceedings.
- 107 These consist of the EUTM proprietor's costs of professional representation in the appeal proceedings of EUR 550 and in cancellation proceedings of EUR 450. Furthermore, the appeal fee of EUR 720 is to be reimbursed.
- 108 The total amount for both proceedings is therefore EUR 1 720.

Order

On those grounds,

THE BOARD

hereby:

- 1. Annuls the contested decision and rejects the request for cancellation.**
- 2. Orders the cancellation applicant to bear the EUTM proprietor costs in the cancellation and appeal proceedings which amount to EUR 1 720.**

Signed

G. Humphreys Bacon

Signed

M. Bra

Signed

E. Fink

Acting Registrar:

Signed

K. Zajfert

