Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber)

19 November 2025 *

(EU trade mark – Revocation proceedings – EU figurative mark Làv – Article 18(1) and Article 58(1)(a) of Regulation (EU) 2017/1001 – Proof of genuine use – Assessment of the evidence – Unreasonable or excessive burden of proof – Principle of good administration – Article 41 of the Charter of Fundamental Rights)

In Case T-563/24,

Gürok Turizm ve Madencilik AŞ, established in Kütahya (Türkiye), represented by J. Erdozain López, J. Vicente Martínez and M. López Camba, lawyers,

applicant,

v

European Union Intellectual Property Office (EUIPO), represented by D. Stoyanova-Valchanova, acting as Agent,

defendant,

the other party to the proceedings before the Board of Appeal of EUIPO being

Olav GmbH, established in Cologne (Germany),

THE GENERAL COURT (Third Chamber),

composed, at the time of the deliberations, of P. Škvařilová-Pelzl (Rapporteur), President, I. Nõmm and D. Kukovec, Judges,

Registrar: J. Čuboň, Administrator,

having regard to the written part of the procedure,

further to the hearing on 7 July 2025,

gives the following

* Language of the case: English.

Judgment

1 By its action under Article 263 TFEU, the applicant, Gürok Turizm ve Madencilik AŞ, seeks the annulment of the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 22 August 2024 (Case R 214/2024-4) ('the contested decision').

Background to the dispute

2 The applicant is the proprietor of the EU trade mark No 011224821, registered on 7 March 2013 further to an application filed on 28 September 2012 by Gürallar YAPI Malzemeleri Ve Kimya Sanayii Anonim Sirketi, its predecessor in title, for the following figurative sign:



3 The goods and services covered by the mark referred to in paragraph 2 above are in Classes 8, 11, 19, 21, 35, 37 and 39 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, corresponding, for each of those classes, to the following description:

– Class 8: 'Hand tools and implements (hand-operated); cutlery; side arms; razors; table cutlery made of precious metals or coated therewith, namely, knives, spoons and forks; non-electric egg and cheese slicers, non-electric pizza cutters, non-electric vegetable and fruit peelers';

– Class 11: 'Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes; bath tubs, bidets, bath installations, shower enclosures, urinals (sanitary fixtures), water closets, toilets, portable; lavatories, sinks';

– Class 19: 'Building materials (non-metallic); non-metallic rigid pipes for building; asphalt, pitch and bitumen; non-metallic transportable buildings; monuments, not of metal; shaped building, construction and road construction materials made of concrete, gypsum, earthen, clay, sand, natural stone, artificial stone, wooden, plastic or synthetic materials; buildings, poles, barriers; natural or synthetic non-metallic surface coatings for building purposes in the form of plates or strips (heat-adhesive); glass blocks for building, glass bricks, glass tiles, glass panes, glass panels for building construction purposes';

– Class 21: 'Household or kitchen utensils and containers; combs and sponges; brushes (except paint brushes); brush-making materials; steelwool; unworked or semiworked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes; dishes, jars, cookie jars, glasses, cups, trays, egg cups, coffee cups, saucepans, carafes, cake molds, teapots, tableware (other than knives, forks and spoons) made of glass and porcelain, namely, bowls, mugs, plates, salt and pepper shakers, gravy boats, jugs and vases; statuettes, statues and works of art of glass and porcelain';

– Class 35: 'Advertising; business management; business administration; office functions; the bringing together, for the benefit of others, of hand tools and implements (hand operated),

apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, building materials, non-metallic rigid pipes for building, non-metallic transportable buildings, monuments, not of metal, household or kitchen utensils and containers, glassware, porcelain and earthenware (excluding the transport thereof), enabling customers to conveniently view and purchase those goods; all of the aforementioned services may be provided by retail stores, wholesale outlets, through mail order catalogues or by means of electronic media, for example, through web sites or television shopping programmes';

– Class 37: 'Building construction; repair; installation services; construction services; building construction, repair and restoration';

– Class 39: 'Transport; packaging and storage of goods; travel arrangement; transport commission agency services in the nature of arranging excursions for tourists, freight commission agency services in the nature of freight brokerage, ship agency services in the nature of freight ship transport, tourist bureau services in the nature of tourist agency services and tour guide services, making reservations and bookings for transportation and travel and tour tickets, tour organization services'.

4 On 8 December 2022, Olav GmbH, the other party to the proceedings before the Board of Appeal, filed an application for a declaration of revocation of the mark referred to in paragraph 2 above in respect of all the goods and services for which that mark had been registered, on the basis of Article 58(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1), on the ground that that mark had not been put to genuine use within a continuous period of five years.

5 By decision of 28 November 2023, the Cancellation Division upheld the application in part and revoked the contested mark for all the goods referred to in paragraph 3 above, with the exception of 'household or kitchen containers; glassware not included in other classes; dishes, jars, cookie jars, glasses, cups, coffee cups, carafes, tableware (other than knives, forks and spoons) made of glass, namely, bowls, mugs, plates, jugs', in Class 21.

6 On 28 January 2024, Olav GmbH filed an appeal with EUIPO, pursuant to Articles 66 to 71 of Regulation 2017/1001, against the Cancellation Division's decision in so far as the contested mark had not been revoked in respect of the goods referred to in paragraph 5 above.

7 By the contested decision, the Board of Appeal annulled the Cancellation Division's decision, finding, in essence, that the evidence provided by the applicant did not reach the required standard of probative value to demonstrate the extent of use of the contested mark and that the absence of additional explanations and cross-references from the applicant hindered that evidence from being considered to be solid, objective and sufficient.

Forms of order sought

8 The applicant claims, in essence, that the Court should:

– annul the contested decision, inasmuch as that decision upheld the application for a declaration of revocation for all of the goods in Class 21 covered by the contested mark;

– order EUIPO to pay the costs;

– order Olav GmbH to pay the costs.

9 EUIPO contends that the Court should annul the contested decision.

10 At the hearing, the applicant added to the form of order sought by it by asking the Court, in the alternative, to alter the contested decision.

11 Moreover, at the hearing, the applicant stated that it was withdrawing its claim that the Court should order Olav GmbH to pay the costs, since Olav GmbH was not a party to the proceedings before the Court, formal note of which was taken in the minutes of the hearing.

Law

Admissibility of certain heads of claim

Admissibility of the applicant's claim that the Court should alter the contested decision

12 At the hearing, the applicant introduced an additional head of claim before the Court, in the alternative, for the alteration of the contested decision. In essence, the applicant requests that the Court find, like the Cancellation Division, that the contested mark had been put to genuine use, on the basis of evidence produced during the pre-litigation phase.

13 Under Article 21 of the Statute of the Court of Justice of the European Union, applicable to the procedure before the General Court by virtue of the first paragraph of Article 53 thereof, and Article 76 of the Rules of Procedure of the General Court, the application initiating proceedings must indicate, inter alia, the subject matter of the dispute and contain the form of order sought by the applicant. The form of order sought must be set out in a precise and unequivocal manner, since otherwise the Court would risk giving a ruling *infra petita* or *ultra petita* and disregarding the rights of the defendant (see, to that effect and by analogy, judgment of 21 October 2015, *Petco Animal Supplies Stores* v *OHIM – Gutiérrez Ariza (PETCO)*, T-664/13, EU:T:2015:791, paragraph 24 and the case-law cited). Moreover, new claims put forward for the first time at the hearing cannot be allowed without depriving defendants of an opportunity to prepare a response and thereby infringing the rights of the defence (see, to that effect, judgments of 17 March 2005, *Commission* v *AMI Semiconductor Belgium and Others*, C-294/02, EU:C:2005:172, paragraph 75, and of 15 September 2021, *ADR Center* v *Commission*, T-364/15, not published, EU:T:2021:593, paragraph 65 and the case-law cited).

14 Thus, only the form of order set out in the originating application may be taken into consideration and the substance of the application must be examined solely with reference to the order sought in that application. Article 84(1) of the Rules of Procedure allows new pleas in law to be introduced on condition that they are based on matters of law or of fact which came to light in the course of the procedure. It is apparent from the case-law that that condition governs a fortiori any amendment to the forms of order sought and that, in the absence of matters of law or of fact which came to light in the course of the written procedure, only the order sought in the application may be taken into consideration (see, to that effect, judgment of 21 October 2015, *PETCO*, T-664/13, EU:T:2015:791, paragraph 25 and the case-law cited).

15 In the present case, the request to alter the contested decision is not based on any new matters, within the meaning of Article 84(1) of the Rules of Procedure, so, even supposing that the applicant had voluntarily amended the form of order sought by it at the hearing, such an amendment cannot be accepted given the absence of any new matters of law or of fact which would have been revealed in the course of the procedure.

16 It follows that the applicant's head of claim seeking, in the alternative, an alteration to the contested decision, first submitted before the Court at the hearing, is inadmissible.

The first head of claim, by which EUIPO endorses the form of order sought by the applicant

17 By its single head of claim, EUIPO endorses the form or order sought by the applicant for the annulment of the contested decision.

18 Although EUIPO does not have the requisite capacity to bring an action against a decision of a Board of Appeal, conversely it cannot be required to defend systematically every contested decision of a Board of Appeal or automatically to claim that every action challenging such a decision should be dismissed. Nothing prevents EUIPO from endorsing an applicant's head of claim or from simply leaving the decision to the discretion of the Court, while putting forward all the arguments that it considers appropriate for giving guidance to the Court. In contrast, it may not seek an order annulling or altering the decision of the Board of Appeal on a point not raised in the application or put forward pleas in law not raised in the application (see judgment of 25 October 2005, *Peek & Cloppenburg* v *OHIM (Cloppenburg)*, T-379/03, EU:T:2005:373, paragraph 22 and the case-law cited).

19 In the present case, it should be noted that the applicant claims that the Board of Appeal, in essence, imposed, in the context of the revocation proceedings, a requirement for quality of evidence so high that the requirement constitutes an extremely burdensome and impractical constraint in order to demonstrate the genuine use of the contested mark. Furthermore, the applicant submits that the Board of Appeal made an error of assessment in finding that the evidence relating to the extent of use of that mark was insufficient for the use to be regarded as genuine.

20 EUIPO supports, in essence, the applicant's argument and states that the Board of Appeal imposed, in the specific factual circumstances of the present case, an unreasonable requirement for quality of evidence, such that the contested decision should be annulled.

21 It follows that the single head of claim, by which EUIPO endorses the applicant's claim for annulment, must be declared admissible inasmuch as that head of claim and the arguments set out in support thereof do not go beyond the form of order sought and the arguments put forward by the applicant.

Substance

22 The applicant raises a single plea in law alleging infringement of Article 58(1) and (2) of Regulation 2017/1001. In essence, it claims that the Board of Appeal considered that the extent of use of the contested mark could not be demonstrated, having regard to the weak probative

character of the evidence submitted, and criticised the applicant for not providing additional explanations or carrying out sufficiently elaborate cross-referencing of all the evidence submitted in support of its line of argument.

23 EUIPO also submits that the Board of Appeal imposed an unreasonable burden of proof on the applicant.

24 However, EUIPO argues that the evidence and arguments put forward by the applicant in paragraphs 41 and 42 of the application, which are submitted for the first time before the Court, are inadmissible.

25 In the present case, in order to adduce proof of genuine use of the contested mark, the applicant provided the following items of evidence:

– a screenshot of a page from the website 'company.lav.com.tr', dated April 2023 (Annex 1);

– a selection of undated photos showing the packaging of the goods referred to in paragraph 5 above available for sale (Annex 2);

– a screenshot of a page from the website 'company.lav.com.tr', dated April 2023, linking to various publications appearing in different media (Annex 3);

– a selection of invoices, packing lists and other commercial documentation, dated from 2017 to 2022 (Annexes 4 to 9);

– two catalogues of goods marked with 'lav', dated 2014 and 2023 (Annexes 10 and 11);

– an extract from the Turkish Trade Registry Gazette of 10 April 2024 concerning the merger of the legal entity of the applicant in the present case and Gürallar YAPI Malzemeleri Ve Kimya Sanayii Anonim Sirketi (Annex 12).

26 The applicant submits, first, that paragraphs 70 and 71 of the contested decision are vitiated by a contradiction in reasoning in so far as (a) the Board of Appeal stated that the activity of the applicant and its predecessor in title of the contested mark in the glassware industry and the export of certain goods at issue to 140 countries, including Spain and France, and the existence of a marketing and sales office in Italy, and (b) the Board of Appeal concluded, in paragraph 72 of that decision, that the only clear reference concerning the relevant territory is to Türkiye. Moreover, the applicant claims that the catalogues at issue, as presented in Annexes 10 and 11, include contents in Spanish and French and submits that the exclusive use of English and Turkish for the catalogues is justified by the existence of just one version intended for international distribution.

27 Secondly, the applicant asserts, in essence, that the documents provided in Annexes 4 to 9 are made up of a series of customs documents bearing the indication of the use of the contested mark with the element 'lav', appearing on those documents which are addressed to undertakings established across the European Union. The applicant also puts forward that all the invoices contain a common reference to the goods covered by the contested mark, identified by the same textual structure of capital letters 'LV' followed by a hyphen before the specific reference to the concerned product.

28 Thirdly, the applicant reports a total number of 2 919 lines with the LV reference in the invoices relating to the sale of goods covered by the contested mark, spread over the entire relevant period amounting to more than EUR 6.485 million.

29 Fourthly, the applicant claims that the Board of Appeal made, in essence, an error of assessment in finding, in paragraph 76 of the contested decision, that the invoices submitted did not prove that goods allegedly bearing the contested mark had ever been offered in any retail outlet in the European Union, let alone purchased by any end consumer and that, what is more, it was difficult to know when the goods allegedly shipped 'to Europe' had actually been sold in any retail outlet. Furthermore, according to the applicant, the Board of Appeal erred in law in finding, for the first time during the pre-litigation phase, that the applicant was required to adduce evidence of the direct sale of the goods at issue to end consumers.

30 Fifthly, the applicant challenges the Board of Appeal's assessments arising from paragraphs 82 to 84 of the contested decision, according to which, in essence, admittedly, the product codes and the descriptions in an invoice could be associated with goods in a catalogue which are marketed under the mark for which genuine use had to be proved, but that situation was hypothetical and as such was clearly not the solid and objective evidence of effective and sufficient use required for genuine use to be proved.

31 According to the applicant, it was not reasonable for an obligation to be imposed on it to establish a link between each of the 2 919 lines identified in the invoices which refer to the goods covered by the contested mark through the references and photos in the catalogues. The applicant maintains, in addition, that there are product descriptions connected with the references in the packing lists in Annexes 4 to 9. Such an obligation would be extremely burdensome and not practical. Moreover, the applicant submits, in essence, that the Board of Appeal had no reason to refrain from verifying the cross references carried out by the Cancellation Division or from itself verifying that in the process of its analysis.

32 Sixthly, as regards the extent of use of the contested mark, the applicant claims that the evidence produced in Annexes 4 to 9 contained a great number of invoices that were in themselves sufficient to establish the resulting quantity of goods sold and, therefore, the extent of use of that mark.

33 More specifically, the applicant submits that the total amounts of sales derive from the invoices addressed to recipients established in the relevant territory, which is also supported by the packing lists and customs documents submitted in support of these. Furthermore, according to the applicant, the amounts invoiced in euro relate to goods bearing the element 'lav'.

34 EUIPO submits, in the first place, that the Board of Appeal did not make an error of assessment, contrary to the applicant's view, regarding the recipients of the invoices and that, in essence, the Board of Appeal did not suggest that the use needed to be aimed at end consumers in order to be recognised as outward use.

35 In the second place, as regards the burden and standard of proof, EUIPO notes that the Board of Appeal recognised, first, in paragraphs 35 and 36 of the contested decision, that the documents in Annexes 4 to 9 were in large part clear and contained product codes and references to the contested mark; secondly, in paragraphs 49 and 50 of the contested decision, that the invoices and commercial documentation showed that the goods were sold by the proprietor of that mark or, with its consent, to various entities in several Member States of the European Union, with the

result that the evidence provided sufficient indications regarding the territorial scope of the alleged use; thirdly, in paragraph 53 of the contested decision, that the contested mark appeared in the product indication of the invoices and commercial documentation, in the catalogues and on the screenshots of the pages of the applicant's website and that the use of that mark was public, external and apparent to actual or potential customers of the goods; and, fourthly, in paragraph 64 of the contested decision, that the catalogues provided showed use of the contested mark in relation to a variety of goods covered by it.

36 In the third place, EUIPO states that the Board of Appeal had established, conversely, in paragraphs 83, 84 and 87 of the contested decision, that the applicant had failed to prove the extent of the use of the contested mark because the applicant had not provided explanations or evidence as to the clear link between the exact goods indicated in the various invoices and remaining documentation, including various product codes. Furthermore, EUIPO observes that the Board of Appeal found that cross-referencing which could have given the invoices the required probative value was missing in the applicant's submission and that the Cancellation Division had ruled on the basis of mere probabilities or presumptions.

37 In that regard, EUIPO puts forward, as argued by the applicant in the application, that the Court has already confirmed that a diligent comparison of product codes on the reproductions of goods in photos and in catalogues, and of invoices, does not amount to a mere estimation of a probability or to a mere presumption but involves a rational and logical process in the course of assessment of genuine use (see, to that effect, judgment of 17 July 2024, *W.B. Studio* v *EUIPO – E.Land Italy (BF BELFE)*, T-54/23, not published, EU:T:2024:481, paragraphs 60 and 61). Moreover, EUIPO observes that the Board of Appeal acknowledged, in paragraphs 79, 80, 82 and 83 of the contested decision, the work carried out by the Cancellation Division and confirmed that the product descriptions in the documentation include references to the contested mark. Those references also include a brief description of the goods which allowed seven examples of product codes to be identified in the invoices that can be associated with the catalogues, in line with the explanations provided by the applicant before the Cancellation Division and the Board of Appeal. The applicant explained, in its observations relating to the proof of use of 14 April 2023 and in its observations in reply to the appeal of 22 May 2024, that the reference numbers at pages 122 to 127 of the catalogue submitted in Annex 10 could be cross-referenced with the invoices. The applicant also provided a list of products referenced and shown in the images.

38 In those circumstances, in the fourth place, it is the view of EUIPO that the applicant had no reason to submit further explanations to link every single item mentioned in the invoices and the product catalogues, with the result that the Board of Appeal imposed, in the specific circumstances of the present case, an unreasonable burden of proof within the meaning of Regulation 2017/1001 and of paragraph 31 of the judgment of 19 October 2022, *Louis Vuitton Malletier* v *EUIPO – Wisniewski (Representation of a chequerboard pattern II)* (T-275/21, not published, EU:T:2022:654).

39 In consequence, EUIPO refrained from submitting observations in reply to the applicant's other arguments and claims that the contested decision should be annulled.

40 Pursuant to the first subparagraph of Article 18(1) of Regulation 2017/1001 and to Article 58(1)(a) thereof, the rights of the proprietor of an EU trade mark are to be declared to be revoked on application to EUIPO, if, within a continuous period of five years, the trade mark has not been put to genuine use in the European Union in connection with the goods or services in respect of which it is registered, and there are no proper reasons for its non-use.

41 Regarding the assessment criteria for genuine use, Article 10(3) of Commission Delegated Regulation (EU) 2018/625 of 5 March 2018 supplementing Regulation 2017/1001, and repealing Delegated Regulation (EU) 2017/1430 (OJ 2018 L 104, p. 1) is applicable *mutatis mutandis* to revocation proceedings, under Article 19(1) of that regulation. Article 10(3) of that delegated regulation provides that proof of use must relate to the place, time, extent and nature of the use to which the contested mark has been put.

42 Furthermore, under Article 10(4) of Delegated Regulation 2018/625, proof of use is limited to the submission of supporting documents and items such as packages, labels, price lists, catalogues, invoices, photographs and newspaper advertisements, and statements in writing as referred to in Article 97(1)(f) of Regulation 2017/1001.

43 In the context of revocation proceedings of a mark, it is the obligation of the proprietor of that mark, in principle, to establish its genuine use (see judgment of 23 January 2019, *Klement* v *EUIPO*, C-698/17 P, not published, EU:C:2019:48, paragraph 57 and the case-law cited).

44 Genuine use of a trade mark cannot be proved by means of probabilities or presumptions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned. It is therefore necessary to carry out a global assessment which takes into account all the relevant factors of the particular case and entails a degree of interdependence between the factors taken into account (see judgment of 8 July 2020, *Euroapotheca* v *EUIPO – General Nutrition Investment (GNC LIVE WELL)*, T-686/19, not published, EU:T:2020:320, paragraph 35 and the case-law cited).

45 It is not necessary for each item of evidence to give information about all four elements to which the proof of genuine use must relate, namely the place, time, nature and extent of use. An accumulation of items of evidence may allow the necessary facts to be established, even though each of those items of evidence, taken individually, would be insufficient to constitute proof of the accuracy of those facts (see judgment of 5 March 2019, *Meblo Trade* v *EUIPO – Meblo Int (MEBLO)*, T-263/18, not published, EU:T:2019:134, paragraph 84 and the case-law cited). Furthermore, the question whether a trade mark has been put to genuine use requires that an overall assessment be carried out, taking into account all the relevant factors. Thus each piece of evidence is not to be analysed separately, but rather together, in order to determine the most likely and coherent meaning (see judgment of 21 November 2013, *Recaro* v *OHIM – Certino Mode (RECARO)*, T-524/12, not published, EU:T:2013:604, paragraph 31 and the case-law cited).

46 As a preliminary point, as was confirmed at the hearing, inasmuch as the duration, the place and the nature of the use of the contested mark are not called into question in the context of the present proceedings, it is necessary to examine the evidence provided and the arguments advanced by the parties in so far as that evidence and those arguments relate to the extent of genuine use and the burden of proof for that use borne by the proprietor of that mark.

47 In those circumstances, it should be noted, first, that it is common ground between the parties and it follows from paragraphs 6 and 40 of the contested decision that the relevant period for the duration of use of the contested mark is from 8 December 2017 to 7 December 2022.

48 Secondly, it follows from paragraphs 49 and 50 of the contested decision that the evidence provided by the applicant, which is an entity established outside of the European Union, namely in Türkiye, shows that the applicant's goods were sold by the applicant or, with its consent, by other distributors to various entities in several Member States of the European Union including, inter

alia, Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Ireland, Greece, Spain, Croatia, Italy, Lithuania, Hungary, Malta, the Netherlands, Austria, Poland, Romania, Slovakia and Sweden, and that the currencies referred to on the different invoices and the different commercial documentation were mostly euro.

49 Thirdly, regarding the nature of the use of the contested mark, it follows from paragraphs 51 to 64 of the contested decision that the evidence contained sufficient examples of use of that mark for it to be concluded that the mark was used for goods as an indication of their commercial origin.

50 Fourthly, the Board of Appeal found, in paragraphs 51 to 53 of the contested decision, that the contested mark had been subject to use as a mark in the course of trade, in particular inasmuch as that mark had been used in a manner that was public, external and apparent to actual or potential customers of the goods at issue within EU territory. More specifically, the Board of Appeal found that a clear link between, on the one hand, that use as an indication of trade origin and as a means for advertising and, on the other hand, the relevant goods in Class 21 forming the subject matter of the action had been sufficiently established.

51 Furthermore, fifthly, in paragraphs 54 to 62 of the contested decision, the Board of Appeal found that the evidence submitted by the applicant showed, in essence, use of the sign such as it had been registered.

52 However, as regards the extent of use of the contested mark, the Board of Appeal found, contrary to the Cancellation Division, that it could not conclude from the evidence as a whole that genuine use of that mark had been proved to a sufficient extent for the relevant goods under appeal and that, moreover, that use could not, in that sense, be shown by mere probabilities or presumptions.

53 In that respect, first, regarding the catalogues submitted in Annexes 10 and 11, the Board of Appeal found, in paragraphs 71 to 73 of the contested decision, that those annexes were provided in English and in Turkish, that they referred to the years 2014 and 2023 and that they clearly showed the contested mark as a word mark or a figurative sign in relation to various glassware goods, but that no conclusions could be drawn as to the extent of such use since it was difficult to establish the places where the catalogues had been printed or published or to show the places and the nature of their distribution. Furthermore, the Board of Appeal found that the catalogues did not prove that the goods at issue had indeed been offered under the contested mark during the relevant period and within the relevant territory. In that regard, the Board of Appeal also criticised the applicant for refraining from submitting additional information.

54 Secondly, the Board of Appeal found that, indeed, the evidence submitted by the applicant heavily relied on the invoices and the commercial documentation submitted in Annexes 4 to 9 showing the actual sales of the goods at issue. However, the Board of Appeal found that those documents were lacking the required probative value, in that, in essence, it had been impossible to determine the specific goods covered by the various product codes and their commercial volume, the frequency and the duration of the sales, and in that those invoices did not prove that any goods allegedly bearing the contested mark had ever been offered in any retail outlet in the European Union, let alone purchased by any end consumer. Furthermore, the Board of Appeal criticised the applicant for not providing invoices of sales to local dealers or to end consumers, good-quality photos of the products in the retailer's stores within EU territory, or catalogues or any other advertising material to prove the use to the EU consumer.

55 In that sense, thirdly, the Board of Appeal, in essence, in paragraph 83 of the contested decision, criticised the applicant for not elaborating on the content of the invoices and on the exact goods indicated therein, ignoring the referencing work carried out by the Cancellation Division. Consequently, the Board of Appeal found that the applicant was unable to explain the existence of a clear, expressed and shown link, allowing a determination of which goods from the catalogues the codes referred to, and that it was impossible to derive from those codes the specific goods in question and the extent of their use. According to the Board of Appeal, the absence of such explanations altered and weakened the probative value of the invoices. The Board of Appeal also found, in paragraph 84 of the contested decision, that the evidence as a whole was insufficient to constitute a solid and objective body of evidence of effective use. Furthermore, according to the Board of Appeal, that body of evidence did not meet the requirements for proving genuine use of the contested mark. Consequently, the Board of Appeal found that it had been, in essence, forced to limit its examination, inasmuch as that examination could not be based on presumptions or probabilities due to the absence of probative evidence.

56 Lastly, fourthly, in paragraph 85 of the contested decision, the Board of Appeal criticised the applicant for having provided documentation of such an extremely poor quality as to impede reading and understanding that documentation, and, in paragraph 86 of that decision, for having provided invoices containing product codes without 'lv-' which makes reference to the contested mark. Consequently, the Board of Appeal found that the total amounts invoiced did not correspond to the exclusive sale of goods covered by that mark.

57 According to the case-law, and as follows from paragraphs 43 to 45 above, although the probative value of an item of evidence is limited to the extent that, individually, it does not show with certainty whether, and how, the goods concerned were placed on the market, and although that item of evidence is therefore not in itself decisive, it may nevertheless be taken into account in the overall assessment as to whether the use is genuine. That is also the case, for example, where that evidence corroborates the other relevant factors of the present case (see, to that effect, judgment of 6 March 2014, *Anapurna* v *OHIM – Annapurna (ANNAPURNA)*, T-71/13, not published, EU:T:2014:105, paragraph 45 and the case-law cited).

58 In the present case, in the first place, it should be observed that the Board of Appeal could have easily examined the entirety of the evidence provided by the applicant and determined, on that basis and in a reasoned way, the duration, place and use of the contested mark. More specifically, in paragraphs 35 and 36 of the contested decision, the Board of Appeal affirmed that the documents in Annexes 4 to 9 were largely self-explanatory and contained product codes and references to the contested mark. Furthermore, the Board of Appeal also found that the key information in the documentation provided was clear and understandable, making the documentation largely self-explanatory and sufficient for the purposes of the present proceedings.

59 Therefore, the Board of Appeal is contradictory in its reasoning in criticising the applicant, in paragraphs 84 to 86 of the contested decision, for having provided evidence of a poor quality, which did not constitute solid and objective evidence of use of the contested mark.

60 In the second place, the Board of Appeal also vitiated the contested decision with contradictory reasoning by finding, in paragraphs 72 and 73 of that decision, that the catalogues provided in Annexes 10 and 11 did not prove that the concerned goods had indeed been offered for sale within the relevant territory, where the Board of Appeal had previously observed, in paragraphs 70 and 71 of that decision, on the basis of those catalogues, that the applicant was

active in the glassware industry and exported its goods to 140 countries, including EU Member States, while observing, in addition, the existence of a marketing and sales office in Italy for a part of those goods.

61 In the third place, contrary to what is argued by EUIPO, it follows from paragraph 76 of the contested decision that the Board of Appeal intended to require, as proof of use of the contested mark, any evidence allowing the sale of the goods at issue to end consumers within the EU territory to be proved. Taking the view that outward use of a mark, within the meaning of the case-law, must consist of use aimed at end consumers would effectively mean that marks used only in inter-corporate relations cannot enjoy the protection of Regulation 2017/1001. The relevant public to which marks are addressed does not only comprise end consumers, but also specialists, industrial customers and other professional users (see judgment of 1 March 2023, *Worldwide Brands* v *EUIPO – Wan (CAMEL)*, T-552/21, not published, EU:T:2023:98, paragraph 88 and the case-law cited).

62 Therefore, the Board of Appeal erred in law in forcing the applicant, in essence, to adduce proof of the sale of the goods concerned to end consumers as proof of genuine use of the contested mark. It follows, furthermore, that the proof of sale of the goods at issue to end consumers is not relevant to the present case, so it is necessary to reject the evidence and the arguments advanced by the applicant in paragraphs 41 and 42 of the application, without there being any need to rule on their admissibility.

63 In the fourth place, it should be borne in mind that, in paragraph 88 of the contested decision, the Board of Appeal found that the file did not contain sufficient evidence, even when considered collectively, that would allow the extent of use of the contested mark for the goods in question to be determined.

64 In that regard, first, indeed, Annexes 10 and 11 do not allow use of the contested mark within the relevant territory and during the relevant period to be shown in an explicit and unequivocal manner. However, according to the case-law, it is appropriate to consider that, since the market life of a product usually extends over a given period of time and continuity of use is one of the indications relevant for establishing that use has been objectively intended to create or maintain a market share, the documents not from the relevant period, far from being irrelevant, must be taken into account and should be evaluated in conjunction with the rest of the evidence, inasmuch as they can offer proof of real and genuine commercial exploitation of the mark (see judgment of 16 June 2015, *Polytetra* v *OHIM – EI du Pont de Nemours (POLYTETRAFLON)*, T-660/11, EU:T:2015:387, paragraph 54 and the case-law cited).

65 In the present case, as the Board of Appeal correctly observed in paragraph 53 of the contested decision, Annexes 10 and 11 showed apparent and external use of the contested mark in the course of trade, between 2014 and 2023, or over a longer and more extensive period than the relevant period, which constituted relevant evidence in the assessment of the extent of use in the circumstances of the present case. It follows that the Board of Appeal made an error of assessment in refraining, in the context of the assessment of the extent of use, from examining Annexes 10 and 11 in a reasonable and comprehensive manner, together with the entirety of the references and relevant evidence stemming from Annexes 4 to 9.

66 Secondly, in paragraphs 49 and 50 of the contested decision, the Board of Appeal found that all the invoices and commercial documentation showed that the goods concerned had been sold by the applicant or, with its consent, to various entities in several EU Member States and that that

evidence provided sufficient indications of the territorial scope of the alleged use. Furthermore, in paragraph 53 of that decision, the Board of Appeal affirmed that the contested mark appeared in the product indications of the invoices and commercial documentation, in the catalogues and on the screenshots of pages of the applicant's website, and that the use of the contested mark was public, external and apparent to the EU public. Lastly, in paragraph 64 of the contested decision, the Board of Appeal found that the catalogues showed use of the contested mark for a variety of products covered by that mark.

67 It follows from EUIPO's file that the applicant provided 902 pages of invoices relating to the sale of a multitude of goods covered by the contested mark, the references across most of which explicitly related to the contested mark through the use of the 'lv' element before the code of the concerned product, which can be determined by comparison with the catalogues provided in Annexes 10 and 11.

68 In the circumstances of the case, it is unreasonable to consider that the goods marketed by an undertaking cannot be explicitly recognised by their product code in their producer's catalogues, since it was allegedly impossible to determine the place of printing of those catalogues and their actual distribution within the relevant territory during the relevant period. Moreover, as follows from the case-law cited in paragraph 64 above, the fact that the goods are offered for sale for a period longer than the relevant period is precisely such as to strengthen the arguments in favour of the extent of use of the contested mark.

69 Thirdly, as follows from the case-law cited in paragraph 37 above and from settled case-law, the diligent comparison of product codes, first, on the reproductions of goods in photos and in catalogues, and, secondly, on invoices, is not equivalent to a mere estimation of a probability or to a mere presumption, but involves a rational and logical process in the assessment of genuine use (see, to that effect, judgments of 27 April 2022, *LG Electronics* v *EUIPO – Anferlux-Electrodomésticos (SmartThinQ)*, T-181/21, not published, EU:T:2022:247, paragraph 91; of 6 September 2023, *Weider Germany* v *EUIPO – Den i Nosht (YIPPIE!)*, T-45/22, not published, EU:T:2023:513, paragraph 42; and of 17 July 2024, *W.B. Studio* v *EUIPO – E.Land Italy (BELFE)*, T-50/23, not published, EU:T:2024:480, paragraphs 60 and 61). In that regard, the applicant correctly observed, at the hearing, that the Board of Appeal and, a fortiori, the Cancellation Division did not engage in a misuse of power in establishing, on their own initiative or by overall assessment of the evidence submitted to them, the link between the reproductions of the goods in the photos and in the catalogues, first, and the invoices for those products, second, by relying on their respective indications of the product codes, which proved to be identical (see, to that effect, judgment of 17 July 2024, *BF BELFE*, T-54/23, not published, EU:C:2024:481, paragraph 61).

70 Therefore, the Board of Appeal erred in its assessment in considering, in paragraph 87 of the contested decision, that the Cancellation Division had based its examination relating to the extent of use of the contested mark on conclusions drawn from evidence provided without being fully aware of the content of the evidence and that it had thus ruled on the basis of probabilities or presumptions.

71 In particular, it follows, on the one hand, from paragraphs 81 and 82 of the contested decision and, on the other hand, from pages 11 to 13 of the applicant's observations on the proof of use, of 14 April 2023, and from pages 12 and 13 of its observations in reply to the appeal of 22 May 2024 that the applicant had indicated and explained to the Cancellation Division and to the Board of Appeal that the reference numbers of the goods at pages 122 and 127 of the catalogue in

Annex 10 could be cross-referenced with the invoices and had provided a list of goods referenced and shown in the images. Furthermore, it should be noted, in addition, that the Board of Appeal also fails to state, in a clear and sufficient manner, the reasons why it departed from the Cancellation Division's assessments and disputed the merits of the cross-referencing established by the Cancellation Division which allowed it to characterise, on the basis of evidence that it had found to be concrete and substantial, the extent of use of the contested mark. Accordingly, the Board of Appeal also vitiated its decision through a lack of reasoning.

72 Therefore, fourthly, it follows from paragraphs 81 to 83 of the contested decision that the explanations provided by the applicant before the Cancellation Division, then before the Board of Appeal, were capable of highlighting the sale of several of the goods referred to in paragraph 5 above, during the relevant period and in volumes and for amounts sufficiently high to conclude that there was continual, actual and substantial use of the contested mark for the goods concerned, under the case-law according to which there is genuine use of a mark, within the meaning of Article 58(1)(a) of Regulation 2017/1001, where the mark is used in accordance with its essential function, which is to guarantee the identity of the origin of the goods or services for which it is registered, in order to create or preserve an outlet for those goods or services; genuine use does not include token use for the sole purpose of preserving the rights conferred by the mark (judgment of 3 July 2019, *Viridis Pharmaceutical* v *EUIPO*, C-668/17 P, EU:C:2019:557, paragraph 38; see, also, by analogy, judgment of 11 March 2003, *Ansul*, C-40/01, EU:C:2003:145, paragraph 43).

73 In any event, it clearly follows from Annexes 4 to 9, as argued by the applicant, that the goods covered by the contested mark were sold within the relevant territory between 2017 and 2022. In essence, it is possible, in accordance with the applicant's arguments, to find that the invoices contain 2 919 lines bearing the reference LV, relating in this way, as follows from paragraph 67 above, to the sale of goods marketed by the applicant, the total amount of which exceeds EUR 6.485 million, spread out over the relevant period.

74 Furthermore, in criticising the applicant, in paragraphs 72 and 83 of the contested decision, for deliberately refraining from submitting additional information or for having knowingly decided not to give further details regarding the specific references in the invoices, the Board of Appeal intended, from the reading of paragraphs 73 to 85 of that decision, to require the applicant to carry out cross-referencing work of all 2 919 lines of invoices with each of the corresponding goods in the catalogues. Moreover, as was confirmed at the hearing, the Board of Appeal did not seek any additional information or explanation, so it cannot accuse the applicant of any intentional failure to provide, as was the applicant's obligation according to the Board of Appeal, evidence or facts. The Board of Appeal was reasonably able to assess the extent of genuine use of the contested mark on the basis of all the evidence, taken together, that had been submitted to it or on the basis of various indicators in the stages following its examination or even due to indications that the applicant had provided in its successive writings which had been taken on board by the Cancellation Division.

75 Therefore, in those circumstances, it must be noted, on the one hand, that the Board of Appeal erred in its assessment regarding the scope of the examination of evidence submitted by the applicant with a view to demonstrating the extent of use of the contested mark and, on the other hand, that the Board of Appeal intended to impose on the applicant an excessive requirement for quality of evidence and an unreasonable burden of proof in the context of revocation proceedings for lack of genuine use.

76 In that regard, fifthly, indeed, it is incumbent, in principle, on the proprietor of the contested mark, and not on EUIPO of its own motion, to establish genuine use of that mark (judgment of 26 September 2013, *Centrotherm Systemtechnik* v *OHIM and centrotherm Clean Solutions*, C-610/11 P, EU:C:2013:593, paragraph 63). Nevertheless, as is recalled in paragraph 42 above, the proof of genuine use is limited to the production of supporting documents, like price lists, catalogues or invoices, as is so in the present case.

77 Furthermore, in accordance with the case-law cited in paragraph 44 above, proof of genuine use must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned. However, that requirement for conclusive evidence cannot give rise to an unreasonable or excessive burden of proof nor be based on requirements for quality of proof stricter than the conditions set out in case-law relating to Article 18(1) and Article 58(1)(a) of Regulation 2017/1001.

78 As a preliminary point, it is necessary to reject at the outset EUIPO's arguments, submitted in its response, relying, in essence, on the teachings of the judgment of 5 October 2022, *Puma* v *EUIPO – CMS (CMS Italy)* (T-711/20, not published, EU:T:2022:604), relating to proceedings concerning damage to reputation, based on Article 8(5) of Regulation 2017/1001, which is independent of the present proceedings and the specific requirements of which cannot be treated as equivalent.

79 In the present case, the Board of Appeal adopted a very strict approach in paragraph 83 of the contested decision, in requiring the applicant to establish a clear link between the various invoice codes and the goods covered that is 'explained, expressed, and shown'. The Board of Appeal cannot, without erring in law, impose, in the context of revocation proceedings under Article 18(1) and Article 58(1)(a) of Regulation 2017/1001, a requirement for quality of proof that exceeds the admissible threshold for evidence of effective and sufficient use that would be corroborated by sufficient items of evidence or a set of indicia resulting from the interdependence of the various relevant factors, within the meaning of the case-law cited in paragraphs 44 and 45 above.

80 Sixthly, it should be noted, like EUIPO in its response (see paragraph 38 above), that the application of legal requirements relating to a trade mark proprietor's burden of proof in revocation proceedings for demonstrating genuine use of the contested mark must not lead to imposing upon it an unreasonable burden of proof.

81 The imposition of an unreasonable or excessive burden of proof is likely to result in a breach of the right to good administration, which is part of the general principles of EU law and which is enshrined in Article 41 of the Charter of Fundamental Rights of the European Union (see, by analogy, judgments of 19 October 2022, *Representation of a chequerboard pattern II*, T-275/21, not published, EU:T:2022:654, paragraph 31; of 6 March 2024, *Lidl Stiftung* v *EUIPO – MHCS (Shade of the colour orange)*, T-652/22, not published, EU:T:2024:152, paragraph 87; and order of 1 July 2025, *Santos* v *EUIPO (Shape of a citrus press)*, T-668/24, not published, EU:T:2025:668, paragraph 31).

82 In the light of all of the foregoing, it should be held that, first, and as follows from paragraphs 58 to 60 above, the Board of Appeal vitiated the contested decision with several contradictions in reasoning; secondly, as follows from paragraphs 67 to 75 above, the Board of Appeal made several errors of assessment and of law regarding the examination of evidence relating to the extent of use of the contested mark; and, thirdly, the Board of Appeal, as a consequence, imposed

an excessive requirement for quality of evidence on the applicant and, therefore, an unreasonable burden of proof, in breach of Article 18(1) and of Article 58(1)(a) of Regulation 2017/1001, with the result that the applicant's single plea in law must be upheld and the contested decision must be annulled.

Costs

83 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

84 Since the contested decision is being annulled, EUIPO must be ordered to bear its own costs and to pay those incurred by the applicant, in accordance with the form of order sought by the applicant.

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby:

1. **Annuls the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 22 August 2024 (Case R 214/2024-4);**

2. **Orders EUIPO to bear its own costs and to pay those incurred by Gürok Turizm ve Madencilik AŞ.**

Škvařilová-Pelzl Nõmm Kukovec

Delivered in open court in Luxembourg on 19 November 2025.

V. Di Bucci
Registrar

M. van der Woude
President