

**DECISION
of the First Board of Appeal
of 19 February 2024**

In case R 1147/2023-1

HD HYUNDAI CO., LTD.

477 Bundangsuseo-ro, Bundang-gu
13553 Seongnam-si, Gyeonggi-do
Republic of Korea

Opponent / Appellant

represented by Ildikó Hennelne Komor, Széchenyi István tér 7-8. C1 Tower, 1051 Budapest,
Hungary

v

Global Trade Services, Inc.

1964 W Corporate Way
92801 Anaheim
United States of America

Applicant / Defendant

represented by Elisa Arsuaga Santos, Paseo Saucos 14, nº 22 Urb. Montepíncipe, 28660
Boadilla del Monte (Madrid), Spain

APPEAL relating to Opposition Proceedings No B 3 167 714 (European Union trade mark
application No 18 615 959)

THE FIRST BOARD OF APPEAL

composed of M. Bra (Acting Chairperson), A. González Fernández (Rapporteur) and
C. Bartos (Member)

Registrar: H. Dijkema

gives the following

Language of proceedings: English

Decision

Summary of the facts

- 1 By an application filed on 3 December 2021, Global Trade Services, Inc. ('the applicant') sought to register the figurative mark



for the following list of goods:


Class 9: Home security cameras; home automation hubs comprising voice-activated or software-activated speakers, computer hardware and software to operate internet-enabled and connected lights, locks, garage door openers, thermostats, cameras and home security alarms; home automation systems comprising computer hardware, wired and wireless controllers and downloadable computer software to automate appliances, lighting, hvac systems, security systems and electrical power; electronic interactive whiteboards; digital signage display panels; digital kiosks, interactive computer kiosk systems consisting primarily of computers, computer hardware, computer peripherals and computer touchscreens for use in providing directory assistance and information in indoor and outdoor environments; point of sale apparatus; digital signage; digital signage monitors; interactive computer kiosks comprising computers, computer hardware, computer displays, computer peripherals and computer operating software for use in automated purchasing of food and beverages; touchscreens; desktop computers; basic computer systems or kits comprising cases, motherboards, processors, memory cards, video cards, hard disks and power supplies; laptop cooling fans, laptop computer cooling pads; components for computers and computer fittings, computer processors, mother boards, hard discs, keyboards, memory cards, video cards, computer screens; computer docking stations; keyboard cases for smartphones; notebook computers and laptops, with or without touch functions; computer motherboards; computer screen filters; computer screen protector, namely, computer screen films and covers; computer servers; single board computing devices, single board computers (sbc); graphics tablets; tablet computers; tablet computers; video display cards; covers for computer keyboards; network servers; internet of things (iot) computers, personal computers, computers, portable computers; internet of things (iot) servers, network servers, internet servers, computer servers; bags, cases and covers specially adapted for computer devices, peripherals and components; laptop battery chargers, battery chargers for portable computers; computer power adapters; headphones; computer keyboards; stands adapted for televisions; computer mice; computer stands adapted for laptops and portable computers; computer stands; electronic pens for computers; speakers for computers; computer cables; uninterruptible power supply (ups) batteries for computers; blank hard

disks for computers; hard discs; data storage devices, blank flash drives; blank external hard drives; computer hard drive enclosures; hard disk drives; flash memory cards; prerecorded flash memory cards; internal solid state drives; solid-state drive [ssd]; memory cards, namely, micro sd cards; blank tapes for storage of computer data; optical disk drives; data storage media, blank flash drives; data storage and/or blank magnetic recording media; monitors [computer hardware]; computer screens; computers featuring interactive video games; computer game accessories; speakers [audio equipment]; internal and external video display cards; image scanners; all-in-one scanners; business card scanners; document scanners; photo-scanners; image scanners; electronic scanners; matrix printers; all-in-one printers, combined document printers, fax machines, photocopiers and scanners; ink-jet color printers for documents; document printers for computers; label printers; photo printers; printer supplies, filled and unfilled ink cartridges for printers; computer printers for printing documents and printer parts, including printer cables and printer components; network routers; computer hardware, wireless and wired access point devices; hand-held and hands-free wireless modems to create mobile wireless hotspots; kvm switches; mesh networks, hardware for computer networks or lan [local operating network] hardware; modems; network-attached storage (nas) hardware; network boards; computer hardware, wireless network extenders; computer network concentrators; computer hardware, wireless network repeaters; network streaming server/player, digital media transmission devices; network switches for computers; computer network transceivers; aerials for telecommunications networks; computer print server; wireless internet connection systems; network hubs; computer network switches; switches, electric; computer interface boards; computer network adapters; routers (computers); computer network communication switches; mobile computing devices, notebook computers, tablets, smartphones, ereaders; mobile digital devices; mobile telephones; smartphones; downloadable mobile payment software, downloadable software to process payments; fingerprint identity sensors; humanoid robots with artificial intelligence; automated ai machines; computers operated or controlled by artificial intelligence software; downloadable computer operating system software; downloadable voice recognition software; downloadable computer software for use as an application programming interface (api); downloadable instant messaging software; downloadable computer software for use in data management in the field of artificial intelligence; development software, downloadable computer software for developing e-commerce applications for computers; downloadable integrated software suite for use in database management in the field of artificial intelligence; downloadable software platforms for portable devices, software for tracking activity, location, vital signs, biometrics, body position, movement, gait patterns, environmental conditions and for virtual reality headsets; downloadable software platforms for smartwatches, namely downloadable software for tracking activity, location, vital signs, biometrics, environmental data, body position and movement; voice-activated audio speakers; voice-activated loudspeakers with displays; downloadable computer operating software for voice and video calling devices; smartwatches; earphones; portable electronic devices, virtual reality headsets, activity trackers, environmental condition monitors, motion trackers; downloadable computer software programs featuring artificial intelligence for use in facial recognition; stands for computer hardware and consumer electronics, in particular for mobile phones, laptop computers, tablet computers, electronic book readers; cameras [photography]; cable connectors; television apparatus; television apparatus; speakers for consumer electronics.


2 The application was published on 10 January 2022.

- 3 On 11 April 2022, HD HYUNDAI CO., LTD. ('the opponent') filed an opposition against the registration of the published trade mark application for all the above goods.
- 4 The grounds of opposition were those laid down in Article 8(1)(b) EUTMR.
- 5 The opposition was based on the following earlier rights:


HYUNDAI

- figurative mark , applied for on 30 January 2015 and registered in Benelux on 13 April 2015 with No 969 376, for various goods in Classes 9 and 14 (earlier mark No 1).
- national word mark 'HYUNDAI' applied for on 30 January 2015 and registered in France on 22 May 2015 with No 4 152 644, for goods in Classes 9 and 14 (earlier mark No 2).


HYUNDAI

- national figurative mark , applied for on 29 January 2015 and registered in Italy on 24 November 2015 with No 1 657 147, for goods in Classes 9 and 14 (earlier mark No 3).

HYUNDAI

- national figurative mark , applied for on 7 January 2014 and registered in Portugal on 31 March 2014 with No 523 757, for goods in Class 9 (earlier mark No 4).

HYUNDAI

- national figurative mark , applied for on 30 January 2015 and registered in Spain on 7 July 2015 with No M 3 545 752, for goods in Classes 9 and 14 (earlier mark No 5).

- 6 By decision of 4 April 2023 ('the contested decision'), the Opposition Division rejected the opposition for all the contested goods on the grounds that there was no likelihood of confusion. It gave, in particular, the following grounds for its decision:
 - The contested sign is a figurative mark composed of various slightly inclined vertical bars of different heights and two of these bars contain dots on top of them. It is irrelevant if a verbal element might be recognised only as a result of a meticulous comparison between two signs since the consumer does not usually have the opportunity to compare signs side by side and does not engage in a meticulous and time-consuming analysis of the signs.
 - The relevant public in the relevant territories, when encountering the contested sign as depicted – and without any accompanying or opposing indication that could suggest that it depicts the word 'Hyundai' – will not perceive the contested sign as containing any particular verbal element. Instead, they will perceive it as an abstract

figurative device comprising various geometric figures, therefore, without any meaning, it being distinctive to a normal degree. Some consumers might visualise some letters within these lines, such as the last letter ‘i’, but will not be able to form a complete word.

- Visually, even if the last component of the contested sign were to be perceived as a lower-case letter ‘i’, which is also the last letter in the earlier marks, this is irrelevant given that the contested sign as a whole does not resemble any verbal element as explained above. Therefore, the signs are not visually similar.
 - Aurally, the signs are neutral since purely figurative signs are not subject to an aural assessment. As the contested sign does not resemble any readable and/or pronounceable verbal element, it is not possible to compare the signs aurally.
 - Conceptually, neither of the signs has a meaning for the public in the relevant territories. Since a conceptual comparison is not possible, the conceptual aspect does not influence the assessment of the similarity of the signs.
 - As the signs do not coincide in any relevant aspect, they are dissimilar.
 - The opponent argues that consumers would associate the contested sign ‘with the opponent’s company and its “HYUNDAI” brand and logo which have been used on the European Union market for more than 30 years’. However, even if this argument was considered to be a claim for enhanced distinctiveness, the opponent has not submitted evidence to support such a claim. Moreover, in the present case, the outcome would be the same even if the earlier trade marks were to be considered as enjoying a high degree of distinctiveness, since the dissimilarity of the signs cannot be overcome by the highly distinctive character of the earlier trade marks.
 - The similarity of the signs is a condition for a finding of likelihood of confusion. Since the signs are dissimilar, one of the necessary conditions of Article 8(1)(b) EUTMR is not fulfilled, and the opposition must be rejected.
- 7 On 31 May 2023, the opponent 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 14 July 2023.
- 8 No response was filed by the applicant.

Submissions and arguments of the opponent

- 9 The arguments raised by the opponent in the statement of grounds may be summarised as follows:
- The applicant’s CEO is also CEO of another company, named Hyundai Technology Group, Inc. The opponent has never given permission to the applicant or to Hyundai Technology Group, Inc. to use its trade mark ‘HYUNDAI’.
 - The contested application reads ‘hyundai’, as the applicant’s company is connected to Hyundai Technology Group, Inc.

- The applicant filed 13 parallel applications for the contested sign all over the world. None of which has been registered. A summary of the trade mark applications, along with their status and outcome is provided.
- The Vienna Classification of the contested sign indicates 27.5.25, which corresponds to letters presenting some other special form of writing. This means that the EUIPO itself classified the opposed trade mark application as being comprised of letters, not of rectangles or vertical lines.
- Visually, the signs contain an easily legible verbal element, namely the word ‘HYUNDAI’, the only difference is the typeface. In particular, the last ‘vertical bar’ clearly represents the letter ‘I’.
- Consumers do not need to carry out a meticulous comparison to be able to read the word ‘hyundai’ in the contested sign, as the word stands out and is quite easily noticeable. If a consumer looks at the sign, they will not see ‘slightly inclined vertical bars of different heights’ but they will see the word ‘hyundai’.
- It is emphasized that the trade mark ‘Hyundai’ has been on the market for 55 years and it is a globally well-known brand, quite important and powerful ‘accompanying indication’ that suggests that the mark depicts the word ‘hyundai’.
- When perceiving a word sign, consumers will break it down into elements that, for them, suggest a specific meaning or that resemble words known to them. By analogy, this means that when looking at the mark, consumers will immediately recognize the word ‘hyundai’ as an automatic reaction, as it is a word that is familiar to them, a word which they know.
- Aurally, as the signs in question are clearly not purely figurative but are figurative marks with easily legible word elements, the phonetic comparison should have been made and as a result, the signs should have been found aurally identical.
- As regards the comparison of goods, they are partly identical and partly similar as the signs both cover information technology, audio-visual, photographic and communication devices and devices and apparatus for electricity.
- The earlier mark enjoys a high level of distinctiveness. ‘Hyundai’ is the 35th most valuable brand in the world for the fourth consecutive year. It is a well-known trade mark worldwide which has been used for 55 years, and this is why consumers will immediately see the word ‘hyundai’ when looking at the contested sign.
- To support its statement of grounds, the opponent filed the following additional evidence:
 - Annex 13: Articles of Incorporation of the applicant’s company (Global Trade Services, Inc.).
 - Annex 14: Statement of Information of the applicant’s company (Global Trade Services, Inc.).
 - Annex 15: Statement of Information filed by Hyundai Technology Group, Inc..

- Annex 16: Extract of the Mexican national trade mark application No 2655896 from the Mexican trade mark register.
- Annex 17: Extract of the Brazilian national trade mark application No 925524794 from the Brazilian trade mark register.
- Annex 18: Extract of the Argentinian national trade mark application No 4077677 from TMview.
- Annex 19: Extract of the Peruvian national trade mark application No 000926092-2021 from the Peruvian trade mark register.
- Annex 20: Extract of the national trade mark application No PH-4-2021-529278 of the Philippines.
- Annex 21: Extract of the national trade mark application No 2021-010889 of Costa Rica.
- Annex 22: Extract of the national trade mark application No SD2021/0112176 of Colombia.
- Annex 23: Decision of the Colombian Trademark Office (No 34599, 03/06/2022).
- Annex 24: Extract of the national trade mark application No 1200845 of New Zealand.
- Annex 25: Extract of the national trade mark application No 1485082 of Chile.
- Annex 26: Extract of the national trade mark application No 2243999 of Australia.
- Annex 27: Extract of national trade mark application No 2243999 from TMview.
- Annex 28: Extract of national trade mark application No 2021-176643 of Türkiye.
- Annex 29: Extract of national trade mark application No 61267751 of China.

Reasons

10 The appeal complies with Articles 66, 67 and Article 68(1) EUTMR. It is admissible.

Admissibility of the additional evidence filed upon appeal

11 The opponent submitted new evidence upon appeal. Pursuant to Article 95(2) EUTMR, the Office may disregard facts or evidence which are not submitted in due time by the parties concerned. Pursuant to Article 27(4) EUTMDR, the Board of Appeal may accept facts or evidence submitted for the first time before it only where those facts or evidence

are, on the face of it, likely to be relevant for the outcome of the case and they have not been produced in due time for valid reasons, in particular where they are filed to contest findings made or examined by the first instance of its own motion in the decision subject to appeal.

- 12 In the present case, the Board is of the opinion that the requirements for taking into account the documents submitted in the appeal proceedings pursuant to Article 95(2) EUTMR and Article 27(4) EUTMDR are met in relation to the additional evidence filed upon appeal, since they have been filed to contest the assertions made in the appeal concerning the findings made in the contested decision.

Article 8(1)(b) EUTMR


- 13 Pursuant to Article 8(1)(b) EUTMR, an EUTM application shall be rejected upon law, the risk that the public might believe that the goods 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:1999:323, § 17).
- 14 In line with the same case-law, a likelihood of confusion must be assessed globally, based on how the relevant public would perceive the marks and the goods in question and taking into account all factors relevant to the circumstances of the case (22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 18; 11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 22; 29/09/1998, C-39/97, Canon, EU:C:1998:442, § 16).

Relevant public and territory

- 15 In the global assessment of the likelihood of confusion, account should be taken of the average consumer of the category of goods concerned, who is reasonably well informed, observant and circumspect. It should also be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods in question (13/02/2007, T-256/04, Respicur, EU:T:2007:46, § 42; 24/11/2021, T-551/20, Riviva, EU:T:2021:816, § 57; 24/02/2021, T-56/20, Vroom, EU:T:2021:103, § 17).
- 16 The public common to the goods and services at issue must be taken into consideration. The relevant public is composed of consumers likely to use both the goods covered by the earlier trade mark and those covered by the contested sign (19/07/2016, T-742/14, Calcilite, EU:T:2016:418, § 44; 12/07/2019, T-792/17, Mando, EU:T:2019:533, § 29). Furthermore, the relevant public is identified by means of the nature of the goods covered by the conflicting signs.
- 17 The goods in Class 9 target both the general and professional public. Depending on the price and level of sophistication of these goods, and the knowledge or expertise required, the Board considers that the level of attention of the relevant public varies from average to high.
- 18 As the earlier marks consists of various national registrations, the relevant territory is the Benelux, France, Italy, Spain and Portugal.

Comparison of the marks

- 19 The comparison of the conflicting signs in relation to the visual, aural and conceptual similarities between the signs in question has to take into account the overall impression given by the signs, bearing in mind, in particular, their distinctive and dominant components (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 23).
- 20 The signs to be compared are:

	<p>HYUNDAI (earlier mark Nos 1, 3, 4, 5)</p> <p>HYUNDAI (earlier mark No 2)</p>
<p><i>Contested sign</i></p>	<p><i>Earlier marks</i></p>

- 21 The contested sign is a figurative mark composed of various slightly inclined vertical bars of different heights, two of which contain dots on top of them. This combination of bars has no meaning in relation to the contested goods and is, therefore, distinctive.
- 22 Contrary to the opponent's claims, the Board agrees with the contested decision that consumers will not be able to read any letters in the contested sign but will perceive only vertical bars of different heights, two of which have dots. The contested sign is missing the horizontal lines, which is an essential component of the normal graphic representation of the verbal element 'hyundai', without which the relevant public will have difficulty in recognising that verbal element. Consequently, the contested sign will not be immediately and without any mental effort recognised as the verbal element 'hyundai'. It is much more probable that the contested sign will be recognised only as the combination of some basic figurative elements. Only after an in-depth analysis, which consumers do not tend to perform (26/03/2021, R 551/2018-G, Device (fig.) / Device (fig.), § 52), might very stylised representations of the verbal element 'hyundai' be perceived.
- 23 The earlier marks are composed of the verbal element 'HYUNDAI', which has no meaning for the earlier goods. Therefore, it is distinctive.
- 24 The stylisation of the verbal element of the figurative earlier mark Nos 1, 3, 4 and 5 has an essentially ornamental function and does not detract from the public's ability to immediately perceive the verbal element, to which they will attribute more importance. Its distinctive character is, therefore, very limited.
- 25 Although in the publication of the contested sign there is a reference to the class 27.05.25 of the Vienna classification, which reads 'Letters presenting some other special form of writing', this does not automatically imply that the relevant public will perceive in a clear and definite manner the combination of letters. The reference to the Vienna Classification, as such, does not affect the assessment of the perception of the mark concerned by the relevant public. The reference to the Vienna Classification provides information on the perception of the mark applied for by the trade mark applicant, but not

on its perception by the relevant public. The likelihood of confusion between trade marks must be assessed by reference to the perception of those trade marks by that public (08/07/2020, T-633/19, (fig.) / TOTTO (fig.), EU:T:2020:312, § 38 and the case-law therein cited).

- 26 The mere fact that the applicant's company is connected to another company named Hyundai Technology Group, Inc. is irrelevant. Even if the two companies share the same CEO, the Board recalls that the comparison between two signs in order to determine whether there is a likelihood of confusion under Article 8(1)(b) EUTMR must be performed on the basis of the signs as a whole as registered or applied for (02/02/2022, T-202/21, Vitablocs triluxe forte, EU:T:2022:42, § 43). The existence of other signs, whether similar or not, is irrelevant. In any event, if the opponent refers to an alleged dishonest intent when applying for the contested sign, this is also irrelevant in opposition proceedings under Article 8(1)(b) EUTMR.
- 27 Even if the contested sign may have been developed based on the word 'HYUNDAI', this is not in itself a sufficient ground for concluding that there is a visual similarity between the signs at issue. In particular, the very specific graphic design of the contested sign has the effect of counteracting to a large extent the alleged point of similarity relating to the fact that it may be understood as a reference to the word 'HYUNDAI' by part of the public. The lines comprising the contested sign are configured in such a way as to provide a highly stylised image. In these circumstances, the consumer would have to engage in a highly imaginative cognitive process in order to 'decipher' that figurative sign and to perceive it as representing the word 'HYUNDAI'. The close interconnection of the lines comprising that figurative sign will lead the relevant consumer to perceive it as an abstract and unitary shape rather than as the word 'HYUNDAI' (by analogy, 01/09/2021, T-463/20, Gt racing / GT (fig.) et al., EU:T:2021:530, § 67-69). Such a perception of that mark by that public is all the more probable since that term has no obvious meaning, in relation to the goods in question, which could help the consumer to identify that term in that mark. Consequently, there are no elements within the mark in question that invite or assist the relevant public to identify the claimed term in the mark (by analogy, 08/07/2020, T-633/19, (fig.) / TOTTO (fig.), EU:T:2020:312, § 36).
- 28 The contested sign has no elements that could be considered clearly more dominant than other elements.
- 29 Visually, while the signs could possibly coincide in some of the vertical lines, these coincidences are not sufficient to consider that the signs share any visual relevant similarity. Even with an effort from consumers to discern some letters in the highly stylised elements of the contested sign, no visual similarities can be detected between the signs. The depiction of the various shapes in the contested sign forms, as a whole, an abstract configuration, which does not correspond to the depiction of any letter. Furthermore, consumers do not proceed to analyse the various details of the mark when making a purchase. It is the immediate impression created from the sign that is of relevance and not a possible perception following a detailed analysis. Therefore, the signs are visually dissimilar.
- 30 Even if consumers would recognise the last letters 'i' in the contested sign, overall the confronted signs are visually dissimilar.

- 31 Purely figurative signs are not subject to a phonetic assessment. As the contested sign is purely figurative, it is not possible to compare the signs aurally.
- 32 Conceptually, neither of the signs has a meaning for the public in the relevant territory. Since a conceptual comparison is not possible, the conceptual aspect does not influence the assessment of the similarity of the signs.
- 33 As the signs do not coincide in any relevant aspects, they are dissimilar.
- 34 For the purposes of applying Article 8(1)(b) EUTMR, the likelihood of confusion presupposes that the goods or services as well as the signs at issue are identical or similar to those in respect of which the earlier mark is registered. These conditions are cumulative. If the earlier sign and the mark applied for are not similar, as is the case here, there can be no likelihood of confusion, regardless of the possible identity or similarity of the goods and whatever the reputation of the earlier mark (12/10/2004, C-106/03, Hubert, EU:C:2004:611, § 51, 54).

Other allegations

- 35 The opponent's claim that consumers will immediately perceive the word 'hyundai' when looking at the contested sign, because 'Hyundai' is the 35th most valuable brand in the world and has been used in the market for 55 years, is both irrelevant and unfounded. In particular, even qualifying the opponent's argument as a claim for enhanced distinctiveness, the Board notes that not only the lack of similarity between the signs cannot be overcome by the highly distinctive character of the earlier trade mark but also that the opponent did not submit evidence to support such a claim. The mere reference to the website Interbrand (footnote No 6 of the opponent's statement of grounds) does not provide any information, *inter alia*, about the relevant geographical area and the relevant goods and services.
- 36 The national decisions in the parallel applications for the contested sign relied upon by the opponent (Annexes 16 to 29) cannot cast doubt on the Board's conclusion. The European Union trade mark regime is an autonomous system with its own set of objectives and rules peculiar to it; it is self-sufficient and applies independently of any national system. Consequently, the registrability of a sign as a European Union trade mark must be assessed by reference only to the relevant Union rules. Accordingly, the Office and, if appropriate, the Union judicature are not bound by a decision given in a third country, that the sign in question is registrable or not as a national mark. (27/02/2002, T-106/00, Streamserve, EU:T:2002:43, § 47).
- 37 In light of all the foregoing, the Opposition Division did not err in rejecting the opposition.
- 38 Thus, the appeal is dismissed.

Costs

- 39 Pursuant to Article 109(1) EUTMR and Article 18 EUTMIR, the opponent, as the losing party, must bear the applicant's costs of the opposition and appeal proceedings.

- 40 As regards the appeal proceedings, these consist of the applicant's costs of professional representation of EUR 550.
- 41 As to the opposition proceedings, the Opposition Division ordered the opponent to bear the applicant's representation costs, which were fixed at EUR 300. This decision remains unaffected. The total amount for both proceedings is therefore EUR 850.

Order

On those grounds,

THE BOARD

hereby:

- 1. Dismisses the appeal.**
- 2. Orders the opponent to pay EUR 550 for the applicant's costs in the appeal proceedings. The total amount to be paid by the opponent to the applicant in the opposition and appeal proceedings is EUR 850.**

Signed

M. Bra

Signed

A. González Fernández

Signed

C. Bartos

Registrar:

Signed

H. Dijkema

