Case-law Research Report

Descriptiveness of names of colours

March 2025

This report is the result of discussions within the Consistency Circles and the General Consistency Meeting of the Boards of Appeal. It is a working document that reflects case-law and views at the given date of the report. It does not have any binding effect on the Boards of Appeal.

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1 Introduction

1 This report is a compilation of case-law from the Court of Justice (CJ), the General Court (GC) and the Boards of Appeal (the Boards or the BoA), drawn up with the aim of identifying and analysing the relevant case-law and trends on the topic.

2 The purpose is to further support the work of the BoA with a view to maintaining and enhancing the **consistency** of decision-making practice with the case-law of the EU Courts and among the BoA. As such, it contributes to improving the **predictability** of decisions and legal certainty in general. Through divulging relevant legal information, it also serves to increase **knowledge, awareness and transparency** among the various BoA stakeholders.

3 It is a working document that reflects existing case-law and the result of discussions within the Consistency Circles and the General Consistency Meeting of the BoA at the given date of the report. **It does not have any binding effect on the BoA**. It has been made available to the staff of the BoA and the public in general for information purposes only.

4 The report focuses on the descriptiveness of marks consisting of names of colours. Colour marks, figurative elements in a specific colour and the refusal of a trade mark application or the cancellation of a registered mark pursuant to grounds other than Article 7(1)(c) EUTMR are beyond the scope of this analysis.

2 Legal Framework

2.1 EU law

5 Article 7(1)(c) EUTMR prohibits the registration of 'trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or service'.

6 Article 4(1) of the Trade Mark Directive ([1]) contains the same provision.

2.2 Other instruments

7 The **Office Guidelines** deal with this topic in Part B, Examination, Section 4, Absolute Grounds for Refusal, Chapter 4, Descriptive trade marks (Article 7(1)(c) EUTMR), Point 2, Word Marks, 9, Names of colours.

([1]) Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks (OJ L 336, 23.12.2015, p. 1).

3 Case-law Analysis

3.1 Understanding the mark as a name of a colour

8 Before proceeding to the assessment of descriptiveness, it is crucial to establish whether the relevant public understands the mark as a name of a colour or as something else (in the case of words having several meanings).

9 In **CHROME** ([2]) CHRØME (recalling the word 'chromium' to the English-speaking public and applied for a wide range of goods in Classes 7, 8, 14, 21, 26 and 34), the GC confirmed the findings of the previous instances and refused the application because, considering that the mark referred to 'chromium', it was **descriptive** of the quality (main substance / ingredient) of the goods in question (§ 48), and would not be perceived as a mere indication of the colour.

10 As for the Boards' case-law, in **EMERALD FIELDS** ([3]), the Board considered that the meaning of the term indicated a place rich in diamonds (and not the colour emerald green, § 16-17). For this reason, the services in Class 37, including mining extraction and services, were found to be objectionable under Article 7(1)(c) EUTMR.

11 In **SEPIA** ([4]), the Board considered the sign 'sepia' as the name of a colour when assessing it in relation to *medical apparatus and instruments* in Class 10 and found it **not to be descriptive** of those goods, whereas in the second **SEPIA** ([5]) case, the Board confirmed that 'sepia' would be understood by the relevant public as 'cuttlefish', finding it to be **descriptive** of, in general, chemical substances for the treatment of plants, due to the fact that cuttlefish bone could have been used in the preparation of those chemicals.

12 In the following cases, the Board decided on a series of signs in German and found them **not to be descriptive** of the goods and services in question (with the exception of R 625/2022-1, the second MUSCHELGRAU case). In particular, the Board found that the signs did not refer to a specific colour and did not describe any characteristics of the goods in question. They were considered as fanciful words consisting of the combination of two German words with no conceptual meaning as a whole.

- **MUSCHELGRAU** ([6]) ('*mussel grey*' in German, applied for, inter alia, *varnishes and paints* in Class 2, *bleaching preparations* in Class 3 and *building materials* in Class 19). However, in a second decision ([7]), the mark was declared invalid on the grounds of Article 7(1)(c) EUTMR as being a **descriptive** name of a colour for the same goods. In this decision, the Board referred to the fact that the evidence submitted by the cancellation applicant was not available at the time of the first proceedings. Considering that the evidence in question proved that the name of

([2]) 14/06/2023, T-446/22, CHRØME (fig.), EU:T:2023:329, § 48. The fact must be considered that there are several previous decisions of the first instance as well as of the Boards of Appeal considering that 'chrome' referred to 'chromium' rather to 'colour'.
([3]) 27/06/2016, R 1445/2015-5, EMERALD FIELDS.
([4]) 20/04/2017, R 2184/2016-4, SEPIA.
([5]) 24/08/2022, R 1042/2022-2, SEPIA.
([6]) 27/09/2018, R 287/2018-4, Muschelgrau. § 11-12, 14.
([7]) 17/11/2022, R 625/2022-1, Muschelgrau.

colour 'muschelgrau' was customary in the relevant sector (§ 38) at the filing date of the trade mark application (§ 41) and that the circumstances of the two proceedings were indeed different, the Board declared the mark invalid.

- **FELSGRAU** ([8]) ('rock grey' in German, applied for, inter alia, *varnishes* and *paints* in Class 2, *bleaching preparations* in Class 3 and *building materials* in Class 19).

- **QUELLBLAU** ([9]) ('spring blue' in German, applied for, inter alia, *paints* in Class 2 and *building materials* in Class 19).

13 If the sign has several meanings, one of which denotes the name of a colour, it does not follow automatically that the sign is descriptive for the goods and services concerned. For instance, in **ZINNOBER** ([10]) ('[bright] red, black or blue grey mineral containing mercury' or 'vibrant yellowish-red colour' or 'vibrant yellowish-red hue' in German, applied for, inter alia, *clothing* in Class 25), the Board considered that the existence of three meanings of the German word in question, two of them referring not to a specific colour but rather to several different colours (for instance, a 'vibrant yellowish-red') and the low frequency of use of the word indicated that the public would not understand it as the name of a colour, let alone that it could identify a specific category of the relevant goods (§ 11). Regarding the fact that the mark identifies a range of colours and not a precise one, in **KARACA** ([11]), ('warm' or 'blackish' in Turkish, applied, inter alia, for *cutlery* in Class 8 and *home appliances* in Class 12), the Board held, that even if '*colour indications, which can reasonably be considered as indications of the colour design of the registered goods, are excluded from registration as a trade mark under Article 7(1)(c) EUTMR*' (§ 24), the sign was **not descriptive** of the goods in question because the cancellation applicant did not prove the exact colour identified by the mark (§ 25-29).

14 The Board dealt with the relevance of dictionary definitions and the frequency of use of the word (name of a colour) also in **UMBRA** ([12]) ('earth brown painter's paint from clay containing iron and manganese' and 'earth brown colour' in German, applied for, inter alia, *wrist watches* in Class 14, *advertisement boards* in Class 16, *wastebins* in Class 21 and *curtains* in Class 24), finding that '*even if the combination of the Internet examples and the* […] *dictionary entry were to be considered prima facie evidence that the word 'UMBRA' would have been immediately associated by a part of the relevant public* […] *with an 'earth brown colour', this alone* […] *does not justify a finding that Article 7(1)(c) EUTMR is therefore applicable*' (§ 43). The link between the sign and the goods and services concerned was missing and, therefore, the sign was held **not to be descriptive**.

([8]) 27/09/2018, R 290/2018-4, Felsgrau, § 11-13.
([9]) 27/09/2018, R 2687/2017-4, Quellblau, § 11-12.
([10]) 21/02/2018, R 2025/2017-4, Zinnober.
([11]) 23/02/2021, R 345/2020-2, Karaca.
([12]) 13/05/2021, R 1557/2019-2, Umbra.

3.2 Names of colours as relevant characteristics of goods and services

3.2.1 Court case-law

15 The GC stated that '*it cannot be ruled out a priori that the colour of a product may be one of the characteristics referred to in Article 7(1)(c)* [EUTMR]' ([13]).

16 In the absence of any definition in the regulation about what the 'other characteristics' mentioned in Article 7(1)(c) EUTMR are, the Court stated the following: "*The fact that the EU legislature chose to use the word 'characteristic' highlights the fact that the signs referred to in Article 7(1)(c)* [EUTMR] *are merely those which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought. As for the case-law, a sign can be refused registration on the basis of [Article 7(1)(c) EUTMR] only if it is reasonable to believe that it will actually be recognised by the relevant class of persons as a description of one of those characteristics*" ([14]).

17 The Court stated in **VISIBLE WHITE** ([15]) and in **TRUEWHITE** ([16]), that for Article 7(1)(c) EUTMR to apply in relation to names of colours, the mark must describe one of the **essential characteristics** of the goods and services protected by it. In both cases, respectively, the fact that the toothpastes made the white colour of teeth visible and the natural light-like colour of LED lights were considered to be intrinsic and essential characteristics of these goods. The GC reached an identical conclusion in **BLUE SOFT** ([17]) (*contact lenses* in Class 9) as it found the mark **descriptive** of two essential characteristics of the goods in question, their softness and their (possible) blue colour, especially in aesthetic contact lenses (§ 45-47).

18 In **VITA** ([18]) ('white' in Swedish and applied for, inter alia, *food processors* in Class 7 and *kitchen appliances* in Class 21), the GC found that '*the colour white does not constitute an 'intrinsic' characteristic which is 'inherent to the nature' of the goods concerned (such as food processors, electric pressure cookers and household utensils), but a purely random and incidental aspect which only some of them may have and which does not, in any event, have any direct and immediate link with their nature. Such goods are available in a multitude of colours, among them the colour white, which is not more prevalent than the others*' (§ 45). Consequently, the GC held that the mark was **not descriptive** of the goods in question (§ 58).

19 The GC also specified why the case at stake was not comparable with **VISIBLE WHITE** and **TRUEWHITE** mentioned above. As regards the former, the Court indicated that '*the terms 'visible' and 'white' allowed the relevant public to detect immediately and*

([13]) 25/06/2020, T-133/19, OFF-WHITE (fig.), EU:T:2020:293, § 43. Similarly, but in more general terms, the GC stated that '*the word meaning 'colour' may be used to designate a characteristic of goods, namely their ability to be presented in various shades of colours*' (16/12/2010, T-281/09, CHROMA, EU:T:2010:537, § 36, referring to 25/02/2010, C-408/08 P, COLOR EDITION, EU:C:2010:92, § 47-48).
([14]) 10/03/2011, C-51/10 P, 1000, EU:C:2011:139, § 50; 10/07/2014, C-126/13 P, ecoDoor, EU:C:2014:2065, § 21-22; 12/12/2018, T-743/17, CARACTÈRE, EU:T:2018:911, § 25; 17/01/2019, T-40/18, SOLIDPOWER, EU:T:2019:18, § 23.
([15]) 09/12/2008, T-136/07, Visible White, EU:T:2008:553.
([16]) 07/07/2011, T-208/10, TRUEWHITE, EU:T:2011:340.
([17]) 10/06/2008, T-330/06, BLUE SOFT, EU:T:2008:185.
([18]) 07/05/2019, T-423/18, vita, EU:T:2019:291.

without further reflection the description of a fundamental characteristic of the goods concerned, namely 'toothpaste and mouthwash', in the sense that their use makes the white colour of teeth visible. In that case, 'visible white' described an intrinsic characteristic that is inherent to the nature of the goods concerned, namely the point of using them or their intended purpose'. As regards the latter, the GC stated that, applying the term 'truewhite' to light-emitting diodes (LED), '*that mark merely described an essential characteristic of those goods, namely their ability to reproduce light of such whiteness that it could be considered to be similar to natural light. In that case, the 'true white', that is to say one comparable to that of natural light, also described an intrinsic characteristic inherent to the nature of the goods concerned, namely the quality of those goods*'.

20 In line with **VITA**, the GC found in **OFF-WHITE** ([19])

(for, inter alia, *glasses* in Class 9, *jewellery* in Class 14 and *cushions* and *furniture* in Class 20) that '*although off-white corresponds* […] *to one of the possible colour variations which those goods may have, it does not, however, constitute the sole or even predominant colour. That colour is presented only as a purely random and incidental aspect which only some of those goods may have and which does not, in any event, have any direct and immediate link with their nature. Thus, the mere fact that the goods in question are more or less usually available in off-white, among other colours, is irrelevant, since it is not 'reasonable'* […] *to believe that for that reason alone that colour will actually be recognised by the relevant public as a description of an intrinsic characteristic which is inherent to the nature of those goods'* (§ 45). The GC held that the mark 'off-white' was **not descriptive** of the relevant goods (§ 46).

21 In light of the above, other characteristics of goods and services, including names of colours, '*must be 'objective' and inherent to the nature of that product or service* ([20]) and *'intrinsic and permanent'* with regard to that product or service ([21]), for Article 7(1)(c) EUTMR to apply.

22 For a colour to be intrinsic to the nature of the goods, it is not sufficient that it is one of the available colours for the specific product ([22]). Moreover, in **OFF-WHITE**, the GC made it clear that considerations referring to the aesthetic value and contribution of a colour, as they involve an element of subjective assessment, are likely to vary greatly according to the individual preferences of each consumer and therefore cannot be used to determine how a sign may be perceived by the public as a whole (§ 44). Last but not least, it is also irrelevant whether such characteristics are commercially essential or ancillary ([23]).

([19]) 25/06/2020, T-133/19, OFF-WHITE (fig.), EU:T:2020:293.
([20]) 06/09/2018, C-488/16 P, NEUSCHWANSTEIN, EU:C:2018:673, § 44.
([21]) 23/10/2015, T-822/14, COTTONFEEL, EU:T:2015:797, § 32; 05/07/2016, T-167/15, NEUSCHWANSTEIN, EU:T:2016:391, § 30; 07/05/2019, T-423/18, vita, EU:T:2019:291, § 44; 25/06/2020, T-133/19, OFF-WHITE, EU:T:2020:293, § 37.
([22]) 07/05/2019, T-423/18, vita, EU:T:2019:291, § 46.
([23]) 16/10/2014, T-458/13, GRAPHENE, EU:T:2014:891, § 20; 07/05/2019, T-423/18, vita, EU:T:2019:291, § 44; 25/06/2020, T-133/19, OFF-WHITE, EU:T:2020:293, § 37.

3.2.2 Boards of Appeal case-law

23 In **BLUE BLACK THREADS** ([24]) (colloquial English for clothing, applied for *clothing*, *headgear* and *footwear* in Class 25), the Board found, following the findings of the GC in **VITA** and **OFF-WHITE**, that the sign at issue **could not be understood** by the relevant English-speaking public **as an indication that described an intrinsic characteristic which was inherent to the nature of the goods concerned**, which would fall under the prohibition laid down in Article 7(1)(c) EUTMR. The Board indicated the following in particular.

(i) '*the mere fact that the goods in question are more or less usually available in a colour or colour shade, among other colours, is irrelevant, since it is not reasonable to believe that, for that reason alone, that colour will actually be recognised by the relevant public as a description of an intrinsic characteristic which is inherent to the nature of those goods*' (§ 37);

(ii) "*these mere findings should have led to the conclusion that the colour 'blue black' does not constitute an 'intrinsic' characteristic which is 'inherent to the nature' of the goods concerned (clothing, footwear, headgear), but a purely random and incidental aspect which only some of them may have and which does not, in any event, have any direct and immediate link with their nature, since such goods are available in a multitude of colours, among them the colour blue black, which is not more prevalent than the others*" (§ 38);

(iii) "*the decisive factor is whether it is reasonable to believe that, in the perception of the relevant public, the colour name contained in the sign, 'blue black', will actually be recognised and understood by the relevant consumers as a description of a characteristic of those goods*" (§ 42);

(iv) *"the mere fact that the goods concerned may be, or even are, more or less usually available in blue black, among other colours, and that such colour might even be aesthetically appealing to some consumers, is irrelevant, since it is not 'reasonable' to believe that for that reason alone the colour blue black will actually be recognised by the relevant public as a description of a characteristic which is objective and inherent to the nature of the goods in question, as well as intrinsic and permanent for those goods"* (§ 48).

24 Regarding the intrinsic relationship of the colour with the product, in **BLACKS** ([25]), the Board found that the mark was **descriptive** of, inter alia, *spectacles*, *sunglasses* and *optical apparatus and instruments*, in Class 9, because these goods had or were likely to have black lenses to protect from the sun (§ 71-73), as well as of *retail services in relation to sunglasses for travel, outdoor sports and hunting*, in Class 35. Nonetheless, the mark was **not** considered to be **descriptive** of a long list of other goods (such as *bags* in Class 18, *beds* in Class 20, *curtains* in Class 22, and *clothing* in Class 25) because it was not reasonable to consider the black colour as an intrinsic characteristic of those goods.

([24]) 09/06/2021, R 2154/2020-1, Blue black threads.
([25]) 09/01/2024, R 304/2023-5, BLACKS.

25 On the basis of the principle that the colour indicated by the trade mark is **simply one of the available colours** for the goods and services at issue and that it does not infer any reference to particular characteristics of these goods from the colour, the Board found the following signs **not to be descriptive**:

- **AMARILLO** ([26]) ('yellow' in Spanish, applied for, inter alia, *furniture* in Class 20, *textiles* in Class 24 and related *retail services* in Class 35);

- **SEPIA** ([27]) ('a brownish grey to dark yellowish-brown colour', applied for *medical apparatus and instruments* in Class 10);

- **PINK** ([28]) (PINK, applied for, inter alia, *sunglasses*, *bags* and *beddings* in Classes 9, 18 and 20);

- **UMBRA** ([29]) ('earth brown colour' in German, registered for, inter alia, *wrist watches*, *clocks and parts thereof* in Class 14, *advertisement boards* in Class 16, *wastebins* in Class 21, and *curtains* in Class 24). The Board stated that '*such goods are available in a multitude of colours, among them the colour 'umbra', which is certainly not more prevalent than the others*' (§ 49).

3.3 Relevance of market sector realities

3.3.1 Court case-law

26 Market realities constitute a factor that the Court occasionally refers to, explicitly or implicitly, when the significance of a name of colour as a characteristic of the relevant goods and services is assessed.

27 For instance, as far as alcoholic and non-alcoholic beverages are concerned, in **BLUE** ([30]) Blue, the GC found the mark (applied for, inter alia, *non-alcoholic beverages* in Class 32) '***descriptive*** *in so far as such a reference to the colour blue refers to the visual aspect of the goods in Class 32*' with the reasoning that '*it is not unknown that manufacturers, in order to increase their commercial success, distinguish their beverages on the basis of their colour and that there are many examples of blue-coloured drinks, and consequently that colour may reasonably be perceived as a significant characteristic of the goods in question, that is likely to be important in consumer choice*' (§ 32-33). The GC recalled its findings in **B'LUE** ([31]) that '*it is common knowledge that terms referring to a colour may be used in order to designate goods in the beverages sector, including non-alcoholic beverages' (*§ 31*).*

([26]) 29/03/2022, R 1219/2021-1, AMARILLO, § 11-19.
([27]) 20/04/2017, R 2184/2016-4, SEPIA, § 11-14.
([28]) 11/10/2016, R 695/2016-4, PINK (fig.), § 10-11. As regards the descriptive nature of the mark PINK in relation to a number of cosmetics in Class 3 see point 3.4.1.
([29]) 13/05/2021, R 1557/2019-2, Umbra, § 43-53.
([30]) 12/06/2018, T-375/17, BLUE (fig.), EU:T:2018:340, § 32-33.
([31]) 28/04/2016, T-803/14, B'lue (fig.) / BLU DE SAN MIGUEL, EU:T:2016:251, § 28.

28 In **BLACK IRISH** ([32]) (applied for, inter alia, *coffee* in Class 30, *beer* in Class 32 and *alcoholic coffee-based beverages containing whisky* in Class 33), the GC reiterated the findings in **BLUE** ([33]) and held that '*the descriptiveness of the sign BLACK IRISH is not contingent on the pre-existence of categories such as* [black vodka and black whisky]*, but must be assessed in concreto*' (§ 53). In this case though, the Court confirmed the reasoning of the Board that the element 'Black' of the mark described, inter alia, the colour of a wide range of products (in Classes 30, 32 and 33) spanning from foodstuff to beers and to other alcoholic beverages. For the latter, the Court stated that the black colour would not be considered merely '*as one of the possible colour variations which they may have*' (§ 39) but instead as a market practice of the alcoholic drinks sector, which identifies a specific drink or group of drinks by its colour, as '*there are many examples of very dark-coloured or even black beverages and that colour may reasonably be perceived as a significant characteristic of the goods in question*' (§ 42). The GC endorsed the reasoning of the contested decision, which analysed in detail the relationship between the colour black and the goods in question '*as information regarding the chocolate content, as an indication of the colour of the coffee and of the lack of any additional substance in that coffee, as a type of tea (black tea) or even as an indication of the very dark colour of the alcoholic beverages – in particular because of the presence of coffee or chocolate in those beverages or because they are prepared using foodstuffs*' (§ 47). On this basis, it concluded that '*the term 'black' refers to a characteristic which is objective and inherent to the nature of the goods at issue and intrinsic and permanent with regard to those goods*' (§ 47). The sign was held to be **descriptive**.

29 Interestingly, in **CAFFÈ NERO** ([34])

('black coffee' in Italian, applied for, inter alia, *coffee* in Class 30), the GC held that for the relevant Italian-speaking public there is no commercial practice to identify or refer to coffee by its colour. Still, that was **not a sufficient reason to exclude the descriptiveness** of the mark. Specifically, it found that '*even if it were true that the expression 'caffè nero' were not a part of that culture, it would be incapable of altering the fact that, when faced with that expression, the Italian-speaking public will understand that it refers to coffee served as a beverage without any additions*' (§ 31).

30 As far as the tobacco sector is concerned, in **SIENNA SELECTION** ([35]) (applied for, essentially, '*traditional products associated with tobacco', '[smokers'] articles' and 'vapes/electronic cigarettes and heated tobacco products'* in Class 34), the GC, annulling the BoA's decision, held that the sign was **not descriptive**, reasoning that the sienna colour did not convey any meaning to consumers in relation to the goods. Regarding the Board's finding that '*certain colours are traditionally used by the tobacco industry to signify,* inter alia*, the taste, flavour and nicotine content of tobacco products and their substitutes*', the GC held that it was irrelevant, as the sign denoted only one of the shades and not all of them. Therefore, it was impossible for the public to place the sign within the range of shades, and it was also impossible for the colour sienna alone to provide information regarding the specific amount of nicotine, flavour, etc. Moreover, the colour 'sienna' was not exact, as it identified both yellowish and reddish

([32]) 14/09/2022, T-498/21, Black Irish, EU:T:2022:54.
([33]) 12/06/2018, T-375/17, BLUE (fig.), EU:T:2018:340.
([34]) 27/10/2016, T-37/16, CAFFÈ NERO, EU:T:2016:634.
([35]) 09/06/2021, T-130/20, Sienna selection, EU:T:2021:341; § 41-61.

shades of brown (§ 49, 53). The GC concluded that '*[i]n the absence of such a 'colour code', the relevant public would not be able to form the view, in the abstract, that a certain colour, such as that at issue in the present case, is dark, thus alluding to tobacco products which are strong in taste or in nicotine content, or light, thereby alluding to tobacco products which are lighter in taste or in nicotine content. In particular, where, as in the present case, a shade of colour is concerned, its 'dark' or 'light' character is relative and depends on the other shades with which it is compared*' (§ 55).

3.3.2 Boards of Appeal case-law

31 In **AMBER SELECTION** ([36]), which was decided by the Board at the same time as **SIENNA SELECTION** but was not appealed, the Board found the sign **descriptive** of the same three categories of goods in Class 34 (§ 39-46), reasoning that the '*tobacco companies manipulate consumers' perceptions of the taste and strength of cigarettes by changing the colour of the packaging on their products. Traditionally certain colours have been associated with fuller flavoured and stronger nicotine products (red and darker colours), and lighter taste and less nicotine with white and lighter colours. This trend seems to have continued with the electronic products*' at stake […]. '*Amber' represents 'full taste', which follows the usual practice in this market in that darker/stronger colours indicate fuller flavoured and greater nicotine content*' (§ 41-42).

32 However, in **TURQUOISE SELECTION** ([37]) and **YELLOW SELECTION** ([38]), taken after the GC's judgment in **SIENNA SELECTION**, the Board stated that '[a]*s to the categories of 'traditional products associated with tobacco' and 'vapes/electronic cigarettes and heated tobacco products', the General Court has noted that there may exist a practice traditionally used by the tobacco industry to signify the taste, flavour and nicotine content of tobacco products and their substitutes, but that, if that practice indeed exists, this only concerns 'red' and 'white' or word elements which directly allude to those colours in particular*' ([39]). Consequently, the signs were found **not to be descriptive** of the goods concerned.

33 In **IRISH GREEN** ([40]) (applied for *non-metallic building materials* and *non-metallic floors* in Class 19), the Board considered the mark **descriptive** stating that, not only "*the relevant professionals in the wider building sector, all the more those trading in natural stones, must be deemed to know and immediately recognise 'Irish Green' as another name for the famous 'Connemara marble'*" (§ 46), but also that the general public would recognise that name, in relation to natural stones, due to the custom of that specific market sector to create names by the combination of its colour group and its place of origin (such as 'Carrara white' or 'Sienna brown') (§ 50).

34 As far as *chocolate* and *confectionery* in Class 30 are concerned, colours are often considered as an indication of the type of product or of its ingredients. For instance, in **GOLDBÄREN** ([41]) ('golden bears' in German, applied for *confectionery* in Class 30),

([36]) 19/12/2019, R 1674/2019-5, Amber selection.
([37]) 16/06/2021, R 1673/2019-5, Turquoise selection.
([38]) 16/06/2021, R 1672/2019-5, Yellow selection.
([39]) 09/06/2021, T-130/20, SIENNA SELECTION, EU:T:2021:341, § 49-50.
([40]) 11/05/2020, R 2470/2018-1, Irish Green.
([41]) 12/03/2018, R 440/2017-1, GOLDBÄREN (fig.).

the Board considered that, even though 'gold' in German refers to the element gold and not to the colour, the German public would understand it as '*an indication of a characteristic, namely shining like gold or having a golden colour*' (§ 21) and that such colour as well as bear-shapes were typical (*common*) in the confectionery sector (§ 26). Therefore, it was "*likely that, at least the German-speaking part of the public in the European Union would refer to confectionery goods in the shape of bears with a golden colour or shining like gold or indeed if their packaging / wrapping is of golden colour or shining like gold, as 'GOLDBÄREN'*" (§ 27). Consequently, the sign was found to be **descriptive**.

35 In **AMBER** ([42]), the Board found the contested mark **descriptive** of, inter alia, *chocolate-based confectionery* in Class 30, and related retail services in Class 35. The colour 'amber' would indicate to the relevant public that the sweets contained caramel (§ 48). In contrast, regarding confectionery, other than chocolate-based, the Board found that '[w]*hile all these goods may indeed be amber-coloured, it has not been proven that this would be seen to represent any inherent and objectively relevant characteristic*' (§ 53). Likewise, in **DOLCE ROSSO** ([43]) ('red sweet[s]' in Italian, filed, inter alia, for *pralines, including with liquid fillings, in particular of wines and spirits* in Class 30), the Board found the sign was a clear indication for the relevant public that the goods in question were filled with red wine coming from Sicily or Tuscany (apparently known by the relevant public under the name 'dolce rosso') (§ 10).

36 In **BLACK MINT** ([44]), the Board did not find the sign to be a reference to 'dark chocolate' mint confectionery, but a reference to the fact that such category either included black-coloured and mint flavoured goods or black mint (which is a specific kind of mint) goods (§ 18) and that 'black mint' is used as such on the market (§ 32). The Board confirmed that the sign is **descriptive** within the meaning of Article 7(1)(c) EUTMR.

37 In **WHITE MOCHACCINO** ([45]) (applied for, inter alia, *coffee-based beverages* and *ice cream* in Class 30), the Board found that the mark informed the English-speaking public that the relevant products had white chocolate in it ('white mochaccino' being a specific type of coffee which contains white chocolate) (§ 38) and of their ingredients (for ice creams, § 39), and that the expression is used descriptively on the market (§ 32-34). The sign was found **descriptive**.

38 In **BLUEWATER** ([46]), the Board found that it was a well-known fact that water producers had been offering water in different flavours for many years, including blueberry, blackberry, or elderberry. The colour blue indicated that specific ingredient (§ 36). Accordingly, '*the English-speaking consumers may also understand the mark 'BLUEWATER' as a direct reference to the typical colour of a specific flavour or taste (e.g. 'water with a blueberry flavour') or to the 'classic water' version 'blue' without taste*' ('§ 36-37). The sign was, therefore, found **descriptive**.

([42]) 28/09/2023, R 1816/2022-1, AMBER; confirmed in 05/03/2025, T-1121/23, AMBER, EU:T:2025:203.
([43]) 04/05/2016, R 384/2016-4, DOLCE ROSSO.
([44]) 09/02/2018, R 2328/2017-5, BLACK MINT.
([45]) 15/03/2024, R 2589/2023-4, White Mochaccino.
([46]) 19/11/2019, R 856/2019-5, Bluewater.

39 Whenever it is established that the use of a specific colour in a market sector is customary, that is a strong indication in favour of a finding of descriptiveness of the mark in question, in relation to the goods of that sector.

3.4 Colour as a relevant reason to purchase the goods at issue

40 One of the reasons to find a mark descriptive is that consumers consider the colour as a relevant factor to purchase the specific product. In **TAUPE WHITE** ([47]), the Board stated that '[t]*he test to find out whether this is the case is to ask if relevant consumers, when they purchase the goods, would consider the characteristic to be decisive for their purchase decision. The latter does not always apply to colours. Colour is potentially a characteristic of any good covered by Classes 1 to 34 and as such not inextricably linked to any of the goods. Thus, colour per se is not a feature of any of those goods and thus is unsuited to be a descriptive term if the word for the colour is filed as trade mark. However, if colours are crucial for the perception of the goods from the point of view of the relevant consumers, they play a role when consumers make their choice and can thus serve as a basis to assess the descriptive character of the sign applied for*' (§ 26).

3.4.1 Cosmetics

41 In the field of cosmetics, colours can constitute a relevant characteristic that is decisive for the consumer's purchase decision.

42 For instance, in **LILAC** ([48]) LiLAC® (applied for, inter alia, *cosmetics; nail care products* in Class 3, *nail stickers* in Class 8 and retail store services in relation to those goods in Class 35), the GC stated that '[c]*olour is not an irrelevant or arbitrary factor in cosmetics and especially in nail care. That could be the case, in relation to the mark applied for, for all the categories of goods at issue, since they include goods which are normally available in the colour 'lilac', which* […] *forms part of the range of standard colours for nail or make-up products, as a colour with a seasonal tendency or as a shade derived from those colours*. […] [I]*t is reasonable to assume that that colour will in fact be recognised by the English-speaking part of the relevant public as* ***descriptive*** *of an intrinsic and inherent characteristic of those goods*' (§ 48).

43 The Board reached the same conclusion in **PINK** ([49]) PINK, in relation to a number of cosmetic products, including *nail polish* in Class 3 (other than *perfume, eau de parfum, eau de toilette, body splash, body mist, body spray, body powder*, for which the mark was already considered registrable). It was found that '*it is certainly not unknown that manufacturers, in order to increase their commercial success, distinguish such goods [cosmetics, including nail polish] on the basis of their colour and that there are many examples of pink-coloured goods for personal care and pink-coloured cosmetics, and consequently that colour may reasonably be perceived as a significant characteristic of the goods in question, that is likely to be important in consumer choice. It simply cannot be denied that for consumers, the colour of goods such as lip stick, nail gloss,*

([47]) 03/07/2019, R 1803/2018-1, Taupe white.
([48]) 30/11/2022, T-780/21, LiLAC (fig.), EU:T:2022:732.
([49]) 08/11/2018, R 784/2017-5, PINK (fig.).

face powder or mascara, is clearly relevant, and even plays an important role in consumer's choice' (§ 22).

44 In contrast, in **INDIGO** ([50]) INDIGO, applied for, inter alia, *nail polish* in Class 3, the Board found that the specific colour indigo was a simple alternative to others in the nail polish sector (§ 32) and that the examiner failed to state reasons as to why that colour would be an objective and intrinsic characteristic, inherent to the nature of those goods (§ 33, 35). Consequently, the sign was found **not to be descriptive** of the goods concerned.

45 In **BLACK AND WHITE** ([51]), applied for *creams, lotions shower gels and deodorants* in Class 3, the Board found the sign **not to be descriptive** because, even though white was one of the possible chromatic declinations of cosmetic creams, the same did not apply to black and the combination of black and white (§ 27). In this regard, the Board stated that black was not '*an element the consumers look for in these products nor a factor that influences their decision*' (§ 28). The cancellation applicant failed to prove that the use of black or black and white colours was a common practice in the sector of cosmetic creams (§ 29), or that it described the creams' suitability for white and black skins, contrary to what was considered in the contested decision (§ 35).

3.4.2 Building materials

46 The decision-making practice of the Boards seems consistent in considering colours relevant, in the eyes of consumers, when purchasing building materials which include window frames, door handles, profiles, marble, floorings, etc.

47 In **BLUE** ([52]), applied for, inter alia, window stops of metal in Class 6; acoustic insulating materials in Class 17; windows and doors not of metal, drainpipes in Class 19, the Board found that 'colour is a criterion for the architectural design of the façade and is therefore essential. The choice of colour of the façade can be decisive for the consumer for aesthetic reasons' (§ 32-35). The sign was found **descriptive**. The Board reached the same conclusion in **GREEN** ([53]), applied for, inter alia, window bands of metal in Class 6, acoustic insulating materials in Class 17, and windows and doors not of metal and building materials, not of metal in Class 19. It is, however, debatable whether the colours 'green' or 'blue' necessarily support the finding of descriptiveness for these goods.

48 The signs applied for were also found descriptive in relation to *building materials* in **LONGLIFE_WHITE** ([54]), **STREIFLICHTFREI-WEISS** ([55]), **STREIFLICHTFREI** ([56]) and **TAUPE WHITE** ([57]). In the latter, the Board made an important statement regarding

([50]) 28/09/2023, R 1430/2022-1, INDIGO (fig.).
([51]) 20/08/2021, R 1309/2020-2, Black and white.
([52]) 19/07/2021, R 1938/2020-1, Blue.
([53]) 19/07/2021, R 1939/2020-1, Green.
([54]) 24/04/2023, R 1919/2022-2, longlife_White; the additional element 'longlife' of the mark, in combination with the colour name 'white', added to the finding of descriptiveness.
([55]) 12/08/2019, R 2323/2018-5, Streiflichtfrei-Weiss.
([56]) 12/08/2019, R 2322/2018-5, Streiflichtfrei.
([57]) 03/07/2019, R 1803/2018-1, Taupe white.

non-metallic building materials: '[c]*olours, in relation to the abovementioned building materials, such as marble and granite, are not only important but absolutely crucial for the relevant consumer's purchase decision*' as '*the colouring almost always influences the design of the building material*' (§ 27).

49 In **IRISH GREEN** ([58]) (applied for *non-metallic building materials* and *non-metallic floors* in Class 19), the Board found the sign **descriptive** of, inter alia, *marbles* because, as a compound name, it identified a specific type of marble coming from Ireland, also known by that commercial name on the relevant market. The Board held that "*when seeing 'IRISH GREEN' used in the context of stones and other building materials applied for, the relevant professional public and consumers with an interest in the goods at issue are likely to recognise it as another name for Connemara marble. However, even consumers who are not aware that 'Irish Green' is another name for the Connemara marble, would immediately perceive it either as the name of a green stone presumably quarried in Ireland or as a pattern coming close to the green shades typical of Irish landscapes*" (§ 52). Interestingly, the Board found that that characteristic of the relevant goods, namely a pattern of irregular green veins, was a sufficient reason to purchase that specific product (§ 64-66).

50 In contrast, in **KOSMOS SCHWARZ** ([59]) ('cosmos black' in German, applied for, inter alia, *building materials made of metal*, *doors* and *pipes* in Class 6), the Board found the sign **not to be descriptive**. It held that '[t]*he use of the word 'Kosmos' in connection with several different colours speaks against the fact that it is supposed to refer to a particular colour nuance'* (§ 12). It added that whether the juxtaposition of a common word and the name of a colour represented a colour '*must be determined in individual cases by analysing the understanding of the relevant trade circles, including target consumers and competitors*' (§ 13).

3.4.3 Paints, coatings and bleaching preparations

51 The Boards tend to consider colours as a relevant reason to purchase paints, coatings, and bleaching preparations.

52 In **MY BASALT** ([60]) (applied for, inter alia, *paints* and *lacquers* in Class 2), the Board confirmed that 'basalt' would be understood as a reference to the colour of the goods (§ 23), as it was demonstrated by the examiner that this term was often used to describe a particular colour designation in that field (§ 25-26). The Board reached the same conclusion for inter alia, *bleaching preparations* in Class 3 and *building materials* in Class 19, as for these goods the mark could also indicate their composition and quality (§ 28).

53 In the same vein, the Board found the mark **BLUEBERRY** ([61]) (a dark blue colour) **descriptive** of *paints* and *coatings* in Class 2 (§ 33-35). Nonetheless, this was not the case with other goods in the same class such as *thinners for coatings, paints, varnishes, lacquers; anti-rust preparations*, as well as *bleaching preparations and other*

([58]) 11/05/2020, R 2470/2018-1, IRISH GREEN.
([59]) 05/08/2021, R 2012/2020-1, Kosmos black.
([60]) 20/09/2019, R 660/2019-2, My Basalt.
([61]) 23/05/2019, R 189/2019-5, Blueberry.

substances for laundry use, cleaning, polishing, scouring and abrasive preparations for painting and plastering; scouring solutions in Class 3. While with the former goods, the association between the sign and the properties of the goods was considered instantaneous and obvious, this was not the case regarding the latter goods

54 Similarly, the trade mark **AZUR** ([62]) (a shade of light blue in German, applied for, inter alia*, chemicals used in industry, namely shine additives for galvanic baths* in Class 1) was not considered descriptive as the colour at issue was not an 'intrinsic' or 'intrinsic feature' of the goods concerned (§ 21).

3.4.4 Electric home appliances

55 As held by the GC in **VITA,** '*the colour white does not constitute an 'intrinsic' characteristic which is 'inherent to the nature' of [inter alia, food processors, electric pressure cookers and household utensils], but a purely random and incidental aspect which only some of them may have and which does not, in any event, have any direct and immediate link with their nature. Such goods are available in a multitude of colours, among them the colour white, which is not more prevalent than the others*' (§ 46). The GC also clarified that so-called white goods are '*above all large household appliances, like, for example washing machines and dishwashers*' and that, contrary to the Board's decision, the colour white was not an intrinsic characteristic of 'small household electrical appliances' or of kitchen utensils, which were not to be considered white goods (§ 52-53).

56 In **ICE BLUE** ([63]), a decision taken prior to **VITA**, concerning, inter alia, *dishwashers, vacuum cleaners* in Class 7 and *air conditioners* in Class 11, the Board found the sign **not to be descriptive** of these goods, the light blue colour being one of several possible colours for electric appliances. In contrast with the reasoning in **VITA**, the Board did not accept that electric household appliances were referred to by their colour. It stated that [t]he *only colour name used in that respect is that of 'white goods', a term which designates the category of large electrical appliances such as washing machines or dishwashers because they are typically white in colour*' (§ 10).

3.4.5 Lights and lighting apparatus

57 In **GRAU** ([64]) ('grey' in German, applied for, inter alia, *lighting apparatus* in Class 11, and *light dimmers* in Class 9), the Board held that the colour grey could characterise not the light irradiated by those goods but instead the colour of the lamp shade, arm etc., being '*a physical characteristic which is crucial for the good's external appearance*' (§ 54). In this case, the colour was not regarded as a purely incidental aspect (opposite to **VITA**, § 79-80). Consequently, the sign was held to be **descriptive** of those goods.

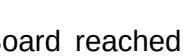
58 In the same vein, in **MORE WHITE** ([65]) (applied for, inter alia, *lighting equipment, apparatus and installations; lamps and lights*), the Board held that the relevant

([62]) 16/10/2020, R 667/2020-2, Azur.
([63]) 12/10/2017, R 1001/2017-4, Ice blue (fig.).
([64]) **Error! Reference source not found.**.
([65]) 10/01/2018, R 747/2017-2, MORE WHITE.

consumers would perceive the sign as referring to the fact that the goods thus identified emitted a whiter and therefore more natural light than other (e.g. conventional) lamps. It referred to the finding of the GC in **TRUEWHITE** that '[t]*he ability to reproduce white light is an essential characteristic of lamps*' (§ 17). The Board indicated that '*the colour of light does indeed play an important role for consumers when purchasing lamps. Unlike yellowish light, white light comes particularly close to natural daylight. White light is therefore a characteristic to which a not inconsiderable number of consumers attach value. It is for this reason that a large number of manufacturers place emphasis in their product descriptions on the fact that their products emit a whiter and therefore less yellow light than other products*' (§ 18). Consequently, the Board found that, as the sign '*describes the ability to reproduce a particularly white light, in other words a light that is whiter than the light of conventional lamps and lights*' (§ 19), it was **descriptive**.

3.4.6 Paper, printed matter and stationery

59 In **DAS GELBE** ([66]) ('the yellow one' in German, applied for, inter alia, *paper, printed matter, stationery* in Class 16), the Board found that the sign was descriptive of the nature and quality of the goods, due to how important colour is for consumers buying a marker or a folder, resulting in a strong connection (§ 11-12). The Board reached the same conclusion in **DIE GELBEN** ([67]) ('the yellow ones' in German), and in **GELB** ([68]) ('yellow' in German) for the same goods. In all the previous cases, the contested mark was found to be **descriptive**.

60 Similarly, in **TRURED** ([69]) (applied for, inter alia, *filled ink cartridges* in Class 2 and *pens* in Class 16), the Board found that the sign would be understood by the relevant public as the synthesis of 'true' and 'red' and that it was '***descriptive*** *insofar as such a reference to the colour 'true red' referred to the visual aspect of the goods*' (§ 30). The Board reached a similar conclusion in **PACK VERDE** ([70]) 

('green pack' in Spanish, applied for, inter alia, *packaging material* in Class 16).

3.4.7 Other goods

61 In **CYAN** ([71]), the Board found that the colour cyan was a relevant reason to purchase, inter alia, *clothing* in Class 25, as well as *cars* in Class 12, *jewellery* in Class 14 and *handbags* in Class 18 and was, therefore, **descriptive** of these goods (§ 16-18). Interestingly, the Board underlined that it was not necessary for the finding of descriptiveness that the colour constituted an essential characteristic of the goods in question (§ 16). The Board also found the sign **BLACKED** ([72]) **descriptive** of, inter alia, *clothing* in Class 25, as it referred to the type / nature or (dark) colour of those goods (following a 'blackening' process) (§ 16). It concluded that the less frequent use

([66]) 11/10/2017, R 326/2017-1, Das Gelbe.
([67]) 11/10/2017, R 327/2017-1, Die Gelben.
([68]) 11/10/2017, R 325/2017-1, Gelb.
([69]) 10/03/2020, R 2099/2019-1, Trured.
([70]) 11/09//2019, R 112/2019-1, pack verde (fig.), § 35.
([71]) 26/05/2016, R 2588/2015-5, CYAN.
([72]) 05/01/2018, R 1342/2017-2, BLACKED.

of the word 'blacked' was not an obstacle for a finding of descriptiveness given that the meaning of the mark was not 'obscure', in any case (§ 20).

62 The Board reached the opposite conclusion in **ZINNOBER** ([73]) ('cinnabar' in German). Considering the low frequency of use of the word in question in German, and the fact that it identified a range of colours rather than a specific one, the Board found the sign **not to be descriptive** of, inter alia, *handbags* in Class 18 or *jackets* in Class 25. The Board added that '[i]*n view of the variety of possible hues and colour graduations, virtually no limits are imposed on manufacturers during the selection of the corresponding colour designations. Therefore, a mere possible use as a colour designation in connection with the goods claimed does not lead to the conclusion that the consumer will immediately perceive the indication 'Zinnober' as a descriptive characteristic in relation to a certain category of goods. A mere possible use as a colour designation in connection with the goods claimed does not lead to the conclusion that the consumer will immediately perceive the indication 'Zinnober' as a descriptive characteristic in relation to a certain category of goods'* (§ 13).

63 The following marks were found **descriptive**:

- **LUMINOUSRED** ([74]) (concerning, inter alia, *visible light treatment instruments* in Class 10 and *visible light therapy services* in Class 44) since red was the typical colour of lasers (§ 29);

- **INTENSELY RED** ([75]) (applied for, inter alia, *chemicals* in Class 1 and *flavourings [other than essential oils and colour flavourings]* in Class 30) as the sign served to indicate the colour that resulted from the use of the chemicals in question, for instance on paper or textiles and leather (§ 24). Regarding *flavourings*, the Board found that, first, the restriction in square brackets, insofar as it referred to 'colour flavourings', was most likely not acceptable and that, in any case, even if *flavourings* were not primarily characterised by their colour, it was not unusual for them to incorporate the colour of the simulated fruit or vegetable as well as its taste and scent (§ 29);

- **RED** ([76]), **YELLOW** ([77]) and **BLUE** ([78]) (all of them applied for, inter alia, *antibodies* and *antigens for scientific purposes* in Class 1 and *antibodies* and *antigens* in Class 5), since they referred to the colour of the light these goods would emit when examined in a laboratory. The Board considered that the sector of engineering light-emitting antibodies or antigens is growing (**RED**, § 22, 25);

- **ZLATÉ PASTILKY** ([79]) ('golden pills' in Czech and Slovak, applied for, inter alia, *medicines* in Class 5 and *candy* in Class 30), where 'zlaté' could suggest not only the colour of the pills but also their nature and kind;

([73]) 21/02/2018, R 2025/2017-4, Zinnober.
([74]) 19/12/2022, R 773/2022-1, Luminousred.
([75]) 05/10/2015, R 435/2015-1, Intensely Red.
([76]) 30/05/2018, R 2718/2017-2, Red.
([77]) 23/04/2018, R 2715/2017-2, Yellow.
([78]) 23/04/2018, R 2717/2017-2, Blue.
([79]) 13/08/2018, R 723/2018-5, Zlaté Pastilky.

- **JAPAN WHITE** ([80]) (applied for, inter alia, *rice* in Class 30) as it described the geographical origin and the colour of the relevant products (§ 40);

- **INFINITE WHITE PLATINUM** ([81]) (applied for *jewellery* in Class 14 and *processing of precious metals and/or precious stones into jewellery* in Class 40), since it referred to the white colour of the element platinum, likely to be used in creating jewellery and also in the final product (§ 17);

- **STERLING-SILVER** ([82]) (applied for, inter alia, *light metal wheel rims* in Class 12), as that special coating or surface treatment '*has a direct impact on the appearance of the goods*' and '*on the visual element that is undoubtedly important to consumers of light metal wheel rims*' (§ 18). The sign was also considered to be descriptive of the nature of the relevant goods due to the fact that the expression identifies a silver alloy made of pure silver and copper (§ 18).

64 The following marks were found **not to be descriptive**:

- **OPAL BLUE** ([83]), **GREENELY** ([84]) and **GREEN LABEL** ([85]) (as for the latter two, see 3.5.2) for *software* because, being an intangible good, its colour is not perceivable or relevant;

- **SEPIA** ([86]) for *medical apparatus and instruments* in Class 10, as the public '*does not infer any reference to* particular *characteristics of these goods from the colour*' and it '*also has no reason to perceive the indication 'SEPIA' as a reference to a particular kind of medical apparatus and instruments*' (§ 13). This conclusion was based on the fact that the possibility that a product of that type might be of sepia colour was not enough to find the mark descriptive (§ 12).

3.5 Names of colours that have another meaning

65 Certain names of colours, alone or in conjunction with other words, may have gained a further, non-literal, meaning. The case-law shows that there is a higher probability that this kind of mark falls foul of Article 7(1)(c) EUTMR for being descriptive.

([80]) 20/03/2018, R 694/2017-1, JAPAN WHITE.
([81]) 15/10/2012, R 685/2012-4, INFINITE WHITE PLATINUM.
([82]) 12/06/2007, R 329/2007-4, STERLING-SILVER.
([83]) 31/08/2016, R 664/2016-4, Opal Blue, § 9-10.
([84]) 29/11/2023, R 387/2023-1, GREENELY.
([85]) 28/04/2008, R 1685/2007-5, GREEN LABEL.
([86]) 20/04/2017, R 2184/2016-4, SEPIA. There is a later and homonymous case for different goods (in general, chemical substances for the treatment of plants) where, in the application of Article 7(1)(c) EUTMR, the first instance made reference to the meaning of sepia not as a colour but as 'cuttlefish'. The mark was found to be descriptive of the goods in question as cuttlefish bone has a positive effect when used in treatments for plants and could have been used in the preparation of those chemicals (24/08/2022, R 1042/2022-2, SEPIA).

3.5.1 Compound marks

66 These marks consist of a colour name combined with another word. Together, the two words have a specific meaning in the relevant language and **in the context of trade** that goes beyond the individual meanings of each word.

67 For instance, in **WEISSE SEITEN** ([87]) ('white pages' in German), the GC pointed out that the term 'weiße Seiten' had become synonymous, in the German language, with 'telephone directories for private individuals' and could therefore be considered to be **descriptive** of the goods and services for which it was a common term, such as *magnetic data carriers* in Class 9, *paper; printed matter; classified directories* in Class 16, and *publishing services*, *editing of written texts* in Class 41 (§ 96-108). The mark was declared partially invalid on the grounds of Article 7(1)(c) EUTMR.

68 In these cases, it is not possible to assess the elements of the mark individually; the meaning of the sign must be examined as a whole due to the fact that it consists of a conceptual unit. Taking this into account, it might be easier to register such a mark for goods and services that do not have a specific link with it (for instance 'blackout' for *furniture*), rather than a mark consisting of only a name of a colour for those same goods and services.

3.5.2 Green

69 Almost all the case-law concerning marks consisting of, or including, the word 'green' recognises the association by the public of this colour with the concept of environmental friendliness.

70 In **GREENWORLD** ([88]), the GC found that 'the term 'green' does not only refer […] to the colour green, but also included an ecological meaning, which is very common. A product or service described as green is usually understood as a product or service that is ecological or, at least, less harmful to the environment' (§ 24). The GC added that the mark had 'a clear and unambiguous meaning' with regard to the goods and the services in question (inter alia, fuels, energy and gas and distribution thereof), 'namely products or services which generally contribute to the protection of the environment' (§ 27). The GC reached the same conclusion in **CARBON GREEN** ([89]) (applied for, inter alia, reclaimed and recycled rubber in Class 17), where the GC, after finding the word 'carbon' descriptive of a characteristic of the goods concerned, being all made of carbonaceous materials (§ 24) and the word 'green' as denoting ecological benefits and ecological balance (§ 25), held that overall the mark was **descriptive** of the goods claimed.

71 There are numerous Board decisions where the refusal or cancellation of marks consisting of or including the word 'green' is based on the fact that the colour indicates that the relevant goods are environmentally friendly or 'eco'. The main characteristic of

([87]) 16/03/2006, T-322/03, WEISSE SEITEN, EU:T:2006:87.
([88]) 27/02/2015, T-106/14, Greenworld, EU:T:2015:123.
([89]) 11/04/2013, T-294/10, CARBON GREEN, EU:T:2013:165.

'green' is that this meaning can apply to a wide spectrum ([90]) of goods and services, as already acknowledged by the Board in **GREEN PLUS** ([91]), applied for *fuel additives,* and refused for being **descriptive**, as the public would have thought that the goods in question were more environmentally friendly than others on the market.

72 In the **GREENLINE** ([92]) cases (where the signs were applied for, inter alia, *chemicals for gardening* in Class 1; *garden decorations* in Class 6; *pumps* in Class 7; a wide range of transmitting and recording apparatuses in Class 9; *climatization and air conditioning devices* in Class 11; *motors and parts thereof* in Class 12; wholesale and retail trade services in relation to these goods in Class 35; *rental of vehicles* in Class 39 and *waste management* in Class 40), the Board held the marks **descriptive** on the basis that 'green' stood for environmentally friendly and / or ecological.

73 The Board ([93]) stated, inter alia, that '[t]he term 'GREEN' has not only the dictionary definition of a colour, but also the meaning of 'environmentally sound or beneficial', as referred to by the examiner. Based on this meaning, numerous CTM applications have been rejected for goods or services that are relevant for the environment [e.g., 23/10/2006, R 521/2006-4, GREEN PLUS, § 36 (…)]'. In **GREEN LINE** ([94]), it was also found that 'no reflection or interpretation will be required from a professional […] in order to understand that the goods covered by the sign 'GREENLINE' consist of an ecological line of products whose manufacturing process is carried out or performed in a way to prevent or limit harm to the natural environment' (in relation to, inter alia, paper for cushioning in Class 16).

74 In contrast, the Board partially allowed the appeal finding the sign **not to be descriptive** in only one **GREEN LINE** case ([95]) in respect of *letter boxes made of metal* in Class 6 and *letter boxes made of plastic or wood* in Class 20.

75 Similarly, in **GREENELY** ([96]) (applied for, inter alia, *computer software* in Class 9 and services related to the distribution of energy, advisory services relating to the use of energy, technological analysis of energy and power needs of others in Classes 39 and 42), the Board found the mark **not to be descriptive**. It considered, in particular, that the misspelling of 'greenly' would allow the public to divert their attention from the fact that 'green' refers to eco-friendliness (§ 25, 27).

76 In **GREEN LABEL** ([97]), the Board found the mark GREEN LABEL **not to be descriptive**, as it was not considered that the relevant goods in Class 9 (including cameras, computer software, computer peripherals devices and batteries) were actually eco-friendly. The Board found that '*the mere fact that the word 'GREEN' may have various*

([90]) 30/03/2023, R 1701/2022-2, GREEN COTTON, § 30; 27/04/2020, R 122/2020-5, GreenLine (fig.), § 47; 11/09//2019, R 112/2019-1, pack verde (fig.), § 35; 03/12/2015, R 424/2015-1, GREEN POWER, § 31.
([91]) 23/10/2006, R 521/2006-4, GREEN PLUS, § 36-37.
([92]) 03/05/2004, R 525/2002-4, green line; 30/03/2007, R 125/2007-2, GREENLINE; 18/10/2012, R 741/2011-4, Green Line; 13/04/2017, R 2150/2016-2, GREENLINE; 08/11/2019, R 1365/2019-5, Greenline; 27/04/2020, R 0121/2020-5, Greenline; 27/04/2020, R 122/2020-5, GreenLine (fig.).
([93]) 18/10/2012, R 741/2011-4, GREEN LINE, § 13.
([94]) 13/04/2017, R 2150/2016-2, GREENLINE, § 44.
([95]) 30/03/2007, R 125/2007-2, GREENLINE.
([96]) 29/11/2023, R 387/2023-1, GREENELY.
([97]) 28/04/2008, R 1685/2007-5, GREEN LABEL.

meanings of which one could refer to the environmentally friendly character of the goods does not make the sign descriptive for the goods applied for' (§ 18). The Board concluded that '[w]*ith respect to the goods applied for that are high-tech goods, the message perceived by the consumer will not be about the ecological character of the goods, as the characteristics of the goods will lie on their technical qualities as well as in their effectiveness, reliability and their cost*' (§ 20).

77 There are three cases – of those examined in this report – where the word 'green' was not associated at all with 'eco-friendliness' in the reasoning. In **GREEN** ([98]) (applied for, inter alia*, windows and doors, not of metal; building materials, not of metal* in Class 19), the Board considered the mark simply as the name of a colour, with no further meaning, and found it descriptive of the goods listed above. Moreover, in **IRISH GREEN** ([99]) (reported in 3.3.2 and 3.4.2), the Board considered 'green' not as denoting eco-friendliness in respect of non-metallic building materials, but rather as an indication of a type of Irish marble. Last but not least, in **GREEN CRACK** ([100]), the Board did not consider the colour 'green' as meaning 'eco-friendly' but, instead, it considered it together with the verbal element 'crack' as a clear reference to a specific type or variety of cannabis plant (§ 18, 23).

3.5.3 Other scenarios

78 In **BLUEWATER** ([101]), the Board considered the name of colour blue as denoting purity and / or the origin of a series of products belonging to the category of *water* in Class 32 as originating, for instance, from a spring or natural source (§ 33-35). The Board concluded that '[t]*he element 'Blue' in the contested mark will therefore be understood as a direct reference to the nature and quality of the goods (water from a blue water source or blue water in the sense of pure, clean and fresh water) or to other characteristics such as the typical colour of a specific flavour or taste of the water (e.g. water with blueberry taste or water in the 'classic blue' version*' (§ 38). Consequently, the sign was found to be **descriptive**.

79 In **ABSOLUTELY RED** ([102]) (applied for, inter alia, fresh fruit, fresh vegetables, flowers in Class 31), the Board found the mark to be **descriptive** because '*the word 'RED' not only designates the actual colour but also a specific category of fruit, vegetable or flower, which is distinct from other categories of the same fruit, vegetable or flower. The word 'RED' identifies red currants as opposed to black currants, red peppers as opposed to green or yellow peppers, red grapes as opposed to white grapes and red roses as opposed to white, yellow or pink roses*' (§ 13).

([98]) 19/07/2021, R 1939/2020-1, Green.
([99]) 11/05/2020, R 2470/2018-1, Irish Green.
([100]) 08/03/2023, R 1602/2022-5, Green Crack.
([101]) 19/11/2019, R 856/2019-5, Bluewater.
([102]) 13/09/2017, R 664/2017-4, ABSOLUTELY RED.

4 Conclusions

80 The following conclusions can be drawn in order to safeguard consistency.

(i) A trade mark consisting of the name of a colour is descriptive pursuant to Article 7(1)(c) EUTMR if it will actually be recognised by the relevant public as a relevant characteristic which is objective and inherent to the nature of the goods and services in question, as well as intrinsic and permanent (§ 21).

(ii) A trade mark consisting of the name of a colour is not descriptive of the goods and services concerned if that colour is only a random and incidental aspect of those goods (or the goods that are subject of those services) which only some of them may have and which does not have any direct and immediate link with their nature. Furthermore, the aesthetic appeal of a colour to some consumers and the public's subjective preferences are not, in principle, relevant for finding a mark designating a colour descriptive (§ 20, 22, 23).

(iii) In order to establish whether a mark consisting of the name of a colour is descriptive of the goods concerned, it is, first, necessary to establish whether the relevant public would perceive the mark as a name of colour (§ 8-14). Whether a mark with a double meaning can be understood as a name of a colour is often determined in reference to the goods and services in question (§ 11). Moreover, the fact that the mark refers to a range of colours may run counter to a precise understanding of it as a colour (§ 13, 30). The fact that a term is not understood as a colour name does not automatically exclude the possibility that the mark may be found descriptive for other reasons (§ 8-14).

(iv) The case-law shows that specific colours might be used to identify a product in a particular market sector, immediately indicating to the public, for instance, the colour of its ingredients or the colour arrangement of its composition (§ 27-28, 35-38). When that use is recognised as a 'market sector reality', this usually plays in favour of finding the mark descriptive (§ 39).

(v) A mark consisting of a name of a colour is found descriptive when there is a direct and immediate link between the colour and the goods at issue, that is when that colour is determinant as to why the relevant public would purchase that product and / or because the colour is an intrinsic characteristic of the product, in the absence of which the product would not be the same (for instance, it would lose its purpose) (§ 40). The case-law shows that for certain types of goods, for instance paints and building materials that link is more readily established (§ 46-54). In certain cases, it seems not necessary to establish that the colour is an intrinsic characteristic of the goods in question as long as it is considered a relevant reason to purchase them (§ 43, 61).

Annex
List of cases reviewed

General Court

05/03/2025, T-1121/23, AMBER, EU:T:2025:203
14/06/2023, T-446/22, CHRØME (fig.), EU:T:2023:329
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15/03/2024, R 2589/2023-4, White Mochaccino
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19/07/2021, R 1938/2020-1, Blue
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16/10/2020, R 667/2020-2, Azur
11/05/2020, R 2470/2018-1, IRISH GREEN
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19/12/2019, R 1674/2019-5, Amber selection
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18/10/2012, R 741/2011-4, Green Line
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03/05/2004, R 525/2002-4, green line