Case-law Research Report

Defining subcategories of goods and services in the case of partial use

Consistency Circle Goods and Services

July 2024

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.

TABLE OF CONTENTS

1 INTRODUCTION 3
2 LEGAL FRAMEWORK 3
2.1 EU law 3
2.2 Other instruments 4
3 CASE-LAW ANALYSIS 5
3.1 Main principles and criteria 5
3.2 Categories of goods and services that are precise and sufficiently narrow 8
3.3 Criteria for defining independent subcategories 14
3.3.1 Purpose and intended use of the goods and services 14
3.3.1.1 Health 14
3.3.1.2 Hygiene and beauty care 17
3.3.1.3 Technology 18
3.3.1.4 Vehicles 23
3.3.1.5 Fashion 23
3.3.1.6 Food and beverages 28
3.3.1.7 Other sectors 31
3.3.2 Other characteristics of the goods and services 34
3.3.3 Aspects of market reality 36
3.4 Burden of proof 37
4 CONCLUSIONS 39
ANNEX 41

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 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 Boards 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 defining the extent of protection of (i) the earlier mark in relation to the goods and services for which it is registered in the case of proof of use in opposition or invalidity proceedings and (ii) the contested mark in revocation for non-use cases. Other use scenarios (for establishing enhanced distinctiveness, well-known character, reputation, use in the course of trade of more than mere local significance, acquired distinctiveness, etc) are beyond the scope of the analysis, as the purpose of proving use of the mark in those other scenarios is different, even though the following principles may be used *mutatis mutandis*.

2 Legal Framework

2.1 EU law

5 **Recital 24 EUTMR** reads as follows: '*There is no justification for protecting EU trade marks or, as against them, any trade mark which has been registered before them, except where the trade marks are actually used*'.

6 **Article 47(2) EUTMR**, in **opposition** proceedings, provides: '*If the applicant so requests, the proprietor of an earlier EU trade mark who has given notice of opposition shall furnish proof that, during the five-year period preceding the date of filing or the date of priority of the EU trade mark application, the earlier EU trade mark has been put to genuine use in the Union in connection with the goods or services in respect of which it is registered and which he cites as justification for his opposition, or that there are proper reasons for non-use, provided that the earlier EU trade mark has at that date been registered for not less than five years. In the absence of proof to this effect, the opposition shall be rejected.* ***If the earlier EU trade mark has been used in relation to only part of the goods or services for which it is registered it shall, for the purposes of the examination of the opposition, be deemed to be registered in respect only of that part of the goods or services***.'

7 **Article 64(2) EUTMR**, in proceedings for a **declaration of invalidity**, provides: '*If the proprietor of the EU trade mark so requests, the proprietor of an earlier EU trade mark, being a party to the invalidity proceedings, shall furnish proof that, during the period of five years preceding the date of the application for a declaration of invalidity, the earlier EU trade mark has been put to genuine use in the Union in connection with the goods or services in respect of which it is registered and which the proprietor of that earlier trade mark cites as justification for his application, or that there are proper reasons for non-use, provided that the earlier EU trade mark has at that date been registered for not less than five years. If, at the date on which the EU trade mark application was filed or at the priority date of the EU trade mark application, the earlier EU trade mark had been registered for not less than five years, the proprietor of the earlier EU trade mark shall furnish proof that, in addition, the conditions set out in Article 47(2) were satisfied at that date. In the absence of proof to this effect, the application for a declaration of invalidity shall be rejected.* ***If the earlier EU trade mark has been used only in relation to part of the goods or services for which it is registered, it shall, for the purpose of the examination of the application for a declaration of invalidity, be deemed to be registered in respect of that part of the goods or services only***.'

8 **Article 58(1)(a) and (2) EUTMR**, in proceedings for **revocation for non-use**, provide: '*The rights of the proprietor of the EU trade mark shall be declared to be revoked on application to the Office or on the basis of a counterclaim in infringement proceedings if, within a continuous period of five years, the trade mark has not been put to genuine use in the Union in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use (…)*'. '***Where the grounds for revocation of rights exist in respect of only some of the goods or services for which the EU trade mark is registered, the rights of the proprietor shall be declared to be revoked in respect of those goods or services only.***'

9 The above provisions of the EUTMR concerning use of the mark for only part of the goods or services for which it is registered also apply to national marks invoked in opposition and cancellation proceedings (Article 47(3) and Article 64(3) EUTMR), and are essentially equivalent to Articles 44(2) [proof of use in opposition], 46(4) [proof of use in invalidity] and 19(1) in conjunction with 21 [revocation for non-use], of the Trade Mark Directive ([1]).

2.2 Other instruments

10 The **Office Guidelines** deal with this topic in Part C, Opposition, Section 7, Proof of use, Point 6.3.4 Use for subcategories of goods/services and in Part D, Cancellation, Section 2, Substantive provisions, Chapter 2, Revocation, Point 2.2.2 Genuine use and Chapter 4, Relative grounds for invalidity, Point 4.4 Non-use of the earlier mark.

([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.

3 Case-law Analysis

3.1 Main principles and criteria

11 The concept of genuine use for part of the goods or services and the need and purpose of establishing subcategories was first scrutinised by the GC in **ALADIN** ([2]).

12 The GC interpreted the concept of partial use laid down in the law, '*as seeking to prevent a trade mark which had been used in relation to part of the goods or services for which it was registered being afforded extensive protection merely because it had been registered for a wide range of goods or services*'. It ruled:

'*(44) (…) it is necessary to take account of the breadth of the categories of goods or services for which the earlier mark was registered, in particular, the extent to which the categories concerned are described in general terms for registration purposes, and to do this in the light of the goods or services in respect of which genuine use has, of necessity, actually been established*.

(45) (…) if a trade mark has been registered for a category of goods or services which is sufficiently broad for it to be possible to identify within it a number of ***subcategories capable of being viewed independently****, proof that the mark has been put to genuine use in relation to a part of those goods or services affords protection, in opposition proceedings, only for the subcategory or subcategories to which the goods or services for which the trade mark has actually been used belong. However, if a trade mark has been registered for goods or services defined so precisely and narrowly that it is not possible to make any significant subdivisions within the category concerned, then the proof of genuine use of the mark for the goods or services necessarily covers the entire category for the purposes of the opposition*.

(46) Although the principle of partial use operates to ensure that trade marks which have not been used for a given category of goods are not rendered unavailable, it must not, however, result in the proprietor of the earlier trade mark being stripped of all protection for goods which, although not strictly identical to those in respect of which he has succeeded in proving genuine use, are not in essence different from them and belong to a single group which ***cannot be divided other than in an arbitrary manner****. The GC observes in that regard that in practice it is impossible for the proprietor of a trade mark to prove that the mark has been used for all conceivable variations of the goods concerned by the registration. Consequently, the concept of 'part of the goods or services' cannot be taken to mean all the commercial variations of similar goods or services but merely goods or services which are* ***sufficiently distinct to constitute coherent categories or subcategories****.*'

13 In **RESPICUR** ([3]), the GC first referred to the **criteria that are relevant for defining subcategories** of goods or services within broader categories thereof. The GC held that, '*since consumers are searching primarily for a product or service which can meet their specific needs, the* ***purpose or intended use*** *of the product or service in question is vital in directing their choices. Consequently, since consumers do employ the*

([2]) 14/07/2005, T-126/03, ALADIN / ALADDIN, EU:T:2005:288.
([3]) 13/02/2007, T-256/04, RESPICUR / RESPICORT, EU:T:2007:46, § 29.

criterion of the purpose or intended use before making any purchase, it is of fundamental importance in the definition of a subcategory of goods or services'.

14 In **PELLICO** ([4]), the Grand Board established that the assessment of partial use requires a two-step examination: (1) whether, in view of the goods or services for which use is demonstrated, the indication of goods or services for which the mark is registered is so broad that several independent and coherent subcategories can be identified therein, (2) defining such subcategories as per relevant criteria. The Grand Board laid down a number of criteria to be taken into account to define objective and independent subcategories within a broad category of the registration. It indicated that '[w]*hen defining the criteria to establish the category of products for which genuine use has been shown, **market realities are determinant** and, within that framework, it has to be taken into consideration whether there are **specialised industries**, **specialised designers**, **specialised shops** and **trade practices** and what is the **behaviour of the relevant consumer**. It is indeed important, when assessing the evidence, to place the evidence within the context of the economic sector in question'*.

15 In **TIGHA** ([5]), the CJ had the opportunity to rule on the legal criteria applicable when assessing partial use in view of the GC's long-standing practice since 2005, as established in **ALADIN**. The CJ confirmed, firstly, that the **purpose and intended use of the goods or services** at issue is the **essential criterion for defining an independent subcategory** of goods or services (§ 44). Secondly, it indicated that, since the aim of the criterion of the purpose and intended use of the goods in question is not to provide an abstract or artificial definition of subcategories of goods, this **criterion must be applied coherently and specifically** (§ 50).

16 The CJ further stated that '*if the goods concerned have **several purposes and intended uses** – as is often the case – determining whether there exists a separate subcategory of goods by considering in isolation each of the purposes that those goods may have will not be possible […]. Indeed, such an approach would not enable independent subcategories to be identified coherently and would have the effect, […] of limiting excessively the rights of the proprietor of the earlier mark, inter alia in that his legitimate interest in expanding his range of goods or services for which his trade mark is registered would not sufficiently be taken into consideration*' (§ 51).

17 The CJ also dismissed as unfounded the appellant's argument that the GC failed to take into account the fact that the goods concerned were **aimed at different publics** and were **sold in different shops**, as **these criteria are not relevant when defining an independent subcategory of goods** (§ 53).

18 The principles regarding partial use were further developed by the CJ in **TESTAROSSA** ([6]). The referring court asked, in essence, whether Article 12(1), first sentence, and Article 13 of Directive 2008/95 ([7]) (now, essentially, Article 19(1) in conjunction with Article 21 of the Trade Mark Directive) must be interpreted as meaning that a trade mark registered in respect of a category of goods and parts thereof ('*motor*

([4]) 15/06/2018, R 2595/2015-G, PELLICO (fig.), § 32, 36-37.
([5]) 16/07/2020, C-714/18 P, tigha / TAIGA, EU:C:2020:573.
([6]) 22/10/2020, C-720/18 & C-721/18, Testarossa, EU:C:2020:854.
([7]) Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks.

cars and parts thereof') must be considered to have been put to genuine use for all of the goods falling within that category and parts thereof, if it has only been put to genuine use in respect of some of those goods (luxury sports cars), or only in respect of replacement parts or accessories for some of those goods.

19 With regard to the relevant criteria to apply to identify a coherent subcategory of goods or services capable of being viewed independently, the CJ reiterated, referring to **TIGHA** that **the criterion of the purpose and intended use** of the goods or services at issue **is the essential** criterion **for defining an independent subcategory of goods** (§ 40).

20 Consequently, the CJ held that '*the **concept of "particular market segment"**, referred to by the referring court, **is not, as such, relevant** to the assessment of whether the goods or services in respect of which the proprietor of a trade mark has used it fall within an independent subcategory of the category of goods or services in respect of which that mark was registered*' (§ 42). '*The only relevant question in that regard is whether a consumer who wishes to purchase a product or service falling within the category of goods or services covered by the trade mark in question will associate all the goods or services belonging to that category with that mark*' (§ 43). '*Such a situation cannot be excluded on the sole ground that, according to an economic analysis, the various goods or services included within that category belong to different markets, or to different market segments. This is all the more the case where there is a legitimate interest of the proprietor of a trade mark in expanding his range of goods or services for which his trade mark is registered'* (§ 44).

21 In **REBELL** ([8]), the GC stated that it is the BoA's **duty to state the reasons for defining a subcategory** within a broader category of goods or services. The GC indicated that '*by failing to refer to the purpose or intended use of those products in relation to the other dairy products covered by the contested trade mark, the Board of Appeal failed to set out all the facts and legal considerations of essential importance for determining the partial revocation of the contested trade mark, with the result that the contested decision is vitiated by an inadequate statement of reasons*'.

22 In conclusion, the principles laid down in case-law regarding the concept of partial use are the following.

(i) A need to balance the general interest of not maintaining protection in relation to goods and services for which the mark has not been used with the legitimate interest of the proprietor in expanding the range of goods or services covered by the registration during the term of protection of the mark.

(ii) A need to assess if the broad category of a registration can be further divided, in an objective and non-arbitrary manner, into sufficiently distinct and coherent subcategories to which the specific goods and services for which genuine use has been proved belong.

(iii) If a trade mark has been registered for goods or services defined so precisely and narrowly that it is not possible to make any significant subdivisions within the category concerned, then the proof of genuine use of the mark for the goods or

([8]) 10/04/2024, T-161/23, Rebell, EU:T:2024:218, § 36.

services necessarily covers the entire category for the purposes of the opposition, invalidity or revocation. The proprietor is not required to prove use for all the conceivable variations of the goods or services within such category of the registration. It is sufficient to show use in relation to a variety of the goods or services which naturally fall under the category of the registration. Consequently, if a mark is used for specific goods and services that exemplify use in all the possible subcategories in which the broad category of the registration could be subdivided, use should be established for the entire broad category without needing to define subcategories. In contrast, if a mark is used for specific goods and services that show use in several defined subcategories, use should be established only for those subcategories, but not for the entire broad category.

(iv) The purpose of the goods and services is fundamental in the definition of independent and coherent subcategories.

(v) Where goods and services have several purposes, it is not possible to define coherent subcategories by considering each of the purposes that those goods and services may have in isolation.

(vi) Defining independent and coherent subcategories must be adequately reasoned.

3.2 Categories of goods and services that are precise and sufficiently narrow

23 As held by the Court, the **breadth of the categories** of goods or services in respect of which the mark is registered is a decisive factor in the balance between the maintenance and preservation of the exclusive rights conferred on the proprietor of the earlier mark, and the limitation of those rights to prevent a trade mark that has only been used for some of the goods or services being afforded extensive protection merely because it has been registered for a wide range of goods or services ([9]).

24 If a trade mark has been registered for goods or services defined so **precisely and narrowly** that it is not possible to make any significant subdivision within the category concerned, then genuine use of the mark must be accepted for the entire category ([10]).

25 The proprietor of a trade mark **cannot be required to adduce evidence of use for all the conceivable variations of goods or services included within a precisely and narrowly defined category** ([11]). It is therefore not appropriate to limit the extent of protection to the specific goods and services for which genuine use has been shown and which exemplify the precise and narrowly defined category of the registration, as this would be tantamount to stripping the trade mark of its protection. As long as the specific goods and services for which genuine use has been shown exemplify the category of the registration, genuine use must be accepted for the category as a whole,

([9]) 16/07/2020, C-714/18 P, tigha / TAIGA, EU:C:2020:573, § 39, 45; 07/06/2023, T-63/22, BROOKS ENGLAND (fig.) / Brooks, EU:T:2023:312, § 49.
([10]) 14/07/2005, T-126/03, ALADIN / ALADDIN, EU:T:2005:288, § 45; 02/03/2022, T-140/21, apo-discounter.de (fig.), EU:T:2022:110, § 24.
([11]) 14/07/2005, T-126/03, ALADIN / ALADDIN, EU:T:2005:288, § 46; 13/02/2007, T-256/04, RESPICUR / RESPICORT, EU:T:2007:46, § 24; 08/02/2018, T-879/16, Vieta (fig.), EU:T:2018:77, § 62.

provided it **cannot be divided other than in an arbitrary manner into further subcategories one of which at least would not include any of those items**.

26 Furthermore, the concept of 'precise and sufficiently narrow' category of goods and services in the context of proof of use is not equivalent to the concept of 'clear and precise' specification of goods and services within the meaning of Article 33(2) EUTMR. There are many categories of goods and services, also general indications of Nice Classification class headings, that are considered sufficiently clear and precise for EUTM registration purposes, for instance, *pharmaceuticals* (Class 5), *vehicles* (Class 12), *clothing, footwear, headwear* (Class 25), *pastries* (Class 30), *non-alcoholic beverages* (Class 32), *alcoholic beverages, except beer* (Class 33), *telecommunications services* (Class 38), *transport* (Class 39), *entertainment* (Class 41)([12]), but which are nevertheless broad categories of goods and services that can be divided into subcategories for the purposes of examining genuine use. At the same time, any defined independent and coherent subcategory must meet the requirement of clarity and precision of the goods and services.

27 The factual circumstances in **ALADIN** ([13]) constitute a clear example of how the concept of 'precise and sufficiently narrow category' is applied. The GC held that the category of '*polish for metals*' (Class 3) was restricted with regard both to the function of the goods concerned (polishing) and to their intended purpose (for metals) with the result that it constituted a precise and sufficiently narrow category of goods. Therefore, limiting the protection to '*product for polishing metals consisting of cotton impregnated with a polishing agent (magic cotton)*' actually used would be arbitrary.

Registered	Used	Accepted
Polish for metals (Class 3)	*Product for polishing metals consisting of cotton impregnated with a polishing agent (magic cotton)*	*Polish for metals*

28 In **FRUITFULS** ([14]), the GC held that '*hard fruit candies*' for which genuine use was shown did not constitute an independent subcategory within the category of '*confectionery*'. The GC indicated that the common feature of all '*confectionery*' is that they are sweet and their purpose is to be consumed for enjoyment, not for nutrition. Therefore, creating a subcategory for '*hard fruit candies*' would be arbitrary. This reasoning implies that '*confectionery*' was considered a precise and sufficiently narrow category of goods.

Registered	Used	Accepted
Confectionery (Class 30)	*Hard fruit candies*	*Confectionery*

However, in the case of the related product category of '*pastries*' (the general indication of Class 30 of the Nice Classification reads '*pastries and confectionery*'), the GC found

([12]) See case-law examples in 3.3 below.
([13]) 14/07/2005, T-126/03, ALADIN / ALADDIN, EU:T:2005:288, § 47-49
([14]) 18/10/2016, T-367/14, Fruitfuls, EU:T:2016:615, § 30-40.

in **MEDEX** ([15]) that it was possible to break it down by defining the distinct subcategory of '*cookies*' (see reported further below).

29 In **INTAS** ([16]), where the earlier mark was registered for '*materials for dressing*' (a general indication of Class 5 of the Nice Classification) but use was only shown for '*gauze dressings and pure cotton*', the GC agreed with the BoA that '*gauze dressings*' and '*pure cotton*' could not be considered to be independent subcategories within the category of '*materials for dressings*', which was already defined in a sufficiently precise and narrow manner.

Registered	Used	Accepted
Materials for dressings (Class 5)	*Gauze dressings and pure cotton*	*Materials for dressings*

30 In **FRUTARIA** ([17]), where the mark was registered for '*dried fruits*' (Class 29), but use was shown for '*dried plums*' (Class 29) only, the GC found that '*dried fruits*' were a 'sufficiently precise and defined category' ([18]) referring to fruit from which moisture has been removed for conservation purposes. Dried plums are preserved using the same methods as for other varieties of dried fruit and are packaged and marketed in the same manner. Nothing indicated that dried plums had a different purpose or intended use than other dried fruits. Dried plums target the same public and have the same purpose as other '*dried fruits'*.

Registered	Used	Accepted
Dried fruits (Class 29)	*Dried plums*	*Dried fruits*

The findings in **FRUTARIA** should be considered as correcting previous narrower approaches taken by the BoA, for instance, in **JARDIN DE PEDRISSA** ([19]), where it was held that '*preserved olives, preserved artichokes, preserved chilli peppers and preserved green peppercorns*' were subcategories within the broader category of '*preserved vegetables and fruits*', without providing any explanation why these subcategories were considered independent and coherent.

31 In line with **FRUTARIA**, the BoA found in **LA VIOLETTE** ([20]) that it was not possible to consider '*aubergines*' as an independent subcategory within '*fresh vegetables*' reasoning that '*it would be arbitrary to consider use for aubergines only since other vegetables can have the same or very similar health properties, intended purpose and methods of use*'.

Registered	Used	Accepted
Fresh fruits and vegetables (Class 31)	*Aubergines*	*Fresh vegetables*

([15]) 07/06/2023, T-419/22, medex (fig.), EU:T:2023:318, § 48-56.
([16]) 07/11/2019, T-380/18, INTAS / INDAS (fig.) et al., EU:T:2019:782, § 91-98.
([17]) 13/10/2021, T-12/20, Frutaria. (fig.), EU:T:2021:702, § 81-82.
([18]) In the context of proof of use, what was meant was 'precise and sufficiently narrow category'.
([19]) 20/09/2018, R 2328/2014-5, Jardin de pedrissa (fig.) / La pedriza (fig.) et al., § 49-52.
([20]) 20/12/2022, R 335/2022-5, LA VIOLETTE / Violetta, § 94-99.

32 In **BROOKS ENGLAND** ([21]), the GC agreed with the BoA that '*athletically-related footwear*' was a sufficiently narrowly defined category and, therefore, '*running shoes*, *racing shoes*', for which use was shown, could not constitute an independent subcategory within it.

Registered	Used	Accepted
Athletically-related footwear (Class 25)	*Running shoes, racing shoes*	*Athletically-related footwear*

33 In **NOAH** ([22]), the GC held that the fact that the mark had been used for '*sleeveless vests*' did not justify the existence of a subcategory within '*sweaters*' for which the mark was registered. The GC indicated that '*sweaters are clothes intended to cover the upper part of the body, whether or not they have sleeves. The absence of sleeves does not therefore alter either the purpose or the intended use of the goods in the category of "sweaters". "Sleeveless vests" cannot, therefore, constitute an independent subcategory within the broader category of "sweaters" in Class 25*'. It follows that the GC considered '*sweaters*' as a sufficiently narrow category of goods. At the same time, the GC confirmed that the BoA was fully entitled to find that the proprietor of the mark had established genuine use of the mark for '*polo shirts*' as a subcategory of the broader category of '*shirts*'.

Registered	Used	Accepted
Sweaters, shirts (Class 25)	*Sleeveless vests; polo shirts*	*Sweaters; polo shirts*

34 In **ARTRESAN** ([23]), the GC held that the category of '*food supplements for medical purposes'* (Class 5) provides a clear indication of the type of goods in question, namely food supplements, whereas the category of '*products to improve the condition of the joints'* does not in any way specify the type of goods in question. Accordingly, '*food supplements for medical purposes'* constituted 'a sufficiently clear category that did not require division into subcategories' ([24]). Consequently, the BoA's finding that genuine use of the contested mark had been proved for the entire category of '*food supplements for medical purposes'* was correct, even though use of the mark was only shown for '*products to improve the condition of the joints'*.

Registered	Used	Accepted
Food supplements for medical purposes (Class 5)	*Products to improve the condition of the joints*	*Food supplements for medical purposes*

35 Likewise, in **LUTAMAX** ([25]), the GC held that '*dietary supplements adapted for medical or dietetic use'* (Class 5) constituted 'a sufficiently clear category that does not require division into subcategories' ([26]).

([21]) 07/06/2023, T-63/22, BROOKS ENGLAND (fig.) / Brooks, EU:T:2023:312, § 55-56.
([22]) 24/01/2024, T-562/22, NOAH (fig.), EU:T:2024:23, § 76-79, 114.
([23]) 12/07/2023, T-585/22, Artresan, EU:T:2023:392, § 63, 74-75.
([24]) In the context of proof of use, what was meant was 'precise and sufficiently narrow category'.
([25]) 20/12/2023, T-221/22 & T-242/22, Lutamax, EU:T:2023:858, § 66-74.
([26]) In the context of proof of use, what was meant was 'precise and sufficiently narrow category'.

Registered	Used	Accepted
Dietary supplements adapted for medical or dietetic use (Class 5)	*Dietary supplements adapted for medical or dietetic use for supporting eye health*	*Dietary supplements adapted for medical or dietetic use*

The GC held that '*if the goods, such as "dietary supplements adapted for medical or dietetic use" have* ***several purposes and intended uses****, determining whether a separate subcategory of goods exists by considering in isolation each of the purposes that those goods may have will not, contrary to what the Board of Appeal found, be possible. Indeed, such an approach would not enable independent subcategories to be identified coherently and would have the effect of limiting excessively the rights of the proprietor of the mark, inter alia in that his or her legitimate interest in expanding his or her range of goods or services for which his or her trade mark is registered would not sufficiently be taken into consideration*'. The GC also held that '***the systematic identification of coherent subcategories within the category of "dietary supplements adapted for medical or dietetic use" on the basis of their therapeutic indication must therefore be ruled out, since that type of product does not necessarily have such an indication***'.

36 Unlike '*pharmaceuticals*', which is considered by GC case-law to be a broad category capable of being divided into subcategories according to their therapeutic indication (see section 3.3.1 below), the GC's findings in **ARTRESAN** and **LUTAMAX** indicate that '*food supplements for medical purposes*' and '*dietary supplements adapted for medical or dietetic use'* normally do not have a precise and specific therapeutic indication, so they cannot be divided into coherent subcategories based on therapeutic indications. This may be considered to be correcting previous, more restrictive approaches by the BoA, such as in **WELLMARK** ([27]), where the BoA endorsed the finding of the contested decision that considered '*chlorella dietary supplements*', for which the trade mark was used, to form an objective subcategory within '*dietetic substances and food supplements adapted for medical use*'.

37 In **BIG MAC** ([28]), the GC held that '*foods prepared from meat products*' could not be subdivided into further distinct subcategories, such as '*sandwiches*', in relation to which actual use had been proven. The GC stated that '*meat sandwiches*' and '*foods prepared from meat products*' had the same intended use or purpose, because they were foodstuffs containing meat, which were meant to be consumed and were intended to meet specific nutritional needs. Bearing this in mind, they could not be considered '*in essence different*'. The GC also indicated that '*the fact that "foods prepared from meat products" cover a wide range of goods which vary greatly in terms of consistency, because they may, in particular, be stock, meat stuffing, meatballs and minced beef, or that the "meat sandwiches" marketed by the intervener are more commonly called "hamburgers" is, in principle, irrelevant, since,* […] *the nature of the goods is not, as such, relevant with regard to the definition of subcategories of goods*'.

([27]) 14/02/2023, R 1512/2022-5 & R 1653/2022-5, WELLMARK / WellMar, § 22-23.
([28]) 05/06/2024, T-58/23, BIG MAC, EU:T:2024:360, § 61-70.

Registered	Used	Accepted
Foods prepared from meat products (Class 29)	*Meat sandwiches*	*Foods prepared from meat products*

38 Regarding BoA decision-making practice, the following cases illustrate the categories of goods and services that were found sufficiently precise and narrowly defined, so that their subdivision into further subcategories was not considered necessary.

Case	Registered	Used	Accepted
XEROX ([29])	*Printing machines* (Class 7)	*Printers, multifunctional printing devices, digital colour presses and production inkjet presses*	*Printing machines*
PHANTOM ([30])	*Cameras* (Class 9)	*High speed cameras*	*Cameras*
VISITRACE ([31])	*Sensors and detectors* (Class 9)	*Sensors designed to measure dissolved oxygen*	*Sensors and detectors*
S SKINS ([32])	*Sports bags* (Class 18)	*Gym sacks and duffle bags*	*Sports bags*
SAFFOLA ([33])	*Edible oils and fats* (Class 29)	*Sunflower oil*	*Edible oils and fats*
KOMILI ([34])	*Edible oils* (Class 29)	*Olive oil*	*Edible oils*
TUTTLE & CO. BARKLEYS ([35])	*Candy; sweets* (Class 30)	*Pastilles*	*Candy; sweets*
SCARPETT ARTISAN PASTA ([36])	*Services for providing food and drink* (Class 43)	*Italian food restaurants*	*Services for providing food and drink*

39 Analysis of the above examples shows that although the same established principles and criteria for defining subcategories were applied, some outcomes can be debatable.

([29]) 01/02/2023, R 1511/2020-1, Xerox, § 93-94.
([30]) 07/02/2024, R 2125/2022-5, PHANTOM, § 91-99 (pending before the GC under T-211/24). The BoA annulled the contested decision to the effect that the Cancellation Division found that '*high speed cameras*' constituted an independent and coherent subcategory within the category of '*cameras*'.
([31]) 26/04/2023, R 1407/2022-1, VISITRACE, § 32-39.
([32]) 16/06/2023, R 1799/2022-2, S SKINS (fig.), § 84-86.
([33]) 03/07/2022, R 1538/2021-5, SAFFOLA, § 101-109.
([34]) 16/07/2024, R 2288/2023-1, Komili (fig.) / Komili (fig.), § 44-45.
([35]) 20/06/2022, R 130/2022-5, TUTTLE & CO. BARKLEYS, § 39-44.
([36]) 19/01/2022, R 750/2021-5, Scarpetta ARTISAN PASTA (fig.), § 91-98.

For instance, it is arguable that '*sensors*' or '*detectors*' (Class 9) are sufficiently precise and narrowly defined subcategories of goods, since the purpose and intended use of sensors (detectors) can be very different, for example, sensors (detectors) for checking water purity, movement or the presence of smoke.

40 To conclude, the case-law analysis shows that applying the same principles and the criterion of 'purpose and intended use of the goods and services' when assessing whether the respective category of goods or services is precise and sufficiently narrow, may lead to inconsistent outcomes.

3.3 Criteria for defining independent subcategories

3.3.1 Purpose and intended use of the goods and services

41 The criterion of **'purpose and intended use' is of fundamental importance in the definition of a subcategory of goods or services** since consumers are searching primarily for a product or service that will meet their specific needs ([37]).

42 In this regard, the **nature and other characteristics of those goods or services are, in principle, irrelevant**. However, it cannot be ruled out that, from the point of view of the relevant consumer, some of the characteristics of the goods or services are of significant importance in directing their choice and that they therefore have a bearing on the purpose and intended use of those goods or services in their eyes ([38]). Even if the nature or characteristics of various types of goods or services are so different that, from the point of view of the end consumer, they are not interchangeable, it is necessary for their purpose or intended use to be different in order to constitute a separate subcategory ([39]).

43 The criterion of the purpose and intended use of the goods in question is **not to provide an abstract or artificial definition of subcategories of goods**, that criterion **must be applied coherently and specifically** ([40]).

44 The following analysis groups case-law according to the broad trade sectors concerned.

3.3.1.1 Health

The purpose and intended use of a pharmaceutical preparation is in its **therapeutic indication**, namely, the indication of the type of illnesses it is intended to treat ([41]).

45 The following cases illustrate the application of this criterion by the GC and the BoA.

([37]) 16/07/2020, C-714/18 P, tigha / TAIGA, EU:C:2020:573, § 44; 02/03/2022, T-140/21, apo-discounter.de (fig.), EU:T:2022:110, § 23; 07/06/2023, T-63/22, BROOKS ENGLAND (fig.) / Brooks, EU:T:2023:312, § 50.
([38]) 24/01/2024, T-603/22, ROYAL MILK (fig.), EU:T:2024:29, § 33, 42.
([39]) 07/03/2018, T-230/17, RSTUDIO / ER/STUDIO, EU:T:2018, § 26.
([40]) 16/07/2020, C-714/18 P, tigha / TAIGA, EU:C:2020:573, § 50; 20/12/2023, T-221/22 & T-242/22, Lutamax, EU:T:2023:858, § 69.
([41]) 13/02/2007, T-256/04, RESPICUR / RESPICORT, EU:T:2007:46, § 30.

Case	Registered	Used	Accepted
RESPICUR ([42])	*Pharmaceutical preparations*	*Multi-dose dry powder inhalers containing corticoids, available only on prescription*	*Therapeutic preparations for respiratory illnesses*
KREMEZIN ([43])	*Pharmaceutical products*	*Pharmaceutical preparations for the treatment of the heart*	*Pharmaceutical preparations for the treatment of the heart*
FAMOXIN ([44])	*Pharmaceutical preparations*	*Pharmaceutical preparations for cardiovascular illnesses*	*Pharmaceutical preparations for cardiovascular illnesses*
DIACOR ([45])	*Pharmaceutical products*	*Antitussive medicinal product*	*Antitussive medicines*
OCTASA ([46])	*Medicinal products and pharmaceutical preparations*	*Pharmaceutical products prescribed for the treatment of diseases of the gastro-intestinal tract*	*Pharmaceutical products for the treatment of diseases of the gastro-intestinal tract*
TRAUMGEL ([47])	*Pharmaceutical substances*	*Homeopathic medicine for the treatment of musculoskeletal injuries, such as sprains, dislocations and bruises as well as for the relief of pain caused by overloading tendons, ligaments and muscles and for the prevention of degeneration of bones and joints in the form of gel, ointment, drops or tablets*	*Pharmaceutical and veterinary substances, namely for the treatment of pain, injuries and other disorders and the prevention of degeneration of the musculoskeletal system*
HELIX ORIGINAL ([48])	*Pharmaceutical preparations, in particular a cancer remedy*	*Natural preparations for use in integrative oncological treatment*	*Natural preparations for use in integrative oncological treatment*

([42]) 13/02/2007, T-256/04, RESPICUR / RESPICORT, EU:T:2007:46, § 27-36.
([43]) 16/06/2010, T-487/08, KREMEZIN / KRENOSIN, EU:T:2010:237, § 60-61.
([44]) 23/09/2009, T-493/07, FAMOXIN / LANOXIN, EU:T:2009:355, § 28-38.
([45]) 24/01/2017, T-258/08, DIACOR / DIACOL, EU:T:2017:22, § 34-36.
([46]) 21/06/2017, T-632/15, OCTASA / PENTASA, EU:T:2017:408, § 27-34.
([47]) 20/12/2021, R 813/2021-4, TRAUMGEL (fig.) / Traumeel, § 24-25.
([48]) 16/03/2022, R 1752/2021-1, HelixORIGINAL (fig.) / HELIXOR et al., § 19.

HAPPINESS ([49])	*Pharmaceutical preparations for human use*	*Skin creams for human use*	*Skin creams for human use*
BIOPLAN ([50])	*Pharmaceutical preparations*	*Platelet antiaggregant*	*Pharmaceutical products, namely platelet antiaggregant*
OMEGOR ([51])	*Pharmaceutical products in the form of Omega-3 fatty acids*	*Pharmaceutical products in the form of Omega-3 fatty acids for the treatment of post myocardial infarction and hypertriglyceridaemia*	*Pharmaceutical products in the form of Omega-3 fatty acids for the treatment of post myocardial infarction and hypertriglyceridaemia*
ALIVIDOL ([52])	*Pharmaceutical preparations for the central nervous system for human use*	*Analgesics*	*Analgesics*
LEVELIP TRIOL ([53])	*Pharmaceutical preparations*	*Analgesics, antipyretics, hormones, central nervous system stimulants and laxatives*	*Pharmaceutical preparations*
APSA ([54])	*Pharmaceutical products*	*Pharmaceuticals for the treatment of coughing, pain, febrile states, adult insomnia and dyspeptic disorders*	*Pharmaceuticals for the treatment of coughing, pain, febrile states, adult insomnia and dyspeptic disorders*
GENUIGEL ([55])	*Pharmaceutical preparations*	*Pharmaceutical preparation to reduce inflammation, ulcers, receding gums gingivitis and lesions caused by braces*	*Pharmaceutical preparations for pain relief and wound healing of mouth, gums and teeth*
PIGROLAX ([56])	*Pharmaceutical products*	*Pharmaceutical products for constipation relief*	*Pharmaceutical products for constipation relief*

([49]) 23/05/2022, R 1966/2021-5, HAPPINESS (fig.) / HAPPY, § 24.
([50]) 06/06/2022, R 2147/2021-5, BIOPLAN / BIOPLAK, § 32-40.
([51]) 10/06/2022, R 1168/2021-4, Omegor / OMACOR (fig.) et al., § 94-105.
([52]) 07/02/2023, R 454/2022-2, ALIVIDOL / antidol (fig.), § 54-58.
([53]) 13/04/2023, R 1810/2022-4, LEVELIP TRIOL (fig.) / LEVEL et al., § 42.
([54]) 09/11/2023, R 346/2023-1, APSA / UPSA et al., § 31-34.
([55]) 15/12/2023, R 2312/2022-4 & R 2580/2022-4, GENUIGEL (fig.) / GENGIGEL et al., § 48-55.
([56]) 09/07/2024, R 1733/2023-1, PigroLAX (fig.) / MICROLAX et al., § 32-33.

46 Analysis of the above examples demonstrates that applying the same established principles and criteria may sometimes yield inconsistent outcomes. For example, it is questionable whether '*pharmaceuticals for the treatment of … other disorders*' in **TRAUMGEL** effectively limited the broad category of '*pharmaceutical substances*'. Also, the findings in **LEVELIP TRIOL** may be debatable, since it is the administration's responsibility to identify the subcategories within which the goods and services, for which genuine use was shown, fall, thereby excluding from protection any other independent and coherent subcategories for which use has not been shown (such as, '*pharmaceuticals for the treatment of respiratory or eye diseases'*, in this case).

47 In **IVIS TECHNOLOGIES** ([57]), the BoA found that '*human fertility treatment services*' constituted an objective subcategory of '*medical services*'. Although this finding appears to be in conformity with the criterion of purpose and intended use for defining subcategories, as fertility services indeed constitute a specific field of medical services, there was no reasoning provided to that effect.

Registered	Used	Accepted
Medical services (Class 44)	*Services consisting of infertility consultations and infertility treatments such as infertility endoscopy, sonography and assisted reproductive technique procedures*	*Medical services, namely human fertility treatment services*

3.3.1.2 Hygiene and beauty care

48 In **FOHLENELF** ([58]), the GC held that use of the mark for '*hair and body shampoo*' did not justify use for the broad category of '*cosmetics*' for which the mark was registered, but only for '*shampoos*', which was considered to be a coherent and independent subcategory within the broad category.

Registered	Used	Accepted
Cosmetics (Class 3)	*Hair and body shampoo*	*Shampoos*

49 In **ETOL** ([59]), the BoA held that as use of the mark exclusively related to a very specific type of creams, use could only be recognised for '*skin care cosmetics*', which consumers perceived as an independent subcategory of the broad specification '*cosmetics*' with the reasoning that '*skin products applied to external skin are used to clean, smooth, moisturize, soften and, sometimes, perfume the skin*'.

Registered	Used	Accepted
Cosmetics (Class 3)	*Skin care cosmetics*	*Skin care cosmetics*

([57]) 07/12/2022, R 190/2022-5, iVis Technologies / IVI) (fig.) et al., § 106-112.
([58]) 07/12/2022, T-747/21, Fohlenelf, EU:T:2022:773, § 95-100.
([59]) 10/07/2023, R 1550/2022-1 & R 1855/2022-1, etol, § 108.

The same outcome was reached in **LOTO DEL SVR** ([60]), **WIQO** ([61]) and **DERMÉCRAN** ([62]).

50 In **BERGER PERFUME** ([63]), the BoA held that '*indoor fragrances*', for which use was shown, and in particular, '*perfumes for personal use*', formed two separate subcategories. Moreover, '*some companies produce perfumes for both home and personal perfumes but this is not a common practice of the market. These goods generally meet different specific needs (perfume and deodorising the house for one, and perfuming the human body for the other). They do not share the same purpose and are not marketed in the same sections of supermarkets (section of household or care products or interior design accessories for indoor fragrances, cosmetic section for body perfumes and other deodorants for the other'*.

Registered	Used	Accepted
Perfumery goods (Class 3)	*Indoor fragrances*	*Perfumery goods, namely indoor fragrances*

51 In contrast, in **SO...?** ([64]), the BoA, although indicating that '*toiletries*' and '*cosmetics*' are very broad categories of goods that encompass many subcategories, found that use of the mark for '*dry shampoos, eaux de toilette, deodorants, lip balm, shower gels and body lotions*', demonstrated use for these broad categories. The BoA stated that the goods in respect of which use had been proved did indeed constitute coherent subcategories within the broad categories of '*toiletries*' and '*cosmetics*'. It can be discussed, however, whether under these circumstances the relevant subcategories should have been established. In this sense, the approach followed resembles to the approach in **LEVELIP TRIOL** (pharmaceuticals) and **DIALOGA** (telecommunications). It illustrates the difficulty of determining the extent of partial use when the specific goods and services for which use has been shown exemplify several possible subcategories within the broad registered category, but not others (for example, tooth care or nail care products, in this case).

Registered	Used	Accepted
Toiletries; cosmetics (Class 3)	*Dry shampoos, eaux de toilette, deodorants, lip balm, shower gels and body lotions*	*Toiletries; cosmetics*

3.3.1.3 Technology

52 In **RSTUDIO** ([65]), examining the assessment of the criterion of the purpose and intended use of '*data modelling software and programmes*' and '*entity relationship*

([60]) 11/03/2024, R 135/2023-5, LOTO DEL SVR, § 59-66 (pending before the GC under T-244/24).
([61]) 07/05/2024, R 691/2023-4 & R 772/2023-4, WIQO (fig.), § 93 (pending before the GC under T-364/24).
([62]) 23/04/2024, R 1726/2023-4, DERMÉCRAN / ECRAN, § 28-38.
([63]) 18/07/2023, R 1768/2022-1, BERGER PERFUME, § 46-53.
([64]) 19/03/2024, R 2115/2022-4, SO...?, § 94-95.
([65]) 07/03/2018, T-230/17, RSTUDIO / ER/STUDIO, EU:T:2018, § 20-29.

modelling software for SQL databases' for which genuine use was shown, the GC found that these goods did not constitute separate subcategories in relation to '*database software and programmes*' for which the mark was, inter alia, registered. Although the above goods did not constitute a coherent subcategory that was capable of being viewed independently, they necessarily covered the entire category of '*database software and programmes*'. The GC stressed that '*the proprietor of a trade mark cannot be required to furnish proof that that mark has been used in connection with all the conceivable variations of the goods belonging to the category of "database software and programmes"*.'

Registered	Used	Accepted
Database software and programmes (Class 9)	*Data modelling software and programmes, entity relationship modelling software for SQL databases*	*Database software and programmes*

53 In contrast, in **TEXDOCPOWER** ([66]), the GC held that the purpose and intended use of databases is characterised by the sectors those databases target. It agreed with the BoA that the database software and services for which genuine use had been shown could be divided into coherent subcategories defined based on their purpose, in this case, the automobile industry.

Registered	Used	Accepted
Data carriers of all kinds equipped with programs (Class 9)	*Computerized database containing information on automobile parts*	*DVD data carriers with database software for the automobile industry* (Class 9)
Compilation and systematization of information in computer databases and databases hosted on the Internet (Class 35)		*Compilation and systematization of information in computer databases and databases hosted on the Internet concerning the automobile industry* (Class 35)
Rental of access time to a database server center; updating database software, rental of database software (Class 42)		*Rental of access time to a database server center relating to the automotive industry; updating database software for the automotive industry, rental of database software for the automotive industry* (Class 42)

54 In **TADAA** ([67]), the BoA held that '*computer software'* is an extremely broad term, which can be divided into several subcategories.

([66]) 07/02/2019, T-789/17, TecDocPower / TecDoc (fig.) et al., EU:T:2019:70, § 44-49.
([67]) 11/01/2023, R 2040/2021-5, tadaa, § 55-62.

Registered	Used	Accepted
Computer software (Class 9)	*Software for creating and editing photos*	*Computer software for photos, in particular computer software for capturing, creating or editing digital photos*

55 Likewise, in **DEVICE OF AN EXPLORER** ([68]), the BoA held that the broad category of '*software*' comprised software for unlimited purposes and, therefore, the contested decision had identified the abovementioned independent subcategories correctly. There was nothing in the file that showed use of the contested mark for any other (sub)categories of the broad category of '*software*'.

Registered	Used	Accepted
Software, in particular for *casino and amusement arcade games, for gaming machines, slot machines, video lottery gaming machines, with or without prize payouts and/or for gaming via telecommunications networks and/or the Internet, with or without prize payouts, for gaming with or without prize payouts via the Internet or via telecommunications networks, or for gaming with or without prize payouts for use in telecommunications apparatus'* (Class 9)	*Software for casino and amusement arcade games, for gaming machines, slot machines, video lottery gaming machines, with or without prize pay-outs and/or for gaming via telecommunications networks and/or the Internet, with or without prize pay-outs, for gaming with or without prize pay-outs via the Internet or via telecommunications networks, or for gaming with or without prize pay-outs for use in telecommunications apparatus*	***Software for*** *casino and amusement arcade games, for gaming machines, slot machines, video lottery gaming machines, with or without prize pay-outs and/or for gaming via telecommunications networks and/or the Internet, with or without prize pay-outs, for gaming with or without prize pay-outs via the Internet or via telecommunications networks, or for gaming with or without prize pay-outs for use in telecommunications apparatus*
Hardware, in particular for *casino games and slot machines* (Class 9)	*Hardware for casino games and slot machines*	***Hardware for*** *casino games and slot machines*

56 In **TEAMPLAY** ([69]), the BoA held that '*information system software*' (Class 9) and '*information system software as a service*' (Class 42) constituted independent and coherent subcategories within the broad categories of '*computer software*' and '*software as a service*'.

Registered	Used	Accepted
Computer software (Class 9)	*Information system software*	*Computer software, namely, information system software*

([68]) 01/12/2021, R 133/2021-5 and R 252/2021-5, DEVICE OF AN EXPLORER (fig.), § 70-76.
([69]) 03/10/2023, R 747/2022-5, teamplay / TEAMPLAY, § 69-74 (pending before the GC under T-1175/23).

Software as a service (Class 42)	*Information system software as a service*	*Software as a service, namely, information system software as a service*

57 In contrast, in **IMOBIT** ([70]), the BoA found that the specific types of controllers, for which genuine use was shown, belonged to the independent and coherent subcategory of '*industrial computers*' within the broad category of '*computers*', since '*industrial computers are intended for industrial purposes and are typically used in various industries, for manufacturing and process control and automation. They are more robust or rugged than ordinary PCs and able to function 24/7 in environments with dust, water, debris, fire, shock, or vibration in which most everyday home and office use PCs would not*.'

Registered	Used	Accepted
Computers (Class 9)	*Programmable logic controllers (PLCs), programmable automatic controllers (PACs), 3i intelligent controllers*	*Industrial computers*

58 In **STRATIO** ([71]), the BoA found '*design services'* to be a broad category, and that '*hardware and software design services*' could be considered to be an independent and coherent subcategory within it.

Registered	Used	Accepted
Design services (Class 42)	*Hardware and software design services*	*Design services, namely hardware and software design*

59 With regard to consumer electronics, in **ZOOM** ([72]), the GC found that '*handy recorders (portable recorders)*', for which use was shown, constituted an independent and coherent category within the broad registered category of '*portable communicating apparatus*'. The GC dismissed the applicant's argument that the fact that handy recorders made it possible to post videos directly on the internet, the earlier trade mark's protection should have been extended to the category of '*portable communication devices*'.

Registered	Used	Accepted
Portable communication devices (Class 9)	*Handy recorders (portable recorders)*	*Handy recorders (portable recorders)*

60 In **VIETA** ([73]), the GC held that the BoA erred in finding that '*apparatus for the reproduction of sound and images*' was a sufficiently precise and narrowly defined category of goods. The GC indicated that this broad category could, at the very least,

([70]) 20/03/2023, R 1903/2021-5, Imobit / Imo et al., § 119-130.
([71]) 20/11/2023, R 999/2022-4, stratio, § 84-87 (pending before the GC under T-49/24).
([72]) 24/04/2018, T-831/16, ZOOM / ZOOM et al., EU:T:2018:218, § 49-50.
([73]) 10/12/2015, T-690/14, Vieta (fig.), EU:T:2015:950, § 63-69.

be subdivided into two subcategories '*apparatus for the reproduction of sound*' and '*apparatus for the reproduction of images*'.

61 In **E.PLUS** ([74]), the BoA found that '*mobile phone communication*' formed an independent and coherent subcategory within the broad category of '*telecommunications*' as registered. The BoA noted that '"*telecommunications*" *include a wide variety of services that can be divided into subcategories based on their intended purpose, end users and distribution channels. For example, within the broad category of telecommunications, it is possible to distinguish, inter alia, broadcasting services from telephone and messaging services. The Board notes that these services not only have different providers but also different intended purposes and end users. In particular, broadcasting services consist of the transmission of programmes or information by radio or television to one or more listener or viewer, while telephone and messaging services place a person in oral or written communication with another one, necessarily requiring at least two participants'.*

Registered	Used	Accepted
Telecommunications (Class 38)	*Mobile telephone services, mobile telephone networks*	*Mobile telephone services*

62 Likewise, in **DIALOGA** ([75]), the BoA held that '*telecommunications*' was a broad category that includes a variety of services that could be divided into subcategories. However, in view of evidence showing use for a range of telecommunications services, the BoA confirmed that use is demonstrated in connection with the whole category of '*telecommunications services*'. In this sense, the approach resembles to the approach in **LEVELIP TRIOL** (pharmaceuticals) or **SO...?** (cosmetics). It illustrates the difficulty of determining the extent of partial use when the specific goods and services for which use has been shown, exemplify several possible subcategories within the broad category of registration, but not others (for example, television or radio broadcasting, in this case).

Registered	Used	Accepted
Telecommunications services (Class 38)	*Audio and video communication services, including SMS, fax2mail, sending and reception of calls, voice messages, video conferencing, WebRTC (Web Real-time communication)*	*Telecommunications services*

([74]) 30/06/2023, R 1199/2022-1 & R 1711/2022-1, e.plus (fig.), § 79-96 (pending before the GC under T-570/23 and T-604/23).
([75]) 04/09/2023, R 97/2023-5, Dialoga (fig.), § 104-115 (pending before the GC under T-1075/23).

3.3.1.4 Vehicles

63 In **TESTAROSSA** ([76]), the CJ held that *sports cars* could not constitute an independent and coherent subcategory of '*motor cars*'. The CJ stated '*it is true that cars referred to as "sports cars" are high-performance cars and therefore are capable of being used in motor sports. However, this is only one of the possible intended uses for such cars, which are also capable of being used, like any other car, for the transport by road of people and their personal effects. The mere fact that the cars in respect of which a mark has been used are referred to as "sports cars" is not sufficient to consider that they belong to an independent subcategory of cars'.*

64 In **SYRENA** ([77]), the GC held that '*racing cars*' '*are capable of constituting a coherent subcategory, for, unlike cars, their purpose is not the same as that of vehicles intended to carry a driver and passengers. Those cars […] are not intended to be driven on public roads and such use is even prohibited on account of the absence of type approval. Their purpose is therefore different from that of other cars*'. As a consequence, the GC held that the BoA was wrong to find that genuine use had been shown in respect of 'cars'.

Registered	Used	Accepted
Motor vehicles for locomotion by land and parts therefor (Class 12)	*Racing cars*	*Racing cars*

65 In **VOLTWAGEN** ([78]), the BoA found that use of the mark in respect of passenger cars, commercial vehicles such as vans and pick-ups, SUVs, electronic vehicles and sport utility vehicles can be considered to be use in respect of '*motor vehicles*' only, which is a subcategory of the broad registered category of '*vehicles*'.

Registered	Used	Accepted
Vehicles (Class 12)	*Passenger cars, commercial vehicles such as vans and pick-ups, SUVs, electronic vehicles and sport utility vehicles.*	*Motor vehicles*

3.3.1.5 Fashion

66 One particular issue in the fashion field, and especially regarding clothing, is whether it is justified to create coherent subcategories according to the **gender** and **age group** of the target public.

67 In **MANOU** ([79]), in one of the early judgments post-**ALADIN**, the GC indicated that '*clothing*' is a **broad category of goods that encompasses various distinct and**

([76]) 22/10/2020, C-720/18 & C-721/18, Testarossa, EU:C:2020:854, § 40-48.
([77]) 23/09/2020, T-677/19, Syrena, EU:T:2020:424, § 125-129.
([78]) 13/12/2023, R 2216/2022-4, Voltwagen / VOLKSWAGEN, § 49 (pending before the GC under T-87/24).
([79]) 14/12/2006, T-392/04, MANU MANU MANU (fig.) / MANOU, EU:T:2006:400, § 90-92.

autonomous subcategories, such as women's underwear, tights and stockings, and men's outerwear, including pants, shirts, pullovers or jackets. Therefore, the GC held that '*tights for women*', for which genuine use was shown, constituted a subcategory of '*clothing*'.

Registered	Used	Accepted
Clothing, in particular stockings, tights (Class 25)	*Tights for women*	*Tights for women*

68 In **PELLICO** ([80]), the Grand Board held, referring to the principles established in **ALADIN** and subsequent case-law, that '*footwear*' in Class 25 was sufficiently broad for several subcategories to be identified within it. In its natural and usual meaning, the term '*footwear*' was capable of including a wide array of **products with different purposes** and different characteristics, which may require very **different levels of technical capability and know-how to be produced** and **could target different consumers** and be **sold through different sales channels** and, therefore, **relate to different market sectors**. The Grand Board found that shoe retailers, whether in physical shops or on the internet, generally structure the offer for their shoes (physically or visually), according to gender and age, such as 'women', 'men', 'girls', 'boys', 'infants'. It was noted that many shoe shops exclusively offered 'women's footwear' or, if they market shoes for further target consumers, separate the women's footwear section physically from the remainder. Therefore, '*women's footwear*' was considered an independent and coherent subcategory of '*footwear*'.

Registered	Used	Accepted
Footwear (Class 25)	*Ladies' slip-ons and high heels for casual or festive wear*	*Women's footwear*

69 In **D** ([81]), the GC confirmed the BoA's finding that '*men and women's denim jeans*', for which use was shown, constituted a consistent and homogenous subcategory, and the BoA '*rightly carried out its examination [of proof of genuine use] for that specific subcategory and not for clothing, trousers or even jeans per se*'. The BoA's reasoning was – by reference to **PELLICO** – that '*jeans'* constituted a '*specialised industry, being of interest to specialised designers, on sale in specialised shops (and sections in large stores) and directly targeted to all consumers at some time or another*' and that there was '*no justification for a finding of use for "clothing" in general, "trousers" in particular or even "jeans" as such (which could include items for children)*' ([82]).

Registered	Used	Accepted
Clothing (Class 25)	*Men and women's denim jeans*	*Men and women's denim jeans*

([80]) 15/06/2018, R 2595/2015-G, PELLICO (fig.), § 32, 36-37, 42.
([81]) 28/05/2020, T-615/18, D (fig.) / D (fig.) et al., EU:T:2020:223, § 90.
([82]) 03/08/2018, R 2657/2017-5, D (fig.) / D (fig.) et al., § 34-35.

70 In **MAGNIFICA LULÚ** ([83]), the BoA held that the differences between clothing, footwear and headgear for adults and for children '*in terms of inherent characteristics, distribution channels and consumers allow it to be concluded that they are two clearly identifiable and well-defined subcategories of products within the broad category of "clothing, footwear, headgear".*'

Registered	Used	Accepted
Clothing, footwear, headgear (Class 25)	*Clothing, footwear, headgear for children*	*Clothing, footwear, headgear for children*

71 In **R** ([84]), the BoA found, by reference to **PELLICO**, that the evidence proved use for retail services of '*children's clothing*, *baby clothing, headgear for children*'. There was no evidence of use for retail services of '*women's clothing*', '*men's clothing*', '*maternity clothing*' or '*footwear*'.

Registered	Used	Accepted
Retail store and on-line retail store services all featuring clothing, baby clothing, children's clothing, maternity clothing; retail services and retail store services connected with clothing, footwear, headgear' (Class 35)	*Retail services and retail store services connected with children clothing, children headgear*	*Retail services and retail store services connected with children clothing, children headgear*

72 The same approach was taken in **PAX** ([85]), **ICEMAN** ([86]), **CRIVIT** ([87]) and **JAMESTOWN** ([88]). In the latter, use in respect of '*jackets for men; outer clothing for men'* was acknowledged in view of the evidence adduced, but not for '*jackets; outer clothing*' for which the mark was registered.

73 In contrast, in **S** ([89]), the BoA found that use of the mark for different types of footwear (trainers, sandals, slippers and other casual shoes) for women and children satisfied the use requirement for the entire category of '*footwear*' for which the mark was registered.

Registered	Used	Accepted
Footwear (Class 25)	*Footwear for women and children*	*Footwear*

74 In **iQ CROSS THE LINE** ([90]), the BoA found that, insofar as '*denim jeans*' constituted a consistent and homogenous subcategory of '*women's and men's clothing*', genuine

([83]) 08/04/2020, R 102/2019-1, Magnifica LuLù (fig.) / Magnifica LuLù (fig.), § 61-64.
([84]) 26/09/2022, R 1935/2021-4, R (fig.), § 109-112.
([85]) 06/10/2022, R 2191/2021-4, Pax, § 67-73.
([86]) 14/02/2023, R 939/2022-5, ICEMAN, § 132-147.
([87]) 21/03/2023, R 612/2020-4, crivit (fig.) / Civit, § 62-63, 65.
([88]) 23/05/2023, R 1476/2022-5, JAMESTOWN / JAMES et al., § 61-69.
([89]) 23/01/2024, R 607/2023-5, S (fig.), § 69-73.
([90]) 17/04/2024, R 266/2023-4, iQ CROSS THE LINE (fig.) / IQ (fig.), § 73, 75.

use could be accepted for '*denim jeans*' only. It is debatable though whether this decision was fully in line with the case-law it referred to (T-615/18, 'D') insofar as it did not limit protection to '*women's and men's denim jeans*' excluding children's denim jeans, especially considering that the registered category itself did not cover children's clothing.

Registered	Used	Accepted
Women's and men's clothing (Class 25)	*Denim jeans*	*Denim jeans*

75 The other issue in the fashion sector, and in particular clothing, is the degree of detail to which the specific purpose of the goods (beyond their general purposes of covering the body and providing protection against the elements) should be taken into account to create subcategories.

76 In **TIGHA** ([91]), the CJ, after confirming the correctness of the legal criteria applied by the GC in the assessment of partial use (see section 3.1), found that the proof of use for different clothing articles that had the same purpose (to cover, adorn the human body and protect it against the elements) was sufficient to establish genuine use for the categories of goods as registered. The fact that the clothing for which use was shown had particular weather-protection characteristics, was, in principle, irrelevant, insofar as, in accordance with the case-law, the **characteristics of the goods are not, as such, relevant for defining subcategories**. The CJ held that this was particularly true since a characteristic of '*outer garments*', certain types of '*underwear*' and '*headgear*', '*gloves*' and '*socks*', by nature, was protection from cold, wind or rain, and that common characteristic of the goods could not justify creating an independent subcategory in Class 25.

Registered	Used	Accepted
Clothing; outer clothing; underwear; headgear for wear and headwear; working overalls; gloves; belts and socks (Class 25)	*Weather protective outdoor clothing*	*Clothing; outer clothing; underwear; headgear for wear and headwear; working overalls; gloves; belts and socks*

77 In **JOYROOM** ([92]), the BoA found that use for '*sportswear*' could not be extended to '*clothing*'. The BoA considered that the former constitutes an independent and homogenous subcategory, with the specific purpose of being used for sporting activities, within the broad category of '*clothing*'.

Registered	Used	Accepted
Clothing, hosiery, leotards, underwear, corsets (Class 25)	*Clothing for sport activities*	*Sportswear*

([91]) 16/07/2020, C-714/18 P, tigha / TAIGA, EU:C:2020:573, § 33-35.
([92]) 02/12/2022, R 1268/2022-4, JOYROOM (fig.) / JOY et al., § 52.

78 In **NORDIC ACTIVE** ([93]), the BoA found that '*sportswear*' could include independent and coherent subcategories, in this case '*ski gloves*', for which use was shown. In **CAMEL** ([94]), the BoA held that '*shirts*', for which use was shown, constituted an independent and coherent subcategory within the broad category of '*clothing*'. In **CELEBRITI** ([95]) the BoA found that '*clothing*' was a broad category that contained several subcategories. Therefore, as use of the contested mark was shown for '*T-shirts, sweatshirts, scarves*', it did not amount to use of the entire category of '*clothing*', but only the subcategories of '*T-shirts*', '*sweatshirts*' and '*scarves*'. It is debatable to what extent these decisions are in line with the principle that use does not need to be shown for all the possible variation of goods belonging to a category.

Registered	Used	Accepted
Sportswear (Class 25)	*Ski gloves*	*Ski gloves*
Clothing (Class 25)	*Shirts*	*Shirts*
Clothing, in particular outer clothing (Class 25)	*T-shirts, sweatshirts, scarves*	*T-shirts, sweatshirts, scarves*

79 In **MAIMAI MADE IN ITALY** ([96]), use was shown for an array of different articles of clothing and footwear. The GC confirmed the BoA's finding of genuine use in relation to the broad categories '*clothing; footwear*'. The GC highlighted that '*underwear*, *pyjamas and bathing suits*' belonged to the broader category of '*clothing*' and that use in relation to these items of clothing also constituted use for the broad category of '*clothing*'.

Registered	Used	Accepted
Clothing, footwear, headgear (Class 25)	Among others: *shirts; T-shirts; sweatshirts; sweaters; tops; vests; trousers; skirts; scarves; underwear; pyjamas, bathing suits; sandals; slippers*	*Clothing, footwear*

80 In **ARMANI LE SAC 11** ([97]), the GC confirmed the principles established in **PRAKTIKER** ([98]) to be applied in the assessment of whether there were independent and coherent subcategories within the broad category of '*retail services*'. It confirmed that '*retail sales services in relation to handbags, purses and wallets made from leather, ready-made clothing and footwear*' (for which genuine use was proven) created coherent and distinct subcategories.

([93]) 04/02/2022, R 172/2020-4, NORDIC ACTIVE (fig.) / Nordica et al., § 51-54.
([94]) 23/10/2023, R 1548/2020-2, Camel, § 66-80.
([95]) 07/06/2023, R 2221/2022-5, CELEBRITI (fig.), § 67-71 (pending before the GC under T-538/23).
([96]) 09/02/2022, T-589/20, Maimai made in Italy / Yamamay, EU:T:2022:59, § 93-102, 114.
([97]) 26/03/2020, T-653/18, GIORGIO ARMANI le Sac 11 (fig.) / LESAC et al., EU:T:2020:121, § 40-41.
([98]) 07/07/2005, C-418/02, Praktiker, EU:C:2005:425, § 50-51.

Registered	Used	Accepted
Retail sales services (Class 35)	*Retail sales services in relation to handbags, purses and wallets made from leather, ready-made clothing and footwear*	*Retail sales services in relation to handbags, purses and wallets made from leather, ready-made clothing and footwear*

81 Case-law analysis shows that it is possible to define coherent and distinct subcategories based on the **gender** and broad **age group** of the target public in the clothing sector, **where relevant** (more details in section 3.3.2). Furthermore, it would appear that subcategories are defined rather narrowly in the clothing sector, according to the **specific** purpose of the goods, rather than the general purposes of covering the human body and providing protection against the elements.

3.3.1.6 Food and beverages

82 In the food sector, subcategories are defined according to the specific purpose of the type of food or beverage, rather than to the general purpose of nutrition.

83 For instance, in **MEDEX** ([99]), the GC confirmed the BoA's finding that genuine use had been proven for '*cookies*' as an autonomous subcategory within the broader category of '*pastry*', on the ground that the intended use and purpose of '*cookies*' differed from those of other types of '*pastry*'.

Registered	Used	Accepted
Pastry (Class 30)	*Specific cookies*	*Cookies*

This may be contrasted with **FRUITFULS** ([100]) where the GC considered the registered category of '*confectionery*' sufficiently precise and narrow, not requiring the creation of a subcategory for '*hard fruit candies*' (or one that covered those goods).

84 In **ROYAL MILK** ([101]), the GC held that '*milk and milk products with the exception of ice creams and milk desserts*' (Class 29), for which the mark was registered, did not constitute, in the light of the criterion of the purpose and intended use of the goods in question, a sufficiently narrow subcategory, since it contained rather heterogeneous goods. Therefore, the GC confirmed the BoA's finding that '*milk powder for food purposes*' for which use was demonstrated was an independent subcategory within that broad category. The GC dismissed the EUTM proprietor's argument that a subcategory should concern only a single product. The GC stated that there was nothing to preclude that subcategory from being regarded as being capable of including other milk products, such as whey powder, whey protein concentrate powder, milk protein concentrate powder, buttermilk powder or milk powder blends. Those goods could be sufficiently homogeneous in terms of purpose and intended use, as they could be capable of meeting similar consumer needs, in particular as regards their use as additives in the preparation of other dishes.

([99]) 07/06/2023, T-419/22, medex (fig.), EU:T:2023:318, § 48-56.
([100]) 18/10/2016, T-367/14, Fruitfuls, EU:T:2016:615, § 30-40.
([101]) 24/01/2024, T-603/22, ROYAL MILK (fig.), EU:T:2024:29, § 35, 38, 41.

Registered	Used	Accepted
Milk and milk products with the exception of ice creams and milk desserts (Class 29)	*Milk powder for food purposes*	*Milk powder for food purposes*

85 In **THE ORIGINAL OAT-LY!** ([102]), the BoA found that '*food preparations made from cereals*' is a broad category of goods that was capable of being subdivided into subcategories for the different types of cereals. The BoA held that '*taking into consideration the different purposes of the different types of cereals, the different nature of each cereal type and the possible different target consumer taking into consideration food intolerances, oats constitute an appropriate subcategory of the latter and contrary to the EUTM proprietor's arguments, is not too narrow, in compliance with the settled case-law criteria therefor*'.

Registered	Use shown	Accepted
Food preparations made from cereals (Class 30)	*Food preparations made from oats*	*Food preparations made from oats*

86 In **THE SNACK & NUT COMPANY** ([103]), the BoA considered that, given that peanuts were technically vegetables, '*preserved peanuts*' constituted a distinct subcategory of '*preserved vegetables*', while in **CA' PELLETTI** ([104]), the BoA found that '*pasta*', for which the mark was used, constituted an independent and coherent subcategory within the registered category of '*flour and preparations made from cereals*'. No further reasoning for the subdivision was provided in any of these cases. However, it was precisely for this reason that the GC annulled the Board's decision in **REBELL** ([105]), for its failure to state the reasons of its finding that '*cheese and cheese products*', for which the mark was used, constituted an independent subcategory within the registered category of '*milk products*'.

Registered	Used	Accepted
Preserved vegetables (Class 29)	*Preserved peanuts*	*Preserved vegetables, namely peanuts*
Flour and preparations made from cereals (Class 30)	*Pasta*	*Pasta*

87 In **MAY GOLD** ([106]), the BoA found that the broad category of '*non-alcoholic drinks*' could be subdivided into independent and coherent subcategories and that '*non-alcoholic sparkling fruit juice drinks*', for which genuine use was shown, is one of the subcategories. However, it is debatable whether such a subdivision would be too narrow in the context of the criteria of purpose and intended use of the goods (and not, for example, 'juices' or 'carbonated soft drinks').

([102]) 01/03/2022, R 489/2021-5, THE ORIGINAL OAT-LY! (fig.), § 73-79.
([103]) 19/12/2022, R 1247/2022-2, The Snack & Nut Company (fig.) / THE SNACK COMPANY (fig.) et al., § 39.
([104]) 14/11/2022, R 675/2022-1, CA' PELLETTI (fig.), § 42-44.
([105]) 10/04/2024, T-161/23, Rebell, EU:T:2024:218, § 36.
([106]) 28/11/2022, R 1778/2021-4, MAY GOLD, § 80-89.

Registered	Used	Accepted
Non-alcoholic drinks (Class 32)	*Non-alcoholic sparkling fruit juice drinks*	*Non-alcoholic drinks, namely non-alcoholic sparkling fruit juice drinks*

88 In the field of **alcoholic beverages**, there is a coherent line of case-law confirming that subcategories are defined in view of the specific purpose and intended use of the beverage, also taking the aspects of market reality into account.

89 In **MONTEBELLO** ([107]) the GC held that '*wines*', for which use was shown, constituted a distinct subcategory within the registered broad category of '*other alcoholic beverages, except beers'.* This was followed by the BoA in **OCHOA MAITENA** ([108]) and **FUENTENEBRO** ([109]).

Registered	Used	Accepted
Wines and other alcoholic beverages, except beers (Class 33)	*Wines*	*Wines*

90 In **ST. SIMON ORIGINAL** ([110]), the BoA found that '*wines, sangria, tinto de verano*, *cider*', for which genuine use was shown, fell within the coherent and distinct subcategories of '*wines*', '*alcoholic beverages based on wine (except beers)*' and '*ciders*' within the broad registered category of '*wines and other alcoholic beverages, except beers'*.

Registered	Used	Accepted
Alcoholic beverages (except beer) (Class 33)	*Wines, sangria, tinto de verano, cider*	*Wines; alcoholic beverages based on wine (except beers); ciders*

91 In **BISTRO RÉGENT** ([111]) and **DIPLOMATICO THE HEART OF RUM** ([112]), the BoA held that '*brandy*' constituted a subcategory within the broad category of '*spirits*' for which the earlier mark was registered. In the same vein, in **BV** ([113]) the BoA held that '*vodka*', for which genuine use was shown, constituted a subcategory of '*alcoholic beverages (except beers*)'.

Registered	Used	Accepted
Wine; spirits [beverages] (Class 33)	*Brandy*	*Brandy*
Spirits, especially wine fires (Class 33)	*Brandy*	*Brandy*

([107]) 29/04/2009, T-430/07, MONTEBELLO RHUM AGRICOLE (fig.) / MONTEBELLO, § 44-45.
([108]) 06/07/2023, R 175/2023-4, OCHOA MAITENA / MAITEA, § 73-74.
([109]) 08/05/2023, R 2081/2022-5, LADERAS DE FUENTENEBRO / FUENTENEBRO, § 66-67.
([110]) 27/10/2022, R 1003/2022-1, ST. SIMON ORIGINAL (fig.) / DON SIMON et al., § 55-60.
([111]) 18/05/2022, R 1113/2021-5, bistro Régent (fig.) / Regent, § 74-77.
([112]) 19/05/2022, R 1826/2021-4, DIPLOMATICO THE HEART OF RUM / DIPLOMAT, § 44.
([113]) 03/10/2022, R 1240/2021-2, BV (fig.) / 42 BELOW et al.

Alcoholic beverages (except beers) (Class 33)	*Vodka*	*Vodka*

3.3.1.7 Other sectors

92 In the field of **household cleaning**, in **CLINIUM** ([114]), the BoA found that the category of '*cleaning and polishing substances (except for leather)*', for which the mark was registered, was sufficiently broad to identify several independent subcategories. The BoA reasoned that '*although all the goods falling into that category shared the purpose of cleaning or polishing, sub-categories of goods can be determined taking into account the intended use of the goods, namely the type of material to be cleaned with the said substances. Cleaning substances will be perceived as independent from each other according to whether they are intended to clean wood, metal, textile or glass. The purpose and characteristics of the cleaning substances are different*'. Accordingly, since the evidence of use was in respect of '*products for cleaning glass*', the BoA held that use was demonstrated for '*glass cleaning substances; products for cleaning glass*'. Similarly, in **PUSH HIGHRISE** ([115]), the BoA held that, since '*cleaning and polishing preparations*' (Class 3) could be divided into subcategories depending on the material to be cleaned or polished, and the cleaning or polishing product differed not only in its composition but also in its producers (for example, leather, as opposed to metal or glass), it was justified to establish '*leather cleaners, leather cleaning and polishing preparations*' as an independent subcategory of the general category of '*cleaning and polishing preparations*'.

Registered	Used	Accepted
Cleaning and polishing substances (except for leather) (Class 3)	*Products for cleaning glass*	*Glass cleaning substances; products for cleaning glass.*
Cleaning and polishing preparations' (Class 3)	*Leather cleaners, leather cleaning and polishing preparations*	*Leather cleaners, leather cleaning and polishing preparations*

93 In the **field of agriculture**, in **MILAGRUM PLUS** ([116]), the BoA found that, since the evidence showed exclusive use for a specific type of herbicide ('*herbicides for corn*'), use could only be recognised for '*herbicide for agricultural use*', which consumers perceived as an independent subcategory of the broad specification '*herbicides*'. It is, however, debatable whether '*agricultural use*' could objectively delimit the scope of the goods given that '*herbicides*' are, by definition, chemicals for destroying plants, especially weeds.

Registered	Used	Accepted
Herbicides (Class 5)	*Herbicides for corn*	*Herbicide for agricultural use*

([114]) 27/03/2024, R 1074/2023-5, Clinium (fig.) / CLIN et al., § 40-42.
([115]) 25/04/2024, R 1986/2023-1, PUSH HIGHRISE ULTRA STRONG (fig.) / HIGH RISE, § 29-30.
([116]) 08/08/2023, R 1871/2022-1, MILAGRUM PLUS (fig.) / MILAGRO, § 48-49.

94 In the **field of printed matter**, in **DARSTELLUNG EINES SCHMETTERLINGS** ([117]), the GC found that the BoA correctly applied the criterion of purpose and intended use of the goods at stake to identify that '*printed matter containing individual photos*', for which genuine use was shown, constituted a subcategory within the broad category of '*printed matter*' for which the mark was registered. It is debatable though whether the defined subcategory was not too narrow.

Registered	Used	Accepted
Printed matter (Class 16)	*Printed matter containing individual photos*	*Printed matter containing individual photos*

95 In the **field of household goods**, in **GREEN LIFE** ([118]), the BoA held that '*household or kitchen utensils and containers (not of precious metal or coated therewith)*' (Class 21) was a broad category that covered a very broad spectrum of goods, like for example, corkscrews, cocktail shakers or egg separators. '*Goods covered by this term are aimed at different end users and are sold through different channels or are often placed in different sections of sales outlets.'* The range of cookware and bakeware for which genuine use was shown were found to form independent and coherent subcategories within the broad registered category.

Registered	Used	Accepted
Household or kitchen utensils and containers (not of precious metal or coated therewith) (Class 21)	*Cookware and bakeware*	*Cookware and bakeware*

96 In the **field of textile goods**, in **VERSACE** ([119]), the GC held that the BoA erred in finding that use shown for '*household linen*' constituted use for the entire broad category of '*textile goods*'.

Registered	Used	Accepted
Textile goods (Class 24)	*Bed sheets, covers, duvet covers, cushions, bedspreads, table linen (tablecloths), bath linen, hand towels*	*Household linen*

97 In the **advertising sector**, in **MOBILE.RO** ([120]), the GC held, contrary to the BoA, that '… *advertising service in connection with vehicles is not different from any other advertising service to the point that they should be considered to be a subcategory of advertising services*'.

([117]) 11/04/2019, T-323/18, DARSTELLUNG EINES SCHMETTERLINGS (fig.), EU:T:2019:243, § 51-56.
([118]) 20/03/2023, R 1434/2022-4, Green Life (fig.), § 95-101.
([119]) 05/10/2017, T-336/16, VERSACE 19.69 ABBIGLIAMENTO SPORTIVO S.R.L. VIA DANIELE CRESPI, 1 – BUSTO ARSIZIO MILANO – ITALY – (fig.) / VERSACE et al., EU:T:2017:691, § 49-54, 61.
([120]) 12/07/2019, T-412/18, mobile.ro (fig.) / mobile (fig.), EU:T:2019:516, § 59-60.

Registered	Used	Accepted
Advertising (Class 35)	*Advertising of vehicles*	*Advertising*

98 In the **finance sector**, in **GPAY** ([121]), the BoA held that '*electronic payment services*', for which genuine use was shown, constituted an independent subcategory of the registered category of '*financial affairs, monetary affairs*', without providing further reasons.

Registered	Used	Accepted
Financial affairs, monetary affairs (Class 36)	*Electronic payment services*	*Electronic payment services*

99 In the **entertainment sector**, in **EFBET** ([122]), the GC confirmed that the categories of '*entertainment*' and '*gaming*', for which the mark was registered, were capable of comprising a wide range of services with different purposes and intended uses. It was possible to distinguish within them the subcategory of '*gambling*'. Consequently, '*online casino games and sports betting*', as well as related information services, for which genuine use was shown, could be considered to fall in the coherent and independent subcategories of '*gambling*' and *'information services in the field of gambling'*. The GC further stated that the BoA was not required to define further subcategories to which the services in respect of which genuine use was shown did not belong. It was enough to distinguish, within the broad categories of the registration, coherent subcategories with the same purpose and to which the services at issue belonged.

Registered	Used	Accepted
Entertainment; gaming; information services in the field of entertainment and gambling (Class 41)	*Online casino games and sports betting*	*Gambling; information services in the field of gambling*

100 In **PLANET9** ([123]), the BoA found that '*entertainment in the form of television documentaries; production of television documentaries*' constituted an objective subcategory of '*entertainment*'. It is debatable whether that subcategory was not too narrowly defined.

Registered	Used	Accepted
Entertainment (Class 41)	*Entertainment in the form of television documentaries; production of television documentaries*	*Entertainment in the form of television documentaries; production of television documentaries*

101 To conclude, although the assessment of the purpose and intended use of the goods or services concerned requires an objective assessment, the case-law analysis reveals

([121]) 30/11/2022, R 1761/2021-4, GPAY / Epay.bg et al., § 64.
([122]) 01/02/2023, T-772/21, efbet (fig.), EU:T:2023:36, § 62-74.
([123]) 14/12/2022, R 88/2022-2, PLANET9 / PLANETE+ (fig.), § 61-63.

an inconsistent application of this criterion. What constitutes a 'non-arbitrary' definition of subcategories remains, apparently, subject to interpretation.

3.3.2 Other characteristics of the goods and services

102 According to case-law, differences such as those concerning the **nature and other characteristics** of goods or services are, **in principle, not relevant for the definition of a subcategory** of goods or services ([124]). In **FRUITFULS** ([125]), the GC, after emphasising the fundamental importance of the purpose and intended use of the goods and services when defining subcategories, stated that '*the nature of the goods at issue and their characteristics are not, **as such**, relevant to the definition of sub-categories of goods or services*'. It further explained that '*even if the nature or characteristics of different types of goods are so different that, from the point of view of the end consumer, they are not interchangeable, the fact remains that, to constitute a separate subcategory of goods within the meaning of the case-law* […] *it is necessary that their purpose or intended use be different. Accordingly, the applicant's argument that 'hard fruit candies' are not interchangeable with other types of 'confectionery' is not sufficient, **by itself**, for it to be concluded that the 'hard fruit candies' constitute a separate subcategory of goods in relation to 'confectionery'.* Rebutting the applicant's argument, the GC found that the different texture and taste of different '*hard fruit candies*' was not a criterion to justify the existence of an independent and coherent subcategory.

103 However, in **ROYAL MILK** ([126]), the GC indicated that, '*it cannot be ruled out that, from the point of view of the relevant consumer, some of the characteristics of the goods are of significant importance in directing his or her choice and that they therefore have a bearing on the purpose and intended use of those goods in his or her eyes*'.

104 In the field of pharmaceuticals, the GC explained in **RESPICUR** ([127]) that criteria such as **pharmaceutical form** (e.g. tablets, liquid), **active ingredients**, whether it is **sold on prescription or over the counter**, or the **method of administering the medicine** (e.g. dissolving, injection), were irrelevant. Likewise, in **KREMEZIN** ([128]), the GC disagreed with the proposed **subcategory** of '*a sterile solution of adenosine for use in the treatment of a specific heart condition, being for intravenous administration in hospitals*'. The GC indicated that that '*definition is not compatible with the case-law cited above, since, in giving not only the therapeutic indication but also the **pharmaceutical form (liquid)**, the **active substance (adenosine)** and the **method and place of administration (intravenous in a hospital)**, that definition encompasses only goods which are almost identical to those covered by the intervener's trade mark and does not correspond to a category or to a subcategory of goods*'.

105 The **subjective characteristics** of the goods or services, such as 'high class' or 'luxury', are also **not relevant for the definition of a subcategory** of goods or

([124]) 16/07/2020, C-714/18 P, tigha / TAIGA, EU:C:2020:573, § 53; 14/12/2022, T-358/21, CIPRIANI FOOD (fig.), EU:T:2022:817, § 147.
([125]) 18/10/2016, T-367/14, Fruitfuls, EU:T:2016:615, § 32, 35-36.
([126]) 24/01/2024, T-603/22, ROYAL MILK (fig.), EU:T:2024:29, § 33.
([127]) 13/02/2007, T-256/04, RESPICUR / RESPICORT, EU:T:2007:46, § 31.
([128]) 16/06/2010, T-487/08, KREMEZIN / KRENOSIN, EU:T:2010:237, § 60.

services, since they do not identify a clear category of goods or services, as seen in **VERSACE** ([129]) and **TESTAROSSA** ([130]).

106 It follows from the wording used, among others, in **FRUITFULS** (cited above), that the other characteristics of the goods and services cannot **alone** serve to define distinct and coherent subcategories, but are not totally excluded either from being considered. **Other characteristics** of the goods and services can be taken into account to the extent that they are **relevant** characteristics of the goods and services and **complement** the primary criterion of purpose and intended use ([131]).

107 In **PELLICO** ([132]), the Grand Board indicated that the broad category of '*footwear*' is '*capable of including a wide array of products for different purposes, having **different characteristics**, which may require very different levels of **technical capabilities** and **know-how to be produced** and could be **targeting different consumers**, be sold through **different sales channels** and therefore relate to different market sectors*'.

108 In **ORIENTAL MIST** ([133]), the BoA held that '*hand rolling tobacco*', for which genuine use was shown, formed an independent and coherent subcategory within the broad registered categories of '*tobacco; tobacco products*'. The BoA stated that '*hand rolling tobacco differs in certain aspects from other types of tobacco like pipe tobacco, cigar tobacco, shisha tobacco or chewing tobacco. Not only do they have different compositions and ingredients/additives, they are also processed and cut differently and have different methods of use*'. This reasoning appears to be based on the differences in nature and other characteristics, processing and method of use, rather than on the criterion of purpose and intended use which would appear to be the same for different types of tobacco.

Registered	Used	Accepted
Tobacco and tobacco products (Class 34)	*Hand rolling tobacco*	*Hand rolling tobacco*

109 In **CHINA TANG** ([134]), the BoA found that '*Asian restaurant services*', for which genuine use was shown, formed an independent and coherent subcategory within the broad registered category of '*restaurants (meals)*'. The BoA observed that in the '*broad market of restaurants, it is common to categorise them into specific subcategories according to the main ingredients or traditional recipes, or to the different countries or regions, as for example, 'hamburger restaurant', 'steakhouse', 'pizza restaurant', 'Italian restaurant', 'bistro', 'Indian, Greek, Moroccan, Asian or Chinese restaurant'. Therefore, the evidence submitted by the opponent indeed does not cover all these categories of restaurants but merely refers to Asian and Chinese food. Consequently, the earlier mark has been used only with regard to the services, restaurant services (meals), namely Asian restaurant (Class 43)*'.

([129]) 05/10/2017, T-336/16, VERSACE 19.69 ABBIGLIAMENTO SPORTIVO S.R.L. VIA DANIELE CRESPI, 1 – BUSTO ARSIZIO MILANO – ITALY – (fig.) / VERSACE et al., EU:T:2017:691, § 58.
([130]) 22/10/2020, C-720/18 & C-721/18, Testarossa, EU:C:2020:854, § 46.
([131]) 24/01/2024, T-603/22, ROYAL MILK (fig.), EU:T:2024:29, § 33, 42; see in this sense also the report on *Acceptability of restrictions of goods and services (substance)*, Conclusion point (ii).
([132]) 15/06/2018, R 2595/2015-G, PELLICO (fig.), § 32.
([133]) 23/11/2023, R 1756/2022-2, ORIENTAL MIST, § 39-46.
([134]) 02/08/2023, R 63/2023-5, CHINA TANG (fig.) / TANG GOURMET (fig.), § 41.

Registered	Used	Accepted
Restaurants (meals) (Class 43)	*Asian restaurant services*	*Restaurant services (meals), namely Asian restaurant*

It can be, however, debatable whether the definition of a subcategory in this case is not arbitrary, since the purpose of restaurant services does not differ in view of the type of cuisine, Asian, Italian etc. ([135]).

110 Characteristics other than the purpose of the goods and services were considered relevant, for example, in the case-law relating to the clothing sector (see section 3.3.1.5), in **BERGER PERFUME** ([136]), **E.PLUS** ([137]), **THE ORIGINAL OAT-LY!** ([138]).

3.3.3 Aspects of market reality

111 As held in **PELLICO**, the **market realities in a given sector should also be taken into account** when determining whether there are independent and coherent subcategories within the broad category of a registration. Within that framework, the existence of **specialised industries**, **specialised designers**, **specialised shops** and **trade practices** should be taken into consideration, as well as the behaviour of the relevant consumer. It is important to assess the evidence in the context of the economic sector concerned ([139]).

112 The CJ's findings in **TESTAROSSA** ([140]) do not alter what was held in **PELLICO**. The CJ merely stressed that the '**particular market segment**' targeted by the proprietor as its own business choice ('sport cars') is not, as such, relevant for defining a coherent and distinct subcategory within the broader registered category ('motor cars'). What matters is whether the consumer who wishes to purchase a product or service falling within the category of goods or services covered by the trade mark in question will associate all the goods or services as belonging to the category with that mark. This situation cannot be excluded on the sole ground that, according to an economic analysis, the various goods or services included within that category belong to different markets, or to different market segments.

113 The aspects of market reality have been taken into account in numerous BoA decisions when examining the possibility of defining a subcategory within a broad registered category, for instance, in **BERGER PERFUME** ([141]) and in **E.PLUS** ([142]).

([135]) See, 19/01/2022, R 750/2021-5, Scarpetta ARTISAN PASTA (fig.), reported in § 38 above.
([136]) 18/07/2023, R 1768/2022-1, BERGER PERFUME, § 46-53.
([137]) 30/06/2023, R 1199/2022-1 & R 1711/2022-1, e.plus (fig.), § 96 (pending before the GC under T-570/23 and T-604/23).
([138]) 01/03/2022, R 489/2021-5, THE ORIGINAL OAT-LY! (fig.), § 73-79.
([139]) 15/06/2018, R 2595/2015-G, PELLICO (fig.), § 32, 36-37.
([140]) 22/10/2020, C-720/18 & C-721/18, Testarossa, EU:C:2020:854, § 37-44 and § 51-52.
([141]) 18/07/2023, R 1768/2022-1, BERGER PERFUME, § 46-53.
([142]) 30/06/2023, R 1199/2022-1 & R 1711/2022-1, e.plus (fig.), § 96 (pending before the GC under T-570/23 and T-604/23).

3.4 Burden of proof

114 With respect to defining distinct and coherent subcategories of goods and services, it is expedient to also consider the different roles, namely, the party who requests proof of use, the party who must prove genuine use and the Office.

115 Article 95(1) EUTMR, indicates that, in principle, the Office should examine the facts of its own motion in proceedings pending before it. Exceptions apply for relative grounds for refusal and invalidity and for absolute grounds for invalidity. Moreover, in opposition proceedings (Article 47(2) and (3) EUTMR) and in invalidity proceedings (Article 64(2) and (3) EUTMR), the proprietor must submit proof of genuine use upon request. The burden of proving genuine use lies with the proprietor of the earlier mark. Even though there is no similar provision for revocation for non-use in Article 58(1)(a) EUTMR ([143]), the CJ confirmed in **CENTROTHERM** ([144]) that the burden of proof also lies with the proprietor in revocation proceedings, not with the Office. Apart from the systematic argument, that the principles for relative grounds cases should also extend to revocation proceedings, the CJ also had a pragmatic argument for procedural efficiency: '*It is common ground that the proprietor is the best placed – and in some cases the only party able – to furnish specific proof in support of the assertion that he has made genuine use of his mark or set out the proper reasons for non-use of the mark*'. This applies in particular, according to the CJ, to the evidence mentioned in Article 10(4) EUTMDR (also applicable in invalidity and revocation proceedings through Article 19(1) and (2) EUTMDR), such as packages, labels, price lists, catalogues, invoices, photographs or newspaper advertisements.

116 The argument that the proprietor is the best placed to adduce evidence in support of the assertion that its mark has been put to genuine use, was later confirmed by the CJ, by reference to **CENTROTHERM**, in **TESTAROSSA** ([145]) and subsequently, in **MAXUS** ([146]).

117 This does not, however, clarify the role of the party requesting proof of use. The party requesting proof of use is also often better placed to furnish facts, evidence and arguments about the market practice for the goods or services at issue, compared to the Office.

118 Firstly, the party requesting proof of use has a decisive role in the proceedings, as it is the only one that may start and maintain that procedure (or sub-procedure, in a relative grounds context). Proof of use examination cannot be instigated by the Office's own initiative, but only upon request, in adversarial proceedings.

119 Secondly, the proprietor cannot be expected to submit facts and evidence to its detriment. By definition, the proprietor will only submit facts and evidence favourable to their position.

([143]) Although, the burden of proof in revocation for non-use proceedings was provided for in Rule 40(5) CTMIR and is currently provided for in Article 19(1) EUTMDR.
([144]) 26/09/2013, C-610/11 P, CENTROTHERM, EU:C:2013:592, § 64.
([145]) 22/10/2020, C-720/18, Testarossa, EU:C:2020:854, § 73-82.
([146]) 10/03/2022, C-183/21, MAXUS, EU:C:2022:174, § 35.

120 Thirdly, the Office cannot be expected to know the boundaries of partial use in the marketplace and to verify the evidence submitted beyond the realm of well-known facts. Besides the facts and evidence provided by both parties, the decision-taking instance may take into consideration facts that are well-known, that is, that are likely to be known by anyone or that may be learnt from generally accessible sources ([147]) or facts relating to the normal methods for marketing the goods, which may be equated with facts that are well-known ([148]).

121 Fourthly, the procedural rules give the party requesting proof of genuine use the full rights of a party in adversarial proceedings. That party must also be invited to submit observations in reply to the proof of use submitted by the proprietor, as often as is necessary, pursuant to Articles 47(1), 64(1) and 94 EUTMR.

122 Fifthly, a party that is silent in first instance proceedings may not introduce facts and evidence for the first time, except in the circumstances defined in Article 95(2) EUTMR and Article 27(4) EUTMDR. Equally, the Board may not reexamine the proof of use done by the first instance if the parties have not challenged that examination (Article 27(3) EUTMDR).

123 Sixthly, should the Office be called to examine proof of genuine use, it must do an unfettered evaluation of the facts and evidence filed by both parties. The principle of an unfettered evaluation of evidence means that the sole relevant criterion for assessing the evidence adduced by the Office is its credibility. The principle of freedom to adduce evidence is the corollary to the principle of the unfettered evaluation of evidence. Article 41 of the Charter of Fundamental Rights of the European Union gives every person the right to have their affairs handled impartially and fairly, and Article 47 of that Charter confers all parties a right to effective remedy. This includes the possibility to produce any evidence lawfully obtained that they consider relevant to support their arguments ([149]).

124 Therefore, as confirmed by the GC in **GREEN CYCLES** ([150]), **SYRENA** ([151]) and **ARTRESAN** ([152]), in the context of examining genuine use of the contested mark, **it is for the BoA** to assess whether the mark has been put to genuine use in connection with the goods in respect of which it had been registered and, if there was partial use, **to identify any independent and coherent subcategory of goods or services**.

125 For example, in **1870 SALLOURAOĞLU** ([153]), the BoA found that genuine use was shown for '*baklava*', a Turkish dessert based on dough coated with syrup, that was not expressly listed in the specification of the earlier mark, while it was encompassed in the broad term '*pastry*' for which the mark was registered. The BoA established, of its own motion, that it was well-known that the category of '*pastry*' includes '*savoury pastry*' and '*sweet pastry*' which, in view of their intended purpose and use (the purpose of the former can be related to nutrition, whereas the latter is consumed rather for

([147]) 22/06/2004, T-185/02, PICARO / PICASSO, EU:T:2004:189, § 29-32.
([148]) 08/05/2017, T-680/15, L'ECLAIREUR, EU:T:2017:320, § 56; 23/09/2009, T-99/06, FILDOR / PHILDAR, EU:T:2009:346, § 94.
([149]) 04/07/2017, T-392/15, European Dynamics Luxembourg et al., § 49-53, by analogy.
([150]) 29/04/2020, T-78/19, green cycles (fig.), EU:T:2020:166, § 58.
([151]) 23/09/2020, T-677/19, Syrena, EU:T:2020:424, § 122.
([152]) 12/07/2023, T-585/22, Artresan, EU:T:2023:392, § 60.
([153]) 12/02/2024, R 1015/2023-5, 1870 Sallouraoğlu (fig.) / SALLOURA 1870 (fig.), § 86-98.

enjoyment), constitute independent and coherent subcategories. Therefore, the BoA concluded that proof of genuine use for '*baklava*' covered the subcategory of '*sweet pastries'*, which constituted a homogeneous and distinct subcategory within '*pastries*'.

4 Conclusions

122 The case-law analysis shows that the decisions of the Boards are consistent with the main principles regarding use of the mark for part of the goods or services set out in **ALADIN**, **RESPICUR**, **PELLICO**, **TIGHA** and **TESTAROSSA**. However, there are divergencies in the application of the main criterion of purpose and intended use of the goods and services for defining subcategories that occasionally result in inconsistent outcomes.

123 To safeguard consistency, the following conclusions can be drawn.

(i) The assessment of partial use requires a **two-step examination**: (1) whether, in view of the goods or services for which use is shown, **the indication of the goods or services** for which the mark is registered **is so broad that several independent and coherent subcategories could be identified therein**, and (2) **defining these subcategories in accordance with the relevant criteria**.

(ii) The **purpose and intended use** of the goods and services, from the perspective of the relevant consumer, is the primary criterion when defining subcategories of goods or services within a broad category of goods or services. The **market realities** in the given sector should be taken into account. **Other characteristics** of the goods and services may be taken into account if they are a **relevant** characteristic of the goods and services and if they **complement** the primary criterion of purpose and intended use.

(iii) The concept of '**precise and sufficiently narrow category of goods or services**' requires a comprehensive assessment of the scope and breadth of the category of goods or services at issue, in terms of their literal and usual meaning, and in terms of the purpose and intended use of the goods or services. This is in order to establish whether the broad category of a registration can be further divided, in an **objective and non-arbitrary manner**, into **sufficiently distinct and coherent subcategories** to which the specific goods and services for which genuine use has been proved belong.

(iv) The proprietor is not required to prove use for all the conceivable variations of the goods or services within the category of the registration. It is sufficient to show use in relation to a variety of the goods or services which naturally fall under the category of registration. Consequently, if a mark is used for specific goods and services that exemplify use in all the possible subcategories in which the broad category of the registration could be subdivided, use should be established for the entire broad category without the need to define subcategories. In contrast, if a mark is used for specific goods and services that exemplify use in only one or several defined subcategories, use should only be established for those subcategories and not for the entire broad category.

(v) When a broad category of goods or services can be subdivided into one or several independent and coherent subcategories, this should be **properly reasoned**. In order to avoid providing an abstract or artificial definition of subcategories of goods or services, these criteria must be applied coherently and specifically.

(vi) Although it is for the trade mark proprietor to provide the facts, evidence and arguments regarding use of the mark, it is **a matter of law to establish to what extent an earlier mark can be invoked in the opposition or invalidity proceedings and to what extent a registered mark is to be revoked**, in the case of partial use. It is, therefore, for the Board to verify of its own motion, in the case of partial use and provided that, in opposition or invalidity proceedings, proof of use has been challenged on appeal, whether a subcategory was correctly defined at first instance or to define the correct subcategory.

Annex
List of cases reviewed

Court of Justice and General Court

16/07/2020, C-714/18 P, tigha / TAIGA, EU:C:2020:573
22/10/2020, C-720/18 & C-721/18, Testarossa, EU:C:2020:854

14/07/2005, T-126/03, ALADIN / ALADDIN, EU:T:2005:288
14/12/2006, T-392/04, MANU MANU MANU (fig.) / MANOU, EU:T:2006:400
13/02/2007, T-256/04, RESPICUR / RESPICORT, EU:T:2007:46
29/04/2009, T-430/07, MONTEBELLO RHUM AGRICOLE (fig.) / MONTEBELLO, EU:T:2009:127
23/09/2009, T-493/07, FAMOXIN / LANOXIN, EU:T:2009:355
16/06/2010, T-487/08, KREMEZIN / KRENOSIN, EU:T:2010:237
16/05/2013, T-353/12, ALARIS, EU:T:2013:257
08/11/2013, T-536/10, Premeno / Pramino, EU:T:2013:586
06/03/2014, T-71/13, ANNAPURNA, EU:T:2014:105
08/10/2014, T-300/12, FAIRGLOBE (fig.) / GLOBO PORTUGAL (fig.) et al., EU:T:2014:864
30/01/2015, T-278/13, now (fig.), EU:T:2015:57
16/06/2015, T-660/11, POLYTETRAFLON / TEFLON, EU:T:2015:387
10/12/2015, T-690/14, Vieta (fig.), EU:T:2015:950
24/01/2017, T-258/08, DIACOR / DIACOL, EU:T:2017:22
18/10/2016, T-367/14, Fruitfuls, EU:T:2016:615
21/06/2017, T-632/15, OCTASA / PENTASA, EU:T:2017:408
05/10/2017, T-336/16, VERSACE 19.69 ABBIGLIAMENTO SPORTIVO S.R.L. VIA DANIELE CRESPI, 1 – BUSTO ARSIZIO MILANO – ITALY – (fig.) / VERSACE et al., EU:T:2017:691
08/02/2018, T-879/16, Vieta (fig.), EU:T:2018:77
07/03/2018, T-230/17, RSTUDIO / ER/STUDIO, EU:T:2018:120
24/04/2018, T-831/16, ZOOM / ZOOM et al., EU:T:2018:218
13/09/2018, T-94/17, tigha / TAIGA, EU:T:2018:539
07/02/2019, T-789/17, TecDocPower / TecDoc (fig.) et al., EU:T:2019:70
11/04/2019, T-323/18, DARSTELLUNG EINES SCHMETTERLINGS (fig.), EU:T:2019:243
08/05/2019, T-269/18, ZARA / ZARA (fig.) et al., EU:T:2019:306
12/07/2019, T-412/18, mobile.ro (fig.) / mobile (fig.), EU:T:2019:516
07/11/2019, T-380/18, INTAS / INDAS (fig.) et al., EU:T:2019:782
26/03/2020, T-653/18, GIORGIO ARMANI le Sac 11 (fig.) / LESAC et al., EU:T:2020:121
29/04/2020, T-78/19, green cycles (fig.), EU:T:2020:166
28/05/2020, T-615/18, D (fig.) / D (fig.) et al., EU:T:2020:223
23/09/2020, T-677/19, Syrena, EU:T:2020:424
15/10/2020, T-49/20, Robox / Orobox, EU:T:2020:492
16/12/2020, T-863/19, Pcg Calligram Christian Gallimard / Gallimard et al., EU:T:2020:632

13/10/2021, T-12/20, Frutaria. (fig.), EU:T:2021:702
09/02/2022, T-589/20, Maimai made in Italy / Yamamay, EU:T:2022:59
02/03/2022, T-140/21, apo-discounter.de (fig.), EU:T:2022:110
09/03/2022, T-766/20, Stones, EU:T:2022:123
07/12/2022, T-747/21, Fohlenelf, EU:T:2022:773
14/12/2022, T-358/21, CIPRIANI FOOD (fig.), EU:T:2022:817
01/02/2023, T-772/21, efbet (fig.), EU:T:2023:36
26/04/2023, T-35/22, Syrena, EU:T:2023:212
07/06/2023, T-63/22, BROOKS ENGLAND (fig.) / Brooks, EU:T:2023:312
07/06/2023, T-419/22, medex (fig.), EU:T:2023:318
12/07/2023, T-585/22, Artresan, EU:T:2023:392
20/12/2023, T-221/22 & T-242/22, Lutamax, EU:T:2023:858
24/01/2024, T-562/22, NOAH (fig.), EU:T:2024:23
24/01/2024, T-603/22, ROYAL MILK (fig.), EU:T:2024:29
10/04/2024, T-161/23, Rebell, EU:T:2024:218
08/05/2024, T-207/23, VAPIX, EU:T:2024:290
05/06/2024, T-58/23, BIG MAC, EU:T:2024:360

Boards of Appeal

15/06/2018, R 2595/2015-G, PELLICO (fig.)

20/09/2018, R 2328/2014-5, Jardin de pedrissa (fig.) / La pedriza (fig.) et al.
05/07/2019, R 2505/2018-2, Rotkäppchen (fig.)
18/11/2019, R 2160/2019-2, SOLGAR Since 1947 MultiPlus WHOLEFOOD CONCENTRATE MULTIVITAMIN FORMULA (fig.) / MULTIPLUS
12/12/2019, R 1487/2019-2, Tagesschau (pending before the GC under T-83/20 RENV)
26/02/2020, R 1615/2018-4, FALKE
08/04/2020, R 102/2019-1, Magnifica LuLù (fig.) / Magnifica LuLù (fig.)
09/11/2021, R 1605/2020-1, th pharma (fig.) / Th (fig.)
01/12/2021, R 133/2021-5 & R 252/2021-5, DEVICE OF AN EXPLORER (fig.)
20/12/2021, R 813/2021-4, TRAUMGEL (fig.) / Traumeel
19/01/2022, R 750/2021-5, Scarpetta ARTISAN PASTA (fig.)
04/02/2022, R 172/2020-4, NORDIC ACTIVE (fig.) / Nordica et al.
04/02/2022, R 927/2021-2, zelmotor (fig.)
01/03/2022, R 489/2021-5, THE ORIGINAL OAT-LY! (fig.)
16/03/2022, R 1752/2021-1, HelixORIGINAL (fig.) / HELIXOR et al.
18/03/2022, R 1381/2021-5, DREAM PLACE (fig.)
28/02/2022, R 820/2021-5, BLONDE ROAST (fig.) / Starbucks blonde
22/04/2022, R 1234/2021-5, BIOLARK (fig.) / Bioplak
17/05/2022, R 1307/2021-5, Smart base
18/05/2022, R 1113/2021-5, bistro Régent (fig.) / Regent
19/05/2022, R 1826/2021-4, DIPLOMATICO THE HEART OF RUM / DIPLOMAT

19/05/2022, R 2149/2021-4, DIPLOMÁTICO DISTILLERY COLLECTION Nº 2 BARBET RUM (fig.) / Diplomat
19/05/2022, R 2151/2021-4, DIPLOMÁTICO DISTILLERY COLLECTION Nº 3 POT STILL RUM (fig.) / Diplomat
23/05/2022, R 1966/2021-5, HAPPINESS (fig.) / HAPPY
06/06/2022, R 2147/2021-5, BIOPLAN / BIOPLAK
10/06/2022, R 1168/2021-4, Omegor / OMACOR (fig.) et al.
20/06/2022, R 130/2022-5, TUTTLE & CO. BARKLEYS
03/07/2022, R 1538/2021-5, SAFFOLA
26/09/2022, R 1934/2021-4, R (fig.)
26/09/2022, R 1935/2021-4, R (fig.)
03/10/2022, R 1240/2021-2, BV (fig.) / 42 BELOW et al.
06/10/2022, R 2191/2021-4, Pax
13/10/2022, R 471/2022-5, BIO PAD (fig.) / BIOPLAK
18/10/2022, R 956/2020-5, TVR (fig.)
27/10/2022, R 1003/2022-1, ST. SIMON ORIGINAL (fig.) / DON SIMON et al.
14/11/2022, R 675/2022-1, CA' PELLETTI (fig.)
28/11/2022, R 1778/2021-4, MAY GOLD
30/11/2022, R 1761/2021-4, GPAY / Epay.bg et al.
02/12/2022, R 1268/2022-4, JOYROOM (fig.) / JOY et al.
07/12/2022, R 190/2022-5, iVis Technologies / IVI) (fig.) et al.
14/12/2022, R 88/2022-2, PLANET9 / PLANETE+ (fig.)
19/12/2022, R 1247/2022-2, The Snack & Nut Company (fig.) / THE SNACK COMPANY (fig.) et al.
20/12/2022, R 335/2022-5, LA VIOLETTE / Violetta
21/12/2022, R 389/2022-5, iVis Suite / IVI) (fig.) et al.
11/01/2023, R 2040/2021-5, tadaa
01/02/2023, R 1511/2020-1, Xerox
07/02/2023, R 454/2022-2, ALIVIDOL / antidol (fig.)
14/02/2023, R 939/2022-5, ICEMAN
14/02/2023, R 1512/2022-5 & R 1653/2022-5, WELLMARK / WellMar
16/03/2023, R 2402/2020-4, Crivit / Civit
20/03/2023, R 1903/2021-5, Imobit / Imo et al.
20/03/2023, R 1434/2022-4, Green Life (fig.)
21/03/2023, R 612/2020-4, crivit (fig.) / Civit
13/04/2023, R 1810/2022-4, LEVELIP TRIOL (fig.) / LEVEL et al.
26/04/2023, R 1407/2022-1, VISITRACE
27/04/2023, R 1326/2022-5, LLR-G5
08/05/2023, R 2081/2022-5, LADERAS DE FUENTENEBRO / FUENTENEBRO
23/05/2023, R 1476/2022-5, JAMESTOWN / JAMES et al.
02/06/2023, R 612/2022-4, blue is underwriting (fig.) / BLUE S ASSISTANCE (fig.) (pending before the GC under T-447/23)
07/06/2023, R 2221/2022-5, CELEBRITI (fig.) (pending before the GC under T-538/23)
12/06/2023, R 1796/2022-2, S SKINS (fig.) (pending before the GC under T-559/23)

16/06/2023, R 1799/2022-2, S SKINS (fig.)
27/06/2023, R 1803/2022-2, SKINS
30/06/2023, R 1199/2022-1 & R 1711/2022-1, e.plus (fig.) (pending before the GC under T-570/23 and T-604/23)
06/07/2023, R 175/2023-4, OCHOA MAITENA / MAITEA
10/07/2023, R 1550/2022-1 & R 1855/2022-1, etol
18/07/2023, R 1768/2022-1, BERGER PERFUME
18/07/2023, R 1770/2022-1, PARFUMS BERGER (fig.)
02/08/2023, R 63/2023-5, CHINA TANG (fig.) / TANG GOURMET (fig.)
08/08/2023, R 1871/2022-1, MILAGRUM PLUS (fig.) / MILAGRO
10/08/2023, R 885/2022-2 & R 894/2022-2, AIRBNB (pending before the GC under T-1032/23)
04/09/2023, R 97/2023-5, Dialoga (fig.) (pending before the GC under T-1075/23)
19/09/2023, R 86/2023-2, RTL (fig.) (pending before the GC under T-1088/23)
19/09/2023, R 87/2023-2, RTL (fig.) (pending before the GC under T-1089/23)
28/09/2023, R 343/2017-5, TESTAROSSA
03/10/2023, R 747/2022-5, teamplay / TEAMPLAY (pending before the GC under T-1175/23)
05/10/2023, R 633/2023-2 & R 659/2023-2, NKD
17/10/2023, R 1793/2022-5, Blinkline (fig.) / BLINK
23/10/2023, R 1548/2020-2, Camel
07/11/2023, R 1415/2022-2 & R 1421/2022-2, DEVICE OF EIGHT BLACK CHEVRONS (fig.) (pending before the GC under T-32/24)
09/11/2023, R 346/2023-1, APSA / UPSA et al.
20/11/2023, R 999/2022-4, stratio (pending before the GC under T-49/24)
23/11/2023, R 1756/2022-2, ORIENTAL MIST
11/12/2023, R 222/2023-5, DECOCER (fig.) / DECOCER Portugal (fig.)
11/12/2023, R 1313/2022-2, BAHLSEN ABC
13/12/2023, R 2216/2022-4, Voltwagen / VOLKSWAGEN (pending before the GC under T-87/24)
14/12/2023, R 123/2023-2, H.I.G. WHITEHORSE (pending before the GC under T-111/24)
15/12/2023, R 2312/2022-4 & R 2580/2022-4, GENUIGEL (fig.) / GENGIGEL et al.
15/12/2023, R 2110/2022-5, VINATIS / VINITES (pending before the GC under T-86/24)
18/12/2023, R 886/2022-2 & R 893/2022-2, AIRBNB (pending before the GC under T-94/24)
09/01/2024, R 793/2023-5, BIENENBEISSER (pending before the GC under T-144/24)
23/01/2024, R 607/2023-5, S (fig.)
31/01/2024, R 1906/2022-1, DIGI (fig.) / DIGI (fig.) et al. (pending before the GC under T-196/24)
07/02/2024, R 2125/2022-5, PHANTOM (pending before the GC under T-211/24)
12/02/2024, R 1015/2023-5, 1870 Sallouraoğlu (fig.) / SALLOURA 1870 (fig.)
07/02/2024, R 776/2023-5, Wonderbox (fig.) (pending before the GC under T-200/24)
11/03/2024, R 135/2023-5, LOTO DEL SVR (pending before the GC under T-244/24)
14/03/2024, R 754/2023-5, GD TECNOLOGIE INTERDISCIPLINARI FARMACEUTICHE (fig.)
19/03/2024, R 2115/2022-4, SO...?

27/03/2024, R 1074/2023-5, Clinium (fig.) / CLIN et al.
07/05/2024, R 691/2023-4 & R 772/2023-4, WIQO (fig.) (pending before the GC under T-364/24)
17/04/2024, R 266/2023-4, iQ CROSS THE LINE (fig.) / IQ (fig.)
22/04/2024, R 1343/2023-1, homee (fig.)
23/04/2024, R 1726/2023-4, DERMÉCRAN / ECRAN
25/04/2024, R 1986/2023-1, PUSH HIGHRISE ULTRA STRONG (fig.) / HIGH RISE
10/05/2024, R 1402/2023-5, MemoMeister / mindmeister et al. (pending before the GC under T-395/24)
21/05/2024, R 1748/2023-2, RAPPRESENTAZIONE DI UNA STRISCIA RETTANGOLARE POSTA CON I LATI LUNGHI IN VERTICALE (fig.) (pending before the GC under T-372/24)
09/07/2024, R 1733/2023-1, PigroLAX (fig.) / MICROLAX et al.
16/07/2024, R 2288/2023-1, Komili (fig.) / Komili (fig.)