OPPOSITION No B 3 243 338

Apple Inc., One Apple Park Way, 95014 Cupertino, United States (opponent), represented by **CMS Cameron McKenna Nabarro Olswang Posniak i Bejm Sp.K.**, Varso Tower Chmielna 69, 00-801 Warsaw, Poland (professional representative)

a g a i n s t

Yichun Qinningmeng Electronics Co., Ltd., No. 9 - 1, Phase II Of The Electronic Information Industrial Park, Tonggu Industrial Park, 336000 Yichun, Tonggu County, Jiangxi, China (applicant), represented by **Zeller & Seyfert Partg mbB**, Friedrich-ebert-anlage 35-37 (tower 185), 60327 Frankfurt Am Main, Germany (professional representative).

On 05/05/2026, the Opposition Division takes the following

DECISION:

1. Opposition No B 3 243 338 is partially upheld, namely for the following contested goods:

   Class 9: *Audiovisual teaching apparatus; chargers for electric accumulators; cabinets for loudspeakers; photocopiers [photographic, electrostatic, thermic]; electric plugs; radios; computer memory devices; batteries, electric; computers; computer keyboards; computer peripheral devices; electronic pens [visual display units]; mouse [computer peripheral]; printers for use with computers; notebook computers; mouse pads; bags adapted for laptops; tablet computers; devices for the projection of virtual keyboards.*

2. European Union trade mark application No 19 166 965 is rejected for all the above goods. It may proceed for the remaining goods, namely:

   Class 9: *Solar panels for the production of electricity.*

3. Each party bears its own costs.

REASONS

On 03/07/2025, the opponent filed an opposition against all the goods of European Union trade mark application No 19 166 965  (figurative mark). The opposition is based on

international trade mark registration designating the European Union No 1 378 087  (figurative mark). The opponent invoked Articles 8(1)(b) and 8(5) EUTMR.

REPUTATION — ARTICLE 8(5) EUTMR

According to Article 8(5) EUTMR, upon opposition by the proprietor of a registered earlier trade mark within the meaning of Article 8(2) EUTMR, the contested trade mark will not be registered where it is identical with, or similar to, an earlier trade mark, irrespective of whether the goods or services for which it is applied are identical with, similar to or not similar to those for which the earlier trade mark is registered, where, in the case of an earlier European Union trade mark, the trade mark has a reputation in the Union or, in the case of an earlier national trade mark, the trade mark has a reputation in the Member State concerned and where the use without due cause of the contested trade mark would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.

Therefore, the grounds for refusal of Article 8(5) EUTMR are only applicable when the following conditions are met.

- The signs must be either identical or similar.
- The opponent's trade mark must have a reputation. The reputation must also be prior to the filing of the contested trade mark; it must exist in the territory concerned and for the goods and/or services on which the opposition is based.
- Risk of injury: use of the contested trade mark would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.

The abovementioned requirements are cumulative and, therefore, the absence of any one of them will lead to the rejection of the opposition under Article 8(5) EUTMR (16/12/2010, T-357/08, BOTOCYL / BOTOX, EU:T:2010:529, § 41; 16/12/2010, T-345/08, BOTOLIST / BOTOX, EU:T:2010:529, § 41). However, the fulfilment of all the abovementioned conditions may not be sufficient. The opposition may still fail if the applicant establishes due cause for the use of the contested trade mark.

In the present case, the applicant did not claim to have due cause for using the contested mark. Therefore, in the absence of any indications to the contrary, it must be assumed that no due cause exists.

a) Reputation of the earlier trade mark

Reputation implies a knowledge threshold that is reached only when the earlier mark is known by a significant part of the relevant public for the goods or services it covers. The relevant public is, depending on the goods or services marketed, either the public at large or a more specialised public.

In the present case, the contested trade mark was filed on 02/04/2025. Therefore, the opponent was required to prove that the trade mark on which the opposition is based had acquired a reputation prior to that date. In principle, it is sufficient that the opponent show that its mark already had a reputation on that date. While it follows from the wording of Article 8(5) EUTMR that the conditions for its application also need to be present at the time

of taking the decision, and therefore the reputation of the earlier mark must subsist until the decision on the opposition is taken, any subsequent loss of reputation is for the applicant to claim and prove.

The evidence must also show that the reputation was acquired for the goods for which the opponent has claimed reputation, namely:

Class 9: *Computers; computer hardware; handheld computers; tablet computers; smartphones; computer peripheral devices; earphones; audio speakers.*

The opposition is directed against the following goods:

Class 9: *Audiovisual teaching apparatus; chargers for electric accumulators; cabinets for loudspeakers; photocopiers [photographic, electrostatic, thermic]; electric plugs; radios; computer memory devices; batteries, electric; computers; computer keyboards; computer peripheral devices; electronic pens [visual display units]; mouse [computer peripheral]; printers for use with computers; notebook computers; mouse pads; bags adapted for laptops; tablet computers; solar panels for the production of electricity; devices for the projection of virtual keyboards.*

In order to determine the mark's level of reputation, all the relevant facts of the case must be taken into consideration, including, in particular, the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.

On 26/01/2026 the opponent submitted evidence and arguments to prove reputation of its earlier marks.

The evidence is structured in annexes and according to the facts presented in a witness statement signed by the Senior Director of the opponent's Legal Department. The witness statement and the accompanying exhibits (indexed from TLP-1 to TLP-30) provide information on the following:

Annex 1: Witness statement by the Senior Director of Apple's Legal Department that presents the history of Apple. In particular, it mentions that the opponent's company, incorporated in 1977, designs, manufactures and markets mobile communication and media devices and personal computers and sells a variety of related software, services, accessories and third-party digital content and applications. Apple sells its products worldwide through its retail stores, online stores and direct sales force, as well as through third-party cellular network carriers, wholesalers, retailers, and resellers. In addition, Apple sells a variety of third-party Apple-compatible products, including application software and various accessories, through its online and brick-and-mortar retail stores. Apple sells to consumers, small and medium-sized businesses, education, enterprise and government customers. Examples of Apple products and services include: the iPhone, iPad, Mac, iPod, Apple Watch, AirPods, Apple TV and HomePod devices; a portfolio of consumer and professional software applications; the iOS, macOS, tvOS, and watchOS operating systems; the iCloud platform; the Apple Pay service; and a variety of other accessories, services, and support offerings such as Apple Arcade and Apple Health. Apple also sells and delivers digital content and applications through Apple Music, the iTunes Store, App Store, Mac App Store, Apple TV App Store, Apple Books and Apple Music. It further states that, over the course of its more than 40 years of operation, 'Apple has earned a loyal customer base and its goods and services have become some of the most recognized among the public, Apple's commitment to bringing the best user experience to its consumers through its innovative goods and services has earned it a reputation as a pioneer in the field of technology'.

The witness statement mentions, inter alia, that the company's famous Apple marks, including the Apple logo  , which is a visual equivalent of the 'APPLE' word mark, has been in continuous and prominent use by the opponent since at least 1977. Information is also provided on the history of the Apple trade marks (including the earlier mark) in Europe. This includes, inter alia, the information that in June 1977 the opponent began shipping products branded with the Apple marks to Europe; Apple opened a manufacturing plant, support and distribution centres and various offices throughout Europe; and by the end of 1986, Apple was selling its goods and services under the Apple marks in more than 80 countries worldwide. Furthermore, it states that both the 'APPLE' word mark and Apple logo are synonymous with the brand itself and as a result have become indelibly linked with the broad variety of goods and services originating from Apple. The witness statement provides further detailed information concerning the various products marketed under the trade mark, the brand value and recognition of the Apple brand, supported by various rankings carried out by independent bodies. It also claims that the Apple brand is widely recognised as one of the most popular brands in the European Union.

- **Exhibits TLP-1-3**: A wide range of articles evidencing the opponent's commercial success worldwide over the years. Among others, printouts from http://www.bbc.co.uk featuring an article, dated 08/11/2017, titled 'Apple is first public company worth $1 trillion' and one published on 04/01/2022 titled 'Apple becomes first firm to hit $3tn market value'; 'printouts from *Business Insider*, dated 08/11/2017, titled 'Apple just did something unprecedent: its market value passed 900$ billion'; and a printout from http://fortune.com featuring a list of Fortune's 2019 to 2024 'World's Most Admired Companies', placing Apple at number one.

- **Exhibit TLP-4**: copies of *Interbrand*'s 'Best Global Brands' rankings from 2020 and 2024: the Apple brand was estimated to be worth around USD 500 billion in 2024, and it ranked first globally. The opponent also submitted copies of 'Kantar Brandz' Most Valuable Global Brands' annual rankings from 2021 to 2024. The evidence ranks the Apple mark, identified by the name or the logo, as the most valuable brand in the world in 2023 and 2024 while second most valuable brand in 2021. The opponent also submitted copies of the following: 'The World's Most Valuable Brands' rankings by *Forbes* for 2012, 2013, 2015, 2016, 2017, 2018, 2019 and 2020, listing Apple as number one each year and with an estimated value of USD 241.2 billion in 2020; article published on 10/02/2012 titled 'Apple Tops List Of The World's Most Powerful Brands' and stating, inter alia, that 'Apple remains a leader in innovation that is adored by consumers around the world'. The exhibit also contains printouts from https://theharrispoll.com concerning 'The Harris Poll' 2018, 2019 and 2020, measuring brand equity by familiarity, quality and purchase consideration and listing Apple as the 2018 Brand of the Year in the award categories 'Smartphone', 'Tablet computer' and 'Virtual Personal Assistant' (together with Amazon Alexa). In 2019 Apple was brand of the year in 'Audio Streaming Services', 'Smartphone', 'Tablet Computer', 'Virtual Personal Assistant' and 'Wearable Tech'. In 2020 Apple was brand of the year in 'Smartphone', 'Tablets', 'Virtual Personal Assistant' and 'Wearable Tech'. In addition, it was submitted the 'Cool Brands' rankings from 2009/2010 to 2016/2017 which show, inter alia, that in 2009, iPhone, Apple and iPod were voted among the top four 'Cool Brands' and that from 2012 to 2016 Apple was the number one on this list. Finally, a summary of the 'European Passion Study 2010' survey conducted by PanelTeam (a Dutch online research agency) covering 10 000 respondents, according to which Apple is 'the brand Europeans feel most passionate about'.

- **Exhibit TLP-5**: the witness statement specifies Apple's annual net sales in Europe from fiscal year 2019 to 2024 (the amounts range around several hundreds of millions). The evidence in support of these statements consists of copies of the relevant pages from 'Apple Inc. Form 10-K Annual Reports', as filed with the United States Securities and Exchange Commission.

- **Exhibit TLP-6**: A wide range of articles issued from 2007 onwards, primarily focusing on the opponent's product, the Apple iPhone, refer to its commercial success in the EU and technical characteristics. For instance, it is noted that the opponent's product ranked among the ten best-selling smartphones in 2022 in markets such as Germany and France. In most of the articles, the Apple iPhone is consistently listed among the most popular and widely sold phones in the EU and worldwide. Furthermore, in the various images provided, the logo or the mark 'APPLE' is clearly displayed on the products or referred to in the articles, e.g.

- **Exhibit TLP-7:** Form 10-K 'Annual Reports' for the years 2019 to 2025 reporting the commercial performance of some of the opponent's products like iPhone, Mac, IPad, accessories and services, amounting to hundreds of millions.

- **Exhibit TPL-8:** Study titled 'iPhone Social Media Audit' issued by Kantar concerning the European Union from where it derives that 'iPhone' is not a generic term amongst consumers for a smartphone product, but is directly associated with Apple and perceived as the name of a specific smartphone product originating from the company, including its technology and software/hardware features, as well as its integration with other Apple products, by analyzing online data.

- **Exhibit TLP-9**: A wide range of articles issued from 2010 onwards, primarily focusing on the opponent's product, the Apple iPad, refer to its commercial success in the EU and technical characteristics. For instance, it results that in 2010 3 million devices were sold in only 80 days. In 2024 the iPad pro was defined as 'Spectacular' '…a level that the competition can only dream of' by a German magazine.

- **Exhibit TLP-10-11:** A wide range of articles issued from 2012 onwards, primarily focusing on the opponent's product, the Apple Mac series, refer to its commercial success in the EU and technical characteristics.

- **Exhibit TLP-12-17:** A wide range of articles issued from 2014 onwards, primarily focusing on the opponent's product, the Apple Watch, refer to its commercial success in the EU and technical characteristics.

- **Exhibit TLP-18-25:** A wide range of articles issued from 2017 onwards, primarily focusing on the opponent's product, the Apple TV, Vision Pro, HomePod, AirPod, accessories, and Software some of them refer to its commercial success in the EU and technical characteristics.

- **Exhibit TLP-26:** Statistic data concerning the traffic of the opponent's website divided for various EU countries, such as Italy, Spain, France, Germany. The documents provided show that the website is visited by millions of users.

- **Exhibit TLP-27:** a selection of press articles in English, French and Spanish, dated between 2004 and 2017, reporting on, inter alia, the '10 most popular Apple products in history' (e.g. laptops, phones, tablets and software) or the opening of the London Apple store, the first in Europe, with references to the Apple mark and to Apple products. They state, inter alia, that 'Apple is the best brand and design studio of the last 50 years' and that 'Apple is world's most admired company for fifth year in a row'.

- **Exhibit TLP-28-30:** A wide range of images displaying advertising material on billboard in various cities of the EU like Paris. The opponent also provided advertising material on Youtube and additional articles concerning the announcement of new Apple products.

Annex 2: Copies of previous Office decisions acknowledging the reputation and recognition of, in particular, 'APPLE' and the Apple logo.

Annex 3: Market share statistics for the period 2020–2025, issued by StatCounter, show that within the European Union, the share of the mobile operating system of the opponent (IOS) is around 37%.

Annex 4: A study issued by World Population Review in 2025 which evidences the global diffusion of the opponent's 'iPhone'. As far as the European Union is concerned, the study indicates a strong presence. For instance, approximately 80% in Lithuania, 70% in Denmark, and around 40% in Germany.

Annexes 5, 6: A European Commission report from June 2021 indicates that 96% of Europeans had access to a mobile phone (at least 90% in every Member State). Based on Eurostat data showing an EU population of 447 million in 2021, this corresponds to approximately 433.6 million mobile users. According to the opponent, applying a 36.5% market share for iOS, at least 79.1 million consumers in the EU had access to an iPhone in 2021.

Assessment of the evidence

An overall evaluation of the substantial amount of evidence submitted by the opponent leaves no doubt that the trade mark at issue is generally known in the relevant market, where it enjoys a consolidated position among the leading brands, as has been attested by diverse independent sources. Used by the opponent for decades, the brand is featured prominently on its devices and in connection with software products, as well as with other services. The brand studies and articles, the sales figures, the marketing efforts and the international rankings, which place the trade mark among the most valuable global brands, including as the world's most valuable brand many times in recent years; the impressive and constantly increasing number of customers and sales; the various references in the press to its success – all these unequivocally show that the Apple brand **enjoys a high degree of reputation among the relevant public in the European Union** in connection with the following goods:

Class 9: *Computers; computer hardware; tablet computers; smartphones; computer peripheral devices.*

However, the evidence does not succeed in establishing that the opponent has a reputation for all of the goods for which a reputation is claimed. The evidence that can be taken into account mainly relates to the abovementioned goods whereas the evidence makes little or no reference to the remaining goods (which are not otherwise covered by or comparable to those listed above).

b) The signs

	
Earlier trade mark	Contested sign

The relevant territory is European Union.

The opponent has proved that the earlier mark is reputed throughout the European Union.

The global appreciation of the visual, aural or conceptual similarity of the marks in question must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 23).

The earlier mark is a figurative sign consisting of the stylised representation of an apple with a bite mark on its right-hand side and a detached leaf leaning to the right above it (31/01/2019, T-215/17, PEAR (fig.) / APPLE BITE (fig.) et al., EU:T:2019:45, § 40). This element is inherently distinctive to an average degree in relation to the relevant goods for which a reputation has been proved, since it is not directly related to them.

The contested application consists of a stylised circular device. In its upper part, a sinuous element is depicted, inclining towards the left and tapering at its top-left and lower-right ends, where it meets the upper portion of the circle. The circle is incomplete on its right side. Within the circle, the upper area features geometric triangular shapes, while the lower part comprises square and rectangular elements.

The opponent argues that the figurative element of the contested sign also consists of an apple device with a detached leaf and a bite. However, the body of the figurative element consists of a circle (despite the missing part) and apples are not perfectly round. Furthermore, apples are not normally depicted in such a shape which is, in any case, more akin to an orange or other round-shaped fruits. Therefore, while the Opposition Division agrees that the figurative element of the contested sign is likely to be perceived as depicting

a fruit of some sort and that the detached oblong shape is therefore also likely to be perceived as depicting a leaf, in view of its round shape together with the relatively generic leaf shape, it will not be immediately associated with any fruit in particular but rather with a round-shaped fruit in general. It follows from the above that, in the present case, the relevant public will perceive the contested application as a highly stylised round-shaped fruit bearing additional fanciful figurative elements. In particular, the triangular shapes, due to their arrangement, may be seen as segments. Furthermore, the square and rectangular figures in the lower part, again by virtue of their arrangement, may evoke a keyboard. Finally, the fruit appears to be incomplete, as it displays a missing part on its right-hand side. Despite the fact that the representation of a keyboard is, in itself, weak or non-distinctive for most of the goods concerned (i.e. those that are IT goods), the contested sign depicts a complex and stylised component which, as a whole, has an average degree of distinctiveness, as it does not directly relate to the goods at issue.

Finally, the signs under comparison have no elements that can be considered more dominant (visually eye-catching) than other elements.

Visually, and contrary to the opponent's submissions, while the signs display numerous differences, some minor commonalities nevertheless remain. In particular, the main differences can be identified in the following factors: (i) the shape is perfectly round in the contested sign, whereas it is sinuous in the earlier mark; (ii) the leaf in both signs is differently oriented and arranged; (iii) the missing part in both signs is differently portrayed and stylised; and (iv) the contested sign contains additional internal elements namely, the segments and a keyboard-like figure, whereas the earlier mark does not.

Notwithstanding these differences, the Opposition Division acknowledges that some minor visual resemblance subsists between the signs at issue. In particular, both signs share a broadly similar structure, consisting of a round (or approximately round) shape with a leaf element in the upper part and a missing segment on the right-hand side.

Bearing in mind all the above, and considering the specific structure and peculiarities of the signs, it is concluded that they are **visually similar, albeit to a very low degree**.

Aurally, since purely figurative signs are not subject to a phonetic assessment and as both signs are purely figurative, it is **not possible** to compare them aurally.

Conceptually, reference is made to the previous assertions concerning the semantic content conveyed by the marks to the part of the public under analysis.

Two signs are identical or similar conceptually when they are perceived as having the same or analogous semantic content (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 24). In this respect, while it is it is admittedly true that each of the signs in dispute may be described as using the image of a fruit, the mere fact that two figurative elements can be grouped under a common generic term by no means constitutes a case of conceptual similarity. The protection which is granted to an earlier figurative mark does not apply, in the absence of commonalities with the depiction of the mark cited in opposition, to the general category of phenomena that it depicts (31/01/2019, T-215/17, PEAR (fig.) / APPLE BITE (fig.) et al., ECLI:EU:T:2019:45, § 72).

It follows from the considerations set out in the description of the signs above that the signs will not be perceived as having the same or an analogous semantic content even if they will both be perceived as possessing a leaf and a missing part since the earlier mark will be associated with an apple with a bite taken out of it whereas the figurative element of the contested sign will be perceived as representing an unidentifiable round-shaped fruit with a

missing part, sections and a keyboard. Consequently, the opponent's claim that the signs are closely connected, because they will both be associated with an apple device must be set aside as unfounded.

Therefore, the signs in dispute, when considering the concepts conveyed by the respective figurative elements as a whole, are conceptually different. As a result, contrary to the opponent's allegations, **the signs are not conceptually similar**.

Taking into account that the signs have been found visually similar to a very low degree, the examination of the existence of a risk of injury will proceed.

c) The 'link' between the signs

In order to establish the existence of a risk of injury, it is necessary to demonstrate that, given all the relevant factors, the relevant public will establish a link (or association) between the signs. The necessity of such a 'link' between the conflicting marks in consumers' minds is not explicitly mentioned in Article 8(5) EUTMR but has been confirmed by several judgments (23/10/2003, C-408/01, Adidas, EU:C:2003:582, § 29, 31; 27/11/2008, C-252/07, Intel, EU:C:2008:655, § 66). It is not an additional requirement but merely reflects the need to determine whether the association that the public might establish between the signs is such that either detriment or unfair advantage is likely to occur after all of the factors that are relevant to the particular case have been assessed.

Possible relevant factors for the examination of a 'link' include (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 42):

- the degree of similarity between the signs;
- the nature of the goods and services, including the degree of similarity or dissimilarity between those goods or services, and the relevant public;
- the strength of the earlier mark's reputation;
- the degree of the earlier mark's distinctive character, whether inherent or acquired through use;
- the existence of likelihood of confusion on the part of the public.

This list is not exhaustive and other criteria may be relevant depending on the particular circumstances. Moreover, the existence of a 'link' may be established on the basis of only some of these criteria.

As regards the degree of similarity between the marks at issue, it is clear from the case-law that the more immediately and strongly the mark is brought to mind by the sign, the greater the likelihood that the current or future use of the sign is taking, or will take, unfair advantage of the distinctive character or the repute of the mark or is, or will be, detrimental to it (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 67-69; 18/06/2009, C-487/07, L'Oreal, EU:C:2009:378, § 44).

Furthermore, the degree of similarity between the signs required under Article 8(5) EUTMR differs from that required under Article 8(1)(b) EUTMR. Therefore, whereas the protection provided for under Article 8(1)(b) EUTMR is conditional upon a finding of a degree of similarity between the marks at issue such that there is a likelihood of confusion between them on the part of the relevant section of the public, the existence of such a likelihood is not

necessary for the protection conferred by Article 8(5) EUTMR. Accordingly, the types of injury referred to in Article 8(5) EUTMR may result from a lesser degree of similarity between the marks in question, provided that it is sufficient for the relevant section of the public to make a connection between those marks, that is to say, to establish a link between them (24/03/2011, C-552/09 P, TiMiKinderjoghurt, EU:C:2011:177, § 53).

Although the signs are not aurally comparable and conceptually not similar, they have been found visually similar to a very low degree. Furthermore, the earlier mark has been found to enjoy a high degree of reputation in the European Union. In this respect, the stronger the distinctive character of the earlier mark, the more likely it is that, when encountering a later similar mark, the relevant public will associate it with that earlier mark.

Another factor to consider when assessing whether there is a 'link' between the signs is the relevant goods.

The opposition is directed against the following goods:

Class 9: *Audiovisual teaching apparatus; chargers for electric accumulators; cabinets for loudspeakers; photocopiers [photographic, electrostatic, thermic]; electric plugs; radios; computer memory devices; batteries, electric; computers; computer keyboards; computer peripheral devices; electronic pens [visual display units]; mouse [computer peripheral]; printers for use with computers; notebook computers; mouse pads; bags adapted for laptops; tablet computers; solar panels for the production of electricity; devices for the projection of virtual keyboards.*

The goods for which a reputation has been proved are the following:

Class 9: *Computers; computer hardware; tablet computers; smartphones; computer peripheral devices.*

The goods for which reputation has been established have, or may have, a close connection with all the contested goods in Class 9, with the sole exception of *solar panels for the production of electricity*.

In particular, such relevant goods fall within the same, or closely related, market sectors, namely IT devices and related hardware. Furthermore, most of them share relevant factors, such as their producers/providers, target public and distribution channels.

Therefore, although the signs are only visually similar to a very low degree, the Opposition Division concludes that, when encountering the contested sign in relation to the above-mentioned goods in Class 9 – which have, or may have, a close connection with the goods for which the earlier mark enjoys a high degree of reputation – the relevant consumers are likely to associate it with the earlier mark, that is to say, **to establish a mental 'link' between the signs**.

On the other hand, the contested *solar panels for the production of electricity* are devices designed to convert sunlight directly into electrical energy through the photovoltaic effect. These panels are used in a wide range of applications, from small-scale residential installations to large industrial and utility-scale solar farms. The contested goods at stake do not target the same relevant consumers, since they satisfy completely different needs and have different distribution channels. Furthermore, these goods are not complementary or in competition and are not produced or provided by the same undertakings. Moreover, the goods themselves are completely different and belong to market sectors that have no material overlap. In addition, the signs are only visually similar to a very low degree. Therefore, and because these contested goods and the opponent's relevant goods for which

a reputation has been proved belong to distinct industries and commercial sectors that have nothing clearly relevant in common, the Opposition Division finds it highly unlikely that the relevant public, when encountering the contested sign in relation to such services, would recall the earlier mark, even if it enjoys a high degree of reputation.

Therefore, taking into account and weighing up all the relevant factors of the present case in relation to the contested *solar panels for the production of electricity*, and in the absence of any convincing arguments and supporting evidence to the contrary, the Opposition Division concludes that **it is unlikely that the relevant public will make a mental connection between the signs in dispute, that is to say, establish a 'link' between them**. In this respect, the Opposition Division acknowledges that the opponent refers to opposition B 3 070 951 in order to substantiate the alleged proximity between the above mentioned contested goods and certain computer devices that may be capable of using, storing or transferring solar energy. However, the decision relied upon concerns *solar batteries*, which are rather different from the contested goods, namely *solar panels for the production of electricity*. Consequently, that decision is not considered relevant in the present case.

Nevertheless, for the reasons set out above, and weighing up all the relevant factors of the present case, it must be concluded that, when encountering the contested mark in relation to all the remaining contested goods in Class 9, the relevant consumers will be likely to associate it with the earlier sign, that is to say, establish a mental 'link' between the signs. However, although a 'link' between the signs is a necessary condition for further assessing whether detriment or unfair advantage are likely, the existence of such a link is not sufficient, in itself, for a finding that there may be one of the forms of damage referred to in Article 8(5) EUTMR (26/09/2012, T 301/09, Citigate, EU:T:2012:473, § 96).

d) Risk of injury

Use of the contested mark will fall under Article 8(5) EUTMR when any of the following situations arise:

- it takes unfair advantage of the distinctive character or the repute of the earlier mark;
- it is detrimental to the repute of the earlier mark;
- it is detrimental to the distinctive character of the earlier mark.

Although detriment or unfair advantage may be only potential in opposition proceedings, a mere possibility is not sufficient for Article 8(5) EUTMR to be applicable. While the proprietor of the earlier mark is not required to demonstrate actual and present harm to its mark, it must 'adduce prima facie evidence of a future risk, which is not hypothetical, of unfair advantage or detriment' (06/07/2012, T-60/10, ROYAL SHAKESPEARE / RSC- ROYAL SHAKESPEARE COMPANY et al., EU:T:2012:348, § 53).

It follows that the opponent must establish that detriment or unfair advantage is probable, in the sense that it is foreseeable in the ordinary course of events. For that purpose, the opponent should file evidence, or at least put forward a coherent line of argument demonstrating what the detriment or unfair advantage would consist of and how it would occur, that could lead to the prima facie conclusion that such an event is indeed likely in the ordinary course of events.

The opponent claims that use of the contested trade mark would take unfair advantage of the distinctive character or the repute of the earlier trade mark and be detrimental to the distinctive character of the earlier trade mark.

Unfair advantage (free-riding)

Unfair advantage in the context of Article 8(5) EUTMR covers cases where there is clear exploitation and 'free-riding on the coat-tails' of a famous mark or an attempt to trade upon its reputation. In other words, there is a risk that the image of the mark with a reputation or the characteristics which it projects are transferred to the goods and services covered by the contested trade mark, with the result that the marketing of those goods and services is made easier by their association with the earlier mark with a reputation (06/07/2012, T-60/10, ROYAL SHAKESPEARE / RSC- ROYAL SHAKESPEARE COMPANY et al., EU:T:2012:348, § 48; 22/03/2007, T-215/03, VIPS / VIPS, EU:T:2007:93, § 40).

The proprietor of the earlier mark bases its claim on the following:

> *The use of the Applicant's sign will take unfair advantage of the reputation of the Opponent's Apple Logo, in that it enhances consumers' readiness to take note of, and trust in, the goods marketed under the Applicant's sign. This risk is greatly enhanced by the very high degree of recognition enjoyed by the Opponent's Earlier Mark. Moreover, the Apple Logo is one of the most established and renowned technology manufacturers in the world and triggers an immediate association on the part of consumers in the EU. This effect, resulting from the consistent and significant use of the Opponent's Earlier Mark and from the significant efforts made by the Opponent to maintain the uniqueness, would suffer detriment if another sign that is as similar as the Applicant's sign were allowed to be used in the marketplace. Given the immense reputation of the Opponent's Earlier Mark, it is hard to believe that the Applicant's intention was not, at the very least, to bring the Opponent's Apple Logo to mind in some way. More likely, the Application represents a deliberate attempt to take advantage of that reputation to offer identical and highly similar goods. As a result, the addressed public, when confronted with the Applicant's sign, will wrongly assume that the Application indicates a connection to Apple (i.e. that the Applicant is a supplier or manufacturer). The link between the marks is therefore liable to increase sales of goods under the Application.*

According to the Court of Justice of the European Union

> … as regards injury consisting of unfair advantage taken of the distinctive character or the repute of the earlier mark, in so far as what is prohibited is the drawing of benefit from that mark by the proprietor of the later mark, the existence of such injury must be assessed by reference to average consumers of the goods or services for which the later mark is registered, who are reasonably well informed and reasonably observant and circumspect.
>
> (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 36.)

The relevant contested goods in Class 9 have, or can have, a (close) connection to most the goods for which the earlier mark enjoys a high degree of reputation as an iconic landmark in the field of consumer technology products. The opponent's earlier mark is instantly recognised by consumers everywhere as a defining signature of the opponent's company, a pioneer and leader in the field of technology and, as shown by the evidence, ranked for several years in a row as the world's most admired company. With a consolidated and string market presence of almost 40 years at the relevant date and ranked several times as the

most valuable global brand, the famous Apple logo (the earlier mark) conveys an image of innovation, creativity, imagination, design, user-friendliness and functionality that will be immediately transferred to the relevant contested goods in Classes 9.

The 'good' and 'special' reputation of the earlier mark, in that it conveys a positive message or brand image, as set out above, that will be transferred to the image of the contested sign in the minds of the consumers, could positively influence, without any marketing efforts or investment by the applicant on its own, the choice of those consumers as regards the contested goods in Class 9 offered under the contested sign vis-à-vis those offered by other providers.

On the basis of the above and the arguments put forward by the opponent, the contested trade mark is likely to take unfair advantage of the distinctive character or the repute of the earlier trade mark.

Other types of injury

The opponent also argues that use of the contested trade mark would be detrimental to the distinctive character of the earlier trade mark.

As seen above, the existence of a risk of injury is an essential condition for Article 8(5) EUTMR to apply. The risk of injury may be of three different types. For an opposition to be well founded in this respect it is sufficient if only one of these types is found to exist. In the present case, as seen above, the Opposition Division has already concluded that the contested trade mark would take unfair advantage of the distinctive character or repute of the earlier trade mark. It follows that there is no need to examine whether other types also apply.

f) Conclusion

Considering all the above, the opposition is well founded under Article 8(5) EUTMR insofar as it is directed against the following goods:

Class 9: *Audiovisual teaching apparatus; chargers for electric accumulators; cabinets for loudspeakers; photocopiers [photographic, electrostatic, thermic]; electric plugs; radios; computer memory devices; batteries, electric; computers; computer keyboards; computer peripheral devices; electronic pens [visual display units]; mouse [computer peripheral]; printers for use with computers; notebook computers; mouse pads; bags adapted for laptops; tablet computers; devices for the projection of virtual keyboards.*

The opposition is not successful insofar as the remaining goods, for which a link was not established, are concerned namely:

Class 9: *Solar panels for the production of electricity.*

The Opposition Division will now assess the case on the basis of the other grounds invoked by the opponent and in relation to the contested goods for which a link was not found.

LIKELIHOOD OF CONFUSION — ARTICLE 8(1)(b) EUTMR

Pursuant to Article 8(1)(b) EUTMR, a likelihood of confusion exists if there is a risk that the public might believe that the goods or services in question, under the assumption that they bear the marks in question, come from the same undertaking or, as the case may be, from

economically linked undertakings. Whether a likelihood of confusion exists depends on the appreciation in a global assessment of several factors, which are interdependent. These factors include the similarity of the signs, the similarity of the goods and services, the distinctiveness of the earlier mark, the distinctive and dominant elements of the conflicting signs, and the relevant public.

a) The goods

The goods on which the opposition is based are the following:

Class 9: *Computers; computer hardware; handheld computers; tablet computers; smartphones; computer peripheral devices; earphones; keyboards; mice; mouse pads; audio speakers; electrical and electronic connectors; chargers; covers for computers.*

The relevant contested goods, for which the link was not found, are the following:

Class 9: *Solar panels for the production of electricity.*

The relevant factors relating to the comparison of the goods or services include, inter alia, their nature, their intended purpose, their method of use and whether they are in competition with each other or are complementary ('the Canon criteria'). It is also necessary to take into account, besides the Canon criteria, other factors, namely distribution channels, the relevant public and the usual origin of the goods or services (02/06/2021, T-177/20, Hispano Suiza / Hispano Suiza, EU:T:2021:312, § 21-22).

As outlined above, the contested goods are specific devices that convert sunlight into electricity by means of solar modules composed of photovoltaic (PV) cells, which generate electric current when exposed to light. The opponent's *electrical and electronic connectors* can be intended to be used with, and sold separately from, the opponent's goods. These goods can thus target the same relevant public, share the same distribution channels and be produced by the same undertakings. Therefore, they are similar.

b) Relevant public — degree of attention

The average consumer of the category of products concerned is deemed to be reasonably well informed and reasonably observant and circumspect. It should also be borne in mind that the average consumer's degree of attention is likely to vary according to the category of goods or services in question (22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 26).

In the present case, the goods found to be similar target the public at large and business customers with specific professional knowledge or expertise.

The degree of attention may vary from average to high, depending on the specialised nature of the goods, the frequency of purchase and their price.

c) The signs

The relevant territory is the European Union.

The global appreciation of the visual, aural or conceptual similarity of the marks in question must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 23).

The signs have already been compared above under the grounds of Article 8(5) EUTMR. Reference is made to those findings, which are equally valid for Article 8(1)(b) EUTMR, since the trade mark invoked under this ground is the same as the one compared under Article 8(5) EUTMR.

As the signs have been found visually similar to a very low degree, the examination of likelihood of confusion will proceed.

d) Distinctiveness of the earlier marks

The distinctiveness of the earlier mark is one of the factors to be taken into account in the global assessment of likelihood of confusion.

According to the opponent, the earlier trade mark enjoy a high degree of distinctiveness as a result of their long-standing and intensive use in the European Union. The evidence submitted by the opponent to prove the reputation and highly distinctive character of the earlier trade marks has already been examined above under the grounds of Article 8(5) EUTMR. Reference is made to those findings, which are equally valid for Article 8(1)(b) EUTMR.

In this respect, however, the evidence provided does not clearly demonstrate that the earlier trademark has acquired enhanced distinctiveness in relation to the earlier goods found to be similar to the contested ones in the comparison above i.e. *electrical and electronic connectors*. Therefore, it cannot be concluded that the earlier mark acquired enhanced distinctiveness through use in relation to those specific goods.

Consequently, the assessment of the distinctiveness of the earlier marks will rest on their distinctiveness per se. In the present case, as outlined above, the earlier trade mark has no particular meaning for the goods in question from the perspective of the public in the relevant territory. Therefore, the distinctiveness of the earlier marks must be seen as normal.

e) Global assessment, other arguments and conclusion

The appreciation of likelihood of confusion on the part of the public depends, inter alia, on the recognition of the earlier mark on the market, the association which can be made with the registered mark, the degree of similarity between the marks and between the goods or services identified. It must be appreciated globally, taking into account all factors relevant to the circumstances of the case (22/06/1999, C 342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 18; 11/11/1997, C 251/95, Sabèl, EU:C:1997:528, § 22).

For the purposes of that global appreciation, the average consumer of the category of products concerned is deemed to be reasonably well informed and reasonably observant and circumspect. However, likelihood of confusion covers situations where the consumer directly confuses the trade marks themselves, or where the consumer makes a connection between the conflicting signs and assumes that the goods/services covered are from the same or economically linked undertakings

In the present case the goods have been found similar. The degree of attention may vary from average to high. The degree of distinctiveness of the earlier mark is average.

The signs have been found visually similar, albeit to a very low degree. Aurally not comparable and conceptually not similar.

In the present case, the signs share only minor visual commonalities, resulting in a very low degree of visual similarity. This finding, combined with the relevant visual and conceptual differences between the signs, the average degree of distinctiveness of the earlier mark, and the fact that the goods have been found to be only similar, is sufficient to ensure that the overall impressions produced by the signs remain clearly distinct. In these circumstances, the Opposition Division considers that the relevant consumer, who is reasonably well informed and reasonably observant and circumspect, is unlikely to believe that the goods at issue originate from the same undertaking or from economically linked undertakings even when paying an average degree of attention.

Considering all the above, **there is no likelihood of confusion** on the part of the public. Therefore, the opposition must be rejected as far as Article 8(1)(b) EUTMR is concerned.

COSTS

According to Article 109(1) EUTMR, the losing party in opposition proceedings must bear the fees and costs incurred by the other party. According to Article 109(3) EUTMR, where each party succeeds on some heads and fails on others, or if reasons of equity so dictate, the Opposition Division will decide a different apportionment of costs.

Since the opposition is successful for only some of the contested goods, both parties have succeeded on some heads and failed on others. Consequently, each party has to bear its own costs.

The Opposition Division

Angela DI BLASIO	Aldo BLASI	Irene MARUGÁN MARÍN

According to Article 67 EUTMR, any party adversely affected by this decision has a right to appeal against this decision. According to Article 68 EUTMR, notice of appeal must be filed in writing at the Office within two months of the date of notification of this decision. It must be filed in the language of the proceedings in which the decision subject to appeal was taken. Furthermore, a written statement of the grounds for appeal must be filed within four months of the same date. The notice of appeal will be deemed to have been filed only when the appeal fee of EUR 720 has been paid.