

Bouwbenodigdheden Hoogeveen BV

v

European Union Intellectual Property Office

Judgment of the General Court (Eighth Chamber, Extended Composition) of 9 July 2025

(EU trade mark – Revocation proceedings – EU word mark BIENENBEISSER – Genuine use of the mark – Article 58(1)(a) of Regulation (EU) 2017/1001 – Proof of genuine use – Use in connection with the goods in respect of which the mark is registered – Role of the Nice classification – Homogeneous category of goods – Air vents – Obligation to state reasons)

1. EU trade mark – Surrender, revocation and invalidity – Grounds for revocation – Lack of genuine use of the mark – Proof of use – Genuine use – Concept – Criteria for assessment – Requirement of solid and objective evidence

(European Parliament and Council Regulation 2017/1001, Arts 18(1) and 58(1)(a))

(see paragraphs 16, 17, 25)

2. EU trade mark – Lodging of application for EU trade mark – Identification of the goods or services concerned by the trade mark – Use of the general indications in the headings of the classes of the Nice Classification – Scope

(see paragraphs 26-29)

3. EU trade mark – Surrender, revocation and invalidity – Grounds for revocation – Lack of genuine use of the mark – Proof of use – Partial use – Effect – Concept of some of the goods or services covered by the registration – Homogeneous category of goods or services – Concept

(European Parliament and Council Regulation 2017/1001, Arts 18(1)(a) and 58(2))

(see paragraphs 33-39)

4. Action for annulment – Pleas in law – Infringement of essential procedural requirements – Lack of or inadequate statement of reasons – To be considered of the Court's own motion

(Arts 263 and 296 TFEU)

(see paragraph 42)

Résumé

By its judgment, the General Court rules on the obligation, on the Boards of Appeal of the European Union Intellectual Property Office (EUIPO), to state reasons where, in revocation proceedings, the proprietor of the mark at issue puts forward specific and substantiated arguments that the goods covered by that mark come within the same homogeneous category or subcategory of goods even though they belong to different classes of the Nice Classification, ([1](#)) with the result that it is sufficient to demonstrate use of that mark solely for goods in one of those classes in order for the mark to be maintained.

Since 2010, Bouwbenodigdheden Hoogeveen BV, the applicant, has been the proprietor of the EU word mark BIENENBEISSER, registered for metal building materials and building materials (non-metallic) in Classes 6 and 19 of the Nice Agreement, respectively.

In 2021, Sören Pürschel filed an application for revocation (2) of that mark in respect of all the goods for which it had been registered. The Cancellation Division of EUIPO upheld that application in part and revoked that mark for certain goods in Class 6 and for all the goods in Class 19.

The applicant therefore filed a notice of appeal before the Board of Appeal of EUIPO seeking to have that decision set aside in so far as its rights in the contested mark had been revoked in respect of ‘building materials (non-metallic) including air vents’ in Class 19. However, the Board of Appeal of EUIPO dismissed that appeal.

It is in that context that an application for the annulment in part of the decision of the Board of Appeal was brought before the Court in respect of non-metallic air vents.

Findings of the Court

As a preliminary point, the Court notes that, in order to assess whether a trade mark has been put to genuine use ‘in connection with the goods or services in respect of which it is registered’, it is necessary to determine, in the first place, the scope of protection of the mark at issue and, in the second place, the type of goods or services for which that mark has actually been used on the market during the relevant period, in order to ascertain whether that type of goods or services is included in the scope of protection of that mark.

In the first place, as regards the determination of the scope of protection of a mark, the Court states that, although the Nice Classification is purely administrative, the Board of Appeal may use it to determine the range or meaning of the goods in respect of which a mark has been registered. In particular, where the description of the goods or services for which a mark is registered is so general that it may cover very different goods or services, it is possible to take into account, for the purposes of interpretation or as a precise indication of the designation of those goods or services, the classes in the Nice Classification that the trade mark applicant had chosen. To that end, the headings of the goods covered by that mark must be interpreted from a systematic point of view, having regard to the logic and the system inherent in the Nice Classification, while taking into account the descriptions and explanatory notes to the classes, which are relevant in determining the nature and purpose of the goods in respect of which that mark was registered.

Accordingly, in the present case, the Court finds that the Board of Appeal could, without erring, have recourse to the Nice Classification and its explanatory notes in order to determine the scope of protection of the contested mark and observe that Class 6 includes metal building materials whereas Class 19 includes building materials (non-metallic).

In the second place, as regards the determination of the type of goods or services in respect of which the mark at issue was actually used, the Court notes that the applicant used its mark only in relation to some of the goods for which it was registered. In that regard, the Court recalls that, where the grounds for revocation of rights exist in respect of only some of the goods or services covered by the mark, the rights of the proprietor of that mark are to be declared to be revoked in respect of those goods or services only. (3)

First, as regards the concept of ‘some of the goods or services’, the Court notes that a consumer who wishes to purchase a product or service in a category that has been defined particularly precisely and narrowly, within which it is not possible to make any significant subdivisions, will associate all the goods or services belonging to that category with the mark at issue. Accordingly, it is sufficient to require the proprietor of the mark to adduce proof of genuine use in relation to some of the goods or services in that homogeneous category. However, in the case of goods or services which form part of a broad category, which may be subdivided into several independent subcategories, it is necessary to require the proprietor of the mark to adduce proof of genuine use of that mark for each of those independent subcategories. That being said, the Court notes that the concept of ‘partial use’ cannot result in the proprietor of the trade mark being stripped of all protection for goods which, although not identical to those in respect of which he or she has succeeded in proving genuine use, are not in essence different from them. Consequently, the concept of ‘some 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.

Second, as regards the question whether goods form part of a homogeneous category that cannot be subdivided, the Court notes that, in so far as consumers are searching primarily for goods or services

which can meet their specific needs, the purpose or intended use of the goods or services at issue is vital in directing their choices. Consequently, that criterion is of fundamental importance in the definition of a homogeneous category of goods or services. It follows that, to that end, EUIPO is not required to limit itself to the indications of goods or services expressly included in the Nice Classification. Accordingly, to assess whether the goods or services in respect of which the proprietor of a trade mark has used that mark come within an independent category, the only relevant question is whether a consumer who wishes to purchase a product or service coming 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.

In the present case, the Court notes that, admittedly, as the Board of Appeal correctly stated, the arguments put forward by the applicant before EUIPO that metallic and non-metallic air vents belonged to the same homogeneous category of goods, having regard to the fact that they have the same purpose and intended use, did not relate to the determination of the scope of protection of the mark. However, the Court notes that those arguments concerned the question whether the goods in respect of which the contested mark had actually been used on the market during the relevant period formed part of one and the same homogeneous category of goods. Accordingly, the grounds set out by the Board of Appeal, relating to the lack of impact of those arguments on the determination of the scope of protection of the mark at issue, do not enable the applicant to understand the reasons why those arguments were rejected or enable the Court to exercise its power of review. Similarly, by merely stating that the fact that metallic air vents can have some similarities with air vents made of other materials was not relevant to the present case, in that the Board of Appeal's assessment related to whether use had been proven for the registered goods, and not to the analysis of the market situation, the Board of Appeal did not set out to the requisite standard the reasons for rejecting the applicant's arguments. Accordingly, the Court finds that the Board of Appeal's decision is vitiated by a failure to state reasons.

In the light of those considerations, the Court annuls the Board of Appeal's decision in so far as it dismissed the applicant's appeal in respect of non-metallic air vents in Class 19.

([1](#)) Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended.

([2](#)) On the basis of Article 58(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark ([OJ 2017 L 154, p. 1](#)).

([3](#)) Article 58(2) of Regulation 2017/1001.