

DECISION
of the Fourth Board of Appeal
of 12 May 2025

In case R 2472/2023-4

Rituals International Trademarks B.V.

Herengracht 539

1017 BW Amsterdam

The Netherlands

IR Holder / Appellant

represented by Novagraaf Nederland B.V., Hoogoorddreef 5, 1101 BA Amsterdam,
The Netherlands

v

Zheni Aleksieva

zhk Druzhba 1, bl. 172, vh. B, ap. 32

1592 Sofia

Bulgaria

Cancellation Applicant / Defendant

represented by Zlatarevi Patent and Trade mark, Dianabad 31b, b-1/14, 1172 Sofia, Bulgaria

APPEAL relating to Cancellation Proceedings No C 55 197 (International Registration
No 914 438 designating the European Union)

THE FOURTH BOARD OF APPEAL

composed of N. Korjus (Chairperson), L. Marijnissen (Rapporteur) and A. Kralik (Member)

Registrar: H. Dijkema

gives the following

Decision

Summary of the facts

- 1 On 9 June 2006, claiming priority as from 3 March 2006 of Benelux trade mark application No 1 105 791, Masada B.V., subsequently transferring its right to Rituals International Trademarks B.V. ('the IR holder'), designated the European Union in its international registration for the mark in standard characters

RITUALS

('the contested mark') for the following goods and services:

Class 3: *Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; laundry products for woven fabrics; fabric softeners; perfumery, essential oils, cosmetic preparations, colognes, eau de toilette, perfume body sprays; cosmetic oils, creams and lotions for skincare purposes; shaving foam, shaving gel, pre-shaving and after-shaving lotions; talcum powder for toiletry use; toiletries for the bath and shower use; hair lotions; dentifrices; non-medicated mouthwashes, deodorants for personal use, anti-perspirants (toiletries); non-medicated toilet preparations; depilatory preparations; non-medicated massage preparations (cosmetics); tissues impregnated with cosmetic lotions.*

Class 4: *Wicks for candles and lamps; tallow; fuel for lighting; paper spills for lighting; beeswax; oils and waxes for preservation purposes.*

Class 21: *Brushes (except paint brushes); combs; sponges including so called "body loofah" (not for surgical and medical purposes); cosmetic brushes; toilet cases.*

Class 24: *Textiles and textile goods, not included in other classes; bed and table covers; bed clothes and bedding including sheets, bed mattress covers, loose covers, duvet covers, pillowcases, sleeves for decoration, children's bedding; quilts; bed covers; eiderdowns; bath linen (except clothing); towels of textile; textile for kitchen use; fabrics, for textile use; mosquito nets.*

Class 30: *Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice.*

Class 35: *Retail services and business intermediary services for the wholesale of bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, laundry products for woven fabrics, fabric softeners, perfumery, essential oils, cosmetic preparations, colognes, eau de toilette, perfume body sprays, cosmetic oils, creams and lotions for skincare purposes, shaving foam, shaving gel, pre-shaving and after-shaving lotions, talcum powder for toiletry use, toiletries for the bath and shower use, hair lotions, dentifrices, non-medicated mouthwashes, deodorants, anti-perspirants for personal use, non-medicated toilet*

preparations, depilatory preparations, non-medicated massage preparations, wicks for candles and lamps, tallow, fuel for lighting, paper spills for lighting, beeswax, oils and waxes, all for household use and home decoration (not included in other classes), brushes (except paint brushes), combs, sponges and body loofah (not for surgical and medical purposes), cosmetic brushes and cosmetic removing paper, toilet cases, containers for household or kitchen use (except in precious metal), steelwool, candle holders and soap dishes, glassware, porcelain and earthenware not included in other classes, textiles and textile goods not included in other classes, bed and table covers, bed clothes and bedding including sheets, bed mattress covers, loose covers, duvet covers, pillowcases, sleeves for decoration, children's bedding, quilts, bed spreads, comforters, duvets, bath linen (except clothing), towels of textile, textile for kitchen use, fabrics, for textile use, mosquito nets, clothing, footwear, headgear, coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionery, ices, honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices, ice; business management and economic consulting services related to franchising; advertising, sales promotion, market prospecting, market research and market analysis for the service industries and retail, wholesale and distribution companies; business intermediary services related to the import and export of consumer goods.

- 2 The contested mark was published in accordance with Article 190(2) EUTMR on 4 February 2008 and renewed until 9 June 2026.
- 3 On 28 June 2022, Zheni Aleksieva ('the cancellation applicant') filed an application for revocation of the contested mark for all the above goods and services.
- 4 The grounds of the application for revocation were those laid down in Article 58(1)(a) EUTMR.
- 5 On 6 September 2022, the IR holder submitted the following evidence as proof of use:
 - Annex 1A-G: Invoices issued by the IR holder to its distributors in Belgium, the Netherlands, Germany and France, dated between 2017 and 2021 for the following goods: perfumes, shaving products, shaving gels and creams, aftershaves, cosmetic and massage oils, shower gels, hair products, shampoos, conditioners, face creams, body moisturizers, face exfoliators, face masks, cosmetic cleansers, various cosmetic skin care products, body lotions, anti-perspirant sprays, fragrance sticks, bath foams, eau de toilette, soaps and hand washes, body scrubs, scented candles, make-up removers, cosmetic sets, shower oils, hair & body mists, hair waxes, bathrobes, bath towels, kimonos, perfume cartridges, candle holders, toothbrush holders and soap dispensers;
 - Annex 2A-Q: Invoices for marketing and advertising issued by companies in the Netherlands, Germany, Belgium, Spain and Poland, to Ritual Cosmetics, dated between February 2021 and May 2022, for what seems to be advertisements in magazines and television, and Christmas cards; prices are undisclosed;
 - Annex 3A: A brand perception report from 2017 carried out by the independent research agency MeMo², in 12 countries (EU and non-EU) showing considerable awareness of the mark 'Rituals', in some regions, among the female 18-40 year-

old population (e.g. 90 % in the Netherlands, 75% in Flanders (Belgium), 62% in Wallonia (Belgium), 40 % in Germany, 60 % in Sweden and 37 % in Spain);

- Annex 3B: A brand awareness search report carried out by the independent research agency PanelWizard in September 2021 in the Netherlands, Belgium, Germany and Sweden, showing spontaneous awareness of the mark ‘Rituals’ for instance in the Netherlands of 52.3 % and Belgium of 29 % and aided awareness in these countries of 92.9 % and 72.5 %, respectively;
- Annex 4A-E: Financial statements from 2018, 2019, 2020 and 2021 (showing annual net profits of millions of euros) and indicating that the IR holder sells its products in 77 different countries through different channels including a chain of Rituals stores (both its own stores and franchise stores), the Rituals web shop, shop-in-shops in major department stores and perfumeries, travel retail (airlines, hotels) and urban spas; an extract from the Dutch Chamber of Commerce showing that Rituals Cosmetics Enterprise B.V. is the Board Member of the IR holder;
- Annex 5: A company presentation from 2018 titled ‘WELCOME TO THE WORLD OF RITUALS’ underneath which is the quote ‘Rituals is not just another cosmetics brand. We’re not here to sell beauty. We’re here to make you feel special’. Chapter 1 is titled ‘Brand’ (Rituals is described as the ‘No.1 Bath & Body brand in Europe. A unique luxury lifestyle brand with a passion to transform your everyday routines into more meaningful experiences’); Chapter 2 ‘Facts and Figures’ (reference is made to 650+ stores, 2 000+ luxury department stores, 4 urban spas, 27 countries, 220+ airport shops, 1 500+ luxury hotel rooms and 10 airline partners); Chapter 3 ‘The origin’; Chapter 4 ‘Stores and experiences’ (Making reference to ‘Retail - A slow shopping experience’ further described as ‘A unique slow shopping concept. Luxury store design to induce a warm, relaxing and welcoming atmosphere. Welcoming tea ceremony. Professional, fully trained and engaging staff. Discover products at the water island. Hand massages, meditations and other treatments. A luxury lifestyle brand with great gifts. “Must-have” truly innovative products. Exceptional value for money’); Chapter 5 ‘Connecting with the world’. The presentation contains many motivational quotations and exotic photographs and some information about the IR holder. The products presented are cosmetic and fragrance products. The distribution strategy of the products is explained and illustrated in detail;
- Annex 6A-H: Articles concerning ‘Rituals’-branded products in promotional publications of the IR holder entitled *Express Your Soul* (2017), *Open Your Heart* (2017), *Namaste* (2018), *I wish winter* (2018), *The Art of Attention* (2019), *Give Rise to Happiness* (2019), *The Art of Soulful Living and House of Rituals* (2022). Cosmetic and perfumery products are represented. Other products are also presented, namely clothing, tea bags, travel bags and make-up bags, toiletry bags, towels, candles, a yoga mat, tea cups, cushions, candle holders, soap dispensers, toothbrush holders, cotton jars, bed textiles. Prices are in pounds sterling in the English versions and in euro in the Dutch versions. Printouts from the rituals.com website from March 2022 show that the 2022 version of *Rituals* magazine was available in stores and online as of 1 March 2022;

- Annexes 7A-O: Printouts from the IR holder’s website showing articles published within the relevant period illustrated with products bearing the contested mark, namely cosmetic brushes, cosmetics, toiletry cases, clothing, tea and teacups, shaving products, home fragrances and candles. There is also a mention of towels;
- Annex 7P: Printouts from the IR holder’s online shop showing cosmetics, hair products and perfumery products, soaps, tea, candles, advent calendars and clothing and yoga accessories offered for sale, prices are in euros on the websites related to EU countries where euros are used and in Polish zlotys, Romanian leus, Swedish kronas, and Hungarian forints on the respective websites;
- Annex 7Q: Printouts from the ‘store locator’ section of the IR holder’s website showing that Rituals shops are located in many EU countries;
- Annex 7R: Website printouts from the IR holder’s website, printed on 30 August 2022, showing laundry products (detergent, fabric softener and scent booster), dish washes, soaps, cosmetic and massage oils and other cosmetic products, eaux de cologne and perfumes, wipes, a candle wick trimmer, candles, soap dispensers, cotton jars and toothbrush holders, jewellery boxes and toiletry bags, tea and tea cups, bed sheets and pillow cases, quilts, bath mats, towels, clothing and shower caps, offered for sale under the mark ‘Rituals’;
- Annex 7S: A printout from Similarweb showing a report regarding the traffic on the website rituals.com with data for May, June and July 2022, showing roughly 4.5 million visits per month, mostly from the Netherlands, Germany, the UK, France and Belgium;
- Annex 8A-K: A presentation regarding the IR holder’s social media according to which the ‘Rituals Cosmetics’ Facebook profile has 1.3 million followers, mostly from the EU countries, an Instagram page of nearly 0.5 million followers, several Facebook and Instagram posts from the Rituals Cosmetics profile dated between 2019 and February 2022 showing a mascara, deodorant, clothing and bed linen and towels, an overview of the Facebook profile showing the same goods as those displayed in previous documents; Ritual Cosmetics profile on Pinterest, Twitter, YouTube;
- Annex 9A-I: Online articles from various Dutch websites and magazines as well as other websites such as www.airport-business.com or *Cosmetics Business* regarding the IR holder and its business, giving information about, e.g. the expansion of the Rituals outlets, or replacement of a certain skincare range with vegan products. The articles are dated between 5 April 2017 and 2020, an article from *vtwonen*, seemingly undated, which contains a mention of ‘Rituals’ pillow case, an undated printout from bol.com showing ‘Rituals’ cosmetic products being offered for sale, in Dutch, with prices in euros. There is an article dated 3 June 2019 about the opening of the flagship store House of Rituals in Amsterdam further mentioning that Rituals Cosmetics, at that time, had 750 shops, 2 000 shop-in-shops and 4 urban spas in 27 countries. Furthermore, it is mentioned that the company opens 2-3 new shops every week, somewhere in the world;

- Annex 10A: An overview of a part of the Rituals assortment with a launch date in the period 2013-2022 and a table seemingly from the IR holder;
- Annex 10B and E: Printouts from the website www.bol.com showing a soap dish, towels, and a blanket (as well as cosmetic products) under the contested mark being offered for sale. The page is undated, save for a copyright note 1999-2022. The blanket seems to have some reviews from clients dating from 2019, 2020 and 2021;
- Annex 10C: Screenshots from a YouTube video posted on the IR holder's website in 2018 showing a model doing her make-up while using a cosmetic brush and Rituals-labelled mascara;
- Annex 10D: A print screen from a website Beste.nl showing sale of a Rituals towel, undated;
- Annex 10E: A print screen from a website bol.com showing the sale of a 'Home Blanket' – Fleece plaid blanket –by a third party;
- Annex 10F: Press clippings showing products under the contested mark being advertised in renowned magazines of various EU countries dated in the period between 2019 and 2021. The products are cosmetics and perfumery, candles, and, occasionally, clothing, tea and cosmetic wipes;
- Annex 10G: Screenshots from a YouTube video regarding 'the first Rituals flagship store', dated in 2020; candles, pillows, bed linen, perfume bottles, clothing, toiletry bags, laundry products and towels are visible in the shop;
- Annex 10H: A printout from www.spydeals.nl showing a mascara under the mark Rituals being offered for sale;
- Annex 10I: An online order confirmation from Rituals dated in 2021 showing cosmetics products and two cosmetic brushes;
- Annex 10J: A declaration of R.C., CEO of the IR holder, in which it is stated that 'RITUALS' is a worldwide famous brand for personal and home care items, home accessories and clothing, that was launched in 2000 and has been used on the external forefront of the retail stores as well as on the products. Mr R.C. declares that the brand is present in many countries of the EU and provides annual turnover figures for 2016, 2017 and 2018, which reach many millions of euros, and in the Benelux region hundreds of millions. He also lists awards in favour of the brand the IR holder being named, amongst others, 'Retailer of the Year' in France at the Business Awards, 'Retailer of the Year Nederland 2017-2018' in the Netherlands ABN-AMRO awards;
- Annex 10K: A hotel booklet showing hotel amenities with the 'Rituals' brand;
- Annex 10L: A presentation displaying the inside of Rituals stores showing, in addition to the fragrance and cosmetics products, towels, bathrobes and candles; a table with Powerpoint Properties is included which shows that the presentation was created in 2021 and last saved on 31 August 2022;

- Annex 10M: Printouts from the IR holder’s website showing toiletry and make-up cases, an eyebrow pencil and a scrub glove labelled with the contested mark being offered for sale, undated; an article from dfnionline.com dated in August 2017 stating that Rituals launched travel-friendly cosmetic sets, a screenshot from haarspullen.nl showing a cosmetic set of Rituals packed in a bag; an article from *Rituals* magazine on make-up tips with a picture of cosmetic brushes labelled with the contested mark (they do not seem to be for sale), dated in 2018;
 - Annex 10N: Documents submitted with the aim of proving use of the mark for goods in Class 30, which consist mainly of the recipe section of the IR holder’s website containing recipes for soulful meals and of a menu of House of Rituals containing tea and coffee, desserts, and side dishes;
 - Annex 10O: Photographs from the inside of Rituals shops.
- 6 In its observations filed on 29 November 2022, the cancellation applicant argued in essence the following:
- The evidence shows use of the contested mark only for a limited number of cosmetic goods in Class 3 and not for the rest of the registered goods and services.
 - The IR holder only sells goods under its own brand and this does not constitute genuine use for retail services in Class 35.
 - The mark as used is different from the mark as registered.
- 7 In its observations filed in reply on 3 February 2023, the IR holder argued in essence the following:
- The previous filed evidence and several invoices submitted in addition (Annexes Ia-i), prove that the cancellation applicant’s statement that the evidence only shows use for some goods in Class 3 is incorrect.
 - It is extensively explained and illustrated that the mark was also genuinely used for retail services.
 - The mark is not only used in the figurative form on the products but its verbal form can also be found abundantly throughout the evidence.
- 8 By decision of 19 October 2023 (‘the contested decision’), the Cancellation Division partially upheld the application for revocation and revoked the contested mark for the European Union (‘EU’) as from 28 June 2022 for some of the contested goods and services, namely:
- Class 3: Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; laundry products for woven fabrics; fabric softeners; essential oils; talcum powder for toiletry use; dentifrices; non-medicated mouthwashes, depilatory preparations.*
- Class 4: Wicks for candles and lamps; tallow; fuel for lighting; paper spills for lighting; beeswax; oils and waxes for preservation purposes.*

Class 21: *Brushes (except paint brushes); combs; sponges including so called "body loofah" (not for surgical and medical purposes); cosmetic brushes; toilet cases.*

Class 24: *Textiles and textile goods, not included in other classes; bed and table covers; bed clothes and bedding including sheets, bed mattress covers, loose covers, duvet covers, pillowcases, sleeves for decoration, children's bedding; quilts; bed covers; eiderdowns; bath linen (except clothing); towels of textile; textile for kitchen use; fabrics, for textile use; mosquito nets.*

Class 30: *Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice.*

Class 35: *Retail services and business intermediary services for the wholesale of bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, laundry products for woven fabrics, fabric softeners, perfumery, essential oils, cosmetic preparations, colognes, eau de toilette, perfume body sprays, cosmetic oils, creams and lotions for skincare purposes, shaving foam, shaving gel, pre-shaving and after-shaving lotions, talcum powder for toiletry use, toiletries for the bath and shower use, hair lotions, dentifrices, non-medicated mouthwashes, deodorants, anti-perspirants for personal use, non-medicated toilet preparations, depilatory preparations, non-medicated massage preparations, wicks for candles and lamps, tallow, fuel for lighting, paper spills for lighting, beeswax, oils and waxes, all for household use and home decoration (not included in other classes), brushes (except paint brushes), combs, sponges and body loofah (not for surgical and medical purposes), cosmetic brushes and cosmetic removing paper, toilet cases, containers for household or kitchen use (except in precious metal), steelwool, candle holders and soap dishes, glassware, porcelain and earthenware not included in other classes, textiles and textile goods not included in other classes, bed and table covers, bed clothes and bedding including sheets, bed mattress covers, loose covers, duvet covers, pillowcases, sleeves for decoration, children's bedding, quilts, bed spreads, comforters, duvets, bath linen (except clothing), towels of textile, textile for kitchen use, fabrics, for textile use, mosquito nets, clothing, footwear, headgear, coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionery, ices, honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices, ice; business management and economic consulting services related to franchising; advertising, sales promotion, market prospecting, market research and market analysis for the service industries and retail, wholesale and distribution companies; business intermediary services related to the import and export of consumer goods.*

- 9 The contested mark remained valid in the EU for all the remaining goods, namely:

Class 3: *Soaps; perfumery, cosmetic preparations, colognes, eau de toilette, perfume body sprays; cosmetic oils, creams and lotions for skincare purposes; shaving foam, shaving gel, pre-shaving and after-shaving lotions; toiletries for the bath and shower use; hair lotions; deodorants for personal use, anti-perspirants (toiletries); non-medicated toilet preparations; non-medicated massage preparations (cosmetics); tissues impregnated with cosmetic lotions.*

10 Each party was ordered to bear its own costs. The Cancellation Division gave, in particular, the following reasons for its decision:

- The IR holder had to prove genuine use of the contested mark during the five-year period preceding the date of the application for revocation, that is, from 28 June 2017 until 27 June 2022 inclusive. The IR holder submitted evidence of use of the contested mark (see paragraphs 5 and 7 above).

Time of use

- Most of the evidence is dated within the relevant period, in particular the invoices, the publications of the IR holder promoting its products, some of the social network posts and online articles. Therefore, the evidence of use filed by the IR holder contains sufficient indications concerning the time of use.

Place of use

- The invoices show sales of products to companies based in Belgium, the Netherlands, Germany and France; the marketing expenses demonstrate that advertising of the mark took place in several EU countries; the IR holder's online shop has sections with prices in euros and several other EU state currencies; many of the publications are in Dutch; the brand awareness reports show significant awareness of the contested mark in several EU countries or regions. Overall, the evidence shows that the mark was present in a significant part of the EU territory.

Nature of use: use as a trade mark

- The mark was evidently used directly on the goods to identify their commercial origin as is clear from the many publications, photographs, articles, online shops etc. It was used as a trade mark.

Nature of use: use of the mark as registered

- The mark is registered as a word mark. The evidence shows its use mostly as



and sometimes as



Within text it is used as a word mark.

- While the word 'rituals' may create some pleasant associations when used in relation to cosmetics and perfumery, it is not specific enough to constitute a description of any kind and it is sufficiently uncommon to maintain a normal degree of inherent distinctiveness.
- Even in the use on the square decorative background, the word is clearly legible. No word elements are added or omitted. The three dots are inconclusive and will not be given extra thought by the consumers. The separation in different lines and

placement against a decorative square will not go unnoticed but will be perceived to be within the limits of distinctiveness-unaltered decoration.

- Consequently, the mark was used in compliance with Article 18(1)(a) EUTMR.

Nature of use: use in relation to the registered goods and services and extent of use

- The evidence filed by the IR holder does not show genuine use of the trade mark for all the goods and services.
- The core of products for which the mark was used are cosmetic, personal care and perfumery products, which appear abundantly through all the documents, particularly in the invoices, websites, social media, the IR holder's publications, in the online shops (both the IR holder's and third parties') and the IR holder's presentations. More specifically, these goods are perfumes, shaving products, shaving gels and creams, aftershaves, cosmetic and massage oils, shower gels, hair products, shampoos, conditioners, face creams, body moisturizers, face exfoliators, face masks, cosmetic cleansers, various cosmetic skin care products, body lotions, anti-perspirant sprays, fragrance sticks, bath foams, eaux de toilette, soaps and hand washes, body scrubs, make-up removers, cosmetic sets, shower oils, hair & body mists, hair waxes.
- From the registered goods, use of the contested mark for the above products constitutes use for the following goods in Class 3: *soaps; perfumery, cosmetic preparations, colognes, eau de toilette, perfume body sprays; cosmetic oils, creams and lotions for skincare purposes; shaving foam, shaving gel, pre-shaving and after-shaving lotions; toiletries for the bath and shower use; hair lotions; deodorants for personal use, anti-perspirants (toiletries); nonmedicated toilet preparations; non-medicated massage preparations (cosmetics); tissues impregnated with cosmetic lotions.*
- As regards the extent of use for these goods, it is evident that it passes the conditions of genuine use. The invoices show sales of hundreds or thousands of the individual items regularly throughout the entire relevant period. Moreover, the considerable brand awareness demonstrated by the reports in Annex 3 and the high figures in the annual financial reports in Annex 4 imply that the presence of the brand and the extent of its use is large scale, at least regarding its core products as listed above. Therefore, the evidence shows genuine use of the contested mark for the above listed goods in Class 3.
- Furthermore, the evidence mentions other registered goods, namely *laundry products, cosmetic brushes, toilet cases, towels, bed linen and tea*. However, these goods appear in the evidence overall only occasionally and with little or no information on the extent of use. The evidence cannot be considered sufficient to demonstrate that the IR holder genuinely attempted to gain a market share for these goods.
- The mark is also registered for a variety of food products in Class 30. Apart from *tea*, which actually appears as a product offered for sale under the contested mark

in some of the documents, there is no trace of use of the mark for any of these goods in any of the documents.

- As far as the rest of the contested goods are concerned, there is no indication in the evidence that the mark was used in relation to them.
- Finally, the mark is registered for *retail services and business intermediary services for the wholesale* related to a broad range of products. There is no dispute between the parties that the IR holder operates shops with its own goods. However, they argue about whether, or not, this constitutes use of the contested mark for retail services. The IR holder claims that it is not merely selling its own goods but competing on the retail market with other companies selling similar goods. It emphasises that the mark appears at the front of shops and inside them, on the packaging bags and cash receipts. It states that customers are treated to a unique experience in the shops, being offered tea and hand massages.
- Retail services in Class 35 are defined in the Explanatory Note of the Nice Classification as ‘the bringing together, for the benefit of others, of a variety of goods (excluding the transport thereof), enabling customers to conveniently view and purchase those goods’. It can be implied from the Burlington judgment (04/03/2020, C-155/18 P-C-158/18 P, BURLINGTON / BURLINGTON ARCADE et al., EU:C:2020:151), that the ‘others’ are the manufacturers or trade mark owners looking for an outlet for their goods.
- In the model in which the IR holder operates, there is no business, manufacturer or trade mark owner other than the IR holder itself that would benefit from the IR holder’s activity. All the activities carried out in the IR holder’s shops have one aim, which is to sell the IR holder’s goods. The fact that the mark is placed at the front of the stores, inside the stores and on cash receipts and that the purchased products are packed in a bag with the trade mark printed on it, does not change the fact that the only purpose of all this is to sell the IR holder’s products. The mark at the front of the store informs consumers that goods under the mark ‘Rituals’ are sold inside. The IR holder is not competing with retailers on the market of retail services but with other producers of cosmetic and fragrance products. The consumers do not choose between shopping in a ‘Rituals’ shop or in a cosmetic retail shop with a variety of cosmetic products of different brands. They choose between purchasing ‘Rituals’ cosmetics or products of other trade marks.
- Consequently, the activity of the IR holder connected to its shops has to be considered to be mere sales of its own goods, which is an activity covered by the protection conferred by registration for the goods, not an independent retail service. The IR holder failed to demonstrate use of the contested mark for retail services.
- There is also no indication in the evidence that the mark was used for *business intermediary services for the wholesale*.
- Therefore, the mark must be revoked for the entire Class 35.

Conclusion

- The evidence demonstrated that the contested mark has been used in relation to some of the contested goods during the relevant period, in the relevant territory, to an extent sufficient to indicate that the use made was genuine. Moreover, it was used as a trade mark and in a form not altering the distinctive character of the mark. Considering all the above, the evidence, as a whole, is sufficient to demonstrate that the contested mark was genuinely used during the relevant period, in the relevant territory, for goods in Class 3, listed in paragraph 9 above.
 - The IR must be revoked for the goods and services, for which the IR holder had not proven genuine use, i.e. those listed in paragraph 8 above.
- 11 On 15 December 2023, the IR holder filed an appeal requesting that the contested decision be partially set aside, namely for all the goods and services for which the contested mark was revoked in Classes 3, 21, 24 and 35 and for part of the goods, namely *tea*, for which the contested mark was revoked in Class 30.
- 12 On 16 February 2024, the statement of grounds of the appeal was received.
- 13 No response was filed.

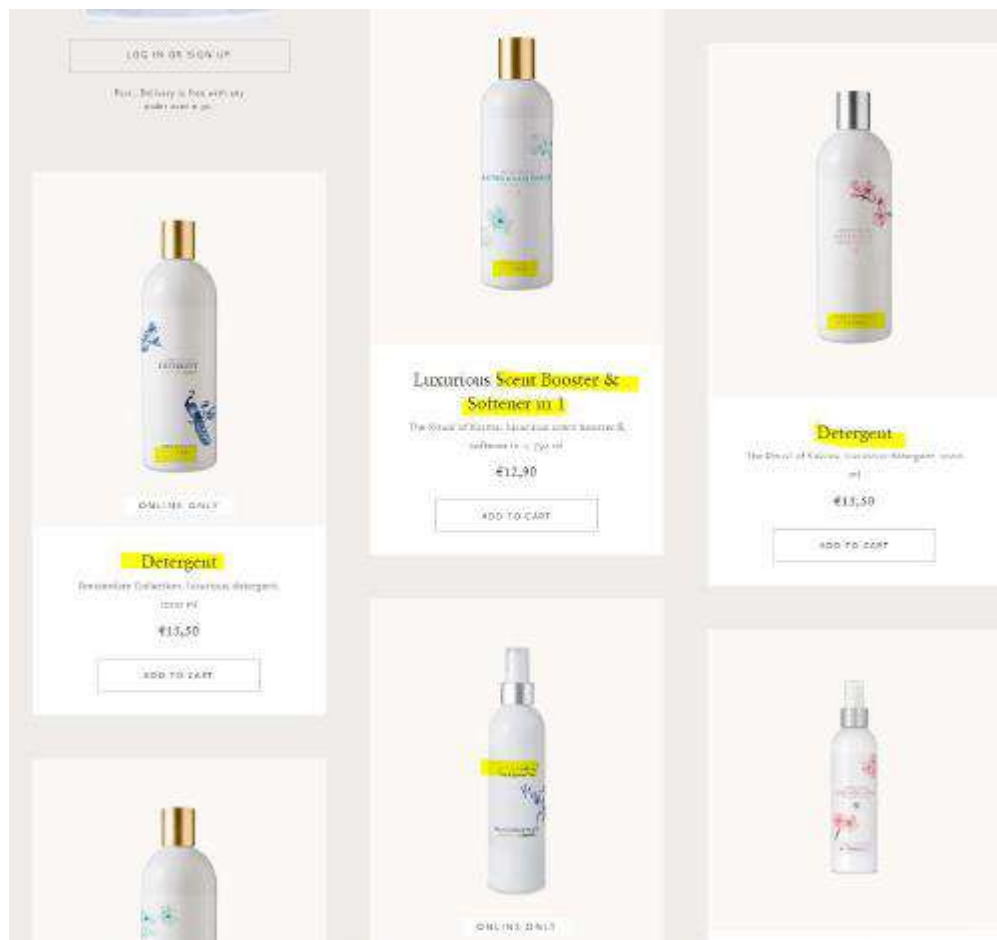
Submissions and arguments of the IR holder

- 14 The arguments raised by the IR holder in the statement of grounds may be summarised as follows:
- The Cancellation Division’s assessment of time, place and nature of use (use as a trade mark and use of the mark as registered) is correct and endorsed; all these criteria are sufficiently proven as regards the use of the contested mark.
 - However, the Cancellation Division incorrectly found that the extent of use was not sufficiently proven for the contested goods and services which are the subject of the appeal.
 - The previously submitted arguments and evidence are still valid in the present appeal. Additional evidence (Annexes 1 to 9) is enclosed with the statement of grounds of appeal in support of proving the genuine use. This evidence is relevant for the outcome of the case, supplementing previous evidence filed and, in the case of the statement dated 9 February 2024 of the independent *Registeraccountant* (chartered accountant) submitted as Annex 1, this was not available earlier. [In order to distinguish the evidence submitted with the statement of grounds of appeal from the evidence submitted in the first instance, the Board will refer to the former as Appendices and to the latter (referred to in paragraphs 5 and 7 above) as Annexes].
 - It is stressed that IR holder (hereinafter also referred to as ‘Rituals’) obviously, like many other trade mark owners, offers core products and non-core products. To this end, it is important to note that while the statement of the chartered accountant contains a sample of the goods sold by the IR holder, the lower sales of some of

the covered goods do not indicate non-genuine use. Instead, it shows that even for the non-core products, the mark was used genuinely.

Class 3 – extent of use

- Looking at the products for laundry use, which includes the registered goods *laundry products for woven fabrics; fabric softeners*, the Cancellation Division found that ‘other registered goods, namely laundry products [...] appear in the evidence overall only occasionally and with little or no information on extent of use’. This finding is contested. Indeed, the products for laundry use can extensively be found in Annex 6G and Annexes 7P and R all of which clearly show genuine use of the mark for laundry products. Additional examples of use in the relevant period are shown in Appendix 7A as follows:



- Further, in line with the IR holder’s previous evidence which consisted of, amongst others, relevant invoices, further invoices as well as the abovementioned certified statement of the IR holder’s accountant were submitted, which show the actual sales of laundry products. These can be found in Appendices 1 and 2. This evidence is further supported by the invoices in Appendices 6A-D which prove the use of the mark in several individual EU Member States. The combination of both the advertisements of the laundry products and the actual sales, also show the link with the name that was given to the product by the IR holder (e.g. Scent Booster & Softener in 1). The statement by the accountant as attached in Appendix 2A also shows a high number of sales for, amongst others, laundry products in other

EU Member States. As the IR holder is, however, selling these products throughout the whole of the EU, the actual number of sales is much higher, which is reflected in the sales of Germany, France and Spain, constituting a substantial part of the EU and therefore shows genuine use. Further, in Appendix 2, one can find the cross-references between the evidence and the statement of the accountant.

- Also, the registered goods *essential oils* are offered under the ‘Rituals’ brand. Essential oil is defined by *Cambridge Dictionary* as ‘an oil, usually with a strong smell, that is taken from a plant and is used to make perfume, or for rubbing into a person’s body during massage.’
- Rituals products include massage oils and air fragrances consisting of essential oils. Rituals offers various massage oils and air fragrance products, such as fragrance sticks and their refill bottles. Examples of such use are found in Appendices 7A and 8 as follows:



- In Appendices 3A-E, the sales of so-called fragrance cartridges have been highlighted. These cartridges contain essential oils and are to be used in combination with the aromatherapy diffuser. Whereas this might not be indicated as such, one can find on Rituals’ website that ‘this electric oil diffuser is a real eye-catcher. Whether you place it in your bedroom, living room or bathroom, the unique design is a stylish addition to your interior’ (<https://www.rituals.com/en-nl/home-collection/aromatherapy-diffuser>), thereby indicating that the cartridges to be used in the oil diffuser, do contain essential oils:

Essential Oil Diffuser With a Unique Look and Feel

One of the purest moments of happiness is coming home to a house that breathes the fragrances from RITUALS essential oil diffuser. With its unique, luxurious look, this electric oil diffuser is a real eye-catcher. Whether you place it in your bedroom, living room, or bathroom, the unique design is a stylish addition to your interior.

Make every moment meaningful by choosing the right fragrance with it. For example, you can choose a more relaxing scent for your bathroom and an aroma that stimulates the senses for the meditation room. But it is also possible to place an essential oil diffuser in your workspace with a fragrance that refreshes and invigorates you, or one in the sitting room that provides a relaxing atmosphere.

- Further, naming the essential oil cartridges as such, is important to link the cartridges, as indicated on the invoices in Appendices 3A-E (highlighted accordingly), to the genuine use of the mark for essential oils in the evidence

previously provided in Annexes 1A-G. Evidence of how the mark is used on the product can be found in Annex 6G, which elaborately shows all versions of the cartridge which can be linked to the names on the invoices:

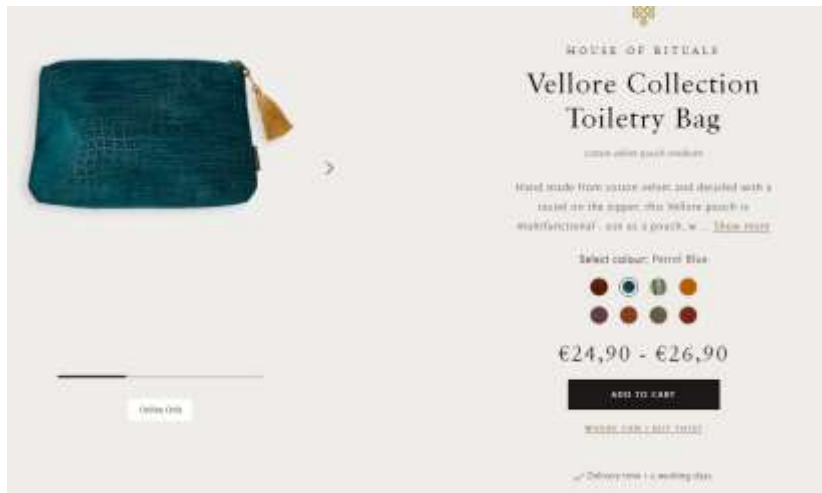


- Together, the sales and the examples of how the mark is used in connection with the cartridges, prove the genuine use of the mark for *essential oils*.
- Regarding the registered goods *depilatory preparations*, genuine use was proven for shaving products, shaving gels and creams and aftershaves as correctly found by the Cancellation Division. According to the taxonomy of TM Class, *depilatory preparations* are categorised under the denominator hair removal and shaving preparations.
- Therefore, genuine use was also proven for *depilatory preparations*.

Class 21 – extent of use

- In addition to the evidence submitted at first instance, which is largely related to catalogues/magazines, promotional material and online articles, Appendix 4 shows a high volume of sales of so-called ‘travel exclusives’, ‘beauty to go bag’ or ‘Make-Up Bag’. These names refer to *toilet cases* as covered under Class 21 and as exhibited in Annexes 1A-G, Annex 5, Annexes 6A-C and E (which shows an explicit link between *toilet cases* and *make-up bag*) and G, Annexes 7A-F and Q-S, Annex 10G-O and Annex I b, f and g.
- Besides the invoices, which clearly show the sales of the toilet cases, the use of the trade mark for toilet cases in catalogues amounts to proving the extent of genuine use of the mark. Further, the statement of the accountant shows a high number of sales of the individual pouches/toiletry bags. Cross references are made between

the specific travel bag and its sales. Lastly, the toilet cases (as seen below) all bear the 'RITUALS' trade mark:



- Looking at the registered *brushes* and in particular *cosmetic brushes*, one can find clear evidence of use in Annex 5, Annexes 6A-C, Annexes 7A-L, Annexes 8B and D and Annexes 10A-E and G-O. This evidence is further supported by the invoices in Appendix 6 which prove the use of the mark in several individual EU Member States. Further, the evidence not only shows the use of the contested mark for *cosmetic brushes* in a catalogue but Annexes 10L-O clearly exemplify how this product is staged in stores, where consumers can try the product in combination with other goods covered under Class 3.
- Further examples of use of the contested mark for products in Class 21 are found in Appendix 7B.

Class 24 – extent of use

- For the goods in Class 24, especially bed linen and towels, the Cancellation Division found that in the evidence they appear, just like *toilet cases* and *tea*, ‘only occasionally and with little or no information on extent of use’. This is contested. In the evidence previously provided, it was clear how the contested mark was used

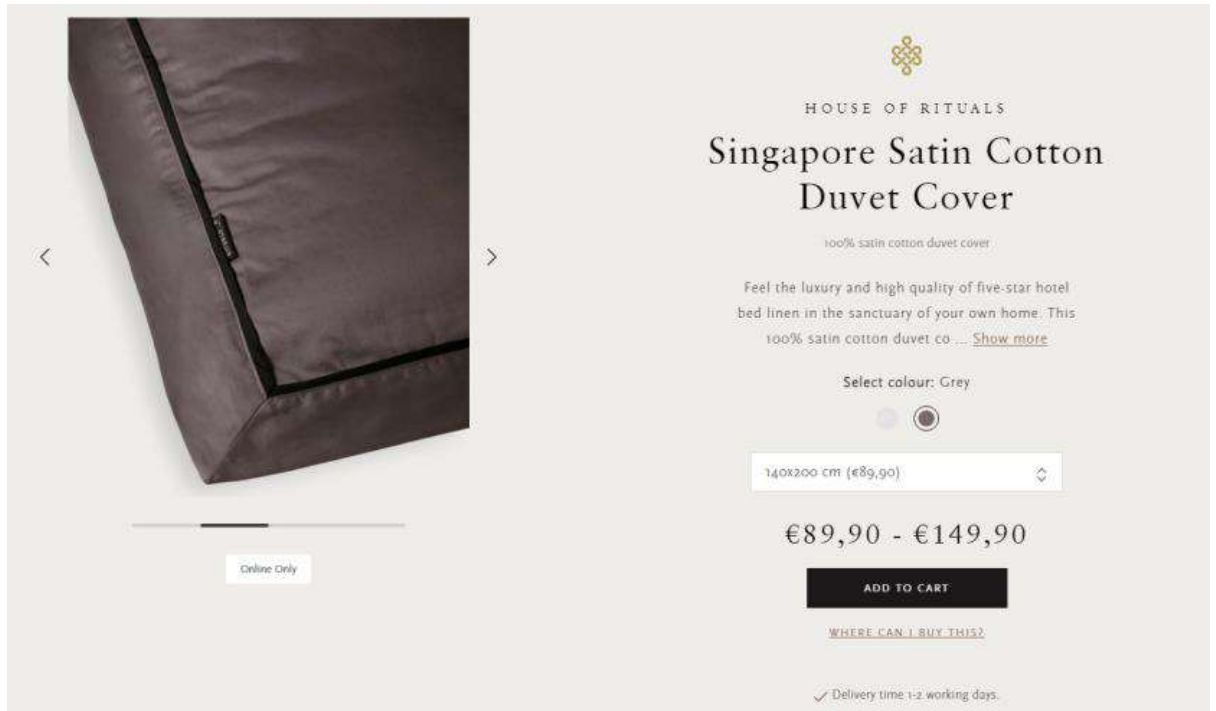
for amongst others bed linen and towels. These goods are furthermore covered by the overarching term *textiles and textile goods, not included in other classes*.

- For *towels*, extensive evidence of use has been provided by means of advertising materials which show the use of the contested mark in connection with the goods. The evidence is largely related to catalogues and online articles which may contribute to the extent of use in an overall assessment.
- Looking at the evidence specifically, one can find evidence of use in Annexes 6A and G, Annexes 7G-O and Q-S, Annexes 8G-I and K, Annexes 9E and H and Annexes 10B-E and G-O as per below:



- This evidence, of how the contested mark is used on the product, is further substantiated by the statement of the accountant which shows the numbers sold of several of the towels bearing the ‘RITUALS’ word mark. In this statement, the pieces of evidence in which the towels are shown are cross-referenced with the high numbers of sales.
- A similar structure of evidence is provided in relation to *bedding* (including the registered *bed clothes and bedding including sheets, bed mattress covers, loose covers, duvet covers, pillowcases, sleeves for decoration; quilts; bed covers*) which consists of evidence of use as a combination of advertising materials and actual sales. Here, the advertisement materials also fulfil the role of exemplifying how the contested mark is used in relation to *bedding* which is again cross-referenced in the statement of the accountant showing the sales and thereby genuine use. While it is acknowledged that the sales of these products (as shown in the certified statement) might not be as high as for other contested goods, this is not a core product, and the evidence shows only a sample of the various textile products that were sold.
- For example, the statement only contains sales in the Netherlands, but these products were also sold in other EU Member States which is shown in Appendix 5. The evidence therefore sufficiently proves that the IR holder has seriously tried to acquire or maintain a commercial position on the relevant market as opposed to having solely used the contested mark with the intention of preserving the rights conferred by the mark. In the evidence previously provided, one can find the use of the contested mark for bed linen in Annexes 6E and G, Annexes 7Q-S, Annexes 8E and J, Annexes 9G-I and Annexes 10G-O. In Annex 6G (p. 32) and Annexes 10L-O (p. 73), the different versions of the Singapore and Shanghai linen are exemplified as well as the Vellore Cotton Velvet Quilt. These pictures

correspond to the duvet covers mentioned and backed by sales in the accountant's statement. Lastly, amongst others, the duvet covers (as seen below) all bear the 'RITUALS' trade mark which shows that the mark is indeed in use for the respective goods.



- Further examples of use of the mark for products in Class 24 are found in Appendix 7C.



Class 30 – extent of use

- Under Class 30, the evidence provided proves use of the contested mark for the registered goods *tea*. The extensive evidence provided for *tea* in catalogues and magazines show the importance of and effort put into the sales of tea. Indeed, the contested decision highlighted that *tea* ‘actually appears as a product offered for sale under the contested mark in some of the documents’. The evidence also shows that the packaging of all varieties of tea offered by the IR holder include the ‘RITUALS’ word mark which is therefore extensively used. The evidence of this use can more specifically be found in Annexes 6A-G, Annexes 7A-O and Q-S and Appendix 1. This evidence is further supported by the invoices in Appendix 6 which prove the use of the contested mark in several individual EU Member States. While not all pieces of evidence show the use of the contested mark on the tea itself, Annex 6E, p. 42 for example, clearly shows the mark in relation to *tea* which is therefore also – albeit indirect – a link to the evidence on page 41 of Annex 6E. This can also be seen in the pictures below which show the product bearing the mark on the packaging as well as on the tea bag itself.



- Further examples of use of the mark for products in Class 30 are found in Appendix 7D.

Class 35 – extent of use

- The Cancellation Division found that the IR holder is not offering retail services because such services cannot be provided with regard to the retailer's own goods. This interpretation is not consistent with the standing case-law. In the Praktiker judgment (07/07/2005, C-418/02, Praktiker, EU:C:2005:425), the Court of Justice has given the definition of retail services as follows:

‘34 In that regard, it should be noted that the objective of retail trade is the sale of goods to consumers. That trade includes, in addition to the legal sales transaction, all activity carried out by the trader for the purpose of encouraging the conclusion of such a transaction. That activity consists, *inter alia*, in selecting an assortment of goods offered for sale and in offering a variety of services aimed at inducing the consumer to conclude the abovementioned transaction with the trader in question rather than with a competitor.’ (underlining by the IR holder).

- The Court of Justice thus gives in the Praktiker judgment a broad interpretation of the concept of ‘retail services’. The Court explicitly notes that there is no room for a definition of retail services which is more restrictive.
- In line with this, the EUIPO has, until recently, classified retail services with regard to one's own products as retail services in Class 35. As an example, reference is made to the Cancellation Division's decision of 11/12/2018, C 14 986. In this case the Cancellation Division held that Cath Kidston Ltd., which only sells its own products in its Cath Kidston stores, nonetheless provides retail services in Class 35, explicitly noting that the ‘bringing together’ of goods or services may be in respect of the trade mark holder's own products.
- The Cancellation Division ruled similarly in its decision of 19/12/2018, C 15 460, again confirming that ‘[t]he “bringing together” of goods and services may be in respect of the trade mark holder's *own products* or *services*’. Further reference is made to cancellation proceedings No C 12 844, where The North Face had shown use for retail store services, although it had only retailed its own branded products. Likewise, the Board of Appeal found that the EUTM ‘ZARA’ is reputed for retail services, although the ZARA chain only sells ZARA-branded apparel (05/07/2017, R 2330/2011-2 & R 2369/2011-2, ZARA TANZANIA ADVENTURES (fig.) / ZARA et al.).
- Following the Burlington judgment (04/03/2020, C-155/18 P-C-158/18 P, Burlington (fig.) et al. / BURLINGTON ARCADE et al., EU:C:2020:151), the EUIPO seems to have changed its course and has since adopted a narrow interpretation of ‘retail services’. This narrow interpretation – which clearly deviates from the definition in paragraph 34 of the Praktiker judgment – categorically excluding retail services of all well-known mono-brand retailers, the EUIPO derives from the Nice Classification Explanatory Note on Class 35:

‘This Class includes, in particular:

- the bringing together, for the benefit of others, of a variety of goods, excluding the transport thereof, enabling customers to conveniently view and purchase those goods; such services may be provided by retail stores, wholesale outlets, through

vending machines, mail order catalogues or by means of electronic media, for example, through websites or television shopping programmes.’

- This is the very Explanatory Note the Court of Justice addressed in its *Praktiker* judgment, propagating the broad interpretation of the concept of ‘retail services’. There is no indication that in the *Burlington* judgment the Court sought to abandon its views as explained in *Praktiker*. It rather investigated whether services of shopping arcades may fall within this category. In that relation it repeated, *inter alia*, the words ‘for the benefit of others’ from the Explanatory Note. The *Praktiker* judgment thus still reflects the current state of the law, and hence *retail services* in Class 35, are the services defined in paragraph 34 of that judgment.
- In the contested decision the Cancellation Division gave a broad exposé of who ‘the others’ might be and seems to be largely inspired by the shopping arcade example. It states that ‘the others are the manufacturers or trade mark owners looking for an outlet for their goods’. That may be true in the shopping arcade situation, but not in all situations involving retail trade.
- The IR holder clearly offers retail services as explained in paragraph 34 of the *Praktiker* judgment. From the evidence submitted it appears that the IR holder, in addition to the legal sales transaction, offers a host of activities for the purpose of encouraging the conclusion of such a transaction. Those activities consist, *inter alia*, of selecting an assortment of goods offered for sale and in offering a variety of services, aimed at inducing the consumer to conclude the abovementioned transaction with the trader in question rather than with a competitor, including product demonstration.
- In the *Apple Store* judgment (10/07/2014, C-421/13, *Apple Store*, EU:C:2014:2070), the Court of Justice ruled that a sign of a goods manufacturer may be registered not only for the goods themselves but also for services falling within one of the Nice classes concerning services, including Class 35, such as demonstrations of the manufacturer’s own products, where those services do not form an integral part of the offer for sale of those goods. The Court ruled that *Apple* demonstrating *its own products* in its *Apple stores* fulfils the concept of ‘retail services’ in Class 35:

‘Certain services, such as those referred to in *Apple’s* application and clarified by *Apple* during the hearing, which consist of carrying out, in such stores, demonstrations by means of seminars of the products that are displayed there, can themselves constitute remunerated services falling within the concept of “service”.’ (§ 26).
- Additionally, in that case the Court of Justice ruled that Directive 2008/95 does not preclude the registration of a sign for services in relation to the goods of the applicant for registration (§ 28).
- In fact, the Office has allowed many cosmetics and fashion brands to have their marks registered for retail services, including *Dior*, *L’Oréal*, *Estée Lauder*, *Givenchy*, *Gucci*, *Prada*, *Louis Vuitton* and *Fendi*, while it is abundantly clear that these brands do not offer retail services according to the new high standard set by the EUIPO.

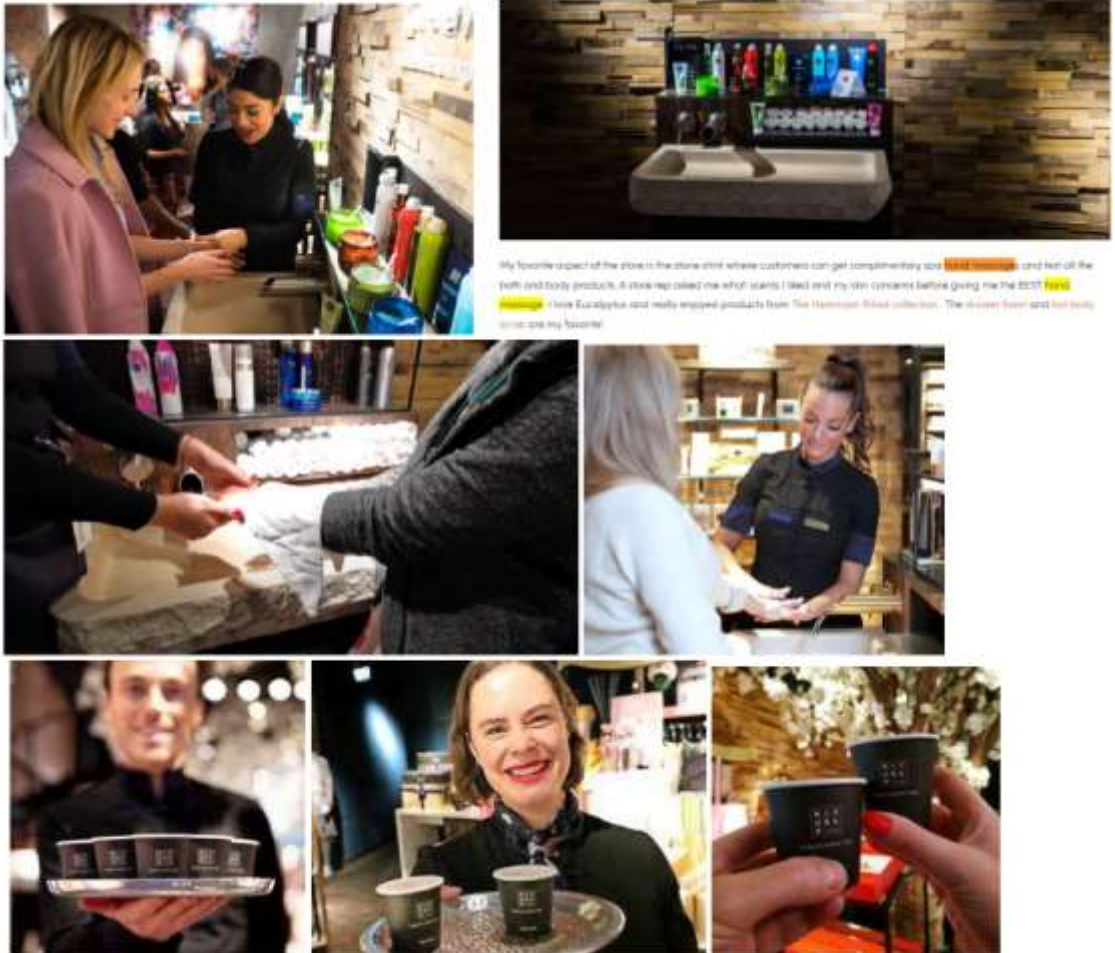
- Trade marks registered in Class 35 offer protection to companies offering their retail services under an (umbrella) brand, against retailers offering their services under an identical or similar brand. There is no justifiable reason why only retailers offering products from different origins should receive such protection and retailers offering their own products should be excluded from this protection.
- Why should Intersport, JD Sports and Decathlon be protected against a company offering sportswear under a confusingly similar name, while Adidas, Nike, Puma and lesser-known mono-brand retailers of sportswear do not receive such protection? There is no justification for such discrimination.
- In conclusion: the services offered by the IR holder can be considered retail services, despite it being services in relation to its own products.
- As regards the relevant services, the Rituals retail concept is not solely based on the sale of products, but also on offering various services within the framework of *the Rituals experience*. Rituals offers numerous services under its Rituals brand to set itself apart from its competing cosmetic providers. The Rituals retail concept and services are aimed at helping customers take more time for themselves ('me-time') and turning daily body care routines into moments of pampering (Appendix 9A).
- Rituals seeks to offer its customers an experience as if they just entered an Asian spa. The decoration is warm and luxurious. There is an Asian décor, including a Japanese Sakura tree, wood panelling and marble water troughs where people can wash their hands and where products are demonstrated, see below and Appendix 9B:

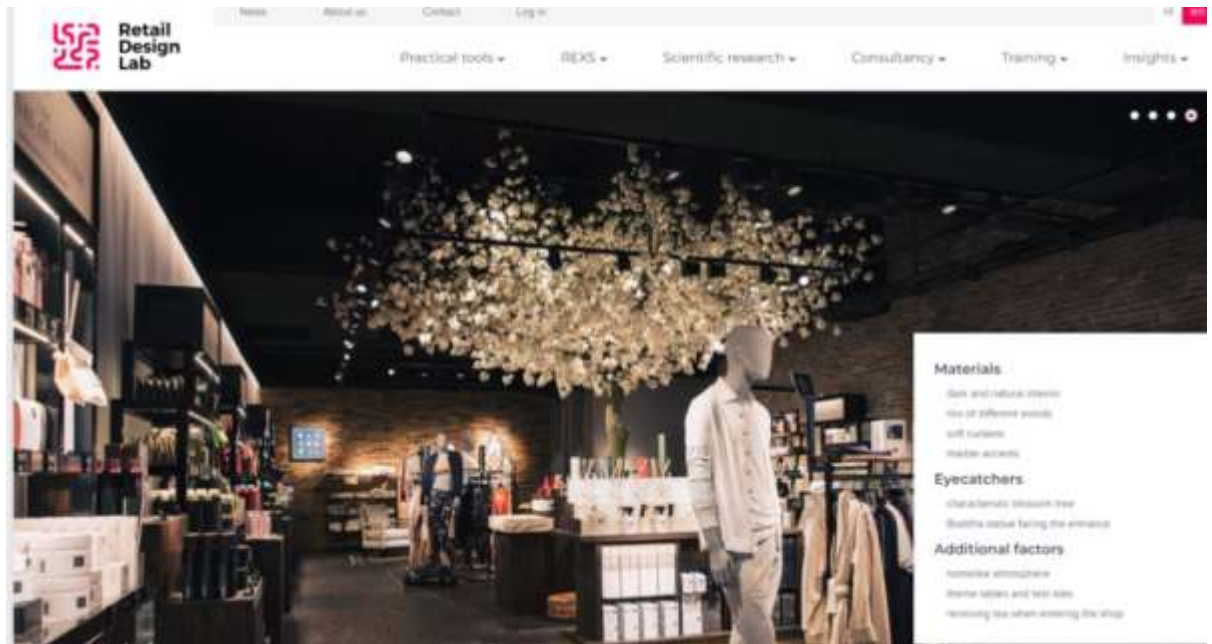


- The salespeople wear clothing, reminiscent of spa staff, see below and Appendix 9C:



- Customers are made to feel at ease and often receive a cup of tea, a hand massage or instruction on a one-minute massage, see below and Appendix 9D:





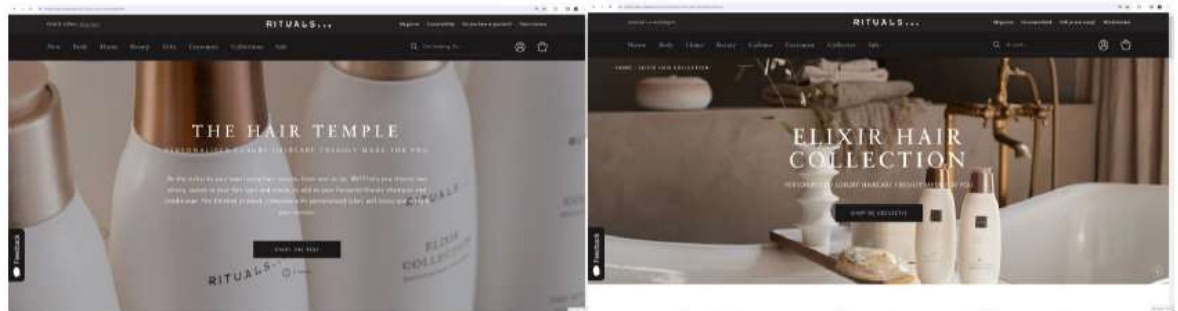
- Rituals enables its customers to create their own products, such as shampoos and perfumes. Various Rituals stores offer the ‘Hair Temple’, in which customers can have their own shampoo and conditioner created on the spot. The customers choose their preferred Rituals shampoo or conditioner and then have one or more elixirs added and mixed. With nine different elixirs to choose from 495 variants can be created (Appendix 9E):



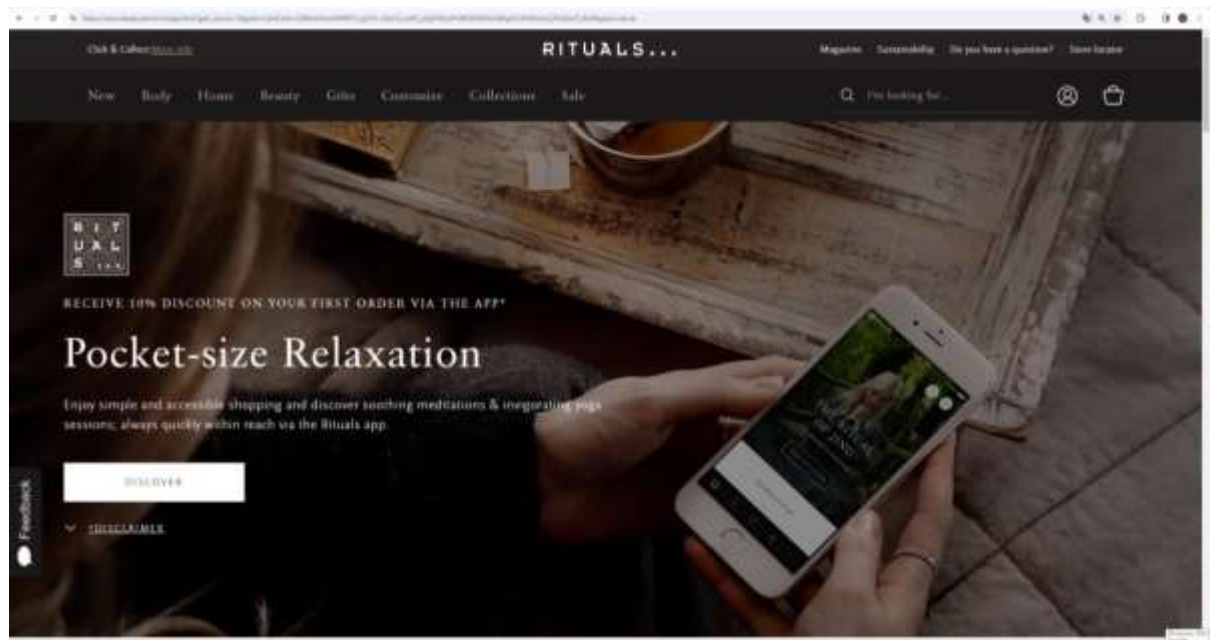
5. CHOOSE A GOOD SHAMPOO

In order to find a shampoo that best suits your hair, you need to pay attention to its ingredients. For example, [argan oil](#) and [eucalyptus](#) are known to provide volume and gloss, and a sensitive scalp needs a shampoo that is both mild and hydrating.

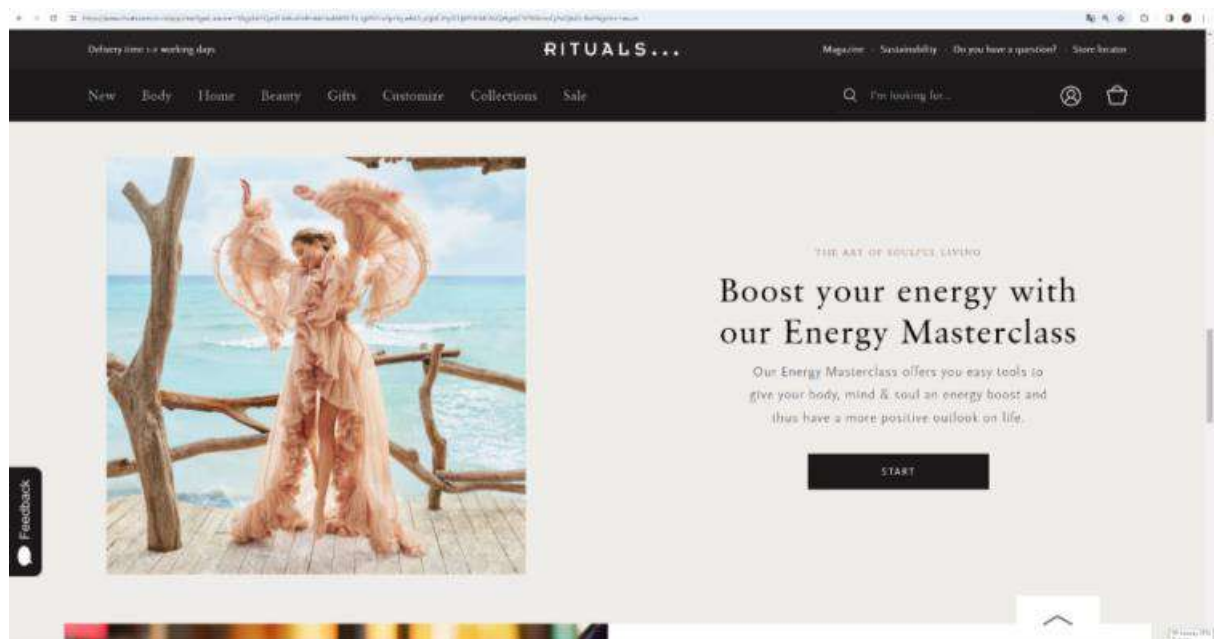
Choosing the perfect shampoo for your hair can be a challenge, which is why you can now design a shampoo that fits you like a tailor-made suit. At [The Hair Temple](#), now available in a number of Rituals stores, you can create your own personalised shampoo and conditioner by choosing from different elixirs. Depending on your hair type and your current needs, you're able to add elixirs that best address your hair concerns. Curl definition, colour protection, scalp therapy or an elixir for smoother hair: you'll find all of these and more at The Hair Temple. Add your favourite Rituals fragrance and voilà: you have a custom-made shampoo.

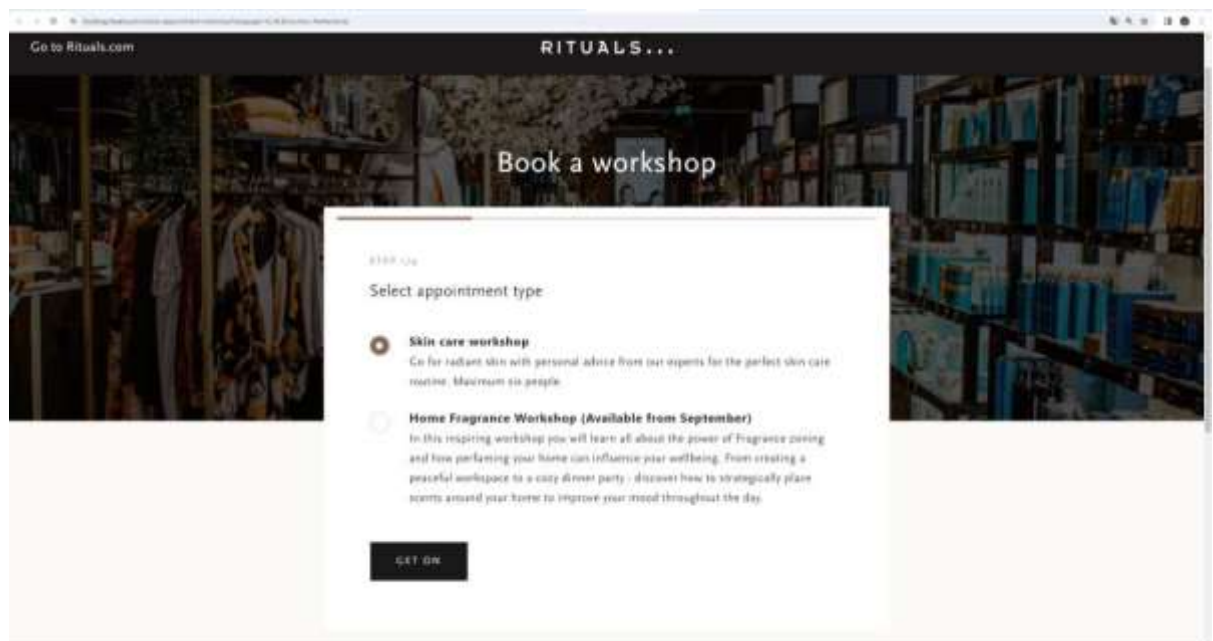
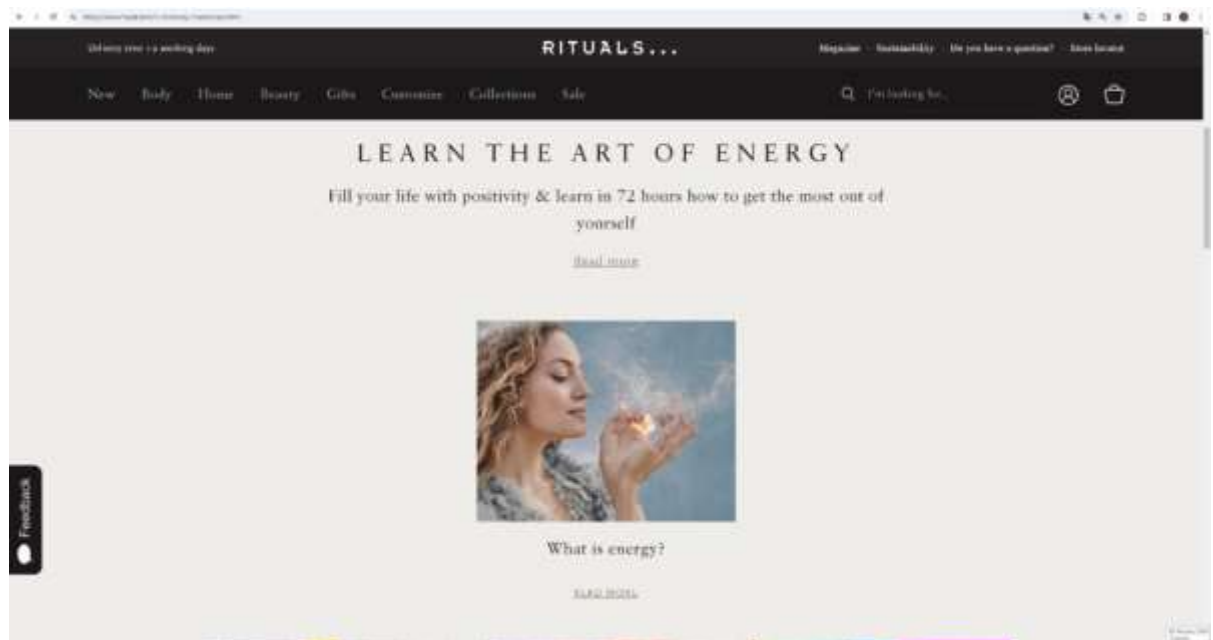


- Rituals offers a mindfulness app with meditation guides, and a magazine with inspirational readings on the topics of meditation, yoga, and lifestyle (Appendix 9F):

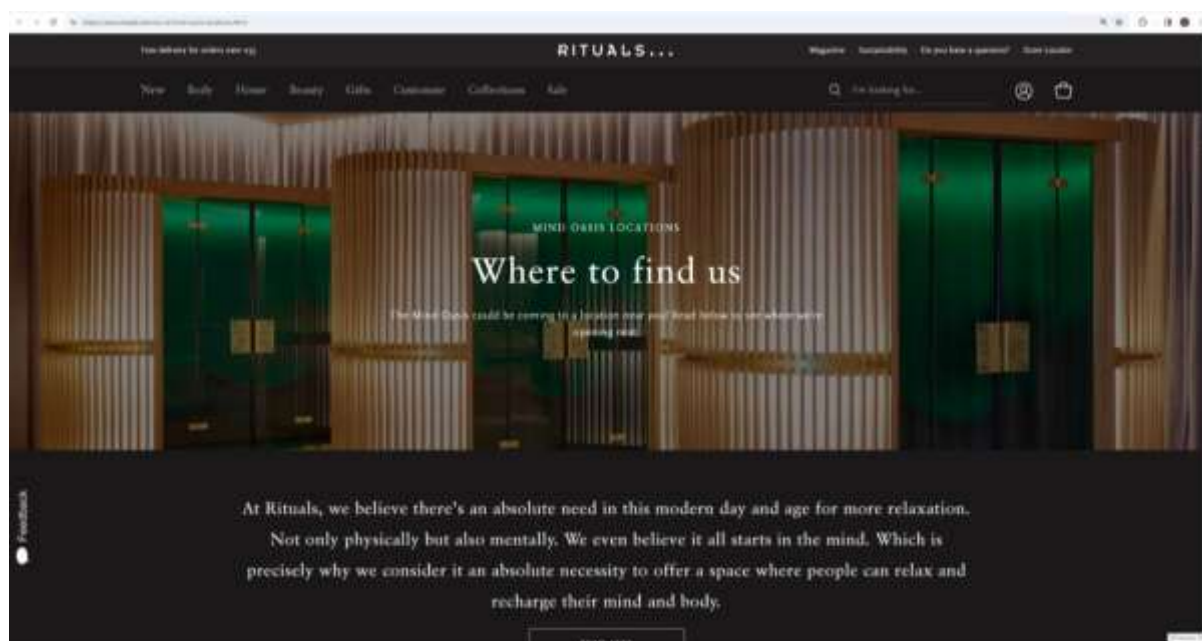


- Rituals offers various workshops and masterclasses to give the body, mind and soul an energy boost (Appendix 9G):





- Rituals offers spaces where customers can relax and recharge their mind and body, called Mind Oasis. It currently operates such Mind Oasis in Amsterdam, Antwerp, Paris, Frankfurt, Barcelona and will soon do so in Berlin (Appendix 9H).



- Rituals furthermore offers Meditation guides, magazine and a website with inspirational readings, about yoga, meditation, lifestyle, health food and inspiring travelling (Appendix 9I). These services do not form an integral part of the offer for sale of those goods.
- As regards retail partners, Rituals also offers services (including the above) to its premium partners, select partners, flagship partners and stores operating in larger department stores and shopping arcades.
- Rituals operates a selective distribution system. A part of the distribution of Rituals products occurs through selected partners. These entities sell to end consumers in authorised points of sale, or within their network. To be considered an authorised partner in this system, one must have been actively selected by Rituals and meet the selective distribution criteria set by Rituals. Redacted partnership agreements between Rituals and selected partners were submitted as Appendix 9J.
- The Rituals Brand Manual for authorised partners, which contains the selective distribution criteria, is part of that agreement. This is confidential information, but some essentials of the brand guide, such as the instructions about the store décor, are found in Appendix 9B.
- In accordance with the Rituals Brand Manual for authorised partners, an integral part of the partnership agreement, the selected partners must adhere to the criteria set out therein. Rituals offers its partners training, and supplies them with Rituals-branded furniture, bags, samples, stickers and gifts which the partners must use when selling Rituals products to end-customers. The samples are used for demonstrations inside the partner stores. Furthermore, Rituals selects the assortment of goods for these entities. Rituals offers retail services aimed at inducing the consumer to conclude a transaction with its partner for their products instead of the products of Rituals' competitors. Through these requirements Rituals ensures that customers, even in the stores of its partners, experience the brand to

the fullest. See the following clause in a partnership agreement between Rituals and a selected partner:

• **PROMOTIONAL MEANS MANAGEMENT**

The Supplier shall provide for free, samples, gifts and GWPs for the following minimum quantities:

Minimum Quantities	
Testers	Upon Sephora needs
Samples	400 00 units
Gifts	9 000 units
GWPs	15 000 units

Those units shall be delivered as "Delivered Duty Paid" (DDP) at the address set forth on the purchase order (Santa Cristina, Italy, Saran, France or any other warehouse specified on the delivery note), in accordance with the Incoterms definition in force. The obligations of each Party are set out in the Appendix "Customs".

- These services are retail services as meant in Class 35. They are services as meant in paragraph 34 of the Praktiker judgment. Moreover, they also fulfil the essential characteristics mentioned in paragraph 126 of the Burlington judgment: (i) the purpose of those services is the sale of goods to customers, (ii) they are addressed to the consumer with a view to enabling him or her to conveniently view and purchase those goods, and (iii) they are provided for the benefit of others: the retail partners.
- The purpose of providing Rituals-branded materials in partner stores is to support and increase the sale of goods to customers in those stores. These materials are meant to make sure that the customer can conveniently view and test Rituals products in partner stores. These services are provided for the benefit of 'others', being Rituals' authorised partners and customers. The benefit the authorised partners obtain by using the Rituals samples and bags is the increase of sales beneficial to and the purpose of those partners. The retail partners have their own websites, but Rituals submits the guidelines to which these websites have to adhere, in order to best communicate the Rituals experience.

Conclusion

- The Cancellation Division has erred in finding that the contested mark is not in use for the contested goods and services subject of this appeal. The numbers of sales provided for each product group clearly indicate that the goods that were previously included in those revoked have been genuinely used. Further, convincing evidence has been provided that the contested mark was genuinely used for the services in Class 35 during the relevant period which leads to the conclusion that the trade mark registration should remain valid in its entirety.

Confidentiality of the documents

- It is expressly requested to consider and treat Appendices 1, 2 and 9J as confidential towards third parties within the meaning of Article 114 EUTMR. The documents contain detailed information relating to the sales (Appendices 1 and 2) and

commercial partnership agreements (Appendix 9J) and therefore qualify as sensitive business information.

Reasons

- 15 All references made in this decision to the EUTMR should be seen as references to Regulation (EU) 2017/1001 (OJ 2017 L 154, p. 1), codifying Regulation (EC) No 207/2009 as amended, unless specifically stated otherwise in this decision.
- 16 The appeal complies with Articles 66, 67 and Article 68(1) EUTMR. It is admissible.

Scope of the appeal

- 17 The Cancellation Division revoked the contested mark for the goods and services mentioned in paragraph 8 above.
- 18 In its notice of appeal, the IR holder indicated that it appealed the contested decision as regards all the revoked goods and services in Classes 3, 21, 24 and 35 and *tea* in Class 30.
- 19 The IR holder did not appeal the contested decision insofar as the contested IR was revoked for goods in Class 4, and other goods than *tea* in Class 30. The contested decision has thus become final for these goods.
- 20 In the absence of an appeal or cross appeal by the cancellation applicant, the contested decision has also become final for the goods for which the application for revocation was rejected (see paragraph 9 above).
- 21 The Board will therefore proceed to assess whether the Cancellation Division correctly found that genuine use of the contested mark was not sufficiently proven with respect to the following goods and services:

Class 3: *Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; laundry products for woven fabrics; fabric softeners; essential oils; talcum powder for toiletry use; dentifrices; non-medicated mouthwashes, depilatory preparations.*

Class 21: *Brushes (except paint brushes); combs; sponges including so called "body loofah" (not for surgical and medical purposes); cosmetic brushes; toilet cases.*

Class 24: *Textiles and textile goods, not included in other Classes; bed and table covers; bed clothes and bedding including sheets, bed mattress covers, loose covers, duvet covers, pillowcases, sleeves for decoration, children's bedding; quilts; bed covers; eiderdowns; bath linen (except clothing); towels of textile; textile for kitchen use; fabrics, for textile use; mosquito nets.*

Class 30: *Tea.*

Class 35: *Retail services and business intermediary services for the wholesale of bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, laundry products for woven fabrics, fabric softeners, perfumery, essential oils, cosmetic preparations, colognes, eau de toilette,*

perfume body sprays, cosmetic oils, creams and lotions for skincare purposes, shaving foam, shaving gel, pre-shaving and after-shaving lotions, talcum powder for toiletry use, toiletries for the bath and shower use, hair lotions, dentifrices, non-medicated mouthwashes, deodorants, anti-perspirants for personal use, non-medicated toilet preparations, depilatory preparations, non-medicated massage preparations, wicks for candles and lamps, tallow, fuel for lighting, paper spills for lighting, beeswax, oils and waxes, all for household use and home decoration (not included in other classes), brushes (except paint brushes), combs, sponges and body loofah (not for surgical and medical purposes), cosmetic brushes and cosmetic removing paper, toilet cases, containers for household or kitchen use (except in precious metal), steelwool, candle holders and soap dishes, glassware, porcelain and earthenware not included in other classes, textiles and textile goods not included in other classes, bed and table covers, bed clothes and bedding including sheets, bed mattress covers, loose covers, duvet covers, pillowcases, sleeves for decoration, children's bedding, quilts, bed spreads, comforters, duvets, bath linen (except clothing), towels of textile, textile for kitchen use, fabrics, for textile use, mosquito nets, clothing, footwear, headgear, coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionery, ices, honey, treacle, yeast, baking-powder, salt, mustard, vinegar, sauces (condiments), spices, ice; business management and economic consulting services related to franchising; advertising, sales promotion, market prospecting, market research and market analysis for the service industries and retail, wholesale and distribution companies; business intermediary services related to the import and export of consumer goods.

Admissibility of the evidence submitted for the first time before the Board of Appeal

- 22 Together with its statement of grounds, the IR holder has submitted further evidence, including a statement from its chartered accountant (Appendices 1 and 2), invoices (Appendices 3 to 6), supplementary materials in respect of the contested goods (Appendices 7 and 8), and supporting materials in respect of the contested services (Appendix 9).
- 23 As regards this evidence submitted for the first time before the Board, its admissibility needs to be assessed.
- 24 Pursuant to Article 95(2) EUTMR, the Office may disregard facts or evidence which are not submitted in due time by the parties concerned. Pursuant to Article 27(4) EUTMDR, the Board of Appeal may accept facts or evidence submitted for the first time before it only where those facts or evidence are, on the face of it, likely to be relevant for the outcome of the case and they have not been produced in due time for valid reasons, in particular where they are merely supplementing relevant facts and evidence which had already been submitted in due time, or are filed to contest findings made or examined by the first instance of its own motion in the decision subject to appeal.
- 25 Those same principles are reiterated in Article 54(1) BoA-RoP, according to which such facts or evidence may also not be disregarded if they were not available before or at the time the contested decision was taken or are justified by any other valid reason.
- 26 The Board considers that the evidence submitted for the first time before the Board is merely supplementary to the evidence that the IR holder submitted at first instance.

Indeed, it supplements both rounds of evidence submitted in the first-instance proceedings (ten lettered annexes, submitted on 6 September 2022, together with Annexes Ia-i, which consists of further invoice evidence, submitted on 3 February 2023), some of which included, inter alia, invoice evidence in respect of particular goods, and some of which constituted evidence other than invoice evidence only, such as catalogue screenshots. The supplementary evidence might also be relevant for the outcome of the case and constitutes a legitimate reaction to the contested decision. Moreover, the cancellation applicant had an opportunity to respond.

- 27 The Board decides to admit this evidence.

Confidentiality request

- 28 The IR holder requested that the contents of Appendices 1, 2 and 9J, submitted on appeal, be kept confidential as commercially sensitive information, which should not be disclosed to third parties, is contained therein.
- 29 In accordance with Article 114(4) EUTMR, files may contain certain documents that are excluded from public inspection (e.g. parts of the file that the party concerned showed a special interest in keeping confidential). In the event that special interest in keeping a document confidential, in accordance with this provision, is invoked, the Office must check whether that special interest is sufficiently shown. This special interest exists because of the confidential nature of the document or its status as a trade or business secret.
- 30 In line with the above, the Board will treat said evidence with the appropriate degree of care and refer to it in general terms, not disclosing information, which may be considered confidential, and which is not accessible from other publicly available sources.

Application for revocation

- 31 Pursuant to Article 58(1)(a) EUTMR in conjunction with Article 198(1) and (2) EUTMR, the effects of an IR designating the European Union may be declared invalid if, within a continuous period of five years, the trade mark has not been put to genuine use in the European Union in connection with the goods or services in respect of which it is registered. Where the grounds for revocation of rights exist in respect of only some of the goods or services for which the mark is registered, the rights of the IR holder shall be declared to be revoked in respect of those goods and services only.
- 32 The contested IR was published in accordance with Article 190(2) EUTMR on 4 February 2008. The application for revocation was filed on 28 June 2022. Therefore, the IR holder had to prove genuine use of the contested IR during the five-year period preceding the date of the application for revocation, that is, from 28 June 2017 until 27 June 2022 inclusive, for the contested goods and services which are the subject of this appeal.

Proof of use

- 33 There is ‘genuine use’ of a trade mark where the mark is used in accordance with its essential function, which is to guarantee the identity of the origin of the goods or services

for which it is registered, in order to create or preserve an outlet for those goods or services; genuine use does not include token use for the sole purpose of preserving the rights conferred by the mark (11/03/2003, C-40/01, *Minimax*, EU:C:2003:145, § 43). In addition, the condition relating to genuine use of the trade mark requires that the mark, as protected in the relevant territory, is used publicly and outwardly (11/03/2003, C-40/01, *Minimax*, EU:C:2003:145, § 37; 05/02/2020, T-44/19, *TC Touring Club (fig.) / TOURING CLUB Italy et al.*, EU:T:2020:31, § 52).

- 34 In interpreting the notion of genuine use, account must be taken of the fact that the ratio for the requirement that the mark must have been put to genuine use is not to assess commercial success or to review the economic strategy of an undertaking, nor is it intended to restrict trade mark protection to the case where large-scale commercial use has been made of the marks (26/09/2013, C-609/11 P, *Centrotherm*, EU:C:2013:1449, § 72; 29/11/2018, C-340/17 P, *ALCOLOCK*, EU:C:2018:965, § 90).
- 35 When assessing whether use of a trade mark is genuine, regard must be had to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark is real, particularly whether such use is viewed as warranted in the economic sector concerned to maintain or create a share in the market for the goods or services protected by the mark, the nature of those goods or services, the characteristics of the market and the scale and frequency of use of the mark (11/03/2003, C-40/01, *Minimax*, EU:C:2003:145, § 38, 39; 19/12/2012, C-149/11, *Onel / Omel*, EU:C:2012:816, § 29; 30/01/2020, T-598/18, *BROWNIE / BROWNIE, Brownie*, EU:T:2020:22, § 32).
- 36 In order to examine, in a particular case, whether a trade mark has been put to genuine use, an overall assessment must be carried out, which takes into account all the relevant factors of the particular case. That assessment implies certain interdependence between the factors taken into account. Thus, a low volume of goods marketed under the trade mark may be compensated for by a high intensity or a certain consistency over time of the use of that trade mark or vice versa. In addition, the turnover and the volume of sales of goods marketed under the mark cannot be assessed in absolute terms but must be looked at in relation to other relevant factors, such as the volume of business, production or marketing capacity or the degree of diversification of the undertaking using the mark and the characteristics of the products or services on the relevant market. As a result, use of the mark at issue need not always be quantitatively significant in order to be deemed genuine. Even minimal use can therefore be sufficient to be deemed genuine, provided that it is viewed as warranted in the economic sector concerned in order to maintain or create a market share for the goods or services protected by the mark (08/07/2004, T-203/02, *Vitafruit*, EU:T:2004:225, § 42; 02/02/2016, T-171/13, *MOTOBIB PESARO*, EU:T:2016:54, § 72).
- 37 Genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned (13/06/2019, T-398/18, *DERMAEPIL SUGAR EPIL SYSTEM (fig.) / dermépil Perron Rigot (fig.)*, EU:T:2019:415, § 56; 23/09/2020, T-677/19, *Syrena*, EU:T:2020:424, § 44).
- 38 Pursuant to Article 10(3) EUTMDR, the indications and evidence of use must establish the place, time, extent and nature of use of the contested trade mark for the goods and services for which it is registered.

- 39 The Board does not see any reason to depart from the Cancellation Division's assessment of the evidence put forward in the first-instance proceedings as regards the time and place of the use of the contested mark, and as regards its use as a trade mark in the course of trade, and in a way that does not alter its distinctive character, particularly in view of the absence of any new and specific arguments from the cancellation applicant. Accordingly, the evidence on file is considered sufficient to establish those facts.
- 40 The Board therefore refers to the findings of the contested decision to avoid unnecessary repetition, which thus make up an integral part of the reasons for the present decision (13/09/2010, T-292/08, *Often*, EU:T:2010:399, § 48).
- 41 The Cancellation Division, however, considered that the evidence submitted by the IR holder did not suffice to show use and/or the requisite extent of use in relation to part of the contested goods and all of the contested services, those including the goods and services which are the subject of this appeal.

Use in relation to the registered goods and services and extent of use

- 42 Concerning the extent of use made of the contested mark, account must be taken, in particular, of the commercial volume of all the acts of use on the one hand, and the duration of the period in which those acts of use occurred, and the frequency of those acts, on the other (08/07/2004, T-334/01, *Hipoviton*, EU:T:2004:223, § 35). The assessment of use maintaining the right entails a degree of interdependence between the factors taken into account. Thus, the fact that commercial volume achieved under the mark was not high may be offset by the fact that use of the mark was extensive or very regular, and vice versa (08/07/2004, T-203/02, *Vitafruit*, EU:T:2004:225, § 42; 16/05/2013, T-353/12, *Alaris*, EU:T:2013:257, § 35).
- 43 The purpose of the proof of use is not to assess commercial success or to review the economic strategy of an undertaking, nor is it intended to restrict trade mark protection to the case where large-scale commercial use has been made of the marks (08/07/2004, T-203/02, *Vitafruit*, EU:T:2004:225, § 38). When it serves a real commercial purpose, even minimal use of the trade mark can be sufficient to establish genuine use (11/05/2006, C-416/04 P, *Vitafruit*, EU:C:2006:310, § 72).
- 44 Although the requirement as to the extent of use does not mean that the EUTM proprietor, or the IR holder, has to reveal the entire volume of sales or turnover figures, it does have to submit evidence which proves at least that the minimum threshold for a finding of genuine use has been passed (11/05/2006, C-416/04 P, *Vitafruit*, EU:C:2006:310, § 72; 12/11/2021, R 1312/2020-1, *airtours a sphere (fig.) / Sfera et al.*, § 33).
- 45 The IR holder relies on the evidence submitted at first instance (Annexes 1A-10O as summarised in paragraph 5 above and the invoices submitted as Annexes Ia-i as referred to in paragraph 7 above) and the evidence submitted with its statement of grounds of appeal (Appendices 1-9J as referred to in paragraph 14 above).

Class 3

- 46 In its appeal, the IR holder identifies that 'Rituals' products for laundry use, which include the contested *laundry products for woven fabrics* and *fabric softeners*, are shown

at first instance in Annex 6G and Annexes 7P and R, and further provides additional examples of their use in the relevant period on appeal, as shown in Appendix 7A.

- 47 In line with this evidence, a certified statement of the IR holder's chartered accountant, was submitted on appeal (Appendices 1 and 2). This evidence is further supported by supplementary invoices showing sales of laundry products in Appendices 3A-E. Cross references between the evidence submitted at first instance and the statement of the chartered accountant are provided in Appendix 2.
- 48 The combination of both the advertisements of the laundry products and the actual sales in respect of, e.g. the Scent Booster & Softener shows genuine use in the EU. The products were sold under the contested mark during the relevant period in amounts which clearly justify the genuine use of the contested mark for *laundry products for woven fabrics; fabric softeners* as correctly argued by the IR holder, and not contested in the appeal by the cancellation applicant.
- 49 The same applies for the contested goods *essential oils*. Indeed, examples of these goods as well as actual sales to a sufficient extent during the relevant period are shown in Annexes 1A-G and 6G and Appendices 3A-E, 7A and 8.
- 50 The IR holder further submits that genuine use has been established for *depilatory preparations*. The Board does not agree. While these products constitute hair removal preparations, none of the evidence shows products which, in and of themselves, remove unwanted hair, using, e.g. chemicals, as opposed to the shaving preparations, which are used together with, e.g., razors to remove hair and which appear adjacent and separate to hair removal preparations in Class 3, which may include depilatory preparations. These latter goods are not the same as the products used before, during and after shaving, which were considered to be genuinely used by the Cancellation Division, see paragraph 9 above. With regard to the other revoked goods in Class 3, the IR holder did not raise any explicit argument, and they have not been shown to be used to any extent. Therefore, genuine use for these goods has not been proven either.
- 51 It follows that genuine use of the contested mark has been proven for part of the contested goods in Class 3 which are the subject of this appeal, namely *laundry products for woven fabrics; fabric softeners; essential oils*.

Class 21

- 52 In its appeal, the IR holder explains that the 'Rituals' products 'travel exclusives', 'beauty to go bag' and 'Make-Up Bag' refers to the *toilet cases* for which the contested mark is registered. These products are referred to in the invoices (Annexes 1A-G and Annex 1b, f and g), in the company presentation (Annex 5), the magazines, articles, websites, catalogues and other promotional material (Annexes 6A-C and E, 7A-F and Q-S and 10G-K and L-O) as submitted at first instance.
- 53 In line with this evidence, a certified statement of the IR holder's chartered accountant is submitted on appeal (Appendices 1 and 2). This evidence is further supported by supplementary invoices showing sales of these products in Appendices 4A-D. Cross references between the evidence submitted at first instance and the statement of the chartered accountant are provided in Appendix 2.

- 54 The submitted evidence, taken as a whole, shows genuine use of the contested mark in the EU for *toilet cases*. The products are sold under the contested mark during the relevant period in amounts which justify the genuine use of the contested mark for these products, as correctly argued by the IR holder, and not contested in the appeal by the cancellation applicant.
- 55 The same applies for the contested *cosmetic brushes*. Indeed, examples of these products as well as actual sales to a sufficient extent during the relevant period are shown in Annexes 5, 6A-C, 7A-F and G-L, 8B and D and 10A, B-E, G-L and L-O, as submitted at first instance as well in Appendices 4A-D and 7B, as submitted in the appeal.
- 56 *Cosmetic brushes* are indicated by the IR holder itself as a specific subcategory of the broader category of *brushes (except paint brushes)* for which the contested mark is registered as well and for which genuine use has not been proven. With regard to the other revoked goods in Class 21, the IR holder did not raise any explicit argument, and they have not been shown to be used to any extent. Therefore, genuine use for these goods has not been proven either.
- 57 It follows that genuine use of the contested mark has been proven for part of the contested goods in Class 21 which are the subject of this appeal, namely *cosmetic brushes; toilet cases*.

Class 24

- 58 In its appeal, the IR holder identifies that ‘Rituals’ *bed clothes and bedding including sheets, bed mattress covers, loose covers, duvet covers, pillowcases, sleeves for decoration, children’s bedding; quilts; bed covers; towels of textile* are shown at first instance in Annexes 6A and G, 7G-L, M-O and Q-S, 8G-I and K, 9E and H and 10B-E, G-K and L-O and on appeal further provided additional examples of their use in the relevant period, as shown in Appendix 7C.
- 59 The certified statement of the IR holder’s chartered accountant, submitted on appeal (Appendices 1 and 2), is in line with this evidence and is further supported by supplementary invoices showing sales of these products in Appendices 5A-E. Cross references between the evidence submitted at first instance and the statement of the chartered accountant are provided in Appendix 2.
- 60 The submitted evidence taking as a whole shows genuine use of the contested mark in the EU for *bed covers; bed clothes and bedding including sheets, bed mattress covers, loose covers, duvet covers, pillowcases, sleeves for decoration, children’s bedding; quilts; bed covers; towels of textile*. The products are sold under the contested mark during the relevant period in amounts which justify the genuine use of the contested mark for these products, as correctly argued by the IR holder, and not contested in the appeal by the cancellation applicant.
- 61 With regard to the other revoked goods in Class 24, the IR holder did not raise any explicit argument, and they have not been shown to be used to any extent. In this respect the Board notes that the abovementioned goods are indicated by the IR holder itself as a specific subcategory of the broader category *textiles and textile goods, not included in other classes* for which the contested mark is registered as well and for which, therefore, genuine use has not been proven.

- 62 It follows that genuine use of the contested mark has been proven for part of the contested goods in Class 24 which are the subject of this appeal, namely *bed covers, bed clothes and bedding including sheets, bed mattress covers, loose covers, duvet covers, pillowcases, sleeves for decoration, children's bedding; quilts; bed covers; towels of textile*.

Class 30 - Tea

- 63 In its appeal, the IR holder identifies that 'Rituals' *tea* is shown at first instance in Annexes 6A-G and 7A-O and Q-S and further provided additional examples of its use in the relevant period on appeal, as shown in Appendix 7D.
- 64 The certified statement of the IR holder's chartered accountant, submitted on appeal (Appendices 1 and 2), is in line with this evidence and is further supported by supplementary invoices showing sales of this product in Appendices 6A-D. Cross references between the evidence submitted at first instance and the statement of the chartered accountant are provided in Appendix 2.
- 65 The submitted evidence taking as a whole shows genuine use of the contested mark in the EU for *tea* which is sold under the contested mark during the relevant period in amounts which justify the genuine use of the contested mark for this, as correctly argued by the IR holder, and not contested in the appeal by the cancellation applicant.
- 66 It follows that genuine use of the contested mark has been proven in Class 30 for the contested *tea* which is the only good in this class subject to appeal.

Class 35

- 67 The IR holder extensively argues that it offers *retail services* for which the contested mark is registered. The Board supports this view regarding part of the retail services, namely those related to the goods for which genuine use has been proven as found by the Cancellation Division and as reasoned by the Board above.

Relevant case-law

- 68 In the Praktiker judgment (07/07/2005, C-418/02, Praktiker, EU:C:2005:425), the Court of Justice answered the question of the German *Bundespategericht* of whether the concept of 'services' referred to in Article 2 of the First Council Directive 89/104/EEC of 21 December 1988 ('the Directive'), is to be interpreted as including services provided in connection with retail trade in goods and, if so, whether the registration of a service trade mark in respect of such services is subject to the specification of certain details.
- 69 In the core paragraph 34 of the Praktiker judgment, the Court of Justice noted that 'the objective of retail trade is the sale of goods to consumers. That trade includes, in addition to the legal sales transaction, all activity carried out by the trader for the purpose of encouraging the conclusion of such a transaction. That activity consists, inter alia, in selecting an assortment of goods offered for sale and in offering a variety of services aimed at inducing the consumer to conclude the abovementioned transaction with the trader in question rather than with a competitor.'

- 70 In paragraph 35, the Court of Justice continues that ‘[n]o overriding reason based on the directive or on general principles of Community law precludes those services from being covered by the concept of “services” within the meaning of the directive or, therefore, the trader from having the right to obtain, through the registration of his trade mark, protection of that mark as an indication of the origin of the services provided by him.’
- 71 In paragraph 36, it states ‘[t]hat consideration is illustrated by the Explanatory Note to Class 35 of the Nice Classification, according to which that class includes “the bringing together, for the benefit of others, of a variety of goods ... enabling customers to conveniently view and purchase those goods”’, and in paragraph 39 that ‘[c]onsequently, it must be concluded that the concept of “services” within the meaning of the directive includes services provided in connection with retail trade in goods.’
- 72 In paragraph 44, the Court of Justice refers to its definition of ‘retail services’ as it stands by stating that ‘there is no need to rely on a definition of “retail services” for the purposes of the directive which is more restrictive than that which follows from the description contained in paragraph 34 of this judgment’.
- 73 In the subsequent paragraphs 49 and 50, the Court of Justice states ‘for the purposes of registration of a trade mark covering services provided in connection with retail trade, it is not necessary to specify in detail the service(s) for which that registration is sought. To identify those services, it is sufficient to use general wording such as “bringing together of a variety of goods, enabling customers to conveniently view and purchase those goods”. However, the applicant must be required to specify the goods or types of goods to which those services relate by means, for example, of particulars such as those contained in the application for registration filed in the main proceedings.’
- 74 In paragraphs 43 and 44 of the O STORE judgment (24/09/2008, T-116/06, O STORE, EU:T:2008:399), the General Court repeated the core paragraph 34 of the Praktiker judgment and the further considerations of the Court of Justice in that judgment in paragraphs 35, 49 and 50 as referred to above.
- 75 In paragraph 47 of the O STORE judgment, the General Court elaborates on the difference of purpose between goods and retail services explaining that they are not only different in nature (the one fungible and the latter not), but also differ in purpose and method of use ‘since the retail service precedes the purpose served by the product and concerns the activity carried out by the trader for the purpose of encouraging the conclusion of the sales transaction for the product in question. So, for example, an item of clothing is intended in particular to clothe the person who purchases it, whereas a service linked to the sale of clothes is intended, inter alia, to offer assistance to the person interested in the purchase of that clothing. The same applies to their method of use, which for clothes means the fact of wearing them, whereas the use of a service linked to the sale of the clothes consists, inter alia, in obtaining information about the clothes before proceeding to buy them.’
- 76 In paragraphs 48 and 49, the General Court continues by stating that retail services ‘can be offered in the same places as those in which the goods in question are sold’, this being a relevant criterion for the purposes of the examination of the similarity between the services and goods concerned. In paragraph 50, it supports this finding by the consideration that ‘the manufactures of the goods in question often have their own sales outlets for their goods’.

- 77 In paragraph 54, the General Court again reverts to paragraph 34 of the Praktiker judgment where it states that ‘the relationship between the retail services and the goods covered by the earlier trade mark is close in the sense that the goods are indispensable to or at the very least, important for the provision of those services, which are specifically provided when those goods are sold’. It emphasises that the Court of Justice in the Praktiker judgment held that ‘the objective of retail trade is the sale of goods to consumers’ and also pointed out that ‘that trade includes, in addition to the legal sales transaction, all activity carried out by the trader for the purpose of encouraging the conclusion of such a transaction. Such services, which are provided with the aim of selling certain specific goods, would make no sense without the goods’.
- 78 In the Apple Store judgment (10/07/2014, C-421/13, Apple Store, EU:C:2014:2070), the Court of Justice had to answer the question of whether the layout of a retail store may be registered for services which comprise various services aimed at inducing the consumer to purchase the products of the applicant for registration, Apple Inc. The latter submitted that such is the case referring to the distinction the Court of Justice had made in paragraphs 34 and 35 of the Praktiker judgment (as cited above) between the sale of goods, on the one hand and services, falling within the concept of ‘service’, intended to induce that sale, on the other hand, see paragraph 25 of the judgment.
- 79 In the next paragraph 26 of the judgment, the Court of Justice held that ‘a sign depicting the layout of the flagship stores of a goods manufacturer may legitimately be registered not only for the goods themselves but also for services falling within one of the classes under the Nice Agreement concerning services, where those services do not form an integral part of the offer for sale of those goods. Certain services, such as those referred to in Apple’s application [Class 35: *Retail store services featuring computers, computer software, computer peripherals, mobile phones, consumer electronics and related accessories and demonstrations of products relating thereto*] and clarified by Apple during the hearing, which consist of carrying out, in such stores, demonstrations by means of seminars of the products that are displayed there, can themselves constitute remunerated services falling within the concept of “service”.’
- 80 In paragraph 28 of the judgment, the Court of Justice held that ‘Directive 2008/95 does not preclude the registration of a sign for services which are connected with the goods of the applicant for registration’.
- 81 In line with, and with explicit reference to the above case-law, the Office has classified retail services with regard to one’s own products as retail services in Class 35, amongst others, in the following decisions: 27/09/2016, R 1896/2015-4 & R 1959/2015-4, ORIGINE GOURMET, § 41; 05/07/2017, R 2330/2011-2 & R 2369/2011-2, ZARA TANZANIA ADVENTURES (fig.) / ZARA et al., § 65; 13/12/2024, R 1369/2024-4, Pol’s FREEZE FRESH (fig.) / PAUL depuis 1889 (fig.) et al., § 45, 46; decisions of the Cancellation Division of 25/05/2018, C 12 844 ; 11/12/2018, C 14 986 ; 19/12/2018, C 15 460.

The relevant services

- 82 It is fully in line with the abovementioned case-law that the IR holder’s activity as extensively referred to in these proceedings classifies not only as the activity of a commercial enterprise the function of which is the sale of goods, but also as retail services

in Class 35, at least in relation to part of the retail services for which the contested mark is registered, see paragraph 67 above.

- 83 Retail services are clearly and explicitly defined in paragraph 34 of the Praktiker judgment of the Court of Justice, while in that same judgment, the Court of Justice stated in paragraph 44 that there is no need to rely on a definition which is more restrictive than that what follows from what is described in paragraph 34, namely:

- The objective of retail trade = the sale of goods to consumers;
- Retail trade includes the legal sales transaction + all activity carried out by the trader for the purpose of encouraging the conclusion of that sales transaction;
- The activity carried out by the trader for the purpose of encouraging the conclusion of the sales transaction consists, inter alia,
 - in selecting an assortment of goods offered for sale and
 - in offering a variety of services aimed at inducing the consumer to conclude the abovementioned transaction with the trader in question rather than with a competitor.

- 84 Indeed, the IR holder's activity is broader than just being a commercial enterprise selling its goods and in fact exactly fits within how retail services are defined by the Court of Justice as per above:

- The objective of the activity of the IR holder = the sale of the 'Rituals' goods in Classes 3, 21, 24 and 30 as defined above in paragraphs 9, 51, 57, 62 and 66 to consumers;
- These activities include the pure legal sales transaction of these 'Rituals' goods + all kinds of activity carried out by the IR holder in order to encourage the consumer to conclude that sales transaction;
- The activity carried out by the IR holder for the purpose of encouraging the conclusion of the sales transaction consists, inter alia,
 - in selecting an assortment of 'Rituals' goods offered for sale, namely the goods in Classes 3, 21, 24 and 30 as defined above in paragraphs 9, 51, 57, 62 and 66, and
 - in offering a variety of services aimed at inducing the consumer to conclude the legal sales transaction of these 'Rituals' goods with the IR holder rather than with a competitor, namely a complete experience in which consumers can for instance wash their hands with 'Rituals' soap, drink 'Rituals' tea and where products are demonstrated by the IR holder's trained staff (be it during a one-minute hand massage, or in seminars, workshops or masterclasses) and consumers can create their own tailor-made products or use the 'Rituals' mindfulness, meditation and yoga apps and guides to relax and recharge their mind and body.

- 85 In paragraph 26 of the Apple Store judgment of the Court of Justice (with explicit reference to paragraph 34 of the Praktiker judgment making the distinction between the sale of the goods, on the one hand and services to induce that sale, on the other hand) exactly these kind of services (‘certain services, such as [...] demonstrations by means of seminars of the products that are displayed there’) are classified by the Court as retail services. It follows from the same paragraph that a trade mark may be registered not only for the goods themselves but also for these services. In paragraph 28, the Court of Justice, with explicit reference to paragraph 26, states that it is clear that the registration of a sign for services which are connected with the goods of the applicant for registration is not excluded.
- 86 Thus, a commercial enterprise, such as the IR holder, which in addition to the legal sales transaction of its goods offers all activity for the purpose of encouraging the conclusion of that sales transaction, is fully entitled to obtain protection not only for the goods themselves, but also for the retail services which have these goods as a subject.
- 87 This also follows from the O STORE judgment of the General Court (which also explicitly refers to the Praktiker judgment of the Court of Justice). In paragraph 47 of that judgment, the General Court elaborates on the differences in nature, purpose and method of use between goods and retail services explaining that the retail service precedes the purpose served by the product and concerns the activity carried out by the trader for the purpose of encouraging the conclusion of the sales transaction for the product in question. As an example, it mentions that an item of clothing is intended in particular to clothe the person who purchases it, whereas a service linked to the sale of clothes is intended, inter alia, to offer assistance to the person interested in the purchase of that clothing. The same applies to their method of use, which for clothes means the fact of wearing them, whereas the use of a service linked to the sale of the clothes consists, inter alia, in obtaining information about the clothes before proceeding to buy them.
- 88 The General Court continues in paragraph 48 stating that retail services can be offered in the same places as those in which the goods in question are sold, in which respect it is held in paragraph 50 that ‘the manufacturers of the goods in question often have their own sales outlets for their goods’ which is exactly the scenario in the present case.
- 89 This does not mean, however, that other scenarios are not possible as well, namely in which retail services are provided by entities which are not the manufacturers of the goods at issue. Here one may think of supermarkets and other retail stores or outlets offering a variety of goods of different manufactures such as the larger department stores and, as explicitly decided in the Burlington judgment of the Court of Justice (04/03/2020, C-155/18 P - C-158/18 P, Burlington (fig.) et al. / BURLINGTON ARCADE et al., EU:C:2020:151), shopping arcades such as the retail partners to which the IR holder refers in its statement of grounds.
- 90 In the Burlington judgment the Court of Justice makes in paragraph 124 explicit reference to the definition of *retail services* as in paragraph 34 of the Praktiker judgment. In paragraph 128, the Court of Justice states that this definition ‘does not support the assertion that the services provided by shopping arcades or shopping centres are, by definition, excluded from the scope of the concept of “retail services” defined in Class 35’. In paragraph 130, the Court of Justice continues that ‘the concept of “retail services” includes a shopping arcade’s services aimed at the consumer with a view to

enabling him or her to conveniently view and purchase those goods, for the benefit of the businesses occupying the arcade concerned’.

- 91 These businesses occupying the arcade concerned may very well concern enterprises such as the IR holder, Apple or other brand owners who not only manufacture their goods, but also offer retail services, that is in addition to the legal sales transaction, all activity carried out for the purpose of encouraging the conclusion of such a transaction as defined in the Praktiker judgment.
- 92 The mere positive example of what retail services can include as provided in the Burlington judgment, namely shopping arcades which are there not only for the benefit of the end consumers as is the case for the individual retailers occupying the arcade concerned, but also for the benefit of the latter, cannot undermine or lead to a restriction in the negative, of the description of the Court of Justice of what retail services are, as laid down in paragraph 34 of the Praktiker judgment consistently relied on in all further case-law of the Court. As explicitly stated in paragraph 44 of the Praktiker judgment, there is no need to rely on a definition which is more restrictive than the one provided in paragraph 34 of that judgment.
- 93 The Board emphasises that the definition of retail services is provided in paragraph 34 of the Praktiker judgment. The Explanatory Note of the Nice Classification indicates that the services in Class 35 include, in particular ‘the bringing together, for the benefit of others, of a variety of goods [...] enabling customers to conveniently view and purchase those goods’. The consideration of the Court of Justice in the Praktiker judgment in paragraph 35, namely that there is no overriding reason based on the Directive or general principles of Community law that precludes retail services as defined in paragraph 34 from being protected by the trader through registration as a trade mark, is illustrated by that Explanatory Note as the Court of Justice explicitly states in paragraph 36 of its judgment. The fact that the Burlington judgment states that the shopping arcade’s services are for the benefit of the businesses occupying the arcade concerned does not detract from the general principle that these retail services are there also, and above all, for the benefit of the consumer.
- 94 The Board further emphasises that it must base its decisions solely on the EUTM Regulations as interpreted by the Courts of the European Union. The Nice Classification, the main purpose of which is to facilitate registration and searches, has essentially a practical value. The same applies to the Office Guidelines which are not binding legal acts for the purpose of interpreting provisions of the EUTM Regulations (19/01/2012, C-53/11 P, R10, EU:C:2012:27, § 57; 19/12/2012, C-149/11, Onel/Omel, EU:C:2012:816, § 48; 17/04/2024, T-126/22, Coinbase / Coinbase et al., EU:T:2024:252, § 35).
- 95 It follows that genuine use of the contested mark has been proven for the following contested services:

Class 35: Retail services of soaps, laundry products for woven fabrics, fabric softeners, perfumery, essential oils, cosmetic preparations, colognes, eau de toilette, perfume body sprays, cosmetic oils, creams and lotions for skincare purposes, shaving foam, shaving gel, pre-shaving and after-shaving lotions, toiletries for the bath and shower use, hair lotions, deodorants, anti-perspirants for personal use, non-medicated toilet preparations, non-medicated massage preparations, cosmetic brushes, toilet cases, bed

covers, bed clothes and bedding including sheets, bed mattress covers, loose covers, duvet covers, pillowcases, sleeves for decoration, children's bedding, quilts, bed spreads, towels of textile, tea.

- 96 Genuine use of the contested mark was not proven for the other retail services which are related to the goods for which genuine use of the contested mark was not established. The same applies to the *business intermediary services for the wholesale* in relation to any of the goods listed as well as for the *business management and economic consulting services related to franchising; advertising, sales promotion, market prospecting, market research and market analysis for the service industries and retail, wholesale and distribution companies; business intermediary services related to the import and export of consumer goods* for which the contested mark is registered, in which respect the Board further notes that no arguments at all were raised by the IR holder.

Conclusion

- 97 The contested decision is annulled insofar as the application for revocation was upheld for the following goods and services for which the contested mark remains registered:

Class 3: *Laundry products for woven fabrics; fabric softeners; essential oils.*

Class 21: *Cosmetic brushes; toilet cases.*

Class 24: *Bed covers; bed clothes and bedding including sheets, bed mattress covers, loose covers, duvet covers, pillowcases, sleeves for decoration, children's bedding; quilts; bed covers; towels of textile.*

Class 30: *Tea.*

Class 35: *Retail services of soaps, laundry products for woven fabrics, fabric softeners, perfumery, essential oils, cosmetic preparations, colognes, eau de toilette, perfume body sprays, cosmetic oils, creams and lotions for skincare purposes, shaving foam, shaving gel, pre-shaving and after-shaving lotions, toiletries for the bath and shower use, hair lotions, deodorants, anti-perspirants for personal use, non-medicated toilet preparations, non-medicated massage preparations, cosmetic brushes, toilet cases, bed covers, bed clothes and bedding including sheets, bed mattress covers, loose covers, duvet covers, pillowcases, sleeves for decoration, children's bedding, quilts, bed spreads, towels of textile, tea.*

- 98 For the above goods and services, the IR holder is successful in its appeal. The appeal is dismissed for the remainder.

Costs

- 99 Pursuant to Article 109(3) EUTMR, where each party succeeds on some and fails on other heads, the Boards of Appeal shall decide a different apportionment of costs. As the appeal is successful in part, it is appropriate to order that each party bears its own costs in the appeal proceedings.

- 100 As to the costs of the cancellation proceedings, the contested decision ordered that each party bears its own costs. These findings are not altered by the present decision.

Order

On those grounds,

THE BOARD

hereby:

- 1. Annuls the contested decision to the extent that application for revocation was upheld for the following goods and services:**

Class 3: *Laundry products for woven fabrics; fabric softeners; essential oils.*

Class 21: *Cosmetic brushes; toilet cases.*

Class 24: *Bed covers; bed clothes and bedding including sheets, bed mattress covers, loose covers, duvet covers, pillowcases, sleeves for decoration, children's bedding; quilts; bed covers; towels of textile.*

Class 30: *Tea.*

Class 35: *Retail services of soaps, laundry products for woven fabrics, fabric softeners, perfumery, essential oils, cosmetic preparations, colognes, eau de toilette, perfume body sprays, cosmetic oils, creams and lotions for skincare purposes, shaving foam, shaving gel, pre-shaving and after-shaving lotions, toiletries for the bath and shower use, hair lotions, deodorants, anti-perspirants for personal use, non-medicated toilet preparations, non-medicated massage preparations, cosmetic brushes, toilet cases, bed covers, bed clothes and bedding including sheets, bed mattress covers, loose covers, duvet covers, pillowcases, sleeves for decoration, children's bedding, quilts, bed spreads, towels of textile, tea.*

- 2. Rejects the application for revocation also for the above goods and services for which international registration No 914 438 remains valid in the European Union as well.**

3. Dismisses the appeal in the remainder.

4. Orders the parties to bear their own costs in the cancellation and appeal proceedings.

Signed

N. Korjus

Signed

L. Marijnissen

Signed

A. Kralik

Registrar:

Signed

H. Dijkema

