

OPPOSITION No B 3 219 702

Hilton Worldwide Manage Limited, Maple Court Central Park, Reeds Crescent, WD24 4QQ Watford, United Kingdom (opponent), represented by **Boekx Trademarks B.V.**, Leidsegracht 9, 1017 NA Amsterdam, Netherlands (professional representative)

a g a i n s t

Servicios Productivos Malagueños, S.L., Calle Alonso De Bazán 8, 6º, 29602 Marbella, Spain (applicant), represented by **Falcon Abogados**, C/ Goya, 23 - 3º Izda., 28001 Madrid, Spain (professional representative).

On 05/11/2025, the Opposition Division takes the following

DECISION:

1. Opposition No B 3 219 702 is upheld for all the contested services.
2. European Union trade mark application No 19 005 062 is rejected in its entirety.
3. The applicant bears the costs, fixed at EUR 620.

REASONS

On 03/07/2024, the opponent filed an opposition against all the services of European Union



trade mark application No 19 005 062
based on the following earlier rights:

(figurative mark). The opposition is

- 1) European Union trade mark registration No 1 852 946 'Waldorf Astoria' (word mark);
- 2) International trade mark registration designating the European Union No 926 493 'THE WALDORF=ASTORIA COLLECTION' (word mark);
- 3) Benelux trade mark registration No 493 934 'WALDORF=ASTORIA' (word mark).

The opponent invoked Article 8(1)(b) EUTMR in relation to all earlier rights and Article 8(5) EUTMR in relation to earlier rights 1) and 3).

EVIDENCE SUBMITTED BY THE OPPONENT

The outcome of the opposition depends to a great extent on the conclusions in relation to the evidence submitted by the opponent to prove the genuine use and reputation of the earlier marks. Therefore, in this section the Opposition Division will first set out the evidence submitted in its entirety and will determine whether the earlier mark has been put to genuine use and whether it has acquired a reputation.

Within its submissions of **17/10/2024** (during the substantiation period of the opposition), the opponent submitted the evidence in support of its claim of a high degree of distinctiveness and reputation of the earlier mark.

As the opponent requested to keep certain commercial data contained in the evidence confidential vis-à-vis third parties, the Opposition Division will describe the evidence only in the most general terms without divulging any such data.

The evidence to be taken into account is the following:

- **Annexes 1-3.2:** According to the opponent they contain a 'General information'. They consist of:
 - **Annex 1:** screenshots of the Instagram account of Grupo Casa Lola.
 - **Annex 2:** extracts of the opponent's trade mark registrations obtained from the official databases of EUIPO, WIPO and Benelux trademark registries.
 - **Annex 3.1:** extract from Wikipedia about 'Waldorf Astoria Hotels & Resorts' listing, among others, all the Waldorf Astoria hotels in operation.
 - **Annex 3.2:** extract from Michelin guide from 2023, which according to the opponent, lists the restaurants in the Waldorf Astoria hotels in Rome (La Pergola), Amsterdam (Spectrum) and France (Gordon Ramsay au Trianon).
- **Annexes 4.1-4.29:** According to the opponent, they contain 'Printed and online media regarding the Waldorf Astoria Amsterdam'. They consist of:
 - **Annex 4.1:** an online article dated 21/05/2014 from 'Luxury Travel Magazine', entitled 'Waldorf Astoria Amsterdam Opens'. It states, inter alia, 'Once home to some of the wealthiest and most influential residents of the city, the patrician houses have been lovingly restored **to create an elegant 93-room hotel steeped in history**'.
 - **Annex 4.2:** an online article dated 14/07/2014 from 'New York Times', entitled 'In Amsterdam, a New Waldorf-Astoria Hotel Raises the Bar'. It states, inter alia, 'Created from six of the Dutch city's most beautiful 17th- and 18th-century brick townhouses, **the Waldorf-Astoria Amsterdam, five years in the making, sets an impressively high bar for a new sort of stylish and discreetly luxurious European hotel**'.
 - **Annex 4.3:** an online article dated 17/07/2014 from 'Travel + Leisure', entitled 'The Waldorf Astoria Amsterdam Captures the City's New Golden Age'.
 - **Annex 4.4:** an online article dated 31/08/2014 from 'Architectural Digest', entitled 'The Waldorf Astoria Opens a New Amsterdam Location'.
 - **Annex 4.5:** an online article dated 31/08/2015 from 'The Condé Nast Traveler', entitled 'The Perfect Weekend in Amsterdam'. Among its recommendations when visiting Amsterdam, it states that, inter alia, 'For uber-posh, head to the Waldorf Amsterdam, which debuted in 2014 on the Herengracht ('gracht' means canal) as one fully stocked Dutch toy box: The back garden is planted with tulips, the Michelin-starred Librije's Zusje Amsterdam serves a North Sea daily catch, and the guest rooms are accented with a blue palette echoing the canals outside'.

- **Annex 4.6:** an online article dated 17/11/2015 from 'Amsterdam Today Online News Magazine', entitled 'Waldorf Astoria Driving Experience'. It states, inter alia **'Access performance, design and beauty at Waldorf Astoria Hotels & Resorts**. Their unforgettable driving experiences allow you to sample their iconic and landmark properties, and access some of the world's best supercars right from the driver's seat. Reserve your scenic drive at one of their participating properties, and choose between a morning, midday or afternoon session'.
- **Annex 4.7:** an online article dated 23/12/2015 from '**Vogue**' entitled 'Is Amsterdam Poised for a Culinary Revolution?'. It describes, inter alia, the dining experience at the Librije's Zusje, **'the restaurant in the subterranean level of the luxurious Waldorf Astoria Amsterdam'**.
- **Annex 4.8:** an online article dated 12/03/2016 from '**Forbes**' entitled 'A Comeback On The Canal, Courtesy Of The Waldorf Astoria Amsterdam'. It states that, inter alia, 'When the Waldorf Astoria Amsterdam opened in May, 2014 on the famous Herengracht canal (known to Anglophones alternatively as the Patricians' or Gentlemen's Canal), it meant nothing less than the revival of six double-front, 17th- and 18thcentury residences' and 'Over some five years of design work, the GA Group of hotel architects wisely exercised discretion in leaving well enough alone, to the extent that you could pass right by the property and not realize that **a major luxury hotel is right in front of you**. You'd never guess that a full 93 rooms and suites are carved out of this ensemble located within the Grachtengordel, or Canal Ring (a UNESCO world heritage site that was surprisingly only inscribed as recently as 2010)'.
- **Annex 4.9:** an online article dated 19/12/2016 from 'Condé Nast Traveler' entitled **'Editors' Choice: Our Favorite Hotels in Europe'**. It lists Waldorf Astoria Amsterdam among two best hotels in Amsterdam and as one of the best hotels in Europe.
- **Annex 4.10:** an online article dated 29/05/2018 from 'Condé Nast Traveler' entitled **'Best Hotels in Amsterdam'**. It states, inter alia, that 'In the past few years, boutique and international brands, from the likes of Waldorf Astoria, Kimpton, and The Hoxton, have opened impressive hotels in Amsterdam with smart designs that piece together historical buildings—yet incorporate modern luxuries'. This article lists Waldorf Astoria Amsterdam as one of the best hotels in Amsterdam. It also states that this hotel was placed on or received **GOLD LIST 2018, HOT LIST 2015 and READERS' CHOICE AWARDS 2017, 2018**.
- **Annex 4.11:** an online article in Dutch dated 03/04/2019 from 'Entree' entitled 'Waldorf Astoria Amsterdam is 5 years'. No English translation is provided. According to the opponent, **'This article rates the Waldorf Astoria Amsterdam as the number 1 luxury hotel in Amsterdam and one of the best hotels in the world'**.
- **Annex 4.12:** an online article in Dutch dated 11/05/2019 from 'Quote Magazine' entitled **'We are the best hotel of the Netherlands'**. No English translation is provided. According to the opponent, 'Quote, a prominent Dutch business and lifestyle magazine, published an interview with the owner of the Waldorf Astoria Amsterdam'.
- **Annex 4.13:** an online article in Dutch dated 16/05/2019 from 'Amsterdam Magazine' entitled 'For an Afternoon Tea experience you should go to the Waldorf Astoria'. No English translation is provided except for the article title.

- **Annex 4.14:** an online article dated 21/06/2019 from '**Forbes**' entitled 'The Best Hotels In Amsterdam'. It lists, '**Waldorf Astoria Amsterdam**' as one of the best hotels in Amsterdam. It states, inter alia, that 'It does not get more luxurious than Amsterdam's 93-room Waldorf Astoria. Carved out of six contiguous large canalside houses – which in this case approach the classic European definition of 'palaces' – on Amsterdam's signature Heerengracht. There are grand ball spaces and intimate ones, and even a recreation of New York's trademark Peacock Alley, providing a wonderful anchor for those world travelers who are devotees of the Waldorf style'.
- **Annex 4.15:** an online article in Dutch dated 02/07/2019 from 'Your Little Black Book' entitled 'Spectrum Amsterdam: the new restaurant of 2 Michelin-star chef Sidney Schutte'. No English translation is provided. According to the opponent, 'An article about the reopening of the hotel restaurant rebranded as 'Spectrum', naming the 2 Michelin-star restaurant "fantastic", "unique" and "special"'.
- **Annex 4.16:** an online article in Dutch dated 03/07/2019 from 'Algemeen Dagblad' entitled 'In these restaurants, you'll find not only great food but also the finest wines on the menu'. No English translation is provided. It provides screenshot from Instagram account of the 'Spectrum' restaurant which is located in Waldorf Astoria Amsterdam. According to the opponent, 'This article, published in the Netherlands' most widely read newspaper, **highlights Spectrum at Waldorf Astoria Amsterdam as one of the finest wine destinations**'.
- **Annex 4.17:** an online article dated 20/08/2019 from 'Travel Weekly' entitled 'Golden Age reborn at Waldorf Astoria Amsterdam'. It states, inter alia, that '**Comprising six contiguous Unesco-listed canal palaces, the Waldorf Astoria Amsterdam is on the Herengracht, or Patricians' Canal, the most prestigious of the city's canals**, notable for its double-wide mansions and private gardens'. Furthermore, it states that 'Inspired by the bespoke jewelry collection of Amsterdam jeweler Choices by DL, the Waldorf's tea service highlights a collection of confectionery jewels and gemstones' and 'The Clefs d'Or concierges at the Waldorf Astoria Amsterdam arrange private airport transfers via Maybachs and Mercedes-Benzes through Marcus Executive Car Services, and Bios-groep offers private airport service via Teslas with gull-wing doors'.
- **Annex 4.18:** an online article in Dutch dated 02/12/2019 from 'Omroep Zeeland' entitled 'At this top chef in Zeeland, The Rolling Stones, Adele, and Ariana Grande dine'. No English translation is provided. According to the opponent, this is 'An article about the chef of 'Spectrum', shedding light on the restaurant's allure for celebrities who frequently dine there'.
- **Annex 4.19:** an online article in Dutch dated 14/12/2019 from 'Het Parool' entitled 'A day with the General Manager of Hilton and Waldorf Astoria'. No English translation is provided. According to the opponent, this article is about 'An extensive interview with the manager of the Waldorf Astoria Amsterdam in a leading Dutch newspaper'.
- **Annex 4.20:** an online article dated 01/09/2020 from 'Travel Weekly' entitled 'Waldorf Astoria Amsterdam opens the Mayor's Residence'. It states, inter alia, that 'The Waldorf Astoria Amsterdam overlooks the Unesco-protected Herengracht canal and comprises six 17th century residential palaces from the Dutch Golden Age. The Mayor's Residence was built in 1665 for Amsterdam's then-mayor Hendrik Hooft and retains many of its original Rococo features. Guests of the residence will have exclusive use of the hotel's **Guerlain Spa** and

unlimited spa treatments, as well as the services of a dedicated concierge, butler, housekeeper, private chef and spa therapist’.

- **Annex 4.21:** an online article in Dutch dated 07/09/2020 from ‘De Telegraaf’ entitled ‘This is the most expensive hotel room in Amsterdam’. No English translation is provided. According to the opponent, this is **‘An article in one of the largest Dutch newspapers highlights a previously unveiled suite at the Waldorf Astoria Amsterdam’**.
- **Annex 4.22:** an online article in Dutch dated 17/01/2021 from ‘Het Parool’ entitled ‘80 out of 180 employees gone from Waldorf Astoria: ‘I had the best time of my life here’. No English translation is provided. According to the opponent, ‘In this extensive article the popular Amsterdam newspaper Het Parool mentions the Waldorf Astoria Amsterdam to illustrate the impact of COVID-19 on the hotel business, while emphasizing that normally rich and famous people visit the hotel’.
- **Annex 4.23:** an online article in Dutch dated 15/04/2021 from ‘Harper’s Bazaar’ entitled ‘Waldorf Astoria Amsterdam presents Afternoon Tea with Igone de Jong’. No English translation is provided.
- **Annex 4.24:** an online article in Dutch dated 25/08/2022 from ‘De Volkskrant’ entitled ‘The service is outstanding at the upscale Vigor, and the vegetarian menu deserves high praise’. No English translation is provided. According to the opponent, this is **‘An article praising the Waldorf Astoria Amsterdam restaurant Spectrum and comparing it to another high-class restaurant’**.
- **Annex 4.25:** an online article in Dutch dated 01/11/2022 from ‘ELLE Magazine’ entitled ‘Afternoon tea at the Waldorf Astoria, this is the place to be after an afternoon of shopping in Amsterdam’. No English translation is provided. According to the opponent, **‘A publication recommending Afternoon tea in the Waldorf Astoria Amsterdam, also highlighting the hotel’s partnership with luxury candle brand Trudon’**.
- **Annex 4.26:** an online article dated 05/01/2023 from ‘Food & Wine’ entitled ‘This Bank Vault-Turned-Bar in Amsterdam Offers a Scotch Collection Any Whisky Aficionado Will Love’. It states, inter alia, that ‘situated in a former bank vault, the Vault Bar in the basement of the historic Waldorf Astoria Amsterdam has been unlocked to feature **some of the world’s rarest Scotch whiskies**’. It further states that ‘The Vault Bar is the only location nationwide where The Dalmore, which is sold for EUR850 for a 35ml our, is served by the glass. **‘Here at the Waldorf [Astoria]. We try to partner with brands that align with ours and are as exclusive as we are’** says Emiliano Di Franca, the food and beverage manager at the Waldorf Astoria Amsterdam’.
- **Annex 4.27:** an online article in Dutch dated 02/04/2023 from ‘Quote Magazine’ entitled ‘Spectrum makes Hilton – and us – happy’. No English translation is provided. According to the opponent, ‘This article praises the culinary expertise and exquisite wines offered at Spectrum in the Waldorf Astoria Amsterdam’.
- **Annex 4.28:** an online article in Dutch dated 18/04/2023 from ‘NSMBL’ entitled ‘What are the celebrity hotspots in Amsterdam? The stars sleep in these hotels’. No English translation is provided. According to the opponent, **‘This article describes the Waldorf Astoria Amsterdam as one of the city’s most opulent and exclusive hotels, frequently chosen by celebrities like Ariana Grande for their stays’**.

- **Annex 4.29:** Extract from 'Wikipedia' about 'Waldorf Astoria Amsterdam'.
- **Annexes 5.1-5.19:** According to the opponent, they contain 'Printed and online media regarding the Waldorf Astoria Berlin'. They consist of:
 - **Annex 5.1:** an online article in German dated 07/04/2012 from 'Der Spiegel' entitled, 'Marble luxury on the Kudamm'. No English translation is provided. According to the opponent, this is 'An article in major online magazine Der Spiegel about the opening of the Waldorf Astoria Berlin'.
 - **Annex 5.2:** an online article in German dated 21/10/2012 from 'Die Welt' entitled 'Luxury hotel "Waldorf Astoria" opens in December'. No English translation is provided. According to the opponent, 'Die Welt, one of Germany's most popular newspapers, dedicated an article to the opening of the Waldorf Astoria Berlin'.
 - **Annex 5.3:** an online article in German dated 03/01/2013 from 'Bild' entitled 'One night in this suite costs as much as your annual rent'. The opponent following partial English translation: 'The first 30 guests have checked in. The Waldorf Astoria Berlin is open (a year late)! Of the 232 rooms and suites, the showpiece is located on the 31st floor - the presidential suite! BILD was allowed inside before the doors only open again for 12,000 euros per night'.
 - **Annex 5.4:** an online article in German dated 03/01/2013 from 'Süddeutsche Zeitung' entitled 'With a view of the flamingos'. According to the opponent, 'One of Germany's largest daily newspapers dedicates an article to the then newly opened Waldorf Astoria Berlin: "But of course the Waldorf Astoria is not just a hotel. It has too big a name for that and, more importantly in this case, it is in an exceptional location: right next to Zoo station"'.
 - **Annex 5.5:** an online article dated 05/02/2013 from 'Viva Most' entitled 'Berlin: The Waldorf Astoria Hotel welcomes the Cinema for Peace Gala'. It states, inter alia, that 'On Saturday February 9th, the hotel Waldorf Astoria in Berlin will host the annual Cinema for Peace Gala. For the last decade the galas took place at the Konzerthaus on Gendarmenmarkt square and welcomed thousands of guests in the movie world, but also politicians, athletes and musicians. Mikhail Gorbachev, Sean Penn, Dustin Hoffman and Richard Gere have been at one of the galas'.
 - **Annex 5.6:** an online article dated 12/11/2014 from 'Condé Nast Traveler' entitled 'A Food Lover's Guide to Berlin'. It states, inter alia, that 'There are few people in the world who understand the sensual pleasures of food more than Michelin-starred chef Pierre Gagnaire. The Frenchman currently heads up an impressive 11 restaurants around the world from Tokyo to Las Vegas. **One of the crown jewels in his empire is Les Solistes at Waldorf Astoria Berlin.** The Paris-based chef was recently on site in Berlin for the launch of the Taste of Waldorf, a global culinary program with the James Beard Foundation (he was paired up with rising star chef Chris Kajioka, a Per Se alumnus, for the project). Here, Gagnaire takes us on a culinary tour of the German capital and gives us the scoop on the city's hottest foods.
 - **Annex 5.7:** an online article dated 12/10/2016 from 'DW' entitled 'Breitscheidplatz: the heart of western Berlin'. It states, inter alia, that 'Next door is the Europa center, a 22-floor shopping mall built in the 1960s. With its old West Berlin charm, the complex is inviting for those looking to shop. **Since 2012, it has**

been towered over by the "Zoofenster," a new building that houses the luxury hotel Waldorf Astoria. This new construction has returned Breitscheidplatz to its previous glory, returning it to the living heart of Berlin's west'. According to the opponent, 'This article discusses the Waldorf Astoria Berlin in the context of its premium location on the Breitscheidplatz'.

- **Annex 5.8:** an online article in German dated 04/02/2019 from 'Tophotel' entitled 'The Waldorf-Astoria should "fully benefit from the location'. No English translation is provided. According to the opponent, this article is about 'An interview with General Manager of the Waldorf Astoria Berlin in popular niche magazine Tophotel'.
- **Annex 5.9:** an online article in German dated 01/03/2021 from 'Bild' entitled 'This is the coolest thing I have experienced'. According to the opponent, 'In this article, Bild accompanies a famous young German actress as she was connected live from the Waldorf Astoria Berlin to the Golden Globes in the US'.
- **Annex 5.10:** an online article in German dated 20/08/2022 from 'Gourmetwelten' entitled 'New team in the Roca'. The opponent provided following partial English translation: "It is characterized by timeless elegance, in the style of the legendary hotel in New York's Manhattan. Waldorf Astoria has been writing hotel history since its foundation and sets the highest standards with its "True Waldorf Service" sets the highest standards in the luxury hotel sector".
- **Annex 5.11:** an online article in German dated 24/08/2022 from 'Berliner Morgenpost' entitled 'New team for the "Roca" at the "Waldorf Astoria"'. The opponent provided following partial English translation: "The luxury hotel "Waldorf Astoria Berlin" announces that renowned head chef Robert Mujagic and restaurant manager Kevin Stummer will take over the management of the in-house restaurant "Roca" with immediate effect".
- **Annex 5.12:** an online article dated 18/09/2022 from 'Luxury Lifestyle Magazine' entitled 'How To Spend A Luxury Weekend in Playful Berlin'. Among its recommendation on what to do in Berlin, the article recommends 'Waldorf Astoria' as the place to stay. It further states, inter alia, that 'At 118 metres tall, **Waldorf Astoria has dominated the West Berlin skyline since 2012.** The grand hotel is sculpted from limestone and adorned with 900 pieces of local contemporary art, which some might say is no contest for its lobby wall filled with sloppy signatures from former famous residents like **Arnold Schwarzenegger and Aerosmith'**.
- **Annex 5.13:** an online article (one page of this article with an image of the hotel) in German dated 16/01/2023 from 'Berliner Morgenpost' entitled 'Waldorf Astoria in Berlin becomes ten years old'. No English translation is provided except for the article title.
- **Annex 5.14:** an online article in German dated 19/01/2023 from 'Gourmetwelten' entitled '10 years of luxury and elegance'. According to the opponent, 'This article details the gala event commemorating the 10th anniversary of the Waldorf Astoria Berlin'.
- **Annex 5.15:** an online article in German dated 14/03/2023 from 'Berliner Zeitung' entitled 'Israeli Prime Minister Netanyahu in Berlin: Highest security level security level - large-scale closures'. According to the opponent, 'This article covers Israeli Prime Minister Netanyahu's visit to Berlin, highlighting his

accommodation at the Waldorf Astoria Berlin. He is among the many politicians who have stayed at the hotel’.

- **Annex 5.16:** an online article in German dated 15/03/2023 from ‘Bild’ entitled ‘Netanyahu in Berlin - extensive closures’. The opponent provided following partial English translation: “This mainly affects the area in City West around Hardenbergstrasse at the Hotel Waldorf Astoria, where **Netanyahu** is staying twice”.
- **Annex 5.17:** an online article in German dated 25/03/2023 from ‘Berliner Zeitung’ entitled ‘Delicious new addition to the Morgenpost menu at the Waldorf Astoria’. Its content is related to the Waldorf Astoria hotel in Berlin and possibly a restaurant called ‘ROCA’ and based inside this hotel, however, the content is not self-explanatory and no English translation is provided.
- **Annex 5.18:** an online article dated 25/09/2023 from ‘Luxury London’ entitled ‘The best luxury hotels in Berlin’. **It mentions Waldorf Astoria as one of the best luxury hotels in Berlin.**
- **Annex 5.19:** Extract from ‘Wikipedia’ about ‘Waldorf Astoria Berlin’.
- **Annexes 6.1-6.10:** According to the opponent, they contain ‘Printed and online media regarding the Waldorf Astoria Rome Cavalieri’. They consist of:
 - **Annex 6.1:** an online article dated 08/08/2016 from ‘Condé Nast Traveler’ entitled ‘5 Common Mistakes Travelers Make in Rome’. In this article, Frederick Hawkins, cultural ambassador on the Waldorf Astoria Rome Cavalieri shares five easy ways to spot a tourist- and what to do to look like a local.
 - **Annex 6.2:** an online article in Italian dated 07/10/2016 from ‘Il Sole 24 Ore’ entitled ‘In Rome, the new Grand Spa opens at the Cavalieri, with 2,200 square meters for fitness and beauty’. The opponent provided the following partial English translation: ‘Popular Italian newspaper Il Sole 24 Ore dedicates an article to the opening of the new spa in the hotel: “The new Cavalieri Grand Spa Club has just opened in the Rome Cavalieri Waldorf Astoria Hotels & Resorts, a 2,200-square-meter area in a private Mediterranean park spanning six acres of greenery, overlooking of Rome and the Vatican”.
 - **Annex 6.3:** an online article in Italian dated 15/03/2022 from ‘Il Giornale’ entitled ‘The "red freeze" returns. Xi ready to supply Chinese weapons to Putin. And the U.S. warns: serious consequences’. According to the opponent, this article concerns ‘Milan based popular newspaper Il Giornale about a meeting between US and Chinese officials held in the Waldorf Astoria Rome Cavalieri’.
 - **Annex 6.4:** an online article dated 07/12/2016 from ‘Condé Nast Traveler’ entitled ‘The 10 Most Extravagant Hotel Experiences in the World’. **It lists, Rome Cavalieri (Waldorf Astoria) among the most extravagant hotel experiences in the world.** It states that ‘There are many reasons to book the penthouse suite at the Rome Cavalieri: You can sleep alongside original Andy Warhol paintings, soak in a jacuzzi tub overlooking the Roman skyline, lounge around on Karl Lagerfeld-designed furniture, and pop bottles from your private wine cellar. But perhaps the most compelling reason of all is the chance to skip the crowds and go on a private tour of the Vatican, Sistine Chapel and St. Peter's Basilica. That's right—the hotel will hook you up with “privileged access” to all of Rome's most sacred sights, so that you can stand alone before the works of Michelangelo and Leonardo da Vinci. Really, is there any better way to see the Eternal City?’.

- **Annex 6.5:** an online article dated 26/10/2021 from 'Breaking travel news!' entitled 'BTN interview: Alessandro Cabella, managing director, Rome Cavalieri, A Waldorf Astoria Hotel'. It states, inter alia, that **'Rome Cavalieri, A Waldorf Astoria Hotel has been honoured with the title of Europe's Leading Luxury City Resort at the World Travel Awards'**.
- **Annex 6.6:** an online article dated 12/01/2022 from 'Belfast Telegraph' entitled 'License to Rome'. It states, inter alia, that 'Where else to base yourself for a break in the enchanting Eternal City than Leo DiCaprio and Julia Roberts' favourite hotel' and 'Sitting high on Monte Mario overlooking Rome city center, the Rome Cavalieri hotel is the perfect location for a city break in Italy'. It further states that **'Opened in 1963, the opulent and grand Waldorf Astoria resort has played host to royalty and celebrities such as George Clooney, Julia Roberts, Leonardo DiCaprio and Brad Pitt'**.
- **Annex 6.7:** an online article dated 21/10/2022 from 'Hotel My Passion' entitled 'The movie stars At the Rome Cavalieri, A Waldorf Astoria Hotel'. It states, inter alia, that the 17th edition of the Rome Film Fest took place at the Rome Cavalieri Waldorf Astoria hotel. Among the guests of the evening, the Oscar winner James Ivory, Melissa Newman were present.
- **Annex 6.8:** an online article dated 29/11/2022 from 'Forbes' entitled 'Best Holiday Getaways 2022: Here's Why You Should Go To Rome This Christmas'. It states, that, inter alia, 'And with that idea in mind, Rome Cavalieri, A Waldorf Astoria Hotel—one of the Eternal City's most acclaimed resorts has unveiled its 2022/2023 holiday programming, designed to inspire guests to embrace the wondrous season in high Italian style, with world-class dining experiences, singular celebrations, and more'.
- **Annex 6.9:** an online article in Italian dated 04/01/2023 from 'Il Sole 24 Ore' entitled 'Waldorf Astoria, the legend bets on luxury residences'. Its content is related to Waldorf Astoria Hotel. However, no English translation is provided.
- **Annex 6.10:** an online article in Italian dated 11/07/2023 from 'Corriere Della Sera' entitled 'Hilton opens 5 new hotels in Italy and celebrates 60 years in Rome'. According to the opponent, 'Italy's most-read newspaper covers the 60th-anniversary celebration of the Waldorf Astoria in Rome, emphasizing the frequent visits of VIPs to the hotel: "The industry data were presented at the Rome Cavalieri, Waldorf Astoria Hotel, a luxury resort on the top of the hill of Monte Mario in Rome, from which there is one of the most beautiful views of the city's eternal city, by the Group's top executives-David Kelly, senior vice president Continental Europe Hilton and Alessandro Cabella, managing director of the Rome Cavalieri Waldorf Astoria. Both were in the capital on the occasion of the 60th anniversary of the historic Capitoline hotel. **The hotel over the years has hosted heads of state, official delegations, highly confidential summits and international celebrities such as Julia Roberts, Leonardo DiCaprio, George Clooney, and John Travolta**".
- **Annexes 7.1-7.9:** According to the opponent, they contain 'Printed and online media regarding the Waldorf Astoria Trianon Palace Versailles'. They consist of:
 - **Annex 7.1:** an online article dated 03/10/2019 from 'Ynet news' entitled 'A French kosher feast at the Waldorf Astoria'. It states, inter alia, that 'The executive chef of The Waldorf Astoria Jerusalem, Itzik Barak, is collaborating with his colleague Frédéric Larquemin, executive chef of The Waldorf Astoria Trianon

Palace Versailles, on a special dinner menu being served at the Palace Restaurant the first half of this month. Each course of the gourmet dinners is being paired with premium wines from Carmel Wineries’.

- **Annex 7.2:** an online article in French dated 19/10/2019 from ‘Forbes France’ entitled ‘L’Art De Vivre Versaillais Celebrated At The Waldorf Astoria Trianon Palace’. The opponent provided one sentence partial English translation: “‘Culture, gastronomy, elegance and nature: the Waldorf Astoria Trianon Palace has it all!’”.
- **Annex 7.3:** an online article in French dated 29/11/2020 from ‘Le Parisien’ entitled ‘Miss France 2021: welcome to the palace!’. According to the opponent, ‘Popular French newspaper covers the Miss France beauty pageant held at the Waldorf Astoria Trianon Palace Versailles: “Because I’m happyyy”, sings Sylvie Tellier as she enters the sumptuous, gilded lobby of the gilded lobby of the Waldorf Astoria Versailles-Trianon Palace hotel’.
- **Annex 7.4:** an online article in French dated 02/11/2021 from ‘Forbes France’ entitled ‘The Trianon Palace at Versailles, a breath of culture and greenery’. Its content is related to Waldorf Astoria Hotel. However, no English translation is provided.
- **Annex 7.5:** an online article in French dated 09/03/2022 from ‘78 Actu’ entitled ‘A woman at the helm of the Trianon Palace in Versailles’. According to the opponent, this article was published by ‘Popular Versailles news outlet 78 Actu reports: “UK-born Stéphanie Rambaud officially took over as manager of the Waldorf Astoria in Versailles (Yvelines) in January 2022, succeeding Grégoire Salamain. This self-taught woman thus becomes the first woman to manage the Trianon Palace, a five-star establishment founded in 1910”.
- **Annex 7.6:** an online article dated 06/12/2022 from ‘Forbes’ entitled ‘Waldorf Astoria Versailles Trianon Palace: Where Parisians Go For Luxurious Weekend Getaways’. It states, inter alia, that ‘There’s a very good reason why well-heeled Parisians from the past and present go to Versailles to spend their weekends. **A five star hotel, the Waldorf Astoria Versailles Trianon Palace offers a blissfully quiet, peaceful and luxurious escape from the hustle and bustle of the City of Lights.** The grand dame of Versailles, the Waldorf Astoria Versailles Trianon Palace is surrounded by lush gardens. It offers everything you might expect at a five star hotel. It has world-class dining by Gordon Ramsay, a Guerlain Spa, an expansive indoor swimming pool with hammam and sauna, two fitness centers and tennis facilities’.
- **Annex 7.7:** an online article in French dated 10/08/2023 from ‘Yonder’ entitled ‘We tested La Pause at the Waldorf Astoria Versailles Trianon Palace’. The opponent provided the following one sentence English translation: “‘The Waldorf Astoria Versailles - Trianon Palace blends rich French heritage and contemporary luxury within its historic walls, built in 1910”.
- **Annex 7.8:** an online article dated 2022 from ‘Pursuitist’ entitled ‘Stay At The Hotel Where The Duke and Duchess Of Windsor Went During Their Honeymoon’. It states, inter alia, that ‘**the Duke and Duchess of Windsor stayed at this five star hotel in Versailles, France during their honeymoon in 1937** shortly after their wedding at Chateau de Candé in the Loire Valley’.
- **Annex 7.9:** Extract from ‘Wikipedia’ about ‘Trianon Palace Versailles’.

- **Annexes 8.1-8.6:** According to the opponent, they contain 'Printed and online media general'. They consist of:
 - **Annex 8.1:** an online article dated 14/04/2015 from 'BusinessWire' entitled 'Waldorf Astoria Hotels & Resorts Puts Guests in the Driver's Seat of Luxury Vehicles at 12 Properties Worldwide'. It states that, inter alia, 'Following a successful test drive in 2014, Waldorf Astoria Hotels & Resorts shifts into the fast lane with the global launch of Waldorf Astoria Driving Experiences, now bookable for guests across North America, Europe and the United Arab Emirates at 12 of the brand's 26 hotels and resorts'. It further lists, the Waldorf Astoria hotels in Italy, France, Berlin and Scotland taking part in the driving experience.
 - **Annex 8.2:** an online article dated 03/06/2015 from 'Town & Country Magazine' entitled 'Guests at the Waldorf Astoria Can Now Drive Ferraris and Lamborghinis'. It states, inter alia, that 'The Waldorf Astoria Driving Experience offers guests a turn behind the wheel of supercars like Ferraris, Lamborghinis, and McLarens'. It further states that 'For \$999 per driver or driver-passenger pair, guests get a two-and-a-half-hour drive that involves a turn behind the wheel of each of the three supercars being featured on that excursion. Driving sessions are offered three times a day: morning, midday, and afternoon'. It further lists, the Waldorf Astoria hotels in Italy, France, Berlin and Scotland taking part in the driving experience.
 - **Annex 8.3:** an online article dated 02/09/2015 from 'BusinessWire' entitled 'Waldorf Astoria Hotels & Resorts Curates Bespoke Unforgettable Experiences at 25 Iconic Destinations Worldwide'. It states, inter alia, that 'From a meet and greet with one of Europe's most respected 3-Michelin Star chefs, Heinz Beck, followed by a private dinner in Rome to a camel ride accompanied with a secluded dinner in the desert for two in Dubai, Waldorf Astoria Unforgettable Experiences highlights truly bespoke offers. Waldorf Astoria Unforgettable Experiences incorporates the most engaging and exclusive activities in each destination paired with Waldorf Astoria's unparalleled True Waldorf Service and VIP amenities like in-room spa treatments, luxury airport transfers, and Michelin-starred meals'. It further lists the hotel locations worldwide including Waldorf Astoria hotels in Holland, Germany, Scotland, Italy and France.
 - **Annex 8.4:** an online article dated 13/09/2015 from 'La Repubblica' (which according to the opponent is an Italian newspaper) entitled 'Obama is the first president to not stay at the Astoria'. According to the opponent 'Obama is the first president to not stay at the Astoria'; The renowned Italian newspaper La Repubblica highlights the uniqueness of a US president opting not to stay at the Waldorf Astoria in New York, emphasizing the hotel's popularity among US presidents.
 - **Annex 8.5:** an online article in Dutch dated 07/10/2019 from 'Algemeen Dagblad' entitled 'What are we eating today: Waldorf salad'. According to the opponent, this is an article in the biggest Dutch newspaper about a recipe for the well-known Waldorf Salad. No further English translation is provided.
 - **Annex 8.6:** Extract from 'Wikipedia' about 'Waldorf Astoria Hotels & Resorts'.
- **Annexes 9.1-9.6:** This Annex contains multiple awards received by the Waldorf Astoria hotels, namely the following:
 - **Annex 9.1:** World Travel Awards of Waldorf Astoria Rome Cavalieri:

- 1) World's Leading Green City Resort 2022
- 2) World's Leading Luxury City Resort 2022
- 3) Europe's Leading City Family & Wellness Resort 2022
- 4) Europe's Leading Luxury City Resort 2022
- 5) Europe's Leading Luxury Wedding Resort 2022
- 6) Italy's Leading Luxury City Resort 2022
- 7) World's Leading Green City Resort 2021
- 8) World's Leading Luxury City Resort 2021
- 9) Europe's Leading Luxury City Resort 2021
- 10) Italy's Leading Luxury City Resort 2021
- 11) World's Leading Luxury City Resort 2020
- 12) Europe's Leading Luxury City Resort 2020
- 13) Italy's Leading Luxury City Resort 2020
- 14) World's Leading Luxury City Resort 2019
- 15) Europe's Leading Luxury City Resort 2019
- 16) Italy's Leading Luxury City Resort 2019
- 17) World's Leading Luxury City Resort 2018
- 18) Europe's Leading Luxury City Resort 2018
- 19) Italy's Leading Luxury City Resort 2018
- 20) World's Leading Luxury City Resort 2017
- 21) Europe's Leading Luxury City Resort 2017
- 22) Italy's Leading Luxury City Resort 2017
- 23) World's Leading Luxury City Resort 2016
- 24) Europe's Leading Luxury City Resort 2016
- 25) Italy's Leading Luxury City Resort 2016
- 26) World's Leading Luxury City Resort 2015
- 27) Europe's Leading Luxury City Resort 2015
- 28) Italy's Leading Luxury City Resort 2015
- 29) Italy's Leading Business Hotel 2014
- 30) Italy's Leading Business Hotel 2013
- 31) Italy's Leading Business Hotel 2012
- 32) Italy's Leading Conference Hotel 2011
- 33) Italy's Leading Conference Hotel 2007

This Annex also contains a long lists of hotel nominations for other awards in Europe and Italy.

According to the opponent, World Travel Awards is 'the travel industry's most prestigious awards programme' and 'this overview illustrates that the Waldorf Astoria Rome Cavalieri has won prizes yearly since 2011, among others for World's Leading Luxury City Resort, World's Leading Green City Resort and Italy's Leading Business Hotel'.

○ **Annex 9.2:** World Travel Awards of Waldorf Astoria Trianon Palace Versailles:

- 1) France's Leading Spa Resort 2012
- 2) France's Leading Spa Resort 2008
- 3) France's Leading Spa Resort 2007
- 4) France's Leading Spa Resort 2006

Also nominated for:

- 1) France's Leading Spa Resort 2016
- 2) France's Leading Spa Resort 2015
- 3) France's Leading Spa Resort 2014
- 4) France's Leading Spa Resort 2013
- 5) France's Leading Hotel 2012

- 6) France's Leading Hotel 2011
 - 7) France's Leading Spa Resort 2011
 - 8) France's Leading Hotel 2010
 - 9) France's Leading Spa Resort 2010
 - 10) France's Leading Spa Resort 2009
- **Annex 9.3:** Waldorf Astoria Amsterdam was nominated by World Travel Awards as the Europe's Leading New Hotel 2015.
- **Annex 9.4:** an online article in Dutch dated 25/05/2016 from 'Hospitality Management', entitled 'Waldorf Astoria Amsterdam receives a prize'. According to the opponent, **'The Waldorf Astoria Amsterdam won the Connie Award for best performing luxury Waldorf Astoria and Conrad Hotels in 2016'**.
- **Annex 9.5:** an online article in Dutch dated 16/05/2022 from 'Misset Horeca' entitled, 'One Dutch hotel in the European top-25 of Tripadvisor'. According to the opponent, **'This article states that the Waldorf Astoria was ranked by Tripadvisor as the 13th best hotel of Europe and the best hotel of The Netherlands'**.
- **Annex 9.6:** an online article dated 09/02/2023 from 'CNBC' entitled 'These are the best hotels in the U.S. and Europe, according to a new ranking'. According to the opponent, 'The U.S. News & World Report ranked the Waldorf Astoria Amsterdam as the best hotel in Europe'.
- **Annexes 10.1-10.9:** This Annex contains screenshots of blogs and articles with reviews of Waldorf Astoria hotels, namely the following.
 - **Annex 10.1:** extract from the blog of Barts Boekje (travel and lifestyle platform in the Netherlands) dated 22 June 2018 entitled 'The Summer Afternoon Tea at Waldorf Astoria Amsterdam is like having a Vacation in Your Own Country'. According to the opponent, 'this blog post praises the Afternoon Tea in the Waldorf Astoria Amsterdam'.
 - **Annex 10.2:** extract from the review of Waldorf Astoria Amsterdam at 'One Mile at a Time' dated July 2021. According to the opponent, this is an 'extensive review of the Waldorf Astoria Amsterdam, concluding by: "The Waldorf Astoria Amsterdam is a spectacular hotel that I can't recommend enough, whether you're paying cash or redeeming Hilton Honors points. This is now my favorite points hotel in Europe, and one of my top 10 city hotels in the world"'.
 - **Annex 10.3:** an online article dated 21/12/2022 from 'Condé Nast Traveler' entitled 'Waldorf Astoria Amsterdam: The epitome of good taste'. It states, inter alia, that 'This hotel stands out in a city full of trendy boutique hotels, offering spacious rooms that are both opulent and dignified'.
 - **Annex 10.4:** an online article dated 14/03/2023 from 'Town & Country Magazine' entitled 'The Best Room at ... The Waldorf Astoria Amsterdam'. It states, inter alia, that 'For plenty of properties, one palace would be enough—but not the Waldorf Astoria Amsterdam. The hotel is based in a series of six mansions, known as "canal palaces," dating back to 1665 along the historic Herengracht waterway in the heart of the city. But don't mistake the legacy of the buildings with being old fashioned; the hotel and its 93 rooms feel modern and bustling, thanks in part to offerings like Spectrum, the in-house restaurant with two Michelin stars, the Peacock Alley lobby lounge, proximity to excellent shopping and dining—go to nearby Winkel 43 for the apple cake, trust us—and a spa run in partnership with Guerlain'.

- **Annex 10.5:** an online article dated 18/03/2023 from 'De Standaard' entitled 'Au Trianon'. According to the opponent, 'The Belgian newspaper De Standaard reviews the restaurant Au Trianon in the Waldorf Astoria Versailles, calling it "special" and an "impeccable experience"'.
- **Annex 10.6:** an online article dated 09/07/2023 from 'The Daily Mail' entitled 'The best luxury stays in Paris: Two luxury hotels and an apartment with a difference reviewed'. It states, inter alia, that "WALDORF ASTORIA VERSAILLES – TRIANON PALACE, Ooh-la-la factor: So many Grand Budapest Hotel vibes. Opened in 1910, this chocolate-box, neoclassical hotel has welcomed everyone from novelist Marcel Proust and US President Dwight D Eisenhower to Queen Elizabeth II".
- **Annex 10.7:** online article dated 2023 from 'The Telegraph' entitled 'Waldorf Astoria Berlin'. It states, inter alia, that "This classic Berlin hotel, in the city's upmarket City West district, more than earns each of its five stars for its convenient location and excellent service. Elegant and sophisticated, the interiors seamlessly blend classic Art Deco and contemporary touches, while the warm and welcoming staff are eager and obliging".
- **Annex 10.8:** extracts reviews on 'Tripadvisor' up to 2018 of the Waldorf Astoria Amsterdam, Waldorf Astoria Rome Cavalieri and Waldorf Astoria Berlin and Waldorf Astoria Versailles. Random prices on some screenshots appear in USD, however, the reviewers are based in a number of cities in Europe, including Italy and the Netherlands.
- **Annex 10.9:** extracts reviews on 'Tripadvisor' up to 2023 of the Waldorf Astoria Amsterdam, Waldorf Astoria Rome Cavalieri and Waldorf Astoria Berlin and Waldorf Astoria Versailles. Random prices on some screenshots appear in USD, however, while there are some reviews of customer based in Europe most reviews are done by customers based outside the EU.
- **Annex 11.1:** an affidavit dated 13/12/2023 of Hilton Senior Vice President, Assistant General Counsel which according to the opponent which provides additional detail and exhibits regarding the history and fame of the WALDORF ASTORIA brand. Most of the information in the affidavit concerns the Waldorf Astoria Hotels in United States of America or worldwide. However, it also includes some references such as awards and other information for Waldorf Astoria Hotels and restaurants at Waldorf Astoria Hotels based in Europe. It contains figures in relation to reservations, revenue and advertising of the Waldorf Astoria Hotels worldwide including Europe as well as the number of <https://www.hilton.com/en/brands/waldorf-astoria/> website's visits from EU residents. However, such figures are not shown for any specific country in Europe but as a continent. Exhibits No. 1-16 attached to the present affidavit are mostly related to the US or other non-European Territories and therefore, are not relevant to the present proceedings. Among its content, the Assistant General Counsel mentions:
 - 'Brand-Level Awards', namely:
 - 1) 2020 Top 25 Hotel Brands, #21 Waldorf Astoria Hotels & Resorts - Travel + Leisure World's Best
 - 2) 2017 Public Relations Gold, Taste of Waldorf Astoria, Best Consumer Placement - Bloomberg Pursuits featuring John Vanderslice, Global Head of Luxury & Lifestyle Brands - HSMIA Adrian Awards

- 3) 2017 Public Relations Silver, Taste of Waldorf Astoria, Best Consumer Placement - Waldorf Astoria Hotels & Resort's Taste of Waldorf Astoria Heritage Program – Food & Wine Online - HSMAI Adrian Awards
- 4) 2021 Rome Cavalieri, a Waldorf Astoria Hotel – No. 5 Best Hotel in Rome - Travel + Leisure World's Best Awards

○ Property-Level Awards for:

Waldorf Astoria Amsterdam:

- 1) 2021 Best Hotels in Europe (Gold badge winner) - 2021 U.S. News & World Report Best Hotel Rankings
- 2) 2020 #1 in the Netherlands and #1 in Amsterdam: AMSWA - 2020 U.S. News & World Report Best Hotels Rankings
- 3) 2020 2-Michelin Stars: Spectrum – Michelin
- 4) 2020 9,4/10 Traveler Review Awards 2020: AMSWA - Booking.com
- 5) 2019 #1 The Best Luxury Hotel in the Netherlands - Luxury Lifestyle Awards
- 6) 2019 4 stars by Forbes Travel Guide - Forbes
- 7) 2019 #1 Guerlain Spa Best luxury Beauty Spa - Europe - World Luxury Spa Awards
- 8) 2019 #1 Guerlain Spa best luxury Beauty spa - Netherlands - World Luxury Spa Awards
- 9) 2019 #8 The top 10 Europe City Hotels - Travel+Leisure
- 10) 2018 #1 The Best Luxury Hotel in the Netherlands - Luxury Lifestyle Awards
- 11) 2018 #1 Top Hotels in Amsterdam: Readers' Choice Awards - Condé Nast Traveler
- 12) 2018 #22 Best of Luxury Hotels – TripAdvisor
- 13) 2017 Gold List - Conde Nast Traveler
- 14) 2017 #1 Top Hotels in Amsterdam, Reader's Choice Award - Conde Nast Traveler
- 15) 2017 World's Best Hotel Finder - Travel + Leisure

Trianon Palace Versailles, A Waldorf Astoria Hotel:

- 1) 2021 Waldorf Astoria Versailles – Trianon Palace – No. 2 Best Resort Hotel in France - Travel + Leisure World's Best Awards
- 2) 2021 Waldorf Astoria Versailles - Trianon Palace – No. 7 Hotel in France and Monaco - Condé Nast Traveler Readers' Choice Awards
- 3) 2017 #8 Top Hotels in France and Monaco, Reader's Choice Award - Conde Nast Traveler
- 4) 2017 Top 10 Resort Hotels in Europe, No. 10 - Travel + Leisure
- 5) 2017 Top 5 Resort Hotels in Europe, No. 1 - Travel + Leisure

Rome Cavalieri:

- 1) 2021 – No. 6 Hotel in Rome - Condé Nast Traveler Readers' Choice Awards
- 2) 2021 Best Hotels in Europe (Gold badge winner) - 2021 U.S. News & World Report Best Hotel Rankings
- 3) 2020 Top 10 Hotels in Europe/Italy/Rome: #4 - Condé Nast Traveler 2020 Readers' Choice Awards
- 4) 2017 #10 Top Hotels in Rome, Reader's Choice Award - Conde Nast Traveler
- 5) 2017 Forbes Four-Star Hotel - Forbes Travel Guide
- 6) 2017 Europe's Leading Luxury City Resort - World Travel Awards
- 7) 2017 Italy's Leading Luxury City Resort - World Travel Awards

Waldorf Astoria Edinburgh - The Caledonian:

- 1) 2021 Waldorf Astoria Edinburgh - The Caledonian – No. 6 Hotel in the UK - Condé Nast Traveler Readers' Choice Awards
- 2) 2021 Best Hotels in Europe (Gold badge winner) - 2021 U.S. News & World Report Best Hotel Rankings
- 3) 2020 Top 30 Hotels in Europe/UK/London: #3 - Condé Nast Traveler 2020 Readers' Choice Awards
- 4) 2017 #6 Top Hotels in the United Kingdom, Reader's Choice Award - Conde Nast Traveler
- 5) 2017 #8 Best Hotels in Scotland - U.S. News & World Report
- 6) 2017 #4 Best Hotels in Edinburgh - U.S. News & World Report

Waldorf Astoria Berlin

- 1) 2021 Best Hotels in Europe (Gold badge winner) - 2021 U.S. News & World Report Best Hotel Rankings
- 2) 2017 Forbes Four-Star Hotel - Forbes Travel Guide
- 3) 2017 #39 Best Hotels in Germany - U.S. News & World Report
- 4) 2017 #11 Best Hotels in Berlin - U.S. News & World Report

- **Annexes 12.1-12.9:** These Annexes include, according to the opponent, official partnerships and advertising involving Waldorf Astoria Hotels. They consist of:
 - **Annex 12.1:** Waldorf Astoria & Goodwood Festival of Speed Partnership; Waldorf Astoria presented a stand – including a spa – on the popular motorsport event Goodwood Festival of Speed in 2017 and 2019. Waldorf Astoria was shortlisted for the European Sponsorship Association Sponsorship of the Year award.
 - **Annex 12.2:** an online article dated 08/08/2017 from 'Robb Report' entitled 'Storming the Bastille: **Lamborghini Lessons with Waldorf Astoria in Versailles**'. It states, inter alia, that 'Forget cake; Marie Antoinette should have said, "Let them drive Lamborghinis." That's exactly what guests of the Waldorf Astoria Trianon Palace Versailles were able to do over Bastille Day weekend, courtesy of a partnership between the exotic carmaker and the luxury hotel brand'.
 - **Annex 12.3:** an online article dated 23/06/2018 from 'Travel Pulse' entitled 'Waldorf Astoria Launches New Marketing Campaign'. It states, inter alia, that 'The iconic luxury brand's new campaign "Live Unforgettable" will highlight Waldorf Astoria's unique experience while also deepening connections with today's luxury travelers'.
 - **Annex 12.4:** an online article dated 04/12/2018 from 'Aston Martin' entitled 'Aston Martin and Waldorf Astoria: Where Sports Car Performance Meets Service and Style'. This article states that "Aston Martin Lagonda and Waldorf Astoria Hotels & Resorts, Hilton's (NYSE: HLT) iconic luxury hotel brand, announce a new, four-year, global partnership, bringing two enduring icons of global luxury together to launch a new era of performance and hospitality".
 - **Annex 12.5:** an online article dated 05/12/2018 from 'Luxury Travel Advisor' entitled 'Aston Martin Lagonda and Waldorf Astoria Hotels & Resorts Partner Up'. It states that "Waldorf Astoria will be offering its guests VIP hospitality at some of these fixtures, including 24 Hours of Le Mans in France (June 15 - 16, 2019)".

- **Annex 12.6:** an online article dated 06/06/2019 from 'Forbes' entitled 'How Waldorf Astoria is Pacing The High-End Travel Race'. It states, that in 2019 Waldorf Astoria has partnered up with the world famous race 24 Hours of Le Mans: "**And the 24 Hours of Le Mans, one of racing's most grueling events, takes place on June 15 and 16 in a town only 115 miles from the Eiffel Tower.** Hang around the country this month and you could easily check off half of your sports bucket list. With the latter event, an unprecedented partnership with **Waldorf Astoria and Aston Martin** promises to take the racing experience into another gear".
- **Annex 12.7:** an online article in Dutch dated 25/10/2022 from 'NSMBL' (online magazine based in Amsterdam) entitled 'Waldorf Astoria unveils its Afternoon Tea in collaboration **with candle brand Trudon** – we asked them everything you want to know'. According to the opponent, **'this article is about the collaboration between Waldorf Astoria Amsterdam and luxury candlemaker Trudon'**.
- **Annex 12.8:** an online article in Dutch dated 06/11/2022 from 'F1 Journaal' entitled 'VIDEO: Lando Norris as a chef at the Waldorf Astoria hotel in Amsterdam'. According to the opponent, this is 'A post on a Belgian F1 website about a video in which McLaren F1 driver Lando Norris becomes a chef at the Waldorf Astoria Amsterdam'.
- **Annex 12.9:** screenshot from YouTube dated 17/11/2022 entitled 'Rome Film Fest 2022 Gala Dinner by Heinz Beck at La Pergola'. According to the opponent, this is 'A video impression of the Rome Film Festival 2022 Gala Dinner hosted by the Waldorf Astoria Rome Cavalieri and its restaurant La Pergola'.
- **Annexes 13.1-13.3:** These Annexes, according to the opponent, contain information about 'WALDORF ASTORIA' in films, books and other media.
 - **Annex 13.1:** 'Filming Location Matching "Waldorf-Astoria Hotel - 301 Park Avenue, Manhattan, New York City, New York, USA" (Sorted by Popularity Ascending)' by IMDB (Internet Movie database).
 - **Annex 13.2:** screenshots of books about the Waldorf Astoria hotels available on Amazon.nl, Amazon.de and Amazon.fr within the Netherlands, Germany and France.
 - **Annex 13.3:** podcast dated 31/08/2018 from 'Het Laatste Avondmaal' entitled 'Sidney Schutte (Librije's Zusje) and an unbelievably exquisite Caribbean spiny lobster'.
- **Annexes 14.1-14.4:** Screenshots from social media's accounts of 'WALDORF ASTORIA'. They consist of:
 - **Annex 14.1:** Overview of the YouTube-pages of Waldorf Astoria Amsterdam, Waldorf Astoria Rome Cavalieri and Waldorf Astoria Berlin;
 - **Annex 14.2:** Overview of the Instagram-pages of Waldorf Astoria worldwide, Waldorf Astoria Amsterdam, Waldorf Astoria Versailles, Waldorf Astoria Rome Cavalieri and Waldorf Astoria Berlin **with Waldorf Astoria having 33,200 followers.**
 - **Annex 14.3:** Examples of videos posted on YouTube by the individual Waldorf Astoria hotels in Europe. It includes a screenshot of video entitled '**Live**

Unforgettable at Waldorf Astoria Amsterdam' from 24/08/2018 where it has 12,477 views.

- **Annex 14.4:** Examples of Instagram posts on the Instagram accounts of the Waldorf Astoria Amsterdam, Waldorf Astoria Versailles, Waldorf Astoria Rome Cavalieri and Waldorf Astoria Berlin;
- **Annexes 15:** Invoices consisting of:
 - **Annex 15.1:** Examples of invoices by Waldorf Astoria Berlin, dated 2017, 2019 and 2021.
 - **Annex 15.2:** Examples of invoices by Waldorf Astoria Trianon Palace Versailles dated 2023.
 - **Annex 15.3:** Examples of invoices by Waldorf Astoria Edinburgh dated 2017, 2019 and 2022.

The amounts in EUR and GBP included in the very few submitted invoices are not particularly high.

- **Annex 16.1:** an online article dated 30/03/2015 from '30s Magazine' entitled 'Lunch at Brasserie Goldfinch in the Waldorf Astoria Amsterdam' Amsterdam'. He opponent cited the following quote in its submissions taken from the article: 'A few weeks ago I had lunch at the newly opened Brasserie Goldfinch in the Waldorf Astoria hotel in Amsterdam. I have to say, it was one of the best lunches I had in a while'.
- **Annex 16.2:** an online article in Dutch dated 02/04/2015 from 'Your Little Black Book' entitled 'Goldfinch Brasserie Amsterdam: Lunch favorite in the Waldorf Astoria'.
- **Annex 16.3:** an online article dated 21/08/2018 from 'Michelin Guide' entitled 'Catching Up with Heinz Beck'. It states, inter alia, that 'Just as Beck is trying to break the mold when it comes to nutrition and fine dining, Reitano is breathing life into the restaurant's ornate, frescoed dining room on the top floor of the Rome Cavalieri a Waldorf Astoria resort that sits on 15 private acres and is just as stunning as the food coming out of the La Pergola kitchen one bottle at a time'.
- **Annex 16.4:** an online article dated 21/08/2018 from 'Forbes' entitled 'Italy's Best Luxury Hotels: Rome Cavalieri, A Waldorf Astoria Resort' Resort'. According to the opponent this article praises La Pergola, the restaurant in the hotel: 'Though aesthetes could happily spend hours perusing the hotel's lobby and halls, gazing saucer eyed at the paintings, sculptures and other rarities on display, gourmets will want make a beeline for Chef Heinz Beck's world renowned La Pergola, which has earned the singular distinction of being Rome's first and only three star Michelin restaurant'.
- **Annex 16.5:** an online article in Dutch dated 06/03/2019 from 'Misset Horeca' entitled 'Vegetarian voyage of discovery in Goldfinch Brasserie Waldorf Astoria'.
- **Annex 16.6:** an online article in Dutch 22/06/2019 from 'Het Parool' entitled Restaurant Spectrum: fireworks while staying within the lines (8,5)'. According to the opponent, this Dutch newspaper summarizes the experience at restaurant Spectrum in the Waldorf Astoria: 'Eating at Spectrum is an adventure. The cooking is daring and inventive, making it easy to overlook any minor flaws. Had we only tried the vegetarian menu, we would have floated out on a cloud of bliss despite the hefty bill. Special mention goes to the service, which, in the somewhat formal hotel setting, exudes warmth, authenticity, and enthusiasm'.

- **Annex 16.7:** extract from 'World Culinary Awards 2022', according to which, La Pergola at Waldorf Astoria Rome Cavalieri won the award for Italy's Best Hotel Restaurant 2022.
- **Annex 16.8:** an online article in Dutch dated 02/07/2022 from 'De Telegraaf' entitled 'Restaurant review: Spectrum in Amsterdam operates at a three-star level'. According to the opponent 'The biggest Dutch newspaper is ecstatic about Spectrum: Mees & Hope made way for the Waldorf Astoria Hotel, which houses Spectrum, one of the country's best restaurants. (...) A few weeks ago, we wrote that Tribeca is the best restaurant in the country. That was a bit hasty. Spectrum operates at the exact same three-star level. It's high time Michelin shows some courage and acknowledges this. We're concluding fourteen years of restaurant reviews with a bang'.
- **Annex 16.9:** an online article dated 08/08/2022 from 'Food & Wine' entitled 'What It's Like to Dine at Rome's Only Three Michelin Star Restaurant'. It states, inter alia, that 'Located at the top of Rome Cavalieri, a Waldorf Astoria Resort on the ninth floor, peering over sweeping, movie set like views of Rome, La Pergola would be something different; it offers one of the most extravagant tasting menus you can find in Italy, a nation built on trattorias. As I sipped an exquisite pre dinner negroni at the restaurant's chic bar, I marveled at the glowy panorama of the Rome that I knew so well, but not like this'.
- **Annex 16.10:** an online article in Dutch dated 24/12/2022 from 'Het Parool' entitled 'Chef Sidney Schutte of Spectrum: "Turkey is so damn dry, who came up with the idea of eating that for Christmas ??)". According to the opponent, this is 'An extensive interview in the Dutch newspaper Het Parool with the famous chef Sidney Schutte of Spectrum, the restaurant in the Waldorf Astoria Amsterdam: "Seven months after the opening of Spectrum, then still Librije's Zusje, in 2014, we immediately received two stars. I had expected one. It was amazing; we threw a big party, but I also thought: damn, now the real work begins. I gathered the team and said: listen, now we have to show that we deserve it and aim for three stars. You want to meet the guests' expectations. If you don't have a star and you're incredibly good, people are seriously surprised. With us, guests often have the attitude of: go ahead, impress us'.
- **Annex 16.11:** an online article dated 30/03/2023 from 'The Berliner' entitled 'Charlottenburg's 13 best breakfast spots'. It states, inter alia, that 'The Waldorf Astoria's restaurant Roca is offering luxurious weekend brunches where champagne and eggs reign supreme'.
- **Annex 16.12:** an online article dated 01/03/2024 from 'Amsterdam Vacay' entitled, 'Experience Fine Dining at Waldorf Astoria Amsterdam Restaurant: A Review'. It states, inter alia, the following: 'Are you seeking a fine dining encounter that ticks all the right boxes? Well, the Waldorf Astoria Amsterdam Restaurant promises to exceed your expectations. This refined eatery, known for its sophisticated ambience, culinary masterpieces, and impeccable service, offers a gastronomic experience like no other'.
- **Annex 16.13:** an online article dated 11/06/2024 from 'Business Insider' entitled 'I spent \$650 a night to stay at a Waldorf Astoria hotel in Rome with my daughter. The incredible views weren't even the best part'. It states, inter alia, that 'Breakfast at Uliveto, another of Rome Cavalieri's restaurants, was unlike anything I've had in a hotel'.
- **Annex 16.14:** undated online article from Hotels.com entitled '10 Best Hotels with Michelin Star Restaurants in Europe'. It lists on the third place: Rome Cavalieri, A Waldorf Astoria Hotel, Rome and on the eight place: Waldorf Astoria Versailles Trianon Place.
- **Annex 16.15:** undated extract from the website www.gaultmillau.nl. According to the opponent, 'GaultMillau is a French company that publishes gastronomy guides in several countries, including throughout Europe. Gault Millau rates restaurants on a scale of 1 to

20, with 20 being the highest. Listing of Spectrum restaurant in the Waldorf Astoria Amsterdam hotel at 18,5 points: At the Waldorf Astoria Hotel, chef Sidney Schutte exceeds expectations with a rich spectrum of dishes that are perfectly balanced without ever being repetitive. repetitive.” Awards: Host of the Year 2020 and Chef of the Year 2017’.

- **Annex 16.16:** an online article dated 12/04/2022 from Dutch website <https://www.hospitalitynet.org/news/4109901.html> entitled ‘Gastronomic Getaways With Hilton. Seven Michelin starred restaurants to discover and devour across Europe’ listing amongst others Rome Cavalieri, A Waldorf Astoria Hotel: Three Michelin stars, Waldorf Astoria Versailles Trianon Palace: One Michelin star and three Gault Millau toques.
- **Annex 16.17:** Screenprint of website <https://www.versailles-tourisme.com/Gordon-ramsay-au-trianon.html>: Le restaurant Gordon Ramsay au Waldorf Astoria Versailles Trianon Palace étoilé au guide Michelin vous convie à un festin des sens. Vous pourrez y apprécier l'exquise cuisine française dans le cadre poétique du Parc du Château de Versailles.Versailles.” In English: The Michelin starred Gordon Ramsay restaurant at the Waldorf Astoria Versailles Trianon Palace invites you to a feast for the senses. Enjoy exquisite French cuisine in the poetic setting of the Parc du Château de Versailles.
- **Annex 16.18:** undated extract from the website www.fr.gaultmillau.com/en/hotels/waldorfastoria-trianon-palace-versailles: Waldorf Astoria Trianon Palace Versailles: Review: ‘The perfect vantage point from which to admire the most beautiful château in the world... Marcel Proust, Sarah Bernhardt and Marlene Dietrich, all made it their favorite hideaway, and even today, this palace just a stone's throw from the Château de Versailles continues to seduce travelers from all over the world. The credit goes to its beautiful gallery bathed in natural light, its 100 luxurious rooms and suites with views over the château and its gardens, its 2,800 m2 spa by Guerlain, and its cuisine designed by Gordon Ramsay, available in gastronomic or brasserie versions. It's an exquisite place to take a break for a weekend, while enjoying the many activities on offer, such as the Grandes Eaux nocturnes show at Versailles or a visit to the surrounding vineyards. Vineyards’.
- **Annex 16.19:** undated extract from website of the British celebrity chef Gordon James Ramsay: <https://www.gordonramsayrestaurants.com/au-trianon/>. It states, inter alia, that ‘At the gates of Paris, the Waldorf Astoria Versailles Trianon Palace stands in the middle of an 800-hectare park adjoining the Château de Versailles. Located on the edge of the royal domain, the most emblematic hotel in western Paris since 1910 is a true peace haven. Amongst the gastronomic experience at Trianon Palace, the Gordon Ramsay au Trianon restaurant continues its breakthrough in the gastronomic scene and delights the taste buds of visitors and gourmets passionate about haute cuisine. This year, a new chapter opens in Versailles, Gabriele Ravasio is the new appointed head chef of the one Michelin star brigade. Aiming to one objective: continue to offer a unique culinary experience Accompanied by Eddie Benghanem, Executive Pastry Chef, and Cyril Bruneau, Restaurant Manager, they have one objective every day: excellence’.
- **Annex 16.20:** an online article dated 29/05/2024 from ‘Michelin Guide’ entitled ‘11 Stunning Wine Cellars at MICHELIN Restaurants and Hotels’. It states, inter alia, that ‘La Pergola The sweeping views from Three MICHELIN Star La Pergola on the top floor of Rome Cavalieri, A Waldorf Astoria Hotel, are a given. Peek behind the curtain, though, and it's the bi level wine cellar hosting over 76,000 bottles that epicureans will love. The modern design of the cellar includes clear glass flooring to allow for a view into the level below as well as striking hexagonal racks carved out of limestone. The list contains some 3,600 labels, including multiple wines from premier producers like Gaja Barbaresco and rarities like 1922 Chateau Lafite Rothschild and 1945 Pétrus’. This Annex also contains screenshot of three star rating La Pergola on website Michelin Guide which includes the following review: ‘Closed for refurbishment works until April 2024. Rome’s most famous

roof garden, as well as the most international restaurant in Italy. From the terrace at La Pergola, Rome appears eternal and imperturbable, as it is so often described. The ambience here is hushed and elegant, with carpets and armchairs, silverware and fresh flowers, paintings and refined furniture all providing a magnificent setting for the superb views. Heinz Beck's cuisine is classic and timeless, featuring much loved favourites such as "fagottelle" filled with carbonara alongside more seasonal dishes such as broad bean and pea buttons with asparagus and nduja flavoured baby squid, and turbot served with asparagus, seasonal mushrooms and wild garlic sauce. The cheese trolley and the desserts, including the delicious chocolate soufflé, are not to be missed. Choose between two separate wine lists: one dedicated to Italian labels, the other to wines from around the world, both featuring some excellent rare vintages (including classic labels from Tuscany and Bordeaux, some of which date from the beginning of the last century), as well as lesser known labels selected by talented sommelier Marco Reitano'.

- **Annex 17.1:** an online article dated 20/09/2024 entitled 'This is the Astoria, the new Tavern in the centre of Malaga: when it opens what you can eat and how much it costs' published in the Spanish newspaper 'EL MUNDO' (including an automated English translation thereof). In this article the opening on Friday September 20, 2024, of the applicant's restaurant/gastronomic project 'ASTORIA TABERNA' is announced.
- **Annex 17.2:** examples of actual use by the applicant of the contested mark and similar signs as well as examples of such use that refer to the old New York City (US).
- **Annex 17.3:** an online article dated 15/09/2024 entitled 'The Casa Lola group continues unstoppable and opens its sixth tavern in the center' published in the Spanish newspaper 'SUR' (including automated translation thereof). In this article the opening of the 'new Taberna Astoria' is discussed.

On **24/03/2025**, within the time limit to submit the proof of use, the opponent submitted the evidence of use.

As the opponent requested to keep certain commercial data contained in the evidence confidential vis-à-vis third parties, the Opposition Division will describe the evidence only in the most general terms without divulging any such data.

The evidence to be taken into account is the following:

- **Annex 18:** EUIPO Opposition Division decision dated 14 November 2024 in opposition No. B 3 199 96 (Hilton Worldwide Manage Limited v. Frantzén Productions AB).
- **Annex 19.1-19.4:** images published on Google from 2019 to 2024, showing use of the earlier mark for hotel services Class 43 at the Waldorf Astoria Amsterdam, Waldorf Astoria Berlin, Waldorf Astoria Rome Cavalieri and Waldorf Astoria Versailles. Samples of images are shown below:



- **Annex 20.1:** screenshots from the Wayback Machine of websites operated by the Opponent in the period 2019–2024, showing use of the 'WALDORF ASTORIA' trademark for hotel services as part of domain names and on related websites.
- **Annex 20.2:** screenshots from the Wayback Machine of booking platforms (2019–2024), showing use of the 'WALDORF ASTORIA' trademark for hotel and restaurant reservations.
- **Annex 20.3:** screenshots from the Wayback Machine of booking platforms (2019–2024), showing that the booking platforms for worldwide Waldorf Astoria hotels are available in numerous European languages and thus aimed at EU residents.
- **Annex 21.1:** samples of invoices and receipts by Waldorf Astoria Amsterdam, dated 2019 up and until 2024 for hotel and restaurant services.
- **Annex 21.2:** samples of invoices and receipts by Waldorf Astoria Berlin, dated 2019 up and until 2024 for hotel and restaurant services.
- **Annex 21.3:** samples of invoices and receipts by Waldorf Astoria Versailles, dated 2019 up and until 2024 for hotel and restaurant services.
- **Annex 22:** overviews of the Instagram-pages as of 5 February 2025 of Waldorf Astoria worldwide, Waldorf Astoria Amsterdam, Waldorf Astoria Versailles, Waldorf Astoria Rome Cavalieri and Waldorf Astoria Berlin.
- **Annex 23.1:** extract from 'RYDER CUP GOLF' extracted from <https://romecavalieri.com/ryder-cup-golf-rome/> which states 'To make your golf experience in Rome unforgettable, and as Official Team Hotel of the Ryder Cup 2023, having hosted Team Europe and Team USA, we will be happy to arrange your visit to the official hosting venue of 2023 Ryder Cup Marco Simone Golf & Country Club'.

- **Annex 23.2:** an online article dated 31/05/2023 entitled 'Hilton elevates relationship with the Ryder Cup to Worldwide Partner' published on PGA Media Center which states that: 'In addition to providing accommodation to Ryder Cup players and staff at Rome Cavalieri, a Waldorf Astoria Hotel, Hilton will also benefit from global brand exposure through co-created, multi-channel marketing campaigns. And bringing its leading approach to creating the most memorable stays, Hilton will be launching a Ryder Cup edition of their award-winning "A Stay on the Green by Hilton" experience that has already proved so successful at select DP World Tour events. Hilton Honors members will have exclusive access to use their Points to book the unique opportunity of staying in a specially constructed Hilton room next to the 10th green at Marco Simone Golf and Country Club'.
- **Annex 23.3:** an online article dated 26/09/2023 entitled 'Inside luxury five-star hotel where Ryder Cup stars are staying that boasts Rome's only three-star Michelin restaurant' published by online magazine 'the Sun'.
- **Annex 23.4:** an online article dated 25/10/2023 entitled 'Hilton Honors takes "heart of the action" to a whole new level' published by GQ Magazine which states: 'For the Ryder Cup, though, Hilton knew they had to elevate the experience even further, so this time, they modelled the room on the brand's Waldorf Astoria Hotels & Resorts collection, taking particular inspiration from the hotels from Europe and the Americas, notably in Amsterdam, Beverly Hills and New York'.
- **Annex 23.5:** extract from YouTube dated 25/09/2023 entitled 'The Ryder-Cup Hotel Inspector' which contains a promotional video in which Colin Montgomerie (one of Europe's most successful golfers and a Ryder Cup legend) inspects the Waldorf Astoria Rome Cavalieri.

PROOF OF USE

In accordance with Article 47(2) and (3) EUTMR, if the applicant so requests, the opponent must furnish proof that, during the five-year period preceding the date of filing or, where applicable, the date of priority of the contested trade mark, the earlier trade mark has been put to genuine use in the territories in which it is protected in connection with the goods or services for which it is registered and which the opponent cites as justification for its opposition, or that there are proper reasons for non-use. The earlier mark is subject to the use obligation if, at that date, it has been registered for at least five years.

The same provision states that, in the absence of such proof, the opposition will be rejected.

The applicant requested that the opponent submit proof of use of the trade marks on which the opposition is based.

However, for reasons of procedural economy the Opposition Division finds it appropriate to focus the examination of proof of use on to earlier European Union trade mark registration No 1 852 946 'Waldorf Astoria' (word mark) which is the most relevant earlier mark for the examination of the opposition vis-à-vis the contested trade mark application.

The request was submitted in due time and is admissible given that it was submitted as an unconditional request in a separate document and the earlier trade mark was registered more than five years prior to the relevant date mentioned above.

The date of filing of the contested application is 27/03/2024. The opponent was therefore required to prove that the trade mark on which the opposition is based was put to genuine use in the European Union from **27/03/2019** to **26/03/2024** inclusive.

Furthermore, the evidence must show use of the trade mark for the services on which the opposition is based, namely the following:

Class 42: Hotel and motel services; restaurants and catering services, provision of facilities for meetings, conferences and exhibitions; reservation services for hotel accommodation.

According to Article 10(3) EUTMDR, the evidence of use must consist of indications concerning the place, time, extent and nature of use of the opposing trade mark for the goods or services in respect of which it is registered and on which the opposition is based.

Within its submissions of 17/10/2024 (during the substantiation period of the opposition), the opponent submitted the evidence in support of its claim of a high degree of distinctiveness and reputation of the earlier mark. On 24/03/2025, within the time limit to submit the proof of use, the opponent submitted the evidence of use. As the evidence in support of the opponent's claim of a high degree of distinctiveness and reputation of the earlier mark was submitted before the expiry of the time limit for providing proof of use, it will be taken into account for the examination of the proof of use together with the evidence submitted on 24/03/2025 listed above in section 'EVIDENCE SUBMITTED BY THE OPPONENT'.

As far as the affidavit enclosed in **Annex 11.1** is concerned, Article 10(4) EUTMDR expressly mentions written statements referred to in Article 97(1)(f) EUTMR as admissible means of proof of use. Article 97(1)(f) EUTMR lists means of giving evidence, amongst which are sworn or affirmed written statements or other statements that have a similar effect according to the law of the State in which they have been drawn up. As far as the probative value of this kind of evidence is concerned, statements drawn up by the interested parties themselves or their employees are generally given less weight than independent evidence. This is because the perception of the party involved in the dispute may be more or less affected by its personal interests in the matter.

However, this does not mean that such statements do not have any probative value at all.

The final outcome depends on the overall assessment of the evidence in the particular case. This is because, in general, further evidence is necessary to establish use, since such statements have to be considered as having less probative value than physical evidence (labels, packaging, etc.) or evidence originating from independent sources.

Bearing in mind the foregoing, it is necessary to assess the remaining evidence to see whether or not the contents of the sworn declaration are supported by the other items of evidence.

The applicant argues that the opponent did not submit translations of some of the evidence of use and that therefore this evidence should not be taken into consideration. However, the opponent is not under any obligation to translate the proof of use, unless it is specifically requested to do so by the Office (Article 10(6) EUTMDR). Taking into account the nature of some of the documents that have not been translated and are considered relevant for the present proceedings, namely, invoices and other pieces of evidence, and their self-explanatory character, the Opposition Division considers that there is no need to request a translation. Furthermore, the translations of some Annexes were submitted by the opponent.

The applicant argues that not all the items of evidence indicate genuine use in terms of time, place, extent, nature and use of the goods for which the earlier mark is registered.

The applicant's argument is based on an individual assessment of each item of evidence regarding all the relevant factors. However, when assessing genuine use, the Opposition Division must consider the evidence in its entirety. Even if some relevant factors are lacking in some items of evidence, the combination of all the relevant factors in all the items of evidence may still indicate genuine use.

Assessment of evidence

The invoices show that the **place of use** are various countries in the European Union, including Netherlands, Italy, France and Germany. This can be inferred from the language of the documents and invoices submitted by the opponent as **Annexes 15** and **21.1-21.3**. Therefore, the evidence relates to the relevant territory.

The applicant argues that 'A substantial portion of the evidence provided, notably in Annex 20.3 and related annexes, refers to establishments located outside the territory of the European Union (including Washington D.C., Bangkok, Dubai and Cancun)'. However, as it is clearly shown in the description of the Annexes in the section 'EVIDENCE SUBMITTED BY THE OPPONENT', there is a significant volume of evidence which refers at least to the Netherlands.

As regards the **time of use**, most of the evidence is dated within the relevant period.

With respect to the applicant's argument that part of the evidence is undated, it is recalled that material submitted **without any indication of date of use** may, in the context of an overall assessment, still be relevant and taken into consideration **in conjunction with other items** of evidence that are dated (17/02/2011, T-324/09, Friboi, EU:T:2011:47, § 33). In the present case, a combined reading of the items of evidence that are admittedly undated, and the evidence that is dated within the relevant period, such as the invoices containing the name of the products, allows the Opposition Division to examine the evidence as a whole and determine the relevant factors of use, particularly nature of use.

As regards the **extent of use**, all the relevant facts and circumstances must be taken into account, including the nature of the relevant goods and the characteristics of the market concerned, the territorial extent of use, and its commercial volume, duration and frequency.

The evidence as a whole shows relevant use of the earlier mark in various countries in the European Union, such as Netherlands, Italy, France and Germany. The invoices in **Annexes 15** and **21.1-21.3** read in conjunction with the remaining pieces of evidence, provide the Opposition Division with sufficient information concerning the commercial volume, the territorial scope, the duration, and the frequency of use.

It is clearly shown that several sales transactions took place between 2019-2024 in various countries in the European Union in relation to hotel and restaurant services. The invoices seen in conjunction with the remaining pieces of evidence such as numerous online articles in leading online magazines and numerous awards show use of the sign during various years. It follows from the evidence that the opponent has seriously tried to acquire a commercial position in relation to hotel and restaurant services.

Therefore, the Opposition Division considers that the opponent has provided sufficient indications concerning the extent of use of the earlier mark.

In the context of Article 10(3) EUTMDR, the expression '**nature of use**' includes evidence of use of the sign in accordance with its function, of use of the mark as registered, or of a

variation thereof according to Article 18(1), second subparagraph, point (a) EUTMR, and of its use for the goods and services for which it is registered.

The evidence shows the use of the earlier mark in, inter alia, the following forms:



According to Article 18(1), second subparagraph, point (a), EUTMR, the following will also constitute use within the meaning of paragraph 1: use of the European Union trade mark in a form differing in elements that do not alter the distinctive character of the mark in the form in which it was registered, regardless of whether or not the trade mark in the form as used is also registered in the name of the proprietor.

When examining the use of an earlier registration for the purposes of Article 47(2) and (3) EUTMR, Article 18 may be applied by analogy to assess whether or not the use of the sign constitutes genuine use of the earlier mark as far as its nature is concerned.

Regarding its use in the form of a logos or as a word mark as shown above, these forms do not alter the distinctive character of the earlier mark in the form in which it was registered, as the difference in colour combination or the addition of city names such as Amsterdam which merely indicated where hotels are located or where restaurant services are provided have a lesser impact on the consumers' perception of the sign as a whole. Furthermore, the addition of letters 'WA' above the verbal elements 'Waldorf Astoria' further reinforces these elements since they are considered abbreviations of the first letters of the earlier mark's verbal elements.

The evidence shows that the mark has been used in accordance with its function and as registered or in an acceptable variation of its registered form for at least *Hotel and motel services* in Class 42.

Therefore, the Opposition Division will only consider the abovementioned services in its further examination of the opposition.

REPUTATION — ARTICLE 8(5) EUTMR

For reasons of procedural economy, the Opposition Division will first examine the opposition in relation to earlier European Union trade mark registration No 1 852 946.

According to Article 8(5) EUTMR, upon opposition by the proprietor of a registered earlier trade mark within the meaning of Article 8(2) EUTMR, the contested trade mark will not be registered where it is identical with, or similar to, an earlier trade mark, irrespective of whether the goods or services for which it is applied are identical with, similar to or not similar to those for which the earlier trade mark is registered, where, in the case of an earlier

European Union trade mark, the trade mark has a reputation in the Union or, in the case of an earlier national trade mark, the trade mark has a reputation in the Member State concerned and where the use without due cause of the contested trade mark would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.

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

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

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

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

a) Reputation of the earlier trade mark

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

In the present case, the contested trade mark was filed on **27/03/2024**. Therefore, the opponent was required to prove that the trade mark on which the opposition is based had acquired a reputation prior to that date. In principle, it is sufficient that the opponent show that its mark already had a reputation on that date. While it follows from the wording of Article 8(5) EUTMR that the conditions for its application also need to be present at the time of taking the decision, and therefore the reputation of the earlier mark must subsist until the decision on the opposition is taken, any subsequent loss of reputation is for the applicant to claim and prove.

The evidence must also show that the reputation was acquired for the services for which the opponent has claimed reputation and for which the genuine use has been proven, namely:

Class 42: *Hotel and motel services*.

The opposition is directed against the following services:

Class 35: *Dissemination of advertisements via the Internet; Commercial information services, via the internet; Advertising via electronic media and specifically the internet; Providing consumer product information via the Internet; Distribution of promotional matter; Promotion [advertising] of business; Advertising, marketing and promotional services; Promotion of goods and services through sponsorship; Advertising services for the promotion of beverages.*

Class 43: *Services for providing food and drink; Bistro services; Providing food and drink in bistros; Serving of alcoholic beverages.*

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

In its arguments submitted on 17/10/2024 (during the substantiation period of the opposition), the opponent submitted initial evidence to support its claim for reputation of the earlier mark and, after a request of proof of use, on 24/03/2025, within the time limit to submit the proof of use, it submitted some additional evidence to show genuine use, all of which have been listed above in section 'EVIDENCE SUBMITTED BY THE OPPONENT'.

Even though, according to Article 7(2) EUTMDR, the opponent has to provide evidence of substantiation within a time limit set by the Office, this cannot be interpreted as automatically preventing **additional** evidence from being taken into account.

According to Article 8(5) EUTMDR, where after the expiry of the period referred to in Article 7(1) EUTMDR, the opponent submits facts and evidence that supplement relevant facts or evidence submitted within that period and that relate to the same requirement laid down in Article 7(2) EUTMDR, the Office has to exercise the discretion conferred on it by Article 95(2) EUTMR in deciding whether to accept these supplementing facts or evidence. The Office must exercise its discretionary power if the late facts or evidence merely supplement, strengthen and clarify the prior relevant evidence submitted within the time limit that relate to the same legal requirement laid down in Article 7(2) EUTMDR, namely, when both sets of facts or evidence refer to the same earlier mark, to the same ground and, within the same ground, to the same requirement.

In exercising its discretion, the Office must take into account, in particular, the stage of proceedings and whether the facts or evidence are, *prima facie*, likely to be relevant for the outcome of the case and whether there are valid reasons for the late submission of the facts or evidence. The acceptance of additional belated evidence is unlikely where the opponent has abused the time limits set by knowingly employing delaying tactics or by demonstrating manifest negligence.

In this regard, the Office considers that the opponent did submit relevant evidence within the time limit initially set by the Office and, therefore, the later evidence can be considered to be additional to support its claim for reputation of the earlier mark.

Having examined the evidence, the above-mentioned press information, being in the form of articles issued from independent sources and not referring to simple advertising announcements illustrate some degree of the opponent's reputation in relation to at least *hotel services* in the Netherlands. These documents prove that the opponent's commercial activities related to the above-mentioned services are often recorded by press and in the public interest. These publications refer directly to the opponent's commercial success and mention the earlier mark in relation to 'major luxury hotel' with the 'Waldorf Astoria Amsterdam' being located within the Grachtengordel, or Canal Ring, which, according to the

evidence, is an UNESCO world heritage site. Some of the publications in local online magazines, such as the one included in Annex 4.11 rate the 'Waldorf Astoria Amsterdam' as the number one luxury hotel in Amsterdam and one of the best hotels in the world. Furthermore, the evidence contains information on rankings and awards where, for example, the 'Waldorf Astoria' was ranked by Tripadvisor as the 13th best hotel of Europe and the best hotel of The Netherlands (Annex 9.5) or it won the Connie Award for best performing luxury Waldorf Astoria and Conrad Hotels in 2016 (Annex 9.4). It is also important to mention the 'Waldorf Astoria' brand involvement in partnerships with other brands such as, the collaboration between Waldorf Astoria Amsterdam and luxury candlemaker Trudon (Annex 12.7) or its partnership with Gurelain where a Gurelain Spa is located in the hotel premises. It is also worth mentioning that 'Waldorf Astoria' was mentioned on a Belgian F1's website since the McLaren F1 driver Lando Norris became a chef at the 'Waldorf Astoria Amsterdam' (Annex 12.8). Furthermore, the article enclosed in Annex 4.28, describes the Waldorf Astoria Amsterdam as one of the city's most opulent and exclusive hotels, frequently chosen by celebrities like Ariana Grande for their stays.

Taking into account all the relevant criteria, namely, the frequent and regular exposure of the public to the mark through publications and taking due account of the awards and rankings showing the recognition of the earlier mark for hotel services, the Opposition Division concludes that the earlier mark has been proved to enjoy some degree of recognition among the relevant public in relation to at least *hotel services*. Whether the degree of recognition is sufficient for Article 8(5) EUTMR to be applicable depends on other factors relevant under Article 8(5) EUTMR such as, for example, the degree of similarity between the signs, the inherent characteristics of the earlier trade mark, the type of goods and services in question, the relevant consumers, etc.

b) The signs

Waldorf Astoria	
Earlier trade mark	Contested sign

The relevant territory is the European Union.

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

The unitary character of the European Union trade mark means that an earlier European Union trade mark can be relied on in opposition proceedings against any application for registration of a European Union trade mark that would adversely affect the protection of the first mark, even if only in relation to the perception of consumers in part of the European Union (18/09/2008, C-514/06 P, ARMAFOAM / NOMAFOAM, EU:C:2008:511, § 57). Therefore, a risk of injury, for only part of the relevant public of the European Union is sufficient to reject the contested application.

The Opposition Division finds it appropriate to focus the comparison of the signs on the Dutch-speaking part of the relevant public because, as shown above, the reputation has been demonstrated in the Netherlands.

Before analysing the meaning of both signs, it should be pointed out that English is widely understood in the Netherlands (20/01/2021, T-253/20, It's like milk but made for humans, EU:T:2021:21, § 35 and the case-law cited therein; 09/12/2010, T-307/09, NATURALLY ACTIVE, EU:T:2010:509, § 26-27 and the case-law cited therein).

The earlier mark's verbal element 'WALDORF' will be perceived either as a meaningless word or part of the public might understand it as referring to 'Waldorf education', an educational style which is holistic, intended to develop pupils' intellectual, artistic, and practical skills, with a focus on imagination and creativity. Whether or not understood, it has no relation to the relevant services.

The signs' common verbal element 'ASTORIA' is meaningless for the public under analysis and therefore, it is distinctive for the relevant services.

The contested sign's verbal element 'TABERNA' is a Spanish word which will be understood by the public under analysis due to its similarity with the English equivalent word 'tavern' referring to a place where people gather to drink and be served food. While this verbal element is of limited (if any) distinctiveness for the services in Class 43 since it describes their nature, it has no direct connection to the relevant services in Class 35 resulting in being distinctive for these services.

The contested sign's numerical element '1872' will be perceived as the year designating the creation of an industrial or commercial establishment or of a specific product or service. It is, therefore, descriptive of the year in which the establishment of the brand or company behind the services in question took place.

The contested sign's oval frame and the stylisation on its verbal elements are purely decorative and therefore, they are non-distinctive.

None of the contested sign's elements has a visually dominant role, however, the word 'astoria' is preponderant, given its larger size and central position.

Visually and **aurally**, the signs coincide in the distinctive verbal element 'ASTORIA'. They differ in the earlier mark's verbal element 'Waldorf' and the contested sign's verbal element 'TABERNA' and the non-distinctive numerical element '1872'. They further visually differ in the contested sign's figurative aspects of less impact.

Therefore, the signs are visually and aurally similar to an average degree.

Conceptually, while the earlier mark is meaningless, the contested sign's verbal element 'TABERNA' and the year '1872' convey concepts which results in the signs being conceptually not similar. However, since the numerical element '1872' and the word 'TABERNA' in relation to services in Class 43 are of limited (if any) distinctiveness, they have a limited impact on the present comparison.

c) The 'link' between the signs

As seen above, the earlier mark is reputed and the signs are similar to some extent. In order to establish the existence of a risk of injury, it is necessary to demonstrate that, given all the relevant factors, the relevant public will establish a link (or association) between the signs.

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

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

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

This list is not exhaustive and other criteria may be relevant depending on the particular circumstances. Moreover, the existence of a 'link' may be established on the basis of only some of these criteria. The establishment of such a link, while triggered by similarity (or identity) between the signs, requires that the relevant sections of the public for each of the goods and services covered by the trade marks in dispute are the same or overlap to some extent.

Furthermore, it must be remembered that the degree of similarity of the signs required under Article 8(5) EUTMR differs from the one required under Article 8(1)(b) EUTMR. Thus, whereas the protection provided for under Article 8(1)(b) EUTMR is conditional upon a finding of a degree of similarity between the marks at issue such that there is a likelihood of confusion between them on the part of the relevant section of the public, the existence of such a likelihood is not necessary for the protection conferred by Article 8(5) EUTMR. Accordingly, the types of injury referred to in Article 8(5) EUTMR may result from a lesser degree of similarity between the marks in question, provided that it is sufficient for the relevant section of the public to make a connection between those marks, that is to say, to establish a link between them (24/03/2011, C-552/09 P, TiMiKinderjoghurt, EU:C:2011:177, § 53).

The signs are visually and aurally similar to an average degree and conceptually not similar. The earlier mark enjoys some degree of reputation for, at least, *hotel services* in Class 42 in the Netherlands.

The contested services in Class 43 are *Services for providing food and drink; Bistro services; Providing food and drink in bistros; Serving of alcoholic beverages*. It is not uncommon for hotels, especially luxury hotels, such as the one of the opponent, which provide all types of additional services to please the guests in all possible ways (as also evidenced by the opponent) to also provide food and drink services and bar services. Therefore, there is a close connection between hotel services and the contested services in Class 43 for a link to be established.

The remaining contested *Dissemination of advertisements via the Internet; Commercial information services, via the internet; Advertising via electronic media and specifically the internet; Providing consumer product information via the Internet; Distribution of promotional matter; Promotion [advertising] of business; Advertising, marketing and promotional services; Promotion of goods and services through sponsorship; Advertising services for the promotion of beverages* in Class 35 are services rendered for others to help them run or improve their commercial or industrial undertaking. Although these contested services, unlike the earlier mark's services, target business customers, the latter are also familiar not only with the earlier mark itself but also with its advertising efforts and its corporate success, as demonstrated above. It clearly follows that an association with earlier mark remains possible.

Therefore, taking into account and weighing up all the relevant factors of the present case, it must be concluded that, when encountering the contested mark, the relevant consumers in the Netherlands be likely to associate it with the earlier sign, that is to say, establish a mental 'link' between the signs. However, although a 'link' between the signs is a necessary condition for further assessing whether detriment or unfair advantage are likely, the existence of such a link is not sufficient, in itself, for a finding that there may be one of the forms of damage referred to in Article 8(5) EUTMR (26/09/2012, T-301/09, CITIGATE / CITICORP et al., EU:T:2012:473, § 96).

d) Risk of injury

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

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

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

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

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

Unfair advantage (free-riding)

Unfair advantage in the context of Article 8(5) EUTMR covers cases where there is clear exploitation and 'free-riding on the coat-tails' of a famous mark or an attempt to trade upon

its reputation. In other words, there is a risk that the image of the mark with a reputation or the characteristics which it projects are transferred to the goods and services covered by the contested trade mark, with the result that the marketing of those goods and services is made easier by their association with the earlier mark with a reputation (06/07/2012, T-60/10, ROYAL SHAKESPEARE / RSC- ROYAL SHAKESPEARE COMPANY et al., EU:T:2012:348, § 48; 22/03/2007, T-215/03, VIPS / VIPS, EU:T:2007:93, § 40).

According to the Court of Justice of the European Union

... as regards injury consisting of unfair advantage taken of the distinctive character or the repute of the earlier mark, in so far as what is prohibited is the drawing of benefit from that mark by the proprietor of the later mark, the existence of such injury must be assessed by reference to average consumers of the goods or services for which the later mark is registered, who are reasonably well informed and reasonably observant and circumspect.

(27/11/2008, C-252/07, Intel, EU:C:2008:655, § 36.)

Trademark owners frequently invest large sums of money and effort to create a certain brand image associated with their trademark. This image associated with a trademark confers on it an economic value, which is independent of that of the goods and services for which it is registered.

The opponent claims the following:

- The Applicant's use and intended use of the Application mark takes unfair advantage of the substantial reputation subsisting in the marks that are the subject of the Opponent's Registrations. The relevant public that draws a connection between the Application and the earlier marks will be predisposed to assume that the Applicant's services bear similar attributes including, inter alia, in terms of exclusivity, quality, service level, etc. For these reasons, the Applicant will gain a commercial advantage over its competitors in the marketplace by trading upon the image and reputation of the Opponent's respected and well-known earlier marks and the positive characteristics they project. However, that advantage would not be derived from the Applicant's own marketing efforts, investment, skill, and innovation. Rather, it would be derived from its use of a mark similar to the Opponent's, thus associating itself with the Opponent's history, reputation, marketing efforts, and investments.
- The Applicant's use, intended use and registration of the Application constitutes a clear example of taking unfair advantage. In the light of the significant distinctiveness subsisting in the earlier WALDORF ASTORIA mark of the Opponent, use of the Applicant's mark will inevitably call to mind the services in respect of which the earlier marks are used.
- The relevant public will therefore either believe that the services in question originate from the Opponent, or alternatively may consider there is an existing licensing arrangement in place between the Opponent and the Applicant. As shown above, the Application is already used in this manner, resulting in the Applicant already taking unfair advantage of the reputation subsisting in the earlier marks of the Opponent.
- When used on the same market sector as the earlier reputed marks of the Opponent, the use of the Application will give the Applicant an unfair advantage vis-à-vis its competitors. By using for its services a sign which is highly similar to the earlier reputed marks of the Opponent, the Applicant will benefit from the attractiveness of it. Through that, a misappropriation of the Opponent's reputed mark's attractive powers

and advertising value will occur. This leads to a situation of commercial parasitism where the Applicant takes a 'free-ride' on the investment of the Opponent in promoting and building-up repute for its marks, as it may stimulate the sales of the Applicant's services to an extent which is disproportionately high in comparison with the size of its promotional investment.

- Given the similarity between the signs and the reputation that the earlier marks enjoy for the relevant public, the contested sign is thus very likely to take unfair advantage of the distinctive character or the repute of the earlier trademarks.
- Furthermore, as a final remark in this regard, the Opponent notes that, based on established case law, taking unfair advantage does not necessarily require a deliberate intention to exploit the goodwill attached to someone else's trade mark. The concept of taking unfair advantage concerns the risk that the image of the mark with a reputation or the characteristics that it projects are transferred to the goods or services covered by the mark applied for, with the result that the marketing of those goods or services is made easier by that association with the earlier mark with a reputation (judgments of 19/06/2008, T-93/06, Mineral Spa, EU:T:2008:215, § 40; 22/03/2007, T-215/03, Vips, EU:T:2007:93, § 40; 30/01/2008, T-128/06, Camelo, EU:T:2008:22, § 46).

As already established, the earlier mark enjoys some degree of reputation for, at least, *hotel services* in Class 42 in the Netherlands. As seen from the evidence submitted, the opponent's mark is associated with the positive qualities, image and characteristics of its *hotel services*.

The specific reputation of the earlier mark (including qualitative aspects, such as a particular image the earlier mark has created in the minds of the public in the Netherlands due to its extensive use and popularity in the Netherlands) and the degree of similarity between the marks make it possible for the image of the reputed mark to be transferred to the contested mark. This image transfer would facilitate the marketing of the contested services.

Since the opponent must have made substantial investments in developing and building the image and reputation of the earlier mark, the use of the contested mark by the applicant would take unfair advantage of those investments and the earlier mark's reputation, because the applicant would benefit from the goodwill built up towards the earlier trade mark without having to make any investments of its own.

Bearing in mind the link between the services in question, as established above, some degree of reputation of the earlier mark and the similarities of the signs, the Opposition Division concludes that the contested trade mark is likely to take unfair advantage of the distinctive character or the repute of the earlier trade mark. Indeed, the accumulation of all of the above factors makes it quite likely that the contested sign recalls the earlier mark, thus misappropriating its attractive powers and advertising value.

The connection that the contested sign might trigger with the earlier reputed mark and the positive image it possesses, would inevitably compel consumers to further explore said brand and the services offered under it. This way, the contested mark will already unfairly benefit from the continuous investments of the opponent in creating and preserving the positive image of its mark.

On the basis of the above, the Opposition Division concludes that the contested trade mark is likely to take unfair advantage of the distinctive character or the repute of the earlier trade mark.

Other types of injury

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

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

e) Conclusion

Considering all the above, the opposition is well founded under Article 8(5) EUTMR. Therefore, the contested trade mark must be rejected for all the contested services.

Given that the opposition is entirely successful under Article 8(5) EUTMR, it is not necessary to examine the remaining ground and earlier rights on which the opposition was based.

COSTS

According to Article 109(1) EUTMR, the losing party in opposition proceedings must bear the fees and costs incurred by the other party.

Since the applicant is the losing party, it must bear the opposition fee as well as the costs incurred by the opponent in the course of these proceedings.

According to Article 109(1) and (7) EUTMR and Article 18(1)(c)(i) EUTMR, the costs to be paid to the opponent are the opposition fee and the costs of representation, which are to be fixed on the basis of the maximum rate set therein.

**The Opposition Division**

Florica RUS

Agnieszka PRZYGODA

Anna PEKAŁA

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