

CANCELLATION No C 56 966 (INVALIDITY)

Tesla, Inc., 1 Tesla Road, 78725 Austin, Texas, United States (applicant), represented by **Bird & Bird LLP**, Maximiliansplatz 22, 80333 Munich, Germany (professional representative)

a g a i n s t

Capella Eood, Trakia 12, 1504 Sofia, Bulgaria (EUTM proprietor), represented by **Erich Auer**, Trakia 12, 1504 Sofia, Bulgaria (professional representative).

On 17/12/2024, the Cancellation Division takes the following

DECISION

1. The application for a declaration of invalidity is upheld.
2. European Union trade mark No 5 838 727 is declared invalid in its entirety.
3. The EUTM proprietor bears the costs, fixed at EUR 1 080.

REASONS

On 04/11/2022, the applicant filed a request for a declaration of invalidity against European Union trade mark No 5 838 727 'TESLA' (word mark) (the EUTM), filed on 17/04/2007 (with a claimed priority of 17/10/2006 from Austrian trade mark AM7043/2006) and registered on 08/07/2022. The request is directed against all of the goods covered by the EUTM, namely:

Class 12: hub caps; wheel trims; Accessories for vehicles, included in class 12, in particular Tow bars, Bicycle carriers, Roof racks, Travel baggage Of the following materials: of leather, Aluminum, Titanium, Fabrics made from natural fibres, in particular Cotton, Jute, restraints, Viscose, restraints and Fine animal hairs (wool), synthetic fibre industry and plastics, for transport in electric vehicles, Child's seats, Tarpaulins, in particular The aforesaid goods relating to the following goods: vehicles, Electrically powered land vehicles, Electrically operated air vehicles, Electric amphibious vehicles and Electrically-powered water vehicles; snow chains, namely the aforesaid for cars, two-wheeled vehicles, buses, utility vehicles, forestry machines, military vehicles, 4x4 and SUV vehicles, tractors, electrically operated special-purpose vehicles.

Class 25: Clothing, footwear, headgear.

The applicant invoked the ground of bad faith under Article 59(1)(b) EUTMR.

SUMMARY OF THE PARTIES' ARGUMENTS

The case for the applicant

The applicant claims that it is one of the world's best-known companies for electric vehicles. It argues that the EUTM proprietor is the well-known Austrian trade mark troll Mr E.A. who

uses an abusive application strategy to block third parties in order to gain a financial advantage. Furthermore, the EUTM proprietor has created a network of numerous letterbox companies in various countries through which he files hundreds and thousands of trade mark applications in different Member States without even paying application fees, the vast majority of which have never proceeded to registration, but which had the sole aim of later claiming priority for potential subsequent EUTM applications. The applicant puts forward that Mr E.A. becomes aware of third-party operations under a potential brand name and then he files an application in a single country participating in the EU system. Once the third party files for the corresponding trade mark, Mr E.A. then files an EUTM based on the priority of the earlier right and initiates opposition proceedings to block its registration. Mr E.A. filed the trade mark application 'TESLA' in Austria on 17/10/2006 right after the applicant had just begun to become famous due to its new electric car, the 'Tesla Roadster', which had featured in various newspaper reports. The applicant claims that Mr E.A.'s intention was to block the applicant's later EUTM application. When the applicant filed two EUTM applications in the beginning of 2007 Mr E.A. filed an EUTM covering the exact core goods of the applicant in Class 12 on 17/04/2007 in which it relied on the priority of the Austrian mark with a priority date of 17/10/2006. Mr E.A. then filed oppositions against the applicant's EUTM applications and purposefully delayed the opposition proceedings for almost 15 years, speculating that the value of the applicant's brand would continue to increase and result in a huge 'redemption sum'.

The applicant then provides details about its company and the EUTM proprietor's company, including images of the building where it is located. It claims that the EUTM proprietor does not carry out any relevant business yet it has filed over 300 national trade marks in Germany and Austria, all with a status of 'application deemed to have been withdrawn' (in Germany) or 'cancelled' (in Austria) and with none proceeding to registration. Mr E.A. acts as representative for the EUTM proprietor and has filed the contested EUTM but he later transferred the mark back and forth between different 'letterbox' companies owned by Mr E.A. and he signs all of the transfers as their official representative. The applicant provides details about Mr E.A.'s strategy and his claims about his business model, but the applicant considers that the marks are filed speculatively in the thousands to target third-party brands which he tries to conceal using different letterbox companies in different countries. The applicant argues that Mr E.A. follows a six-month filing strategy to maintain a priority date but without paying fees, while monitoring whether the third-party files an EUTM application and once it does then he files his own EUTM application and opposes the other application. The only purpose being to block the third-party to gain a financial advantage. It cites the judgment 07/07/2016, T 82/14, LUCEO, EU:T:2016:396 in this respect. The applicant further claims that this strategy is used to extract a redemption sum from third parties. The EUTM proprietor has (according to a Polymark research) filed more than 2,400 trade mark applications at the EUIPO and the German IPO, but only a small percentage of these filings ever proceeded to registration while the majority were withdrawn due to the non-payment of the application fee. In Austria alone Mr E.A. has filed over 2,200 trade mark applications but a search of the legal status of these marks with the legal status of 'registered' or 'legally valid' results in zero marks in this status. The applicant partially cites a judgment of the Supreme Court in Austria (case Oberste Gerichtshof der Republik Österreich, decision of 17th September 2014, case 4 Ob 98/14m) which found that as of 2010 Mr E.A. had already applied for 3,000 Austrian marks and more than 450 CTMs (now EUTMs) but that only 120 marks were ever registered and the Court commented on the 'quite extraordinary ratio between applications and registrations...speaks for speculative intent'. The applicant notes that Mr E.A. has filed over 2,400 trade marks for *vehicles* in Class 12 in the EUIPO and Germany, while in Austria he has filed 1,700 trade marks for *vehicles* in Class 12.

The applicant claims that Mr E.A. has been using this abusive strategy for over a decade at this point, and many of the goods registered are in Classes 12, 25 and 28 as in the present case. The applicant provides examples of such trade mark applications for the signs

'FEELING', HURACAN', 'ANTOS', 'CROSSCAMP' and 'ASCENT', all of which were either signs used, similar to signs being used, or followed the pattern of branding used by car manufacturers at the time and the applicant provides arguments in this respect. Mr E.A. uses the different letterbox companies to file his marks and the EUTM proprietor is one of these companies and it names other companies in Switzerland, Bulgaria (all located in the same apartment block) and the UK (all with a capital of 1 GBP and domiciled at the same address and one of these companies has already registered over 20,000 companies (Chalfen Corporate Limited which offers company registration and management services). The applicant claims that Mr E.A. uses these companies to conceal his identity from the claims of bad faith. It cites an extract from a German Court regarding a company 'Y-Group' being one of Mr E.A.'s companies with a minimum share capital, like his other companies, which does not require much construction but which can be relevant if the liability for claims for fees or damages in the case of unjustified cease-and-desist letters is to be limited. It denies that Mr E.A.'s filing strategy is some sort of legitimate 'marketing concept' or 'business strategy' in which he offers 'finished' trade marks to potential customers that are ready to be used, and this has been confirmed by different courts as well as the EUIPO.

The applicant claims that the contested EUTM in the present case is just another example of his abusive application strategy and is not a coincidence and does not follow a legitimate business concept but instead merely targeted the applicant. The applicant was extensively reported on in the press and Mr E.A. was aware of this in Austria, he anticipated the filing of an EUTM by the applicant and filed the Austrian mark without paying the fee. When the applicant filed its EUTM applications including 'TESLA' Mr E.A. then filed the contested EUTM using the priority of the Austrian mark and opposed the applicant to obtain a blocking position. Mr E.A. then delayed the proceedings for 15 years. The applicant provides information about its success and the fact that Mr M. (the CEO of the applicant) had already become famous as he founded PayPal which was sold to eBay for USD 1.5 billion in 2002. On 10/02/2005 the applicant filed two US trade mark applications No 3'403'726 'TESLA MOTORS' for *electric vehicles* in Class 12 and No 3'403'726 'TESLA ROADSTER' for *full battery electric high-performance sports cars* in Class 12. In February and May 2006 more famous investors recognised the potential of the applicant like the Google Founders, the former President of eBay and a hotel heir. In July 2006 after a little over two years of development, the first 'Tesla Roadster' was developed and introduced to the public on the airport grounds of Santa Monica, California and it became a sensation, even being reported on in *Forbes* magazine in August 2006. It was the first premium fully electric sports car and amongst its buyers were celebrities. It was launched at a high price and was a luxury car so that later on more affordable versions could be released. After its launch in Santa Monica the applicant was invited to display the 'Tesla Roadster' at the San Francisco Auto Show on 18-26/11/2006 and the Los Angeles Auto Show on 01-10/12/2006 (at which Arnold Schwarzenegger who was Governor of California at the time) was photographed inspecting the car. Both shows were hugely successful for the applicant and the applicant's Vice President of Customer Service and Support at the time was reported as saying that 'There were periods when reporters, TV cameras and photojournalists were lined up three deep to talk to us. Very heady stuff' (from an article dated 06/12/2006). In December 2006 *Time* magazine featured the 'Tesla Roadster' as one of the best inventions of 2006. From 2008 the 'Tesla Roadster' went into production and since then the applicant has developed into one of the most significant car manufacturers in the world and introduced many more models of 'TESLA' vehicles and its stock is valued at over EUR 1 trillion making it worth seven times more than Volkswagen.

The applicant argues that Mr E.A., in Austria, already knew of the applicant in 2006. The applicant states that an article dated 11/09/2006, about the 'Tesla Roadster', appeared in the *Handelsblatt* which is one of Germany's most famous newspapers and which is also available in Austria and referred to Tesla Motors as 'the sensation in Silicon Valley'. Moreover, several major newspapers in Austria also reported on the applicant just days

before Mr E.A. filed the Austrian application. There are not many newspapers in Austria and *Die Presse*, *Kleine Zeitung*, and *Kurier* have a circulation in Austria which accounts for more than 20% of the population and they ran articles on Tesla on 15/09/2006 (*Kleine Zeitung*), 07/10/2006 (*Kurier*) and 13/10/2006 (*Die Presse*). Shortly after these articles were published Mr E.A. filed the Austrian mark on 17/10/2006 for 'TESLA' covering the same core classes as the applicant's business, i.e. *vehicles and their parts and accessories included in class 12 and wheels for vehicles*. The applicant claims that Mr E.A. did not pay the registration fee for the Austrian application and the mark shows as 'application cancelled' on the register. Thus, it claims this shows Mr E.A.'s strategy.

The applicant filed EUTM applications as it intended to expand to Europe following on from its success in the US. It filed EUTM application No 5 678 479 'TESLA' for Classes 7, 9, and



12, including *vehicles*, and No 5 678 602 for the figurative mark for Classes 7, 9, and 12 covering also *vehicles*, both filed on 09/02/2007. Two months later, on 17/04/2007, Mr E.A. filed an EUTM application for 'TESLA' for i.e. *vehicles and their parts and accessories included in Class 12 and wheel for vehicles in Class 12*. It claimed priority for this application from the Austrian 'TESLA' trade mark application which had been filed in 17/10/2006. Mr E.A. also filed a German trade mark No 307251985 on the same day 17/04/2007 for the same classes and he also claimed priority from the Austrian trade mark. However, he did not have to register the German trade mark as he could rely on the EUTM application and now the German application appears with the status 'deemed to have been withdrawn'. The date 17/04/2007 was the last day of the six-month period which Mr E.A. could claim priority from the Austrian application and the marks were specifically filed in response to the applicant's EUTM applications to block it, and then on 10/10/2007 he filed oppositions against the applicant's EUTM applications (B 1 209 412 and V 1 222 100). On 08/12/2009 the applicant filed another EUTM application No 8 741 225

TESLA for inter alia *vehicles* in Class 12. On 27/05/2010 Mr E.A. again filed an opposition against this application (B 1 665 184).

However, shortly after the filing of the oppositions by Mr E.A., based on the contested EUTM, a third-party from the Czech Republic filed an opposition against the contested EUTM (B 1 247 099, 'the Czech Opposition'). As such the applicant's oppositions were suspended until a decision was taken in the Czech Opposition. It was through the Czech Opposition that Mr E.A. delayed the applicant's oppositions by almost 15 years. The applicant assumes that this was done as if the contested EUTM was not registered then no bad faith invalidity or revocation could be filed. In order to delay the Czech Opposition, Mr E.A. restricted the list of goods of the contested EUTM 45 times. It mentions that the restrictions were either totally nonsense (*air vehicles lighter than air and air vehicles heavier than air*) or specifically targeted towards the applicant (by adding *electrically powered* to various goods). At that point a fourth party then opposed two of the earlier rights being relied upon in the Czech Opposition proceedings and the Czech Opposition proceedings were suspended until that was resolved. However, during the time when the opposition was suspended Mr E.A. did not restrict the goods even once. However, when the Czech Opposition proceedings were finally resumed, Mr E.A. carried out two further restrictions of the goods. The applicant lists the different restrictions and claims that they were done with the purpose of delaying the applicant's oppositions and was abusive behaviour. However, at that point the EUIPO took a decision and ended the proceedings on 12/07/2021, partially

upholding the Czech Opposition. Then Mr E.A. filed an appeal against the decision, although he eventually withdrew the appeal. Therefore, on 08/07/2022 Mr E.A.'s 'TESLA' mark No 5 838 727 (the contested EUTM) proceeded to registration for the remaining goods in Classes 12 and 25.

The applicant goes through the relevant law on the concept of bad faith and applies the principles to the case at hand. It insists that Mr E.A. was aware of the existence of the applicant's 'TESLA' and filed the EUTM in bad faith in order to block the applicant and to seek financial gain. It applies all of the above arguments to arrive at the conclusion that the EUTM was filed in bad faith. The applicant claims that no honest person would delay the registration of its own mark for 15 years but would actually have an intention to use the mark. This delay was to block the applicant and gain more financial compensation from the applicant as the brand grew and so that the EUTM could not be challenged on the ground of bad faith. The contested EUTM was filed directly in response to the applicant's EUTM applications which he immediately opposed and blocked. The filing of the contested EUTM is part of Mr E.A.'s abusive filing strategy with the goal of creating a blocking position against the applicant and it cites the Board of Appeal decision of 25/11/2013, R 2292/2012-4, paragraph 32. It also references the afore cited decision in relation to the disparity between trade mark applications and registrations of Mr E.A. (paragraph 39). It contends that the only reason Mr E.A. files so many trade marks is to secure priority dates for potential subsequent EUTM applications if a third-party files an identical or similar mark which he can thus block. The applicant states that the EUIPO, the Board of Appeal as well as the General Court have already held that the use of such a system proves bad faith. The applicant claims that Mr E.A. was aware of the applicant's earlier sign 'TESLA' and its use due to the extensive media coverage and its possible extension into Europe. Mr E.A. had no commercial logic for filing the EUTM, only to block the applicant, and the filings in Austria and Germany where the fee was not paid. The EUTM proprietor is merely a letterbox company of Mr E.A., located in an apartment in Bulgaria and registered for 'provisions of services, trade and production of goods of any kind as well as any other activity not prohibited by law' which the applicant claims can cover anything and the company is just another vehicle with which to file applications. There is no commercial logic for the application except speculative, especially for goods in Class 12 and unrelated goods in Classes 25 and 28 which have no connection with Class 12. Moreover, the nine transfers of the contested EUTM back and forth between Mr E.A.'s companies with low capital base and no apparent commercial logic was only to try and conceal his abusive application strategy and limit his own potential liability. Therefore, the applicant requests that the contested EUTM be entirely invalidated as it was applied for in bad faith.

In its reply to the EUTM proprietor the applicant contests the EUTM proprietor's observations and insists that the EUTM was filed in bad faith. It points out that a large part of the EUTM proprietor's observations consists of a self-written book called 'Trademark theft – of atypical trademark piracy & new forms of white-collar crime' consisting of 730 pages. The entire book contains subjective elaborations on general aspects of trade mark piracy and has nothing to do with the case at hand and should be ignored. In the first 112 pages of the EUTM proprietor's observations he tries to victimise himself to disguise his true intentions, which is to use the EUTM against the applicant. The applicant insists that Mr E.A. is a well-known trade mark troll and he is the Managing Director of the EUTM proprietor who, at the filing of the EUTM, was well-aware of the applicant and its imminent expansion into Europe. The EUTM was solely filed with the intentions of blocking the applicant as the EUTM proprietor (Mr E.A.) had no intentions of using the mark.

The applicant denies that it has been in breach of EU law for decades or that it has a bad character as implied by the EUTM proprietor. The CEO of the applicant (Mr M.'s) wealth derives from a serious business and it did not copy the trade mark from other entities but bought the rights thereto legitimately from Mr B.S. and makes use of the sign and has built a

reputation for itself. On the contrary, the EUTM proprietor is known to the EUIPO and other IPOs and Courts as he has been the subject of many lawsuits already for trolling other serious business owners' trade marks. The EUTM proprietor has failed to substantiate its claim that it runs a serious business and it casts doubts on why other parties have concluded some kind of contract with Mr E.A., suggesting it is likely to avoid further nuisance. The applicant claims that Mr E.A. may conclude some serious business activities on occasion, as even a bank robber may not necessarily steal his groceries just because he earns his money that way. The applicant references Mr E.A.'s legal aid motions in which he stated that he did not have any genuine income in the recent past and submits copies of same. Thus it casts doubt over the EUTM proprietor's serious business and points out that in the legal aid proceedings before the Court in Düsseldorf his request was refused as he was unable to provide the Appeal Court with any evidence regarding a genuine income. He claimed to live from 'family support' but that was not very plausible. He did not submit any bank documents or statements or tax assessment notices to substantiate his claim. The applicant claims that the judges in Düsseldorf did not believe Mr E.A.'s statements and expressed their opinion that he was dishonest about his financial situation and income, and the applicant holds the same opinion at the Court. It argues that if the EUTM proprietor had a legitimate business it could have proven this to the Court through evidence, especially considering the amount of marks it owns. It is hard to believe that Mr E.A. does not have a flourishing business. It claims that everyone on the market is aware of his illegal business activities and it has become harder to find someone who is willing to pay his blackmail or good money for an illegitimate formal right position.

The applicant confirms, repeats and expands and insists that Mr E.A. filed the EUTM in bad faith to illicitly earn money and he is a keen observer and has significant experience in the automotive industry. Mr E.A. has claimed in his observations that he focused his attention on the cash-rich automobile market and frequently applied for trade marks for vehicles in Class 12 and that he has filed thousands of marks in his own name and is thus very informed about the automotive sector. Thus the applicant's business could not have escaped his attention, especially due to the extensive reporting, even in Austria, which took place prior to the filing of the EUTM. The applicant also claims that the EUTM proprietor also provides the Office with proof that the industry was well-aware of the applicant already back in 2003 but at the latest in 2006 when the TESLA Roadster was introduced in Santa Monica Airport on 19/07/2006 as both articles cited by the EUTM proprietor name this point in time and it provides screenshots of same and a translation into English. It states that even if both articles are dated after the filing of the EUTM they show that the industry was aware of both events. It denies that it is relevant that the introduction of the Tesla Roadster was done in a closed event with 350 celebrity guests as their attendance attracted the attention of the public and was a huge success. Hundreds of reservation orders came into during the event and it refers to another article submitted by the EUTM proprietor which outlines this. The applicant did not limit its sales to US citizens and neither the applicant's FAQs nor the supply agreement with LOTUS CRS Ltd (LOTUS) prove otherwise. As regards the FAQs submitted, they only determine a requirement of sale within the US once the cars passed the Federal Motor Vehicle Safety Standard and could be admitted to the streets. The statement that there were no plans to expand outside the US yet was from a time when 'TESLA' cars were not even available outside of California at the beginning of the business. However, due to its quick and intense success this became obsolete. The supply agreement with LOTUS only referred to certain kinds of vehicles from the applicant as is clear from page 23 of the agreement that other TESLA vehicles could be produced as long as they are not derived from LOTUS. The applicant expanded into Europe shortly after its successful introduction of cars in the US.

The applicant claims that the industry awareness makes it highly unlikely that the EUTM proprietor came up with the sign 'TESLA' for cars himself just months after the Tesla Roadster was presented to the public in the US, and even less probably when examining his

reason for filing the mark. It contests the EUTM proprietor's allegation that the inspiration for the sign came from a CD with boat names and a newspaper article that it had 3 to 6 years prior to the trade mark application is implausible as there is no connection between this 'inspiration' and the EUTM. The article the EUTM proprietor refers to was published in March 2000 and thus he waited more than six and a half years, and coincidentally, just after the applicant's brand was intensively reported in the Austrian press, to file the mark. As Mr E.A. is well aware of the importance of a priority for a trade mark he would not have waited six and a half years to file the sign 'TESLA' after having an idea about it. This argument just disguises his motive. The same can be said about the CD 'Complete Book of Boat Names' which he purchases in October 2023. The applicant argues that it is not comprehensible why Mr E.A. would have chosen 'TESLA' from page 4464 out of more than 300,000 name suggestions and not, for example, 'TESORO' or 'TESSIE' which are also listed. Nor is it clear why the CD, purchased three years earlier, should have prompted him to apply for the registration of the mark 'TESLA' on 17/10/2006 or why he did not also apply (only) for boats, but for vehicles and wheels in Class 12 as well as clothing, footwear and headgear in Class 25 and gymnastic and sporting articles and games in Class 28. The applicant contests these claims and considers that it is more likely that the EUTM proprietor filed the Austrian priority application after seeing the report about the applicant who was specialising in electric vehicles and the timing of these reports. It was not a coincidence that he filed the EUTM for the goods for which the applicant was successfully using the sign. Therefore, it considers the EUTM proprietor's arguments implausible. The applicant claims that the EUTM proprietor himself confirms this in a statement he made before the Court of Düsseldorf in which he said "Nothing is further from the defendant's mind than selling e-cars (to end customers)". This shows his true intentions and his lack of intention to use the EUTM for the registered goods or at all. He did not submit any evidence that he developed the mark for someone else or that he made any effort to license it afterwards. The applicant argues that the only reason for filing the EUTM was to try and sell it to the applicant for an outrageous amount of money.

The applicant denies that the EUTM proprietor's entities (Mr E.A.'s entities) are not actively acting as trade mark exploitation companies or that he paid at least half a million EUR to different Trade Mark Offices in the EU and the EUTM proprietor did not substantiate this claim with evidence. The applicant insists that these letterbox companies have the sole purpose to disguise Mr E.A.'s identity and he only pays fees if he wishes to obtain a registration in order to take action against a third party on the basis of it. This, it argues, has already been confirmed by the EUIPO in past decisions against Mr E.A.. When Mr E.A. is uncertain about the use of the sign he does not pay the application fee and thus minimises his financial exposure and risk and the applicant refers to its previous observations and evidence in this respect. The applicant argues that if the EUTM proprietor's claims were true (they have not been substantiated), then Mr E.A. would have spent over three million EUR in Germany, Austria, Switzerland and the EU considering the filings that he made in these jurisdictions. As such, its argument that it has paid half a million EUR would still not have paid sufficient fees for most of his trade marks and confirms the EUTM proprietor's ploy to not pay the application fees unless he is ready to use the mark against others. If Mr E.A. had a serious business he would only file trade marks which are of interest to his clients or where he intends to develop an idea himself and thus would pay the fee and be able to offer the sign on the market. Instead he only applies for signs which suit the filing strategy of third parties and only registers them once the 'target' files their mark, as like happened in the present case. Mr E.A. only paid the registration fee in Austria in February 2007, four months after he had applied for the priority Austrian mark on 17/10/2006. The EUTM proprietor has failed to justify the reason for not paying earlier and assuming he was genuinely interested in the mark he would have paid the fees as quickly as possible in order to register the sign. The applicant claims that Mr E.A.'s interests were not legitimate and by delaying the payment he safeguards the priority of his filings without any risk or financial exposure until his target decides to register their mark and when he becomes aware of this, only then does he pay the fees to register the mark so that it matures into a valuable asset to him.

The applicant has not been selling vehicles under 'TESLA' 'without hindrance' from the EUTM proprietor and could not register the mark as planned in the EU as a result, its EUTM applications were opposed by the EUTM proprietor as based on the contested EUTM. The applicant owns two international registrations for 'TESLA' in Class 12 which are considerably younger (2013) than the EUTM application opposed by the EUTM proprietor and also they do not cover the entire EU but only individual Member States. These IRs were not challenged but were probably overlooked as if not they would have been challenged, and thus this does not prove that the EUTM proprietor does not hinder the applicant's business activities in Europe. Until the registration of the EUTM on 08/07/2022 the EUTM proprietor was unable to claim anything else from the applicant or to hinder it further, other than blocking the applicant's filings but he may do so at some point. The scenario created by the EUTM proprietor also suffices to threaten the applicant, although he does not approach the applicant himself, he hopes that the applicant will contact him to buy him out, so that there is less evidence to prove his intention. Nevertheless, the applicant claims that Mr E.A.'s true intentions are mirrored several times in his observations when he stresses the following: "Why the applicant did not also contact Mr E.A. regarding serious negotiations remains an open question". The only reason Mr E.A. is waiting is for the applicant to offer him money which reveals what he wanted from the beginning. This strategy seemed to work as the applicant offered him money just to solve the pending disputes so that the applicant could proceed with its business of manufacturing cars. That's when the EUTM proprietor's worthless right become somewhat valuable, even if it is not objectively valuable and it cannot show that it was filed in good faith. The offer was made without prejudice for the pending cases and just to end this dispute and also partly because the Courts in Düsseldorf had suggested a settlement for a rather small payment and it submits this proposal.

The applicant negotiated a coexistence agreement with Tesla Holding a.s. and bought the trade mark from TESLA OTOMOTIV but did not do business with the EUTM proprietor simply because the former company had been carrying out business since 1946 in good faith but was active in a different business sector and the latter company had been legitimately active in Turkey since 2004, whereas the EUTM proprietor is a trade mark troll who neither uses the mark 'TESLA' in good faith nor intends to do so, but only filed it to obstruct the applicant. The applicant denies that it misuses the law to harass the EUTM proprietor and states that the actions are lawful and only treated separately in different jurisdictions as they are based on different claims of the applicant and impediments, such as the mark not maturing to registration due to the actions of the EUTM proprietor and its numerous restrictions of the goods to avoid a burden of use of the mark or possible bad faith proceedings being filed. It denies that the EUTM proprietor is underprivileged and points out that it owns numerous trade marks and entities in various jurisdictions which could serve as financial assets if it would liquidate them. As a result its legal aid requests were refused by the Swiss and German Courts who agreed with the applicant's stance. It claims that the applicant does not use its financial advantages illegally but defends its legitimate rights. The applicant does not defame Mr E.A. or his business and is not carrying out a smear campaign against the EUTM proprietor but is lawfully defending its rights. Moreover, neither Apple's attorney Mr. L, nor Mr. W, the President of the German association Grur have anything to do with the present proceedings. The present action is based on facts and the applicant cites jurisdictions where cases against Mr E.A. and his illegal business activities were confirmed in the past. The present case is not different from these ones. Mr E.A. saw a possibility to take advantage of the applicant's great business idea and for which the applicant did not hold rights in the EU, especially due to his long-standing interest in the automotive industry (as stated by the EUTM proprietor in the observations) and he knew that the applicant's business would become very popular so the risk of a bad investment was low, especially considering it did not pay the application fees for the Austrian trade mark, at least at first. The same happened with other trade mark applications filed by Mr E.A., such as 'HURACAN', 'ASCENT', 'ANTOS' and 'CROSSCAMP'. The applicant goes through the

EUTM proprietor's explanations for how it came up with these marks and rejects them and argues that the choosing of these specific names goes beyond a simple coincidence. The EUTM proprietor filed the contested EUTM in bad faith and with no intention of using it and admitted its lack of intention to the Court of Appeal of Düsseldorf.

The applicant contests the EUTM proprietor's arguments and denies that they are sufficient to refute bad faith and claims that they are diffuse and completely beside the point, containing general facts and complete book written by Mr E.A., the sole person behind the EUTM proprietor, that has no value in the present proceedings. The applicant then concludes on all of the aforementioned observations and applies them to the present case and insists that the EUTM was filed in bad faith to extort money from the applicant. In relation to the EUTM proprietor's claims that the Austrian Supreme Court recognised that the mark 'FEELING' was not filed in bad faith it acknowledges this ruling but claims that the decision merely concerned expedited proceedings of preliminary injunctions with a lower threshold of proof. The trade mark was later subject to infringement proceedings where the Supreme Court found that 'there is no doubt that (also) the plaintiff's trade mark was applied for speculative purposes'. As such, it refuted its prior decision and confirmed Mr E.A.'s abusive trade mark filing system. The EUTM proprietor claimed that the German case law is not binding on the present case and the applicant admits this is true but that it shows how the Courts in Germany also found that Mr E.A.'s behaviour was found to be abusive in the past. As regards the EUTM proprietor's arguments that it allegedly initiated proceedings against Germany for a violation of mandatory EU law the applicant states that it is not aware of any EU Commission proceedings against Germany and the EUTM proprietor did not submit any proof that his opinion about abusive decisions is well-founded and must be disregarded. The applicant also argues that the EUTM proprietor's argument that the LUCEO judgment (Ibid) has become null and void due to the judgment of the CJEU in Sky/Skykick (Ibid). The Court merely ruled that if the applicant of a trade mark does not know at the time of filing if he will use the mark for all of the registered goods and services this does not necessarily indicate bad faith. However, this was not the basis of the finding in the LUCEO judgment which resulted from a conclusion of bad faith due to the numerous identical trade mark filings for different goods and services over the years without paying the application fees on several occasions. His behaviour showed clearly that he speculated that the mark would become relevant at some point in time and until then he did not want to spend any money on the filings. Moreover, the judgment of LUCEO was not appealed successfully by the EUTM proprietor and is thus final and must be taken into consideration. Moreover, as the EUTM proprietor failed to submit the legal aid motion the applicant cannot comment on the content or whether the Court was of the opinion that any appeal would have been successful or not. The decisions which the EUTM proprietor relies upon to prove that it did not file trade marks in bad faith, for the most part, do not involve bad faith claims and do not serve as precedence in the present case. It goes through each case to distinguish it from the present case, the cases were not submitted as evidence, or they do not involve bad faith at all, and the applicant points out how in some instances the EUTM proprietor could have speculated over the names of the signs which it filed. Therefore, the applicant concludes that the cited decisions are not suitable to refute the bad faith of the EUTM proprietor in the present case. It also considers that the book of Mr E.A. submitted in the observations about trade mark theft has no bearing on the case at hand and should be ignored. Therefore, it insists that the application for a declaration of invalidity as based on the ground of bad faith should be entirely upheld.

In its final round of observations the applicant insists that the EUTM proprietor has not brought forward any arguments, let alone facts, that would disprove his bad faith. Instead, its Managing Director, Mr E.A., bathes himself (for over 50 pages) in a perpetrator-victim reversal, according to which he would be a trade mark 'pioneer' that became the victim of 'trademark theft' which basically left him bankrupt. Proof of this would be that the applicant never asked for a license, although the applicant states that it does not have to engage with

trade mark trolls. The applicant points out that the EUTM proprietor argues that all of the various decisions rendered against Mr E.A. or one of his many shell companies which held that he indeed operates an illegitimate business model of a trade mark troll, would be void due to conspiracies of the examiners and judges whose only alleged goal would have been to discredit or insult him. The applicant also claims that the EUTM proprietor keeps falling into contradictions when it recounts its story. Mr E.A. on the one hand describes himself as a penniless insolvent man when it suits him but then on the other hand brags about having paid fees in dizzying amounts, for which he doesn't submit proof and which do not add up mathematically. All it shows is that Mr E.A. is a well-known and skilful trade mark troll and the decisions rendered against him are not the result of corrupt judge and examiners but rather a testimony to the functioning rule of law in the EU. If this has left Mr E.A. penniless (as he claims), then the reason is that he does not operate a business which can generate a legitimate cash flow and the applicant accuses Mr E.A. of making money from illegal activities. The applicant contends that the entirety of the EUTM proprietor's observations have no bearing or relevance to the present case and should be disregarded, except that the EUTM proprietor again shows that he never had any intention of legitimately using the contested trade mark. The EUTM proprietor further tries to threaten the applicant with selling the EUTM to another (Chinese) car manufacturer instead of the applicant, which Mr E.A. probably thought to be cleverly written between the lines and made to make the applicant react by offering money to buy the mark, which merely shows his trolling attempts. The applicant claims that the last observations of the EUTM proprietor merely show its bad faith at the time of filing a mark it never intended to use save only as an illegitimate threatening mechanism against the applicant to hinder its business activities and to blackmail it into payment and therefore the EUTM must be invalidated.

The applicant then goes into further detail about Mr E.A.'s allegations and lack of proof to support them to try and rebut them. It also contests and describes Mr E.A.'s/ the EUTM proprietor's actions and his/it's alleged dishonest intention at the time of filing. It confirms, repeats and expands its previous arguments and contests the EUTM proprietor's observations. It points to case law, which it partially cites in the observations and later attaches as evidence, in support of its arguments and points to other cases in which Mr E.A. or his companies were involved showing his/their bad faith. The applicant points out that the EUTM proprietor never placed the mark on the market but it was only transferred to Mr E.A. or his companies and it details the dates of these transfers and the recipients being Mr E.A. or his companies which it again describes as 'letterbox' companies and provides further information and evidence in this regard. It states that none of these companies actual generate any income and are merely shell companies and Mr E.A. has admitted that it never had or has any intention to use the mark, except to try and blackmail the applicant into paying for the EUTM. It denies that the EUTM proprietor has any legitimate business model. Unlike the ATHLETE judgment (17/01/2024, T-650/22, ATHLET, ECLI:EU:T:2024:11) which it discusses in detail, in the present application, Mr E.A. did not have to re-submit multiple Austrian trade mark applications. However, it still acted in a way that does not correspond to legitimate business behaviour or honest practices in trade and commerce by obstructing the opposition proceedings against his EUTMA for more than 17 years and thus acted in bad faith. The EUTM was thus filed with the sole purpose to illegitimately exploit its blocking effect against the applicant. Mr E.A., as a self-proclaimed 'pioneer' for trade marks for vehicles since 2001 could not have known of the applicant when it filed the Austrian trade mark application 'TESLA' and even less when it filed the contested EUTM for 'TESLA' just months after the TESLA ROADSTER was presented to the public in the US and only days after this was reported in an Austrian newspaper. The only stories it come up with about the creation of the sign were from the CD and newspaper articles three to six years prior to the filing which is not very likely. The applicant insists that Mr E.A. saw his chance when he heard about the applicant and its great business idea and knew that at that point the applicant had no trade mark rights in the EU, and, suspecting it would be successful, he took his opportunity and filed the EUTM. The present case is no different from the other cases

that led to decisions against Mr E.A. confirming his illegitimate trolling activities and it lists the decisions which include decisions of the EUIPO¹, the Board of Appeal², the EU Courts³ and German⁴ and Austrian Courts⁵ to this effect. Mr E.A.'s sole reply to these decisions was that they were rendered by corrupt judges or examiners and should therefore be null and void, which is nonsense. The fact that the EUTM proprietor did not like the decisions does not make them legally vulnerable and the fact that his business activities were held to be in bad faith perfectly follows the rule of law in the EU which does not allow such applications. It claims that the EUTM proprietor's arguments against these decisions are unfounded or unrelated to bad faith and goes through some of these to rebut them. The applicant concludes that the EUTM proprietor has acted in bad faith in filing the EUTM and that it has failed to provide sufficient arguments or evidence to rebut this conclusion. Therefore, the EUTM should be entirely invalidated.

In support of its observations the applicant submitted the following evidence:

On 04/11/2022:

With the application for a declaration of invalidity the applicant claimed that it submitted Annexes A1 to A48, however, the Cancellation Division can only see Annexes A1 – A5 of these documents and the rest appear not to have been submitted and are not listed in the annexes in the application form. Therefore, the evidence to be taken into account is the following:

- A 1: Website extract from the applicant's website and a Wikipedia article about the applicant. It states that the company was incorporated in July 2003 and in February 2004, via a USD 6.5 million investment, Mr M. became the largest shareholder. The production of the first 'TESLA' car began in 2008. It further states that in 2006 and 2007 there were different venture capital funding rounds in which hundreds of millions of USD were raised. Tesla's first car, the Roadster, was officially revealed to the public on 19/07/2006 at the Santa Monica Airport, California at a 350 person invitation only event. It also speaks of the great success of 'TESLA' electric cars and how the production and sales began around the world and opened its first Tesla store in Europe (London, Member State at the time) in 2009 and now has its European headquarters in the Netherlands.

¹ EUIPO, Cancellation Division decision of 14/12/2012, 5424 C – LUCEO and Opposition Division decision of 12/07/2021, B 1 247 099 – Czech word mark TESLA.

² EUIPO, BoA, decisions of 25/11/2013, R 2292/2012-4 – LUCEO, of 12/07/2022, R 1603/2021-5, of 13/06/2007, R 788/2007-4 – CROSSRACER, of 05/02/2010, R 726/2008-4 – SALVEO, of 28/03/2011, R 2147/2010-4 – ROCKY, of 23/07/2010, R 1050/2009-4 – SAVANNA, of 14.06.2010, R 1429/2009-1 – GTE, of 11/05/2011, R 2000/2010-4 – FORERUNNER, of 21/03/2016, R 1246/2015-5 – ORIBI, of 05/06/2012, R 1082/2010-1 – PACER, of 07.03.2013, R 574/2012-2 – SYNTHESIS, of 23/08/2013, R 2026/2011-4 – DORADO, of 22.11.2013, R 2266/2012-2 – ESPEED, of 17/04/2024, of 23/09/2011, R 2220/2010-2 – CRATOS, of 15/03/2013, R 2606/2011-1 – PROPUS, of 14/07/2016, R 2171/2015-4 – EGT, of 19/03/2020, R 0010/2020-4 – CELERITAS.

³ 0907/07/2016, T 82/14, LUCEO, EU:T:2016:396 and 09/12/2014, T-307/13, ORIBAY, EU:T:2014:1038 and 16/03/2017, T 473/15, APUS / ABUS, EU:T:2017:174.

⁴ Higher Regional Court of Frankfurt am Main, decision of 7 February 2013, U 126/12 – FURIO, Regional Court Düsseldorf, decision of 2 June 2023, 38 O 18/22 – legal aid proceedings, LG Stuttgart, decision of 20.12.2017, 17 O 805/16 – PERSEUS, OLG Stuttgart, decision of 20.12.2017, W 41/17 – PERSEUS. District Court of Munich, decision of 14.11.2022, 33 O 12422/22, Saarland Higher Regional Court, decision of 10.02.2023, 1 U 94/22, District Court of Frankfurt a.M., decision dated 15.03.2010, 2-06 O 116/1.

⁵ Supreme Court of the Republic of Austria, decision of 17 September 2014, 4 Ob 98/14m – FEELING (see Annex A 9); Austrian Supreme Patent and Trademark Senate, decision of 25 April 2012, Om 1/12 – RUSH (see Annex A 56), Austrian Supreme Court, decision of 08.04.2008, 17 Ob 1/08h – FEELING, Austrian Supreme Patent and Trademark Senate, decision of 02.02.2012, Om 11/11-5 – SUNRISE, Cancellation Division of the Austrian Patent Office, decision of 21.04.2009, 72/2007-2 – TANGARA

- A 2: Excerpts from the Bulgarian company register for 'Capella EOOD' (the EUTM proprietor) with an address in Bulgaria and stating that it is managed by Mr E.A. and he is also noted as being the sole owner of capital in the company. It is accompanied by a translation into English.
- A 3: Polymark search report showing approximately 300 national trade mark applications in Germany and Austria filed by the EUTM proprietor showing their status as 'withdrawn', 'cancelled' or 'filed' (in Germany) or 'cancelled' (in Austria).
- A 4: Official application form for the filing of the contested EUTM 'TESLA' in German in the name of Mr E.A..
- A 5: Transfer applications of the EUTM between different companies of Mr E.A. and signed and represented by Mr E.A..

On 24/08/2023:

- A 48: EUTM Proprietor's legal aid motions with corresponding decisions and translations in Swiss and German proceedings.
- A 49: List of Mr E.R.'s Austrian Trademark Applications.
- A 50: List of Mr E.R.'s German Trademark Applications.
- A 51: List of Mr E.R.'s European Trademark Applications.
- A 52: Translation of articles originally claimed to be submitted as Annex A 31 to A 33.
- A 53: Reasoned appeal brief of Mr. E.R. dated 25/07/2023 with a translation of the Düsseldorf proceedings.
- A 54: List of Mr E.R. Swiss Trademark Applications.
- A 55: Correspondence between parties and Court of Düsseldorf's settlement proposal with translations.
- A 56: Decision of Austrian Federal Patent Senat re Mr E.R. TMA 'RUSH' with its translation.
- A 57: Application form of the change of ownership of Mr E.A.'s "GTE" trade mark to Volkswagen.
- A 58: Sales offer of Skoda rims.
- A 59: Article about EXAGON's 'ETG' car.

On 04/09/2023:

- A 49 – A 51 and A 54 (as submitted on 24/08/2023) along with their translation into English.

On 17/04/2024:

- A 60: GC judgment of 17/01/, T-650/22, ATHLET, ECLI:EU:T:2024:11 in German and English.
- A 61: Commercial Register excerpts for COPERNICUS-TRADEMARKS Limited, SEGIMERUS Limited and RAETI Limited.
- A 62: Commercial Register excerpt, companies house excerpt and Google Maps screenshot for CHALFEN CORPORATE LIMITED.
- A 63: Commercial Register excerpts for COPERNICUS EOOD, CAPELLA EOOD and VERUS EOOD.
- A 64: Google Maps screenshots for Trakia 12, 1504 Sofia, Bulgaria address.

The case for the EUTM proprietor

The EUTM proprietor submits observations with screenshot evidence inserted into the observations.

Observations of 17/04/2023:

The applicant is a billion dollar US corporation whose CEO is the richest person in the world but it has been willingly infringing the EUTM proprietor in the EU for decades. He accuses the applicant of ruthlessly enforcing its monetary interests by all means, even unlawful means and hiring numerous big law firms to enforce its monetary interests. Mr E.A. as the trade mark creator is not the only victim of the applicant but the entire EU as trade marks have an individual importance but also a universal importance being a regulatory task in the competition order of the EU. The applicant has submitted thousands of pages of lies that were constructed for this purpose, such as the applicant's claims in the Swiss proceedings against Mr E.A., the applicant demands the cancellation of the EUTM but at the same time submits that it does not have the possibility to cancel the EUTM. He claims that this is procedural fraud on the part of the applicant as the applicant can and is trying to invalidate the EUTM in the present proceedings. He claims that due to trade mark theft and character assassination or defamation campaigns, especially by the applicant, the EUTM proprietor has no financial means to bring about a balance of power that is even approximately equal.

He contests the applicant's reasoning as unconvincing, confusing, incoherent and defamatory writing that is contrary to fundamental rights and EU law and avoids mentioning the highest case law on bad faith, namely, 29/01/2020, C 371/18, SKY, EU:C:2020:45 as the applicant knows there is no bad faith and the EUTM will never be invalidated. The highest case law on bad faith, the direct applicability of fundamental EU rights, the direct effect of EUTM Directives and the principles of EU trade mark law are suppressed by the applicant from the court. Instead, the applicant tries to use contrived legal constructions to get its 'trademark theft' of the EUTM into dry cloth. The primacy of fundamental rights, special legal provisions or special provisions of trade mark law of the EUTMR (lex specialis) and EUTM law applies. As such, facts regarding abuse of rights/immorality etc. since the entering into force of the EUTM are to be measured against its regulations, namely, the EUTMR, as well as the highest case law in this respect. With the creations of the CTMR, now the EUTMR, a uniform self-contained European regulatory and protection system for trade marks was introduced which already contains provisions on (national) unfairness. These have been incorporated into the harmonised facts of bad faith law and the highest case law of the CJEU and the ECHR is exclusively decisive in this regard. The application for invalidity is unlawful or an abuse of rights. There is a prohibition under civil law and procedural law to conduct proceedings without an interest in legal protection ("ban on harassment") such as in Germany § 226 DE-BGB (prohibition of harassment); § 242 DE-BGB ("good faith").

The applicant is using the EUIPO unfairly and solely for competitive advantage and this amounts to the applicant having bad faith (unclean hands) in bringing the present bad faith application. The applicant has already secured its own (younger) IR trade marks for 'TESLA' for vehicles and has maliciously concealed or suppressed this from the EUIPO and without informing the earlier right holder, and he provides details of these trade marks. The applicant has also 'conspiratorially' filed other EUTMs for 'TESLA' and he provides details of these also. For decades the applicant has been infringing the EUTM by selling vehicles in the EU and making billions in profits. The applicant negotiated with another opponent from the Czech Republic who held earlier rights to the sign 'TESLA' and as a result the Czech company subsequently withdrew its oppositions against the applicant. The EUTM proprietor questions why the applicant did not also contact Mr E.A. to begin serious negotiations.

Contrary to the applicant's assertions there is a system in place for the development, application, registration and exploitation of trade mark rights which is used by many companies each day. All trade mark owners are correctly established and active (European) companies, however, the applicant is a foreign US company that is breaking EU laws for decades and thus pocketing billions in profits that flow into the US. Regarding the delay in the opposition proceedings, the EUTM proprietor claims that it was for the opponent to end

the proceedings and he gave them many opportunities to do so by restricting the list of goods, he did not restrict 'automobiles' contrary to the applicant's assertions and insists that there is a fundamental right to be heard which must be respected and thus proceedings can take a long time. Contrary to the applicant's arguments, he claims that since the beginning of 2001 he has paid more than half a million euros in fees to trade mark offices. If the trade mark is not paid for then it has no protection and no claims can arise against infringers under the EUTMR. He contests the applicant's argument that it could not use the trade mark applications and insists that the exploitation of intellectual property secures the existence of the creator. He contests the applicant's argument that the EUTM proprietor is not transparent and he insists that all of the companies' data is freely available on public registers and that the companies are active and not just letterbox companies. They are trade mark rights exploitation companies that exploit the marks developed by Mr E.A. and this is stated in the company register. He insists that the paragraphs concerning payments in respect of the 'LUCIO' trade mark and about the withdrawal of oppositions in respect of the trade mark 'RUSH' are untruthful and denies that the EUTM proprietor enriches itself at the expense of third parties. It is the trade mark infringers that are enriching themselves at the expense of Mr E.A.. For this reason, he must apply for free legal assistance and legal aid.

It is untrue that no fees were paid in relation to the Austrian trade mark application for 'TESLA' as on 13/07/2007 the application and class fees for the mark were transferred to the Austrian Patent Office and it provides a partial screenshot in the observations. Mr E.A. is a world-renowned pioneer in the interdisciplinary development of new European trade mark rights since 2001. He is the original author and creator of the trade mark and develops new brand rights for new cars, including electrically powered cars. As of 2003 Mr E.A. developed the Austrian word mark 'VOLTIGA' for vehicles as well as their parts and accessories and it was later registered as an EUTM. The EUTM proprietor also claims that Mr E.A. is the proprietor of the Austrian and EUTMs 'TESLA' in Classes 12, 25 and 28 since 17/10/2006 and the registered goods of the marks are different from those of the applicant's US marks which also have different signs 'TESLA ROADSTER' and 'TESLA MOTORS'. Thus, the applicant has no claim over any EUTM for 'TESLA' which was inspired by the old Austrian mark, both of which were developed by Mr E.A. and is original and has nothing to do with the US applicant who has been violating EU law for decades. It claims that Mr M.'s wealth is the result of trade mark theft and violations of EU law and also white-collar crime.

The EUTM was developed without any knowledge of the applicant or the press reports concerning it at the time of filing or registration of the Austrian or EU trade marks. In 2000 Mr E.A. had a subscription to the Austrian newspaper *DER STANDARD* with a customer number 12607130 and it provides a partial screenshot which includes his name and address and the claimed customer number without further details. On 16/03/2000 there was an article about the old Austrian Nikola Tesla on page 46 which he saw and he claims to have kept the article until today as the inventor fascinated him and this led to the creation of the brand and the filing of the Austrian mark and later the EUTM. It provides a partial screenshot of the article. Another inspiration for the development of the 'TESLA' brand was a CD he purchased on Amazon on 29/10/2003 with the title 'COMPLETE BOOK OF BOAT NAMES' (2000) and on page 4464 it mentioned the name 'TESLA'. He claims that the confirmation of the Amazon purchase and the page excerpt from the CD are attached as screenshots, however, only the page extract (not showing any origin but containing, inter alia, 'TESLA').

It refers to the judgment 27/06/2013, C 320/12, Plastic bottle (3D), EU:C:2013:435, §1-3 (Malaysia Dairy Industries) which held, inter alia, that the fact that the applicant knows or must know that a third party is using a trade mark abroad which may be confused with the trade mark applied for at the time of filing the application is not in itself sufficient to establish bad faith on the part of the applicant within the meaning of Article 4(4)(g) of Directive 2008/95. Mr E.A. is a European trade mark attorney since 2001 and the owner of a well recognised trade mark agency and has developed many new trade marks since 2001. It

provides screenshots from his trade licences dated between 2001-2005 in German with a partial translation into English. It claims that the EU also recognised his the trade mark 'COPERNICUS' and the trade name 'COPERNICUS CONSULTING' for the services of creating, developing and sale/licensing of trade marks and for services concerning trade marks. He submits a screenshot of a co-existence agreement between Mr E.A. and the EU in this respect which was signed in 2010. Already in 2002 he was invited to give lectures and provides details of same and a screenshot of the documentation regarding the lecture in Vienna.

The applicant had no prior rights to 'TESLA' and the EUTM proprietor states that it submits a copy of the search report although it does not appear in the document. It also states that no 'TESLA' marks in the EU or for the EU appeared at the priority date as per the Austrian search report for which it attaches a screenshot. Therefore, the applicant did not carry out any business in the EU before the priority date as per the reports and the applicant's arguments. The assumption of an *acquis* worthy of protection presupposes that the mark is known in Germany or the EU due to sufficient market presence and he cites DE-BGH GRUR 2014, 780 - Liquidrom; Strö- bele/Hacker, MarkenG, 11th edition, § 8 marginal no. 877; Ingerl/Rohnke, MarkenG, 3rd edition, § 8 marginal no. 308 without submitting a copy of same. Thus, the applicant would have to have used the mark in the course of trade and acquired a sufficient reputation in the trade, which is not the case. Even if the applicant had founded a US start-up company under the name 'Tesla Motors Inc' it did not present its car at the two car shows until after the priority date of 17/10/2006 and the applicant was not known to the public. The vehicle 'Tesla Roadster' was only presented in 2008 as it claims is proven by the article from www.autobild.de of 23/12/2014 entitled 'First vehicle was 2008 the Tesla Roadster' and a screenshot was submitted in German.

According to the magazine *AUTO TEST* from September 2009 (No 9) on page 131 the first prototypes of the 'Tesla Roadster' have been driving since the beginning of 2007 and Tesla was to come to Europe before the end of 2009 and it provides a screenshot of the article and quotes therefrom. It refers to the celebrities being among its customers and that a reservation cost would be EUR 50,000 deposit (amongst other details). The EUTM proprietor points out that all of these dates are after the priority date of the Austrian application when Mr E.A. or his company had filed the mark. The EUTM proprietor claims that the applicant only entered the public eye in 2006 when the first presentation of the cars took place at the San Francisco International Auto Show from 18-24/11/2006 as well as at the Los Angeles Auto show from 01-10/12/2006 which were after the priority date of the EUTM. It notes that previously there was an alleged closed event for the super rich at Santa Monica airport but the public was excluded, although some celebrities attended and it provides a screenshot from www.carthrottle.com in this respect. It claims that the US company was not famous or well-known at all before the priority date of the EUTM but was only a start-up in the US.

In April 2007 *AUTO BILD* reported that the US company had only tested two prototypes and it provides a translation into English and a screenshot of same. The EUTM proprietor refers to the applicant's international trade mark registrations No 1 162 462 'TESLA' registered on 24/04/2013 with a basic US application date of 17/04/2013 and the IR No 1 222 761 'TESLA' with a date of registration of 09/12/2013 and a basic date of application from the US of 21/07/2009 and screenshots including details of both marks. The applicant violates the requirement of objectivity and insults and defames Mr E.A. countless times and uses terms like 'Brand Troll' to describe him and tries to win proceedings using slander, defamation and a lack of objectivity using a mud-bucket propaganda in the hope that something will stick in order to clear the way for further centuries of trade mark infringement. The applicant's arguments are insulting and if a pleading contains offensive statements, as herein, it must be rejected by the Office/Court as not being suitable for proper business treatment. The applicant's claims are disparaging, defamatory, infamy, polemic, unobjective, a smear campaign and prejudicial and consist of interest-based, financially influenced bogus

justifications and one-sided views which portray the applicant as a victim. The applicant quotes from pleadings of other trade mark 'robbers' and their legal representatives who invent terms like 'trade mark trolls' in order to turn the perpetrators into victims. This term was invented by the legal representative of Apple who used it against Mr E.A. to commit character assassination. It provides details of Mr E.A.'s telephone conversation with the President of a law firm in Germany in which the German firm agreed to represent him despite them talking about 'The troll story' and the fact that Mr E.A. was involved in a rights exploitation company which holds (not yet used) earlier trade marks against an infringer.

The EUTM proprietor has been a trade mark author/developer/creator since the beginning of 2001 (when he started his business) and a European trade mark attorney since 2006. Whereas the applicant intended only to operate and sell its vehicles exclusively in the US and it submits a screenshot from the applicant's webpage in 2006 and 2007 in this regard as well as a screenshot from the FAQs. On 11/07/2005 Tesla signed a production contract with Lotus Cars to manufacture complete cars that would later become the 'Tesla Roadster' and it provides hyperlinks to a news report and the contract. It also provides a screenshot of the contract. It was not until 04/08/2009 that the contract with 'LOTUS' was extended to 'worldwide'. It also provides a copy of an article from *electrek.co* from 2016 that provides a history of the applicant and which the EUTM proprietor claims that it shows the cars were only to be used in the US. The EUTM proprietor claims that the first model of the applicant's car was only sold in the US in February 2008 and reported in the media and this is after the priority date of 17/10/2006 of the EUTM and was not in the EU. Again, it denies any knowledge of the applicant before filing the priority mark. It also submits another article from the *Economist* in German from 19/02/2008 which reported on the applicant's cars being full battery electric high-performance sports cars and how they had been on the market since the beginning of the month and other articles from *autobild.de* of 17/04/2008 and 25/04/2008 about the applicant's cars in German and another article on the same website from 11/04/2008 stating that 'Tesla Motors, Californian manufacturer of an electric roadster (photo), plans to launch its zero-emissions 248-horsepower sports car in Europe in autumn 2009. This is what Tesla CEO Ze'ev Drori told the Financial Times'. A screenshot from *AUTO TEST* from September 2009 mentioning, inter alia, that the first prototypes have been running since the beginning of 2007 and that in mid-March 2008 the production of the electric roadster began at Lotus in England. The Tesla is to come to Europe before the end of 2009. The EUTM proprietor states that in the archive of the *Frankfurter Allgemeine Zeitung* there is not a single report of 'Tesla Roadster' between 01/03/2003-01/05/2007 and it provides a screenshot.

The EUTM proprietor states that it did pay the application fee for the Austrian trade mark 'TESLA' by bank transfer on 13/02/2007 and provides a screenshot of same, showing a payment of EUR 100 and the name Mr E.A. and the number of the Austrian application AM 7043/2006. The EUTM proprietor claims that the applicant confirms the non-existence of bad faith which would cancel the mark *ex-tunc* and it was only when there was no response to the applicant's immoral offers to purchase the mark that the applicant tries to eliminate the mark by means of litigation fraud. The applicant sued Mr E.A. before the Commercial Court of Switzerland and the Regional Court of Dusseldorf and it provides screenshots thereof. After the judge at the LG Düsseldorf suggested it, the applicant sent a purchase offer for the 'TESLA' trade mark which includes the claims for damages for the past (since the publication of the EUTM in 2007) and provides a screenshot thereof which, in German, shows a figure of EUR 50,000. As of 2010 the applicant wanted to buy the EUTM and did not consider it a bad faith filing. On 28/06/2010 the purchase price of EUR 5,000 was made to the EUTM proprietor and it concludes that this shows that the applicant did not consider the mark to be filed in bad faith. It provides a screenshot of emails between the parties regarding the negotiations. The applicant confirmed to the Court in Düsseldorf that it is irrelevant where Mr E.A. got the inspiration for the brand 'TESLA' and it provides a screenshot of a letter in German from the applicant's representative in this regard.

The applicant has copied its name from several older companies and it provides details thereof, one in the Czech Republic and from US trade marks. The EUTM proprietor provides a screenshot of an article in German from teslamag.de/news and it translates a part thereof 'Tesla could have been called Faraday'. The applicant's 2005 US application for 'TESLA MOTORS' was for different goods than the 2006 Austrian filing and thus the applicant held no rights to the sign before 2007. The applicant purchased earlier trade mark rights or reached financial settlements with the earlier right holders, except with the EUTM proprietor. The applicant bought the older Turkish brand 'TESLA' which had been active since 2004 and it provides a partial screenshot of the mark. The applicant also was involved in financial negotiations with another Czech opponent who had opposed the applicant's EUTMAs and the oppositions were subsequently withdrawn. The EUTM proprietor questions why the applicant did not also contact Mr E.A. to negotiate. It provides a screenshot of the aforementioned mark.

The contested EUTM was filed in 2007 solely to extend the national trade mark, the priority Austrian mark filed in 2006. It argues that indeed hundreds of extended EUTMs have been filed since 2001 which proves this and the application fees paid have been over one million EUR paid to the EUIPO. The applicant was aware of the earlier national mark so the more recent EUTMAs must all be classified as being filed in bad faith and classified as trade mark theft. The EUTM proprietor claims that the applicant has lied about many facts that it put forward. Mr E.A. is in fact the trade mark creator of the sign 'HURACAN' which is the name of a wind and not a bull's name and it provides a hyperlink to Wikipedia and claims he owns an earlier right than Audi to the sign. It argues the same for 'ASCENT', for which he holds prior rights to Subaru and details his thought process in choosing the sign. The EUTM proprietor also refers to the signs 'ANTOS' for which he holds prior rights to Daimler, 'CROSSCAMP' for which it owns prior rights to the sign, and it states that there are no Austrian trade mark registrations in his name as they have either expired after 10 years or have been transferred to third parties, although no proof of this is submitted alongside this claim.

It claims that the ruling of the Austrian Court OHG 4 Ob 98/14m 'Feeling' was annulled by the ECJ in 19/01/2020, C-371/18, Sky plc / Skykick. Furthermore, it was based on distorted facts, violations of fundamental rights and violations of ECJ jurisprudence. The prosecution took up the case. The Austrian Supreme Court ruled on 08/04/2008, Case 17 Ob 1/08h 'FEELING', that Mr E.A. did not file a trade mark application in bad faith, no proof was submitted alongside this claim. In regard to the applicant's cited German judgments it claims that an application for infringement proceedings against Germany for violations of mandatory Union law has already been submitted to the EU Commission. It claims that these German judgments are void because they violate Union law and are based on procedural fraud which also renders them null and void. The ECJ 'LUCERO' judgement should also be considered null and void as it is based on factual irregularities and violation of the right to be heard and was substantively 'annulled' by the ECJ in its 'SKY' ruling. It further claims that the ECJ granted legal aid against the 'LUCERO' judgment it 10/11/2015, C-477/15 AJ – Coperinus due to incorrect notifications of deadlines by the Administrative Board, the action against the 'LUCERO' judgment was unfortunately brought out of time.

The EUTM proprietor states that Mr E.A. has won many important judgments/decisions where there was a negation of bad faith on his part⁶. It further cites the decision of the

⁶ He cites the following:

- ECJ, 10.11.2015, C-477/15 AJ - Copernicus Trademarks v OHIM. (He claims that the ECJ recognises infringement and grants legal aid for an appeal against judgment T-186/12, where an alleged "bad faith trade mark application" was at issue due to incorrect time limit instructions by the Administrative Council, the action was brought out of time).
- ECJ, 09.12.2014, T-307/13 - Capella / OHMI - Oribay Mirror Buttons (ORIBAY.)

Regional Court of Hamburg (Ref.: 327 O 243/23) of 05/10/2023⁷ and points out that a copy of the decision in German is inserted as a screenshot in the observations. The EUTM proprietor claims that based on the above statement of the judge in Hamburg the entire argumentation and submission of the applicant regarding the quantity of applications collapses. The pages of trade mark applications made by Mr E.A., submitted by the applicant, shows only his creative power, innovative strength, creativity, ability and diligence. He was not practicing a business model but an official profession or trade, of which he is a pioneer.

It claims that the applicant's representative's lies, defamation and discrediting of Mr E.A. before the courts and authorities have caused serious damage to his companies' reputation and also caused financial loss and are based on the lie that he is a trade mark troll based on non-utilisation of marks. The applicant had claimed to have bought the earlier mark from a Mr B.S. but did not submit evidence of same and it is a US mark and has nothing to do with the EU. The applicant also falsely claimed that Mr E.A. made himself rich with formal rights and is a trade mark troll – quad non. The EUTM proprietor insists that he is a trade mark originator since 2001 and has been impoverished by trade mark theft, in particular by the applicant and his lawyers and has no assets or income and discredited. It denies any truth about the trade mark trolls fictitious, untrue and invented story by the applicant's lawyers who want to divert their attention from their own criminal offenses (trade mark theft) and their

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- ECJ, 16.03.2017, T-473/15 - Capella v EUIPO - Abus (APUS)
 - Austrian Supreme Court, 08.04.2008, Case 17 Ob 1/08h – FEELING (he claims the Supreme Court rules that there was no bad faith trademark application).
 - Austrian Supreme Patent and Trademark Senate, 25.04.2012, Case Om 1/12 - RUSH
 - Austrian Supreme Patent and Trademark Senate, 02.02.2012, Case Om 11/11-5 - SUNRISE
 - Cancellation Division of the Austrian Patent Office, 21.04.2009, Case Nm72/2007-2 - TANGARA
 - Stuttgart Regional Court, 29.12.2016, 17 O 805/16 - PERSEUS (he claims that the LG decides that there is no bad faith trade mark application).
 - OLG Stuttgart v. 20.12.2017, 2 W 41/17 (the OLG decides that there is no bad faith trademark application)
 - LG München I v. 14.11.2022, Az.: 33 O 12422/22 (the LG decides that there is no bad faith trade mark application).
 - LG Frankfurt a.M. v. 15.03.2010, Az. 2-06 O 116/10 (the LG decides that there is no bad faith trademark application)
 - Saarland Higher Regional Court v. 10.02.2023, Ref.: 1 U 94/22 (the Higher Regional Court decides incidentally that there is no bad faith trademark application)
 - EUIPO Opposition Division - various decisions
 - EUIPO Cancellation Division - various decisions
 - EUIPO Board of Appeal, 22.02.2006, R599/2005-2 - WELLAQUA
 - EUIPO Board of Appeal, 13.06.2007, R788/2007-4 - CROSSRACER
 - EUIPO Board of Appeal, 05.02.2010, R726/2008-4 - SALVEO
 - EUIPO Board of Appeal, 14.06.2010, R1429/2009-1 - ATE
 - EUIPO Board of Appeal, 23.07.2010, R1050/2009-4 - SAVANNA
 - EUIPO Board of Appeal, 28.03.2011, R2147/2010-4 - ROCKY
 - EUIPO Board of Appeal, 11.05.2011, R2000/2010-4 - FORERUNNER
 - EUIPO Board of Appeal, 23.09.2011, R2220/2010-2 - CRATOS
 - EUIPO Board of Appeal, 05.06.2012, R1082/2010-1 - PACER - (partial victory)
 - EUIPO Board of Appeal, 07.03.2013, R574/2012-2 - SYNTHESIS
 - EUIPO Board of Appeal, 15.03.2013, R 2606/2011-1 - PROPUS
 - EUIPO Board of Appeal, 23.08.2013, R2026/2011-4 - DORADO
 - EUIPO Board of Appeal, 22.11.2013, R2266/2012-2 - ESPEED
 - EUIPO Board of Appeal, 23.07.2013, R656/2011-4 - SAVANNA
 - EUIPO Board of Appeal, 21/03/2016, R1246/2015-5 - ORIBI
 - EUIPO Board of Appeal, 14.07.2016, R2171/2015-4 - EGT
 - EUIPO Board of Appeal, 19.03.2020, R0010/2020-4 – CELERITAS (he claims that the BK decides incidentally that there is no bad faith trademark application).
 - German Patent and Trade Mark Office - various decisions

⁷ "Finally, sufficient factual indications for a bad faith application for the injunction mark as a so-called speculative mark cannot be inferred from the reply to the warning letter. The mere number of trade marks applied for by the managing director of the applicant "for himself and for the companies managed by him" is not sufficient in this respect, especially as the applicant in Annexes ASt 25 and ASt 26 submits a trade licence issued to the managing director of the applicant by the Municipality of the City of Vienna relating to the trade "exploitation of patent, trade mark, design protection, copyright and other rights of use by brokering, selling and licensing under Exclusion of any activity subject to a certificate of competence" and an extract from the trade register of the City of Vienna concerning the managing director of the applicant with the trade name "Development of word marks (signs) and their exploitation through sale, brokerage or licensing". The exercise of these trades obviously includes the registration of several – even many - trade marks".

tactic of slandering smaller inventors or intellectual property as 'trolls' in order to prevail in court/trade mark offices.

The troll stories are reduced to absurdity by two events. Firstly on 02/08/2015 Mr E.A. contacted the applicant's representative and asked to be represented by them in the Czech Republic and it provides details of the lawyer with whom he spoke and submits a screenshot of the email. It claims that the applicant's representative was happy to represent Mr E.A. and it claims that the troll story thus collapses like a house of cards. Also, the same lawyer from the applicant's representative accepted Mr E.A.'s invitation to network on LinkedIn and it provides screenshots of same. It claims that 'You don't network with a "trademark troll"'. It also provides details of a phone discussion with another legal firm which Mr E.A. had asked to represent him and he mentioned the infringed earlier mark he needed help with had not yet been used and was not required to until 2019 and mentioned the issue of non-practicing entities, to which the lawyer replied 'The troll story' to which Mr E.A. replied that it was not comparable with trade mark law and allegedly the lawyer replied 'yes' and agreed to represent him.

The EUTM proprietor denies that it blackmailed the applicant and argues that the applicant could have switched to use an alternative sign or added descriptive information but instead chose trade mark theft and deliberately infringed or stole the published rights. The applicant falsely claims that a lump sum was demanded by the EU but nothing was demanded at all and Mr E.A. has, for the benefit of the EU and its citizens, concluded a free prerogative agreement with the EU. Mr E.A. alleges that his trade mark licensing was not successful due to the reputation damage and discrediting he received, he merely claimed that he was offering licensing, contrary to the applicant's arguments. It further claims that the fact that the applicant did not ask for a license of the 'TESLA' mark proves that it committed theft and proves the criminal energy of this company. The fact that the 'corrupt judge' in Düsseldorf did not grant legal aid, even though all of the requirements were or are met, will keep the highest courts busy. It states that as 'the trademark pirate' confirms that Mr E.A.'s trade mark portfolio is of interest to the most renowned corporations this confirms the trade mark theft and also the common practice of other corporations which steal trade marks rather than acquiring them correctly from the owners or through obtaining a license. The EUTM proprietor denies that the automotive sector is a cash-rich area as claimed by the applicant and states that other areas like finance or pharmaceuticals are much higher.

It denies again any knowledge of the applicant's activities prior to filing. The applicant's evidence, it claims, dates from after the priority date and the first car was not sold until 2009 by the applicant and only a few super-rich people attended the first event so even the US public were not aware of the sign. The 'trademark predator' is desperately trying to undermine the (creative) development of the 'TESLA' mark but will not succeed. Brand development is a creative process and not always rational and the evaluation of the names on the CD was not carried out all at once but was consulted over the years. The fact that the name 'TESLA' only appears at page 4464 shows that it was years later. When it did come up on the CD it was associated – in spirit – with the earlier newspaper articles from 2000 about Nikola Tesla. The EUTM proprietor had already started to develop trade mark rights for all types of vehicles, including electric vehicles in 2001. Its trade mark 'TESLA' is a logical continuation of this development process for vehicles, in particular electric vehicles as well as for goods in classes 25 and 28 which are goods called brand extension goods (like Mercedes-Benz Collection' or 'Porsche Design driver's Selection' and it submits a screenshot of same). The sign distinguishes the parties as the applicant only registered the sign in the US for electric sports cars.

The EUTM proprietor claims that often people or software, when trying to come up with trade marks, chose the same signs, however, the principles of priority and territoriality and independence of trade mark law still apply. The 'TESLA' sign existed before the applicant

and also afterwards and the applicant had to purchase the sign itself from a company in Turkey that manufactures trim parts for coaches, midibuses, lorries and other commercial vehicles. The applicant also concluded agreements with the Czech company and there are many other marks in the register with 'TESLA' for different goods and services or country of protection. The applicant repeatedly raises the issue of use and attempts to mislead about the relevant law and the EUTM proprietor again explains its business and argues that he cannot use the mark himself due to lack of capital. The applicant conceals the fact that he never asked Mr E.A. for a licence but instead stole the mark from Mr E.A. after making a purchase offer of EUR 5,000 which was rejected and now has infringed the mark for decades. The EUTM proprietor claims that the EUIPO itself has confirmed in an email the immense expenditure of around half a million EUR for trade mark fees incurred by Mr E.A. and evidence has already been provided dozens of times that Mr E.A. has also paid the fees for national applications that were not registered. There are no screenshots or evidence in relation to this claim. It claims that it is a lie that no fees were paid in this regard and it is legally wrong, misleading and nonsense that you can keep a mark and not pay any fees for it. The 'trade mark rights collecting societies' are even bringing the identity of Mr E.A., as the trade mark author, closer to the public by publicising his name.

In relation to the 'LUCIO' judgment the EUTM proprietor claims that the facts of that judgment have nothing to do with Mr E.A. and it was a result of 'corruption' due to the manifold violations of fundamental rights, international law and trade mark law in the judgment. Mr E.A. has paid approximately EUR 50,000 in fees to the EUIPO alone as confirmed in an email dated 28/11/2023 (not submitted) and the EUIPO and national offices are aware of this. He refers to his book (attached in the previous observations) about how offering applications and registrations brings much added value for potential interested parties and it is the right of the author to register his mark again in order to offer it to third parties under license or exploitation. All decisions and judgements in which it is claimed that no fees were paid are null and void due to these untrue facts. The 'LUCIO' judgment did not take account of the fact that he did not attempt to circumvent the obligation to use the mark, despite the arguments put forward and an application that is not yet registered cannot circumvent use as the grace period has not begun to run yet or at all. The legitimate rights of a trade mark agency and author were completely ignored and the right to be heard was violated. The ECJ granted legal aid against the 'LUCIO' judgement 'as it recognised the legal errors and factual irregularities and all formal requirements were met' and a screenshot is submitted. The later payment for the Austrian priority filing is, according to the applicant's logic, even proof that there was no knowledge of the foreign applicant on the day of the first filing. Had he known about the applicant he would have paid the fees as quickly as possible to secure the right. It insists that the applicant lies and points out that the applicant registered IR marks for the EU and has been pirating trade marks in the EU for decades. The applicant bought the earlier US trade mark but in the EU it stole the earlier mark in cold blood and never paid a license fee. As such, it claims that the applicant in fact is blocking the EUTM proprietor from exploiting the mark with the present application.

The EUTM proprietor claims that the applicant has been threatening Mr E.A. and his companies and initiated proceedings in Switzerland, which it claims is abusive and based on litigation fraud. Furthermore, with attacks against the 'TESLA' Brexit clone in the UK which are also based on litigation fraud. Also, there is an abusive lawsuit against Mr E.A. personally in Düsseldorf which it claims is based on procedural fraud. The EUTM proprietor and Mr E.A. are also being threatened by the present proceedings which it also claims is based on procedural fraud. These abusive proceedings are aimed at destroying Mr E.A. and his collecting societies so the applicant can continue to make billions in profits undisturbed under the predatory trade mark in the EU. The Court in Düsseldorf recognised that the EUTM proprietor's 'TESLA' mark was not filed in bad faith as otherwise it would not suggest that the applicant pay EUR 50,000 for it. The applicant's initial EUR 5,000 offer for the mark many years ago was not made under pressure from a court and thus it is an admission and

confirmation that the mark was not filed in bad faith. A trade mark filed in bad faith is not intellectual property as it can be cancelled *ex tunc*. Thus it is a double confirmation that the EUTM was not filed in bad faith and the applicant's arguments that all of Mr E.A.'s applications and registrations are filed in bad faith must be rejected. Mr E.A. has no assets or income due to the miscarriages of justice, defamation and discrediting and trade mark theft.

Mr E.A. is the originator of the 'HURACAN', 'ASCENT', 'ANTOS', 'CROSSCAMP' marks and it confirms, repeats and expands its arguments as previously presented in relation to the creation and circumstances of each one. Mr E.A. had no contact with Subaru. The EUTM proprietor claims that the applicant presents the EUTM proprietor's professional trade mark development as a trick which only reveals the applicant's malice and ignorance of trade mark development and it resorts to theft as it does not have a command of this subject and uses tricks to obtain judgments so that it can continue to pirate trade marks undisturbed. Mr E.A. did not delay the registration process as claimed as it was a third party that filed the opposition against the EUTM and was not satisfied with any of the restrictions carried out and there is a fundamental right to be heard. The applicant could have approached Mr E.A. during this time to negotiate a license but did not do so due to its dishonest and criminal motives. Despite the applicant's knowledge of the earlier right it has continued to commit to a decades-long wilful infringement of the mark. Contrary to the applicant's argument, the EUTM has not become unattractive to other vehicle manufacturers and trade marks are often sold to other car manufacturers, for example a Chinese company bought 'MG' trade mark for cars. It could easily sell the EUTM 'TESLA' to a Chinese manufacturer for example and then the latter could easily sell vehicles in the EU under the sign instead of the applicant. The applicant is not the only party interested in the EUTM and Mr E.A. could license it to a Chinese manufacturer. The EUTM proprietor therefore requests the applicant to stop its trade mark infringement and use a different mark that will not be confused with the EUTM and states 'I (Mr E.A.) do not have to license or sell my Union trademark TESLA to you (the applicant). There would certainly be enough other interested parties'.

In relation to the 'FEELING' case it claims that the Austrian Supreme Court has denied any bad faith and the proceedings only lasted a year and it is not comparable to the present case. The applicant did not put forward any arguments in relation to the fictitious bad faith theory in this regard and despite the procedural fraud the Court analysed the case and found no bad faith. In the subsequent main proceedings, which concerned damages, the judge committed coercion against Mr E.A.'s partner and punished by the public prosecutor's office with a diversion. Despite this the judge was not removed from the proceedings and in revenge wrote untrue facts in his judgment which the lower courts adopted and thus based their decisions on untruths. This violation of fundamental and human rights, including in the case law of the CJEU, were violated and renders it null and void (the judgment was not submitted). It is also procedural fraud by the applicant to claim untruthfully that Mr E.A. was aware of the future use of the 'FEEL' sign by Volvo and again it claims that Volvo committed trade mark theft against Mr E.A. and his company and then slightly changed the mark to 'FEELING' to not be immediately accused of fraud. It is also further litigation fraud that the applicant claims that the judgments and decisions submitted by the EUTM proprietor were not the subject of bad faith claims and confirms to Mr E.A. and his companies that there were no bad faith applications. Mr E.A. is the originator of the sign 'TANGARA' for vehicles, amongst other things, in Austria and later as an IR and fees were paid for both and thus Renault committed trade mark theft. Another lie of the applicant is that the Higher Regional Court in Stuttgart did not treat the issue of bad faith. It cites page 6 of the judgment which makes reference to 'trademark grabber' and 'Any circumstances, which would prove an abusive trade mark application by the plaintiff in the injunction in 2011, the defendant in the injunction has also not submitted in the grounds of appeal'. A screenshot of the decision in German is attached. In 2022 the Regional Court of Munich issued an interim injunction against the car manufacturer SKODA due to trade mark infringement of 'BETRIA' authored

by Mr E.A.. It claims that SKODA filed extensive objections relating to bad faith, abuse of rights and intent to use and it provides a screenshot of letters from SKODA's representative to the Court in German and later provides an English translation. It states inter alia, that they seek 'The application for an interim injunction must be rejected for reasons of abuse of rights' and provides further reasons thereafter. The EUTM proprietor states that all of SKODA's objections regarding bad faith were rejected by the Court and it submits a screenshot of the decision in German with a partial English translation which does not appear to contain a conclusion but some reasoning. The Saarland Higher Regional Court has confirmed that there are no trade marks filed in bad faith. In relation to the VOLKSWAGEN 'GT' series it was held that 'GT' is a descriptive term and provides examples of its meaning. Mr E.A. was the originator of the 'PROPUS' mark for, amongst others, vehicles and holds priority rights to it and thus SKODA has committed trade mark theft of the mark. It denies that there is a SKODA model with the name 'PROPUS'. Regarding the 'EGT' mark it has a priority date of January 2010 and the Paris Motor Show took place from 02-17/10/2010 and thus the French company has committed trade mark theft. The EUTM proprietor submits copies of the emails between the applicant and Mr E.A. regarding the offer for the mark of EUR 5,000.

In its observations of 22/08/2024 it argues the following:

The EUTM proprietor argues that there was no bad faith in its filing of the EUTM but that there is bad faith on the part of the applicant who has allegedly carried out the largest theft of intellectual property in the history of mankind. It claims that Mr M. was only able to become the world's richest person by stealing the priority EUTM of the proprietor and thus he didn't earn his money legally and also accuses his lawyers of the same practices. The EU does not benefit from Mr M.'s wealth as he does not pay taxes here and the profits are also diverted to another country. It claims that the present proceedings, as well as the court proceedings, are aimed at prolonging the dishonest and unlawful trade mark infringements into the future and thus achieving self-serving profits in the billions. The EUTM proprietor makes serious allegations against Mr M. and points to different news in this regard and provides hyperlinks to the news reports. It denies that any of the claims of the applicant are true and asserts that they constitute massive litigation fraud. The procedural fraud can be found in almost every section of the pleadings and it points to an example in which the applicant suggests that the decisions cited actually show the EUTM proprietor's bad faith, which it denies. It claims that the applicant's campaigns of misinformation, disinformation and defamation serve to divert attention from its own unlawful actions and offences. It argues that the applicant and its lawyers have never practiced the profession of a commercial trade mark developer, in contrast to Mr E.A. who has practiced this profession since 2001 and is a pioneer in the field and also held a trade license in this respect since 2001 and it provides a screenshot of same. The EUTM proprietor names a Mr D. and accuses him and his 'accomplices' of being exposed in the past for trade mark theft and names a trade mark which he allegedly stole. The applicant's decades-long deliberate distortion of competition in the EU has led to enormous damage.

It claims that the applicant's statements are absurd constructs or pure fantasy novels that have nothing to do with reality but are merely an unstructured sequence of defamations, assertions and insults made to discredit the victim (Mr E.A. and his company) and to make him a scapegoat. The EUTM was only just registered when the cancellation proceedings were initiated and thus third parties cannot exploit the mark and do not wish to obtain a licence for it due to the proceedings. The applicant had no economic effect in the EU, or the US, prior to the priority date of the EUTM and thus had no protectable or vested rights to the sign 'TESLA' in the EU or US at the time of priority in October 2006. The EUTM was genuinely developed by Mr E.A. without the applicant's knowledge. It points to the final judgment of the German OLG in Düsseldorf against Tesla, Inc. which confirmed the priority rights of Mr E.A. which is legally binding, and the applicant lost the case. The Court indirectly

confirmed that Mr E.A. created the 'TESLA' brand but not for the applicant, as it claims was alleged in the proceedings but which was a lie. It also states that the applicant has refused to pay the costs in accordance with the ruling. It provides the German judgment and a DeepL English translation of the judgment in the observations. The lack of sales by the EUTM proprietor is a result of various trade mark robbers in combination with litigation fraud and fraudulent judgments and thus Mr E.A. and his companies have no income anymore, even though his activities have been recorded since 2001. Due to the litigation and defamation which have discredited him and his companies and his labelling as a 'brand troll', which is denied, it has affected his business.

It cites T-181/23 - Allergan Holdings France SAS ("Allergan") and Dermavita Company S.a.r.l. ("Dermavita") and claims that the Court reiterated that the mere use of a sign does not automatically imply that third parties were aware of its use and that unequivocal evidence to this end is required. There was no use of the sign 'TESLA' by the applicant before the priority date and the launch was a closed event in 2006 for only a few selected super-rich people on an airfield in the US where a prototype of an electric car was presented. Mr E.A. denies any knowledge of this event or the sign when applying for the EUTM. Therefore, it denies any bad faith and cites 27/06/2013, C 320/12, Plastic bottle (3D), EU:C:2013:435, §42. It also cites the judgment 17/01/2024, T-650/22, Athlet, EU:T:2024:11, which it states is not final as there is an ongoing application for legal aid lodged with the CJEU in file number C-113/24 AJ and it provides a translation of the reasons submitted in the legal aid application. It considers the judgment of the General Court to be purely arbitrary and that it violates the rule of law, human dignity, fundamental rights, international law and the case law of the CJEU. It is a violation of the CJEU judgment in SKY (ibid) which is the leading decision on the matter and that it violates the right to be heard, the right to a fair trial (Article 6 ECHR) and is a violation of Article 94 EUTMR regarding the right to be heard, as well as a violation of ECtHR case law particularly Application No. 73049/01, "Anheuser-Busch Inc. v. Portugal" concerning trademark applications. In the present case it argues that there is a violation of the priority right of the Paris Convention (or Article 34 EUTMR), of the TFEU and Article 59 EUTMR (absolute grounds for invalidity). It states that it appends a copy of the complaint (Appendix A2) and a detailed statement on all of the legal issues raised (Appendix A3) in Mr E.A.'s thesis 'Brand theft of atypical trademark piracy & new forms of white-collar crime – at the same time an explanation of trademark law' which has already been submitted in its previous observations.

It claims that all of the national trade marks were applied for a purely economic or personal decision and have different registration dates. Between the first national application in 2007 and the fourth or last application in 2010, third-party trade mark or name rights arose in the EU which preceded the subsequent EUTM application. A trade mark has financial implications (such as assignment or licence) which arise from the priority right but that is not secured until registration. It cites from the Anheuser Busch judgment (ibid). A trade mark is protectable when the IP Office examines the application in accordance with the statutory provisions and finds it registrable and when there is no successful opposition against it. Property is the only economic right that is protected in the ECHR alongside political and civil rights and this also covers intellectual property rights. The EUTM proprietor then submits a section entitled 'To the marginal numbers in the judgment' without naming the judgment, although it would appear to refer to T-650/22 – ATHLETE (Ibid). There are many pages of commentary on the different paragraphs of the judgment. The Cancellation Division carefully notes and considers these arguments without listing them all in detail here due to their length but the contents thereof are duly considered.

To summarise the EUTM proprietor contests the facts as laid out by the Court and the legal findings in the judgment. It claims that the SKY judgment (Ibid) was disregarded and the judgment leads to a distorted competition system. It also criticises the Board of Appeal for arbitrarily inventing or constructing something that does not exist and the EUTM proprietor

points to the Paris Convention regarding chain applications. It claims that the Court did not take into account that the applicant is a trade mark agency that utilises applications and registrations and there is a right to priority and not a period of consideration, the second application is independent and is examined anew. Priority rights are important and secure seniority for a trade mark and only a registration can block a later mark but this is part of trade mark law and a mere registration cannot monopolise anything. It denies any successive sequence in that case and it states that there is no explanation as to why the development of trade marks should be contrary to the objectives of Regulation No. 207/2009 which constitutes a breach of the duty to state reasons. It submits that the registration of such marks by a trade mark agency meets and promotes the objectives of the Regulation. The blanket reference the LUCEO and MONSOON judgments is not sufficient as they also involved untrue facts and legal error and they are null and void following the judgment in SKY judgment. The Austrian tax office collects an obligatory fee for trade mark applications, not the Austrian Patent Office and therefore the fees are paid. It criticises the Court's explanations as illogical, unsubstantiated and grossly erroneous in law and should not echo the legal concept of 'abuse of rights' without stating reasons and the one sentence it did write was a 'sham justification'. The business strategy of a company is not to be reviewed by the Court nor its filing strategy of national applications and this is not relevant and falls outside of its jurisdiction.

It claims that the Court also violated the right to be heard on the grounds for national applications, namely that the EUTM proprietor is a trade mark agency offering exploitation of applications and registrations, was not taken into account. It puts forward reasons for its filing of the marks and contests the 'untruths' put forward in the judgment. The trade mark exploitation could not be carried out due to the proceedings and it denies that the UK companies were not engaged in any business activities, they exploit trade marks, and any argument that it is a dishonest business model is complete nonsense but also slander. The companies are transparent and can be traced by anyone in the world. It is purely arbitrary and also defamatory to state that Mr E.A. or the EUTM proprietor had no intention to use the property and denies his relation with the other companies. Licensing a mark does not indicate a lack of intention to use it as it is licensed for that purpose and licensing is contemplated in EU law and the EUTMR and refers thereto. The applicant does not even need to have an intention to use the mark or to own a business. The trade mark was intentionally infringed or stolen and the intervener did not seek a license or to buy the mark but only to infringe it. It claims that the statements of the Court are absolutely confused and incorrect and the 'scientific work' of Mr E.A. had been submitted before the Cancellation Division and it submits a copy of the EUIPO header page as a screenshot. It also criticises the conclusions on the grounds of appeal and evidence or that Mr E.A. (or his company) did not explain its commercial logic in the repeated filings. Its filing was in good faith due to his business.

It also criticises the LUCEO judgment findings and denies that there is any abusive business strategy and claims the court contradicts itself and there is an another error of law. It claims that a trade mark registration is a legal absolute right and points to Article 4 of the Paris Convention that the priority right takes precedence. It denies that there was a strategy of filing national trade mark applications in succession to circumvent priority rules and denies that such a thing exists in trade mark law. It denies that trade mark rules were circumvented or done like an assembly line or conveyor belt and criticises the use of such language. It claims that evidence and facts were falsified on a massive scale and other pieces of evidence and facts were not taken into account which amounts to a violation of the right to be heard. In regard to the length of proceedings it claims that the burden of this justification is on the administration and this led to unpleasant side effects such as loss of reputation due to the long publicity as well as high legal defence costs and uncertainty regarding the exploitation of the mark(s) and contradicts the 'efficient' European administration under the law. Due to the delays and strain on the financial resources of the proprietor it was

exhausted and no legal action could be taken against the decision. The proprietor then begins to name legal attorneys and a person involved in the LUCEO decision and argues that they are members of the same association and participated in an event organised by the legal representatives of the applicant and tries to cast doubt on the independence of the person involved in the decision. It makes claims of corruption and enrichment and abuse of power or influence. It claims that public officials should maintain a fair and transparent system. It then points to further portions of the judgment that it considers untrue. It summarises that there has never been any bad faith on its part and the EU Courts engage in 'voodoo jurisprudence' and the judgment is a construct of untruths and criminalises an innocent trade mark originator and makes unsubstantiated allegations which are untrue. This, it claims, will allow a carte blanche for brand predators to distort and falsify competition in the EU. A trade mark creator always has an intention to use the mark in order to exploit it (licence or transfer) and this is his business since 2001. It states that the Board of Appeal never assumed bad faith on the part of the applicant but derived this from the fact that there was no intention to use the challenged mark or economic activity with third parties which were not affiliated with Mr E.A. in relation to this mark. Since the judgment of the Court is not authoritative (in his opinion) this raises a significant question for the unity, coherence or development of EU law. It finishes with a question regarding whether there is an irrefutable intention to use an application at the time of filing even if there is no actual economic activity with third parties (not affiliated with the applicant or its Managing Director) in relation to the mark applied for.

The EUTM proprietor argues that the EUIPO has already confirmed the high six-figure fee payments since 2001 to Mr E.A. in an email dated 28/11/2023 at 16.16h from the Customer care department and thus has officially recognised this, although it did not submit any copy of this email. It insists that fees must be paid to register an Austrian mark and submits a screenshot of what it describes as a fee payment collected by the Austrian Tax Office for Fees and Transfer Taxes for an Austrian mark for EUR 92.40. It is well known that no limited company or limited liability company can protect the Managing Director or Director in the event of tortious acts by the same, but that liability can be enforced. It claims that the applicant committed litigation fraud and thus obtained a Swiss judgment that is contrary to EU law and which also violates fundamental rights/human rights and is based on untrue facts and on alleged unfair competition and is intended to condemn Mr E.A. personally and oblige him to withdraw the three oppositions against the applicant's EUTMs and not to assert claims against the applicant as based on his earlier right, even though Mr E.A. is not the trade mark owner. It claims that on 07/08/2020 the EUIPO found that the Swiss judgment is contrary to EU law and thus null and void and it rejected the applicant's fraudulent, bad faith and wilful request for the official withdrawals of the oppositions in opposition B 1 665 184 and submits a screenshot of the letter (which is barely legible or altered in part). It claims that the applicant not only committed trade mark theft and has been infringing the proprietor's mark for years but it is also committing an offence under the German UWG law (Unfair competition law). This situation is unfair and has been misleading consumers in the EU for many years and deceiving them as to the origin. It claims that the background to the theft of the 'TESLA' mark as well as all of the legal issues can be found in the scientific work of Mr E.A. which it attaches again. It claims to submit the following evidence:

- Appendix A1: Copy of the contested decision of the General Court of 17.01.2024 (served on the appellant on 17.01.2024) in Case T-650/22 (it cannot be found on file).
- Appendix A2: Copy of the complaint to the EGC (it cannot be found on file).
- Appendix A3: Scientific paper: "Trademark theft – of atypical trademark piracy & new forms of white-collar crime - at the same time an explanation of trademark law.

ABSOLUTE GROUNDS FOR INVALIDITY – ARTICLE 59(1)(b) EUTMR

General principles

Article 59(1)(b) EUTMR provides that a European Union trade mark will be declared invalid where the applicant was acting in bad faith when it filed the application for the trade mark.

There is no precise legal definition of the term 'bad faith', which is open to various interpretations. Bad faith is a subjective state based on the applicant's intentions when filing a European Union trade mark. As a general rule, intentions on their own are not subject to legal consequences. For a finding of bad faith there must be, first, some action by the EUTM proprietor which clearly reflects a dishonest intention and, second, an objective standard against which such action can be measured and subsequently qualified as constituting bad faith. There is bad faith when the conduct of the applicant for a European Union trade mark departs from accepted principles of ethical behaviour or honest commercial and business practices, which can be identified by assessing the objective facts of each case against the standards (Opinion of Advocate General Sharpston of 12/03/2009, C-529/07, Lindt Goldhase, EU:C:2009:148, § 60).

Whether an EUTM proprietor acted in bad faith when filing a trade mark application must be the subject of an overall assessment, taking into account all the factors relevant to the particular case (11/06/2009, C-529/07, Lindt Goldhase, EU:C:2009:361, § 37).

The burden of proof of the existence of bad faith lies with the invalidity applicant; good faith is presumed until the opposite is proven.

One situation which may give rise to bad faith is when a commercial entity has obtained some degree of legal protection by virtue of the use of a sign on the market, which a competitor subsequently registers with the intention of competing unfairly with the original user of the sign.

In such instances, the Court of Justice of the European Union (11/06/2009, C-529/07, Lindt Goldhase, EU:C:2009:361, § 48, 53) has stated that the following factors in particular should be taken into consideration:

- (a) the fact that the EUTM proprietor knows or must know that a third party is using an identical or similar sign for an identical or similar product capable of being confused with the contested EUTM;
- (b) the applicant's intention of preventing that third party from continuing to use such a sign;
- (c) the degree of legal protection enjoyed by the third party's sign and by the sign for which registration is sought; and
- (d) whether the EUTM proprietor in filing the contested EUTM was in pursuit of a legitimate objective.

The abovementioned are only examples drawn from a number of factors which can be taken into account in order to determine whether or not the applicant was acting in bad faith when filing the application; account may also be taken of other factors (14/02/2012, T-33/11, BIGAB, EU:T:2012:77, § 20-21; 21/03/2012, T-227/09, FS, EU:T:2012:138, § 36).

Bad faith may apply if it transpires that the EUTM proprietor never had any intention to use the contested EUTM, for example if the EUTM proprietor filed repetitive applications to avoid the consequences of revocation for non-use of its earlier EUTM registrations, whether in

whole or in part (03/06/2010, C-569/08, Internetportal, EU:C:2010:311, § 51; 13/12/2012, 13/12/2012, T-136/11, Pelikan (fig.), EU:T:2012:689, § 27).

The overall assessment of bad faith must bear in mind the general principle that the ownership of a European Union trade mark is acquired by registration and not by prior adoption by way of its actual use. Particularly when the invalidity applicant is claiming rights to a sign which is identical or similar to the contested EUTM, it is important to remember that Article 59(1)(b) EUTMR moderates the 'first-to-file' principle, according to which a sign may be registered as an EUTM only in so far as this is not precluded by an earlier mark with effect either in the European Union or in a Member State. Without prejudice to the possible application of Article 8(4) EUTMR, the mere use of a non-registered mark does not prevent an identical or similar mark from being registered as an EUTM for identical or similar goods or services (14/02/2012, T-33/11, BIGAB, EU:T:2012:77, § 16-17; 21/03/2012, T-227/09, FS, EU:T:2012:138, § 31-32).

Facts and evidence dated prior or subsequent to filing may be used to interpret the owner's intention at the time of filing the EUTM (GC, 16/05/2017, T 107/16, AIR HOLE, § 41)

The relevant circumstances when examining an applicant's bad faith are neither limited in time and space (GC, T-3/18, Ann Taylor, § 88 and 158-161).

Assessment of bad faith

Much of the applicant's and the EUTM proprietor's arguments refers to Mr E.A., the original applicant who filed the EUTM (but later transferred the EUTM to different companies which he controls, as shown in the evidence and which is not contested) and the legal representative of the EUTM proprietor and the self-proclaimed creator of the trade marks, who runs the companies that then exploit the marks, including the company that is the EUTM proprietor in the present case. It is hard to separate where Mr E.A. is speaking of himself alone or the EUTM proprietor or his other companies, although indeed Mr E.A. is running the EUTM proprietor (and many other companies including those that have previously owned the EUTM) as can be seen from the register extracts and filing details of the marks and thus he presumably 'created' them also. The same applies to the applicant's arguments where it refers to Mr E.A. and the EUTM proprietor, at times interchangeably. Thus, the Cancellation Division notes that references to 'he' or '(Mr) E.A.' necessarily refer to the man behind the creation (and original filing) of the EUTM in the present case and the companies he uses to 'develop' or 'exploit' the marks, including the EUTM proprietor, are owned and run by him and are under his control. Thus, any reference to Mr E.A., at least in the case at hand, is a reference to the original filer of the EUTM and the person in charge of the EUTM. Indeed, the EUTM proprietor refers to itself, for the most part, (as Mr E.A.) in the first person ('I') in the arguments but then later takes issue with the applicant or decisions/judgments inferring the actions of his companies, solely run by Mr E.A., as being his actions also. Yet he speaks about how he develops and exploits trade marks through his companies. In the EUTM proprietor's observations it states that Mr E.A. is the proprietor of the Austrian and EUTMs 'TESLA' in Classes 12, 25 and 28 since 17/10/2006. The Austrian trade mark and the contested EUTM were filed by Mr E.A.. However, the contested EUTM in the present case has been transferred 8 times to different companies run by Mr E.A. but is no longer in the name of Mr E.A.. The confusion between Mr E.A. and his companies is clear from the EUTM proprietor's (as well as the applicant's) arguments, but it is also clear that Mr E.A. is involved in the EUTM proprietor and in many other different companies which he uses to exploit the marks as will be discussed further later. Therefore, any switching in terminology in the present decision between 'Mr E.A.', 'he', the EUTM proprietor' and 'it' are all deemed to refer to the EU proprietor both at the time of filing and at present and as claimed by the parties, namely, Mr E.A. and the EUTM proprietor whom he controls. The term 'applicant' in Article 59(1)(b) EUTMR has to be construed as meaning the person

applying for the EUTM in its own name, the principal of an agent acting in the name of its principal or any person instructing a nominee to act in its (the nominee's) own name, but who, according to an arrangement between them, merely serves the interests of the former, while acting in good faith and being unaware of the former's bad faith (13/12/2004, R 582/2003-4, EAST SIDE MARIO'S, § 17-18).

The EUTM proprietor places great emphasis on the circumstances at the time of the priority filing and considers any evidence of the applicant that postdates this time, even in relation to the time of filing of the EUTM, as being too late to prove bad faith. However, the Cancellation Division notes that in applications based on the absolute ground of bad faith the relevant date on which bad faith must be proven is the date of filing of the EUTM (18/11/2014, T-50/13, VOODOO, EU:T:2014:967, §58). Although, facts and evidence dated prior or subsequent to filing may be used to interpret the owner's intention at the time of filing the EUTM (GC, 16/05/2017, T 107/16, AIR HOLE, § 41) and this can include facts around the date of priority or after the filing which might influence the case. However, bad faith involves a dishonest intention 'at the time of filing' which thus appears as an inherent defect in the application (rather than the trade mark) which then fundamentally vitiates the registration itself regardless of other circumstances (11/06/2009, C-529/07, Lindt Goldhase, EU:C:2009:148 § 41). As such, the Cancellation Division will examine the EUTM proprietor's intentions at the time of filing while also having regard to relevant circumstances both prior to this (such as before or at the date of priority) and its actions thereafter to determine the subjective intention of the EUTM proprietor at the time of filing by reference to the objective circumstances of the case.

The applicant claims that it is the owner of earlier rights to the sign 'TESLA'. In order to prove the existence of an earlier right to the sign 'TESLA', the application for a declaration of invalidity, filed on 04/11/2022, cites in its observations and in the index a list of 'attached' evidence. However, only some of these documents were in fact submitted (A1-A5). Although, in the observations themselves, the applicant also includes a number of screenshots of the 'TESLA' cars, either alone or as presented at the 49th Annual San Francisco international Auto Show in 2006 and the Los Angeles Auto Show in 2006 (one photo showing Arnold Schwarzenegger beside the car). There are also further screenshots of some of the car brands mentioned in the observations and photos of the EUTM proprietor's company address and screenshots from Mr E.A.'s LinkedIn profile. The applicant provides extracts from some articles in the press or from websites and also from Austrian and German Court decisions and decisions of the Board of Appeal of the EUIPO and the EU Courts, either in English or in German, along with their translations into English, but did not submit the articles or decisions themselves. As regards the judgments and decisions the applicant has correctly and sufficiently identified the decisions on which it relies and provided the pertinent translations of the relevant parts in the evidence and thus it is sufficient to be taken into account (to the extent that any decision not in English has been translated or part thereof). The list of the trade marks, oppositions, and the restrictions of the goods carried out by the EUTM proprietor can also be verified by the Office. As per the articles and websites extracts cited but not submitted, the Office cannot take these into account, although it has no reason to doubt the applicant's extracts, they have not been supported by independent evidence.

However, the EUTM proprietor has submitted other articles and evidence which confirm the information provided in the applicant's observations about the content of the evidence that was not submitted as will be outlined in the following paragraph. The applicant contends that it was established in 2003. In Spring 2004 the applicant completed its first financing round and by this time the applicant claims that Mr M. had become famous due to his involvement with PayPal and had invested part of the money from the same of that company into the applicant. This appears to be confirmed from the Wikipedia extract and the screenshots from the applicant's webpage submitted by the EUTM proprietor. On 10/02/2005 the applicant

filed two US trade mark applications, one for 'TESLA MOTORS' No 3'403'726 for *electric vehicles* in Class 12 and another for 'TESLA ROADSTER' No 3'269'364 for *full battery electric high-performance sports cars* in Class 12, both are registered (the EUTM proprietor argues that the first mentioned mark only covers niche products, it is registered for goods that are high performance electric sports cars). The EUTM proprietor claims that these goods are different to those of the contested mark, although the Cancellation Division notes that they all overlap to the extent that they cover types of electrically powered land vehicles/automobiles.

In February and May 2006 further famous investors recognised the potential of the applicant and also invested. This included prominent entrepreneurs such as Google founders Sergey Brin and Larry Page, the former President of eBay Jeff Skoll or the hotel heir and Hyatt CEO Nick Pritzker, who are mentioned in the Wikipedia extract (as the other cited source from CNBC was not enclosed). The applicant held its launch event of the 'TESLA' brand for electric cars in July 2006 in Santa Monica Airport. Although this event was private and had limited attendees it involved a number of celebrities like Arnold Schwarzenegger, George Clooney and the two founders of Google Larry Page and Sergey Brin. The applicant claims that Forbes magazine reported on the event in August 2006, which is a large and world renowned publication, but failed to submit the article. It also claims that in December 2006 the publication *Time* magazine featured the 'TESLA ROADSTER' as one of the best inventions of 2006, but again, the applicant failed to submit this article. From 2008 the car went into production and since then it has developed into one of the most successful and significant car brands in the world.

As mentioned, although the applicant has failed to submit some of the evidence it refers to in its observations, the EUTM proprietor has submitted some evidence which confirms the claims of the applicant. Firstly, the EUTM proprietor submitted an extract from *AUTO TEST* from September 2009, p 131 which states "The first prototypes have been running since the beginning of 2007. Transmission problems delayed the start of series production, Company founder Martin Eberhard had to leave. In mid-March 2008, production of the electric roadster began at Lotus in England. Arnold Schwarzenegger and George Clooney are among the customers. The Tesla is due to come to Europe before the end of 2009; a reservation costs 50,000 euros down payment." Furthermore, the EUTM proprietor also provides a screenshot and details regarding the presentation of the Tesla Roadster at the exhibitions mentioned above although it claims that these took place, after the priority date of the EUTM, on 18-24/11/2006 and 01-10/12/2006. The EUTM proprietor also submitted an article from *Trottle* which speaks about the introduction of the Tesla electric car in 2006 and mentions that "It was revealed to a selected party of only 350 people at a hangar at Santa Monica Airport, Santa Monica, California on July 19. Few months later, it was officially unveiled to everyone during the San Francisco International Auto Show on November 18-24, where soon afterwards the first one was commissioned unto Tesla chairman Mr M. in 2008 followed by 500 models made from mid-2008 to 2009" and the article shows images of the car and is dated 16/04/2023.

The EUTM proprietor also submitted a screenshot from *AUTO BILD* from 11/04/2007 which had reported on the testing of two prototypes of 'TESLA' cars and showed an image of the cars. The EUTM proprietor also submits printouts from the applicant's website which, in 2006 and 2007, stated "Tesla will sell cars in the US. Only when they pass the Federal Motor Vehicle Safety Standard (FMVSS)" and the FAQ section from an interview in November 2006 and May 2007 in which the CEO said "We currently have no plans to offer the Tesla Roadster outside of the continental US". The Cancellation Division further notes that the article states "The limited-edition "Signature One Hundred" series Tesla Roadster, the first high-performance electric car manufactured by Tesla Motors, has sold out in three weeks, confirming that the sleek, stylish, zero-emissions Tesla Roadster is a hit. Unveiled last month before a throng of well-wishers and automotive enthusiasts in Santa Monica, Calif.,The

Signature One Hundred Club has attracted a diverse group of members, including performance sports car devotees, alternative energy advocates, technology enthusiasts, “Clean Tech” supporters, environmentalists and members of the financial community. Some of the initial members include Oscar® winner George Clooney, Dennis Haysbert (of “24” fame), Jim Marver of VantagePoint Venture Partners, Jeff Skoll, formerly of eBay, as well as Eberhard and Mr M....” The FAQ extract, inter alia, states ‘Tesla Motors has “sold out of all of its 2007½ model year Tesla Roadsters in less than four months...Tesla Motors will begin taking deposits very soon for its 2008 Tesla Roadster”. It further states “For those customers who live in an area where we have or will have a Customer Care Centre by the end of 2007, we feel confident that we will be able to provide the necessary level of support. This would include customers in California, and the metropolitan area of Chicago, New York City and Miami....Purchasing Questions...We currently have no plans to offer the Tesla Roadster outside of the continental US....General Questions....Starting in early 2007, we will begin hosting a series of events in our key markets, where you can see and meet with Tesla Motors Customer Care Specialists” and it has a copyright of @2006 at the bottom, even if the date of extraction is from 2023 it is clear that the article was published in 2006 or at the latest at the start of 2007 due to the information given therein. It further submitted a copy of the contract signed between Tesla Motors and LOTUS on 11/07/2005 to manufacture complete cars for what would later become the Tesla Roadster. The EUTM proprietor provides this piece of evidence to show that in point 3.15 it states “TESLA shall not sell or distribute the TESLA Vehicle outside the Territory’...Territory means the United States of America”.

The EUTM proprietor further submits an online article from *electrek* dated 19/07/2016 entitled ‘Tesla launched the Roadster exactly 10 years ago and came out of stealth mode – Here’s a trip down memory lane [Gallery]’. The articles speak about that date (19/07/2016) being the 10 year anniversary and that the official debut of the Tesla Roadster was on 19/07/2006 at the Santa Monica Airport event, which was prior to the filing of the Austrian priority application of 17/10/2006. The article further states that the company came out of ‘stealth mode’ as before that there had been no media articles or customers but that “Straubel recalls convincing hundreds of customers to place a reservation for the vehicle despite the prototypes “hardly holding together” during the event”. At the end of the press release it states “Tesla will sell cars in the U.S. only when they pass the Federal Vehicle Safety Standard (FMVSS)”. The EUTM proprietor submitted a screenshot of the article in *Die Presse* of 19/02/2008 in German and partially translates it into English. It states “A battery-powered sports car has been on the market since the beginning of the month. It also submits the following articles: from *www.autobild.de* dated 18/04/2008 in German with a partial translation into English which states that “250 copies of the Tesla Roadster electric sports cars are to come to Europe; another dated 25/04/2008 which states ‘Tesla Motors, manufacturer of the electric roadster in production since mid-March’; another dated 11/04/2008 stating “Tesla Motors, Californian manufacturer of an electric roadster (photo), plans to launch its zero-emission 248-horsepower sports car in Europe in autumn 2009. This is what Tesla CEO Ze’ev Drori told the Financial Times”; another dated September 2009 stating “The first prototypes have been running since the beginning of 2007. Transmission problems delayed the start of series production. Company founder Martin Eberhard had to leave. In mid-March 2008, production of the electric roadster began at Lotus in England. Arnold Schwarzenegger and George Clooney are among the customers. The Tesla is to come to Europe before the end of 2009; a reservation costs 50,000 euros down payment. A second model is being developed. The Model S, a four-door hatchback, is to be launched in 2010 at a price of around 40 000 euros”.

From all of the above it can be determined, and indeed it has not been disputed by the parties, that the applicant first introduced the Tesla Roadster on 19/07/2006 at the Santa Monica Airport in a closed invite-only private event (prior to the filing date and also the priority date of the EUTM). However, the event was attended by celebrities who would

garner attention to the event itself. Moreover, it is also not disputed by the parties that the applicant then presented the “Tesla Roadster” to the public at the San Francisco Auto Show on 18-26/11/2006 and the Los Angeles Auto Show on 01-10/12/2006 where Arnold Schwarzenegger, who was Governor of California at the time, was photographed inspecting the car, this was also prior to the date of filing of the EUTM (although after the claimed priority date). Production began on the car in 2008 and it arrived in Europe in 2009 and ‘TESLA’ electric cars manufactured and sold by the applicant have made significant sales and become very popular cars since its launch.

Taking into consideration all of the above it is clear that the applicant had been using the sign ‘TESLA’, creating a buzz about the launch and revealing the car at the launch which had been picked up on by at least the automobile press prior to the time of the priority filing of the EUTM proprietor’s Austrian mark on 17/10/2006 and/or prior to the time of filing of the EUTM on 17/04/2007. Indeed, the applicant had already filed two US trade marks for the ‘TESLA MOTORS’ and ‘TESLA ROADSTER’ in the US also prior to this time (in 2005). The articles in specialised automotive press (leaving aside the claimed reports in renowned publications like *Forbes* and *Time* which were not submitted or confirmed) and the fame of Mr M. and indeed of the initial investors and the celebrities who attended the launch (both the closed event and the later exhibition at events in California) as detailed above, lead to a finding that at the time of filing of the EUTM and even at the time of priority, the applicant had been using the sign ‘TESLA’, whether alone or in combination with ‘ROADSTER’ or ‘MOTORS’ which are descriptive in relation to the goods (‘Roadster’ means inter alia ‘a car without a roof and with only two seats’, meaning extracted from the Cambridge English Online dictionary on 02/10/2004 <https://dictionary.cambridge.org/dictionary/english/roadster>) or ‘MOTORS’ which is also descriptive in relation to the goods which refers to ‘cars’ or ‘a device that changes electricity or fuel into movement and makes a machine work’ meaning extracted from the Cambridge English Online dictionary on 02/10/2004 <https://dictionary.cambridge.org/dictionary/english/motor>). The distinctive element of the signs as used is ‘TESLA’ and thus the addition of non-distinctive elements does not alter the distinctive character of the sign ‘TESLA’ or mean that the registration of the US marks cannot show use of ‘TESLA’ in relation to electric cars. Thus, prior to the filing of the EUTM and indeed prior to the claimed priority date of the Austrian trade mark, the applicant had used and even registered in the US trade marks containing the distinctive element ‘TESLA’ in relation to electric cars and had gained a degree of legal protection. Therefore, it can be established that the applicant has sufficiently proven that it owns prior rights to the sign ‘TESLA’. Whether the applicant had commenced selling goods under the sign ‘TESLA’ in the EU is not decisive at this point but will be examined below in regard to the knowledge of the EUTM proprietor of the applicant’s sign. However, what has been established is that the applicant had prior rights to the signs ‘TESLA’, ‘TESLA MOTORS’ and ‘TESLA ROADSTER’.

The distinctive element of the earlier US marks, and as used, is ‘TESLA’ as discussed above. However, taking these earlier rights as a whole ‘TESLA MOTORS’ and ‘TESLA ROADSTER’ these signs are still highly similar to the EUTM as they correspond in their most distinctive element ‘TESLA’. Even if ‘TESLA’ was the surname of the famous inventor and used by other companies as argued by the EUTM proprietor, this word has no direct meaning in relation to the relevant goods. Even if Nikola Tesla contributed to the design of the modern alternating current electricity supply system this relation is insufficient to find that the term ‘TESLA’ is lacking distinctive character, even if the sign is associated with the inventor. As such, the distinctive element ‘TESLA’ is found in all of the signs in conflict and thus the signs are similar to this extent and considering that the remaining elements are descriptive, overall the signs are highly similar.

Moreover, at the time of filing the EUTM, the mark covered the following goods:

Class 12: *Vehicles, and parts and fittings therefor, included in class 12; wheels for vehicles.*

Class 25: *Clothing, footwear, headgear.*

Class 28: *Gymnastic and sporting articles; games.*

The EUTM proprietor carried out approximately 47 restrictions of the specification of the goods of the EUTM after its filing (as will be discussed in detail later in the decision). As such, the remaining goods of the EUTM, and those contested by the applicant, are:

Class 12: *hub caps; wheel trims; Accessories for vehicles, included in class 12, in particular Tow bars, Bicycle carriers, Roof racks, Travel baggage Of the following materials: of leather, Aluminum, Titanium, Fabrics made from natural fibres, in particular Cotton, Jute, restraints, Viscose, restraints and Fine animal hairs (wool), synthetic fibre industry and plastics, for transport in electric vehicles, Child's seats, Tarpaulins, in particular The aforesaid goods relating to the following goods: vehicles, Electrically powered land vehicles, Electrically operated air vehicles, Electric amphibious vehicles and Electrically-powered water vehicles; snow chains, namely the aforesaid for cars, two-wheeled vehicles, buses, utility vehicles, forestry machines, military vehicles, 4x4 and SUV vehicles, tractors, electrically operated special-purpose vehicles.*

Class 25: *Clothing, footwear, headgear.*

In bad faith cases it is important to establish the EUTM proprietor's intentions at the time of filing and thus the goods for which the EUTM was filed initially are important to take into consideration. It can be seen from the original goods filed in Class 12 of the EUTM that they covered *vehicles* in Class 12 which are identical to the earlier goods *electric cars* as the earlier goods would be contained within the broad category of *vehicles*. Therefore, at least some of the goods are identical. Moreover, some of the goods are similar, such as the remaining goods in Class 12 at the time of filing, being *parts and fittings therefor (for vehicles), included in class 12; wheels for vehicles to electric cars* as these goods often coincide in producer, relevant public and distribution channels and can be complementary. Even if there is dissimilarity in relation to some of the originally listed goods (for example, the goods in Classes 25 or 28) this does not rule out bad faith automatically (19/10/2022, T-466/21, Lio (fig.) / El Lio (fig.) et al., EU:T:2022:644, § 39-41), especially where the EUTM proprietor may try to associate itself with the applicant's brand (it is noted that Class 28 is no longer covered by the EUTM after the many restrictions of the goods). Furthermore, even in relation to the goods in Class 25, the EUTM proprietor itself (or Mr E.A.) argues that these are examples of 'brand expansion goods' like as offered by 'Mercedes-Benz Collection' or 'Porsche Design driver's Selection' and it submits a screenshot of same..

Considering that the signs are similar to the extent they all coincide in the distinctive element 'TESLA' and the goods are at least partially identical or similar, there is a risk of confusion for at least some of the goods.

The EUTM proprietor has vehemently denied that it had any knowledge of the applicant's use of its earlier sign, especially as the first cars were not sold until 2009 in Europe, which is after the priority date of the EUTM and as they had only been marketed to the super-rich in the US. He denies any knowledge of the applicant's use of 'TESLA' before or at the time of filing (or priority). The EUTM proprietor also argues that the applicant did not own any EU trade mark rights and had not used the sign 'TESLA' in the EU prior to the filing or the priority date of the contested EUTM. The assumption of an *acquis* worthy of protection presupposes that the mark is known in Germany or the EU due to sufficient market presence and he cites the German decisions DE-BGH GRUR 2014, 780 - Liquidrom; Ströbele/Hacker, MarkenG, 11th edition, § 8 marginal no. 877; Ingerl/Rohnke, MarkenG, 3rd edition, § 8 marginal no. 308 without submitting a copy of same or their necessary

translation into English and has not substantiated this argument. In any event, decisions of national courts are not binding on the Office and a finding of bad faith does not require that there is prior use in the EU or reputation for a successful action. The examination of whether the proprietor of the contested mark had prior knowledge of a third party's use of that sign must not be confined to the EU market (GC, 28/10/2020, T-273/19, TARGET VENTURES, § 47). As such, any lack of use or the fact that the applicant did not hold registrations in the EU at the time of filing of the contested EUTM (or the claimed priority date) is not decisive. Indeed, the applicant did hold US trade marks that were earlier than the claimed priority date and filing date of the EUTM and, as seen above, the sign was being used at least in the US. The EUTM proprietor cites 15/05/2024, T-181/23, JUVEDERM, ECLI:EU:T:2021:653 and claims that the Court reiterated that the mere use of a sign does not automatically imply that third parties were aware of its use and that unequivocal evidence to this end is required. This is indeed true, mere use is not sufficient, however, the circumstances of each case must be assessed in order to determine whether there was any knowledge or a presumption of knowledge on behalf of the applicant who filed the contested EUTM. Mr E.A. denies any knowledge of this event or the sign when applying for the EUTM. Therefore, it denies any bad faith and cites 27/06/2013, C-320/12, Plastic bottle (3D), EU:C:2013:435, §42 (although it would appear that the wrong paragraph may have been cited in this regard, the case law is indeed taken into consideration).

The EUTM proprietor has put forward the following argument in relation to how it came up with the sign 'TESLA'. The EUTM proprietor claims that he had a subscription to the Austrian newspaper *Der Standard* in the year 2000 and provides his customer number and a screenshot showing this customer number and his name and address, although it does not show any further details or the name of the newspaper itself to confirm that the subscription was indeed to *Der Standard* and not to any of the other publications which were referred to by the applicant. The EUTM proprietor claims that on 16/03/2000 there was an article about the 'old Austrian Nikola Tesla' on page 46 and he provides a screenshot of the article which he claims he has kept since then as he was fascinated with the inventor. He also claims that the inspiration for the sign came from a CD purchased on Amazon on 29/10/2003 entitled 'COMPLETE BOOK OF BOAT NAMES' (2000) and that on page 4464 the name 'TESLA' was suggested. He provides a screenshot which is of unknown origin including different words with similar letters and including 'TESLA', which is apparently a page extract from the CD (and such explanation will be accepted for the present purposes). Even so, the Cancellation Division considers that if the EUTM proprietor knew of, and liked the sign 'TESLA' in 2000 and 2003, it is curious why he did not file the trade mark at that point, particularly considering the vast amount of filings of trade marks that he (and his companies) have carried out over the years for goods in Class 12. Mr E.A. states that he began filing trade mark applications in 2001 in Austria with the sign 'SOLECTRA' No 4564/2001 on 26/06/2001. He claims to be a pioneer in the development of trade marks for electric vehicles from even before the applicant existed, and continues the process in relation to all types of vehicles. The EUTM proprietor also argues that as or 2003 Mr E.A. had already developed the Austrian trade mark 'VOLTIGA' for vehicles and their parts and accessories and that this mark was later registered as an EUTM. He has filed thousands of trade marks for Class 12 goods and thus was clearly very interested and knowledgeable about the automotive industry.

Furthermore, Mr E.A. argues and submits a screenshot to prove that he was the owner of a trade mark agency already since 2001. In 2002 he was invited to give lectures and provides details of same and a screenshot of the documentation regarding the lecture in Vienna. Thus he would be knowledgeable about trade marks (and even wrote a book/paper on the topic as submitted in the evidence). As such, it would appear somewhat strange that he waited until 2007 to file the EUTM (or October 2006 to file the Austrian priority mark) if he was already aware of the sign so far in advance and liked it and intended to use it for vehicles, especially when he knows the importance of filing trade marks promptly (as he himself argues in his

observations). This is compounded by the fact that the priority filing was carried out so shortly after the launch of the marketing of the 'TESLA' cars by the applicant and its announcement in the Austrian press just days before the filing. Even if the EUTM proprietor (Mr E.A.) had not seen the Austrian press articles, due to his self-proclaimed interest in, and knowledge about the automotive industry, particularly his long-standing knowledge of the electric car industry and his filing of a trade mark in relation to same prior to the existence of the applicant as outlined above, the fact he had a trade mark agency and would be aware how to carry out trade mark searches before filing marks and the existence since 2005 of the applicant's US marks for some of the same or similar goods, the event and launch of the applicant's goods and the buzz around such a launch of a new electric sports car by the already famous Mr M. and promoted by celebrities, Mr A.E./the EUTM proprietor would have to have known of the existence of the applicant's 'TESLA' brand. As such, the explanations given do not prove very convincing.

The EUTM proprietor claims that the applicant did not create the mark but bought it from a Mr B.S. The applicant has admitted that it acquired some prior 'TESLA' trade marks from other parties. However, this was done once the name was decided on, in a legitimate manner. It approached companies who used the mark in a bona fide way to acquire it. The name 'TESLA' clearly existed prior to both parties deciding to call their signs 'TESLA' due to it being the surname of the famous Nikola Tesla who is known for his contributions to the design of the modern alternating current electricity supply system (and of course the evidence of the press article and CD of boat names submitted by the EUTM proprietor). Therefore, whether the applicant bought the mark from other parties is irrelevant as it acquired the sign in a bona fide manner and also used it in a bona fide manner. The EUTM proprietor also claims that the filing of the EUTM was done to extend the scope of protection of the national mark in Austria to the EU but yet admits that he had not used nor did he intend to use (or his companies) the mark 'TESLA' in relation to the registered goods (but only to license or sell it to another party). Thus, such an extension was not entirely necessary unless it wished to prevent another party from entering the market as it could have opposed (and did) the filing of a latter EUTM in any event due to the Austrian application (if it were registered). This point can remain open in any event.

Indeed, due to the ever-increasing push for more environmentally friendly options for vehicles the development of electric cars has garnered much attention in the automotive industry. Moreover, in the present case the cars were luxury cars that were expensive, sporty and high-performance luxury cars that could compete with other such traditional cars. Up to that point electric cars were not sports cars so the introduction of 'TESLA' sports cars which were also fully electric was quite a novelty. Therefore, the launch of such goods would indeed be knowledge at least within the relevant industry but also for those with an interest in the automobile industry, which would include the EUTM proprietor as per his own observations, and the fact that he has filed many thousands of trade mark applications in Austria, Germany and the EU for goods in Class 12. The launch event was reported in specialised automotive press (and also allegedly in renowned publications but this point was not proven) and the launch was also reported in Austrian and German newspapers just days before the EUTM proprietor filed the Austrian trade mark application for which priority was claimed in relation to the EUTM. Moreover, the applicant had already filed US trade marks for the sign on 10/02/2005, one for 'TESLA MOTORS' No 3'403'726 for *electric vehicles* in Class 12 and another for 'TESLA ROADSTER' No 3'269'364 for *full battery electric high-performance sports cars* in Class 12, both are registered. The EUTM proprietor, which is run and owned by Mr E.A., a specialised trade mark agent, who has even written his own book/paper (submitted as evidence) consisting of nearly 700 pages, would be aware that he would have to search for similar marks before filing a trade mark (or more than one) for 'TESLA'. Had he carried out this simple search, he would have seen that since 2005 the applicant held US trade mark registrations containing the sign 'TESLA', especially since he holds thousands of trade marks in Class 12, the competitors in this sector should have been

of particular interest to him. This coupled with the fact that the launch of 'TESLA' cars by the already famous Mr M. (due to his success with Paypal prior to this), at an event filled with celebrities and in partnership with some of the most high profile business men in the world at the time, would certainly have been noticed by anyone with an interest in the automobile industry or in environmental circles (if not the public at large) which means that it would be nearly impossible for Mr E.A. not to have been aware of the 'TESLA' electric car launch at the time of filing. The timing of the filing of the Austrian trade mark application is more than coincidental, especially considering the EUTM proprietor's interest in Class 12 goods and his knowledge of the sector and trade mark law. This 'coincidence' is further strengthened by the fact that the EUTM proprietor has filed a multitude of trade mark applications in Austria, Germany and the EU for other trade marks, apart from 'TESLA', that were also being previously used by other automotive companies which had not yet registered their marks at the time in the EU (or at all) but for which they had been using the sign(s) or which they were about to use them (or it was in line with their pattern of naming cars). In the arguments and evidence submitted by both parties mention is made of trade marks that the EUTM proprietor filed for 'HURACAN' (Lamborghini traditionally uses the names of historical fighting bulls to name their cars), 'ASCENT' (Subaru derives names for different models of cars from the star constellation of the 'seven sisters' and the name 'Ascent' is closely linked to astrology and the 'seven sisters'), 'ANTOS' (Daimler), 'CROSSCAMP' (Dethleffs) etc.

The priority date of 17/10/2006 claimed in the EUTM is from the Austrian trade mark application AM 7043/2006 filed on the above date. The applicant claims that the Austrian mark never proceeded to registration and that the EUTM proprietor never paid the application fee, which it argues is common practice on the part of the EUTM proprietor. In response, the EUTM proprietor filed a screenshot of a payment made for EUR 100 paid to the Austrian Patent Office and it mentions the EUTM proprietor and the number AM 7043/2006 which is the Austrian application number. According to Article 35 EUTMR the formal requirements for a priority claim are that:

- Priority claim is filed together with the EUTM application;
- Number, date and country of the previous application;
- Availability of official online sources to verify the priority data, or submission of priority documents and translations where applicable.

In its application for the EUTM, the EUTM proprietor claimed the priority of the Austrian application and provided the territory and number of the application and the date of its filing but did not provide the goods and/or an indication of the classes for which it was filed. As such, in a communication dated 23/04/2007, the Office officially requested the EUTM proprietor to provide, within a two month period, that is by 24/06/2007, an exact copy of the Austrian trade mark application or the priority right would be lost. On 25/06/2007 (a Monday and thus within the time limit) the EUTM proprietor provided a partial copy of the filing documents, or at least a copy that did not mention the goods and/or services for which the Austrian mark was filed. These documents were in German, which is the first language of the EUTM, and thus no translation was needed at that time. Although it must be mentioned that even so it did not contain any indication of the goods on which it was based. Although it did contain all of the formal requirements necessary in order to be recognised as 'filed', however, that does not mean that the Office confirmed its validity.

The priority claim's validity is only examined where necessary (for example, when it becomes important in opposition or cancellation proceedings) at a later point. According to Decision EX-17-3 of the Executive Director of the Office, if the priority documents are not submitted with the application or are not complete, the Office will check whether the relevant information, namely the number, filing date and country, the name of the applicant or proprietor, the representation of the mark and the list of goods and services of the earlier

trade mark application in respect of which priority is claimed, is available on the website of the central industrial property office of the country of first filing.

The Cancellation Division has examined the Austrian Trade Mark Office database at seip.patentamt.at and found an entry for the Austrian mark with a status of 'application completed'. It bears the same filing date claimed and shown in the documents submitted and has an indication of the Nice Classes 12, 25 and 28 but without any indication of the actual goods for which the application was filed. Simple filing receipts that do not contain all the necessary information for examining the priority claim (e.g. containing only class numbers for the goods and services of the prior application and not the full text version indicating all the goods and services) are not sufficient. As such, with the evidence currently on file it is impossible to determine for which goods the Austrian application was filed and if they correspond to the goods of the EUTM. In order to substantiate a priority claim for all of the goods, all of the registered goods of the EUTM must correspond to those of the earlier application. In the present case this cannot be confirmed due to the lack of evidence in this respect. The EUTM proprietor has already been given the possibility to remedy the deficiencies within the two month period mentioned above and did not provide the list of goods of the Austrian application. As such, the priority claim has not been substantiated. In any event, for the present purposes this point is not decisive, as where bad faith is found the trade mark will be invalidated ab initio (*ex tunc*), thus also rendering void any claimed priority date.

The Cancellation Division also notes that there is no registration date or publication date on the Austrian IPO website, thus it would appear the mark was never registered. The EUTM proprietor has put forward no explanation as to why the mark did not proceed to registration if the application fee was paid and the filing was accepted. The applicant contends that the cost of registering a mark in Austria is EUR 280 and yet the receipt provided by the EUTM proprietor is for EUR 100 without any further explanation. As such, it is not clear whether the full registration fee was paid or perhaps whether this led to the Austrian mark not being registered. In any event, this point can also be left to one side without concluding thereon as it is not decisive for the present purposes. On a further point that may be relevant to bad faith, the Cancellation Division notes that the receipt for EUR 100 paid by the EUTM proprietor is dated 13/02/2007 which is nearly 4 months after the filing date of the Austrian mark and only days after the filing of the applicant's two EUTM applications for 'TESLA' on 09/02/2007 (EUTMAs No 5 678 602 and No 5 678 479). The timing of this payment in relation to the Austrian application (even if it were accepted that the total amount for filing was paid) is rather suspicious being so long after the filing date and just days after the applicant filed its applications. The applicant has filed thousands of trade mark applications over the years which have never reached registration and for which no fee was paid as can be seen from the list of trade mark filings submitted by the applicant in Annexes A49 (in Austria), A50 (Germany) and A51 (EUTMs) etc. The EUTM proprietor claims that all of the national trade marks were applied for a purely economic or personal decision and have different registration dates which preceded any subsequent EUTM filings of others. However, in Austria and Germany no fee has to be paid in order to secure a filing date, although it would need to be paid to be registered. The EUTM proprietor argues that, whether an application proceeds to registration or not in Austria, the Austrian tax office collects an obligatory fee for trade mark applications, not the Austrian Patent Office and therefore the fees are paid (the EUTM proprietor files a screenshot of a payment for EUR 92.40 which is barely legible and which is not translated from German into English, nor is it clear who charged it or for what, at least not in the language of proceedings and thus this point has not been properly substantiated). Yet even if this is true, this does not explain why Mr E.A.'s (and his related companies) has (have) filed thousands of trade marks that never proceeded to registration. If there is an obligatory tax to be paid, even without the registration of a trade mark, then why pay huge amounts of money (if paid in full or at all) for

something that you will not register but still have to pay tax on. In any event, this point can be left open for the present purposes.

The above circumstances would indicate that the EUTM proprietor is filing marks speculatively and in order to achieve earlier filing dates to later use in opposition proceedings or to try and sell or lease the mark, as in the present case. This behaviour points to the fact that not only are the trade mark applications filed, but they are filed with the intention of later opposing legitimate trade mark applications, and that the EUTM proprietor is well-aware of the other companies intention to file trade marks in the EU at the time it files these applications. In the present case only days after the applicant filed its own EUTM applications the EUTM proprietor paid the fee (or at least part of the fee) of the Austrian mark and filed an EUTM application based on the earlier priority date of said mark. Then, shortly after this, it filed opposition proceedings against both of the applicants EUTMAs. The EUTM proprietor argues that had he known about the applicant he would have paid the fees as quickly as possible in order to secure the right but this argument is not particularly convincing given all of the circumstances outlined above and hereinafter.

Following on from all of the above, the Cancellation Division considers that the extensive interest of the EUTM proprietor in registering marks for goods in Class 12 shows his interest in this sector. The applicant's brand had been reported on in publications in the US and worldwide, as well as in Austrian newspapers and on German websites. Both prior to the time of Austrian priority (leaving aside the failed priority substantiation) and at the time of filing of the EUTM, the applicant's brand was known to those in the automotive industry and those interested therein, probably as well as the general public due to the involvement of celebrities and even Mr M.'s growing fame at the time. The EUTM proprietor's arguments concerning how he came up with the name of the brand are not convincing, nor do they explain why he waited several years after choosing the name before filing the EUTM, while at the same time, it happened to coincide with the news of the launch available in the newspapers in Austria and Germany as well as online, and considering his extensive knowledge of trade mark law. Therefore, the Cancellation Division considers that the EUTM proprietor must have known of the existence of the earlier rights to the sign held by the applicant when it filed the EUTM (and the Austrian application).

As per case law, even though it has been concluded that the applicant owned prior rights to the sign, the signs are at least highly similar and the goods are at least partially similar and this would lead to a likelihood of confusion, this in and of itself, does not lead to a finding of bad faith ((11/06/2009, C-529/07, Lindt Goldhase, EU:C:2009:361, § 40). In order to determine whether there was bad faith, the EUTM proprietor's intentions at the time of filing must also be taken into account.

The EUTM proprietor's intentions may be an indication of bad faith if it becomes apparent that the EUTM proprietor did not file the contested EUTM in order to use it, but only to prevent a third party from entering the market (11/06/2009, C-529/07, Lindt Goldhase, EU:C:2009:361, § 44). The same applies if the EUTM proprietor's only intention is to prevent a third party from continuing to be on the market. An indication of bad faith may exist if the EUTM proprietor applies for a trade mark which is identical/similar to that of a third party for confusingly similar/identical goods and services and the earlier right is legally protected to some extent and the sole aim of the EUTM proprietor is to compete unfairly by taking advantage of the earlier sign (11/06/2009, C-529/07, Lindt Goldhase, EU:C:2009:361, § 46-47).

Account must also be taken of whether the EUTM proprietor's filing intentions may be in pursuit of legitimate objectives. This may be the case, for example, if at the time of filing the contested EUTM, the EUTM proprietor had legitimately already been using the contested EUTM. However, in the present case this is not true for the EUTM proprietor. The EUTM

proprietor, as already mentioned, admits that it is not involved in selling any of the contested goods but that it develops and creates trade marks to exploit and broker or lease to others.

Another example of the pursuit of legitimate objectives would be, for example, if at the time of filing the contested EUTM, the EUTM proprietor knows that a third party, who is a newcomer on the market, is trying to take advantage of that sign by copying its presentation, and the EUTM proprietor seeks to register its sign with a view to preventing use of such a copy (11/06/2009, C-529/07, Lindt Goldhase, EU:C:2009:361, § 49). However, this would only be the case where the EUTM proprietor had valid legal claims over the right and had been using it prior to that, which would justify its registration to protect its rights. Here, as mentioned, the EUTM proprietor was not using the sign and admits that it had no intention ever of using the sign as registered, for goods in Class 12, but only to try and sell or lease the mark speculatively to third parties, without having a party lined up to buy or lease it at the time of filing (or possibly even thereafter). Therefore, the EUTM proprietor has failed to prove any legitimate objectives. As mentioned earlier, the filing of speculative marks is carried out not in order to use the mark as a trade mark but only to profit from selling/leasing it to others who are blocked from registering their own marks for which they are already using the sign or have plans to use the sign as a trade mark and of which the EUTM proprietor was aware or must have been aware. Therefore, the EUTM proprietor has failed to prove that it had legitimate objectives in filing the EUTM.

The EUTM proprietor argues in its observations that it is up to it to choose what to do with the trade mark and he (Mr E.A.) does not have to lease it to the applicant and could just as easily sell it to a Chinese competitor. This (not so veiled) threat shows the EUTM proprietor's intentions to try and coerce or force the applicant into accepting his terms and paying compensation for the mark or suffer consequences and possible future competition from a third party. However, what the EUTM proprietor is not considering is that even if he sells or leases or otherwise disposes of the mark to a third party, this would not leave the applicant without recourse, as if the mark was filed in bad faith then the defect is in the trade mark, regardless of the fact that it is no longer held by the EUTM proprietor, or Mr E.A. who originally filed the application. A later transfer would not save the mark. Indeed, in the present case the EUTM has been transferred on numerous occasions already (8 times). On 30/06/2008, the EUTM was transferred to COPERNICUS EOOD, on 09/06/2009 to CAPELLA EOOD, on 07/07/2011 to VERUS EOOD, on 20/08/2011 to COPERNICUS-TRADEMARKS LIMITED, on 20/11/2013 to Ivo-Kermartin GmbH, on 12/01/2019 to SIGIMERUS LIMITED, on 03/12/2019 to RAETI LIMITED, then back to VERUS EOOD on 18/05/2022, and finally on 23/06/2022 back again to CAPELLA EOOD. The applicant claims that all of these companies are 'letterbox companies' owned by the EUTM proprietor and submitted evidence to back up the assertion that they are, for the most part, all located at one address in the UK (some are in Bulgaria) and that there are hundreds of companies all located at the same address which has no company sign. Indeed, all of the transfers were signed by Mr E.A. who also acts as the official representative for all of the companies. In any event, as mentioned, bad faith takes place at the time of filing and thus subsequent transfers of the mark would not overcome such a hurdle and even so, it is clear that this is another diversion tactic on the part of the EUTM proprietor.

The applicant claims that the EUTM proprietor has filed over 2,400 applications in the EUIPO and in Germany and of such, almost 2,000 of them cover goods in Class 12 and the majority thereof have been withdrawn due to non-payment of the application fee. In Austria, out of his more than 2,200 applications, over 1,700 cover *vehicles* in Class 12 and most are not registered. It submits printouts of these applications in Annexes 49-51. The applicant cites (in German and also translated into English) part of the Supreme Court of the Republic of Austria decision of 17/09/2014, case 4 Ob 98/14m which states "Until 2010 he [Mr E.A.] applied for 3,000 Austrian trademarks and more than 450 Community trademarks in his own name or in the name of his companies. [...] Only 120 trademarks were actually registered

[...] This alone – in view of the quite extraordinary ratio between applications and registrations – speaks for speculative intent”.

The parties also cite the previous ‘LUCEO’ judgment (ibid) which involved the EUTM proprietor. In that judgment the Court held that, following nine subsequent applications alternatively filed in Germany and Austria for the sign ‘LUCEO’ which were not registered, Mr E.A. filed an EUTM application with a priority upon notice that a third party had filed an EUTM application for ‘Lucea Led’. Again, in that case Mr E.A. had filed an opposition against said mark and made an offer to transfer said EUTM which enjoyed an earlier priority date to the applicant. However, the General Court confirmed that the earlier EUTM had been applied for in bad faith. Such a filing strategy is qualified as an ‘abuse of law’ since, despite formal observance of the conditions laid down by European Union rules, there had been no intention to use any of the marks applied for in Germany and Austria but rather to obtain an artificial advantage to the detriment of others (‘a blocking position’). The relevant circumstances when examining an applicant’s bad faith are neither limited in time and space (GC, T-3/18, Ann Taylor, § 88 and 158-161). As such, this prior conduct of the EUTM proprietor can be taken into consideration also in the present case. However, even leaving aside the ‘LUCEO’ judgment, the EUTM proprietor’s actions in the present case clearly show his dishonest intention in filing the EUTM as will be explained below.

As mentioned above, the EUTM proprietor filed opposition proceedings against the applicant’s two EUTM applications. On 10/10/2007 it filed the opposition B 1 209 412 against the applicant’s EUTMA for ‘TESLA’ and on 30/10/2007 it filed the opposition B 1 222 100



against the applicant’s EUTMA

(figurative mark). Then on 08/12/2009 the



applicant filed a third EUTMA for the sign

No 8 741 225 and on 27/05/2010 the EUTM proprietor also filed an opposition against this mark B 1 665 184. However, on 19/11/2007 a third party TESLA Holding a.s. from the Czech Republic filed an opposition against the contested EUTM in the present proceedings No 5 838 727 and, as a result, the opposition proceedings against the applicant’s EUTMAs were suspended. In the third party opposition proceedings mentioned above against the contested EUTM, the EUTM proprietor carried out approximately 47 restrictions of the specification of the goods of the EUTM while the EUTM proprietor’s oppositions were pending against the applicant’s EUTM applications (as based on the contested EUTM).

As a consequence of all of these restrictions, and also due to the outcome of the decision in the third party opposition which partially rejected the contested EUTM, the remaining goods which proceeded to registration are those mentioned in the ‘Reasons’ section of the present decision. However, as mentioned previously, in bad faith cases it is the EUTM proprietor’s intentions at the time of filing of the EUTM that must be taken into consideration and thus the initial goods for which the EUTM was applied for are relevant for the present purposes. Furthermore, it is noted that the limitations carried out by the EUTM proprietor in the third-party opposition proceedings were not only numerous, but in many cases without any real impact and indeed rather provocative, adding in specific (and on occasion somewhat ridiculous) terms or adding in a number of terms to later take them out one by one etc. Mr E.A. argues that it was for the opponent in those proceedings to end the proceedings and he gave them many opportunities to do so after carrying out limitations. He also denies that ‘automobiles’ was restricted in the opposition and insists that there is a fundamental right to be heard which must be respected and proceedings can take a long time. There is indeed a

right to be heard and restrictions of the specifications of marks can often lead to the closure of proceedings. However, it is very obvious in the present case that the restrictions carried out had no real bearing on the case and were not intended to result in the closure of the proceedings. It is rather clear when looking at the restrictions as a whole that there was no real purpose to them, except to delay the opposition proceedings, which it did for over 15 years. The reason behind this delay is most likely the fact that the applicant and EUTM proprietor were embroiled in the opposition proceedings against the applicant's EUTM applications for 'TESLA'. While the third-party opposition was in play the applicant's oppositions had to be suspended and they continue to be suspended until the present proceedings are finalised which means that to date they have been suspended for 17 years already. Again, the only possible reason that the EUTM proprietor would delay the registration of its EUTM in such a manner would be that in the event that the third-party opposition against the EUTM were concluded, the EUTM would be registered. This would then mean that the applicant could bring invalidity proceedings based on bad faith against the EUTM proprietor, which it has now done in the present proceedings. It would also leave the EUTM open to a revocation procedure for non-use. Mr E.A. claims to only register signs to exploit them by either brokering them or leasing them to third parties. The EUTM proprietor has no active business or planned business in the automotive industry or in any other industry except for the development, creation and brokerage or licensing of marks to third parties. As such, the EUTM could be revoked for non-use five years after registration if it were not sold or licensed to another party to use it. Therefore, the EUTM proprietor's large number of limitations/restrictions of the goods and the delay of over 15 years in the proceedings would point towards his desire to avoid these outcomes and to block the applicant for as long as possible. In doing so, the EUTM proprietor (Mr E.A.) would attempt to force the applicant's hand to negotiate and pay compensation for a trade mark filed speculatively by the EUTM proprietor. Moreover, the applicant's mark has become much more valuable over time and thus the compensation could possibly be much higher at a later point.

Later, in its final arguments and in its criticism of the ATHLET judgment (Ibid) the EUTM proprietor refers to the length of those proceedings and claims that the burden of this justification is on the administration and this led to unpleasant side effects such as loss of reputation due to the long publicity as well as high legal defence costs and uncertainty regarding the exploitation of the mark(s) and claims that this contradicts the 'efficient' European administration under the law. Due to the delays and strain on the financial resources of the proprietor it was exhausted and no legal action could be taken against the decision. Thus, the EUTM proprietor claims, on the one hand, that proceedings can take a long time and that this involves the right to be heard, but on the other hand it puts the blame on the administration for delaying proceedings and argues that it contradicts the efficient European administration under the law. The EUTM proprietor contradicts itself but also accuses the applicant of contradicting itself in the observations and claims that the applicant's contradictions amount to procedural fraud.

Normally when an applicant files an EUTM application it is because it wants to protect the mark, to use it itself in relation to specific goods and services in order to indicate the commercial origin of the goods. Their interest is to register the mark as quickly as possible in order to obtain such a right. In the present case the EUTM proprietor clearly was not in any rush to obtain the registered mark but merely used it as a blocking method to hinder the applicant and to try and obtain compensation from the applicant.

The ground of bad faith applies where it is apparent from relevant and consistent indicia that the proprietor of an EU trade mark filed its application for registration not with the aim of engaging fairly in competition, but with the intention of undermining the interests of third parties, in a manner inconsistent with honest practices, or with the intention of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those

falling within the functions of a trade mark, in particular the essential function of indicating origin (12/09/2019, C-104/18 P, STYLO & KOTON (fig.), EU:C:2019:724, § 46). Furthermore, as the EUTM proprietor has cited the SKY judgment, the Cancellation Division also notes that this judgment considers that When 'it is apparent [...] that the proprietor of a trade mark has filed the application for registration of that mark not with the aim of engaging fairly in competition but with the intention of undermining, in a manner inconsistent with honest practices, the interests of third parties, or with the intention of obtaining, without even targeting a specific third party, an exclusive right for purposes other than those falling within the functions of a trade mark' (CJEU, 29/01/2020, C 371/18, SKY, § 74).

In the present case the EUTM proprietor did not file a trade mark in order to use it in the course of business to identify the commercial origin of its goods (or services). It filed a mark in order to speculatively sell it to an, as yet, unidentified party. Therefore, it was not created for trade mark functions but to obtain an exclusive right for purposes other than those falling within the functions of a trade mark. Furthermore, examining many of the marks that the EUTM proprietor has filed in Class 12 it becomes clear that there is a pattern of the EUTM proprietor fortuitously coming up with trade marks that are identical or similar to those used by other companies for Class 12 goods already on the market (whether for a short or long period, or due to speculation as the companies have formally used the name of stars or constellations for its vehicles and thus it would be probable that they would continue this pattern of naming cars etc.). The EUTM proprietor argues that often people or software, when trying to come up with trade marks, choose the same signs, but it is the one that files it first that holds the rights to the sign. If this were a once-off occurrence, then it could perhaps be put down to coincidence or mere chance. It further argues that others also came up with the sign 'TESLA' and the applicant had to buy the rights to these other signs to use the mark. However, the sheer number of trade mark applications which have been filed by the EUTM proprietor that coincide with the names of third party brands, particularly in the automotive industry, as detailed in the applicant's observations and in the cited case law, cannot be put down to mere chance. Indeed, it appears that the EUTM proprietor's creation and development of trade marks is carried out by identifying companies that are beginning to use signs (or have used similar signs) and which have as yet not secured any trade mark protection in relation to same in the EU (or at all). It thus becomes clear that the EUTM proprietor is filing these trade marks in order to speculate as it sees that the marks, although being used by others, are not yet registered in the EU (or at all). Thus it files the marks in order to force the hand of the third parties to buy the trade marks from Mr E.A. or suffer the consequences of being prohibited/hindered from entering or staying on the relevant market.

Mr E.A. insists that his companies are transparent and that their data is freely available on the companies' register and the companies are active and exploit and develop trade marks developed by Mr E.A. and that this is stated in the company register and he insists that the exploitation of intellectual property secures the existence of the creator. However, his actions (and those of the companies he controls, including the EUTM proprietor), cannot be described as trade mark creation and development, but indeed the EUTM proprietor's description of 'exploitation' of trade marks seem more reasonable, not in that he exploits marks validly to use them or creates them under commission for others to later lease or own, but in the sense that he is trying to speculate about, as yet unregistered signs, being used by others or which could potentially be used by others, particularly in the automotive industry, to then exploit the parties financially through coercion. This premise is further strengthened by the EUTM proprietor's argument that he can choose who to sell the mark to and he stated that he might sell it to a Chinese company instead of the applicant. Again, as mentioned earlier, this is a (not so veiled) threat to again try and force the hand of the EUTM proprietor into paying a substantial amount of money in order to obtain a right which the EUTM proprietor does not use and admits it had no intention to use itself on the market but only to speculate with its creation to sell or license it to others (see the judgment of the General Court 07/07/2016, T-82/14, LUCEO, EU:T:2016:396).

Mr E.A. argues that he has validly created trade marks which he has later licensed to third parties in support of his business model. In this regard he points to the trade mark 'COPERNICUS' and the trade name 'COPERNICUS CONSULTING' for the services of creating, developing and sale/licensing of trade marks and for services concerning trade marks for which he claims the EU recognised and signed a co-existence agreement with Mr E.A. in 2010. The fact that Mr E.A. successfully obtained a co-existence agreement with the EU does not prove that he has a successful model of creating and licensing trade marks but only that he managed to sign a co-existence agreement with another party. This, in and of itself, cannot substantiate his claims in this respect. The EUTM proprietor rejects the applicant's argument that he demanded a lump sum from the EU but argues that such an agreement was concluded for the benefit of the EU and its citizens and was a free prerogative agreement. This point may remain open as it has not been substantiated.

Mr E.A. (the EUTM proprietor) also makes the following arguments. It claims that he is the originator of the 'HURACAN', 'ASCENT', 'ANTOS', 'CROSSCAMP' marks and puts forwards arguments in relation to the creation and circumstances of each one and denies that he had any contact with Subaru. The EUTM proprietor claims that the applicant presents the EUTM proprietor's professional trade mark development as a trick which only reveals the applicant's malice and ignorance of trade mark development and it resorts to theft as it does not have a command of this subject and uses tricks to obtain judgments so that it can continue to pirate trade marks undisturbed. However, no proof of same has been submitted and indeed the case law submitted would, for the most part, speak against this argument. Mr E.A. further claims that it is procedural fraud by the applicant to claim untruthfully that Mr E.A. was aware of the future use of the 'FEEL' sign by Volvo and he claims that Volvo committed trade mark theft against Mr E.A. and his company and then slightly changed the mark to 'FEELING' to not be immediately accused of fraud. It is also further litigation fraud that the applicant claims that the judgments and decisions submitted by the EUTM proprietor were not the subject of bad faith claims and confirms to Mr E.A. and his companies that there were no bad faith applications. Mr E.A. is the originator of the sign 'TANGARA' for vehicles, amongst other things, in Austria and later as an IR and fees were paid for both and thus Renault committed trade mark theft. He claims that another lie of the applicant is that the Higher Regional Court in Stuttgart did not treat the issue of bad faith. It cites page 6 of the judgment which makes reference to 'trademark grabber' and 'Any circumstances, which would prove an abusive trade mark application by the plaintiff in the injunction in 2011, the defendant in the injunction has also not submitted in the grounds of appeal'. A screenshot of the decision in German is attached. In 2022 the Regional Court of Munich issued an interim injunction against the car manufacturer SKODA due to trade mark infringement of 'BETRIA' authored by Mr E.A. It claims that SKODA filed extensive objections relating to bad faith, abuse of rights and intent to use and it provides a screenshot of letters from SKODA's representative to the Court in German and later provides an English translation. It states inter alia, that they seek 'The application for an interim injunction must be rejected for reasons of abuse of rights' and provides further reasons thereafter. The EUTM proprietor states that all of SKODA's objections regarding bad faith were rejected by the Court and it submits a screenshot of the decision in German with a partial English translation which does not appear to contain a conclusion but some reasoning. The Saarland Higher Regional Court has confirmed that there are no trade marks filed in bad faith. In relation to the VOLKSWAGEN 'GT' series it was held that 'GT' is a descriptive term and provides examples of its meaning. Mr E.A. was the originator of the 'PROPUS' mark for, amongst others, vehicles and holds priority rights to it and thus SKODA has committed trade mark theft of the mark. It denies that there is a SKODA model with the name 'PROPUS'. Regarding the 'EGT' mark it has a priority date of January 2010 and the Paris Motor Show took place from 02-17/10/2010 and thus the French company has committed trade mark theft. The applicant then submitted arguments and evidence in reply to contest the above claims.

The Cancellation Division notes that a mere mention of 'abuse' in a decision does not equate the decision to be based on bad faith. Moreover, decisions of the national courts are not binding on the Office. Indeed, from all of the above it can be seen that Mr E.A. (the EUTM proprietor) is embroiled in many proceedings with third party companies in the automotive industry who allege that he (or his companies) have filed trade marks which these companies were using or were about to use. The claims of procedural fraud have to be rejected as no actual proof of same was submitted to substantiate such serious claims and the decisions have become final and are therefore not open to interpretation at this point.

The EUTM proprietor has denied that it has ever acted dishonestly in any of his trade mark filings or in the present proceedings. In support of his argument the EUTM proprietor cites numerous decisions of national courts and EU Courts in which he claims that the Court held that the applications were not filed in bad faith. The EUTM proprietor claims that based on the statement of the judge in Regional Court of Hamburg (Ref.: 327 O 243/23) of 05/10/2023⁸, the entire argumentation and submission of the applicant regarding the quantity of applications collapses. He also argues that the pages of trade mark applications made by Mr E.A., submitted by the applicant, shows only his creative power, innovative strength, creativity, ability and diligence and that he was not practicing a business model but an official profession or trade, of which is a pioneer. The applicant has gone through most of these judgments and points out that they either did not involve the ground of bad faith or in certain instances, the Court or the appeal court has actually held the opposite in its judgment and deemed that the filings had been done in bad faith. The EUTM proprietor did not submit copies of these decisions although it did submit some parts thereof. The applicant submitted further evidence in this respect. For the most part the applicant's claims prevail. In certain instances, due to lack of evidence, the EUTM proprietor's claims cannot be accepted. Most of the cases in which bad faith was not found involved preliminary injunctions where the court did not delve deeply into the issue or, as in the decision of the Court of Hamburg no 327 O 243/23 – APEX, also an injunction hearing, the other party did not get to provide any evidence of defend itself and moreover, this decision is not binding on the Office. In some of the other cases involving preliminary injunctions cited, later, in the main proceedings, bad faith was actually found when the matter was considered more in depth as pointed out by the applicant. Even so, and even taking into consideration that in some cases the EUTM proprietor or more specifically Mr E.A. was found to have not acted in bad faith, this does not mean that the same conclusion has to apply to the case at hand. Indeed, there is much case law that actually points to Mr E.A. having acted in bad faith and speculating on trade marks. Furthermore, there is sufficient evidence in the present case to show the EUTM proprietor's dishonest intention at the time of filing of the EUTM as has been detailed above. The EUTM proprietor has followed a repetitive pattern of speculating on marks and filing priority applications in countries in which no filing fee is needed (even if taxes may have to be paid, although this was not substantiated sufficiently) and then only paid the filing fee (or perhaps part thereof) when its target has filed an EUTM application and it needs to rely on the priority claim. It then opposes the latter mark and tries to sell its EUTM or tries to block or hinder the other party. This conclusion has been found on numerous occasions and in relation to many different trade marks and even leaving these judgments aside, there is sufficient indications of bad faith at the time of filing of the EUTM in the present case.

⁸ "Finally, sufficient factual indications for a bad faith application for the injunction mark as a so-called speculative mark cannot be inferred from the reply to the warning letter. The mere number of trade marks applied for by the managing director of the applicant "for himself and for the companies managed by him" is not sufficient in this respect, especially as the applicant in Annexes ASt 25 and ASt 26 submits a trade licence issued to the managing director of the applicant by the Municipality of the City of Vienna relating to the trade "exploitation of patent, trade mark, design protection, copyright and other rights of use by brokering, selling and licensing under Exclusion of any activity subject to a certificate of competence" and an extract from the trade register of the City of Vienna concerning the managing director of the applicant with the trade name "Development of word marks (signs) and their exploitation through sale, brokerage or licensing". The exercise of these trades obviously includes the registration of several – even many - trade marks".

The EUTM proprietor has attacked and contested all of these decisions and judgments which found that it or Mr. E.A. had acted in bad faith. He has, in great detail, accused the German and EU judges, EUIPO examiners, Members of the Board of Appeal and the lawyers on the opposite side of the cases, of corruption and fraudulent behavior, all of which are extremely serious and very defamatory claims which have not been substantiated and which are clearly false. He severely criticises decisions of the EUIPO and the Courts claiming a lack of coherence in the development of EU law. Yet the EU case law has followed a coherent development, it is just that Mr E.A. does not agree with the principles and insists that judgments and decisions, which are now final, must somehow now be declared null and void as he disagrees with their outcome.

Moreover, Mr E.A. has also made very serious allegations against Mr M. which he has not substantiated. He claims that Mr M. was only able to become the world's richest person by stealing the priority EUTM of the EUTM proprietor and thus he did not earn his money legally and also accuses his lawyers of the same practices. It claims that the present proceedings, as well as the court proceedings, are aimed at prolonging the dishonest and unlawful trade mark infringements into the future and thus achieving self-serving profits in the billions. Although it must be noted that the party that has prolonged the present proceedings for over 15 years is the EUTM proprietor (Mr E.A.) and not the applicant. The EUTM proprietor makes further serious allegations against Mr M. and points to different news in this regard and asserts that the applicant is carrying out massive litigation fraud and procedural fraud can be found in almost every section of the pleadings. It claims that the applicant's campaigns of misinformation, disinformation and defamation serve to divert attention from its own unlawful actions and offences. It claims that the applicant's statements are absurd constructs or pure fantasy novels that have nothing to do with reality but are merely an unstructured sequence of defamations, assertions and insults made to discredit the victim (Mr E.A. and his company) and to make him a scapegoat.

However, the Cancellation Division notes that Mr E.A. has also not minced his words against others and tarnished their good reputation with inflammatory and very serious allegations. He painted Mr M. as a thief and that he has made his money from robbing trade marks, thus, in the same breath he both seriously accuses Mr M. of a criminal act without substantiating the claim to any sufficient extent, or at all, while claiming that Mr M. and the applicant's representative are defaming him.

Mr E.A. claims that everyone else, including the applicant, is defaming him and projects himself to be the victim of theft and defamation and character assassination. He claims that the applicant's arguments are insulting and if a pleading contains offensive statements, as herein, it must be rejected by the Office/Court as not being suitable for proper business treatment. He further argues that the applicant's claims are disparaging, defamatory, infamy, polemic, unobjective, a smear campaign and prejudicial and consist of interest-based, financially influenced bogus justifications and one-sided views which portray the applicant as a victim. He claims that the applicant has been threatening Mr E.A. and his companies and initiated proceedings in Switzerland, which it claims is abusive and based on litigation fraud. Furthermore, the applicant attacks his/its 'TESLA' Brexit clone in the UK which he/it claims are also based on litigation fraud. Furthermore, there is an abusive lawsuit against Mr E.A. personally in Düsseldorf which he claims is based on procedural fraud. The EUTM proprietor and Mr E.A. are also being threatened by the present proceedings, which it also claims is based on procedural fraud. These abusive proceedings are aimed at destroying Mr E.A. and his collecting societies so the applicant can continue to make billions in profits undisturbed under the predatory trade mark in the EU.

However, these claims have not been substantiated and the decisions or judgments referred to have become final and thus any claims about them being based on procedural or litigation fraud cannot prosper. The EUTM proprietor claims that the applicant quotes from pleadings

of other trade mark 'robbers' and their legal representatives who invent terms like 'trade mark trolls' in order to turn the perpetrators into victims. This term was invented by the legal representative of Apple who used it against Mr E.A. to commit character assassination. It provides details of Mr E.A.'s telephone conversation with a member of this law firm who agreed to represent him despite them talking about 'The troll story' and the fact that Mr E.A. was involved in a rights exploitation company which holds (not yet used) earlier trade marks against an infringer. It claims that the applicant's representative's lies, defamation and discrediting of Mr E.A. before the courts and authorities have caused serious damage to his companies' reputation and also caused financial loss and are based on the lie that he is a trade mark troll based on non-utilisation of marks.

Mr E.A. then provides details of two events which he claims reduces the 'troll stories' to an absurdity. He contacted the applicant's representative and asked to be represented by them in the Czech Republic and provided details of the lawyer with whom he spoke and a screenshot of their email and of their accepted invitation on LinkedIn and states that he was happy to work with Mr E.A.. He argues that in their conversation Mr E.A. informed him that he wished to be represented in relation to a mark which was not being used as yet and the lawyer agreed to represent him. Thus he claims that 'The troll story' 'falls like a house of cards'. The Cancellation Division understands Mr E.A.'s distain for the label 'trade mark troll' and understands how such a label could be damaging to him personally and professionally. Firstly, the fact that a lawyer will take on paid work, whether they agree with the clients tactics or not, is not particularly novel. Everyone deserves representation under the law and the fact that the applicant's representative would be willing to take Mr E.A.'s other case on speaks to the lawyers belief in due process and representation rights for all, as well, of course, as it providing a new income stream. In any event, this argument is not decisive. Moreover, leaving aside whether such a name should be used to describe his actions, what can be determined is that Mr E.A. has filed thousands of trade marks over two decades and yet does not have any real form of business except an occasional sale or license of a trade mark. As mentioned, for the most part Mr E.A. seems to very 'coincidentally' choose signs which are already being used or about to be used by third parties in the same industry as the goods for which Mr E.A. has filed the marks. This is not the result of coincidence or clever concepts for signs but rather has resulted from a speculative behaviour on his part in an industry in which he is a self-proclaimed expert, and from following events and quickly filing marks, whether paying the initial filing fees entirely, partially or not at all, and only files the EUTMA for the sign once the third party has filed its own EUTMA. Whether this describes a 'trade mark troll' or not can remain open. The EUTM proprietor claims that you cannot keep a trade mark if no fees are paid and thus denies that it did not pay the filing fees. Yet the pages of evidence of the trade mark applications in Austria and Germany at least show that he (or his companies) have filed many thousands of applications without them ever reaching registration. Yet the priority date was still achieved and used in further applications thereafter. As such, even if the fees were not paid and he (or his companies) hold no valid trade mark rights as a result (in the cases where no fee was filed only) he could still maintain the priority right which could later be relied on in the EUTM application to secure an earlier right. Thus this argument is set aside.

Mr E.A. complains that 'trade mark troll' is a derogatory name that has caused him to become penniless and need legal aid and that he cannot exploit the marks himself (or through this companies, including the EUTM proprietor) due to lack of capital. He further explains that the lack of sales under his marks (or those of his companies) is a result of various trade mark robbers in combination with litigation fraud and fraudulent judgments and thus Mr E.A. and his companies have no income anymore, even though his activities have been recorded since 2001. Due to the litigation and defamation which have discredited him and his companies and his labelling as a 'brand troll', which is denied, it has affected his business.

Yet he is still filing trade marks (and, at least on occasion, paying the filing fees or part thereof) and defending the resulting proceedings, and still maintains all of his related companies, including the EUTM proprietor. If Mr E.A.'s business model was indeed legitimate and as wonderful as described then surely he would be able to be financially successful in his endeavors. For example, if he were to seek out companies who actually wanted someone to come up with the name of a sign and to then register it and later who could license or buy the mark from Mr E.A. or his related companies, then this would most likely be a very profitable business and such a model brings much added value to its customers. But this does not appear to be the case for the most part and as evidenced by his difficult financial situation as a result of using this business model (although he claims that it is not the business model but the corrupt lawyer, examiners and judges that caused the hardship, but this has not been proven). Mr E.A. is not creating the marks for other companies under commission but is speculating and trying to force other companies into financial negotiations to buy the sign that they are already using or would likely use, through coercion, which may be why Mr E.A. is struggling financially (although no proof of his or his companies finances have been submitted and thus whether he or his companies are actually struggling financially cannot even be determined). The EUTM proprietor denies that the automotive sector is a cash-rich area as claimed by the applicant and states that other areas like finance or pharmaceuticals are much higher, but Mr E.A. has filed thousands of trade mark applications for Class 12 goods and thus has chosen the sector he is interested in and the 'business model' he is using (and through his companies).

Mr E.A. argues that not only he as the trade mark creator is the victim of the applicant but the entire EU suffers also as trade marks have an individual importance but also a universal importance being a regulatory task in the competition order of the EU. He argues that as 'the trademark pirate' confirms, that Mr E.A.'s trade mark portfolio is of interest to the most renowned corporations, he claims that this confirms the trade mark theft and also the common practice of other corporations which steal trade marks rather than acquiring them correctly from the owners or through obtaining a license. He has even submitted (on more than one occasion in the present file) a book or paper written by himself entitled 'Trademark theft of atypical trademark piracy & new forms of white-collar crime' as evidence. The book/paper is approximately 679 pages long but only mentions "TESLA" in passing. Firstly 'TESLA' is mentioned in the section about the author, stating that he is the 'author of numerous trade marks (among others of the trademark TESLA...)'. 'Tesla' is mentioned again in the footnotes regarding an article on www.businessinsider.com regarding a new 'TESLA' trade mark filing which hints that the company could one day sell audio products like headphones and megaphones (article dated 21/01/2022). The rest of the book puts forward Mr E.A.'s theories on trade mark piracy and trade mark law where he paints himself as a victim of trade mark theft by others. He further makes claims such as 'trademark rights are themselves human rights' (page 512). The contents of the book/paper have been duly considered but for the sake of economy of proceedings the Cancellation Division will not attempt to lay out all of the arguments in the book.

The Cancellation Division recognises the importance of trade mark protection for their true owners and indeed recognises the importance of the role of trade marks and intellectual property in the EU, for the smooth running of the internal market, and of course in industry. However, leaving aside general principles of law and looking at the specifics of the case at hand it can be seen that it is Mr E.A. who has continually filed trade marks which 'coincidentally' are identical or similar to signs already being in use by other companies, especially in the automotive industry or which follow a common naming pattern for cars by such companies. If this happened only once then it could be a mere coincidence but this is an established pattern. This may answer why the other 'renowned corporations' may have an interest in his marks, because he has speculated on signs that they were using. There is abundant evidence on file of different examples where Mr E.A. or his companies have filed trade marks which coincide with those of other companies and in which the Board of Appeal

of the EUIPO, the Courts or national courts have taken decisions/judgments where they have found bad faith in the filing of the different marks for the strategy employed by Mr E.A. Mr E.A. also continually makes very serious unproven allegations about examiners, Members of the Board of Appeal and judges, as well as lawyers involved in this case and other cases and anyone who holds a different opinion than him, of being corrupt or acting in a fraudulent manner. However, as much as he may believe this, the fact is that the decisions and/or judgments in which he (or his related companies) have been found to have acted in bad faith have all been decided correctly and are based on the principles of EU trade mark law and the case law of the EU and do not contravene EU fundamental human rights or established practices in trade mark law as he has claimed. He argues that the 'LUCERO' judgment did not take account of the fact that he did not attempt to circumvent the obligation to use the mark, despite the arguments put forward, and an application that is not yet registered cannot circumvent use as the grace period has not begun to run yet or at all. The legitimate rights of a trade mark agency and author were completely ignored and the right to be heard was violated. He claims that the ECJ granted legal aid against the 'LUCERO' judgement 'as it recognised the legal errors and factual irregularities and all formal requirements were met' and a screenshot is submitted. Mr E.A. (the EUTM proprietor). The screenshot states:

- 9 Having regard to the information before the Court at this stage in the proceedings, it must be held that *Copernicus-Trademarks* has established its inability to meet the costs of the action and that the proposed appeal does not appear to be manifestly unfounded.

He claims that the ECJ granted legal aid against the 'LUCERO' judgment in 10/11/2015, C-477/15 AJ – Coperinus, however, due to incorrect notifications of deadlines by the Administrative Board, the action against the 'LUCERO' judgment was unfortunately brought out of time. The wording from the judgment does not support the bold claim made above by Mr E.A. but merely states that an appeal is not 'manifestly unfounded' without going further. In any event, as the appeal was not filed, the judgment has now become final the EUTM proprietor's argument in this regard must be rejected.

In regard to the applicant's cited German judgments the EUTM proprietor claims that an application for infringement proceedings against Germany for violations of mandatory Union law has already been submitted to the EU Commission. It claims that these German judgments are void because they violate Union law and are based on procedural fraud which also renders them null and void. Yet again, the EUTM proprietor (or Mr E.A.) did not submit any evidence to back up this claim and thus it has not been substantiated. His claim that the LUCERO judgment (Ibid) should also be considered to have become null and void due to the judgment of the CJEU in Sky/Skykick (Ibid) must be rejected. The CJEU merely ruled that if the applicant of a trade mark does not know at the time of filing if he will use the mark for all of the registered goods and services this does not necessarily indicate bad faith. However, this was not the basis of the finding in the LUCERO judgment which resulted from a conclusion of bad faith due to the numerous identical trade mark filings for different goods and services over the years without paying the application fees on several occasions. This behaviour showed clearly that Mr E.A. (or his companies) speculated that the mark would become relevant at some point in time and until then he did not want to spend any money on the filings. Moreover, the judgment of LUCERO was not appealed successfully by the EUTM proprietor and is thus final and must be taken into consideration. The EUTM proprietor and Mr E.A. can appeal any judgment they do not agree with but they cannot claim that a judgment or decision which has become final is somehow null and void.

It also cites the judgment 17/01/2024, T-650/22, Athlet, EU:T:2024:11, which it states is not final as there is an ongoing application for legal aid lodged with the CJEU in file number C-113/24 AJ and it provides a translation of the reasons it submitted in the legal aid application. It also provides an extensive commentary on the judgment and contests the

findings therein as extensively laid out in the arguments. It considers the judgment of the General Court to be purely arbitrary and that it violates the rule of law, human dignity, fundamental rights, international law and the case law of the CJEU. It is a violation of the CJEU judgment in SKY (ibid) which is the leading decision on the matter and that it violates the right to be heard, the right to a fair trial (Article 6 ECHR and is a violation of Article 94 EUTMR regarding the right to be heard, as well as a violation of ECtHR case law particularly Application No. 73049/01, "Anheuser-Busch Inc. v. Portugal" concerning trademark applications. In the present case it argues that there is a violation of the priority right of the Paris Convention (or Article 34 EUTMR), of the TFEU and Article 59 EUTMR (absolute grounds for invalidity). It states that it appends a copy of the complaint (Appendix A2) which cannot be found in the file and thus cannot be examined, and he also claims that a detailed statement on all of the legal issues raised (Appendix A3) and in Mr E.A.'s thesis 'Brand theft of atypical trademark piracy & new forms of white-collar crime – at the same time an explanation of trademark law'. However, as previously discussed the content of his book/paper in Appendix A3, which was submitted, have been examined for the present purposes. The fact that Mr E.A. does not agree with the above judgment and that it is not yet final due to the legal aid request does not mean that his pleadings in that appeal are a matter of fact as they have not been decided upon by the court. The Cancellation Division has duly considered all of the EUTM proprietor's (Mr E.A.'s) arguments in relation to why it (he) disagrees with the judgment and how it (he) considers that there are considerable abuse of rights, sham justifications, procedural fraud, corruption etc. but cannot agree with it (him) in this regard for the many reasons already outlined before and herein after. The judgment is well reasoned and follows EU trade mark case law and the serious allegations made against the judges, the lawyers, the parties, the Members of the Board of Appeal and the EUIPO have not been proven. The fact that a Member of the Board of Appeal gave a talk organised by the applicant's representative does not show some form of conspiracy or underhanded action, as examiners and Board Members regularly give presentations in many different events in order to continue to inform attendees of recent case law and practices and to assist in the harmonisation of trade mark laws in the EU, and there is absolutely nothing underhanded in so doing. These are very serious allegations being made which are in no way proven by Mr E.A. (or the EUTM proprietor) and yet he complains that he is being targeted and defamed and is the victim. Such claims are rejected. In any event, in regard to the ATHLET judgment cited above, as the decision has not become final this particular judgment may be left to one side for the present purposes.

Mr E.A.'s claim that he has insufficient funds to bring an appeal cannot be considered as he has failed to submit any tangible proof before the courts or in the present case. As the applicant points out, he claims that he has been left penniless due to trade mark robbery carried out by others against him but at the same time argues that he has spent millions in trade mark filings. He refers to proof of a communication from the EUIPO in regard to the amount he has spent on filing trade marks but did not submit a copy thereof to substantiate the claim. In any event the Cancellation Division does not doubt that he has paid some fees, whether it was for such a large quantity as claimed, or not, may be left to one side for the present purposes. However, it is also clear from the evidence that there are thousands of trade mark applications which he (or his related companies) have filed but which have never matured to registration and for which no fees were paid. The amount of registered marks pales in comparison with few reaching registration. This underscores Mr E.A.'s speculative intentions in filing so many trade marks, especially for goods in Class 12, when he openly admits that he has never used and does not ever intend to use the marks for any goods in this class.

Mr E.A. makes further strong claims against the applicant, accusing it of submitting thousands of pages of lies and of committing procedural fraud in the Swiss proceedings as the applicant demanded the cancellation of the EUTM but at the same time submits that it does not have the possibility to cancel the EUTM. He claims that the applicant obtained a

Swiss judgment that is contrary to EU law and which also violates fundamental rights/human rights and is based on untrue facts and on alleged unfair competition which was intended to condemn Mr E.A. personally and oblige him to withdraw the three oppositions against the applicant's EUTMs and not to assert claims against the applicant as based on his earlier right, even though Mr E.A. is not the trade mark owner. It claims that on 07/08/2020 the EUIPO found that the Swiss judgment is contrary to EU law and thus null and void and it rejected the applicant's fraudulent, bad faith and wilful request for the official withdrawals of the oppositions in opposition B 1 665 184 and it submits a screenshot of the letter (which is barely legible or altered in part). It claims that the applicant not only committed trade mark theft and has been infringing the proprietor's mark for years but it is also committing a UWG offence.

The Cancellation Division notes that the above statement of the EUTM proprietor (or Mr E.A.) is not correct to the extent that the Office did not find that the Swiss judgment was contrary to EU law and null and void nor did it reject the applicant's 'fraudulent, bad faith and wilful request for the official withdrawals of the opposition B 1 665 184'. The Office merely informed the parties in the aforementioned opposition that it could not substitute the submission of a decision of a national court to a direct request for the withdrawal of the opposition by the party to the proceedings and that national judgments are not binding on the Office and the registrability of a trade mark can only be assessed on the basis of the relevant legislation alone (13/09/2010, T-292/08, Often, EU:T:2010:399, § 84; 25/10/2006, T-13/05, Oda, EU:T:2006:335, § 59). Therefore, the decisions adopted in a Member State or in a state that is not a member of the European Union are not binding for the Office (24/03/2010, T-363/08, Nollie, EU:T:2010:114, § 52)." This finding is a far cry from what the EUTM proprietor claims above when it criticises the applicant of putting forward untrue facts and lies. Furthermore, it is noted that the withdrawal of an opposition (or cancellation), being an inter partes proceedings, is acceptable when an explicit request is submitted by opponent (or in cancellation proceedings 'the applicant') itself. Relative grounds for refusal are inter partes proceedings and thus objections cannot be raised *ex officio* and thus the proceedings cannot be withdrawn by the Office either and as mentioned decisions of national courts are not binding on the Office. For this reason this argument must be set aside.

As regards the EUTM proprietor's claim that the Swiss judgment is null and void, the Cancellation Division will not examine the content of said judgment as it falls outside the scope of the present proceedings but notes that any decision of the national courts or indeed the EU courts or the EUIPO which is not appealed and which has reached the state of a final decision cannot be considered to be null and void and thus this argument is set aside also. The EUTM proprietor's claims that the applicant's not only committed theft but has also been committing a UWG (The Unfair Competition law in Germany) offence and misleading consumers in the EU for years by deceiving them as to the origin. However, as regards the UWG offence this falls outside the scope of the present proceedings and the EUTM proprietor has failed, in any event, to substantiate this claim. What must be examined in the present proceedings is whether the EUTM proprietor, including Mr E.A. who filed the EUTM originally and is inextricably intertwined with all of his companies, including the EUTM proprietor, filed the EUTM in bad faith, and even taking into consideration the applicant's behaviour or any decisions of the Swiss courts as outlined above, the above arguments cannot succeed.

Furthermore, in relation to the applicant's alleged contradictory statements, whether in the same or different proceedings, this does not amount to procedural fraud as claimed. The EUTM proprietor contests the applicant's reasoning as unconvincing, confused, incoherent and defamatory writing that is contrary to fundamental rights and EU law and that the applicant avoids 'like the devil avoids holy water' any mention of the highest case law on bad faith, namely, 29/01/2020, C 371/18, SKY, EU:C:2020:45 as the applicant knows there is no bad faith and the EUTM will never be invalidated. Indeed the EUTM proprietor (Mr E.A.) has

made statements which are incorrect and contrary to established principles of the law, such as claiming that judgments which have become final should now be considered null and void due to a later decision of the EU courts or because he does not agree with the outcome, yet that does not amount to procedural fraud on the EUTM proprietor's or Mr E.A.'s part either. As regards the SKY judgment (*Ibid*) the difference between the facts and circumstances of that case to those of the present case have already been set out above and thus this argument is set aside.

The EUTM proprietor makes further arguments that the primacy of fundamental rights, special legal provisions or special provisions of trade mark law of the EUTMR (*lex specialis*) and EUTM law applies. As such, facts regarding abuse of rights/immorality etc. since the entering into force of the EUTM are to be measured against its Regulations, namely, the EUTMR, as well as the highest case law in this respect. With the creation of the CTMR, now the EUTMR, a uniform self-contained European regulatory and protection system for trade marks was introduced which already contains provisions on (national) unfairness. These have been incorporated into the harmonised facts of bad faith law and the highest case law of the CJEU and the ECHR is exclusively decisive in this regard. Thus it claims that the present application for invalidity is unlawful or an abuse of rights. There is a prohibition under civil law and procedural law to conduct proceedings without an interest in legal protection ("ban on harassment") such as in Germany § 226 DE-BGB (prohibition of harassment); § 242 DE-BGB ("good faith"). It claims that the applicant is using the EUIPO unfairly and solely for competitive advantage and this amounts to the applicant having bad faith (unclean hands) in bringing the present bad faith application.

Firstly, the Cancellation Division notes that Article 63(1)(a) EUTMR does not require the applicant to show an interest in bringing proceedings (25/02/2010, C-408/08 P, *Color Edition*, EU:C:2010:92, § 36 et seq.). According to Article 63(1)(a) EUTMR, any natural or legal person who under the terms of the law governing it has the capacity in its own name to sue and be sued can file a request for a declaration of invalidity based on Article 59(1)(b) EUTMR. In the present case, the EUTM proprietor did not provide convincing evidence of abuse of law from the part of the applicant which could call upon application of higher principles of law and question the admissibility of the application for a declaration of invalidity. Against this background the proprietor's claims of the applicant's abuse of law in bringing the present proceedings are set aside.

Moreover, the EUTM proprietor did not submit any evidence of the German law or any of the provision on which it relies in the above arguments. Leaving this to one side, the Cancellation Division indeed recognises the primacy of fundamental rights and all of the measures and laws mentioned above. However, as regards a prohibition of bringing claims without an interest in legal protection, the Cancellation Division notes that the applicant indeed has an interest in the legal protection of its right so this argument cannot prosper. The applicant has been using this sign prior to the filing of the EUTM, and even its claimed priority date (which was not substantiated) and has used the sign extensively for years now with great success. The EUTM proprietor has not used the mark at all and even recognises that it has no intention to ever use the mark (except to possibly sell or license it). This contradiction clearly speaks against the above claim. Although it argues that the EUTM was only just registered when the cancellation proceedings were initiated and thus third parties cannot exploit the mark and do not wish to obtain a licence for it due to the proceedings. However, normally a trade mark is created for use by the creator or under commission from another party to their particular specificities and not done speculatively and coincidentally identical or similar to signs already being used in the industry by other parties for the at some of the same or similar goods, as already detailed.

It must be noted that where a trade mark has been filed in bad faith the EUTM proprietor would not have a right to own such a sign as it would fall foul of Article 59(1)(b) EUTMR

which protects against such circumstances. A proprietor cannot gain rights from a sign that is filed in bad faith. Like in many other situations, personal rights and freedoms can be curtailed when other laws are infringed or broken and therefore, this argument of the proprietor must be set aside. The EUTM proprietor claims that the applicant has secured other (younger) IR's for 'TESLA' for Class 12 which it claims that the applicant maliciously concealed or suppressed from EUIPO and the EUTM proprietor and claims that the applicant also filed other 'TESLA' marks 'conspiratorially' and for decades the applicant has been infringing the EUTM by selling vehicles in the EU and making billions in profits. He argues that the applicant's disinformation and defamation campaign serve to divert attention from her own unlawful actions and offences. Indeed, as recognised recently by the Court, the behaviour of the applicant can be examined in bad faith actions (see 15/05/2024, T-181/23, JUVEDERM, ECLI:EU:T:2024:314 §61). However, as has been established, the applicant held earlier rights to the sign 'TESLA', not only through its use of the sign on its electric vehicles but it also held prior registrations to the sign in the US, and is the party who has actually used the sign in trade to identify the commercial origin of the goods (before and after the filing of the EUTM), unlike the EUTM proprietor (or Mr E.A.). The applicant has made a good faith usage of the sign on the market and such use commenced before the filing (or priority) or the EUTM. The EUTM proprietor could take infringement proceedings against the applicant for this grievance, but the argument does not affect the present proceedings. The action of filing trade marks for a sign which is already in use by the applicant cannot be considered to be dishonest or 'conspiratorial'.

Furthermore, the EUTM proprietor also claims that the applicant has stolen another trade mark from Mr E.A., namely, the sign 'HIGHLAND' and provides details of his earlier Austrian filing in 2006 of this mark No AM 7772/2006 for which fees have been paid for goods in Class 12 and claims that this was later registered as an EUTM in 2008 under No 7 413 578. It provides screenshots from different online articles in support of this claim. The applicant did not comment thereon. However, the Cancellation Division notes that neither the Austrian application nor the EUTM 'HIGHLAND' proceeded to registration. In relation to the EUTM 'HIGHLAND' its status in the Office's database is 'Deemed Not Filed'. Therefore, the applicant could not have stolen the EUTM proprietor's or Mr E.A.'s rights and therefore, it/he holds no rights over the sign in Austria or the EU. Moreover, there was no claim made or proof submitted that Mr E.A. or any of his companies have ever used or intended to use the marks or any justification for its filing, and the four partial screenshots from 2023 showing Tesla 'Highland' vehicles does not show any dishonest actions by the applicant but merely that it has launched another brand of vehicles which uses the sign 'HIGHLAND'. As such this argument must be set aside.

The EUTM proprietor also takes grievance with the fact that the applicant negotiated with other parties who held trade marks for 'TESLA' in order to purchase the marks but that it did not approach the EUTM proprietor to buy the EUTM or ask for a license. It claims that the applicant bought the earlier US trade mark but in the EU it stole the earlier mark in cold blood and never paid a license fee. As such, it claims that the applicant in fact is blocking the EUTM proprietor from exploiting the mark with the present application. The applicant replied that the other companies had made a bona fide use of the marks which is why it negotiated with them but that Mr E.A. (the EUTM proprietor) is a 'trade mark troll' and only wanted the applicant to approach it/him so that it would not appear that the EUTM proprietor/Mr E.A. was trying to extort money from the applicant. It argues that 'trade mark rights collecting societies' even bring the identity of Mr E.A. closer to the public by using his name.

The Cancellation Division will indeed keep his name private and, as is the practice in cases of natural persons involved in proceedings, will only mention the initials. Indeed the parties did negotiate at one point and there is evidence to this effect on file. Moreover, the judge in the case before the Regional Court of Düsseldorf recommended that the parties negotiate. The EUTM proprietor argues that the court suggested a payment of EUR 50,000 be made to

Mr E.A. As such, the EUTM proprietor was not happy when the applicant offered the amount of EUR 5,000. Although, EUR 5,000 indeed is a rather reasonable sum for a trade mark that had never been used and for which no future actual commercialisation by Mr E.A. or the EUTM proprietor or any of his other companies was ever contemplated (although Mr E.A. considers that he could have licensed or sold the mark to some other potential company). Mr E.A. states that the fact the court considered that a settlement should be made in his favour shows that there was no bad faith, as does the offer of EUR 5,000 made by the applicant, which it claims was not done under pressure from the court, and which is thus an admission and confirmation that the mark was not filed in bad faith. However, the Cancellation Division cannot agree with this assertion. The fact that the applicant was willing to pay a sum of money for the EUTM does not automatically mean it recognised that it was filed in good faith. The applicant was merely trying to overcome an obstacle and acquire the mark which it was already using on the market. As such, this argument is rejected.

Mr E.A. also insists that the paragraphs concerning payments in respect of the 'LUCERO' trade mark are untruthful and denies that the EUTM proprietor enriches itself at the expense of third parties. It is the trade mark infringers that are enriching themselves at the expense of Mr E.A.. For this reason he stated that he had to apply for free legal assistance and legal aid. In relation to the 'LUCERO' judgment the EUTM proprietor also claims that the facts of that judgment have nothing to do with Mr E.A. and it was a result of 'corruption' due to the manifold violations of fundamental rights, international law and trade mark law in the judgment. However, it is noted that this judgment is final and the findings of the decision stand and this argument must be set aside. He also requests that legal aid be provided for proceedings before the Office, although this is not presently available, although there is a 'pro bono' programme that offers some free personalised intellectual property support for SMEs in which they can apply for a 50% reduction on trade mark and design applications and for a 75% reduction on an IP pre-diagnostic service (called 'IP scan') and for some free personalised intellectual property support. The practitioners are those on a list which provide such services to others, not the office itself. Indeed, Mr E.A. who is so knowledgeable about IP and filing trade marks would probably not benefit from this type of aid but no further legal aid is currently offered by the Office.

Following on from all of the above considerations, it would appear that Mr E.A. (the EUTM proprietor) was merely speculating in the filing of the EUTM and delaying the proceedings and trying to force the applicant to negotiate and pay a large compensation for a sign which the applicant had been using first and for which the applicant has had much success. Mr E.A. defends his business model and claims that that all of his companies are established and active in the EU while the applicant is in the US and is profiting billions in profits that leave the EU and flow into the US and the applicant's decades-long, deliberate distortion of competition in the EU is extremely dangerous for the entire EU. The Cancellation Division notes that although Mr E.A. and his companies are based in the EU and the applicant in the US this has no bearing or relevance for the present examination. Moreover, aside from the registry or company details on file for Mr E.A.'s companies or the photos of their premises, there is no evidence of their commercial activities at all. The only mention of actions of these companies is in regard to the cases brought by or against Mr E.A. and/or his companies against or by third party companies (and the applicant) in relation to trade mark disputes. Furthermore, it is unsubstantiated that the applicant has in any way distorted competition in the EU but has merely sold the goods under the 'TESLA' brand as it had done before the EUTM was filed. Moreover, the evidence shows that 'TESLA' also has manufacturing plants in the EU and provides jobs under the brand in the EU, while the EUTM proprietor or Mr E.A. have not used the brand and had no intentions to. Thus there is no distortion of competition or sufficient proof of the contrary.

The EUTM proprietor points to several judgments in which it claims that the Court held that Mr E.A. had not acted in bad faith. Some of these cases were not based on the ground of

bad faith, as pointed out by the applicant, while others were decisions in interlocutory injunctions but later in the final judgment the court came to a different ruling. In any event, even in the cases in which Mr E.A.'s bad faith was not demonstrated this does not mean that the Cancellation Division has to accept this outcome in the present case. Each case is examined on its merits and on the evidence and arguments put before the Cancellation Division. Indeed, all of the case law cited has been examined thoroughly and the same principles as applied by the EU Courts, the Board of Appeal of the EUIPO and the Cancellation Division have been applied in the present examination. The decisions of national courts, while persuasive and while due regard is given to their findings, are not binding on the Office as already mentioned. In any event, even if not all listed in detail here, all of the case law (in or accessible in the language of proceedings) or for which extracts have been submitted in the language of proceedings has been taken into consideration for the present purposes, as have all of the evidence and arguments submitted by both parties, the EUIPO guidelines and case law of the EU Courts.

The EUTM proprietor argues that the applicant nearly branded its car 'Faraday' and submitted a screenshot of a German article from teslamag.de/news and a translation thereof which confirms this and argues that it could have chosen a different sign. However, whether a party considered branding or could brand the goods under a different sign is irrelevant as the brand was launched and later marketed and sold under 'TESLA'.

The EUTM proprietor argues that from the applicant's website and FAQ as well as from the Agreement with LOTUS it shows that the applicant had no intention of selling cars outside of the US and provides screenshots to back up the assertion. The applicant replied that these statements applied to the start of the business where they were seeking approval to market the goods in the US but that this was not a long-term plan. The EUTM proprietor itself acknowledges that the LOTUS Agreement was extended to 'worldwide' on 04/08/2009. This became clear as the applicant shortly afterwards announced and then began selling the goods to the public in the EU (evidence of Austria and Germany submitted) and it has been very successful in this endeavour. Indeed, car manufacturers generally sell their cars worldwide, even if they begin only selling the goods in the country of original production. By filing a trade mark for the same sign 'TESLA' in Class 12 (inter alia) the EUTM proprietor (Mr E.A.) could speculate on the goods eventually being marketed and sold in the EU and thus being able to request compensation from the applicant to buy the mark. The EUTM proprietor refers to the production of the applicant's cars not beginning until February 2008 and being reported in the media after this in the EU, which is after the (claimed) priority and filing date of the EUTM. However, again, as mentioned Mr E.A. admits he was already lecturing about trade marks in the earlier 2000's and filing EUTMs since 2001 and holds thousands of trade marks for goods in Class 12 and is thus highly knowledgeable in trade mark issues and interested in the automotive industry and thus the launch of a new electric sportscar, unlike anything seen before that point, could not have escaped him, or at least a cursory search of registered trade marks in the US would have also tipped him off to the existence of the applicant's US trade marks prior to filing the EUTM.

Repetitive conduct may be taken into account in order to assess bad faith (03/06/2010, C-569/08, Internetportal, EU:C:2010:311, § 51; 13/12/2012, T-136/11, Pelikan (fig.), EU:T:2012:689, § 29). Repetitive conduct can be an indication of bad faith if it reveals an intention contrary to acceptable commercial behaviour, for example, the intention of circumventing the registration system.

The filing of notices of opposition per se is not an indicator of possible bad faith on the part of the EUTM proprietor; further facts would be required (04/05/2011, R 1354/2010-1, yello, § 17).

The fact that the EUTM proprietor has proposed financial compensation is a possible indication of bad faith.

In the present case the EUTM proprietor did not file as many trade mark applications as in the LUCEO case (Ibid) but it still followed the same pattern of filing a trade mark speculatively in order to 'exploit' it by trying to sell it to the applicant (after the applicant approached Mr E.A.) who had been using the sign first. As held in the LUCEO judgment (Ibid at §115), bad faith exists, inter alia, where applications for trade marks are diverted from their initial purpose and are filed speculatively or solely with a view to obtaining financial compensation. The EUTM proprietor filed oppositions against the applicant's EUTM applications and delayed the proceedings through nonsensical restrictions of the goods of the EUTM for over 15 years. The EUTM proprietor and more particularly the person in control of this company, Mr E.A., has shown a pattern of speculatively filing trade marks which are already being used by third party companies, but which are still unregistered, or signs which follow a pattern of naming brands by other companies as per the evidence on file and the decisions and judgments cited. He does this by filing national marks in Austria and/or Germany, where filing fees are not necessary in order to secure a date of filing, then delaying the payment of the filing fee until it becomes necessary, or filing a new application securing a priority date from the previous application, until an EUTM is filed for an identical or similar mark, the target of the speculation, and then he files (or through one of his companies) an EUTM with a priority filing date and initiates opposition proceedings to block the EUTM of its target and then requests compensation for the sale thereof or waits for the other company to contact it to resolve the stalemate.

Taking into consideration all of the above, the Cancellation Division considers that the EUTM proprietor (Mr E.A.) must have been aware of the applicant's use of the sign 'TESLA' in relation to electric vehicles at the time of filing. As a result, Mr E.A. then filed the Austrian application to secure priority rights to the sign 'TESLA' without immediately paying the filing fee. He then waited until the applicant filed EUTM applications for signs containing 'TESLA' and then filed his own EUTM, the contested EUTM, and shortly afterwards paid EUR 100 as filing fees for the Austrian mark (whether that was a full or partial payment of the fee is undetermined and can be left open). Then, having secured the contested EUTM with a priority date (which was not properly substantiated as seen above) it attacked the applicant's EUTMAs in opposition proceedings. When the contested EUTM was then opposed it delayed the proceedings for over 15 years by carrying out restrictions of the goods which achieved no real aim (such as listing many very specific examples of goods to later delete them one by one) in order to avoid the EUTM being registered and to hinder and block the applicant's EUTMAs, thus amounting to an abuse of the trade mark system. When the applicant offered a settlement for EUR 5,000 to purchase the Austrian application and the contested EUTM to the EUTM proprietor in 2010 this offer was rejected as Mr E.A. considers that the sum should have been much higher. The EUTM proprietor has also complained that the applicant never approached it to try and buy the EUTM. This may be because the EUTM proprietor (Mr E.A.) thought it would look more suspicious if it (he) approached the applicant and waited for the applicant to come to the table. In any event, the EUTM proprietor did not intend to use the mark for the goods for which the mark was filed, and also admitted that he had no intention to produce or sell vehicles or the other contested goods but only to lease, sell or broker the mark to a third party in the relevant sector. Mr A.E., who initially filed the EUTM, states that he had no particular buyer/licensee lined up at the time (and even now, despite claiming he could sell the mark to a Chinese company), thus the mark was filed speculatively. As stated above, Mr A.E. was aware or must have been aware of the existence of the applicant's 'TESLA' brand at the time of filing and thus the applicant would have been his target to sell the mark. The EUTM proprietor (Mr A.E.) did not have any company who commissioned it or Mr E.A. to develop a mark and it had no practical use for the mark except to speculate its sale, all clearly proving the EUTM Proprietor's dishonest intentions at the time of filing. Considering all of the above, the Cancellation Division

considers that the EUTM was filed in bad faith and the EUTM proprietor has failed to put forward sufficiently convincing arguments or evidence to dispel this finding.

Conclusion

In the light of the above, the Cancellation Division concludes that the application is totally successful and the European Union trade mark should be declared invalid for all the contested goods.

COSTS

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

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

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



The Cancellation Division

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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 of appeal must be filed within four months of the same date. The notice of appeal will be deemed to be filed only when the appeal fee of EUR 720 has been paid.