

DECISION
of the Second Board of Appeal
of 7 April 2026

In case R 1175/2025-2

MNS, Ltd. dba ABC Stores

766 Pohukaina Street
96813 Honolulu, Hawaii
United States

EUTM Proprietor / Appellant

represented by ELZABURU, S.L.P., Edificio Torre de Cristal P.º de la Castellana 259C,
planta 28, 28046 Madrid, Spain

v

‘EUROCASH’ S.A.

ul. Wiśniowa 11
62052 Komorniki
Poland

Revocation Applicant / Defendant

represented by Sołtysiński Kawecki & Szłęzak - Kancelaria Radców Prawnych i Adwokatów,
ul. Jasna 26, 00-054 Warszawa, Poland

APPEAL relating to Revocation Proceedings No C 56 728 (European Union trade mark
registration No 2 084 408)

THE SECOND BOARD OF APPEAL

composed of C. Negro (Chairperson), S. Martin (Rapporteur) and H. Salmi (Member)

Acting Registrar: K. Zajfert

gives the following

Decision

Summary of the facts

- 1 By an application filed on 12 February 2001, MNS, Ltd. dba ABC Stores ('the EUTM proprietor') sought to register the word mark

ABC STORES

as a European Union trade mark (the 'EUTM') for the following services as limited on 25 January 2002 and 5 November 2002:

Class 35: Retail convenience services with the exception of shoe stores.

- 2 The application was published on 26 November 2001, and the mark was registered on 2 May 2003.
- 3 On 24 October 2022, 'EUROCASH' S.A. ('the revocation applicant') filed an application for a declaration of revocation of the registered mark for all the above services.
- 4 The grounds of the request for revocation were those laid down in Article 58(1)(a) EUTMR.
- 5 On 29 December 2022, the EUTM proprietor submitted evidence as proof of use, which was summarised by the Cancellation Division as follows:

- Exhibit 1: article published on 18/11/2021 on the website from CNBC Travel with information on the number of tourists from the EU visiting Hawaii.
- Exhibit 2: screenshots from the EUTM proprietor's website showing various goods offered for sale, for instance, coffee, chocolate, pancake mix, chips, cookies, perfumes, body lotions, soap, lip balm, fruit juices, peanut butter, candies, plates, glasses, bottles, candles, mugs, jars, keyrings, reusable bags, passport bags and books, and identified under different signs. The prices are indicated in US dollars. The sign



is displayed on the upper left-hand side of the website.

- Exhibit 3: screenshot from the EUTM proprietor's website with information on the international shipping policy. The information is in English and refers to shipments from the United States.
- Exhibits 4-9: invoices dated between 2017 and 2022 issued by ABC Stores and directed to customers located within the European Union, for example Austria, Belgium, Czech Republic, Finland, France, Germany, Ireland, Italy, the Netherlands,



Spain, Sweden and the United Kingdom. The invoices contain the sign on the upper left-hand corner and refer to various goods with prices indicated in US dollars.

- Exhibit 10: affidavit signed on 26/05/2022 by Ms T.I., Vice President and Chief Financial Officer of the company MNS, Ltd., dba ABC Stores. She indicates the total revenue of sales of ABC Stores on the European market between 2015 and 2020.
- Exhibit 11: table with information on the number of European visitors to Hawaii during 2022.

6 The revocation applicant argued that the contested mark has been registered for a vague term that lacks clarity and precision (i.e. *retail convenience services with the exception of shoe stores*) and thus this term should be interpreted as referring only to retail services provided on-site in convenience stores. The EUTM proprietor submitted evidence of the use of the contested mark, which relates only to the mail order services of various types of goods, which, however, did not fall within the nature of the services protected under the contested mark. Although these mail order sales services could be classified as similar to the services covered by the contested EUTM, the concept of similarity of goods and services is not a valid consideration within the context of assessment of genuine use. The convenience stores do not operate by mail order as they require a convenient access for potential customers, which entails the rapid acquisition of goods. To support its observations, the revocation applicant submitted printouts from *Wikipedia* concerning the term ‘convenience store’ and the EUTM proprietor’s company. Moreover, the EUTM proprietor has not shown that the use of the contested mark for the services covered in Class 35 is external and that it does not sell exclusively its own goods.

7 By decision of 21 December 2023, the Cancellation Division partially upheld the request for revocation and revoked the EUTM proprietor’s rights in respect of the contested EUTM as from 24 October 2022 with regard to the following services:

Class 35: Retail convenience services with the exception of retail convenience services in connection with cosmetics and toiletries, candles, air fresheners, magnets, jewellery, keyrings, printed matter and stationery, bags and other carriers, tableware, cookware and containers, beach towels, pillows, clothing and headwear, hair ornaments, decorations and foodstuffs.

8 The EUTM remained registered for the following services:

Class 35: Retail convenience services in relation with cosmetics and toiletries, candles, air fresheners, magnets, jewellery, keyrings, printed matter and stationery, bags and other carriers, tableware, cookware and containers, beach towels, pillows, clothing and headwear, hair ornaments, decorations and foodstuffs with the exception of shoe stores.

9 The Cancellation Division found that although the contested EUTM is registered for *retail convenience services* of a broad category of goods, which are not sufficiently clear and precise to enable to determine its scope of protection, it is possible to determine the precise scope of the EUTM proprietor’s services through proof of use (04/03/2020, C-155/18 P to C-158/18 P, BURLINGTON, EU:C:2020:151, § 136). Therefore, the contested EUTM is registered for services that can be offered not only in a fixed location, but through the internet, by catalogue or mail order. Although the goods offered are those that may be acquired on a day-to-day basis, this does not exclude the possibility of offering those goods via the internet for instance.

- 10 On 21 February 2024, the revocation applicant filed an appeal against the decision of 21 December 2023, requesting that the decision be partially set aside to the extent that the contested EUTM registration was allowed to remain registered.
- 11 The appeal was allocated the reference number R 443/2024-2.
- 12 The statement of grounds of the appeal was received on 26 April 2024. The revocation applicant referred to the evidence submitted at first instance and provided supplementary evidence for the first time before the Board in support of its interpretation of the vague term contained in the specification of services of the contested signs, consisting of:
 - Attachment No 1: printouts from the TSDR database maintained by the USPTO relating to US trade marks ‘ABC STORES’ No 73 765 012, No 73 765 693 and No 76 077 033 belonging to the EUTM proprietor.
- 13 In its response received on 1 July 2024, the EUTM proprietor requested that the appeal be dismissed and to confirm the decision of 21 December 2023. The EUTM proprietor submitted the following documents before the Board in reply to the supplementary evidence submitted by the revocation applicant.

- Attachment 1:

Excerpt obtained from the database of the French Trade mark Office (INPI) containing information on the EUTM proprietor’s French trade mark registration No 3 119 396 ‘ABC STORES’ for *access to online sales site* in Class 35. According to the EUTM proprietor, this document concerns a trade mark registration for the same sign ‘ABC STORES’ in France filed at almost the same time as the contested mark, which shows that the intention was to sell goods under the sign ‘ABC STORES’ irrespective of the form of sale.

Excerpts obtained from the database of the United States Trade mark Office (USPTO) featuring information on US trade mark registration No 2 693 113 ‘ABC STORES’, filed on 29/05/2002 in respect of on-line retail convenience store services; mail order catalogue services featuring items relating to Hawaii in Class 35. According to the EUTM proprietor, this document shows that its intention for its ‘ABC STORES’ marks was never to restrict the retail services to those provided exclusively through physical stores.

- 14 By decision of 2 October 2024, in appeal R 443/2024-2, the Second Board of Appeal annulled the Cancellation Division’s decision of 21 December 2023, remitted the case to the Cancellation Division for further examination; ordered the reimbursement of the appeal fee and each party to bear their own costs. The contested EUTM was filed in 2001 and registered in 2003, that is before the Praktiker judgment was delivered in 2005 thus the case-law cannot be applied retroactively (11/10/2017, C-501/15 P, CACTUS OF PEACE CACTUS DE LA PAZ (fig.) / CACTUS, EU:C:2017:750). Although *retail convenience services* do not include a list of the goods that are ‘retailed’, this has no impact on the outcome of the case. The contested mark is registered in relation to *retail convenience services with the exception of shoe stores*. The Board found that *retail convenience services* is unclear, vague and lacks clarity and indeed requires an interpretation. Does the addition of the word ‘convenience’ to the words ‘retail services’ imply that the goods are retailed (sold) in a physical store or that they may be purchased online as the evidence of

use shows in the present case? The interpretation of the services shall be conducted as of the date of application of the contested EUTM. The Cancellation Division did not address this issue and conducted the review of the evidence of use as if the contested EUTM would be registered for *retail services*: ‘Retail services allow consumers to satisfy different shopping needs in one place and are usually directed at the general consumer. They can take place in a fixed location, such as a department store, supermarket, boutique or kiosk, or in the form of non-shop retailing, such as through the internet, by catalogue or mail order’ (page 7 of the decision). The Cancellation Division did not discuss the literal meaning of the word ‘convenience’, in particular when used in conjunction with the word ‘retail’, and did not refer to any common dictionary of the English language, such as the *Oxford English Dictionary*, the *Cambridge Dictionary* and the *Collins Dictionary*, nor did it assess the meaning of that word in everyday language as mandated by the case-law. The Cancellation Division should have interpreted the expression ‘retail convenience services’ in the context of the specific exclusion of ‘shoe stores’, which in common parlance are likely to refer to ‘physical stores’. Consequently, the lack of reasoning in the cancellation decision constituted a breach of its duty to state reasons pursuant to Article 94(1)(1) EUTMR and a substantial procedural error. In view of the foregoing, the contested decision is annulled.

- 15 By decision of 2 May 2025 (‘the contested decision’), the Cancellation Division upheld the application for a declaration of revocation and as of 24 October 2022 the contested EUTM registration was revoked in its entirety. The Cancellation Division gave, in essence, the following grounds for its decision.

Assessment of genuine use

- The assessment was focused on the evidence of use for the relevant registered services.
- The contested EUTM is registered for *retail convenience services with the exception of shoe stores* in Class 35.
- The revocation applicant argued that the contested EUTM is registered for a vague term that lacks clarity and precision, and thus it should be interpreted in its most natural and usual meaning as referring only to retail services provided on-site, in convenience stores. The Board, in its decision of 2 October 2024, R 443/2024-2, concurred with the revocation applicant, cf. Article 33(5) EUTMR (13/05/2015, T-169/14, Koragel / CHORAGON, EU:T:2015:280, § 49). The interpretation of the goods and services shall be conducted as of the date of application of the contested EUTM, that is, 12 February 2001.
- According to the following definitions appearing in the *Oxford* and *Cambridge Dictionaries*, the expression ‘convenience store’ refers to ‘[A] small local shop; (now) esp. one with extended opening hours, stocking a limited range of household goods and groceries’; and ‘a shop that sells food, drinks, etc. and is usually open until late’. From these definitions, it can be inferred that the services provided from a convenience store require a local or physical establishment.
- There is no reason to believe that these definitions did not exist at the time the contested EUTM was filed.

- Retail is defined as ‘[t]he action or business of selling goods in relatively small quantities for use or consumption rather than for resale’ (see *Oxford English Dictionary*). Therefore, the use of the word ‘convenience’ in conjunction with the word ‘retail’ does not change the meaning of the expression ‘convenience store’ mentioned above. Bearing in mind all these definitions, the expression *retail convenience services* shall be interpreted as referring to ‘a small local shop with extended opening hours selling goods in relatively small quantities for use or consumption’.
- The EUTM proprietor referred to various convenience stores listed in the extract from *Wikipedia* submitted by the revocation applicant (see Annex 1, in particular 7-Eleven, Oxxo or Biggie, which sell a wide variety of goods both in physical stores and online). Therefore, according to the EUTM proprietor, *retail convenience services* refer to the type of products that are marketed, and not the way in which these goods are sold.
- It is true that the current reality and trends in the marketplace and the changing needs of consumers mean that the goods marketed by different companies are increasingly and more frequently purchased online or by telephone rather than physically. However, the concept of ‘convenience store’ in everyday language excludes this possibility. Hence, the contested EUTM is considered to be registered for services that can be offered in a fixed location, and not through the internet, by catalogue or mail order. Therefore, the EUTM proprietor’s claims in this regard are dismissed.
- Since the contested EUTM was registered before the date of delivery of the ‘Praktiker Bau’ judgment (07/07/2005, C-418/02, Praktiker, EU:C:2005:425, § 50), the obligation arising from that judgment does not apply.
- Moreover, the Board considered that the Cancellation Division should also have interpreted the expression *retail convenience services* in the context of the specific exclusion of ‘shoe stores’, which in common parlance are likely to refer to ‘physical stores’ (02/10/2024, R 443/2024-2, ABC STORES, § 24). In this regard, the Cancellation Division considers that a convenience store could possibly offer some form of footwear, for instance, flip flops or sandals, particularly in those shops close to the coast. To this extent, the limitation included in the wording of services protected by the contested EUTM excludes the sale of footwear and corroborates that *retail convenience services* in relation to which the contested EUTM is registered, consist of services offered in physical establishments.
- The EUTM proprietor claimed before the Board that its intention when filing the contested EUTM was never to restrict the retail services to those provided exclusively through physical stores. To support this argument, it submitted excerpts obtained from the INPI and the USPTO (Attachment 1) with information on the EUTM proprietor’s French trade mark registration No 3 119 396 ‘ABC STORES’ registered for *access to online sales site services* in Class 35, and US trade mark registration No 2 693 113 ‘ABC STORES’, registered for *on-line retail convenience store services; mail order catalog services featuring items relating to Hawaii* in Class 35.
- The scope of protection of the contested EUTM cannot be interpreted based on the indication of services covered by the EUTM proprietor’s other trade marks, even if

filed on the same date. Consequently, the EUTM proprietor's arguments are dismissed.

- On the basis of the former dictionary definitions, it is considered that the services in relation to which the contested EUTM is registered consist in bringing together, and offering for sale, a wide variety of different goods, especially household goods and groceries, thus allowing consumers to conveniently satisfy different shopping needs from a local shop with extended opening hours. The examination of the application for revocation continues on this basis.
- The EUTM proprietor argued that the services provided under the contested EUTM are offered both physically and online from the stores located in Hawaii, one of the most popular tourist destinations in the world (Exhibit 1), and one of the most visited US destinations among EU tourists (Exhibit 11).
- According to the EUTM proprietor, the goods to which the *retail convenience services* are applied, identified under the contested EUTM, are essentially goods of Hawaiian origin, oriented and directed to tourists. Moreover, all the products are accessible to consumers within the EU through its website, abcstores.com (Exhibits 2-3). The printouts from the EUTM proprietor's website show a variety of goods identified under different signs that are offered for online sale, also to international clients.
- The EUTM proprietor submitted an affidavit (Exhibit 10) indicating the total revenue of sales of ABC Stores on the European market between 2015 and 2020. To support the information contained in the affidavit, the EUTM proprietor submitted invoices dated between 2017 and 2022 (Exhibits 4-9), which show a constant online sale of various goods (cosmetics, toiletries, candles, air fresheners, magnets, jewellery, keyrings, printed matter, stationery, bags, tableware, cookware, containers, beach towels, pillows, clothing, headwear, hair ornaments, decorations and foodstuffs) to various clients within the EU. All the invoices contain a reference to the shipping fee/delivery charge.
- The EUTM proprietor argued that the invoices show the purchases made by consumers residing in the EU for products that were shipped to the corresponding addresses in the EU territory. However, the contested EUTM does not cover retail services offered through the internet, by catalogue or mail order. Therefore, the services in relation to which the evidence shows that the contested EUTM has been used do not fall within the category for which the contested services are registered.
- According to the EUTM proprietor, since Hawaii is one of the most visited US destinations among EU tourists, the services provided under the contested EUTM from the shops located in Hawaii target not only US consumers, but also consumers originating from the EU. However, there is no evidence that might show the acquisition of goods from the shops located in Hawaii by EU consumers.
- Consequently, the evidence, taken as a whole, does not provide sufficient information to demonstrate that the contested EUTM has been genuinely used on the market for the relevant registered services in Class 35.

- An overall assessment of the evidence does not allow the conclusion, without resorting to probabilities and presumptions, that the EUTM was genuinely used during the relevant period for the relevant services.
 - The finding that genuine use has not been proven in the present case is not due to an excessively high standard of proof, but to the fact that the EUTM proprietor chose to restrict the evidence submitted.
 - Consequently, the EUTM proprietor has not proved genuine use of the contested EUTM for the services for which it is registered. As a result, the application for revocation is wholly successful and the contested EUTM must be revoked in its entirety.
- 16 On 1 July 2025, the EUTM proprietor filed an appeal requesting that the contested decision be entirely set aside.
- 17 On 2 September 2025, the statement of grounds of the appeal together with additional evidence was received, consisting of the following attachments:
- Attachment 1: copy of the limitation request of EUTM No 2 084 408 ‘ABC STORES’ filed on behalf of the EUTM proprietor on 5 November 2002;
 - Attachment 2: General Court judgment issued on 17 October 2019 in case T-279/18, AXICORP ALLIANCE (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:752);
 - Attachment 3: extract obtained from the public search tool provided by ICANN with information on the domain name ‘abcstores.com’;
 - Attachment 4: compilation of excerpts from the EUTM proprietor’s website, www.abcstores.com, obtained via the Wayback Machine.
- 18 On 7 November 2025, the revocation applicant submitted its observations in reply together with additional evidence, consisting of printouts from an internet archive website concerning definitions of the words ‘convenience store’, ‘retail’, ‘shop’ and ‘store’ provided in 2001 *Oxford and Longman English dictionaries*.

Submissions and arguments of the parties

- 19 The arguments raised in the statement of grounds may be summarised as follows.
- The literal and natural meaning of the wording registered under the EUTM, *retail convenience services with the exception of shoe stores* in Class 35, is sufficiently precise and clear and enable both the competent authorities and economic operators to easily determine the mark’s scope of protection. Furthermore, the substantial amount of evidence of use submitted allows for a precise determination of the subject matter and extent of protection, as correctly concluded in the cancellation decision of 21 December 2023. Therefore, the list of services covered by the EUTM may be readily understood from its literal and most natural meaning without having to resort to forced, artificial and arbitrary interpretation.

- The contested decision erroneously concluded that the evidence of use did not fulfil the ‘nature of use’ factor, as it does not demonstrate that the EUTM has been used for services registered in Class 35. The argument that the registered *retail services* in Class 35 must be provided through a store and that, according to the meaning of ‘convenience store’ in common language, such retail services are required to be rendered through physical premises or establishments, is disputed.
- The interpretation made by the Cancellation Division is incorrect. The registered services in Class 35 are *retail convenience services with the exception of shoe stores* not *retail convenience store services with the exception of shoe stores* as interpreted by the Cancellation Division. The heading does not contain the term ‘store’. The EUTM is registered for *retail convenience services*.
- The Cancellation Division erred in its interpretation and did not provide any solid reasoning or relevant evidence to support its interpretation, thereby failing to meet its obligation to sufficiently justify and substantiate its conclusions. The contested decision has not provided any arguments that led it to interpret *retail convenience* as *retail convenience store*.
- The Cancellation Division found that the word ‘convenience’ in conjunction with ‘retail’ changes its meaning to *retail convenience store services*, however, no supporting arguments were provided. This conclusion unjustifiably restricts the protection of the EUTM by limiting it solely to ‘retail sale of products carried out exclusively through physical stores’. This led to an erroneous conclusion that the evidence of use submitted is not valid to prove use for the registered services.
- The Cancellation Division incorrectly justified its interpretation by relying solely on dictionary definitions of ‘convenience store’. However, the EUTM is not registered for *convenience store services*, and the inclusion of the word *convenience* does not modify *retail convenience* to mean *retail convenience store*. The contested services do not contain the word ‘store’ after *convenience*, hence, these dictionary definitions are not applicable.
- The Cancellation Division’s further statement that the limitation filed excluding *shoe stores* from the list of services, confirms that the registered retail services consist exclusively of services offered through physical establishments, is contested. The Cancellation Division argued that ‘shoe stores’ in common parlance are likely to refer to ‘physical stores’, and that there are convenience stores located in coastal areas where footwear is offered for sale, such as flip flops or sandals. However, no solid reasoning or evidence was provided.
- The Cancellation Division interpreted the wording in Class 35 without considering the presence of the term *retail*, which means, ‘the action or business of selling goods in relatively small quantities for use or consumption rather than for resale’ and established that the wording was modified to *retail convenience store services* due to the inclusion of the word *convenience*. However, *retail*, which was ignored in the analysis, by its own definition covers the retail sale of products by any means (offline, online, by catalogue, or by phone), hence, the registered *retail convenience services* refer to the sale of a very wide variety of goods and not to the manner in which the goods are sold. If it is ultimately considered that the EUTM is registered for *retail*

convenience store services, it is important to point out that the Office also erred by attributing an erroneous meaning to the term ‘convenience store’.

- The contested decision relied solely on the definitions of ‘convenience store’ available in the *Cambridge* and *Oxford* dictionaries to conclude that the registered retail services necessarily require the sale of goods through a physical store, and not online or by other means. This conclusion is incorrect.
- On the basis of the definitions applied by the Cancellation Division, it cannot be concluded – either now or at the time of filing in 2001 – that genuine use of the EUTM requires goods to be sold exclusively through a physical establishment. Even if the EUTM is not protected for *retail services*, the term ‘convenience store’ refers to a business where goods and services may be purchased without restriction as to the sales method, whether physical or online.
- In the absence of any explicit specification or reference, use of the EUTM must be considered proven through sales conducted online or by other means (see attached examples). In fact, the *Wikipedia* extract provided by the revocation applicant clearly states that the EUTM covers ‘convenience products’, confirming that, if the wording is to be interpreted as referring to *convenience store services*, it does not refer to the manner of sale, nor to the type of products sold:

Products [edit]

The stores sell convenience items such as groceries, as well as tourist items and souvenirs. The chain's best-selling items are tourist-oriented products such as Macadamia nuts, sunscreen and sunglasses. [citation needed]

- For this type of products, the initial cancellation decision issued on 21 December 2023, concluded that serious and genuine use of the EUTM in the EU had been demonstrated and it was found that the EUTM was effectively used in relation to retail sale of goods through ‘convenience stores’, which cannot be conducted in any other manner but through a physical establishment, and argued that the concept of ‘convenience store’ in everyday language requires that the retail services are provided from a physical establishment. This assertion was not supported by conclusive evidence.
- By contrast, it has demonstrated through definitions from various dictionaries that there is no requirement for sales to occur exclusively through physical means (the sales channel does not determine the concepts or their meaning). The term ‘convenience store’ in common parlance, is not defined by the manner in which products are sold (online or offline), but rather by the type of products sold.
- The contested decision stated that the limitation of the mark’s wording by excluding *shoe stores* confirmed the meaning it attributes to the registered services (that they can only be provided physically), arguing that, by its concept, ‘shoe stores’ in common parlance are likely to refer to ‘physical stores’. However, the limitation was only filed due to an agreement reached with a third party and it did not limit the protection of the EUTM to retail services provided solely through physical stores. The intention was always to protect *retail convenience services* without *store*, which was not part of the original heading of the EUTM and only added to settle and conclude the opposition

proceeding initiated by a third party, which was dedicated to the sale of shoes (see Attachment 1).

- The Office simply stated that *shoe stores* refer to ‘physical stores’ without supporting its conclusion with any evidence or information. This statement lacks not only an etymological basis but also a logic. On which grounds and evidence did the Cancellation Division conclude that *shoe stores* are likely to refer only to ‘physical stores’?
- For decades, shoe stores have sold their products through multiple channels and online sales are simply a natural extension of these physical means, which have existed since at least 2001 when the EUTM was filed. In fact, the physical sale of shoes is becoming increasingly less common due to significant changes in consumer behaviour and retail practices. Advances in e-commerce technology have allowed shoe retailers to reach consumers directly through online platforms, offering greater convenience, wider product selections, and competitive pricing. There are many companies that sell their products exclusively online (e.g. ASOS or ZAPPOS). By contrast, this limitation of the registered services clearly shows that the Cancellation Division made an incorrect interpretation of the wording, as otherwise, the limitation would not have been accepted by the Office, since *footwear* is not a typical product sold in a ‘convenience store’. Therefore, the limitation would have been inadmissible, as it would entail excluding protection for services related to the sale of products that were never covered by the original list.
- As the Office concluded that the wording of the list of registered services in Class 35 was not sufficiently clear, or presented interpretative issues, it should have taken into account other relevant factors essential to understanding the scope of the specification, namely, the actual intention of the EUTM proprietor at the time of filing the application, which was not done by the Cancellation Division. Although the sales strategy of a company and the way it markets its goods and/or offers its services depend solely on its own business decisions, it should be borne in mind that the EUTM proprietor has been marketing products online for many decades and before 2001, which clearly shows that its intention has never been to limit the retail registered services just to those provided through physical establishments (see Attachment 2, referring to 17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T2019:752) .
- The EUTM proprietor’s intention when filing the EUTM was never to restrict the retail services to those provided exclusively through physical stores, and this has been amply demonstrated at first instance. The fact that the EUTM proprietor sought protection for its ‘ABC STORES’ mark in the EU, despite all of its physical stores being based in the United States, clearly demonstrates that its intentions 24 years ago was to operate on the European market through online sales of its products and not exclusively through physical stores. If that had been the intention, physical premises or stores would have been opened in the EU.
- The EUTM proprietor registered the domain name ‘abcstores.com’ on 29 May 1998, through which it has been operating its website <https://abcstores.com/> and marketing its products online. It is indisputable that the intention was not to narrow the scope of retail services to only those provided through physical stores (see Attachment 3).

Furthermore, a selection of excerpts from the website www.abcstores.com, obtained via the Wayback Machine is provided (see Attachment 4). All this evidence accurately reflects the exact content of the EUTM proprietor's website before 2001 and, therefore, demonstrates that it has been selling its products online prior to the EUTM's filing date. Moreover, the Wayback Machine shows the website's activity of the website www.abcstores.com by year and displays the number of times it was archived in different years. These graphs demonstrate that the EUTM proprietor has been selling its products online at least since 1998, which is three years before the filing date of the EUTM and proves that the intention was never to restrict the protection of its marks to the sale of products through physical stores, which would be absurd since online sales form part of its core business. Screenshots are submitted in support of its claim.

- The evidence submitted clearly demonstrates that the EUTM proprietor's intention, at the time of filing of the EUTM, was to protect 'retail sales of products' and not to 'exclude online sales services' from protection, which would be absurd. The case-law and teachings of the judgment 17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:752 should be applied to the present case.
- All the arguments and evidence submitted serve to demonstrate that all the proof of use already submitted meets the essential factor of the 'nature of use', as it relates to the services registered in Class 35 and thus, the EUTM must remain registered for *retail convenience services with the exception of shoe stores* in Class 35.

20 The arguments raised in response to the appeal may be summarised as follows.

- In the present case, it has consistently been held that the registered services are unclear and vague, and this has not previously been challenged by the EUTM proprietor.
- When the disclaimer *with the exception of shoe stores* was added, the wording *and drug store* was deleted. If it were to be considered that, as a result of this amendment to the list, the services covered were extended to any *retail convenience services*, and not only to those provided by 'convenience stores' or 'drug stores' as originally applied for, such a limitation would have been made in breach of Article 49(2) EUTMR.
- The EUTM proprietor's reasoning as regards the correct interpretation of the registered services is contradictory and inconsistent with their position presented at an earlier stage.
- The two elements *convenience* and *drug* were linked by the conjunction 'and' and not by exclusive disjunction. Therefore, the element *store* should not have been interpreted as referring only to the latter as *retail drug store services* but as *retail convenience store services*. Furthermore, the term 'drugstore' is correctly written as one word. By separating the word *store*, the EUTM proprietor intended to refer this element also to the term *convenience*. Also, the translation of these terms into other languages of the Office confirms that it refers to retail services provided through a specific distribution channel, physically accessible convenience stores, and not to retail services in general.

- In relation to the EUTM proprietor's US marks serial No 73 765 012, No 73 765 693 and No 76 077 033, in view of the requirement under the US trade mark system to file periodic declarations of the extent of use of the mark, the EUTM proprietor, at the time of the subsequent renewal, amended the identical-sounding lists by deleting *and drug* and restricting them to *retail convenience store services*.
- The EUTM proprietor's argument as regards the Cancellation Division's misinterpretation of the meaning of the term *retail convenience services* in Class 35 by relying on dictionary definitions, must be dismissed.
- According to the relevant case-law, vague and unclear terms must be interpreted narrowly (see also *EUIPO Guidelines*, Part C, Opposition, Section 2, Double identity and likelihood of confusion, Chapter 2, Comparison of goods and services; 14/07/2003, R 559/2002-4, *MOBILIX / OBELIX*, § 17; 02/02/2015, R 391/2014-4 *POWERMATIC / POWRMATIC et al.*, § 29, 33). In line with these Guidelines, the terms *convenience store* and *retail* were interpreted in their most natural and literal meaning. The definitions in question do not explicitly state that *retail* or *convenience store* refer to the sale of goods online or by mail order. Consequently, they cannot be interpreted as referring to methods of use/distribution channels. The EUTM proprietor is attempting to interpret these terms too broadly, which is unacceptable given their vagueness and unclear nature.
- In everyday language, people tend to use more precise terms such as 'online shop/store' or 'online retail' when purchasing goods online or recommending a website to friends.
- The definitions listed in the contested decision of the terms 'convenience store', 'retail', 'shop' and 'store' are correct, attached is a supplement of these definitions (see Attachment 1). This evidence is, on the face of it, relevant to the outcome of the case and merely supplements the definitions already provided by the Cancellation Division in the contested decision, and it should, therefore, be considered admissible under Article 27(4) EUTMDR.
- The EUTM proprietor's argument that the term 'convenience store' is '(...) not defined by the manner in which products are sold (online or offline), but rather by the type of products sold', is based on a logical fallacy. It is precisely the type of activity carried out by convenience stores (i.e. easily accessible, local, usually small neighbourhood shops with prolonged opening hours) that causes them to offer a specific range of products.
- The EUTM proprietor claimed that its intention when filing the EUTM was never to restrict the retail services to those provided exclusively through physical stores and referred to its French and US trade marks. However, this argument is unconvincing and based on contradictory reasoning. The French mark relates to the term *providing access to an online sales site* in Class 38, those services are different from *retail services* in Class 35. Therefore, this is irrelevant as it concerns different services. The US mark is later than the EUTM and it is, therefore, not possible to infer an earlier intention.

- According to the EUTM proprietor, the term included in the original specification, consisting of *retail convenience and drug store services* was also intended to cover online retail services, retail by mail orders, etc. In fact, it already had an earlier registered US word mark ‘ABC STORES’, No 73 765 012, with a priority date from 1998, covering the same services. However, why did the EUTM proprietor apply for the identical word mark ‘ABC STORES’, registration No 2 693 113, if those services were supposed to be covered by an earlier registration? If one were to accept the EUTM proprietor’s reasoning that *retail convenience and drug store services* also covers online retail services, mail order, etc. – then why did the EUTM proprietor make a subsequent filing for an identical word mark ‘ABC STORES’ covering *on-line retail convenience store services; mail order catalog services featuring items relating to Hawaii* in Class 35? Therefore, when the EUTM proprietor applied for protection of the ‘ABC STORES’ marks for *retail convenience and drug store services*, it did not assume that this term would cover services subsequently encompassed by its US registration. The previously submitted printout from *Wikipedia* explicitly describes the EUTM proprietor as ‘a chain of convenience stores based in Honolulu’ (see Attachment 2, 17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:752, § 52). Hence, all the above confirms that the EUTM proprietor’s initial intention was to narrow the scope of registered retail services to include only those provided on-site through *convenience stores* (and *drugstores*, which were later deleted).
- If the EUTM proprietor’s proposed interpretation of the term *retail convenience services, with the exception of shoe stores* were to be accepted, the introduction of the disclaimer *with the exception of shoe stores* would have to be assessed as inadmissible. Such a disclaimer would seek to exclude services (and related goods) from the list that are not explicitly covered by it. If the disclaimer were to apply to the general category of *retail services*, it should read *with the exception of retail services concerning footwear* rather than arbitrarily referring to *shoe stores*. The interpretation of the term *retail convenience services* as proposed by the EUTM proprietor does not define an objectively identifiable service (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:752, § 44 and the case-law cited). However, the concept of *retail convenience store services* is clearer because the term *convenience store* has an established customary meaning.

Reasons

- 21 The appeal complies with Articles 66, 67 and Article 68(1) EUTMR. It is admissible.

Evidence submitted for the first time before the Board

- 22 Together with the statement of grounds, the EUTM proprietor submitted further evidence not presented in the proceedings before the Cancellation Division. This evidence consists of Annex 3, containing an extract from the ICANN public search tool regarding the registration of the domain name ‘abcstores.com’ dating back to 1998, and Annex 4, containing screenshots from the *Wayback Machine* showing the activity of the EUTM proprietor’s website and the online sale of products on various dates prior to and following the filing date of the contested mark (2001).

- 23 In turn, together with its observations in response, the revocation applicant submitted Annex 1, containing extracts from the 2001 *Oxford* and *Longman* English dictionaries with definitions of the terms ‘convenience store’, ‘retail’, ‘shop’ and ‘store’.
- 24 According to Article 95(2) EUTMR and Article 27(4) EUTMDR, the Board of Appeal may accept facts or evidence submitted for the first time before it if they are, on the face of it, likely to be relevant for the outcome of the case; and they have not been produced in due time for valid reasons, in particular where they are merely supplementing relevant facts and evidence which had already been submitted in due time, or are filed to contest findings made or examined by the first instance of its own motion in the decision subject to appeal.
- 25 Those same principles are reiterated in Article 54(1) BoA-RP, according to which such facts or evidence may also not be disregarded if they were not available before or at the time the contested decision was taken or are justified by any other valid reason.
- 26 In the present case, the additional evidence submitted by the EUTM proprietor is filed specifically to contest the interpretation of the scope of services (*retail convenience services*) made by the Cancellation Division in the contested decision and to support the claim regarding the nature of use (online sales). Similarly, the evidence submitted by the revocation applicant supplements the debate regarding the literal meaning of the controversial terms at the time of filing. These pieces of evidence are, *prima facie*, relevant for determining the correct interpretation of the list of services and, consequently, the outcome of the case.
- 27 In view of the above considerations, the Board decides to admit the new evidence into the proceedings.
- 28 Nevertheless, the Board stresses that the *prima facie* relevance of the evidence submitted before the Board does not imply that it is conclusive for the outcome of the present case.

Revocation for non-use (Article 58(1)(a) EUTMR)

- 29 Pursuant to Article 58(1)(a) EUTMR, the rights of the proprietor of the EUTM shall be declared revoked on application to the Office, if, within a continuous period of five years, the trade mark has not been put to genuine use in the European Union in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use. However, that article provides that no person may claim that the proprietor’s rights in a trade mark should be revoked where, during the interval between expiry of that period and filing of the application for revocation, genuine use of the trade mark has been started or resumed.
- 30 As stated by the General Court, the rationale for the requirement that a mark must be the subject of genuine use in order to be protected under EU law is that the EUIPO’s register cannot be compared to a strategic and static depository granting an inactive proprietor a legal monopoly for an unlimited period; on the contrary, that register must faithfully reflect what companies actually use on the market to distinguish their goods and services in economic life (23/09/2020, T-677/19, Syrena, EU:T:2020:424, § 90).
- 31 There is ‘genuine use’ of a trade mark where the mark is used in accordance with its essential function, which is to guarantee the identity of the origin of the goods or services

for which it is registered, in order to create or preserve an outlet for those goods or services; genuine use does not include token use for the sole purpose of preserving the rights conferred by the mark (11/03/2003, C-40/01, *Minimax*, EU:C:2003:145, § 43; 19/12/2012, C-149/11, *Onel / Omel*, EU:C:2012:816, § 29; 14/04/2016, T-20/15, *Piccolomini*, EU:T:2016:218, § 42). In addition, the condition relating to genuine use of the trade mark requires that the mark, as protected in the relevant territory, is used publicly and outwardly (11/03/2003, C-40/01, *Minimax*, EU:C:2003:145, § 37; 18/01/2011, T-382/08, *Vogue*, EU:T:2011:9, § 27; 05/02/2020, T-44/19, *TC Touring Club (fig.) / TOURING CLUB ITALIANO et al.*, EU:T:2020:31, § 52).

- 32 The purpose of the requirement that the contested mark must have been put to genuine use is not to assess commercial success or to review the economic strategy of an undertaking, nor is it intended to restrict trade mark protection to the cases of large-scale commercial use (26/09/2013, C-609/11 P, *Centrotherm*, EU:C:2013:1449, § 72; 29/11/2018, C-340/17 P, *ALCOLOCK*, EU:C:2018:965, § 90; 13/10/2021, T-1/20, *INSTINCT*, EU:T:2021:695, § 33).
- 33 The actual objective of the requirement of use is therefore not so much to determine precisely the extent of the protection afforded to the earlier trade mark by reference to the actual goods or services using the mark at a given time, as to ensure more generally that the mark was actually used for the goods or services in respect of which it was registered (14/07/2005, T-126/03, *ALADIN / ALADDIN*, EU:T:2005:288, § 43).
- 34 When assessing whether use of the trade mark is genuine, regard must be had to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark is real, particularly whether such use is viewed as warranted in the economic sector concerned to maintain or create market share for the relevant goods or services, the nature of those goods or services, the characteristics of the market and the scale and frequency of use of the mark (11/03/2003, C-40/01, *Minimax*, EU:C:2003:145, § 38, 39; 19/12/2012, C-149/11, *Onel / Omel*, EU:C:2012:816, § 29).
- 35 Furthermore, this overall assessment of all the factors must take into account their interdependence; therefore, a low volume of goods marketed under the trade mark may be compensated for by a high intensity or a certain consistency over time of the use of that trade mark or vice versa. In addition, the turnover and the volume of sales of goods marketed under the contested mark cannot be assessed in absolute terms but must be looked at in relation to other relevant factors, such as the volume of business, production or marketing capacity or the degree of diversification of the undertaking using the mark and the characteristics of the goods or services on the relevant market. As a result, use of the mark at issue need not always be quantitatively significant in order to be deemed genuine; even minimal use can therefore be sufficient to be deemed genuine, provided that it is viewed as warranted in the economic sector concerned in order to maintain or create a market share for the goods or services protected by the mark (08/07/2004, T-203/02, *Vitafruit*, EU:T:2004:225, § 42; 02/02/2016, T-171/13, *MOTOBIL PESARO*, EU:T:2016:54, § 72).
- 36 Finally, genuine use of a trade mark cannot be proved by means of probabilities or suppositions, but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned (12/12/2002, T-39/01, *Hiwatt*, EU:T:2002:316, § 47; 13/06/2019, T-398/18, *DERMAEPIL SUGAR EPIL SYSTEM (fig.) / dermépil Perron Rigot (fig.)*, EU:T:2019:415, § 56; 23/09/2020, T-677/19, *Syrena*,

EU:T:2020:424, § 44; 02/03/2022, T-140/21, apo-discounter.de (fig.), EU:T:2022:110, § 20).

Assessment of the evidence of use

- 37 The evidence submitted must be assessed all together and not individually (24/11/2021, T-551/20, Riviva / Rivella, EU:T:2021:816, § 31). Although Article 10(3) EUTMDR refers to indications concerning the four elements to which proof of genuine use must relate, namely, the place, time, nature and extent of use, and gives examples of acceptable evidence in that regard, such as packages, labels, price lists, catalogues, invoices, photographs, newspaper advertisements and statements in writing, that rule does not state that each item of evidence must necessarily give information about all of the four elements in question (24/11/2021, T-551/20, Riviva / Rivella, EU:T:2021:816, § 27 and the case-law cited).
- 38 Indeed, although each of those items of evidence, taken individually, would be insufficient to constitute proof of the accuracy of those facts, the evidence taken together may establish the necessary facts (16/11/2011, T-308/06, BUFFALO MILKE Automotive Polishing Products (fig.) / BÚFALO (fig.), EU:T:2011:675, § 61; 24/05/2012, T-152/11, Mad, EU:T:2012:263, § 33, 34; 14/12/2022, T-636/21, eurol LUBRICANTS (fig.) / Eurollubricants, EU:T:2022:804, § 99 and the case-law cited). Proof of genuine use must therefore be established by taking into consideration all the evidence submitted (19/04/2013, T-454/11, AL BUSTAN / ALBUSTAN, EU:T:2013:206, § 36-37).
- 39 Pursuant to Article 10(3) EUTMDR, the indications and evidence of use must establish the place, time, extent and nature of use of the contested trade mark for the goods and services for which it is registered.
- 40 In the present case, the revocation applicant has not challenged the Cancellation Division's findings regarding the place, time, and extent of use of the contested mark. Similarly, regarding the nature of use, the findings regarding the use of the sign as a trade mark in the course of trade, and in a form that does not alter its distinctive character, have not been disputed. The Board sees no reason to depart from the Cancellation Division's assessment on these points. Accordingly, the evidence on file is considered sufficient to establish those facts.
- 41 The Board therefore refers to and endorses the findings of the contested decision in relation to the place, time and extent of use to avoid unnecessary repetition, which thus make up an integral part of the reasons for the present decision (13/09/2010, T-292/08, Often, EU:T:2010:399, § 48).
- 42 The only factor contested in this appeal concerns the nature of use, and specifically whether the evidence submitted by the EUTM proprietor demonstrates use **in relation to the registered services**. The Cancellation Division considered that the evidence did not suffice because, in its view, *retail convenience services* require provision from physical convenience stores, whereas the evidence showed only online and mail order sales. It is this specific legal interpretation and its application to the facts that constitutes the sole subject matter of the Board's examination.

Nature of Use

- 43 The expression ‘nature of use’ includes evidence of the use of the sign as a trade mark in the course of trade, of the use of the mark as registered, or of a variation thereof according to Article 18(1)(a) EUTMR, and of its use for the goods and services for which it is registered.
- 44 As noted in the previous section, insofar as the revocation applicant has not challenged the Cancellation Division’s findings concerning use of the sign as a trade mark in the course of trade or use of the mark as registered, the only aspect of the nature of use that remains in dispute in this appeal is whether the mark has been used for the services for which it is registered.

Use of the mark for the services for which it is registered

- 45 In accordance with Article 18 EUTMR, the mark must be used for the goods or services for which it is registered to be enforceable. If a trade mark has been registered for a category of goods or services that is sufficiently broad to be divided into subcategories capable of being viewed independently, proof that the mark has been genuinely used in relation to a part of those goods or services affords protection only for the subcategory or subcategories to which the goods or services for which the trade mark has actually been used belong (11/04/2019, T-323/18, DARSTELLUNG EINES SCHMETTERLINGS (fig.), EU:T:2019:243, § 47).
- 46 The use of a mark must be such as to imply its real commercial exploitation and must seek to maintain or create a market share for the goods or services protected by the mark. In that regard, use of the contested EUTM must relate to goods or services that are either actually marketed or about to be marketed and for which the EUTM proprietor made an effort to secure customers. The breadth of the categories of goods or services for which the contested mark was registered is a key element of the balance between, on the one hand, the maintenance and preservation of the exclusive rights conferred on the proprietor of the contested mark and, on the other, the limitation of those rights in order to prevent a trade mark which has been used in relation to part of the goods or services being afforded extensive protection merely because it has been registered for a wide range of goods or services (16/07/2020, C-714/18 P, tigha / TAIGA, EU:C:2020:573, § 39; 02/03/2022, T-140/21, apo-discounter.de (fig.), EU:T:2022:110, § 22; 01/02/2023, T-772/21, efbet (fig.), EU:T:2023:36, § 60).
- 47 It is apparent from Article 18(1) and Article 58(1)(a) EUTMR that the requirement that there be genuine use of the contested EUTM must concern the goods or services ‘in respect of which it is registered’; those provisions do not indicate that use of a mark in connection with goods or services similar to those in respect of which it is registered can be regarded as genuine use of the mark at issue (28/06/2023, T-645/22, CS jeans your best fashion partner, EU:T:2023:363, § 37-39).

The commercial activity of the EUTM proprietor

- 48 According to the EUTM proprietor, MNS Ltd. dba ABC Stores, it operates a chain of convenience stores in Hawaii. Its customers in the European Union are predominantly tourists who visit the physical ABC Stores while in Hawaii and, after returning home,

continue to purchase Hawaiian convenience goods online from the EUTM proprietor's website abcstores.com. This business model – physical discovery in Hawaii followed by online re-ordering in the EU – was already in operation when the mark was filed in 2001.

The central issue of the dispute

- 49 The central issue in this appeal is whether the evidence of online and mail-order sales of convenience goods to consumers in the European Union constitutes genuine use of the contested mark for the services for which it is registered, namely *retail convenience services with the exception of shoe stores*.
- 50 The revocation applicant argues that the scope of protection must be interpreted strictly in light of the market reality at the time of filing (2001). It contends that, at that time, online retail was not yet a standard delivery channel for 'convenience services' or 'convenience store services', which were historically and linguistically tied to physical premises. Consequently, since the specification does not expressly recite 'online retail' or 'mail order', the revocation applicant submits that the use that has been proved – which involves exclusively distance selling, mainly online – cannot constitute use for the registered specification. In the revocation applicant's view, if the EUTM proprietor wished to cover these distinct services, it should have filed a new application specifically for 'online retail services', rather than attempting to retroactively extend the scope of a registration designed for physical stores.
- 51 In contrast, the EUTM proprietor argues that the term 'retail' defines a commercial activity based on the sale of goods in small quantities to consumers, regardless of the specific technical means or channel used to conclude the transaction. It contends that the specification *retail convenience services* is broad enough to encompass the natural evolution of trade, where digital platforms have become a standard substitute for physical proximity. To rule otherwise, the EUTM proprietor asserts, would be to artificially freeze the scope of the mark in 2001 and deny protection to the legitimate modernisation of its business model.
- 52 Consequently, the question raised by the present case is whether the scope of protection for a trade mark registered for *retail convenience services* prior to the Praktiker judgment (07/07/2005, C-418/02, Praktiker Bau- und Heimwerkermärkte, EU:C:2005:425) must be retroactively restricted to the dominant sales channel at the time of filing (physical stores), or whether – in view of the evolution of market practices – such a specification must be interpreted dynamically to encompass the provision of those same services through modern online channels.

Interpretation of the specification retail convenience services

- 53 As this Board observed in its remittal decision of 2 October 2024 (R 443/2024-2), the term *retail convenience services* is unclear and vague and therefore requires interpretation. This lack of clarity stems not from grammatical ambiguity in how the words should be parsed, but rather from the semantic vagueness of *retail convenience services* as a concept. The Cancellation Division was therefore correct to undertake an interpretation of this specification, but the Board disagrees with the interpretation it adopted.

a) Applicable legal principles for interpretation of service specifications

- 54 The list of goods and services must be interpreted in the most coherent manner, in light of its literal meaning and grammatical construction, but also, if there is a risk of an unreasonable result, of its context and the actual intention of the proprietor (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:751, § 50; 05/06/2024, T-58/23, BIG MAC, EU:T:2024:346, § 86).
- 55 The scope of the specification must be assessed as at the date of filing of the application (07/12/2018, T-471/17, EDISON, EU:T:2018:890, § 34; 11/10/2017, C-501/15 P, EUIPO v Cactus, EU:C:2017:750, § 44-49).
- 56 Where a specification is unclear or vague, it must be interpreted strictly, and any difficulties should go to the detriment of the party relying on it (09/03/2011, R 863/2011-G, Matla Cross, § 55; 20/02/2014, C-301/13 P, Club Gourmet, EU:C:2014:144, § 66). Moreover, the proprietor of an EU trade mark should not gain from the infringement of its obligation to indicate services with clarity and precision (06/04/2017, T-39/16, NANA FINK, EU:T:2017:235, § 48; 18/10/2018, T-533/17, nuuna, EU:T:2018:663, § 62).
- 57 The revocation applicant has relied heavily on AXICORP ALLIANCE (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:751) as its principal authority in support of strict interpretation and narrow construction of the specification. The Board will address the specific applicability of that judgment after examining the specification at issue and the interpretive principles and issues it raises.

b) The contested mark is a pre-Praktiker registration

- 58 Before examining the principles applicable to interpreting the specification *retail convenience services*, it is necessary to establish the temporal context in which this mark was filed and registered, as this context is material to the interpretive approach to be adopted.
- 59 The contested mark was filed on 12 February 2001 and registered on 2 May 2003, predating the judgment of the Court of Justice in Praktiker (07/07/2005, C-418/02, Praktiker, EU:C:2005:425). The requirement laid down in that judgment that retail services must identify the goods to which they relate applies only to applications filed after 7 July 2005 and does not apply retroactively (11/10/2017, C-501/15 P, EUIPO v Cactus, EU:C:2017:750, § 44-49).
- 60 Pre-Praktiker registrations therefore benefit from broader specifications that were accepted under the practice prevailing at the time of filing, and they should not be subjected to requirements or interpretive restrictions that were imposed only after their registration. The legitimate expectations of proprietors who filed in accordance with the requirements in force at the time must be respected, and specifications should not be narrowed retroactively based on standards that did not exist when the applications were filed.
- 61 This temporal context informs the Board's approach to interpreting the specification *retail convenience services*. While the mark must still be interpreted according to the natural and usual meaning of the terms used, the Board must do so with due regard to the broader

practice that prevailed at the time of filing and without imposing interpretive restrictions derived from subsequent legal developments.

c) Principles for determining the natural and usual meaning of service specifications

- 62 Article 33(2) EUTMR provides that the goods and services for which protection is sought must be identified with sufficient clarity and precision. It is settled case-law that the scope of protection of an EU trade mark is defined by the natural and usual meaning of the terms chosen (19/06/2012, C-307/10, IP TRANSLATOR, EU:C:2012:361, § 49; 07/12/2018, T-471/17, EDISON, EU:T:2018:890, § 34).
- 63 To determine this natural and usual meaning, each term must be examined individually from the perspective of the relevant public. This assessment relies on grammatical interpretation, definitions given in dictionaries and encyclopaedias, the Nice Classification, and the commercial language of traders (Office Guidelines, Part B, Section 3, 4.2.1 and Part C, Section 2, Chapter 2, 1.5.2.1).
- 64 Furthermore, pursuant to Article 33(5) EUTMR, general terms must be interpreted as including all goods and services clearly covered by their literal meaning.
- 65 The interpretation of services must also account for commercial reality. This requires examining the nature and purpose of the services, their method of use, and how they are understood in trade (14/05/2013, T-249/11, Représentation d'un poulet / SANCO, EU:T:2013:238, § 21; 23/10/2024, T-605/23, VINATIS / VINITUS et al., EU:T:2024:717, § 39). Naturally, to constitute a genuine service, it must be offered to third parties and generally involve economic consideration (30/09/2016, T-355/15, ASTEX / ALPEX, EU:T:2016:591, § 37).
- 66 In the specific context of retail services, the Court of Justice has established that the objective of retail trade is the sale of goods to consumers. This includes all activity carried out by the trader to encourage the conclusion of a transaction, such as selecting an assortment of goods and offering services aimed at inducing the consumer to purchase from that trader rather than a competitor (07/07/2005, C-418/02, Praktiker, EU:C:2005:425, § 34; 04/03/2020, C-155/18 P – C-158/18 P, BURLINGTON / BURLINGTON ARCADE et al., EU:C:2020:151, § 124). While the Praktiker requirement to specify the goods sold does not apply retroactively to this 2001 mark, the Court's functional definition of what constitutes a 'retail service' remains fully applicable.
- 67 Accordingly, in interpreting the specification *retail convenience services*, the Board must determine its natural and usual meaning by evaluating the literal terms used, their commercial perception, and the essential objective of retail services (bringing goods to consumers), all viewed through the lens of the broader interpretive approach applicable to pre-Praktiker registrations.

d) The Explanatory Note to Class 35 (7th Edition) and the unchanging essence of retail services

- 68 The contested EUTM was filed on 12 February 2001, when the 7th Edition of the Nice Classification governed. It is apparent from the Explanatory Note to Class 35 applicable at that time that the concept of retail services rests on three essential and unchanging

characteristics. Firstly, their purpose is the sale of goods to consumers; secondly, they are addressed to the consumer with a view to enabling them to conveniently view and purchase those goods; and thirdly, they are provided for the benefit of others. In the 7th Edition, this core concept was expressly defined as ‘the bringing together, for the benefit of others, of a variety of goods (excluding the transport thereof), enabling customers to conveniently view and purchase those goods’.

- 69 The current Explanatory Note does not alter that essence in any way. It merely adds, by way of non-exhaustive examples reflecting evolving market practices, that such services ‘may be provided by retail stores, wholesale outlets, through vending machines, mail order catalogues or by means of electronic media, **for example, through websites** or television shopping programmes’ (emphasis added).
- 70 In other words, the fundamental understanding of retail services that existed at the time the contested mark was filed in 2001 already encompassed the provision of those services through **whatever** channel enables consumers conveniently to view and purchase the goods. This principle regarding the multiple channels of retail is therefore not a development that post-dates the Praktiker judgment (07/07/2005, C-418/02, Praktiker, EU:C:2005:425); rather, it directly reflects the commercial reality of 2001 and has been consistently recognised in subsequent case-law (04/03/2020, joined cases C-155/18 P to C-158/18 P, BURLINGTON, EU:C:2020:151, § 125; 23/10/2024, T-605/23, VINATIS, EU:T:2024:717, § 49).

e) The revocation applicant’s interpretation of the specification

- 71 Before examining the literal meaning and construction of the specification, it is necessary to identify the specific arguments advanced by the revocation applicant in support of its contention that *retail convenience services* must be interpreted as limited to services provided from physical convenience stores.
- 72 The revocation applicant advances two principal arguments regarding the interpretation of the specification. First, it contends that the word ‘store’ should be read as implicitly present in the specification despite its deletion in 2002, on the basis that the original specification ‘retail convenience **and drug store** services’ (emphasis added) created a distributive grammatical effect whereby ‘store’ modified both ‘convenience’ and ‘drug’. According to this argument, the deletion of ‘and drug store’ did not sever this grammatical link, and the specification should continue to be understood as ‘retail convenience [store] services’. Second, the applicant argues that the exclusion *with the exception of shoe stores* confirms that the specification refers to physical retail premises, since ‘shoe stores’ naturally refers to physical establishments and the exclusion would only make sense in the context of physical convenience stores that might otherwise sell footwear.
- 73 The EUTM proprietor contests both arguments, submitting that they artificially narrow the specification contrary to its plain wording and disregard the commercial reality of retail services. The Board examines each contention in turn, beginning with the question of the literal meaning and grammatical construction of the specification.

f) *Literal meaning and grammatical construction of the specification*

- 74 The specification as registered reads *retail convenience services with the exception of shoe stores*. It is significant that the specification does not read *retail convenience store services*.
- 75 The word ‘store’ appears only in the exclusion (‘shoe stores’), not in the main description of the services for which protection is sought.
- 76 The revocation applicant claims that, when the contested trade mark was originally filed, it covered *retail convenience and drug store services*. In that regard, it contends that the conjunction ‘and’ created a distributive effect, so that the word ‘store’ grammatically modified both ‘convenience’ (as ‘convenience store’) and ‘drug’ (as ‘drug store’).
- 77 Following the limitation request of 5 November 2002 made in the context of a settlement agreement reached with the opponent ANWR GROUP eG during opposition proceedings, the wording ‘and drug store’ was deleted and the exclusion ‘with the exception of shoe stores’ was added.
- 78 After this amendment, the specification became *retail convenience services with the exception of shoe stores*. The question is therefore whether, following deletion of ‘and drug store’, the word ‘store’ should still be read as implicitly present in the specification (i.e. as if it read *retail convenience store services*), or whether the specification as amended should be interpreted according to its actual wording (*retail convenience services*).
- 79 The EUTM proprietor submits that the purpose of these amendments – comprising both the deletion of ‘and drug store’ and the addition of the footwear exclusion – was solely to narrow the substantive scope of the services in order to settle the opposition with ANWR GROUP eG. By carving out drug store services and footwear retail, the EUTM proprietor aimed to avoid conflict with the opponent’s rights over those specific sectors, and not to define or restrict the sales channels through which the remaining *retail convenience services* would be provided.
- 80 The revocation applicant argues that, despite this deletion, the term ‘store’ should still be read as implicitly present in the specification. It contends that in the original construction the word ‘store’ had a distributive effect modifying both ‘convenience’ and ‘drug’. Therefore, in the revocation applicant’s view, the removal of ‘drug store’ did not alter the nature of the remaining element, which should still be understood conceptually and grammatically as ‘*retail convenience [store] services*’.
- 81 In response, the EUTM proprietor counters that this interpretation artificially rewrites the specification by reading back into it a term that was expressly removed. It asserts that the deletion of the phrase ‘and drug store’ severed any prior grammatical link, completely eliminating the noun ‘store’ from the positive description of the services. Consequently, the EUTM proprietor argues that the specification must be interpreted literally as it currently stands on the Register – *retail convenience services* – without interpolating deleted text to arbitrarily restrict the scope of protection to physical premises.
- 82 The Board acknowledges that the original specification as filed could be open to some ambiguity as regards the distributive effect of the term ‘store’. Nevertheless, following the limitation of 5 November 2002, the phrase ‘and drug store’ was deleted and the

specification must therefore be interpreted exactly as it now stands on the Register: *retail convenience services*, not *retail convenience store services*.

- 83 Even if it was accepted (contrary to the clear wording now on the Register) that the term ‘store’ remains implicitly present, this would not assist the revocation applicant. As explained below (see section h), even under that reading the essence of ‘convenience store services’ does not lie in the physical character of any premises. What defines retail convenience store services is the nature of the goods offered (everyday items purchased frequently and with minimal effort) and the provision of easy, rapid access to those goods for the consumer. As will be further explained below, that essential character is fully capable of being satisfied through online platforms and mail-order channels, which have become a standard and natural means of delivering precisely such convenient retail services.
- 84 This understanding finds support in the EUTM proprietor’s corresponding United States registration for the same mark, which expressly covers ‘online retail convenience store services’ (Serial No 76 077 033). While not binding upon EU authorities, this suggests that the provision of services through online channels can be encompassed within the broader category of ‘retail convenience store services’ even when the word ‘store’ is expressly included in the specification. It indicates that the distinction between physical and digital storefronts relates to the medium of delivery, rather than altering the fundamental nature of the services as originally registered.
- 85 Turning to the actual words on the Register, the word ‘retail’ means ‘the action or business of selling goods in relatively small quantities for use or consumption rather than for resale’ (*Oxford English Dictionary* definition cited by the Cancellation Division at page 7 of the contested decision). This definition encompasses retail sales generally and does not specify any particular sales channel or physical location.
- 86 The word ‘convenience’ in the context of retail can have two possible meanings: it may refer adjectivally to convenience stores as a type of retail establishment, or it may describe the character or purpose of the retail services themselves (i.e. convenient retail services, or retail services relating to convenience goods, which are everyday goods purchased frequently and with minimal effort).
- 87 The word ‘services’ refers to the retail services themselves, not to a physical location from which they are provided.
- 88 The Cancellation Division relied heavily on dictionary definitions of the term ‘convenience store’ as referring to ‘a small often franchised market that is open long hours’ (information extracted from *Merriam-Webster* on 19/02/2026 at <https://www.merriam-webster.com/dictionary/convenience%20store>) or ‘a shop that sells food, drinks, etc. and is usually open until late’ (information extracted from *Cambridge Dictionary* on 19/02/2026 at <https://dictionary.cambridge.org/dictionary/english/convenience-store>), and concluded from these definitions that convenience stores must be physical establishments and therefore *retail convenience services* must be provided from physical premises.
- 89 However, the Board considers that this reasoning is flawed for several reasons: first, the specification does not contain the term ‘convenience store’ but rather *retail convenience services*; second, even if one were to interpret ‘retail convenience’ as implicitly referring to convenience store services, the essence of what makes a store a ‘convenience’ store is

not the physical nature of the premises but rather the type of goods sold (everyday household goods and groceries) and the ease and speed of access provided to consumers; third, as will be explained below, both the type of goods and the convenience of access can be provided through online retail channels as well as through physical stores.

g) The exclusion ‘with the exception of shoe stores’

- 90 The Cancellation Division placed weight on the exclusion *with the exception of shoe stores*, noting that ‘shoe stores’ in common parlance are likely to refer to physical stores. It reasoned that since a convenience store – particularly one located near the coast – might typically sell basic footwear such as flip-flops or sandals, the specific exclusion of footwear retail corroborates that the *retail convenience services* protected by the contested mark must consist of services offered in physical establishments.
- 91 The EUTM proprietor challenges this finding, arguing that this exclusion was introduced solely as a result of a settlement agreement with a third party (ANWR GROUP e.G.) during previous opposition proceedings. According to the EUTM proprietor, the aim was simply to carve out the retailing of footwear to resolve the conflict, not to restrict the sales channels through which its own services could be provided. Furthermore, the EUTM proprietor points out that ‘shoe stores’ currently operate through multiple channels, including exclusively online.
- 92 The Board finds merit in the EUTM proprietor’s arguments. Regardless of the specific subjective intent of the parties when drafting that settlement agreement in 2002, the Board must assess the objective meaning of the resulting text. The mere presence of the term ‘shoe stores’ in the exclusion does not automatically compel a physical-only interpretation of the remaining services.
- 93 As the EUTM proprietor correctly notes, in modern commerce, the term ‘shoe stores’ is frequently used to designate footwear retailers irrespective of their distribution channel, with many well-known companies operating exclusively online. Therefore, it cannot be safely inferred from the use of the word ‘stores’ in the limitation that the non-excluded services must be provided exclusively from brick-and-mortar establishments.
- 94 Rather, the exclusion can be reasonably understood as a practical shorthand used to carve out a specific market sector – the retailing of footwear – from the scope of protection. Consequently, the Board finds that the exclusion *with the exception of shoe stores* does not provide a solid basis for concluding that the remaining *retail convenience services* are strictly limited to physical convenience stores.
- 95 Having addressed the revocation applicant’s two principal arguments regarding the interpretation of the specification – namely, the distributive effect of ‘store’ in the original specification and the significance of the exclusion of ‘shoe stores’ – the Board now turns to examine the core definitional question: what does the term *retail convenience services* mean, and whether this concept inherently require that services be provided from physical premises. This requires examining the meaning of ‘convenience’ in the retail context and determining whether distinctions based on sales channels are legally relevant to the interpretation of retail service specifications.

h) The meaning of ‘convenience’ – definitional analysis

- 96 The EUTM proprietor argues that the concept of ‘convenience’ in retail is not strictly tied to a physical location, but is functionally defined by the ease of access to everyday goods – a model that naturally encompasses online sales. It contends that the Cancellation Division erred by ignoring the evolution of the retail landscape and artificially restricting the services to brick-and-mortar stores.
- 97 In contrast, the revocation applicant submits that the term *retail convenience services* must be interpreted in accordance with the ordinary meaning of ‘convenience store’ at the time of filing in 2001, when such establishments were understood as small physical shops offering everyday goods with extended opening hours. According to the revocation applicant, online retail was not yet a defining characteristic of ‘convenience’ in 2001, and extending the specification to cover online channels would improperly broaden the scope of protection beyond what was contemplated at registration.

The parties’ positions on dictionary definitions

- 98 More specifically, the EUTM proprietor submits that the definition of ‘convenience store’ refers to a ‘shop’ but does not include, as a requirement, that the sale of goods must necessarily take place in physical premises. The EUTM proprietor contends that the distinction made in the definitions of ‘convenience store’ upon which the Cancellation Division based its conclusions concerns the type of products sold, not the manner in which they are sold. In that regard, it submits that the definitions on which the Cancellation Division relied do not include a requirement that sales must be exclusively and necessarily physical.
- 99 The revocation applicant responds that the EUTM proprietor’s argument that the definitions do not indicate any requirement for services to be provided on-site is irrelevant. It submits that the definitions do not explicitly state that ‘retail’ or ‘convenience store’ refer to the sale of goods online or by mail order, and that the EUTM proprietor is attempting to interpret the term broadly, which is deemed unacceptable given its vagueness and unclear nature. The revocation applicant provides definitions from several dictionaries of the terms ‘convenience store’, ‘retail’ and ‘shop’ from 2001, arguing that these clearly refer to physical locations where goods are stored, offered and sold.

The Board’s assessment of the dictionary dispute

- 100 The Board considers that the revocation applicant’s reliance on English dictionaries from 2001 does not support its position for several reasons. First, while historical English dictionaries may have primarily described physical shops (reflecting the dominant market practice at the time), dictionary definitions describe typical examples and common usage, not exhaustive or limiting requirements. A definition stating that a convenience store is ‘a shop that sells food, drinks, etc. and is usually open until late’ describes what convenience stores typically were in practice, not the only manner in which the underlying function – providing convenient access to everyday goods – can be performed. Dictionary definitions reflect observed market practice; they do not create legal limitations on the scope of service specifications.

- 101 Second, although physical stores were the dominant or typical form of convenience retail in 2001, this does not mean that the **concept** of convenience retail was inherently limited to that form. The question is not what form convenience stores usually took in 2001, but rather what essential characteristics define the service of *retail convenience services*. If those essential characteristics (providing everyday goods with ease of access) can be satisfied through multiple channels, then the specification encompasses those channels regardless of what was predominant at the time of filing.
- 102 Third, and critically, a comparative analysis of how ‘convenience store’ and its equivalents are defined across various official languages of the European Union reveals that the functional characteristics are consistent across languages, while the emphasis on physical location varies. This suggests that the functional elements – everyday goods, extended availability, ease of access – are the defining characteristics of the concept, while physicality is a contingent feature of historical practice rather than an inherent definitional requirement.

‘Convenience store’ in EU languages

- 103 Examining the definitions across EU languages, the Board observes that they consistently emphasise the nature of the goods and their extended availability rather than requiring a specific physical structure.
- 104 In Spanish, a *tienda de conveniencia* sells ‘a variety of everyday items’ with extended hours exceeding 18 hours a day, 365 days a year (information extracted on 24/02/2026 from *Diccionario Panhispánico del Español Jurídico* of the Real Academia Española at <https://dpej.rae.es/lema/tienda-de-conveniencia> and Wikipedia at https://es.wikipedia.org/wiki/Tienda_de_conveniencia). Similarly, the Portuguese *loja de conveniência* is defined as an establishment selling ‘various goods for immediate consumption’ with ‘extended hours’ (information extracted on 24/02/2026 from *Priberam* at <https://dicionario.priberam.org/loja%20de%20conveni%C3%Aancia> and *Infopédia* at <https://www.infopedia.pt/dicionarios/lingua-portuguesa/loja>).
- 105 In other languages, the focus is on neighbourhood proximity and essential goods: the German *Nachbarschaftsladen* (neighbourhood shop) (information extracted on 24/02/2026 from *dict.cc* at <https://m.dict.cc/deutsch-englisch/Nachbarschaftsladen.html>); the French *commerce de proximité*, selling ‘essential necessities’ (information extracted on 24/02/2026 from *L’Internaute* at <https://www.linternaute.fr/dictionnaire/fr/definition/commerce-de-proximite/>); and the Finnish *lähikauppa*, a ‘small grocery store serving local residents’ (information extracted on 24/02/2026 from *Suomi Sanakirja* at <https://www.suomisanakirja.fi/lähikauppa> and *Sanakirja.org* at <https://www.sanakirja.org/search.php?id=895813&l2=3>).
- 106 The common thread across all these linguistic definitions – everyday goods, extended availability, ease of access – describes the **function** of convenience retail, not a requirement of physical premises. While these definitions historically originated from physical neighbourhood shops, the underlying concept of ‘proximity’ in modern retail is not merely geographical but also functional. Online retail brings the shop directly to the consumer’s home or device, thereby offering an enhanced form of ‘proximity’ and ‘convenience’ by eliminating the need for the consumer to travel to a physical location. A

consumer can access goods from their home at any time of day or night, which provides greater temporal accessibility than even the most extended physical store hours.

Conclusion on the meaning of ‘convenience’

107 Accordingly, the Board concludes that the term *retail convenience services* must be interpreted functionally. The essence of such services lies in providing everyday household goods and groceries to consumers with a high degree of accessibility and availability. This functional definition is not legally or factually restricted to provision from brick-and-mortar establishments. The concept of ‘convenience’ refers to the ease and speed with which consumers can access the goods they need, not to a requirement that such access be provided from a physical location.

i) *The irrelevance of sales channel distinctions – commercial reality and case-law*

108 Having determined that ‘convenience’ in retail services is defined functionally rather than by reference to physical premises, the Board now addresses whether the distinction between physical and online retail channels is relevant to the interpretation of service specifications in the present context.

109 In the recent VINATIS judgment (23/10/2024, T-605/23, VINATIS / VINITUS et al., EU:T:2024:717, § 48), the General Court stated that ‘it would be artificial to proceed to a distinction between retail services according to their mode of delivery’. The Court recalled the statement of Advocate General Hogan in WALLAPOP (25/06/2020, C-763/18 P, WALLAPOP, EU:C:2020:497, § 90) that ‘the traditional distinction between retail establishments selling to customers in a physical store, on the one hand, and entities carrying out direct online sales, on the other hand, has been attenuated in recent years – almost to the point of being reduced to nothing – both due to technological developments and changes in consumer behaviour’.

110 As Advocate General Hogan observed at paragraph 46 of his Opinion in WALLAPOP (25/06/2020, C-763/18 P, WALLAPOP, EU:C:2020:497), ‘the traditional distinction between consumer retail establishments in physical premises, on the one hand, and entities engaged in direct online sales, on the other, has become blurred (and has almost disappeared entirely) in recent years due both to technological evolution and to changed consumer behaviour patterns’.

111 This principle is not a novel development but reflects the understanding that already existed at the time the contested mark was filed. The Explanatory Note to Class 35 of the Nice Classification, even in its 7th Edition (in force 1997-2001), defined retail services as ‘the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase those goods’. As noted in section d) above, the current Explanatory Note merely illustrates that such services ‘may be provided by retail stores, wholesale outlets, through mail order catalogues or by means of electronic media, for example, through websites’ (04/03/2020, C-155/18 P – C-158/18 P, BURLINGTON / BURLINGTON ARCADE et al., EU:C:2020:151, § 125). The multi-channel nature of retail services was thus already inherent in the concept in 2001.

Market reality: multi-channel practice

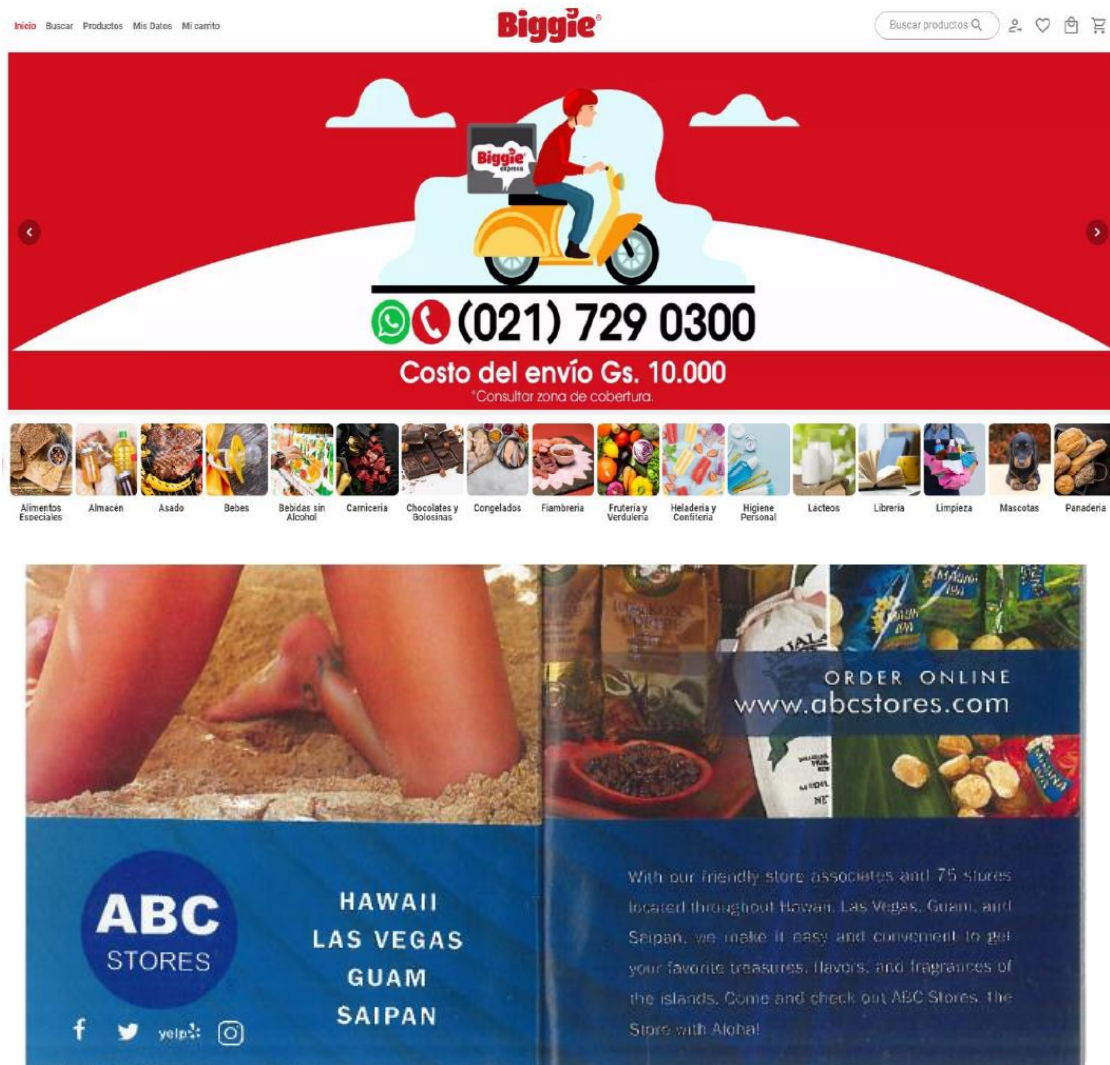
- 112 The EUTM proprietor submits that major convenience store chains have adapted to modern consumer expectations by offering online ordering and delivery services. In support of this contention, the EUTM proprietor submitted evidence showing that chains such as 7-Eleven (an international chain operating globally), Oxxo (a chain widely established in Latin America and Mexico) and Biggie (a chain located in Paraguay) operate through a combination of physical retail and the provision of goods via online channels and delivery services. These examples, although mainly from outside the European Union, illustrate how this multi-channel approach has become common practice in convenience retail:

<https://7collection.com/>



<https://www.oxxo.co/domicilios>





- 113 The revocation applicant does not dispute this market reality. In its observations in response, it acknowledges that ‘companies originally operating convenience store chains have expanded into online sales via delivery apps such as Uber and Glovo’. However, the revocation applicant contends that these current market practices are irrelevant to interpreting a mark filed in 2001, when ‘e-commerce was still in its infancy and the idea of mobile applications enabling grocery deliveries from local convenience stores was unforeseen’.
- 114 In the Board’s view, the revocation applicant’s acknowledgment that convenience stores now routinely operate through delivery platforms such as Uber and Glovo is relevant. This reflects a market reality that is, moreover, a matter of common knowledge: apps like Uber and Glovo are used not only in connection with restaurants but also with convenience retail and local stores to deliver everyday goods to customers. The multi-channel operation of convenience retail – combining physical locations with online ordering and delivery – has become standard commercial practice.
- 115 The revocation applicant’s argument that this evolution is ‘irrelevant’ to interpreting the specification misconceives the nature of the interpretive exercise. As the Board has established in sections h) and i) above, the term *retail convenience services* must be interpreted functionally based on the essential characteristics of the services (providing

everyday goods with ease of access), not based on the dominant sales channel at a particular point in time. Although retailers now facilitate and manage sales via their own websites, and delivery apps like Uber and Glovo have made multi-channel convenience retail even more widespread, this does not mean that such services were outside the scope of the specification when it was filed in 2001. Rather, it demonstrates that the function of convenience retail – bringing everyday goods to consumers in an accessible, efficient manner – can be and is performed through multiple channels, and that this multi-channel approach reflects the natural evolution of how the same service is delivered.

Application to the present case and conclusion

- 116 It follows from the above that the essential service of retailing convenience goods to consumers remains the same whether it is provided through a physical store or through an online platform. What has changed over time is the means of delivery, not the nature or purpose of the service itself.
- 117 The Board therefore concludes that the Cancellation Division erred in law by interpreting *retail convenience services* as limited to services provided from physical convenience stores. This interpretation is inconsistent with case-law establishing that it would be artificial to proceed to a distinction between retail services according to their mode of delivery (23/10/2024, T-605/23, VINATIS / VINITUS et al., EU:T:2024:717, § 48), ignores the commercial reality in which convenience retail operates through multiple channels, disregards the functional definition of ‘convenience’ established through comparative linguistic analysis, and would undermine the stability of the register by requiring proprietors to file new applications each time a new distribution channel emerges.
- 118 The specification encompasses the provision of everyday goods to consumers in an accessible manner, regardless of whether that provision occurs through physical premises, online platforms, mail order, or other retail channels.
- 119 Having established that *retail convenience services* encompasses online channels based on the term’s natural meaning, comparative linguistic analysis, commercial reality, and case-law, the Board now addresses the competing invocations of AXICORP ALLIANCE (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:751) by both parties.

j) The limited applicability of AXICORP ALLIANCE to the present case

- 120 Both parties have relied on the judgment in AXICORP ALLIANCE (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:751) to support opposing conclusions regarding the correct interpretation of the specification.
- 121 The revocation applicant invokes the principles established in that judgment to argue that the interpretation proposed by the EUTM proprietor – encompassing online retail – would lead to an absurd or nonsensical result. Specifically, it argues that reading *retail convenience services* broadly and divorced from physical premises would render the specific formulation of the exclusion (‘with the exception of shoe stores’) nonsensical. It also contends that such an interpretation ignores the context of the 2002 limitation, where the deletion of ‘and drug store’ allegedly confirmed the physical nature of the remaining

‘convenience’ element. Furthermore, the revocation applicant argues that defining the scope of protection by purely subjective criteria (i.e. what is deemed ‘convenient’) would lead to an absurd lack of legal certainty. Finally, relying on the AXICORP principle that requires assessing the EUTM proprietor’s actual intention, the revocation applicant submits that this intention must be evaluated strictly as of the filing date in 2001, when e-commerce was in its infancy – a fact allegedly corroborated by the EUTM proprietor’s subsequent filing of a separate US trade mark specifically covering ‘on-line retail convenience store services’.

- 122 Conversely, the EUTM proprietor relies on the same judgment to argue that it is the restrictive ‘physical-only’ interpretation that leads to an absurd result, as it would exclude the commercial reality of the business it actually intended to protect at the time of filing.
- 123 The Board considers it necessary to clarify the correct application of the principles established in that judgment and to determine which, if any, of these competing invocations of AXICORP ALLIANCE (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:751) is well-founded.
- 124 In AXICORP ALLIANCE (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:751), the specification at issue read: ‘Pharmaceutical preparations but not including infants’ and invalids’ foods **and** chemical preparations for pharmaceutical purposes’. The central issue was whether the exclusion ‘but not including’ applied only to the first category (infants’ and invalids’ foods) or to both categories (infants’ and invalids’ foods **and** chemical preparations for pharmaceutical purposes). This presented a case of genuine grammatical ambiguity: the absence of punctuation and the syntax created two literally equal ways to parse the sentence structure (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:751, § 36-37).
- 125 The General Court in AXICORP ALLIANCE (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:751) found that the specification could be read in two ways: either as excluding both categories, or as excluding only the first category while including the second. The Court held that both interpretations were literally possible based on the text alone, but that the interpretation that excluded ‘chemical preparations for pharmaceutical purposes’ would lead to an absurd result, because it would exclude the proprietor’s entire actual product line (pharmaceutical chemical preparations) while covering only goods never contemplated by the proprietor (herbal remedies) (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:751, § 45, 52).
- 126 In essence, the General Court further held at paragraph 50 that the proprietor’s intention becomes relevant only ‘if there is a risk of an absurd result’, and that the Board of Appeal ‘must interpret the wording of the list of goods and services covered in the most coherent manner, in the light not only of its literal meaning and its grammatical construction, but also, **if there is a risk of an absurd result**, of its context and the actual intention of the mark’s proprietor as regards its scope’ (emphasis added) (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:751, § 50).
- 127 The present case is fundamentally different from AXICORP ALLIANCE (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:751) in several material respects.

- 128 First, there is no grammatical ambiguity in the present specification comparable to that which existed in AXICORP ALLIANCE (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:751). It is important to distinguish between **grammatical ambiguity** (where the text can be parsed in two equally plausible ways due to unclear syntax) and **semantic vagueness** (where the meaning of a term itself is unclear or evolving). In AXICORP ALLIANCE (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:751) the text as written could be parsed in two grammatically valid ways.
- 129 In the present case, the specification *retail convenience services with the exception of shoe stores* is grammatically clear. While there is debate about whether the deleted word ‘store’ remains implicitly present (see paragraph 78), this is an interpretive question about amendment effect, not grammatical parsing. The difficulty arises from the semantic vagueness of *retail convenience services* as a concept: it is unclear whether this term refers to services provided by convenience stores (implying physical premises), convenient retail services (describing the manner of service), or retail services for convenience goods (describing the product category). This vagueness necessarily leads to uncertainty about whether such services must be provided through physical premises or may encompass online channels. This is a question of interpreting a vague term in light of evolving market meaning, not grammatical parsing.
- 130 Second, neither interpretation produces an ‘absurd result’ in the specific sense contemplated by AXICORP ALLIANCE (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:751). In that case, the restrictive interpretation would have excluded the proprietor’s entire actual product line while covering only goods never contemplated (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:751, § 51-52). In the present case, the restrictive interpretation (physical stores only) would exclude the EUTM proprietor’s online EU sales, but it is not ‘absurd’ in the AXICORP sense: the EUTM proprietor does operate physical ABC Stores in Hawaii, so the registration would still cover a real commercial activity actually conducted. Conversely, the broader interpretation does not render the exclusion *with the exception of shoe stores* nonsensical – it simply removes footwear retail regardless of channel. Finally, understanding ‘convenience’ as a functional retail model (fast access to everyday goods) is a well-established objective commercial concept, not a ‘purely subjective’ criterion. Therefore, neither party’s invocation of ‘absurd result’ is persuasive in this regard.
- 131 Third, and critically, because the present case involves neither (1) grammatical ambiguity creating two equally plausible literal readings, nor (2) an absurd result whereby one interpretation would exclude the proprietor’s entire business, the EUTM proprietor’s subjective intention is not relevant as a decisive factor. As the General Court made clear in AXICORP ALLIANCE (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:751, § 50, 60), the proprietor’s intention becomes relevant only where both conditions are met, allowing intention to serve as a tiebreaker between grammatically equal readings.
- 132 Finally, the revocation applicant’s reliance on the principle that proprietors should not gain from unclear specifications (06/04/2017, T-39/16, NANA FINK, EU:T:2017:235, § 48) must be addressed. As AXICORP ALLIANCE (17/10/2019, T-279/18, AXICORP ALLIANCE / ALLIANCE et al., EU:T:2019:751, § 60) clarifies, this strict interpretive principle applies only when both possible literal interpretations are each equally plausible and predictable. Since that condition is not met here, the NANA FINK (06/04/2017,

T-39/16, NANA FINK, EU:T:2017:235) strict penalty does not dictate the narrowest possible interpretation.

133 Moreover, even if one were to accept the revocation applicant's argument that the word 'store' should be read as implicitly present in the specification (an argument which the Board has already addressed and rejected in section f) above), this alternative reading would not assist the revocation applicant. As the Board has established in sections h) and i) above, the concept of *retail convenience services* – or indeed *retail convenience store services* if 'store' were present – is defined functionally by the provision of everyday goods with ease of access, not by a requirement of physical premises. The distinction between physical and online channels relates to the mode of delivery, not to the nature of the services themselves. Consequently, whether the specification reads *retail convenience services* or 'retail convenience store services,' the outcome remains the same: online retail of convenience goods falls within the scope of the registered specification.

k) *Conclusion on the interpretation of retail convenience services*

134 For all the foregoing reasons, the Board concludes that the specification *retail convenience services with the exception of shoe stores* should be interpreted as covering retail services relating to the sale of convenience goods (everyday household goods and groceries) to consumers, provided through any commercial channel including physical stores, online platforms, mail order, or other means of retail distribution, with the exception of retail services relating to footwear.

Application to the evidence in the present case

135 The evidence submitted by the EUTM proprietor in the cancellation proceedings includes screenshots from its website www.abcstores.com showing various convenience goods offered for sale (including food, beverages, cosmetics, toiletries, clothing, accessories, souvenirs, household items, etc.), invoices for sales to customers located in multiple EU Member States during the relevant period from 24 October 2017 to 23 October 2022 (including Austria, Belgium, Czech Republic, Finland, France, Germany, Ireland, Italy, Netherlands, Spain, Sweden, and the United Kingdom prior to 1 January 2021), an affidavit providing information on total revenue from European sales, and information regarding international shipping policies.

136 This evidence demonstrates that the EUTM proprietor has used the contested mark in connection with online retail services relating to convenience goods sold to consumers in the European Union. The goods sold include typical convenience goods such as food products, beverages, toiletries, cosmetics, and everyday household items, as well as tourist-oriented products such as souvenirs, which fall within the broader category of convenience goods insofar as they are items that tourists purchase on an as-needed, immediate basis.

137 Under the interpretation of *retail convenience services* adopted by the Board above, the online retail services demonstrated by this evidence fall squarely within the scope of the registered specification. The services consist of retailing convenience goods to consumers through an online platform, enabling consumers to conveniently view, select, and purchase such goods for delivery to their homes or other locations. These services fulfil the essential

characteristics of *retail convenience services*: they bring convenience goods to consumers in an accessible, efficient, and convenient manner.

- 138 The Cancellation Division erred in law by concluding that such online retail services could not constitute use for *retail convenience services* because they were not provided from physical convenience stores. As explained above, the specification does not require provision from physical stores, and online retail of convenience goods is a form of retail convenience service within the meaning of the specification as correctly interpreted.
- 139 The Board is therefore satisfied that the evidence demonstrates use of the contested mark for the services for which it is registered, namely *retail convenience services with the exception of shoe stores* (interpreting that specification as covering online as well as physical retail of convenience goods, excluding footwear).

Conclusion on nature of use

- 140 Having concluded that the specification *retail convenience services with the exception of shoe stores* encompasses online retail services and that the evidence therefore demonstrates use for services within the scope of the registered specification, the Board must still examine whether genuine use has been proven for all retail convenience services covered by that specification or only for a subcategory thereof.
- 141 Where a consumer seeks to purchase a product or service within a narrowly and precisely defined category – one that does not allow for meaningful internal subdivisions – all goods or services falling within that category will be perceived as associated with the trade mark registered for it. In such a case, the trade mark continues to fulfil its essential function of guaranteeing the origin of the goods or services, and therefore it is sufficient for the trade mark proprietor to demonstrate genuine use of the mark in relation to only some of the goods or services within that homogeneous category (16/07/2020, C-714/18 P, tigha / TAIGA, EU:C:2020:573, § 42; 13/11/2024, T-559/23, S SKINS (fig.), EU:T:2024:800, § 50).
- 142 However, if a trade mark has been registered for a category of goods or services that is sufficiently broad to be divided into subcategories capable of being viewed independently, proof that the mark has been genuinely used in relation to a part of those goods or services affords protection only for the subcategory or subcategories to which the goods or services for which the trade mark has actually been used belong (11/04/2019, T-323/18, DARSTELLUNG EINES SCHMETTERLINGS (fig.), EU:T:2019:243, § 47; 16/07/2020, C-714/18 P, tigha / TAIGA, EU:C:2020:573, § 39).
- 143 The relevant criterion or criteria to apply in order to identify a coherent subcategory of goods or services capable of being viewed independently is that of the purpose and intended use (16/07/2020, C-714/18 P, tigha / TAIGA, EU:C:2020:573, § 44; 13/11/2024, T-559/23, S SKINS (fig.), EU:T:2024:800, § 53). By contrast, the nature of the goods at issue and their characteristics are not, as such, relevant with regard to the definition of subcategories of goods or services (13/11/2024, T-559/23, S SKINS (fig.), EU:T:2024:800, § 54 and the case-law cited).
- 144 In the present case, the specification *retail convenience services with the exception of shoe stores* is sufficiently broad that it can be divided into subcategories capable of being viewed independently, namely retail services relating to different categories of goods.

Retail convenience services relating to cosmetics and toiletries, for example, can be distinguished from retail convenience services relating to foodstuffs or household goods based on the purpose and intended use of the goods to which those retail services relate. A consumer seeking retail services for the purchase of cosmetics will not perceive retail services for foodstuffs as serving the same purpose or having the same intended use, even though both may fall within the broad category of ‘convenience goods’.

145 It is therefore necessary to examine the evidence to determine for which specific categories of goods the EUTM proprietor has demonstrated genuine use of the contested mark in connection with *retail convenience services*.

146 The evidence submitted by the EUTM proprietor, in particular the screenshots from its website (Exhibit 2) and the invoices for sales to EU customers (Exhibits 4-9), demonstrates that the contested mark has been used in connection with retail services relating to the following categories of goods: *cosmetics and toiletries (including perfumes, body lotions, soap, lip balm); candles; air fresheners; magnets; jewellery; keyrings; printed matter and stationery (including books); bags and other carriers (including reusable bags, passport bags); tableware, cookware and containers (including plates, glasses, bottles, mugs, jars); beach towels; pillows; clothing and headwear; hair ornaments; decorations; and foodstuffs (including coffee, chocolate, pancake mix, chips, cookies, peanut butter, candies, fruit juices)*.

147 The evidence does not, however, demonstrate use of the contested mark in connection with retail services relating to other categories of goods that could fall within the broad category of ‘convenience goods’, such as cleaning products, pet supplies, hardware items, newspapers and magazines (other than those specifically shown), or other household goods beyond those specifically identified in the evidence.

148 Pursuant to Article 58(2) EUTMR, where there are grounds for revocation of rights for only some of the goods or services for which the contested mark is registered, the revocation shall be limited to those specific goods or services. The contested mark must therefore be maintained for *retail convenience services* in connection with the specific categories of goods for which use has been demonstrated, and must be revoked for *retail convenience services* in connection with all other goods.

Conclusion

149 It follows from the above that the EUTM proprietor has proven genuine use of the contested mark for *retail convenience services* (with the exception of shoe stores) in connection with the specific categories of goods listed in paragraph 146 above. The application for revocation is therefore successful only in respect of the remaining services.

150 The contested EUTM must accordingly remain registered for:

Class 35: Retail convenience services, with the exception of shoe stores, in connection with cosmetics and toiletries, candles, air fresheners, magnets, jewellery, keyrings, printed matter and stationery, bags and other carriers, tableware, cookware and containers, beach towels, pillows, clothing and headwear, hair ornaments, decorations and foodstuffs.

151 The EUTM must be revoked for all other *retail convenience services* in Class 35.

152 According to Article 62(1) EUTMR, the revocation will take effect from the date of the application for revocation, that is, as of 24 October 2022.

Costs

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

154 As to the costs of the cancellation proceedings, it is appropriate that, for the same reasons, each party also bears its own costs there.

Order

On those grounds,

THE BOARD

hereby:

1. **Partially annuls the contested decision and declares that the contested EUTM remains registered for the following services:**

Class 35: Retail convenience services, with the exception of shoe stores, in connection with cosmetics and toiletries, candles, air fresheners, magnets, jewellery, keyrings, printed matter and stationery, bags and other carriers, tableware, cookware and containers, beach towels, pillows, clothing and headwear, hair ornaments, decorations and foodstuffs.

2. **Dismisses the appeal in the remainder.**
3. **Orders that each party bears their own costs in the cancellation and appeal proceedings.**

Signed

C. Negro

Signed

S. Martin

Signed

H. Salmi

Acting Registrar:

Signed

K. Zajfert

