

**DECISION
of the Second Board of Appeal
of 5 March 2018**

In Case R 1880/2017-2

Rodamco Nederland Winkels B.V.

Jollemanhof 8

1019 GW Amsterdam

Netherlands

EUTM Proprietor / Appellant

represented by Dentons Boekel N.V., Gustav Mahlerplein 2, 1082 MA Amsterdam,
Netherlands

v

Hoog Catharijne B.V.

Stationsplein 97

3511 ED Utrecht

Netherlands

Cancellation Applicant / Defendant

represented by De Brauw Blackstone Westbroek, Claude Debussylaan 80, 1082 MD
Amsterdam, Netherlands

APPEAL relating to Cancellation Proceedings No 12 615 C (European Union trade
mark registration No 6 833 834)

THE SECOND BOARD OF APPEAL

composed of S. Stürmann as a single Member having regard to Article 165(2) and
(5) EUTMR, Article 36 EUTMDR and Article 13 of the Decision of the Presidium on
the organisation of the Boards of Appeal as currently in force, and to the
Second Board's Resolution No 2014-1 of 3 June 2014 on decisions by a single
Member

Registrar: H. Dijkema

gives the following

Decision

Summary of the facts

- 1 By an application filed on 4 April 2008, Rodamco Nederland Winkels B.V. ('the EUTM proprietor') sought to register the figurative mark



for the following list of goods and services:

Class 16 – Printed matter, newspapers, magazines, newsletters, periodicals, books, files (stationery), albums, catalogues and pamphlets, posters; paper, cardboard; printed matter; publications; prospectuses; signboards of cardboard or paper; labels (not of textile); stationery, adhesives for stationery; stickers (items of stationery); pencils; pens; office requisites (other than furniture); bags [envelopes, pouches] of paper or plastics, for packaging;

Class 35 – Advertising; business management; business management and organisation consultancy; business information; outdoor advertising; dissemination of advertising matter, direct mail advertising; advertising mail; business management assistance; business management consultancy; distribution of samples; organisation of exhibitions and trade fairs for commercial or advertising purposes; computerized file management; rental of advertising material, rental of advertising time on all means of communication, rental of advertising space; online advertising on a computer network; publication of publicity texts; advertising by mail order, radio and television advertising; sales promotion (for others); organisation of promotional activities to obtain customer loyalty; organisation of regional or national promotional campaigns; demonstration of goods; shop-window dressing; business management services relating to cards, not for financial purposes, for winning customer loyalty; retailing and collection (except transport) for others, of consumer goods, enabling customers to view and purchase these goods from retail shops or department stores, from a general merchandise catalogue or from a website, from the television or via any other form of electronic communications media, in the fields of clothing, health, hygiene, food, entertainment, household equipment, decoration, furnishing, culture and education and recreation, namely bleaching preparations and other substances for laundry use, cleaning, polishing, scouring and abrasive preparations, soaps, perfumes, cosmetics, perfumery, essential oils, make-up preparations, hair lotions, dentifrices, industrial oils and greases, lubricants, dust absorbing, wetting and binding compositions, fuels (including motor spirit) and illuminants, candles and wicks for lighting, pharmaceutical and veterinary preparations, sanitary preparations for medical purposes, dietetic substances adapted for medical use, food for babies, plasters, materials for dressings, materials for stopping teeth, dental wax, disinfectants, preparations for destroying vermin, fungicides, herbicides, hand tools and implements (hand-operated), cutlery, side arms, razors, scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signaling, checking (supervision), life-saving and teaching apparatus and instruments, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, apparatus for recording, transmission or reproduction of sound or images, magnetic data carriers, recording discs, automatic vending machines and mechanisms for coin-operated apparatus, cash registers, calculating machines, data processing equipment and computers, CD-ROMs, DVDs, audio cassettes and video cassettes, software (recorded programs), fire-extinguishing apparatus, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, vehicles, apparatus for locomotion by land, air or water, fireworks, precious metals and their alloys, works of art, jewellery cases, candlesticks, vases, boxes, statues or figurines (statuettes), cigar or cigarette cases, cigarette holders, powder compacts, purses, household or kitchen utensils, tableware, jewellery, necklaces, rings, bracelets, precious stones, horological and chronometric instruments, watches, wristwatches, musical instruments, paper sheets, cardboard, babies' napkin pants (disposable), towels, handkerchiefs,

toilet paper, tissues for removing make-up, coffee filters, table linen, rubbish bags, cardboard articles, bags (envelopes, pouches) for packaging, printed matter, books, newspapers, periodicals, pens, bookbinding material, photographs, stationery, adhesives for stationery or household purposes, artists' materials, paintbrushes, typewriters and office requisites (except furniture), instructional and teaching material (except apparatus), plastic materials for packaging (namely bags, films and sheets), printers' type, printing blocks, leather and imitations of leather, trunks and traveling bags, umbrellas, parasols and walking sticks, whips, harness and saddlery, briefcases, purses not of precious metal, handbags, rucksacks, wheeled bags, bags for climbers, bags for campers, traveling bags, beach bags, school bags, vanity cases (not fitted), collars and covers for animals, shopping bags and net bags for shopping, bags (envelopes, pouches) of leather for packaging, furniture, mirrors, picture frames, goods of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics, namely works of art, cushions, armchairs, seats, boxes, stoppers, crates of wood, straws for drinking, dowels, not of metal, clothes hangers, baskets, fixed towel dispensers, ladders, figurines (statuettes), kennels for household pets, playpens, clothes hooks, table tops, umbrella stands, magazine racks, shelves, packaging containers, slatted indoor blinds, household or kitchen utensils and containers (not of precious metal or coated therewith), combs and sponges, brushes (except paintbrushes), brush-making materials, articles for cleaning purposes, steel wool, unworked or semi-worked glass (except glass used in building), glassware, porcelain and earthenware, namely boxes of glass, candlesticks not of precious metal, flowerpot covers, not of paper, figurines (statuettes) of porcelain or glass, mosaics of glass, not for building, opaline glass, vases not of precious metal, tableware not of precious metal, glass (receptacles), flasks not of precious metal, soap dishes, napkin holders, not of precious metal, powder compacts not of precious metal, perfume vaporizers, perfume sprays, ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (envelopes, pouches) of textile for packaging, bags for the transport and storage of goods in bulk, padding and stuffing materials (not of rubber or plastics), raw fibrous textile materials, yarns and threads for textile use, textiles and textile goods, namely bath linen, bed linen, household linen, table linen, face towels, canvas for tapestry or embroidery, curtains, blinds, wall hangings, non-woven textile fabrics, bed and table covers, clothing, footwear, headgear, lace and embroidery, ribbons and braid, buttons, hooks and eyes, pins and needles, artificial flowers, carpets, rugs, mats and matting, linoleum and other materials for covering existing floors, wall hangings (non-textile), games and playthings, gymnastic and sporting articles, except clothing, footwear and mats, decorations for Christmas trees (except lighting), meat, fish, poultry and game, meat extracts, preserved, dried and cooked fruits and vegetables, jellies, jams, compotes, eggs, milk and milk products, edible oils and fats, coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, pastry and confectionery, ices, honey, treacle, yeast, baking powder, salt, mustard, vinegar, sauces (condiments), spices, ice, agricultural, horticultural and forestry products and grains, live animals, fresh fruits and vegetables, seeds, natural plants and flowers, foodstuffs for animals, malt, beers, mineral and aerated waters and other non-alcoholic drinks, fruit drinks and fruit juices, syrups and other preparations for making beverages, alcoholic beverages (except beers), wine, tobacco, smokers' articles and matches; allowing customers to see and buy the aforementioned products in the retail stores or in the department stores, in a general catalogue or on an Internet site, on television or by any other form of electronic media of telecommunication;

Class 36 – Insurance; real estate affairs; financing services, financial affairs, monetary affairs, banking; debt collection agencies; credit bureaux, exchanging money; financial analysis, hire-purchase financing, issue of tokens of value, surety services; financial consulting services; financial evaluation (banking, real estate); mutual funds, capital investment, electronic funds transfer, fund investments, financial sponsorship, banking and financial services via computer communications networks; portfolio management; lending against security; credit services; factoring; financing services; financial transactions; real-estate brokerage; rental of offices (real estate) and of business premises; management of apartment houses, business premises, conference centres and exhibition centres and adjoining premises; rent collection; real estate agencies (real estate brokerage and leasing of business premises and apartment houses); real-estate valuations; real estate appraisal; issuing of travellers' cheques and letters of credit; charitable fund raising; credit card services; financial services provided to loyalty card holders; cards for financial purposes, for obtaining financial benefits in the form of reductions, the award of bonuses or points, on a prorata basis depending on purchases made;

Class 37 – Building construction; repair; installation services;

Class 38 – Telecommunications; news and information agencies; information about telecommunications; radio broadcasting, television broadcasting, communications by telegrams or by telephone; communications by and/or between computers and computer terminals; data transmission by teleprinter; transmission of messages and videograms; transmission of specialist technical information by data transmission; transmission of information, sound or images by computers connected in networks and via the Internet; providing access to a global computer network; satellite transmission; dissemination (transmission) of advertisements, including via the Internet; television broadcasting, radio broadcasting, cable television broadcasting, radio and television broadcasting; downloading of data (information, images, sound) via a global computer network, by computers linked in a network and by means of a computer site on communications networks;

Class 39 – Transport; packaging and storage of goods; travel arrangement;

Class 41 – Providing of training, educational services; entertainment services; information and consultancy relating to entertainment and recreation, in particular information and consultancy to transit passengers in airports, relating to education and recreation; providing gaming house facilities; amusement parks; leisure services; ticket agency services (entertainment); arranging and conducting of conferences, colloquiums, workshops (training), congresses and seminars; operating lotteries, organisation of competitions (education or entertainment); film and videotape production, radio broadcasting, radio and television entertainment; editing of video tapes, of radio and television programmes; organization of exhibitions for cultural and educational purposes; organization of sports competitions; organisation of shows (impresario services); publication of books and texts (not including publicity texts);

Class 43 – Services for providing food and drink; temporary accommodation; cafés-restaurants, cafeterias, snack bars, self-service restaurants; bars; services of delicatessens; arrange housing (hotels, pensions); rental of temporary accommodation; reservation of temporary accommodation; canteens.

- 2 The application was published on 7 July 2008 and the mark was registered on 21 January 2009.
- 3 On 29 February 2016, Hoog Catharijne B.V. ('the cancellation applicant') filed a request for a declaration of invalidity of the registered mark for all the above goods and services.
- 4 The grounds of the request for a declaration of invalidity were those laid down in Article 58(1)(a) EUTMR.
- 5 By decision of 28 June 2017 ('the contested decision'), the Cancellation Division declared the invalidity of the contested EUTM in its entirety as from 29 February 2016.
- 6 On 25 August 2017, the EUTM proprietor filed an appeal against the contested decision, requesting that the decision be entirely set aside. On 30 August 2017, the Office acknowledged receipt of the appeal and reminded the applicant that a written statement of grounds had to be filed within a non-extendable four-month period from the notification date of the decision.
- 7 On 22 November 2017, the Registry of the Boards of Appeal informed the EUTM proprietor that as no written statement setting out the grounds of appeal had been filed within the recognised time-limit, i.e. on or before 3 November 2017, the appeal was likely to be deemed inadmissible. Furthermore, it invited the EUTM proprietor to file comments and submit supporting evidence in this respect within a month time-limit.

- 8 No observations were, however, filed by the EUTM proprietor.
- 9 On 5 February 2018, the EUTM proprietor only submitted a renewal of its EUTM for all the goods and services applied for.

Reasons

- 10 All references made in this decision should be seen as references to the EUTMR (EU) No 2017/1001 (OJ 2017 L 154, p. 1), codifying Regulation (EC) No 207/2009 as amended, unless specifically stated otherwise in this decision.
- 11 Pursuant to Article 80 EUTMDR, the CTMIR and BoA-RoP were repealed. However, as a transitional measure, Article 80 EUTMDR foresees that the CTMIR and BoA-RoP shall continue to apply to ongoing proceedings until such proceedings are completed, provided that the EUTMDR does not apply in accordance with Article 81 thereof. Pursuant to Article 81(2)(j) EUTMDR, in the present case the CTMIR has to be applied.
- 12 Pursuant to Article 68(1) EUTMR, a written statement setting out the grounds of appeal must be filed within four months from the notification date of the contested decision.
- 13 As mentioned in the description of the facts above, the time-limit to file the written statement setting out the grounds for appeal against the contested decision expired on 3 November 2017, in accordance with Article 68 EUTMR. However, no written statement setting out the grounds of appeal or any further written communications were received by the Office within the said time-limit.
- 14 Moreover, as noted above, the Registry of the Boards of Appeal clearly informed the EUTM proprietor that as no written statement setting out the grounds of appeal had been filed by the specified time-limit, the appeal was likely to be deemed inadmissible. Nonetheless, no observations were filed in response. The EUTM proprietor's filing of the renewal of its EUTM registration does not amount to, or constitute, any form of observations in reply to its failure in submitting the statement of grounds.
- 15 Hence, pursuant to Rule 49(1) CTMIR, the submission of the statement of grounds within the abovementioned time-limit is a condition for the appeal's admissibility.
- 16 Since the EUTM proprietor failed to submit a statement of grounds of appeal within the statutory time-limit, the appeal does not comply with Article 68 EUTMR. It is, therefore, inadmissible pursuant to Rule 49(1) CTMIR.
- 17 Consequently, the contested decision becomes final and the appeal is rejected as inadmissible.

Costs

- 18 As the appeal is inadmissible, there has not been any procedural activity on the cancellation applicant's part in these appeal proceedings. Pursuant to

Article 109(3) EUTMR, for reasons of equity, the Board deems it appropriate not to make a ruling on the appeal costs.

Order

On those grounds,

THE BOARD

hereby:

- 1. Rejects the appeal as inadmissible;**
- 2. Declares the contested decision final.**

Signed

S. Stürmann

Registrar:

Signed

p.o. N. Granado Carpenter

