

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

23 July 2025 [\(*\)](#)

(EU trade mark – Opposition proceedings – Application for the EU figurative mark IMPOSSIBLE BAKERS – Earlier EU word mark IMPOSSIBLE – Relative ground for refusal – No likelihood of confusion – Article 8(1)(b) of Regulation (EU) 2017/1001)

In Case T-67/24,

Impossible Foods Inc., established in Redwood City, California (United States), represented by T. Cohen Jehoram, lawyer,

applicant,

v

European Union Intellectual Property Office (EUIPO), represented by J. Ivanauskas, acting as Agent,

defendant,

the other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court, being

Impossible Foods, SL, established in Barcelona (Spain), represented by M. Gallardo Meseguer, lawyer,

THE GENERAL COURT (Eighth Chamber),

composed of A. Kornezov, President, G. De Baere and S. Kingston (Rapporteur), Judges,

Registrar: V. Di Bucci,

having regard to the written part of the procedure,

having regard to the fact that no request for a hearing was submitted by the parties within three weeks after service of notification of the close of the written part of the procedure, and having decided to rule on the action without an oral part of the procedure, pursuant to Article 106(3) of the Rules of Procedure of the General Court,

gives the following

Judgment

- 1 By its action under Article 263 TFEU, the applicant, Impossible Foods Inc., seeks the annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 12 December 2023 (Case R 1754/2023-5) ('the contested decision').

Background to the dispute

- 2 On 27 July 2021, the intervener, Impossible Foods SL, filed an application for registration of an EU trade mark with EUIPO in respect of the following figurative sign:

- 3 The mark applied for covered goods and services in Classes 30 and 35 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and corresponding, for each of those classes, to the following description:
- Class 30: 'Bakery goods; Pastries; Viennoiserie; Edible ices; Sweetmeats [candy]; Cakes';
 - Class 35: 'Wholesaling, retailing in shops and via global computer networks of the following goods: Bread products, Pastry products, Dry cakes, ice cream, Chocolates, sweets, Cake'.
- 4 On 22 November 2021, the applicant filed a notice of opposition to registration of the mark applied for in respect of the goods and services referred to in paragraph 3 above.
- 5 The opposition was based, in particular, on the earlier EU word mark IMPOSSIBLE, filed on 28 June 2018 and registered on 9 January 2019 under No 17 924 675, designating, inter alia, goods in Class 30 and corresponding to the following description: 'Baking-powder; bread; bread-based snacks; cereal-based snacks; chewing gum; chocolate substitutes; chocolate; chocolate-based beverages; chocolate-based products; cocoa; cocoa-based beverages; cocoa substitutes; coffee; coffee-based beverages; coffee substitute; confectionery; corn-based prepared meals; corn-based snacks; crackers; dough; flour; frozen confectionery; non-dairy frozen confections; frozen yogurt [confectionary ices]; honey; ice; ice cream; ice cream substitutes; non-dairy ice cream substitutes; mayonnaise; mayonnaise substitutes; dairy substitutes, namely egg and dairy free mayonnaise; meat pies; mustard; noodles; noodle-based prepared meals; pancakes; pasta; pasta-based prepared meals; pasta-based snacks; pasta sauces; pastries; pizzas; popcorn; preparations made from cereals; puddings; non-dairy dessert pudding; quiches; rice; rice-based prepared meals; rice-based snacks; sago; salad sauces; salt; sandwiches; sauces [condiments]; non-dairy cheese sauce; spices; spring rolls; sugar; sugar substitutes; sushi; tacos; tapioca; tea; tea-based beverages; tea substitutes; tortillas; treacle; vinegar; waffles; yeast'.
- 6 The grounds relied on in support of the opposition were those set out in Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1), as well as in Article 8(5) thereof.
- 7 On 20 June 2023, the Opposition Division upheld the opposition on the basis of Article 8(1)(b) of Regulation 2017/1001.
- 8 On 18 August 2023, the intervener filed a notice of appeal with EUIPO against the Opposition Division's decision.
- 9 By the contested decision, the Board of Appeal upheld the appeal on the ground that there was no likelihood of confusion within the meaning of Article 8(1)(b) of Regulation 2017/1001 in respect of any of the goods listed in paragraph 3 above.

Forms of order sought

- 10 The applicant claims that the Court should:
- annul the contested decision;
 - order EUIPO to pay the costs of the present proceedings.

11 EUIPO contends that the Court should:

- dismiss the action in its entirety;
- order the applicant to pay the costs in the event that an oral hearing is convened.

12 The intervener contends that the Court should:

- uphold the contested decision;
- order the applicant to pay the costs.

Law

13 In support of its application, the applicant relies on a single plea in law, alleging infringement of Article 8(1)(b) of Regulation 2017/1001.

14 Article 8(1)(b) of Regulation 2017/1001 provides that, upon opposition by the proprietor of an earlier trade mark, the trade mark applied for must not be registered if, because of its identity with, or similarity to, the earlier trade mark and the identity or similarity of the goods or services covered by the trade marks, there exists a likelihood of confusion on the part of the public in the territory in which the earlier trade mark is protected. The likelihood of confusion includes the likelihood of association with the earlier trade mark.

15 According to settled case-law, the risk that the public may believe that the goods or services in question come from the same undertaking or from economically linked undertakings constitutes a likelihood of confusion. The likelihood of confusion must be assessed globally, according to the relevant public's perception of the signs and goods or services in question and taking into account all factors relevant to the circumstances of the case, in particular, the interdependence between the similarity of the signs and that of the goods or services covered (see judgment of 9 July 2003, *Laboratorios RTB v OHIM – Giorgio Beverly Hills* (GIORGIO BEVERLY HILLS), T-162/01, EU:T:2003:199, paragraphs 30 to 33 and the case-law cited).

16 For the purpose of applying Article 8(1)(b) of Regulation 2017/1001, a likelihood of confusion presupposes both that the marks at issue are identical or similar and that the goods or services which they cover are identical or similar. Those conditions are cumulative (see, to that effect, judgment of 22 January 2009, *Commercy v OHIM – easyGroup IP Licensing (easyHotel)*, T-316/07, EU:T:2009:14, paragraph 42 and the case-law cited).

17 The present action must be examined in the light of those principles.

18 As a preliminary point, it should be stated that the Board of Appeal noted that, as the earlier mark enjoyed protection throughout the European Union, the relevant territory for the purpose of assessing the likelihood of confusion was that of the European Union. It also observed that the goods in Class 30 at issue were aimed at the general public, who would display a low – or, at best, average – level of attention. In addition, as regards the services in Class 35, the Board of Appeal found, with regard to the retailing of bread and pastry products, that the general public would display a level of attention ranging from low to average and, with regard to the wholesaling services in that class, that professional consumers would display an above average level of attention.

19 Next, as regards the comparison of the goods and services at issue, the Board of Appeal found that the goods in Class 30 covered by the mark applied for were identical to some goods in the same class covered

by the earlier mark. It also found that the services in Class 35 covered by the mark applied for were similar to an average degree to the goods in Class 30 covered by the earlier mark.

- 20 The applicant does not dispute those findings.

The comparison of the signs at issue

- 21 The global assessment of the likelihood of confusion must, so far as concerns the visual, phonetic or conceptual similarity of the signs at issue, be based on the overall impression given by the signs, bearing in mind, in particular, their distinctive and dominant elements. The perception of the marks by the average consumer of the goods or services in question plays a decisive role in the global assessment of that likelihood of confusion. In this regard, the average consumer normally perceives a mark as a whole and does not engage in an analysis of its various details (see judgment of 12 June 2007, *OHIM v Shaker*, C-334/05 P, EU:C:2007:333, paragraph 35 and the case-law cited).
- 22 Assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark. On the contrary, the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components (see judgment of 12 June 2007, *OHIM v Shaker*, C-334/05 P, EU:C:2007:333, paragraph 41 and the case-law cited). It is only if all the other components of the mark are negligible that the assessment of the similarity can be carried out solely on the basis of the dominant element (judgment of 12 June 2007, *OHIM v Shaker*, C-334/05 P, EU:C:2007:333, paragraph 42). That could be the case, in particular, where that component is capable on its own of dominating the image of that mark which members of the relevant public retain, with the result that all the other components are negligible in the overall impression created by that mark (judgment of 20 September 2007, *Nestlé v OHIM*, C-193/06 P, not published, EU:C:2007:539, paragraph 43).
- 23 In the present case, the earlier mark is a word mark composed solely of the word 'impossible'. The mark applied for is, for its part, a figurative mark consisting of the words 'impossible' and 'bakers', written in capital letters, the word 'impossible' having two inverted 's' and being located above the word 'bakers', and the latter word being written in a larger font. Above those words, there is a representation of a flying elephant.

The distinctive and dominant elements of the mark applied for

- 24 First of all, with regard to the word elements of the mark applied for, the Board of Appeal found that, for English-speaking consumers or those with a sufficient command of English, the word 'impossible' was somewhat laudatory and had a distinctive character that was below average. According to the Board of Appeal, despite the double inverted 'ss' of the element 'impossible', which was quite striking, that part of the public would perceive that word, from a conceptual point of view, as the equivalent of 'impossible', which, as an adjective, formed a semantic unit with the noun 'bakers', and the expression 'impossible bakers' had a distinctive character that was below average for those consumers, who would perceive it as somewhat fanciful and vague.
- 25 With regard to consumers who did not have a sufficient command of English, but whose national languages included words very similar to the adjective 'impossible', the Board of Appeal noted that, in the light of the somewhat laudatory nature of that adjective, the word 'impossible' had a distinctive character that was below average. Furthermore, according to the Board of Appeal, for those consumers the word 'bakers' had no meaning and had an average distinctive character.

- 26 With regard to consumers who would not know any of the word elements at issue, the Board of Appeal found that the combination 'impossible bakers' had an average distinctive character.
- 27 Next, the Board of Appeal noted that the word 'bakers' was the dominant element of the mark applied for, due to its size.
- 28 Lastly, with regard to the figurative element of the mark applied for, the Board of Appeal found that the flying elephant had an average distinctive character, in view of its quite striking representation in the top part of that mark and the fact that that element was not descriptive of the goods at issue.
- 29 First, the applicant disputes the Board of Appeal's finding regarding the distinctive character of the word 'impossible' as far as consumers who understood that word were concerned.
- 30 First of all, the applicant claims that the word 'impossible' does not describe any aspect of the goods and services concerned, but rather aims to capture the interest of consumers through the paradox between the meaning of that word, namely 'something that cannot exist or be done', and the fact that the goods and services at issue do indeed exist. Furthermore, in some contexts, the word 'impossible' can have a negative connotation. Consequently, according to the applicant, that word is neither descriptive nor laudatory. In any event, the applicant observes that, even if the word 'impossible' were considered somewhat laudatory in the context of food products, this would not be sufficient to conclude that the mark has an inherent distinctive character that is below average, given that, according to the EUIPO Guidelines, the mere fact that a mark alludes to characteristics of the goods and services concerned cannot have an appreciable impact on the distinctive character of that mark if the allusion to those goods and services is sufficiently imaginative or clever.
- 31 In addition, according to the applicant, the Board of Appeal's approach is not consistent with the previous decisions of EUIPO and the Netherlands courts.
- 32 EUIPO and the intervener dispute the applicant's line of argument.
- 33 According to the case-law, for the purpose of assessing the distinctive character of an element making up a mark, an assessment must be made of the greater or lesser capacity of that element to identify the goods or services for which the mark was registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings. In making that assessment, account should be taken, in particular, of the inherent characteristics of the element in question in the light of whether it is at all descriptive of the goods or services for which the mark has been registered (see judgment of 26 November 2015, *Bionecs v OHIM – Fidia farmaceutici (BIONECS)*, T-262/14, not published, EU:T:2015:888, paragraph 38 and the case-law cited).
- 34 It should be noted that the Board of Appeal's finding that, for consumers who understood the word 'impossible', as referred to in paragraphs 24 and 25 above, that word had a distinctive character that was below average, is free from any error of assessment.
- 35 In the first place, the applicant's argument based on the alleged average inherent distinctive character of the word element 'impossible' cannot succeed, given that the Board of Appeal found, in the contested decision, not that that word was descriptive, but that it was somewhat laudatory. A word considered to be laudatory has only a weak distinctive character (see judgment of 24 September 2015, *Primagaz v OHIM – Reeh (PRIMA KLIMA)*, T-195/14, not published, EU:T:2015:681, paragraph 42 and the case-law cited).
- 36 In the second place, as the Board of Appeal correctly noted in the contested decision, one of the main meanings of the word 'impossible' is to correspond to 'something that cannot exist or be done' or which is

'not possible' according to the Oxford Learner's Dictionaries. Furthermore, it should be borne in mind that, according to the case-law, the distinctive character of an element making up a mark must be assessed in relation to the goods or services for which that mark was registered (see, to that effect, judgment of 13 June 2006, *Inex v OHIM – Wiseman (Representation of a cowhide)*, T-153/03, EU:T:2006:157, paragraphs 33 and 35 and the case-law cited).

- 37 In the present case, the goods and services covered by the mark applied for include, inter alia, goods in Class 30, in particular, bakery goods, edible ices, sweetmeats [candy] and cakes, as well as the services in Class 35 corresponding to the retailing of those goods.
- 38 Moreover, for words that have several meanings, it is sufficient that at least one of a word's possible meanings is descriptive for that word not to be distinctive as a result (see, to that effect, judgment of 1 March 2016, *BrandGroup v OHIM – Brauerei S. Riegele, Inh. Riegele (SPEZOOMIX)*, T-557/14, not published, EU:T:2016:116, paragraph 36). One of the meanings of the word 'impossible', considered by the relevant public in relation to food products, will be that the goods at issue have such exceptional qualities or are so good and excellent that those qualities are in fact not possible or not real, with the result that that word will be perceived as conveying a somewhat laudatory message, praising the goods and services at issue, and thus will be weakly distinctive.
- 39 Next, it should be noted that the applicant has not succeeded in demonstrating that the word 'impossible' in itself would capture the attention of the part of the public referred to in paragraph 34 above, inasmuch as that word would be understood as a paradox, by merely claiming, in essence, that the public's attention would arise from the contradiction between the existence of the goods at issue and the meaning of that word. Such a meaning, being of a paradoxical nature, would require a significantly more complicated mental process than that noted by the Board of Appeal according to which that part of the relevant public would perceive that word, after some reflection, as somewhat laudatory.
- 40 Likewise, the argument based on a possible negative meaning of the word 'impossible' (as in the expression 'this person is impossible') is not convincing. As can be seen from paragraph 36 of the present judgment, the distinctive character of an element of a mark must be assessed in relation to the goods and services covered by that mark, that is to say, in the present case, the food products in Class 30 and the services in Class 35 corresponding to the retailing of those food products. The applicant has not demonstrated that the relevant public will perceive that word as having a negative connotation for the goods and services at issue.
- 41 In the third place, as regards the applicant's arguments based on the EUIPO Guidelines, EUIPO's decision-making practice and the case-law of the Netherlands courts, it should be borne in mind that (i) the EUIPO Guidelines are not binding legal acts for the purpose of interpreting provisions of EU law (judgment of 19 December 2012, *Leno Merken*, C-149/11, EU:C:2012:816, paragraph 48), (ii) the legality of decisions of the Boards of Appeal must be assessed solely on the basis of Regulation 2017/1001, as interpreted by the Courts of the European Union (see judgment of 6 September 2018, *Bundesverband Souvenir – Geschenke – Ehrenpreise v EUIPO*, C-488/16 P, EU:C:2018:673, paragraph 72 and the case-law cited), and (iii) the EU trade mark regime is an autonomous system with its own set of objectives and rules peculiar to it and applies independently of any national system (judgment of 25 October 2007, *Develey v OHIM*, C-238/06 P, EU:C:2007:635, paragraph 65). In any event, the applicant has not explained how those guidelines, decisions and national case-law are inconsistent with the Board of Appeal's finding in the present case that, for the part of the relevant public which understood the word 'impossible', that word, after some reflection, would be perceived as a somewhat laudatory expression in relation to the goods and services at issue.

- 42 Therefore, the Board of Appeal did not make an error of assessment in finding that the word 'impossible' had a distinctive character that was below average as far as the part of the relevant public referred to in paragraph 34 above was concerned.
- 43 Secondly, the applicant disputes the Board of Appeal's finding that the word 'bakers' was the dominant element in the mark applied for. According to the applicant, that word will rather be descriptive of the goods and services at issue for at least a large part of the relevant public, namely the public which has a command (even a partial command) of English. It argues that that word's lack of distinctive character will necessarily reduce its weight in the overall impression of the mark applied for. By contrast, the inherent distinctive character of the word 'impossible' will have a greater influence on the overall perception of the mark applied for and will play a pivotal role in the overall impression given by that mark. The applicant also maintains that the strategic placement of the word 'impossible' within that mark reinforces the importance of that word, given that it is placed in the centre of the mark applied for, and is the first word that will be seen and pronounced by the public.
- 44 The applicant further claims that the figurative element of the mark applied for is not dominant either, due to the fact that that element alludes to the word 'impossible', by representing the action of flying, which is not possible for elephants, and reinforces the significance of that word, while reducing, on the other hand, the impact of the element 'bakers'.
- 45 EUIPO and the intervener dispute the applicant's line of argument.
- 46 According to the case-law, with regard to the assessment of the dominant character of one or more given components of a complex trade mark, account must be taken, in particular, of the intrinsic qualities of each of those components by comparing them with those of other components. In addition and accessorially, account may be taken of the relative position of the various components within the arrangement of the complex mark (judgment of 23 October 2002, *Matratzen Concord v OHIM – Hukla Germany (MATRATZEN)*, T-6/01, EU:T:2002:261, paragraph 35).
- 47 In the present case, the Board of Appeal found the word 'bakers' to be dominant in the mark applied for as a whole, due to its size. As regards the figurative element of the mark applied for, the Board of Appeal found that it had an average distinctive character and could not be neglected in the overall impression given by the mark applied for.
- 48 The applicant's arguments do not call those findings into question.
- 49 It should also be noted that, due to their weakly distinctive character, descriptive elements of a trade mark are not generally regarded by the public as being dominant in the overall impression conveyed by that mark, unless, particularly because of their position or their size, they appear likely to make an impression on the public and to be remembered by that public (see judgments of 13 June 2006, *Representation of a cowhide*, T-153/03, EU:T:2006:157, paragraph 32 and the case-law cited, and of 3 September 2010, *Companhia Muller de Bebidas v OHIM – Missiato Industria e Comercio (61 A NOSSA ALEGRIA)*, T-472/08, EU:T:2010:347, paragraph 49 and the case-law cited).
- 50 In that regard, the applicant itself admits that the word 'bakers' is more striking in the mark applied for, due to its larger size compared to the size of the word 'impossible'. Consequently, the Board of Appeal correctly found that element of the mark applied for to be the dominant element of that mark.
- 51 As regards the applicant's argument that the figurative element of the mark applied for is not dominant either, it is sufficient to note that that argument is ineffective, in so far as the Board of Appeal did not find the flying elephant to be a dominant element of that mark, but merely noted that that element was 'quite

striking and [could not] be neglected in the overall impression of the marks' at issue. Furthermore, as regards the argument that that element alludes to the word 'impossible', by representing the action of flying, which is not possible for elephants, thus allegedly reinforcing the importance of the word 'impossible', that argument involves several mental steps which are not realistic, as was correctly observed by the Board of Appeal.

- 52 Consequently, the Board of Appeal's finding regarding the distinctive and dominant elements of the mark applied for is free from any error of assessment.

The visual comparison

- 53 The Board of Appeal found that the signs at issue were visually similar to a low degree. According to the Board of Appeal, the earlier mark was much less complex, being a mark consisting of a single word, while the mark applied for was a mark consisting of three elements, namely the flying elephant, the element 'impossible' and, underneath, the word 'bakers'. The Board of Appeal observed that, in addition to the structural differences, there were other visual differences between the two marks, consisting, in particular, of the presence of a figurative element in the mark applied for and the presence, in that mark, of an inverted double 's' in the common element 'impossible', that common element being smaller than the other components of the mark applied for.
- 54 The applicant maintains that the Board of Appeal overemphasised minor differences between the marks and, at the same time, underestimated the impact of the word 'impossible', which is the common and dominant element of the marks at issue and which is always pronounced first.
- 55 The applicant argues that the Board of Appeal should have based its assessment on the perception of the marks at issue as a whole, as well as on the imperfect picture of them that the average consumer has kept in his or her mind. In that context, the applicant relies on the case-law according to which, in the case of composite trade marks, consumers tend to focus on the word elements of those marks and not their figurative elements. Thus, according to the applicant, it is appropriate to take into consideration the distinctive and dominant elements of a mark when assessing the overall impression produced by that mark, rather than focusing on the visual differences, which it claims were overestimated by the Board of Appeal.
- 56 EUIPO and the intervener dispute the applicant's line of argument.
- 57 First of all, it should be borne in mind that the earlier mark is a word mark consisting of a single word and that the mark applied for is a composite figurative mark consisting of three elements, namely the flying elephant, the element 'impossible' and, underneath, the word 'bakers'. The signs at issue coincide, only and in part, in the element 'impossible', which is written with the inverted double 's' in the mark applied for.
- 58 Next, it should be noted that, contrary to the applicant's assertions, the Board of Appeal carried out a visual comparison of the signs at issue, taking into account both the word elements and the figurative element of the mark applied for. Thus, the Board of Appeal found that, despite the similarities created by the element 'impossible', the signs were visually similar to a low degree, in the light of their different structure and the fact that there were several visual differences between them, including the presence of the figurative element, the inverted double 'ss' in the element 'impossible' and the position of that element and its significantly smaller size compared to the figurative element and the word 'bakers'.
- 59 The applicant's arguments do not call those findings into question.

- 60 First, it should be noted that, where a trade mark is composed of word and figurative elements, the former are, in principle, more distinctive than the latter, because the average consumer will more easily refer to the goods in question by quoting the name of the trade mark than by describing its figurative element (judgment of 14 July 2005, *Wassen International v OHIM – Stroschein Gesundkost (SELENIUM-ACE)*, T-312/03, EU:T:2005:289, paragraph 37).
- 61 However, it is also apparent from the case-law that, in a compound sign, the figurative element may occupy a position equivalent to the word element (see judgment of 24 November 2005, *Simonds Farsons Cisk v OHIM – Spa Monopole (KINJI by SPA)*, T-3/04, EU:T:2005:418, paragraph 47 and the case-law cited).
- 62 It follows that the Board of Appeal did not make an error of assessment in taking into account the figurative element of the mark applied for in the context of the visual comparison of the signs at issue as an element of differentiation between them.
- 63 Secondly, the applicant's argument that the Board of Appeal underestimated the impact of the word 'impossible' seeks, in essence, to call into question the assessment of the distinctive and dominant elements of the mark applied for. However, for the reasons stated in paragraphs 33 to 42 and 46 to 52 above, that argument cannot succeed. In particular, the Board of Appeal correctly found that the word 'bakers' – and not, as the applicant claims, the word 'impossible' – was the dominant element of the mark applied for.
- 64 Thirdly, the argument that the Board of Appeal did not base its assessment on the perception of the marks at issue as a whole cannot succeed for the reasons set out in paragraph 58 above.

The phonetic comparison

- 65 The Board of Appeal found that the signs at issue displayed an average degree of phonetic similarity.
- 66 The applicant does not dispute that finding.

The conceptual comparison

- 67 The Board of Appeal found that, with regard to the word elements of the signs at issue, for consumers who understood all the words contained in the signs, those signs conveyed different connotations. According to the Board of Appeal, for those who understood only the concept conveyed by the word 'impossible', the signs were conceptually identical, but that conceptual link between the marks had a limited impact in view of the laudatory meaning of that word. Furthermore, the Board of Appeal stated that, for consumers who did not understand any concept in the marks at issue, the conceptual comparison was neutral. Lastly, the Board of Appeal found that, taking into account the figurative element of the mark applied for, which would be perceived by all consumers as a flying elephant, the marks at issue were not, to that extent, conceptually similar.
- 68 The applicant claims that, due to the distinctive character of the element 'impossible' in the marks at issue, the Board of Appeal erred in minimising the considerable conceptual similarity between those marks. In particular, it disputes the Board of Appeal's finding with respect to the relevant public having a basic grasp of English and thus understanding the word 'impossible'. The applicant argues that, as that word constitutes the common element of the marks at issue and is a distinctive word, it clearly establishes a conceptual identity between those marks, thus compensating for any visual difference. Furthermore, it claims that the signs at issue remain conceptually similar, despite the presence of a figurative element.
- 69 EUIPO and the intervener dispute the applicant's line of argument.

- 70 First of all, it should be noted that the applicant does not put forward any argument calling into question the Board of Appeal's finding that, for consumers who had a sufficient command of English and who therefore understood all the words contained in the marks at issue, those marks conveyed different connotations. As the Board of Appeal correctly noted, for those consumers, the earlier mark referred to the idea of 'not possible' in an abstract manner, whereas, in the mark applied for, the idea of impossibility was linked to the concept of bakers, in so far as the word 'bakers' formed a semantic unit with the word 'impossible'.
- 71 Likewise, the applicant does not put forward any specific argument calling into question the Board of Appeal's finding that the conceptual comparison was neutral for consumers who did not understand either of those words.
- 72 Next, it should be noted that the Board of Appeal found that, for consumers who understood the word 'impossible', the signs at issue were conceptually identical, in so far as they conveyed the idea of something 'impossible'. However, given that that idea, according to the Board of Appeal, alluded to a certain extent in a laudatory manner to the high quality of the goods and services at issue, that conceptual link had a limited impact.
- 73 Lastly, the Board of Appeal stated that, for all consumers, the presence of a flying elephant in the mark applied for made the signs, to that extent, conceptually dissimilar.
- 74 In that regard, contrary to the applicant's assertions, the figurative element consisting of the flying elephant does not convey the same concept as that conveyed by the earlier mark. While the earlier mark immediately conveys the concept of impossibility, several mental steps, as well as a more in-depth analysis of that figurative element, would be necessary to arrive at the same semantic content as is represented by the image of a flying elephant.
- 75 It follows from all of the foregoing that the Board of Appeal was fully entitled to find that the signs at issue were visually similar to a low degree and phonetically similar to an average degree, and that they did not display any conceptual similarity.

The distinctiveness of the earlier mark

- 76 The Board of Appeal found that the applicant had failed to show the enhanced distinctive character and reputation acquired through use of the earlier mark and that, consequently, the likelihood of confusion had to be assessed on the basis of the inherent distinctive character of that mark, which was below average.
- 77 The applicant does not dispute the Board of Appeal's assessment in that regard.
- 78 To the extent that the applicant disputes the Board of Appeal's assessment of the inherent distinctive character of the earlier mark, that argument must be rejected on the basis of the reasoning set out in paragraphs 33 to 42 above, relating to the distinctive character of the word 'impossible' in relation to the goods and services at issue and which was applicable *mutatis mutandis* to the earlier mark, which consisted of that word alone.

The global assessment of the likelihood of confusion

- 79 A global assessment of the likelihood of confusion implies some interdependence between the factors taken into account and, in particular, between the similarity of the trade marks and that of the goods or services covered. Accordingly, a low degree of similarity between those goods or services may be offset by

a high degree of similarity between the marks, and vice versa (judgments of 29 September 1998, *Canon*, C-39/97, EU:C:1998:442, paragraph 17, and of 14 December 2006, *Mast-Jägermeister v OHIM – Licorera Zacapaneca (VENADO with frame and others)*, T-81/03, T-82/03 and T-103/03, EU:T:2006:397, paragraph 74).

- 80 In addition, according to settled case-law, in the context of the global assessment of the likelihood of confusion, the visual, phonetic or conceptual aspects of the signs at issue do not always have the same weight and it is then appropriate to examine the objective conditions under which the marks at issue may be present on the market (see judgment of 13 November 2024, *Interapothek v EUIPO – Q4 Media (miababy)*, T-1169/23, not published, EU:T:2024:814, paragraph 48 and the case-law cited).
- 81 In the context of the global assessment of the likelihood of confusion, the Board of Appeal began by recalling that the goods and services at issue had been found to be identical or similar to an average degree and that the marks at issue displayed a low degree of visual similarity and an average degree of phonetic similarity. According to the Board of Appeal, for some consumers, the two signs referred to the idea of something ‘impossible’, but were not conceptually similar, in so far as the mark applied for included the representation of a flying elephant.
- 82 Next, the Board of Appeal took into account the circumstances in which the goods at issue would be purchased, namely in supermarkets, bakeries and establishments where consumers were more guided by the visual impact of the marks, and the fact that the public would not display a high level of attention when purchasing those goods. In those circumstances and taking into account the striking visual differences between the marks at issue, according to the Board of Appeal, the likelihood of confusion could be ruled out.
- 83 The Board of Appeal found that the only element of the mark applied for which displayed some similarities with the earlier mark, namely the element ‘impossible’, did not, however, occupy a dominant position in the mark applied for and that the inverted ‘ss’ in that element contributed to distinguishing the marks at issue, as did the presence of the word ‘bakers’ and the flying elephant.
- 84 In conclusion, according to the Board of Appeal, even for the goods which were identical, the visual differences between the marks at issue made it possible to avoid a likelihood of confusion, despite the phonetic similarities, which had less weight for the goods at issue. Similarly, the Board of Appeal stated that the conceptual commonalities for those consumers perceiving, in the marks at issue, the reference to something ‘impossible’ would have a limited impact on the global assessment of the likelihood of confusion, in view of the laudatory allusion conveyed by the word ‘impossible’. According to the Board of Appeal, that finding applied a fortiori to the services concerned which had been found to be similar to an average degree.
- 85 The applicant disputes those findings by arguing, first, that the erroneous attribution of a laudatory meaning to the word ‘impossible’ led the Board of Appeal to downplay the distinctive character of that word and that the Board of Appeal incorrectly found that the word ‘bakers’ was dominant in the mark applied for.
- 86 Secondly, the applicant claims that, by overemphasising the visual differences between the marks at issue, the Board of Appeal disregarded the case-law according to which the assessment of the likelihood of confusion is to be carried out in relation to the marks at issue as a whole, considering the figurative elements as having a lesser impact in the overall impression than the word elements. The applicant also alleges that the Board of Appeal carried out a direct comparison of the two signs at issue, without taking into account the imperfect memory of consumers. The applicant further states that, in the food sector, because the level of attention of the relevant public is particularly low, the likelihood of confusion is

inherently higher. The applicant also disputes the Board of Appeal's finding that, in that sector, the visual differences between the marks outweighed any phonetic and conceptual similarities.

- 87 Thirdly, according to the applicant, the Board of Appeal underestimated the conceptual similarities resulting from the inclusion of the word 'impossible' common to both signs. The applicant observes that that word will convey an identical concept compensating for any visual difference.
- 88 Fourthly, the applicant maintains that the Board of Appeal failed to apply the settled case-law according to which, where the goods are identical, the threshold to be reached for a likelihood of confusion to be established is significantly lower.
- 89 EUIPO disputes the applicant's arguments.
- 90 It should be noted that the applicant's arguments do not call the Board of Appeal's assessment into question.
- 91 In the first place, as regards the applicant's arguments relating to the alleged error in the assessment of the word 'impossible' and the distinctive character of that word, those arguments must be rejected for the reasons set out in paragraphs 33 to 42 above. Next, for the reasons set out in paragraphs 46 to 52 above, the arguments based on the alleged dominant character of the word 'bakers' in the mark applied for should be rejected.
- 92 In the second place, contrary to the applicant's assertions, the Board of Appeal did not fail to consider the marks at issue as a whole; nor did it overemphasise the visual differences or the figurative element of the mark applied for in relation to the word elements of that mark. On the contrary, it took into account both the word and figurative elements of the mark applied for, taking into consideration, in particular, the fact that the element 'impossible' did not occupy a dominant position, the fact that the other elements – namely the flying elephant and the word 'bakers' – attracted the attention of consumers, and the fact that the inverted letters 'ss' created an additional distance from the earlier mark. Furthermore, the argument that the Board of Appeal failed to take into account the imperfect memory of consumers must be rejected for the reasons set out in paragraph 58 above.
- 93 Furthermore, contrary to the applicant's assertions, the Board of Appeal, in assessing the likelihood of confusion, correctly applied the case-law relating to the likelihood of confusion in the food sector.
- 94 It has been found that food products in Class 30 are normally purchased in supermarkets or similar establishments and are thus selected from the shelf by consumers directly, rather than being asked for orally. Similarly, in such establishments, consumers lose little time between successive purchases and often do not read all the information on the various products, letting themselves be guided more by the overall visual impression produced by the labels or packaging. In those circumstances, for the purposes of assessing whether there is a likelihood of confusion or a link between the signs in question, the result of the analysis of the visual similarity between those signs becomes of greater importance than the result of the analysis of their phonetic and conceptual similarities. Moreover, in that assessment, the figurative elements of a mark are deemed to play a more important role than its word elements from the relevant consumer's point of view (see judgment of 16 March 2017, *Sociedad agraria de transformación n° 9982 Montecitrus v EUIPO – Spanish Oranges (MOUNTAIN CITRUS SPAIN)*, T-495/15, not published, EU:T:2017:173, paragraph 63 and the case-law cited).
- 95 Consequently, the Board of Appeal was fully entitled to find, with regard to the goods at issue in the food sector, that consumers were guided more by the visual impact of the marks at issue.

- 96 In the third place, it should be noted that, in its global assessment of the likelihood of confusion, the Board of Appeal expressly took into account the fact that the goods and services at issue had been found to be identical or similar to an average degree. However, that fact alone is not sufficient to conclude that there is a likelihood of confusion, having regard to the circumstances of the present case, in particular the comparison of the signs at issue and the striking visual differences between those signs. According to the case-law, the principle of interdependence is not intended to be applied mechanically. Thus, whilst it is true that, by virtue of the principle of interdependence, a lesser degree of similarity between the goods or services covered may be offset by a greater degree of similarity between the marks, conversely there is nothing to prevent a finding that, in view of the circumstances of a particular case, there is no likelihood of confusion, even where identical goods are involved and there is a weak degree of similarity between the marks at issue (see, to that effect, judgments of 27 June 2019, *Sandrone v EUIPO – J. García Carrión (Luciano Sandrone)*, T-268/18, EU:T:2019:452, paragraphs 95 and 96 and the case-law cited, and of 13 November 2024, *miababy*, T-1169/23, not published, EU:T:2024:814, paragraph 46).
- 97 Consequently, even if some of the goods at issue were considered to be identical, it should be noted that, following a global assessment, the Board of Appeal correctly found that there was no likelihood of confusion, within the meaning of Article 8(1)(b) of Regulation 2017/1001, on the part of the relevant public.
- 98 In the light of all of the foregoing, the applicant's single plea in law must be rejected as unfounded and the action must, therefore, be dismissed in its entirety.

Costs

- 99 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicant has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the intervener, in accordance with the form of order sought by the intervener.
- 100 On the other hand, although the applicant has been unsuccessful, EUIPO has applied for the applicant to be ordered to pay the costs only in the event that a hearing is convened. As no such hearing has been held in the present case, it is appropriate to order that EUIPO is to bear its own costs.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders Impossible Foods Inc. to bear its own costs and to pay those incurred by Impossible Foods, SL;**
- 3. Orders the European Union Intellectual Property Office (EUIPO) to bear its own costs.**

Kornezov

De Baere

Kingston

Delivered in open court in Luxembourg on 23 July 2025.

V. Di Bucci

L. Truchot

Registrar

President