



**BENELUX OFFICE FOR INTELLECTUAL PROPERTY**  
**CANCELLATION DECISION**  
**N° 3000330**  
**of 1 February 2024**

**Claimant:** **Zoom Video Communications, Inc.**

6th floor, Almaden Blvd 55  
95113 San Jose  
United States of America

**Representative:** **Kilburn & Strode LLP**

Laapersveld 75  
1213 VB Hilversum  
Netherlands

*against*

**Defendant:** **Kabushiki Kaisha Zoom**

4-4-3 Kanda-surugadai  
Chiyoda-ku, Tokyo  
Japan

**Representative:** **Le Poole Bekema**

Prinsengracht 463-1  
1016 HP Amsterdam  
Netherlands

**Contested trademark: Benelux registration 476925**

ZOOM

## **I. FACTS AND PROCEEDINGS**

### **A. Facts**

1. On 4 August 2021 the claimant filed an application for cancellation with the Benelux Office for Intellectual Property (hereinafter: "the Office") in accordance with Article 2.30bis(1)(a), invoking the ground for revocation as stated under Article 2.27(2) of the Benelux Convention on Intellectual Property (hereinafter: "BCIP")<sup>1</sup>, namely that no genuine use has been made of the contested trademark in accordance with Article 2.23bis BCIP. The application is accompanied with a request for an earlier revocation date in accordance with Article 2.30nonies(4) BCIP.

2. The cancellation application is aimed at Benelux trademark registration 476925 of the wordmark ZOOM filed on 16 February 1990 for goods in classes 9 and 15. The contested trademark registration is subject of a seniority claim in EU trademark registration 000227157.

3. The application for revocation is directed against all goods the contested trademark is registered for.

4. The language of the proceedings is English.

### **B. Course of the proceedings**

5. The application for cancellation is admissible and was notified by the Office to the parties on 6 August 2021. During the administrative phase of the proceedings both parties filed arguments and supporting documents. The course of the proceedings meets the requirements as stated in the BCIP and the Implementing Regulations (hereinafter: "IR"). Since the application for cancellation solely concerns "revocation due to non-use" the defendant was, in accordance with Rule 1.31(2) IR, first invited to respond by submitting proof of use or to justify that a valid reason for non-use exists, after which the claimant and finally the defendant were given the opportunity to respond. After the exchange of arguments, the Office noted that the request for an earlier date of revocation based on Article 2.30nonies(4) BCIP, accompanying the application for cancellation, was mistakenly not forwarded to the defendant. Since this negatively affected the ability of the defendant to respond, in light of Rule 1.37 UR and the "audi alteram partem" principle, the adversarial phase of the proceedings was re-started from the beginning. The administrative phase was completed on 8 September 2022.

## **II. ARGUMENTS**

### **A. Defendant's arguments**

6. According to the defendant the claimant wishes to use and uses ZOOM without the permission of the defendant for, amongst others, hardware namely digital video cameras, microphones and digital video display monitors which are key products of the defendant and for which the defendant enjoys trademark protection. On 22 July 2021 the defendant sent a cease-and-desist letter to the claimant and summoned the claimant to refrain from use of the trademark ZOOM. Following which, according to the defendant, the claimant filed the application for revocation against the contested Benelux trademark registration. The defendant argues that the cancellation action launched by the claimant is unmerited and unfounded.

7. Following the filed application for revocation based on the ground that no genuine use has been made of the contested trademark, the defendant submits proof of use and requests the Office as well as the claimant to treat the pricelists, invoices and client information as confidential.

8. The defendant argues that the contested trademark has been genuinely used for every year within the relevant period and within the Benelux in relation to all goods registered for. The proof of use contains evidence of the place, duration, extent and manner of use and shows continuous marketing efforts, substantial sales and turnover of products bearing the contested trademark, according to the defendant.

9. The exclusive Benelux distributor of ZOOM products undertook several marketing efforts such as sending newsletters, brochures and pricelists concerning ZOOM products to clients. The proof of use relating to one of the larger resellers of the distributor is on itself already sufficient to demonstrate genuine use, according to the defendant. The total sales of this reseller amount to several millions of euro's.

10. The defendant notes that according to settled caselaw the trademark need not always be quantitatively significant for it to be deemed genuine. Some of the exhibits are indirect, put together or fall outside of the relevant period but provide important context to the business and presence of the defendant over the years. These exhibits can serve to support other proof that was submitted. Documents that have not been drawn up by independent parties cannot be ruled out as evidence. The evidence clearly exceeds token use.

11. Regarding the claimant's request for revocation with earlier effect namely as of 16 February 1995 which is when the five-year non-use grace period ended according to the claimant, or alternatively as of 21 August 2012 which is one day before the date of claimant's first software release according to the claimant, the defendant argues that this request cannot be granted. Merely stating that the contested trademark should be cancelled as of 21 August 2012 because the defendant can, as a result, no longer use the contested trademark as a basis for a possible infringement action does not concern a legitimate interest. Moreover, such a request can only be granted if the claimant proves why the earlier date for revocation is required and why the date of the application for cancellation does not suffice, which the claimant does not. To be able to grant the involved request it should also be possible to accurately determine the earlier date. The claimant fails to provide proof that 16 February 1995 concerns the end of the five-year non-use grace period and that 21 August 2012 concerns the date of the first software release by claimant.

12. An earlier revocation date can only be granted if no genuine use has been proven by the defendant. Genuine use has however been proven, according to the defendant. Following which the contested trademark cannot be revoked at all.


13. The defendant concludes that the submitted proof of use does show that the contested trademark has been genuinely used, that the application for revocation should be rejected and that the claimant should be ordered to pay the procedural costs for the proceedings.

## **B. Claimant's response**

14. According to the claimant no genuine use has been made of the contested trademark, following which the claimant believes the contested trademark should be revoked. The claimant specifically requests revocation of the contested trademark from 16 February 1995, which is when the five-year non-use grace period ended, or alternatively from 21 August 2012, which according to the claimant is one day before the date of their first software release. The claimant states to have a legitimate interest regarding the revocation as of an earlier date. The claimant is of the view that following the cease-and-desist letter of the defendant

to the claimant, in which the defendant threatens to file a lawsuit against infringement, the claimant has a legitimate interest to request an earlier revocation date. The letter represents a real, direct and present threat, which may only be completely eliminated if an earlier revocation date is granted.

15. Regarding the claim of the defendant that the claimant is not entitled to launch a cancellation action, the claimant argues that an application for revocation may be made by any natural or legal person and any group or body as mentioned under Article 2.27 BCIP. There is no requirement for the claimant to provide a reason or demonstrate a specific interest. The mere fact that the registration is more than five years old is sufficient. In addition, the defendant has not substantiated this argument with any evidence.

16. The claimant argues that on the products a device mark, namely , rather than the registered word mark is being used. The used device mark concerns a highly stylized form, which alters the distinctive character of the registered wordmark ZOOM. The first element of the device mark may be perceived as the number "2". The next elements might be interpreted as two zeros, binoculars, an infinity sign or as chain links. In the view of the claimant the used device mark does not qualify as genuine use of the contested wordmark as mentioned under Article 2.23bis(5)(a) BCIP.

17. The claimant argues that none of the submitted proof relates to the contested goods '*peripheral equipment for video's*', '*audiovisual educational equipment, in particular equipment for developing, printing, enlarging and finishing photographs, cine cameras, projectors and film cameras*' nor to '*high-integrity computers and chips*'. Contrary to what the defendant argues, microphones and adapters do not concern '*peripheral equipment for video's*'. Products that are specifically intended for musicians and creators are not necessarily educational by nature or used in an educational environment. That most products mentioned in the proof of use contain '*chips, microprocessors and internal data storage*' does not mean that the contested trademark has been genuinely used for these goods. Pedals, sound amplifiers, mixers, microphones and vocal processors do not fall under '*electronic musical instruments*'.

18. The submitted invoices relate to 12 different clients. The number of different clients is significantly lower than one might expect from a company who claims that her products can be used by everyone. The invoices do not evidence sales of '*high-integrity computers, chips, viewers, projectors, VCRs and CD players*'. The sales of the other products are very minor if not insignificant, according to the claimant.

19. The claimant argues that the website of the Benelux distributor does not show any means of placing an order. The mere fact that information on products was available on a website does not mean that the products were offered or sold to Benelux consumers.

20. In respect of most of the proof of use the claimant argues that it does not relate to the Benelux territory, does not show to which country it relates specifically, is dated outside the relevant period, has not been made available to the public, makes no reference to the contested trademark, does not show if actual marketing or sales have taken place and/or does not show use in relation to the contested goods and should therefore not be taken into account. The information is insufficient to ascertain the place, duration, extent and manner of use of the contested trademark for the goods it is registered for.

21. The claimant concludes that no genuine use has been made of the contested trademark on the market concerned within the relevant period. The claimant requests that the Office grants the application for revocation for all goods concerned and orders the defendant to bear the costs of these proceedings.

### **C. Defendant's final response**

22. The claimant undermines the proof of use by zooming in on individual exhibits where they should be looked at as a whole, according to the defendant.

23. According to the defendant the claimant tries to convince the Office that the proof of use is indirect and that the use was merely token use. This is not the case according to the defendant.

24. The defendant argues that the fact that their Benelux distributor is based in Germany and their website is not in Dutch, does not mean that the Benelux market is not being targeted. Moreover, the distributor's website is in fact also available in the Dutch language, according to the defendant.

25. The defendant reiterates that the contested trademark has been genuinely used in respect to all goods registered for. The proof of use regarding the handy video recorder and audio recorder fall under the scope of '*video peripheral equipment*'. The contested trademark has been used for '*audiovisual educational equipment*'. That many of the contested goods can and will be used to teach music or learn to play (electronical) instruments or to record lessons does not need further explanation, according to the defendant. The contested goods are in fact being sold to schools. Contrary to the claimant's arguments, the "ARQ all-in-one production and live performance instruments" and the "G3n multi-effects-processor" are indeed '*electronical musical instruments*'. They make it possible to create electronical beats, loops and sounds on its own or as accompanying sound. The "ARQ" includes a drum machine, synthesizer, sequencer and a looper.

26. According to the defendant every normal reader will understand that the used device mark reads ZOOM and not 200M, since the "Z" has the same kind of angles and the letter "O" is more circular than the number zero which is more oval. That the device mark is being read like ZOOM is reinforced by the fact that the business name of the defendant is also ZOOM. Moreover, the wordmark is being used on packaging, manuals, catalogues, advertisements, newsletters and agreements. That the use of the device mark alters the distinctive character of the registered wordmark ZOOM, and therefore does not constitute genuine use, is farfetched according to the defendant.

27. The defendant concludes that sufficient proof of use has been provided and requests that the Office rejects the application for revocation. Alternatively, if the claimant's application for revocation is granted the effective date of revocation should be the date of application of the revocation request and not the requested earlier dates, according to the defendant.

## **III. DECISION**

### **A.1 Genuine use - Legal framework**

28. Pursuant to Article 2.30bis(1)(a) BCIP, a revocation action may be brought before the Office on the basis of Article 2.27(2) BCIP. In that case, it is up to the defendant to prove that he has genuinely used his trademark in the Benelux territory in accordance with Article 2.23bis BCIP in the five years preceding the filing of the claim or to prove that there is a valid reason for non-use.

29. The application for cancellation was filed on 4 August 2021. The period to be considered - the relevant period - is therefore from 4 August 2016 to 4 August 2021.

30. Pursuant to Rule 1.41 and Rule 1.25 IR, the evidence of use shall contain indications as to the place, duration, extent and manner of use made of the disputed mark for the goods or services for which it is registered and against which the claim is directed.

31. In accordance with the case-law of the European Court of Justice (hereinafter: "CJEU") there is genuine use of a trademark if the mark, 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, is used in order to create or preserve an outlet for those goods or services, not including token use for the sole purpose of preserving the rights conferred by the mark.<sup>1</sup> When assessing whether use of the trade mark is genuine, regard must be had for all the facts and circumstances relevant to establishing whether the commercial use of the mark is real, particularly the practices regarded as warranted in the relevant economic sector as a means of maintaining or creating market shares for the goods or services protected by the mark, the nature of those goods or services, the characteristics of the market and the scale and frequency of use of the mark.<sup>2</sup> In that regard, the condition relating to genuine use of the trademark requires that the mark, as protected in the relevant territory, be used publicly and outwardly.<sup>3</sup>

32. The General Court held that use of the earlier mark need not always be quantitatively significant for it to be deemed genuine.<sup>4</sup> In interpreting the concept of genuine use, account should be taken of the fact that the *ratio legis* of the requirement that the 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 to restrict trademark protection to the case where large-scale commercial use has been made of the marks.<sup>5</sup>

33. Genuine use of a trademark cannot be proven by means of probabilities or suppositions but must be demonstrated by solid and objective evidence of effective and sufficient use of the trademark on the market concerned.<sup>6</sup>

34. The goods for which genuine use has to be proven are the following:

Class 9            *Sound equipment; peripheral equipment for video's; audiovisual educational equipment, in particular equipment for developing, printing, enlarging and finishing photographs, cine cameras, projectors and film cameras; high-integrity computers and chips.*

Class 15           *Electronic musical instruments.*<sup>7</sup>

## **A.2 Genuine use – Assessment of the submitted proof of use**

35. The defendant submitted the following proof of use:

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<sup>1</sup> CJEU 3 July 2019, C-668/17, ECLI:EU:C:2019:557, point 38 (Viridis) and CJEU 11 March 2003, C-40/01, ECLI:EU:C:2003:145, point 43 (Ansul).

<sup>2</sup> CJEU 31 January 2019, C-194/17, ECLI:EU:C:2019:-80, point 83 (Pandalis) and CJEU 11 March 2003, C40/01, ECLI:EU:C:2003: 145, point 43 (Ansul).

<sup>3</sup> General Court (EU) 4 April 2019, T-910/16 and T-911/16, ECLI:EU:T:2019:221, point 29 and the case-law mentioned there (Testa Rossa).

<sup>4</sup> General Court (EU) 8 July 2004, T-334/01, ECLI:EU:T:2004:223, point 36 (Hipoviton) and General Court (EU) 30 April 2008, T-131/06, ECLI:EU:T:2008:135, point 41 (Sonia Rykiel).

<sup>5</sup> General Court (EU) 4 April 2019, T-910/16 and T911/16, ECLI:EU:T:2019:221, point 28 and the case-law mentioned there (Testa Rossa).

<sup>6</sup> General Court (EU) 8 July 2020, T-686/19, ECLI:EU:T:2020:320, point 35 (GNC LIVE WELL).

<sup>7</sup> Free translation of the Dutch list of goods in class 9 "Geluidsapparatuur; randapparatuur voor video's; audiovisuele onderwijsapparatuur, met name apparatuur voor het ontwikkelen, afdrukken, vergroten en afwerken van foto's, cinecamera's, projectors en filmcamera's; computers en chips met hoge integratie" and in class 15 "Elektronische muziekinstrumenten".

- a. Cease and desist letter from the defendant to the claimant;
- b. Several informative and promotional video's;
- c. Screenshots of the defendant's websites;
- d. Financial report from the defendant;
- e. Screenshots from websites of business information providers with business information concerning the defendant;
- f. Witness statement of the managing director of the Benelux distributor;
- g. Extracts of other trademark registrations owned by the defendant;
- h. Screenshots of the Benelux distributor's website concerning ZOOM products;
- i. Sales overviews accompanied with affidavits from the Benelux distributor;
- j. Invoices from the Benelux distributor to clients in the Benelux;
- k. Leaflets with product information from the Benelux distributor;
- l. E-mail newsletters from the Benelux distributor;
- m. Pricelists and catalogues from the Benelux distributor;
- n. Screenshots of the defendant's social media accounts;
- o. Proof of attendance of the defendant and the Benelux distributor to the "International Broadcasting Convention";
- p. List of clients of the Benelux distributor and turnover per client;
- q. Screenshots of the "Wayback Machine" concerning the website of reseller "Bax-shop";
- r. Screenshots of the website of reseller "Thomann";
- s. List of addressees of newsletters from the Benelux distributor;
- t. Various reviews from Dutch magazines.

*Additional proof of use*

- u. Screenshots of the "Wayback Machine" concerning the website of reseller "Bax-shop" regarding peripheral video equipment;
- v. Turnover overview concerning Benelux resellers;
- w. List of email addresses from the addressees of newsletters originating from the Benelux distributor;
- x. Email correspondence between a reseller and the Benelux distributor concerning a quotation for the University of Amsterdam;
- y. Distribution agreement between the Benelux distributor and the reseller "Bax-shop";
- z. Examples of packaging for ZOOM products.

36. The defendant argues that the contested trademark has been genuinely used during the relevant period in the Benelux for all goods registered for, with which the claimant disagrees.

37. As to the finding of the claimant that submitted individual specimen of use do not meet the requirements of genuine use and should therefore not be taken into account (see point 20), the Office agrees with the defendant (see point 22) that the proof of use should be assessed as a whole and in conjunction with each other.<sup>8</sup> A separate assessment of various relevant factors, each considered in isolation, is not suitable.

38. The fact that certain documents are undated or originate from outside the relevant period, as noted by the claimant (see point 20), does not necessarily mean that they should be ignored. Even if a document is dated after a certain date, it may be possible to draw conclusions from it about a situation that occurred

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<sup>8</sup> General Court (EU) 17 February 2011, T-324/09, ECLI:EU:T:2011:47, point 31 (Friboi).

before that date.<sup>9</sup> Furthermore, these documents are likely to support the other evidence relied upon.<sup>10</sup> Moreover, a substantial part of the evidence is dated within the relevant period amongst which invoices, catalogues, newsletters and screenshots of resellers' websites.

39. According to the claimant, a significant part of the evidence relates to other countries than the Benelux or does not show to which country it relates specifically (see point 20). The Office finds that although part of the evidence does not show use in the Benelux, there is sufficient evidence that does specifically relate to the Benelux amongst which the invoices, affidavits concerning sales by the Benelux distributor, witness statements by the Benelux distributor, screenshots of websites of Benelux resellers and lists of Benelux addressees of the Benelux distributor's newsletters.

40. Regarding the argument of the claimant that the invoices relate to 12 different clients only and concerns very minor or insignificant sales (see point 18), the Office recalls that the purpose of the notion of genuine use is not to assess commercial success or to review the economic strategy of an undertaking, nor is it to restrict trademark protection to the case where large-scale commercial use has been made of the marks.<sup>11</sup> The Office finds that the invoices of the Benelux distributor to 12 different clients account for hundreds of thousands of euro's spend on ZOOM goods, which well exceeds the threshold of mere token use.<sup>12</sup>

41. To the extent that the claimant argues that the contested trademark is used in a manner that differs from the registered form, namely in a highly stylized form rather than a wordmark (see point 16), the Office notes that in both versions the word ZOOM is clearly legible and the stylization does not play a significant role in the overall impression and concerns an acceptable variation.<sup>13</sup> Contrary to the claimant (see point 16), the Office finds it unlikely that the relevant public will perceive a number "2", a letter "M" with in between two zero's, a set of binoculars, an infinity sign or chain links and does not read "ZOOM". The stylized typeface in the mark as used does not alter the distinctive character of the contested wordmark, following which it concerns genuine use within the meaning of Article 2.23bis(5)(a) BCIP.<sup>14</sup>

42. As to the claim of the claimant that the submitted proof of use does not relate to all goods the contested trademark is registered for (see point 18), to which the defendant disagrees (see points 17 and 25), the Office finds that the submitted proof indeed does not show genuine use for all goods. The fact that the products involved contain chips, microprocessors and internal data storage, as argued by the defendant (see point 17), cannot lead to the conclusion that the contested trademark is being used for the contested goods '*high-integrity computers and chips*'. None of the proof of use shows genuine use for specifically these goods.

43. In respect to the argument of the claimant that the contested trademark is not being used for '*peripheral equipment for video's*' since goods like microphones do not concern peripheral equipment (see point 17), the Office finds that the definition for peripheral equipment or "randapparatuur" (as mentioned in the Dutch description of goods) is "a collective name for equipment that supports the use of a particular

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<sup>9</sup> CJEU 17 July 2008, C-488/06, ECLI:EU:C:2008:420, point 72 (Aire Limpio); BOIP 23 October 2008, Opposition Decision no. 2000904 (Y-TAG).

<sup>10</sup> General Court (EU) 8 July 2004, T-203/02, ECLI:EU:T:2004:225, point 53 (Vitafruit); BOIP 30 June 2008, opposition decision no. 2000980 (HOLLANDER).

<sup>11</sup> General Court (EU) 4 April 2019, T-910/16 and T911/16, ECLI:EU:T:2019:221, point 28 and the case-law mentioned there (Testa Rossa).

<sup>12</sup> CJEU 3 July 2019, C-668/17, ECLI:EU:C:2019:557, point 38 (Viridis), and CJEU 11 March 2003, C-40/01, ECLI:EU:C:2003:145, point 43 (Ansul).

<sup>13</sup> General Court 30 January 2020, T-598/18, ECLI:EU:T:2020:22, point 66 (BROWNIE).

<sup>14</sup> CJEU 18 juli 2013, C-252/12, ECLI:EU:C:2013:497, point 31 (Specsavers) and CJEU 13 September 2007, C-123/06, ECLI:EU:C:2007:514, point 86 (Bainbridge).



machine".<sup>15</sup> In this meaning microphones for videocamera's, audiorecorders for videocamera's, remote controls for videocamera's do concern peripheral equipment, of which the defendant's Benelux distributor sold hundreds within the relevant period in the Benelux according to the submitted invoices in conjunction with the catalogues.

44. As to the contested goods '*audiovisual educational equipment, in particular equipment for developing, printing, enlarging and finishing photographs, cine cameras, projectors and film cameras*' the Office finds that, according to the submitted proof of use, the audiovisual equipment offered under the contested trademark contains rehearsal functionalities which aid the study of a music piece. The fact that, according to the submitted proof of use, a large Dutch University requested a quote for the purchase of 110 audiovisual goods, ranging from field-audiorecorders, to handy videorecorders to matching remote controls and cases contributes to the finding that the contested trademark has been genuinely used for '*audiovisual educational equipment, in particular cine cameras and film cameras*'. The Office finds that none of the proof shows use for '*audiovisual educational equipment for developing, printing, enlarging and finishing photographs*'.

45. That the contested trademark has not been genuinely used for '*electronic musical instruments*' since pedals, sound amplifiers, mixers, microphones and vocal processors do not fall under this description, as argued by the claimant (see point 17) does not mean that the contested trademark has not been genuinely used for '*electronic musical instruments*', since other goods for which the contested trademark has been used like electronic synthesizers and electronic sound effects machines do fall under class 15 of the Nice classification. Moreover, contrary to the claimant's argument, pedals for musical instruments do fall under class 15 of the Nice classification. The invoices of defendant's Benelux distributor in conjunction with the catalogues show sales of hundreds of pedals and hundreds of synthesizers.

### **A.3. Conclusion**

46. After careful analysis of the proof of use provided, the Office concludes that the evidence submitted, taken together, sufficiently demonstrates genuine use in the relevant periods within the EU for the goods "*sound equipment; peripheral equipment for video's; audiovisual educational equipment, in particular cine cameras and film cameras*" (class 9) and "*electronic musical instruments*" (class 15).

### **B. Request for an earlier revocation date**

47. Since a trademark cannot be revoked if genuine use commenced or was resumed before the filing of the application for revocation unless the defendant started or resumed genuine use of the mark in view of a threatening revocation in accordance with Article 2.27(3) BCIP, which is not being argued by the claimant, the requested earlier date for revocation cannot succeed in relation to the goods for which genuine use has been proven. With regard to the goods for which genuine use has not been proven, being "*equipment for developing, printing, enlarging and finishing photographs and projectors; high-integrity computers and chips*" from class 9, the Office will proceed by assessing whether the requested earlier revocation date should be granted.

48. The claimant requests for an earlier revocation date being 16 February 1995 or in the alternative 4 August 2021 (see point 14), which is disputed by the defendant (see point 11). Article 2.30nonies(4) BCIP stipulates that an earlier date, on which one of the grounds for revocation occurred, may be fixed in the decision at the request of one of the parties. The Office notes that the afore mentioned concerns an

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<sup>15</sup> See Dutch dictionary "Van Dale Groot Woordenboek van de Nederlandse taal", 16<sup>th</sup> edition.

exception to the general rule that the revocation will take effect from the date of the application for revocation. It is for the claimant to provide reasons and to substantiate that the respective ground for revocation indeed occurred on the requested date. In the present case, the request for an earlier revocation date is insufficiently substantiated. As a consequence, the claimant's request for an earlier revocation date is rejected.

### **C. Other factors**

49. The defendant submitted some additional evidence when filing his final response. The Office is of the opinion that, taking into account the principle of hearing both sides, the nature and content of these documents do not give cause for an additional round of arguments within the meaning of Rule 1.31(2)(f) IR, because these documents do not make a difference and without them the decision would be the same.

50. As regards applications for revocation or for invalidity based on absolute grounds, the applicant does not need to demonstrate an interest in bringing proceedings.<sup>16</sup> This is because, while relative grounds for invalidity protect the interests of proprietors of certain earlier rights, the absolute grounds for invalidity and for revocation aim to protect the general interest (including, in the case of revocations based on lack of use, the general interest in revoking the registration of trademarks that do not satisfy the use requirement).<sup>17</sup> Accordingly, the defendant's argument that the claimant is not entitled to launch a cancellation action (see points 6 and 15) cannot succeed.

### **D. Conclusion**

51. The defendant has shown that, in the five years preceding the filing date of the application for revocation, he has used the contested trademark in the Benelux territory in a genuine manner for part of the goods in class 9 and all goods in class 15. As a consequence, the contested trademark will be revoked for those goods for which genuine use has not been proven and no proper reasons for non-use exist. The claimant's request for an earlier revocation date is rejected.

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<sup>16</sup> General Court (EU) 8 July 2008, T-160/07, ECLI:EU:T:2008:261, points 22-26 (Color Edition); Confirmed by 25 February 2010, C-408/08, ECLI:EU:C:2010:92, points 37-40 (Color Edition)

<sup>17</sup> General Court (EU) 30 May 2013, T-396/11, ECLI:EU:T:2013:284, points 17-18 (Ultrafilter International).

**E. DECISION**

52. The application for revocation with number 3000330 is partly justified.

53. The Benelux registration with number 476925 will be cancelled for the goods:

- Class 9: Equipment for developing, printing, enlarging and finishing photographs and projectors; high-integrity computers and chips.

54. The Benelux registration with number 476925 will remain registered for the goods:

- Class 9: Sound equipment; peripheral equipment for video's; audiovisual educational equipment, in particular cine cameras and film cameras.
- Class 15: *(all goods)*.

55. Neither of the parties shall pay the costs in accordance with Article 2.30ter(5) BCIP in conjunction with Rule 1.44(2) IR, as the application for a declaration of invalidity is only partly justified.

The Hague, 1 February 2024



Yvonne Noorlander  
*(rapporteur)*

Pieter Veeze

Eline Schiebroek

Administrative officer: Rémy Kohlsaet