# OPPOSITION No B 3 224 328

**Chanel Société par Actions Simplifiée**, 135, avenue Charles de Gaulle, 92251 Neuilly sur Seine, France (opponent), represented by **Nautadutilh**, Chaussée de la Hulpe, 120, 1000 Bruxelles, Belgium (professional representative)

a g a i n s t

**Chaos Perfumes Srl**, Str. Gheorghe Doja, Nr 29 B, Municipiul Oradea, Judet Bihor, Romania (applicant), represented by **Weizmann Ariana & Partners Intellectual Property Agency**, Vivando Building 51 11 Iunie Street, 1th Floor, Offices 14-15 Sector 4, 040171 Bucuresti, Romania (professional representative).

On 09/10/2026, the Opposition Division takes the following

## DECISION:

1. Opposition No B 3 224 328 is upheld for all the contested goods.

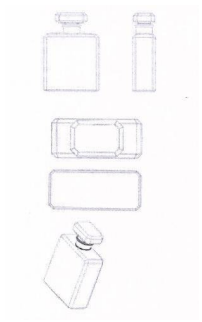
2. European Union trade mark application No 19 010 211 is rejected in its entirety.

3. The applicant bears the costs, fixed at EUR 620.

## REASONS

On 23/09/2024, the opponent filed an opposition against all the goods of European Union trade mark application No 19 010 211 

(3D shape mark). The opposition is based on, inter alia, French trade mark registration No 4 286 540

 (3D shape mark). The opponent invoked Article 8(1)(b) and Article 8(5) EUTMR.

**Preliminary remark**

The applicant submitted that a substantial procedural irregularity had occurred, on the grounds that the opponent's observations do not address the sign actually contested in the present proceedings. Instead, they appear to reproduce arguments relating to a different opposition, namely the opposition brought against a separate trade mark application No. 19 010 279  filed by the applicant. The Opponent, however, explained that the observations had been submitted by mistake and maintained that, in any event, their content was equally applicable to the present proceedings.

For reasons of procedural economy, the Opposition Division will first examine the opposition in relation to earlier French trade mark registration No 4 286 540.

**EVIDENCE SUBMITTED IN SUPPORT OF THE PROOF OF USE AND REPUTATION OF THE EARLIER MARK**

The outcome of the opposition largely depends on the analysis of the evidence submitted by the opponent to demonstrate both the reputation and the genuine use of the earlier trade mark under analysis. Therefore, in this section the Opposition Division will describe the evidence submitted. The same evidence will be analysed in the subsequent sections to assess whether the earlier trade mark has been genuinely used and has acquired reputation in the relevant market.

As the opponent requested to keep certain commercial data contained in the evidence confidential vis-à-vis third parties, the Opposition Division will describe the evidence only in the most general terms without divulging any such data.

On 11/04/2025, within the time limit to substantiate the earlier right and submit further facts in support of the opposition, the opponent submitted, inter alia, the following evidence in support of the earlier marks' reputation:

- **Annex 2.1:** several screenshots from the opponent's website showing the Chanel No. 5 perfume line, including the Eau de Toilette, as well as Coco Mademoiselle.
- **Annexes 3:**

  3.1: extracts from the book titled "N°5 Culture Chanel". According to it, the N°5 CHANEL perfume achieved immediate success, to such an extent that, three years after its creation, the small-scale production of CHANEL N°5, sold exclusively in

CHANEL boutiques in Paris, Deauville, Cannes and Biarritz, could no longer meet demand. In 1924, Gabrielle Chanel signed a contract with Pierre and Paul Wertheimer, owners of the House of Bourjois, thus creating Société des Parfums CHANEL. This contract marked a decisive turning point for CHANEL N°5, which would thereafter be distributed worldwide. The modernist bottle of 1921 gave way, in 1924, to a faceted bottle with an emerald-cut stopper, faithful to Gabrielle Chanel's spirit and aesthetic. Lines, which were the common thread running through her visual vocabulary, became a signature element associated with her identity. At the time of its creation, the CHANEL classic bottle represented a radical departure from the ornamented and sophisticated perfume bottles that were popular in the early 20th century. Its minimalist and geometric design symbolized a new era of modern femininity and minimalism, which aligned with the broader cultural and social changes at the time. It is also referred to as "a manifesto to modernity".

3.2: a document titled "N°5, Mes Recherches 1921–1993" from the opponent. Page 20 of this document reads as follows (partly translated by the opponent): "Each bottle of N°5 is the first. It is always unusual and out of the ordinary. It has entered the hall of myths, but no habit or custom has been able to make it normal, usual or conventional. It is reborn every time a woman looks at it. Time passes for all beings, for all things, except for N°5?". It also contains, inter alia, the following pictures:









3.9: extracts from various press articles (partly translated by the opponent), including articles published by leading French fashion and lifestyle magazines and prominent national newspaper, such as Vogue France, Le Figaro, Elle France, Le Monde and Echo France, dated 2013, 2014, 2021, 2023 and 2024. They describe, inter alia, the opponent's No. 5 perfume bottle as follows:

- "No.5, object of culture" (Echo France, 17/09/2021);
- "It's astonishing this bottle: one cannot see the glass" (Le Monde, 29/01/2021
- "Today still, it is certainly one of the most adored perfumes in the world, which is yet another reason to celebrate it! A light installation represents its highly recognizable bottle" (Vogue France, 29/11/2021).
- "Chanel No.5: the secrets of a legendary fragrance. […] Captivated, the creator was inspired to reimagine the bottle of her perfume, an iconic design that has remained virtually unchanged for 100 years (Harpers Bazaar France, 20/09/2023).

- 3.10: several documents showing various artworks which have used the shape of the opponent's bottle.

The CHANEL bottle features in works by Andy Warhol, one of the most influential artists of the second half of the twentieth century. In 1985, Warhol depicted the bottle as part of his renowned Ads series, immortalising its shape in a series of silkscreen works.




The CHANEL bottle has also appeared in works associated with other internationally renowned artists, including Salvador Dalí, further illustrating the bottle's presence in the fields of art and visual culture .

The annex also includes pictures of the "Exhibition special project" Guido Mocafico vs Artificial intelligence featuring the CHANEL Bottle. This exhibition presented the CHANEL N°5 perfume bottle in a variety of forms and artistic interpretations.

3.11: copies of various webpages showing books written by third-party authors about Chanel N°5 perfume. For example, a webpage from Amazon France sells a book titled "The Secret of Chanel No. 5: The Intimate History of the World's Most Famous Perfume, published in 2011". The book is related to the history of CHANEL N°5 and its cultural significance.

3.12: copy of an internet page referring to a short film titled "Chanel No. 5: Number 5!" directed by Jean-Paul Goude with Marilyn Monroe. She was depicted holding an oversized bottle of Chanel N°5 perfume.

3.13: a screenshot from the 1993 French film "Les Visiteurs", showing a scene in which a large Chanel N°5 bottle is visible and a character pours the fragrance over himself while taking a bath.

3.14: a flyer of the "No 5 Culture Chanel" exhibition held in Palais de Tokyo in 2013. This flyer shows the bottle of the perfume: . The cover of the 430-page exhibition book, published and sold in connection with the exhibition at the

Palais de Tokyo, also featured the CHANEL bottle  which was also present in all the advertising posters as follows .

3.15: a flyer of the "Le Grand Numéro de CHANEL exhibition, held from 15/12/2022 to 9/01/2023 at the Grand Palais Éphémère in Paris, showing the main entrance designed in the form of the CHANEL bottle. 







- **Annexes 4: Advertising materials**

4.1: YouTube videos showing various advertising campaigns, featuring the CHANEL N°5 bottle, dating from 2011 to 2024. Several of these videos have attracted millions of views. For instance, a video starring the famous actress Margot Robbie and the actor Jacob Elordi received approximately 3.1 million views within five months of its publication. Many of these videos also star well-known film personalities, including Keira Knightley and Brad Pitt.

4.2: copies of pages from the opponent's Instagram account, which has a substantial number of followers and features, inter alia, the CHANEL N°5 bottle.

4.3: pictures of the various installations featuring the CHANEL bottle, including large-scale replicas displayed in retail stores and shopping centres. Examples include the following installations in France:





- **Annexes 5:** several press articles showing the CHANEL N°5 bottle through advertising campaigns with famous celebrities and media coverage.

  Exhibit 5.1 includes a press article published in the French magazine “Le Goût” featuring the CHANEL N°5 bottle 

 celebrating its 100th anniversary. The opponent also submitted an article published on the website “Vogue France” in 2021 showing the exterior of a Chanel boutique in France. .

  The evidence further shows that Chanel N°5 perfume has been promoted over several decades through advertising campaigns involving internationally renowned actors and actresses, including Catherine Deneuve, Carole Bouquet, Nicole Kidman, Audrey Tautou, Brad Pitt and Marion Cotillard. The submitted materials depict the CHANEL N°5 bottle.

  The annex also includes an article entitled “Top 10 Best Selling Perfumes in the World” published on 18/10/2023 by the online magazine Fragrance Reviews. The article states that Chanel N°5 perfume remains the best-selling perfume on the list despite being the oldest fragrance included therein and refers to annual sales of up to 10 million bottles worldwide. It has long held its position as the world’s best-selling perfume, with no indication that its sales will decline anytime soon. The article further describes Chanel N°5 as an “iconic staple”.

The article contains a collection of advertisements published in French magazines between 1983 and 2023 depicting the Chanel N°5 bottle. It has been defined the most famous perfume in the world.

An article titled “Chanel No 5 advertising strategy” dated 27/11/2014 published on the website https://brandstrategymanagement.wordpress.com/ stated that: known as one of the most perfume in the world, Chanel N°5 is the most iconic product of the brand. When speaking about the perfume Chanel N°5, it is the advertising launched around the perfume that comes first in my mind. In order to promote the values of the perfume and evocate ideas related to glamour, beauty and luxury, the company used different advertising campaigns. From its creation until 1965, advertisements were simple in black and white where only the bottle was highlighted.

An article titled *“The Art of Luxury: Chanel Marketing Strategies and Marketing Mix”*, published on the website Brand Hopper on 2/02/2024 stated that CHANEL N°5, launched in 1921, rapidly became associated with elegance, sophistication and femininity. The article identifies the bottle design as one of the principal factors underlying the fragrance's commercial success. It also affirmed that the bottle features a rectangular shape with bevelled edges and a minimalist label and that this design distinguished the product from other fragrances available on the market. Indeed, its rectangular bottle with beveled edges is instantly recognizable and synonymous with quality and refinement. The article further explained that until the late 1950s, advertising materials frequently depicted the bottle on its own, thereby placing emphasis on the product rather than on individuals appearing in the advertisements.

- **Annexes 6 Financial results and investments (Confidential)**

  6.1 to 6.3: documents from the opponent concerning its financial results for the years 2021, 2022 and 2023, showing the significant sales generated by its perfumery division, which includes the CHANEL N° 5 perfume, and reporting notable growth, particularly between 2022 and 2023.

  6.4: an affidavit signed by the chief financial officer of the opponent and dated 8/04/2025 showing the significant financial investments made in France in advertising campaigns for, inter alia, the Chanel N°5 perfume.

- **Annex 7:** a market survey conducted by an independent third-party company in May 2016 and translated by the opponent. The survey was carried out in France among a nationally representative sample of 2,438 women aged 16 to 60, representative in terms of age, region and socio-economic group. Of those surveyed, 1,614 were users of perfumes and beauty products distributed through selective retail channels. When shown the unbranded bottle, 72% of respondents spontaneously associated it with CHANEL. The survey also reports recognition of the bottle among respondents who did not use products distributed through selective retail channels.

- **Annex 8:** a judgment of the Paris Court of Appeal dated 2001, which acknowledged the reputation of earlier French trade mark No. 1 556 316, consisitng of the 3D shape of a bottle describing it as “undisputed” and corroborated, inter alia, by the results of a consumer opinion poll.

On 26/08/2025, in response to the applicant’s request for proof of use, the opponent expressly referred to the evidence previously submitted with its observations dated 11/04/2025. The opponent submitted only additional advertising materials published on its official social media accounts in 2023, depicting the CHANEL N° 5 perfume bottle.

**PROOF OF USE**

In accordance with Article 47(2) and (3) EUTMR, if the applicant so requests, the opponent must furnish proof that, during the five-year period preceding the date of filing or, where applicable, the date of priority of the contested trade mark, the earlier trade mark has been put to genuine use in the territories in which it is protected in connection with the goods or services for which it is registered and which the opponent cites as justification for its opposition, or that there are proper reasons for non-use. The earlier mark is subject to the use obligation if, at that date, it has been registered for at least five years.

The same provision states that, in the absence of such proof, the opposition will be rejected. The applicant requested that the opponent submit proof of use of the trade mark on which the opposition is based as indicated above.

The request was submitted in due time and is admissible given that it was submitted as an unconditional request in a separate document and the earlier trade mark was registered more than five years prior to the relevant date mentioned above.

The date of filing of the contested application is 08/04/2024. The opponent was therefore required to prove that the trade mark on which the opposition is based was put to genuine use in France from 08/04/2019 to 07/04/2024 inclusive.

Furthermore, the evidence must show use of the trade mark for the goods on which the opposition is based, namely the following:

Class 3: *Perfumery; perfumes; eau de parfum; extracts of perfumes.*

According to Article 10(3) EUTMDR, the evidence of use must consist of indications concerning the place, time, extent and nature of use of the opposing trade mark for the goods or services in respect of which it is registered and on which the opposition is based.

On 08/09/2025, in accordance with Article 10(2) EUTMDR, the Office gave the opponent until 13/11/2025 to submit evidence of use of the earlier trade mark. On 12/11/2025, within the time limit, the opponent submitted evidence of use as stated and listed above.

*Arguments of the applicant*

The applicant argues that the opponent did not submit translations of some of the evidence of use and that therefore this evidence should not be taken into consideration. However, the opponent is not under any obligation to translate the proof of use, unless it is specifically requested to do so by the Office (Article 10(6) EUTMDR). Given the nature of the untranslated documents considered relevant to the present proceedings, as well as their self-explanatory content, the Opposition Division finds no need to request translations. Moreover, the opponent provided partial translations of the relevant evidence in its submissions, which are considered sufficient for the purposes of the present proceedings.

The applicant argues that not all the items of evidence indicate genuine use in terms of time, place, extent, nature and use of the goods for which the earlier mark is registered. The applicant’s argument is based on an individual assessment of each item of evidence regarding all the relevant factors. However, when assessing genuine use, the Opposition Division must consider the evidence in its entirety. Even if some relevant factors are lacking in some items of evidence, the combination of all the relevant factors in all the items of evidence may still indicate genuine use.

*Assessment of the evidence*

According to Article 10(3) EUTMDR, the evidence of use must consist of indications

concerning the place, time, extent and nature of use of the opposing trade mark for the goods or services in respect of which it is registered and on which the opposition is based.

These requirements for proof of use are cumulative (05/10/2010, T-92/09, STRATEGI / Stratégies, EU:T:2010:424, § 43). This means that the opponent is obliged not only to indicate but also to prove each of these requirements. However, the sufficiency of the indication and proof as to the place, time, extent and nature of use has to be considered in view of the entirety of the evidence submitted. A separate assessment of the various relevant factors, each considered in isolation, is not suitable (17/02/2011, T-324/09, Friboi, EU:T:2011:47, § 31).

Thus, the Opposition Division evaluates the evidence submitted in an overall assessment. All the circumstances of the specific case have to be taken into account and all the materials submitted must be assessed in conjunction with each other. Therefore, although pieces of evidence may be insufficient by themselves to prove the use of an earlier trade mark, they may contribute to proving use in combination with other documentation and information.

***Place of use***

The documents, in particular the press articles, advertising materials, the survey and the financial statements, show that the place of use is 'France'. This can be inferred from the language of the documents ('French'), the currency mentioned ('Euro') and some addresses located in France. Therefore, the evidence relates to the relevant territory.

**Time of use**

Most of the evidence, in particular the financial statements, some press articles and advertising materials, is dated within the relevant period.

As to the remaining evidence, it has to be recalled that evidence referring to use made outside the relevant timeframe is disregarded unless it contains conclusive indirect proof that the mark must have been put to genuine use during the relevant period of time as well. Events subsequent to the relevant time period may make it possible to confirm or better assess the extent to which the earlier mark was used during the relevant time period and the real intentions of the EUTM proprietor at that time (27/01/2004, C-259/02, Laboratoire de la mer, EU:C:2004:50).

In the present case, the evidence referring to use outside the relevant period confirms use of the opponent's mark within the relevant period. Some of these items are relevant because refer to the use of the trade mark within the period, or because the use it refers to is very close in time to the relevant period. The remaining pieces of evidence are not close in time to the relevant period. However, taken together, they show that the mark was used continuously, both before and after the relevant period.

***Extent of use***

As regards the extent of use, all the relevant facts and circumstances must be taken into account, including the nature of the relevant goods and the characteristics of the market concerned, the territorial extent of use, its commercial volume, duration and frequency.

The assessment of genuine use entails a degree of interdependence between the factors taken into account. Thus, the fact that the commercial volume achieved under the mark was not high may be offset by the fact that use of the mark was extensive or very regular, and vice versa. Likewise, the territorial scope of the use is only one of several factors to be taken

into account, so that a limited territorial scope of use can be counteracted by a more significant volume or duration of use.

The evidence shows that the CHANEL N°5 perfume has been consistently marketed and sold in substantial quantities under the opponent's name, CHANEL, and the designation N°5, in the bottle corresponding to the earlier mark. Contrary to the applicant's assertions, the use of that shape cannot be regarded as merely a container for the perfume considering the manner in which the product has been marketed, promoted and sold. It follows that the substantial sales figures, together with the continuous marketing and promotion demonstrate the extent of use of the earlier mark during the relevant period.

Therefore, the documents provide the Opposition Division with sufficient information concerning the commercial volume, the territorial scope, the duration, and the frequency of use.

***Nature of use***

The applicant argued that it is well established that product packaging is primarily perceived by consumers as a means of containing and presenting the goods, rather than as an indication of their commercial origin. The CJEU has repeatedly held that the average consumer is not accustomed to identifying the commercial origin of goods solely on the basis of their shape, particularly where that shape does not depart significantly from the norms and customs of the relevant sector, as confirmed, inter alia, in Case C-286/04 P, Botella Corona. To support its argument, it attached a decision of the Supreme Court of Lithuania rejecting the CHANEL's three-dimensional bottle for lack of distinctiveness and academic studies in product design, consumer psychology, and packaging engineering, that confirm that the CHANEL No. 5 bottle belongs to a standard, generic category of perfume packaging.

Nonetheless, although it is true, that since a liquid product must be contained in a package in order to be sold, the average consumer will perceive the packaging primarily as a form of packaging or presentation, such confirmation must be made with nuances in the case of perfumes. The shape of perfume bottles has become an essential part of perfume appearance. It is true that, in addition to word and figurative marks, the shapes of bottles are intrinsically useful for the visual individualisation of perfumes on the market of different producers (08/08/2024, R 63/2024-5, FORM OF A WOMEN'S BODY (3D). This has been proven in this case. Moreover, the fact that a trade mark consists of the shape of a product or its packaging does not, in itself, preclude that shape from being used as a trade mark (T-459/18, PEPERO original (fig.) / REPRÉSENTATION D'UN BÂTONNET (fig.), EU:T:2019:119).

In the present case, the earlier trade mark consists of the 3D shape of a bottle and its stopper. In that regard, the evidence does not merely show the sale of perfumes in bottles bearing the verbal elements 'CHANEL' and 'N°5'. It also demonstrates the repeated and prominent presentation of the bottle shape in advertising and promotional materials, press coverage and retail installations. Taken as a whole, the evidence therefore shows that the earlier mark has not been used merely as packaging for the goods, but has also been presented to the relevant public in a manner capable of indicating the commercial origin of the goods.

Indeed, some of the evidence demonstrates the use of the earlier mark alone in a form corresponding to that in which it is registered. In other pieces of evidence, the earlier mark is used in conjunction with the verbal elements N°5, CHANEL and Parfum or Eau De Parfum. On the basis of the above, it should be noted that the addition does not adversely affect the earlier trade mark in such a way that its shape will not be recognisable to the relevant public. Therefore, it is concluded that the joint use of the earlier mark with other verbal elements does not affect the identification function of the earlier mark for the goods at issue. The opponent has submitted evidence indicating that the earlier French trade mark, in isolation,

and in association with other verbal elements, as indicated above, used for at least *perfumes* is perceived by consumers as an indication of origin of the product designated from a particular undertaking.

The Court of Justice has held that there is 'genuine use' of a mark where it is used in accordance with its essential function, which is to guarantee the identity of the origin of the goods or services for which it is registered, in order to create or preserve an outlet for those goods or services. Genuine use does not include token use for the sole purpose of preserving the rights conferred by the mark. Furthermore, the condition of genuine use of the mark requires that the mark, as protected in the relevant territory, be used publicly and outwardly (11/03/2003, C-40/01, Minimax, EU:C:2003:145; 12/03/2003, T-174/01, Silk Cocoon / COCOON, EU:T:2003:68).

Taking into account the evidence in its entirety, the evidence submitted by the opponent is sufficient to prove genuine use of the earlier trade mark during the relevant period in the relevant territory for at least perfumes.

**REPUTATION — ARTICLE 8(5) EUTMR**

For reasons of procedural economy, the Opposition Division will first examine the opposition in relation to earlier French trade mark registration No 4 286 540.

According to Article 8(5) EUTMR, upon opposition by the proprietor of a registered earlier trade mark within the meaning of Article 8(2) EUTMR, the contested trade mark will not be registered where it is identical with, or similar to, an earlier trade mark, irrespective of whether the goods or services for which it is applied are identical with, similar to or not similar to those for which the earlier trade mark is registered, where, in the case of an earlier European Union trade mark, the trade mark has a reputation in the Union or, in the case of an earlier national trade mark, the trade mark has a reputation in the Member State concerned and where the use without due cause of the contested trade mark would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.

Therefore, the grounds for refusal of Article 8(5) EUTMR are only applicable when the following conditions are met.

- The signs must be either identical or similar.
- The opponent's trade mark must have a reputation. The reputation must also be prior to the filing of the contested trade mark; it must exist in the territory concerned and for the goods and/or services on which the opposition is based.
- Risk of injury: use of the contested trade mark would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.

The abovementioned requirements are cumulative and, therefore, the absence of any one of them will lead to the rejection of the opposition under Article 8(5) EUTMR (16/12/2010, T-357/08, BOTOCYL / BOTOX, EU:T:2010:529, § 41; 16/12/2010, T-345/08, BOTOLIST / BOTOX, EU:T:2010:529, § 41). However, the fulfilment of all the abovementioned conditions may not be sufficient. The opposition may still fail if the applicant establishes due cause for the use of the contested trade mark.

In the present case, the applicant did not claim to have due cause for using the contested mark. Therefore, in the absence of any indications to the contrary, it must be assumed that no due cause exists.

**a) Reputation of the earlier trade mark**

The evidence submitted by the opponent to prove the reputation of the earlier trade mark has already been listed above. Reference is made to that list.

*Assessment of the evidence*

According to the applicant, the evidence submitted in support of the reputation, including press articles, advertising materials, accounts of commercial success, and references from the worlds of art and cinema, relates overwhelmingly to CHANEL's perfumes themselves, in particular iconic fragrances such as "CHANEL N° 5" and "CHANEL Coco Mademoiselle." These materials primarily attest to the reputation of the fragrances, the CHANEL brand, and the advertising and marketing campaigns associated with them. They do not, however, establish that the shape of the bottle, considered in isolation and without the CHANEL name, label, or other branding elements, is independently recognised by consumers as an indication of commercial origin and, therefore, as a trade mark

However, contrary to the applicant's observations, it is clear from the evidence on file that earlier mark has been subject to long-standing and intensive use and is generally known in the relevant market, where it enjoys a consolidated position among the leading brands, as has been attested by diverse independent sources. The sales figures and marketing expenditure shown by the evidence and the various references in the press to its success all unequivocally show that the earlier mark enjoys a significant degree of recognition among the relevant public. In particular, the evidence demonstrates that the bottle shape constituting the earlier mark has a very long history of use, extending back approximately a century. Annexes 3, 4 and 5 demonstrate that the relevant public has been exposed to the earlier mark for a long period of time. The bottle is repeatedly depicted as a primary visual element in advertising and promotional material, including campaigns in which the bottle is displayed alone or prominently independently of the persons appearing in the campaigns. The evidence also includes large-scale reproductions of the bottle in retail environments and exhibitions, as well as references to the bottle itself in independent press articles. Taken together, those documents demonstrate sustained and extensive exposure of the relevant public in France to the earlier mark.

Moreover, the bottle design has become an important element of the identity and public image of CHANEL N°5. Several independent press articles expressly describe the bottle as 'iconic' and 'highly recognizable', thereby providing further indications of the significant degree of recognition enjoyed by the earlier mark.

Particular weight must be attached to the market survey conducted in France in 2016. The survey presented the bottle without word elements or other branding and found that 72% of respondents spontaneously associated the shape with CHANEL. This evidence directly concerns the perception of the shape independently of the verbal CHANEL and N°5 indications. Although the survey predates the relevant date, it constitutes direct evidence of the ability of the shape to be associated with the relevant goods, perfumes, and the opponent by the relevant public and must be assessed together with the other evidence demonstrating continued use and promotion of the same shape thereafter. Contrary to the applicant's observation, the translation of the survey was provided by the opponent in its observations dated 11/04/2025.

The judgment of the Paris Court of Appeal of 2001, which recognised the reputation of another earlier French trade mark consisting of the same bottle shape as in this case, is also relevant. The Opposition Division is not bound by that finding, nor can a finding made in 2001 by itself establish reputation at the relevant date. Nevertheless, the judgment constitutes additional evidence that the association between the bottle configuration and the opponent was already established at an earlier point in time and is consistent with the more recent evidence submitted in the present proceedings.

According to the applicant, even assuming that the CHANEL bottle marked a stylistic shift a century ago, that historical context has no bearing on the shape's ability today to indicate commercial origin independently of branding. The relevant public, including the average French consumer of perfume products, does not base their understanding of trade mark function on early 20th-century design norms. What may have been revolutionary in 1921 has, over time, become normalised, imitated, and absorbed into the mainstream aesthetics of the perfumery sector.

However, the evidence submitted in the present case confirms that the recognition of the earlier mark was not limited to its historical origins but persisted considerably later. In particular, the 2016 market survey showed that, approximately fifteen years after the judgment of the Paris Court of Appeal, the shape was still spontaneously associated with the opponent by a substantial majority of respondents in France, even when presented without any word elements. Furthermore, the documents contain no indication that the degree of recognition demonstrated by that survey subsequently declined. On the contrary, the more recent evidence supports the conclusion that such recognition persisted up to the relevant date. The recent press article entitled "The Art of Luxury: Chanel Marketing Strategies and Marketing Mix", published on 02/02/2024, identifies the bottle design as one of the principal factors underlying the commercial success of CHANEL N°5. It states that the bottle features a rectangular shape with bevelled edges and a minimalist label and that this design distinguishes the product from other fragrances available on the market. This more recent evidence is consistent with the recognition demonstrated by the 2016 survey and with the other materials documenting the continued recognition of the bottle shape.

On the basis of the above, the Opposition Division concludes that the earlier trade mark has a significant degree of reputation in France for perfumes in Class 3 for which the genuine use has been proven.

With regard to the alleged reputation of the earlier trade mark, the applicant argued that it would have been necessary to provide evidence reflecting current consumer perception of those marks, such as market surveys, consumer studies, or other evidence demonstrating the market share held by the earlier marks. According to the applicant, no such evidence was submitted in the present proceedings.

However, as regard the assessment of reputation, the Court also held that all the relevant facts must be considered when assessing the reputation of the earlier mark, 'in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of investment made by the undertaking in promoting it' (14/09/1999, C-375/97, Chevy, EU:C:1999:408, § 25, 27). It follows that the level of knowledge required for the purposes of Article 8(5) EUTMR cannot be defined in the abstract, but should be evaluated on a case-by-case basis, taking into account not only the degree of awareness of the mark, but also any other fact relevant to the specific case, that is, any factor capable of giving information about the performance of the mark in the market. The list of factors to be taken into consideration in order to ascertain the reputation of an earlier mark (such as the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the amount spent by the undertaking in promoting it) only serve as examples. The conclusion that the mark enjoys reputation does not necessarily have to be reached on the basis of indications regarding all those factors.

On this point, although the documentation submitted does not contain any specific information concerning the opponent's market share, the available materials, including the financial data, extracts from the aforementioned periodicals and magazines, statements issued by independent entities, opinion poll and a judgment of the Paris Court of Appeal, assessed together, are sufficient to establish the significant degree of reputation of the earlier mark for perfumes in France. It follows that the applicant 's argument must be rejected.

**b) The signs**

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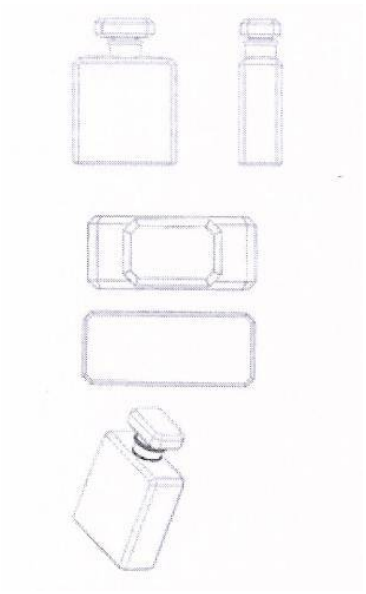
|  |   |
| Earlier trade mark | Contested sign |

The relevant territory is France.

The global appreciation of the visual, aural or conceptual similarity of the marks in question must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 23).

The earlier mark consists of the three-dimensional shape of a perfume bottle and its stopper, depicted from multiple perspectives, including front, side, top and bottom views. It is represented as a drawing, without any verbal elements or colour. The bottle has a rectangular body with rounded corners and a very short neck positioned centrally at the top. The stopper is broad and flattened, with an oblong shape and softly rounded corners.

The inherent distinctive character of the earlier mark is low in relation to perfumes, since it consists of the shape of a container for the goods. When dealing with the distinctiveness of the earlier mark as a whole, the latter should always be considered to have at least a minimum degree of inherent distinctiveness. Earlier marks, whether EUTMs or national

marks, enjoy a ‘presumption of validity’. The Court made it clear, in its judgment of 24/05/2012, C-196/11 P, F1-LIVE (fig.) / F1 et al., EU:C:2012:314, § 40-41, that ‘in proceedings opposing the registration of a European Union trade mark, the validity of national trade marks may not be called into question’.

The contested sign consists of a perfume bottle depicted in multiple views, rendered in black with gold-coloured rectangular label. The bottle has a rectangular shape and rounded corners with a very short, narrow central neck. The stopper is considerably wider than the short neck. It also has horizontally elongated rectangular shape, with rounded corners and faceted edges.

Furthermore, the contested sign contains the verbal elements 'CHAOS', 'DESTRUCTIBLE', 'LOVE', 'EAU DE' and 'DARK'.

The element 'CHAOS' of the contested sign will be understood as 'disorder' or 'extreme confusion' by the relevant French public, as it is a French word. As this meaning has no connection with the relevant goods, it has a normal degree of distinctiveness.

The element 'DESTRUCTIBLE' of the contested sign will be understood as 'capable of being destroyed' by the relevant French public. As this meaning has no connection with the perfumery goods in Class 3, it has a normal degree of distinctiveness.

The element 'LOVE' of the contested sign will be understood as 'love' or 'deep affection' by the relevant public as it is a basic English word (03/10/2019, T-491/18, carnilove / Meatlove, EU:T:2019:726, § 59; 22/06/2022, T-288/21, ALOve / LOVE, EU:T:2022:420, § 62). As this meaning is laudatory and evocative of emotional associations commonly used in the perfumery sector, it is weak.

The element 'EAU DE' of the contested sign will be understood as a standard French perfumery prefix (as in 'eau de parfum' or 'eau de toilette') by the relevant French public. As this meaning directly describes the type or form of the product, it is non-distinctive for the relevant goods.

As regards the element 'DARK', for the part of the French public with some knowledge of English, it will be understood as meaning 'dark' or 'sombre', which has no descriptive connection to the perfumery goods and is therefore distinctive to a normal degree. For the part of the French public for which 'DARK' is meaningless, it is a fanciful element and is likewise distinctive to a normal degree.

The shape of the perfume bottle in the contested sign has a low degree of distinctivess for the relevant goods in Class 3. The black colour of the bottle and the gold rectangular label panel are common decorative elements and are at most weak.

The stylisation of the verbal elements in the contested sign will be merely perceived as a graphical means of bringing the verbal elements to the attention of the public. Accordingly, its impact on the comparison will be limited.

The contested sign has no element that could be considered clearly more dominant than other elements.

**Visually**, contrary to the applicant’s arguments, the signs present several visual features. Both consist of a compact, vertically oriented rectangular bottle with rounded corners. Each bottle has a short, centrally positioned neck surmounted by a wide, horizontally elongated stopper that extends beyond the width of the neck and has softened or rounded edges. Taken into account the above, the marks share the overall appearance of a rectangular perfume bottle including its elements. The bottle has a low degree of distinctiveness for the relevant goods.

The signs differ in the verbal elements of the contested sign ('CHAOS', 'DESTRUCTIBLE', 'LOVE', 'EAU DE', 'DARK') that are absent from the earlier mark. Furthermore, they differ in the presence in the contested sign of the figurative elements and aspects described above which do not have counterparts in the earlier mark.

Therefore, the signs are visually similar to a low degree.

**Aurally**, purely figurative signs are not subject to a phonetic assessment. As one of the signs is purely figurative, it is not possible to compare them aurally.

**Conceptually**, reference is made to the previous assertions concerning the semantic content conveyed by the marks. The signs will be associated with a similar meaning as they share the concept conveyed by the representation of a bottle. Therefore, the signs are conceptually similar to a low degree. However, the contested sign additionally conveys the concepts of disorder, destructibility, and affection through its verbal elements 'CHAOS', 'DESTRUCTIBLE', and 'LOVE', which are entirely absent from the earlier mark.

**c) The 'link' between the signs**

As seen above, the earlier mark is reputed and the signs are similar to some extent. In order to establish the existence of a risk of injury, it is necessary to demonstrate that, given all the relevant factors, the relevant public will establish a link (or association) between the signs. The necessity of such a 'link' between the conflicting marks in consumers' minds is not explicitly mentioned in Article 8(5) EUTMR but has been confirmed by several judgments (23/10/2003, C-408/01, Adidas, EU:C:2003:582, § 29, 31; 27/11/2008, C-252/07, Intel, EU:C:2008:655, § 66). It is not an additional requirement but merely reflects the need to determine whether the association that the public might establish between the signs is such that either detriment or unfair advantage is likely to occur after all of the factors that are relevant to the particular case have been assessed.

Possible relevant factors for the examination of a 'link' include (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 42):

- the degree of similarity between the signs;
- the nature of the goods and services, including the degree of similarity or dissimilarity between those goods or services, and the relevant public;
- the strength of the earlier mark's reputation;
- the degree of the earlier mark's distinctive character, whether inherent or acquired through use;
- the existence of likelihood of confusion on the part of the public.

This list is not exhaustive and other criteria may be relevant depending on the particular circumstances. Moreover, the existence of a 'link' may be established on the basis of only some of these criteria.

The signs are visually and conceptually similar to a low degree as they coincide in the shape of a bottle with very similar characteristics. The aural comparison is not possible as one of the signs is figurative.

The reputed goods are perfumes, and the contested goods are also perfumes and fragrances for personal use. Therefore, they are identical. Furthermore, they have the same nature and purpose, usually coincide in producer, and they also target the same general

public. They also pertain to the same market sector and they are encountered in the same commercial environments. The closer the goods, the easier it is for the relevant section of the public to associate the signs with each other. Indeed, in the points of sale, the opponent and applicant's goods will appear side by side in the same section and will be in direct competition with each other and the public will not pay a particularly high level of attention.

Even though it is true that the earlier mark has a low degree of inherent distinctiveness, it has acquired a significant degree of reputation based on the above evidence. The evidence concerning the reputation of the earlier mark indicates that the bottle configuration is capable of being recognised by the French public even when presented without CHANEL or N°5 word elements.

The applicant relies, inter alia, on previous decisions of the Office, including PUMA v UMABABY (Opposition No. B 3 217 356, dated 10/02/2025), in which, despite the opponent's worldwide renown and longstanding market presence, the Office found that the applicant took no unfair advantage because the required mental link between the signs was absent. In that case, the contested sign 'UMABABY' was deemed to function independently in the marketplace, and the similarity in the letter sequence 'UMA' within 'PUMA' was insufficient to create a risk of free-riding.

However, the Office is not bound by its previous decisions, as each case has to be dealt with separately and with regard to its particularities. This practice has been fully supported by the General Court, which stated that, according to settled case-law, the legality of decisions is to be assessed purely with reference to the EUTMR, and not to the Office's practice in earlier decisions (30/06/2004, T-281/02, Mehr für Ihr Geld, EU:T:2004:198). Furthermore, that argument does not appear to be applicable to the present case, as the signs considered in the case relied upon differ to a greater extent than those at issue in the present case.

Therefore, taking into account and weighing up all the relevant factors of the present case, in particular, the identical goods, the significant reputation of the earlier mark, it must be concluded that, despite the earlier mark having a low degree of inherent distinctiveness, when encountering the contested mark, the relevant consumers in France will be likely to associate it with the earlier shape mark, that is to say, establish a mental 'link' between the signs. However, although a 'link' between the signs is a necessary condition for further assessing whether detriment or unfair advantage are likely, the existence of such a link is not sufficient, in itself, for a finding that there may be one of the forms of damage referred to in Article 8(5) EUTMR (26/09/2012, T-301/09, CITIGATE / CITICORP et al., EU:T:2012:473, § 96).

**d) Risk of injury**

Use of the contested mark will fall under Article 8(5) EUTMR when any of the following situations arise:

- it takes unfair advantage of the distinctive character or the repute of the earlier mark;
- it is detrimental to the repute of the earlier mark;
- it is detrimental to the distinctive character of the earlier mark.

Although detriment or unfair advantage may be only potential in opposition proceedings, a mere possibility is not sufficient for Article 8(5) EUTMR to be applicable. While the proprietor of the earlier mark is not required to demonstrate actual and present harm to its mark, it

must ‘adduce prima facie evidence of a future risk, which is not hypothetical, of unfair advantage or detriment’ (06/07/2012, T-60/10, ROYAL SHAKESPEARE / RSC- ROYAL SHAKESPEARE COMPANY et al., EU:T:2012:348, § 53).

It follows that the opponent must establish that detriment or unfair advantage is probable, in the sense that it is foreseeable in the ordinary course of events. For that purpose, the opponent should file evidence, or at least put forward a coherent line of argument demonstrating what the detriment or unfair advantage would consist of and how it would occur, that could lead to the prima facie conclusion that such an event is indeed likely in the ordinary course of events.

In other words, the opponent claims that use of the contested trade mark would take unfair advantage of the distinctive character or the repute of the earlier trade mark.

**Unfair advantage (free-riding)**

Unfair advantage in the context of Article 8(5) EUTMR covers cases where there is clear exploitation and ‘free-riding on the coat-tails’ of a famous mark or an attempt to trade upon its reputation. In other words, there is a risk that the image of the mark with a reputation or the characteristics which it projects are transferred to the goods and services covered by the contested trade mark, with the result that the marketing of those goods and services is made easier by their association with the earlier mark with a reputation (06/07/2012, T-60/10, ROYAL SHAKESPEARE / RSC- ROYAL SHAKESPEARE COMPANY et al., EU:T:2012:348, § 48; 22/03/2007, T-215/03, VIPS / VIPS, EU:T:2007:93, § 40).

The proprietor of the earlier mark bases its claim on the following:

- The various elements comprising the design and shape of the Chaos perfume bottle were evidently selected with the intention of evoking the renowned CHANEL Classic bottle, protected by the earlier trade marks, thereby seeking to capitalize on its prestigious and luxurious image and broad consumer appeal. the shape protected by the earlier trade mark has featured prominently in CHANEL’s best-selling perfume collections for more than a century and has become both an enduring symbol of luxury and a cultural icon, in France and internationally. When French consumers encounter this specific shape, they instantly associate it with Chanel and its prestigious reputation.

- The remarkable similarity is not the result of coincidences but of several choices that have been made to mislead average consumers and to free-ride on the prestigious reputation and appeal of the earlier trade mark.

According to the Court of Justice of the European Union

> … as regards injury consisting of unfair advantage taken of the distinctive character or the repute of the earlier mark, in so far as what is prohibited is the drawing of benefit from that mark by the proprietor of the later mark, the existence of such injury must be assessed by reference to average consumers of the goods or services for which the later mark is registered, who are reasonably well informed and reasonably observant and circumspect.
>
> (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 36.)

The concept of taking unfair advantage does not necessarily imply a deliberate intention to exploit the goodwill attached to someone else's trade mark. In several cases, the General Court has held that the concept of taking unfair advantage:

> "concerns the risk that the image of the mark with a reputation or the characteristics which it projects are transferred to the goods covered by the mark applied for, with the result that the marketing of those goods is made easier by that association with the earlier mark with a reputation"
>
> (19/06/2008, T-93/06, Mineral Spa, EU:T:2008:215, § 40; 22/03/2007, T-215/03, VIPS, EU:T:2007:93, § 40).

As shown above, a link between the signs has been found. The contested goods and the reputed goods are identical. Furthermore, they are all offered in the same establishments. It is likely that the use of the applicant's sign with those contested goods would take unfair advantage of the earlier reputed mark in the sense recognised by the General Court and mentioned above. In view of the significant reputation of the earlier mark, there is a high probability that the image of the mark and the characteristics that it projects, given its long-standing presence on the market and a significant degree of brand awareness, will be transferred to the contested goods.

The relevant association is reinforced by the fact that the contested sign reproduces the majority of the elements of the earlier bottle, including its compact rectangular form, vertically oriented proportions, short central neck and broad, flattened stopper. These similarities are not considered in isolation but also in light of the significant reputation acquired by the earlier mark in the French market.

Considering the signs' similarities analysed above, the identity of the goods and the significant repute of the earlier mark, the contested sign would receive an unfair 'boost' in the minds of the relevant consumers as a result of it being linked with the opponent's reputed mark. The marketing of the applicant's goods would be made easier, as its mark contains similarities with the earlier mark which will be immediately recognised by the relevant public. It is due to the efforts of the opponent, rather than those of the applicant, that the contested sign would start off with an immediate degree of recognition. Overall, the contested sign's association with the opponent's earlier reputed mark makes the contested sign easier for the relevant consumer to remember and recognise, in light of which, the contested sign would exploit the attractive power of the earlier mark. The contested sign would thus benefit from the repute of the earlier mark.

On the basis of the above, it is concluded that the contested trade mark will take unfair advantage of the repute of the earlier trade mark in the perception of the relevant public in France.

**e) Conclusion**

Considering all the above, the opposition is well founded under Article 8(5) EUTMR. Therefore, the contested trade mark must be rejected for all the contested goods.

Given that the opposition is entirely successful under Article 8(5) EUTMR, it is not necessary to examine the remaining grounds and earlier rights on which the opposition was based nor to assess the opponent's claim of reputation and the proof of use in relation to the remaining goods on which the opposition was based.

## COSTS

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

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

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

**The Opposition Division**

Vito PATI Chiara BORACE Philipp HOMANN

According to Article 67 EUTMR, any party adversely affected by this decision has a right to appeal against this decision. According to Article 68 EUTMR, notice of appeal must be filed in writing at the Office within two months of the date of notification of this decision. It must be filed in the language of the proceedings in which the decision subject to appeal was taken. Furthermore, a written statement of the grounds for appeal must be filed within four months of the same date. The notice of appeal will be deemed to have been filed only when the appeal fee of EUR 720 has been paid.