

**DECISION  
of the Fifth Board of Appeal  
of 20 February 2025**

In case R 992/2024-5

**SB ADVANCED SYSTEMS LTD**

Prespas 2, 4th Floor, Flat /Office 405, Agioi  
Omologites  
1082 Nicosia  
Cyprus

Opponent / Appellant

represented by Magdalena Gabriela Bolintineanu, Str. Ion Câmpineanu, Nr. 28, Imobil Sala  
Palatului, Corp A, Parter, Spațiul administrativ A2, sectorul 1, Bucuresti, Romania

v

**Eldevia MB**

Giruliu st. LT- 10  
Vilnius  
Lithuania

Applicant / Defendant

APPEAL relating to Opposition Proceedings No B3 190 080 (European Union trade mark  
application No 18 788 275)

**THE FIFTH BOARD OF APPEAL**

composed of V. Melgar (Chairperson), Ph. von Kapff (Rapporteur) and R. Ocquet (Member)

Registrar: H. Dijkema

gives the following

## Decision

### Summary of the facts

- 1 By an application filed on 30 October 2022, Eldevia MB ('the applicant') sought to register the word mark

### Superr

for the following goods and services:

Class 9: *Communications server software.*

Class 42: *Server hosting.*

- 2 The application was published on 8 November 2022.
- 3 On 8 February 2023, SB ADVANCED SYSTEMS LTD ('the opponent'), filed an opposition against the registration of the published trade mark application for all the above goods and services.
- 4 The grounds of opposition were those laid down in Article 8(1)(b) and Article 8(5), EUTMR.
- 5 The opposition was based on the following earlier rights:
  - a) Cypriot trade mark No 91 927



applied for on 27 July 2021 and registered on 13 November 2022 for, inter alia, the following goods and services:

*Class 9: Software for gambling; software for betting; downloadable software applications for sports betting; downloadable gambling software applications; downloadable software applications; downloadable mobile applications; downloadable applications for use with mobile devices; casino management software; interactive casino games provided via computer, mobile device or mobile platform (downloadable software); gambling provided by means of a computer, mobile device or mobile platform (downloadable software); computer game software, stored; interactive multimedia computer game programs; computer programs for games and/or interactive competitions; computer software platforms, recorded or downloadable; downloadable electronic publications on gambling; downloadable multimedia content webcasting on gambling; electronic lottery tickets; downloadable electronic forms for gambling and betting; downloadable image files; downloadable*

*emoticons for mobile phones; computer hardware for games; electronic terminals for production of betting slips; lottery ticket dispensers; interactive terminals with touch screen.*

*Class 35: Advertisement; on-line advertising on a computer network; advertising space rental; placement of advertising posters; rental of billboards; development of advertising plans; distribution of advertising messages; publication of advertising texts; author advertising texts; hiring of advertising material; marketing services; public relations services; promotion of sports competitions and events; promotion of goods and services through sponsorship of sporting events; news clipping agency services; collection of information in databases computer; systematisation of information in electronic databases; updating and maintaining data in electronic databases computer databases.*

*Class 41: Gambling services; betting services; gambling services provided online; gambling services provided via a software platform; betting services provided online; distance services gambling services; gambling services provided on line via a website or via mobile devices; betting services provided on line via a website or via mobile devices; lottery organisation; casino [games] (services -); casino services; on line casino services; remote casino services; interactive casino services provided via a computer or mobile platform; bingo game services; bingo hall services; services for the operation of electronic bingo games; function gambling halls, i.e. the conduct of sports betting in special specially designed areas where customers have the opportunity to place bets; providing betting, gambling and gaming services in physical and electronic spaces; conducting multiplayer gaming; providing information on gambling; providing information on betting; provision of coin-operated rooms machines; slot machine rental [gambling machines]; rental of gaming equipment; leasing of casino games (casino); entertainment services; online (on-line) entertainment; providing entertainment services; providing sports information, results and news; online provision of sports information, results and news; on-line supply of newsletters in the field of sports entertainment; club (services -) [recreation or education]; game (services -) provided on line [by network computer network]; provision of entertainment hall services; film production, except for promotional films; provision of non-downloadable films via video services upon request; hiring of playground equipment; electronic publication of books and journals; multimedia publishing; online provision of non-downloadable electronic publications; publication of texts other than advertising texts; providing online, non-downloadable video images; organisation of sports games; organization of sports events; production of sporting events for television and/or radio; competitions (organization -) [education or recreation]; photography; presentation of live performances; production of radio and television programmes; providing sports facilities; hire of sports equipment, other than vehicles; rental of sports fields; ticket agency services (entertainment); conducting games questions; entertainment provided during sports breaks events; organising award ceremonies.*

*Class 42: Software as a service; platform as a service [PaaS]; conversion of data or documents from physical to electronic form; creation and maintenance of websites; user authentication services using a unique connection technology for online software applications; development of a software platform enabling participants to connect and bet online; ensuring the temporary use of online non-downloadable software that*

*allows participants to log in and bet online; ensuring the temporary use of non-downloadable software applications, available on a website, allowing participants to log in and bet online; ensuring the temporary use of non-downloadable online software for processing electronic payments; provision of temporary use of non-downloadable software to facilitate the sharing of multimedia content and comments between users.*

b) Romanian trade mark No 178 023

**SUPERBET**

with the colour claim ‘red (Pantone 2035 C)’, applied for on 19 May 2021 and registered on 3 January 2022 for the following goods and services:

*Class 9: Gambling software; betting software; downloadable sports betting software applications; downloadable gambling software applications; downloadable software applications; mobile, downloadable applications; downloadable applications for use with mobile devices; casino management software; interactive casino games provided via a computer, mobile device or mobile platform (downloadable software); gambling services provided via a computer, mobile device or via a mobile platform (downloadable software); computer game software, stored; interactive multimedia computer game programs; computer programs for interactive games and / or contests; computer software platforms, registered or downloadable; downloadable electronic publications relating to gambling; downloadable podcasts on gambling; electronic lottery tickets; downloadable electronic forms for gambling and betting; downloadable image files; downloadable emoticons for mobile phones; computer hardware for games and gaming; electronic terminals for generating lottery tickets; lottery ticket dispensing apparatus; interactive touch screen terminals.*

*Class 16: Printed betting forms; gambling forms; tickets; printed publications in the field of gambling; newsletters; comics; posters; posters; billboards of paper or cardboard; advertising flyers; pennants of paper; paper banners; calendars; business cards; stationery; agendas; photos; illustrations; graphic representations; plastic foils for documents, foils and bags for packing and wrapping; stickers (stationery).*

*Class 28: Gambling machines; amusement apparatus, automatic and chip operated; devices for arcade video games; bingo cards; scratch cards for lottery games; slot machines (gaming devices); slot machines [counter-free amusement apparatus]; roulette wheels; roulette tables; chips for gambling; coin operated pool tables; bowling machines and apparatus; automatic gaming machines; video game apparatus; playing cards.*

*Class 35: Advertising; online advertising on a computer network; rental of advertising space; posting advertising posters; billboard rental (billboards); development of advertising concepts; dissemination of advertising materials; publishing advertising texts; writing advertising texts; rental of advertising material; marketing services; public relations services; promotion of sports competitions and events; promotion of*

*goods and services through sponsorship of sports events; news clipping services; compilation of information into computer databases; systematization of information in computerized databases; updating and maintaining data in computer databases.*

*Class 41: Gambling services; betting services; gambling services provided online; gambling services provided via a software platform; betting services provided online; remote gambling services; gambling services provided online via a website or via mobile devices; betting services provided online via a website or via mobile devices; organization of lotteries; providing casino facilities (gambling); casino services; online casino services; remote casino gambling services; interactive casino services provided via a computer or mobile platform; bingo services; bingo hall services; services for the operation of computerised bingo; operation of gambling halls, namely the conduct of sports betting in specially designed spaces where customers have the opportunity to place bets; providing betting, gambling and gaming services in physical and electronic spaces; conducting multiple player games of chance; providing information on gambling; providing information on betting; providing slot machine parlors; rental of slot machines [gaming machines]; rental of gambling equipment; leasing of casino games; entertainment services; online entertainment services; providing entertainment services; providing information, results and sports news; providing online sports information, results and news; providing online newsletters in the field of sports entertainment; club services (entertainment or education); game services provided online from a computer network; providing arcade entertainment services; film production, other than advertising films; providing non-downloadable movies via video services upon request; rental of gaming equipment; online publication of electronic books and journals; multimedia publishing; providing online non-downloadable electronic publications; publishing of texts other than advertising texts; providing online, non-downloadable video images; organization of sports competitions; organisation of sporting events; production of sporting events for television and / or radio; organization of competitions (education or entertainment); photography; presentation of live performances; production of radio and television programs; provision of sports facilities; rental of sports equipment, except vehicles; rental of sports fields; ticket agency services (entertainment); operating quizzes; entertainment provided during intervals of sporting events; arranging of award ceremonies.*

*Class 42: Software as a service [SaaS]; Platform as a service [PaaS]; conversion of data or documents from physical to electronic format; creation and maintenance of websites; user authentication services using a unique connection technology for online software applications; developing a software platform that allows participants to log in and bet online; ensuring the temporary use of online non-downloadable software that allows participants to log in and bet online; ensuring the temporary use of non-downloadable software applications, available on a website, that allow participants to log in and bet online; ensuring the temporary use of non-downloadable online software for processing electronic payments; providing temporary use of non-downloadable software to enable sharing of multimedia content and comments among users.*

c) Romanian trade mark No 178 027



with the colour claim 'white, red (Pantone 2035 C)', applied for on 20 May 2021 and registered on 3 January 2022 for, inter alia, the following goods and services:

*Class 9: Gambling software; betting software; downloadable sports betting software applications; downloadable gambling software applications; downloadable software applications; mobile, downloadable applications; downloadable applications for use with mobile devices; casino management software; interactive casino games provided via a computer, mobile device or mobile platform (downloadable software); gambling services provided via a computer, mobile device or via a mobile platform (downloadable software); computer game software, stored; interactive multimedia computer game programs; computer programs for interactive games and / or contests; computer software platforms, registered or downloadable; downloadable electronic publications relating to gambling; downloadable podcasts on gambling; electronic lottery tickets; downloadable electronic forms for gambling and betting; downloadable image files; downloadable emoticons for mobile phones; computer hardware for games and gaming; electronic terminals for generating lottery tickets; lottery ticket dispensing apparatus; interactive touch screen terminals.*

*Class 35: Advertising; online advertising on a computer network; rental of advertising space; posting advertising posters; billboard rental (billboards); development of advertising concepts; dissemination of advertising materials; publishing advertising texts; writing advertising texts; rental of advertising material; marketing services; public relations services; promotion of sports competitions and events; promotion of goods and services through sponsorship of sports events; news clipping services; compilation of information into computer databases; systematization of information in computerized databases; updating and maintaining data in computer databases.*

*Class 41: Gambling services; betting services; gambling services provided online; gambling services provided via a software platform; betting services provided online; remote gambling services; gambling services provided online via a website or via mobile devices; betting services provided online via a website or via mobile devices; organization of lotteries; providing casino facilities (gambling); casino services; online casino services; remote casino gambling services; interactive casino services provided via a computer or mobile platform; bingo services; bingo hall services; services for the operation of computerised bingo; operation of gambling halls, namely the conduct of sports betting in specially designed spaces where customers have the opportunity to place bets; providing betting, gambling and gaming services in physical and electronic spaces; conducting multiple player games of chance; providing information on gambling; providing information on betting; providing slot machine parlors; rental of slot machines [gaming machines]; rental of gambling equipment; leasing of casino games; entertainment services; online entertainment services; providing entertainment services; providing information, results and sports*

*news; providing online sports information, results and news; providing online newsletters in the field of sports entertainment; club services (entertainment or education); game services provided online from a computer network; providing arcade entertainment services; film production, other than advertising films; providing non-downloadable movies via video services upon request; rental of gaming equipment; online publication of electronic books and journals; multimedia publishing; providing online non-downloadable electronic publications; publishing of texts other than advertising texts; providing online, non-downloadable video images; organization of sports competitions; organisation of sporting events; production of sporting events for television and / or radio; organization of competitions (education or entertainment); photography; presentation of live performances; production of radio and television programs; provision of sports facilities; rental of sports equipment, except vehicles; rental of sports fields; ticket agency services (entertainment); operating quizzes; entertainment provided during intervals of sporting events; arranging of award ceremonies.*

*Class 42: Software as a service [SaaS]; Platform as a service [PaaS]; conversion of data or documents from physical to electronic format; creation and maintenance of websites; user authentication services using a unique connection technology for online software applications; developing a software platform that allows participants to log in and bet online; ensuring the temporary use of online non-downloadable software that allows participants to log in and bet online; ensuring the temporary use of non-downloadable software applications, available on a website, that allow participants to log in and bet online; ensuring the temporary use of non-downloadable online software for processing electronic payments; providing temporary use of non-downloadable software to enable sharing of multimedia content and comments among users.*

d) Romanian trade mark No 178 028

**SUPERBET**

applied for on 20 May 2021 and registered on 3 January 2022 for the following goods and services:

*Class 9: Gambling software; betting software; downloadable sports betting software applications; downloadable gambling software applications; downloadable software applications; mobile, downloadable applications; downloadable applications for use with mobile devices; casino management software; interactive casino games provided via a computer, mobile device or mobile platform (downloadable software); gambling services provided via a computer, mobile device or via a mobile platform (downloadable software); computer game software, stored; interactive multimedia computer game programs; computer programs for interactive games and / or contests; computer software platforms, registered or downloadable; downloadable electronic publications relating to gambling; downloadable podcasts on gambling; electronic lottery tickets; downloadable electronic forms for gambling and betting; downloadable image files; downloadable emoticons for mobile phones; computer*

*hardware for games and gaming; electronic terminals for generating lottery tickets; lottery ticket dispensing apparatus; interactive touch screen terminals.*

*Class 16: Printed betting forms; gambling forms; tickets; printed publications in the field of gambling; newsletters; comics; posters; posters; billboards of paper or cardboard; advertising flyers; pennants of paper; paper banners; calendars; business cards; stationery; agendas; photos; illustrations; graphic representations; plastic foils for documents, foils and bags for packing and wrapping; stickers (stationery).*

*Class 28: Gambling machines; amusement apparatus, automatic and chip operated; devices for arcade video games; bingo cards; scratch cards for lottery games; slot machines (gaming devices); slot machines [counter-freed amusement apparatus]; roulette wheels; roulette tables; chips for gambling; coin operated pool tables; bowling machines and apparatus; automatic gaming machines; video game apparatus; playing cards.*

*Class 35: Advertising; online advertising on a computer network; rental of advertising space; posting advertising posters; billboard rental (billboards); development of advertising concepts; dissemination of advertising materials; publishing advertising texts; writing advertising texts; rental of advertising material; marketing services; public relations services; promotion of sports competitions and events; promotion of goods and services through sponsorship of sports events; news clipping services; compilation of information into computer databases; systematization of information in computerized databases; updating and maintaining data in computer databases.*

*Class 41: Gambling services; betting services; gambling services provided online; gambling services provided via a software platform; betting services provided online; remote gambling services; gambling services provided online via a website or via mobile devices; betting services provided online via a website or via mobile devices; organization of lotteries; providing casino facilities (gambling); casino services; online casino services; remote casino gambling services; interactive casino services provided via a computer or mobile platform; bingo services; bingo hall services; services for the operation of computerised bingo; operation of gambling halls, namely the conduct of sports betting in specially designed spaces where customers have the opportunity to place bets; providing betting, gambling and gaming services in physical and electronic spaces; conducting multiple player games of chance; providing information on gambling; providing information on betting; providing slot machine parlors; rental of slot machines [gaming machines]; rental of gambling equipment; leasing of casino games; entertainment services; online entertainment services; providing entertainment services; providing information, results and sports news; providing online sports information, results and news; providing online newsletters in the field of sports entertainment; club services (entertainment or education); game services provided online from a computer network; providing arcade entertainment services; film production, other than advertising films; providing non-downloadable movies via video services upon request; rental of gaming equipment; online publication of electronic books and journals; multimedia publishing; providing online non-downloadable electronic publications; publishing of texts other than advertising texts; providing online, non-downloadable video images; organization of sports competitions; organisation of sporting events; production of sporting events for television and / or radio; organization of competitions (education or entertainment); photography; presentation of live performances; production of*



*radio and television programs; provision of sports facilities; rental of sports equipment, except vehicles; rental of sports fields; ticket agency services (entertainment); operating quizzes; entertainment provided during intervals of sporting events; arranging of award ceremonies.*

*Class 42: Software as a service [SaaS]; Platform as a service [PaaS]; conversion of data or documents from physical to electronic format; creation and maintenance of websites; user authentication services using a unique connection technology for online software applications; developing a software platform that allows participants to log in and bet online; ensuring the temporary use of online non-downloadable software that allows participants to log in and bet online; ensuring the temporary use of non-downloadable software applications, available on a website, that allow participants to log in and bet online; ensuring the temporary use of non-downloadable online software for processing electronic payments; providing temporary use of non-downloadable software to enable sharing of multimedia content and comments among users.*

e) Romanian word trade mark No 181 843

### **SUPERBET**

applied for on 16 June 2021 and registered on 10 May 2022 for, inter alia, the following goods and services:

*Class 9: Gambling software; betting software; downloadable sports betting software applications; downloadable gambling software applications; downloadable software applications; mobile, downloadable applications; downloadable applications for use with mobile devices; casino management software; interactive casino games provided via a computer, mobile device or mobile platform (downloadable software); gambling services provided via a computer, mobile device or via a mobile platform (downloadable software); computer game software, stored; interactive multimedia computer game programs; computer programs for interactive games and / or contests; computer software platforms, registered or downloadable; downloadable electronic publications relating to gambling; downloadable podcasts on gambling; electronic lottery tickets; downloadable electronic forms for gambling and betting; downloadable image files; downloadable emoticons for mobile phones; computer hardware for games and gaming; electronic terminals for generating lottery tickets; lottery ticket dispensing apparatus; interactive touch screen terminals.*

*Class 35: Advertising; online advertising on a computer network; rental of advertising space; posting advertising posters; billboard rental (billboards); development of advertising concepts; dissemination of advertising materials; publishing advertising texts; writing advertising texts; rental of advertising material; marketing services; public relations services; promotion of sports competitions and events; promotion of goods and services through sponsorship of sports events; news clipping services; compilation of information into computer databases; systematization of information in computerized databases; updating and maintaining data in computer databases.*

Class 41: *Gambling services; betting services; gambling services provided online; gambling services provided via a software platform; betting services provided online; remote gambling services; gambling services provided online via a website or via mobile devices; betting services provided online via a website or via mobile devices; organization of lotteries; providing casino facilities (gambling); casino services; online casino services; remote casino gambling services; interactive casino services provided via a computer or mobile platform; bingo services; bingo hall services; services for the operation of computerised bingo; operation of gambling halls, namely the conduct of sports betting in specially designed spaces where customers have the opportunity to place bets; providing betting, gambling and gaming services in physical and electronic spaces; conducting multiple player games of chance; providing information on gambling; providing information on betting; providing slot machine parlors; rental of slot machines [gaming machines]; rental of gambling equipment; leasing of casino games; entertainment services; online entertainment services; providing entertainment services; providing information, results and sports news; providing online sports information, results and news; providing online newsletters in the field of sports entertainment; club services (entertainment or education); game services provided online from a computer network; providing arcade entertainment services; film production, other than advertising films; providing non-downloadable movies via video services upon request; rental of gaming equipment; online publication of electronic books and journals; multimedia publishing; providing online non-downloadable electronic publications; publishing of texts other than advertising texts; providing online, non-downloadable video images; organization of sports competitions; organisation of sporting events; production of sporting events for television and / or radio; organization of competitions (education or entertainment); photography; presentation of live performances; production of radio and television programs; provision of sports facilities; rental of sports equipment, except vehicles; rental of sports fields; ticket agency services (entertainment); operating quizzes; entertainment provided during intervals of sporting events; arranging of award ceremonies.*

Class 42: *Software as a service [SaaS]; Platform as a service [PaaS]; conversion of data or documents from physical to electronic format; creation and maintenance of websites; user authentication services using a unique connection technology for online software applications; developing a software platform that allows participants to log in and bet online; ensuring the temporary use of online non-downloadable software that allows participants to log in and bet online; ensuring the temporary use of non-downloadable software applications, available on a website, that allow participants to log in and bet online; ensuring the temporary use of non-downloadable online software for processing electronic payments; providing temporary use of non-downloadable software to enable sharing of multimedia content and comments among users.*

- f) Article 8(5) EUTMR (reputation) in Romania was claimed regarding the above Romanian word trade mark No 181 843 SUPERBET for the following goods and services:

Class 9: *Gambling software; betting software; downloadable sports betting software applications; downloadable gambling software applications; downloadable software applications; mobile, downloadable applications; downloadable applications for use*

*with mobile devices; casino management software; interactive casino games provided via a computer, mobile device or mobile platform (downloadable software); gambling services provided via a computer, mobile device or via a mobile platform (downloadable software); computer game software, stored; interactive multimedia computer game programs; computer programs for interactive games and / or contests; computer software platforms, registered or downloadable; downloadable electronic publications relating to gambling; downloadable podcasts on gambling; electronic lottery tickets; downloadable electronic forms for gambling and betting; downloadable image files; downloadable emoticons for mobile phones; computer hardware for games and gaming; electronic terminals for generating lottery tickets; lottery ticket dispensing apparatus; interactive touch screen terminals.*

*Class 41: Gambling services; betting services; gambling services provided online; gambling services provided via a software platform; betting services provided online; remote gambling services; gambling services provided online via a website or via mobile devices; betting services provided online via a website or via mobile devices; organization of lotteries; providing casino facilities (gambling); casino services; online casino services; remote casino gambling services; interactive casino services provided via a computer or mobile platform; bingo services; bingo hall services; services for the operation of computerised bingo; operation of gambling halls, namely the conduct of sports betting in specially designed spaces where customers have the opportunity to place bets; providing betting, gambling and gaming services in physical and electronic spaces; conducting multiple player games of chance; providing information on gambling; providing information on betting; providing slot machine parlors; rental of slot machines [gaming machines]; rental of gambling equipment; leasing of casino games; entertainment services; online entertainment services; providing entertainment services; providing information, results and sports news; providing online sports information, results and news; providing online newsletters in the field of sports entertainment; club services (entertainment or education); game services provided online from a computer network; providing arcade entertainment services; film production, other than advertising films; providing non-downloadable movies via video services upon request; rental of gaming equipment; online publication of electronic books and journals; multimedia publishing; providing online non-downloadable electronic publications; publishing of texts other than advertising texts; providing online, non-downloadable video images; organization of sports competitions; organisation of sporting events; production of sporting events for television and / or radio; organization of competitions (education or entertainment); photography; presentation of live performances; production of radio and television programs; provision of sports facilities; rental of sports equipment, except vehicles; rental of sports fields; ticket agency services (entertainment); operating quizzes; entertainment provided during intervals of sporting events; arranging of award ceremonies.*

*Class 42: Software as a service [SaaS]; Platform as a service [PaaS]; conversion of data or documents from physical to electronic format; creation and maintenance of websites; user authentication services using a unique connection technology for online software applications; developing a software platform that allows participants to log in and bet online; ensuring the temporary use of online non-downloadable software that allows participants to log in and bet online; ensuring the temporary use of non-downloadable software applications, available on a website, that allow*

*participants to log in and bet online; ensuring the temporary use of non-downloadable online software for processing electronic payments; providing temporary use of non-downloadable software to enable sharing of multimedia content and comments among users.*

- g) Article 8(5) EUTMR (reputation) in the European Union was claimed regarding the European Union trade mark No 15 899 487



applied for on 7 October 2016 and registered on 7 July 2017, for the all the registered services:

*Class 41: Entertainment services, namely, providing online gaming, betting and gambling services; operation of online virtual casino games and sports betting, including slot machines, roulette games, bingo games, card games, keno, poker games, lottery, live betting, sports betting, raffles and other games of chance; operation of gaming and sports betting halls.*

- h) Article 8(5) EUTMR (reputation) in Romania was claimed regarding the Romanian word trade mark No 132 133

### **SUPER BET**

applied for on 8 July 2013 and registered on 9 September 2014, for the all the registered services:

*Class 41: Gambling and betting activities.*

- 6 On 13 September 2023, the opponent submitted the following documents in order to support its opposition:



– **Annex 1:**

- Evidence of the earlier Romanian word trade mark no 132 133 SUPER BET;
- Evidence of the earlier Romanian word trade mark no 181 843 SUPERBET;
- Evidence of the earlier Romanian trade mark no 178 023

**SUPERBET**

- Evidence of the earlier Romanian trade mark no 178 027

**SUPERBET**

- Evidence of the earlier Romanian trade mark no 178 028 
- Evidence of the earlier Cypriot trade mark no 91 927 

– **Annex 2**

- Article - Success Story – Superbet published by Income Access Team On 5 February 2023 stating the following:

### **The Company**

- Founded back in 2008, Superbet has become the leader of the retail gaming market in Romania.
  - They then turned their attention to the Romanian online market, offering users online betting, slot games, live casinos, virtual games and lotteries, with great products like SuperSpin and Superprono.
  - Superbet became one of the first foreign brands authorized to operate in Poland, which is considered the largest sports betting market in Central / Eastern Europe. This is important for Superbet, as they have an ambitious long-term strategy to continue expanding internationally.
  - Superbet has won numerous awards, including Best Sports Betting Operator in CEE for 2022, awarded at the Central and Eastern European Gaming Conference (CEEGC).
- Article published on 27 September 2017 <https://europeangaming.eu/portal/latest-news/2017/09/27/9729/superbetwins-best-overall-sports-bettingoperator-ceegc-awards-2017/> stating:

This is the first international success for the company. Superbet is already an established brand in Romania, where the company operates over 600 retail shops and the betting portal [www.superbet.ro](http://www.superbet.ro). The company has more than 3,000 employees in the offices Romania (including the headquarter), and starting with 2015 in Serbia, Croatia, Malta and the UK.

- Article published on 28 September 2018 <https://europeangaming.eu/portal/press-releases/2018/09/28/29196/ceegawards-2018-budapest-official-list-ofwinners/> stating:

The awards were presented by **Julia Peeva (Amusenet)** and **Assaf Stieglitz (Odds11)** during the final session of the event and the organizers are honored to reveal the put the winner per each category:

- Best Customer Support in Online Casino 2018: **Betsson Group**
- Best Overall Online Casino 2018: **Mr. Green**
- Best Customer Support in Sports Betting 2018: **Superbet**
- Best Overall Sports Betting Operator 2018: **Superbet**
- Best Overall eSports Service Provider 2018: **UltraPlay**
- Best Overall Fantasy Sports / Virtual Sports Provider 2018: **NSoft**
- Rising Star in the Fantasy Sports / Virtual Sports 2018: **Fantasy Sports Interactive (F**
- Best Sports Betting Innovation in 2018: **Altenar**
- Rising Star in Sports Betting Technology 2018: **Digitain**
- Best Overall Sports Betting Provider 2018: **SBTech**
- Rising Star in Online Casino Technology 2018: **Tom Horn Gaming**



- Article published on 26 September 2019 <https://europeangaming.eu/portal/press-releases/2019/09/26/55088/ceegawards-2019-official-list-of-winnersreleased-congrats-to-all-competitors/> stating mainly:

The winners of each category can be seen below:

1/20 (Responsible Gambling) Best Support for Responsible Gambling 2019: **PLAYTECH**

2/20 (Connected) Best Testing Laboratory: **GAMING LABORATORIES INTERNATIONAL(GLI)**

3/20 (Connected) Best iGaming Service Provider (multiple connected services, including aggregators): **NETSHOP INTERNET SERVICES**

4/20 (Connected) Best iGaming Press in the region 2019: **GAMBLINGCOMPLIANCE**

[europeangaming.eu/portal/press-releases/2019/09/26/55088/ceeg-awards-2019-official-list-of-winners-released-congrats-to-all-c](https://europeangaming.eu/portal/press-releases/2019/09/26/55088/ceeg-awards-2019-official-list-of-winners-released-congrats-to-all-c)

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CEEG Awards 2019 Official List of Winners released – Congrats to all competitors – European Gamini

5/20 (Connected) Best Overall Payment Service Provider: **TRUSTLY**

6/20 (Operators) Best Overall Online Casino 2019: **SUPERBET**

7/20 (Operators) Best Customer Support in Online Casino 2019: **SUPERBET**

8/20 (Operators) Best Overall Sports Betting Operator 2019: **SUPERBET**

9/20 (Operators) Best Customer Service in Sports Betting 2019: **SUPERBET**

10/20 (B2B) Best Lottery Service Provider 2019: **MAGELLAN ROBOTECH – STANLEYBET GROUP**

- Article from 16 July 2021 published in <https://economedia.ro> stating mainly that:

The Superbet Group, one of the largest players on the sports betting and gaming market in Romania, announces the takeover of the Belgian company Napoleon Sports & Casino, the third largest in Belgium. The company says that this is “one of the largest acquisitions made by a Romanian company abroad”. The local press writes that Superbet thus becomes the leader of the local market and, among others, the owner of the Knokke and Middelkerke casinos.

The value of the transaction was not made public, but it was agreed, and the sale process will be completed in the coming weeks.



- Article published on 19 September 2022 <https://europeangaming.eu/portal/press-releases/2022/09/19/121210/thewinners-of-ceeg-awards-2022-have-been-announced-on-16-september-atthe-ritz-carlton-budapest/> stating:

Below you will find the winners at the 2022 edition of the CEEG Awards which were a on 16 September in Budapest.



BEST ONLINE CASINO IN CEE 2022: **PRINCESS CASINO**  
 ONLINE CASINO – BEST CUSTOMER SUPPORT IN CEE 2022: **BETANO**  
 BEST SPORTS BETTING OPERATOR IN CEE 2022: **SUPERBET**  
 SPORTS BETTING – BEST CUSTOMER SUPPORT IN CEE 2022: **STANLEYBET**  
 BEST LOTTERY SERVICE PROVIDER IN CEE 2022: **SZERENCSEJÁTÉK ZRT.**  
 BEST ONLINE CASINO PROVIDER IN CEE 2022: **WAZDAN**  
 RISING STAR – ONLINE CASINO TECHNOLOGY IN CEE 2022: **ENDORPHINA**  
 ONLINE CASINO INNOVATOR IN CEE 2022: **EVOPLAY**  
 BEST SPORTS BETTING PROVIDER IN CEE 2022: **ALTENAR**  
 RISING STAR – SPORTS BETTING TECHNOLOGY IN CEE 2022: **BETCONSTRUCT**  
 BEST SPORTS BETTING INNOVATION IN CEE 2022: **GIG (GAMING INNOVATION G**  
 RISING STAR – VIRTUAL SPORTS / FANTASY SPORTS IN CEE 2022: **GLOBAL BET**  
 BEST VIRTUAL SPORTS / FANTASY SPORTS PROVIDER IN CEE 2022: **GLOBAL BET**  
 BEST ESPORTS SERVICE PROVIDER IN CEE 2022: **ODDIN.GG**

- 7 By decision of 14 March 2024 ('the contested decision'), the Opposition Division rejected the opposition in its entirety on the grounds that there was no likelihood of confusion. It gave, in particular, the following grounds for its decision:

*Article 8(5) EUTMR – Reputation*

- In relation to Article 8(5) EUTMR, the opponent invoked earlier EUTM registration

No 15 899 487  Romanian word mark registrations No 181 843 SUPERBET and No 132 133 SUPER BET.


- In the present case, the contested mark was filed on 30 October 2022. Therefore, the opponent was required to prove that the trade marks on which the opposition is based had acquired a reputation prior to that date. In principle, it is sufficient that the opponent show that its marks already had a reputation on that date.
- The Opposition Division found that the evidence submitted by the opponent did not demonstrate that the earlier trade mark had acquired a reputation.
- The evidence mainly refers to the company Superbet and does not provide sufficient information on the extent of the use of the earlier marks. The evidence does not provide any indication of the degree of recognition of the trade mark by the relevant public. Furthermore, the evidence does not indicate the sales volumes, the market share of the trade marks or the extent to which the trade marks have been promoted. As a result, the evidence does not show the degree of recognition of the trade mark by



relevant public and that the trade marks are known by a significant part of the relevant public. Under these circumstances, the Opposition Division concluded that the opponent failed to prove that its trade marks have a high degree of distinctiveness as a result of long-standing and intensive use and that they have a reputation.

- In any case, the opponent did not provide any facts, arguments or evidence that could support the conclusion that the 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.

*Article 8(1)(b) EUTMR – Likelihood of confusion*




- The opposition is based on more than one earlier mark. The Opposition Division first examined the opposition in relation to the opponent’s national trade mark registration (Cyprus) No 91 927  and national trade mark registration (Romania) No 181 843 SUPERBET.

*Contested goods in Class 9*

- The contested goods are at least similar to the opponent *gambling software; software for gambling* as they have a similar nature and method of use and can coincide in commercial origin and distribution channels.

*Contested services in Class 42*

- The contested services are at least similar to the opponent’s *software as a service [SaaS]* as they can coincide in their providers, distribution channels and relevant public.
- The public’s degree of attentiveness may vary from average to high, depending on the price, specialised nature, or terms and conditions of the goods and services purchased.
- In the present case, it is considered that the relevant public will identify the word ‘SUPER’ in the signs and perceive it as the common English term used for referring to the ‘positive qualities of the goods or services’ (19/05/2010, T-464/08, Superleggera, EU:T:2010:212, § 23-30; 20/11/2002, T-79/01 & T-86/01, Kit Pro / Kit Super Pro, EU:T:2002:279, § 26). Due to its laudatory character and widespread use, it will be understood in the whole European Union (and therefore also in Cyprus and Romania) as **a non-distinctive element for the goods and services at issue**.
- English will not only be understood by native English speakers, but also, as is a well-known fact, in the Scandinavian countries, the Netherlands and Finland (26/11/2008, T-435/07, New Look, EU:T:2008:534, § 23). The same applies to Cyprus where English was the sole official language until 1960, and where it continues to be spoken by a significant part of its population (22/05/2012, T-60/11, Suisse Premium, EU:T:2012:252, § 50; 09/12/2010, T-307/09, Naturally active, EU:T:2010:509, § 26-27).

- Part of the relevant public, in particular the public in Cyprus, which has a rather high level of proficiency in English, will also identify and perceive the English term ‘BET’ in the earlier mark 1) as a sum of money or valued item against someone else’s on the basis of the outcome of an unpredictable event such as a race or game. This element is weak for the relevant goods and services that can be related to gambling. For that part of the public ‘SUPER’ will be perceived as referring to bet (i.e. an excellent gamble). This conceptual unit is deemed to be weak.
- Visually and aurally, the signs coincide in ‘S-U-P-E-R-’. However, they differ in the letters ‘B-E-T’ of the earlier marks and ‘R’ of the contested sign and visually in the typeface of earlier mark 1).
- Therefore, considering the distinctiveness of the elements explained above, the signs are visually and aurally similar to a very low degree.
- Conceptually, reference is made to the previous assertions concerning the semantic content conveyed by the marks. Since the coinciding component ‘SUPER’ is non-distinctive, its impact on the conceptual comparison of the signs is very limited. Therefore, the signs are conceptually similar to a very low degree.
- Earlier mark 2) as a whole has no meaning for any of the goods and services in question from the perspective of a part of the public in the relevant territory, its distinctiveness is normal for that part of the public. As regards earlier mark 1) its distinctiveness is deemed to be low for the reasons that have been stated above.
- The goods and services are at least similar. They target the general public and business customers whose degree of attention may vary from average to high.
- The distinctiveness of earlier mark 1) is low and the distinctiveness of earlier mark 2) is normal.
- The signs are visually, aurally and conceptually similar to a very low degree. They coincide only in a non-distinctive element.
- The additional and different aspects are clearly perceivable and sufficient to exclude any likelihood of confusion between the marks, bearing in mind also that the common element is non-distinctive and is not dominant in the signs.
- Thus, there is no likelihood of confusion on the part of the public. Therefore, the opposition must be rejected. The opponent has also based its opposition on the following earlier trade marks:
  - national trade mark registration (Romania) No 178 023,  ;
  - national trade mark registration (Romania) No 178 027,  ;
  - national trade mark registration (Romania) No 178 028,  .

- Since these marks are essentially identical or differ only in non-distinctive graphic aspects with no trade mark significance, to the one that has been compared and cover the same or a narrower scope of goods and services, the outcome cannot be different with respect to goods and services for which the opposition has already been rejected. Therefore, no likelihood of confusion exists with respect to those goods and services.
- 8 On 13 May 2024, the opponent, filed an appeal against the contested decision, requesting that the decision be entirely aside.
  - 9 In reaction to the notification of the notice of appeal, the applicant wrote on 4 June 2024 to the Office that they maintained that the contested decision was correct and justified based on the evidence and arguments presented during the opposition proceedings. They also announced that they would review the statement of grounds when received and prepare a reply to it.
  - 10 The applicant further requested in the writ of 4 June 2024 to address the future correspondence to the CEO of the applicant ‘at the address provided above’. However, the letter did not contain any address, so all communications were still sent to the company’s address as in the Office records.
  - 11 On 13 July 2024, the statement of grounds of the appeal was received. The statement of grounds and its annexes were marked as confidential.
  - 12 No response was filed.
  - 13 On 20 October 2024, the applicant requested an extension of the deadline to file a response to the statement of grounds claiming that the delay was due to ‘internal administrative oversight’. However, the opponent did not file any response.
  - 14 On 11 November 2024, the applicant filed observations without requesting a continuation of proceedings, stating that the observations do not introduce new facts or evidence.

### **Submissions and arguments of the opponent**

- 15 The arguments raised in the statement of grounds by the opponent may be summarised as follows:
  - It is well established that it is the verbal content, rather than figurative effects, that are considered more distinctive in a mark, because consumers refer to goods or services by their names (and not by trying to describe the figurative element). Consequently, the dominant and the distinctive element of the earlier rights is the verbal element SUPERBET/SUPER BET.
  - Therefore, the beginning of the conflicting signs is identical, almost all of the new sign (five out of six letters) is included in the verbal element of the earlier trade marks.

- In order to prove the reputation of the SUPERBET/SUPER BET trade marks in Romania, the following documents were submitted in the opposition proceedings:
  - An article published on <https://incomeaccess.com> stating the history of the company, stating namely:
 

‘Founded back in 2008, Superbet has become the leader of the retail gaming market in Romania. Superbet has won numerous awards, including Best Sports Betting Operator in CEE for 2022, awarded at the Central and Eastern European Gaming Conference (CEEGC).’
  - Articles published about awards won by Superbet on <https://europeangaming.eu> on September 27, 2017: this article contains an interview of the General Manager of Superbet Romania stating that the company operates over 600 retail shops and the betting portal [www.superbet.ro](http://www.superbet.ro). The company has more than 3 000 employees in the offices in Romania (including the headquarter), and starting with 2015 in Serbia, Croatia, Malta and the UK.
- The evidence already submitted in the opposition procedure provides sufficient information on the extent of the use of the earlier marks, the degree of recognition of the earlier mark by the relevant public, the sales volumes, and the market share. The quantitative criteria refer to the part of the public concerned by the goods or services covered by the trade mark and certainly not the amount of evidence submitted. The evidence submitted in the opposition proceedings shows the degree of recognition of the SUPERBET/SUPER BET trade marks in Romania. Furthermore, the opponent sends additional documents to support its claim about the reputation. The WIPO Arbitration and Mediation Centre ADMINISTRATIVE PANEL DECISION confirmed that the SUPER BET trade mark is, on the evidence before the Panel, a term in which the opponent has developed a significant reputation particularly in Romania. The number of the followers shows that the SUPERBET trade mark is known by a significant part of the public concerned by the goods and services covered by the earlier mark. In addition, the information regarding the use of social media is a good indicator regarding the extent to which the SUPER BET marks have been promoted. The number of videos/materials posted by Superbet (over 10 000 posts on Instagram and 2.5 k videos on YouTube) also proves intense activity and SUPERBET’s interest to get closer to its audience. Superbet Sport on the App Store has a 4.8 out of 5 rating with 102.4 k in ratings.
- SUPERBET has won important awards in the gambling and betting field, namely:
  - BEST OVERALL SPORTS BETTING OPERATOR AT CEEGC Awards 2017 <https://europeangaming.eu/portal/latest-news/2017/09/27/9729/superbet-wins-best-overall-sports-betting-operator-ceegc-awards-2017/>, article published on 27 September 2017;
  - BEST OVERALL SPORTS BETTING OPERATOR 2018 at CEEG Awards 2018 Budapest – article published at <https://e-playonline.com/ceeg-awards-2018-budapest-official-list-of-winners/> on 1 October 2018;
  - Best Overall Online Casino 2019/ Best Customer Support in Online Casino 2019/ Best Overall Sports Betting Operator 2019/ Best Customer Service in Sports

Betting 2019 at CEEG Awards 2019 <https://europeangaming.eu/portal/press-releases/2019/09/26/55088/ceeg-awards-2019-official-list-of-winners-released-congrats-to-all-competitors/>, article posted on 26 September 2019;

- BEST TRADITIONAL (LAND-BASED) BETTING OPERATOR IN 2022 at the ROMANIAN GAMBLING CELEBRATION – Casino Inside Gala Awards <https://www.casinoinside.ro/en/superbet-received-the-award-for-best-traditional-land-based-betting-operator-in-2022-at-the-romanian-gambling-celebra>, article posted on 19 December 2022;
  - Best online betting operator in 2022 at The Romanian Gaming Celebration - Casino Inside Gala Awards, 8th edition <https://www.casinoinside.ro/en/the-romanian-gaming-celebration-casino-inside-gala-awards-8th-edition/>, article posted on 5 January 2023;
  - BEST SPORTS BETTING OPERATOR IN CEE at CEEG Awards 2022, article posted on 19 September 2022 <https://europeangaming.eu/portal/press-releases/2022/09/19/121210/the-winners-of-ceeg-awards-2022-have-been-announced-on-16-september-at-the-ritz-carlton-budapest/>
- A SUPERR trade mark, used without any other additional identification element (it is important to remember that it will be pronounced and heard as Super) for an area of interest for SUPERBET, which is extremely active in the online and IT environment, will benefit, implicitly, from the degree of recognition and the reputation of the SUPERBET brand in Romania.
  - The Opposition Division states that, since the coinciding component ‘SUPER’ is non-distinctive, its impact on the conceptual comparison of the signs is very limited.
  - However, the earlier Romanian SUPERBET trade marks have a high degree of distinctiveness because of long-standing and intensive use.
  - The earlier SUPERBET trade marks are registered for *downloadable applications* in Class 9 and the contested sign was filed for *software* in Class 9. Therefore, the goods in Class 9 are identical.
  - Regarding the Class 42, *server hosting* is a complementary **service for creation and maintenance of websites, platform as a service**, ensuring the temporary use of non-downloadable software applications, available on a website, allowing participants to log in and bet online. Therefore, the services in Class 42 are similar.
  - Annexes:
    - **Annex no. 1:** WIPO Arbitration and Mediation Center ADMINISTRATIVE PANEL DECISION Case No. DRO2021-0009/ Date: 7 February 2022 SB Advanced Systems Ltd. vs. Internet Ad & Seo
    - **Annex no. 2:** An excerpt from the Deloitte report (confidential) from 13 May 2020 - Market value estimation of the Superbet Trademarks
    - **Annex no. 3:** Nielsen IQ study - Betting Brand Health Romania Wave 2022

- **Annex no. 4:** Social media presence (Facebook, Instagram You Tube pages)
- **Annex no. 5:** SUPERBET app excerpt
- **Annex no. 6:** SUPERBET website excerpt
- **Annex no. 7:** SUPERBET land-based agencies
- **Annex no. 8:** Press appearances:
  - article posted on <https://www.sportcaller.com/sportcaller-secures-first-cis-facing-agreement-with-romanian-sports-betting-giant-superbet/> on 10 November 2020
  - article published on <https://www.casino-magazine.ro/clasamentul-ziarul-financiar-include-si-grupul-superbet-in-primele-10-companii.html> 1/ on 3 December 2020 and its English translation
  - article published on <https://www.businessmagazin.ro/cover-story/noul-pariu-superbet-sa-ajunga-unicorn-in-cinci-ani-19779268> on 14 December 2020 and its translation into English
  - article posted on <https://igamingbusiness.com/strategy/ma/superbet-acquires-belgiums-napoleon-sports-and-casino/> on 15 July 2021
  - <https://www.casinoinside.ro/en/superbet-group-prepares-for-a-possible-listing-on-international-capital-markets-by-appointing-hans-holger>

The articles mention the number of SUPERBET agencies number, the number of employees, the history of the Superbet company, and the SUPERBET presence in important rankings of successful services and companies.

  - article published on <https://financialintelligence.ro/top-egr-power-50-compania-romaneasca-superbet-intra-in-top-30-cele-mai-mari-companii-de-gaming-din-lume/> on 11 December 2020 (the English translation of the title is Top EgR Power 50: The Romanian company Superbet enters the top 30 largest gaming companies in the world) and its English translation
  - article published on 20 December 2022 <https://business-review.eu/business/sports/superbet-group-ranks-11th-in-the-top-50-most-powerful-betting-gaming-companies-in-the-world-239874>
- **Annex no. 9:**
  - article published on 1 July 2022 <https://business-review.eu/business/sports/romanian-top-football-league-will-be-named-superliga-as-superbet-becomes-the-official-partner-of-the-com>
  - article published on <https://sbcnews.co.uk/sportsbook/2023/08/29/superbet-women-foot-romania/>

- article published on <https://www.paginademedia.ro/stiri-media/publicitate-online-pariuri-romania-21537854> on 27 March 2024, and its English translation
- **Annex no. 10:** Proof of awards won:
  - article published on <https://europeangaming.eu/portal/latest-news/2017/09/27/9729/superbet-wins-best-overall-sports-betting-operator-ceegc-awards-2017/> on 27 September 2017
  - article published at <https://e-playonline.com/ceeg-awards-2018-budapest-official-list-of-winners/> on 1 October 2018
  - <https://europeangaming.eu/portal/press-releases/2019/09/26/55088/ceeg-awards-2019-official-list-of-winners-released-congrats-to-all-competitors/>, article posted on 26 September 2019
  - <https://www.casinoinside.ro/en/superbet-received-the-award-for-best-traditional-land-based-betting-operator-in-2022-at-the-romanian-gambling-celebra>, article posted on 19 December 2022
  - <https://www.casinoinside.ro/en/the-romanian-gaming-celebration-casino-inside-gala-awards-8th-edition/>, article posted on 5 January 2023
  - article posted on 19 September 2022 at <https://europeangaming.eu/portal/press-releases/2022/09/19/121210/the-winners-of-ceeg-awards-2022-have-been-announced-on-16-september-at-the-ritz-carlton-budapest/>
- **Annex no. 11:** SUPERBET FOUNDATION
  - extras <https://superbetfoundation.com/en/about-us/>
  - article published on <https://business-review.eu> on 20 April 2022 <https://superbetfoundation.com/en/projects/a-donated-ambulance-thousands-of-lives-saved-at-matei-bals-hospital/>
- **Annex no. 12:** Evidence that the Romanian trade mark no 132 133 SUPER BET was renewed – extract from TMview

16 The applicant's observations could be summarised as follows:

- The 'Superr' trade mark is dedicated to *communication server software and server hosting services specifically for video game servers, targeting game developers and businesses focused on gaming infrastructure and monetization hosting* (Classes 9 and 42).
- The opponent operates within the gambling and betting industry, targeting an audience seeking entertainment through betting. These audiences have vastly different expectations and industry standards, which significantly reduce any potential confusion.

- The mark applied for, ‘Superr’, includes an additional ‘r’, differentiating it visually and phonetically from ‘Superbet’. Combined with the industry context, this subtle difference helps eliminate any likelihood of confusion.
- The relevant consumer of the applicant is the professional public.
- Legal standards typically support the view that a trade mark’s reputation in one industry does not extend to unrelated sectors. The inherent market separation should prevent any likelihood of confusion.
- The applicant has no intention of engaging in traditional betting or gambling activities. Our services are strictly focused on server hosting for gaming.

### **Reasons**

- 17 The appeal complies with Articles 66, 67 and Article 68(1) EUTMR. It is admissible. However, it is not well-founded.

#### *Request for acceptance of belated observations*

- 18 On 20 October 2024, that is after the expiry of the deadline, the applicant requested an extension of the deadline to file a response to the statement of grounds claiming that the delay was due to an internal administrative oversight. On 11 November 2024 the applicant filed its observations. The applicant did not request a continuation of proceedings in line with Article 105 EUTMR, but simply asked the Board to exercise its discretion in line with Article 95(2) EUTMR, since no new facts were presented.
- 19 According to Article 27(4) EUTMDR and Article 95(2) EUTMR, the Board of Appeal may accept facts or evidence submitted for the first time before it if they are, on the face of it, likely to be relevant for the outcome of the case; and where they are merely supplementing relevant facts and evidence which had already been submitted in due time or examined by the first instance.
- 20 The applicant simply repeated its arguments already submitted before the Opposition Division. Therefore, the belated observations are admitted but without effect.

#### *Confidentiality request of the opponent*

- 21 In accordance with Article 114(4) EUTMR, files may contain certain documents which are excluded from public inspection (e.g. parts of the file which the party concerned showed a special interest in keeping confidential, see also Article 6 BoA-RP).
- 22 In the event that a special interest in keeping a document confidential, in accordance with this provision, is invoked, the Office must check whether that special interest is sufficiently shown. Such special interest exists because of the confidential nature of the document or its status as a trade or business secret.
- 23 The opponent requested that all its submissions in the appeal proceedings be treated confidentially as they comprise sensitive business data. However, this is clearly not the case for some of the documents, such as the press articles and the social media excerpts.



- 24 In the present case, the opponent did not sufficiently demonstrate its special interest in keeping its submissions at appeal stage confidential. However, it can be understood that the data submitted especially in relation to the company's commercial activity in the excerpt of the Deloitte report (Annex 2 to the appeal proceedings) and turnover may contain commercially sensitive information. In any event, the Board will treat the documents with the appropriate standard of care and will, wherever possible, refer to the evidence in general terms without divulging data that is not otherwise available from publicly accessible sources.

*Scope of the appeal*

- 25 The opponent did challenge the Opposition Division's assessment of both grounds of the opposition.

*Additional evidence submitted before the Board of Appeal*

- 26 According to Article 95(2) EUTMR, the Office may disregard evidence which is not submitted in due time by the party concerned, here the opponent in its statement of grounds.
- 27 Pursuant to Article 27(4) EUTMDR, the Board of Appeal may accept facts or evidence submitted for the first time before it only where those facts or evidence meet the following requirements: (a) they are, on the face of it, likely to be relevant for the outcome of the case; and (b) they have not been produced in due time for valid reasons, in particular where they are merely supplementing relevant facts and evidence which had already been submitted in due time, or are submitted to contest findings made or examined by the first instance of its own motion in the decision subject to appeal.
- 28 The conditions for accepting the belated evidence submitted by the opponent at the appeal stage have been met. The documents submitted before the Board refer to the reputation of the opponent's earlier signs, who failed to prove that its trade marks have a high degree of distinctiveness as a result of long-standing and intensive use and that they have a reputation as at the first instance. The opponent has submitted only five articles related to the history of its company, and the betting portal [www.superbet.ro](http://www.superbet.ro). The articles are about the rewards won as best sports betting operator. Although these articles show the recognition of the opponent on the market as a betting operator among its competitors, they do not show the recognition by the relevant consumer. Firstly, and foremost, the opponent did not provide any direct evidence of the recognition of the mark by the relevant consumers. The information and evidence produced at the appeal stage are supplementary to the documents presented before the Opposition Division. This evidence is submitted in reply to the Opposition Division's criticism that insufficient evidence was submitted. Finally, there is nothing to suggest negligence or delaying tactics in the present case and the applicant remains silent in this respect. (18/07/2013, C-621/11 P, Fishbone, EU:C:2013:484, § 36). It follows that the applicable criteria for accepting the belated evidence have been fulfilled. Therefore, all the facts and evidence submitted by the cancellation applicant will be taken into account as being admissible by the Board (29/06/2016, T-567/14, Tourism & Travel, EU:T:2016:371, § 29-61; 19/04/2018, C-478/16 P, Tourism & Travel, EU:C:2018:268, § 33-44).

- 29 For the sake of clarity, the Board will firstly examine the opposition with regard to Romanian word mark No 181 843 SUPERBET.

*Earlier Romanian word mark No 181 843 SUPERBET*

*Article 8(1)(b) EUTMR*

- 30 According to Article 8(1)(b) EUTMR, the trade mark applied for will not be registered if, because of its identity with, or similarity to, an earlier trade mark, and the identity or similarity of the goods or services covered by the two marks, there is a likelihood of confusion on the part of the public in the territory in which the earlier trade mark is protected.
- 31 The risk that the public might believe that the goods or services in question come from the same undertaking or, as the case may be, from economically linked undertakings, constitutes a likelihood of confusion within the meaning of that Article (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 16-18; 29/09/1998, C-39/97, Canon, EU:C:1998:442, § 30).
- 32 A likelihood of confusion must be assessed globally, taking into account all factors relevant to the circumstances of the case. That global assessment implies some interdependence between the factors taken into account and, in particular, similarity between the trade marks and between the goods and services covered. Accordingly, a lesser degree of similarity between these goods and services may be offset by a greater degree of similarity between the marks, and vice versa (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 22; 29/09/1998, C-39/97, Canon, EU:C:1998:442, § 17; 22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 19).

*Relevant public and territory*

- 33 The earlier mark is a Romanian word mark. Therefore, the relevant territory for the assessment of the likelihood of confusion is Romania.
- 34 However, for an EUTM application to be refused registration, it is sufficient that the relative ground of Article 8(1)(b) EUTMR exists in only part of the European Union (06/04/2022, T-370/22, Nutrifem Agnubalance, EU:T:2022:215, § 39, 45; 08/08/2020, T-659/2019, Kix, EU:T:2020:328, § 56). For there to be a likelihood of confusion, it is sufficient, even within a Member State, that only a distinct and relevant part of the public is affected, for example because of its variable knowledge of languages or its degree of attention (29/04/2015, T-717/13, Shadow Complex, EU:T:2015:242, § 27).
- 35 The relevant public for the purposes of assessing the likelihood of confusion consists of users who may use both the goods covered by the earlier mark and the goods covered by the trade mark applied for (01/07/2008, T-328/05, Quartz, EU:T:2008:238, § 23; 19/01/2017, T-399/15, m & M Morgan & Morgan (fig.) / MMG TRUST MIEMBRO DEL GRUPO MORGAN & MORGAN (fig.), EU:T:2017:17, § 24).
- 36 In the global assessment of the likelihood of confusion, account should be taken of the average consumer of the category of goods and services concerned, who is reasonably well informed, observant and circumspect. The average consumer's degree of attention is likely

to vary according to the category of goods and services in question (13/02/2007, T-256/04, Respicur, EU:T:2007:46, § 42; 16/12/2020, T-883/19, HELIX ELIXIR / HELIXOR, EU:T:2020:617, § 22).

- 37 The public's degree of attentiveness may vary from average to high, as correctly found by the Opposition Division, depending on the price, specialised nature, or terms and conditions of the goods and services purchased.
- 38 In addition, it is not in dispute that the goods and services in question, intended in part for the general public, in part for professionals, and in part for both, are of a technical nature. Therefore, the public will have a relatively higher level of attention. Furthermore, irrespective of whether they are expensive or not, goods of a technical nature in Class 9 (like different software) and services related to these goods are purchased with more than an average degree of attentiveness (see also 08/09/2011, T-525/09, Metronia, EU:T:2011:437). According to the case-law of the General Court, the fact that a product is not purchased on a regular basis, leads one to assume that the public's degree of attention will be rather high (13/10/2009, T-146/08, Redrock, EU:T:2009:398 § 45). This is particularly true for technical information about the nature of the product to which the trade mark may allude.

*Comparison of the goods and services*

- 39 In assessing the similarity of the goods and services concerned, all the relevant factors relating to those goods and services themselves should be taken into account. Those factors include, inter alia, their nature, intended purpose, and method of use and whether they are in competition or complementary (29/09/1998, Canon, C-39/97, EU:C:1998:442, § 23).
- 40 Goods or services are complementary where there is a close connection between them, in the sense that one is indispensable or important for the use of the other so that consumers may think that the responsibility for the production of those goods or provision of those services lies with the same undertaking (01/03/2005, T-169/03, SISSI ROSSI / MISS ROSSI, EU:T:2005:72, § 60; 11/07/2007, T-443/05, PiraÑAM diseño original Juan Bolaños (fig.) / PIRANHA, EU:T:2007:219, § 48; 22/01/2009, T-316/07, easyHotel / EASYHOTEL, EU:T:2009:14, § 57; 01/12/2021, T-467/20, ZARA / LE DELIZIE ZARA, EU:T:2021:842, § 123). Complementarity must be distinguished from 'use in combination' where goods or services are merely used together, whether by choice or convenience, without one being indispensable or important for the use of the other. By definition, goods intended for different publics cannot be complementary (22/01/2009, T-316/07, easyHotel / EASYHOTEL, EU:T:2009:14, § 57-58; 12/07/2012, T-361/11, DOLPHIN / DOLPHIN, EU:T:2012:377, § 48).

- 41 The contested goods

*Class 9: Communications server software.*

is a specialised software application designed to manage and facilitate data and voice communication among different devices in a network. It serves as a central hub that processes, routes and controls all incoming and outgoing communication traffic.

- 42 The Opposition Division stated only that these goods are at least 'similar' to the goods of the earlier sign in Class 9. No further arguments were found in the contested decision.

43 The opponent stated in its statement of grounds that the goods are identical because both are software without further clarification.

44 Thus, it should be noted that all the goods in Class 9 of the earlier sign, namely:

*Class 9: Gambling software; betting software; downloadable sports betting software applications; downloadable gambling software applications; downloadable software applications; mobile, downloadable applications; downloadable applications for use with mobile devices; casino management software; interactive casino games provided via a computer, mobile device or mobile platform (downloadable software); gambling services provided via a computer, mobile device or via a mobile platform (downloadable software); computer game software, stored; interactive multimedia computer game programs; computer programs for interactive games and / or contests; computer software platforms, registered or downloadable; downloadable electronic publications relating to gambling; downloadable podcasts on gambling; electronic lottery tickets; downloadable electronic forms for gambling and betting; downloadable image files; downloadable emoticons for mobile phones; computer hardware for games and gaming; electronic terminals for generating lottery tickets; lottery ticket dispensing apparatus; interactive touch screen terminals*

are all specific application software related to gambling, betting and casino games/casino management.

45 This specific software in Class 9 of the earlier trade mark differs from the communication server software of the mark applied for as they have different natures and methods of use and different purposes.

46 Communications servers are open, standards-based computing systems that operate as a carrier-grade common platform for a wide range of communications.

47 By no means it is a well-known fact that *communications server software* could have anything to do with the specific software of the earlier trade mark. By no means can be considered that all types of software are automatically similar, simply because of the fact that it is software. *Software* is a very broad and undetermined notion, including a multitude of products aimed at a broad range of users, having purposes that cover a wide variety of applications, these being created by very different enterprises. The specification of ‘software’ as such is not precise in the interpretation of the Court of Justice in the IP Translator judgment, § 54, as such a broad specification does not comply with the function of origin. The notion of ‘software’ for specific services like gambling is not similar to any other software, mainly because of the difference in function (09/11/2021, R 44/2021-1, Beat shift / Beat § 22).

48 The Boards have frequently considered that ‘software’ may not have an overly broad scope of protection (15/05/2024, R 1579/2023-5, C castello COIN (fig.) / CASTELL et al.; 04/05/2023, R 1752/2022-2, davinci (fig.) / DA VINCI, § 26; 22/05/2023, R 312/2022-2, Paddle / PaddleNMT et al., § 41; 13/09/2018, R 1471/2017-1, GeoNue (fig.) / GEO (fig.) et al., § 26). In today’s high-tech society, almost no electronic equipment functions without the use of computers in some form and therefore a computer program in one form or another. To acknowledge similarity in this case exceeds the scope of the protection granted by the legislature to the proprietor of the earlier trade mark. Such a position would lead to a situation in which the registration of a computer program would in practice exclude

subsequent registration of any type of electronic or digital process or service exploiting software. That exclusion is not in any event legitimate in the present case, since the earlier registration makes explicitly reference to gambling and betting sector (27/10/2005, T-336/03, MOBILIX / OBELIX, EU:T:2005:379, § 69; 17/04/2024, T-126/22, COINBASE, EU:T:2024:252, § 33; 30/06/2021, T-204/20, Zoom / ZOOM (fig.) et al., EU:T:2021:391, § 51, 52; 15/12/2021, R 955/2021-4, Qos energy / Cox energy et al., § 28).

49 The opponent failed to demonstrate that ‘communication server software’ has a similar function or purpose, is complementary, is distributed through the same or similar distribution channels, or has the same company origin, as the gambling software of the earlier sign. Thus, at most the conflicting goods can be recognised as having a very low degree of similarity, contrary to the findings of the Opposition Division.

50 The contested services

*Class 42: Server hosting*

are applications, IT infrastructure components or functions that organisations access from external service providers, typically through an internet connection. Hosted services cover a wide spectrum of offerings, including web hosting, off-site backup and virtual desktops.

51 These services have some common points, such as providers and distribution channels with the *software as a service* (SaaS) in Class 42 of the earlier sign. However, SaaS is a way of delivering applications remotely over the internet instead of locally on machines (known as ‘on-premises’ software). Without any further information, it is difficult to understand the precise characteristics of the services. Even more, it is not a well-known fact that servers hosting services have a similar function or purpose, is complementary, is distributed through the same or similar distribution channels, or has the same company origin to software as a service or the other services in Class 42. Thus, at most the conflicting goods can be recognised as having a very low degree of similarity, contrary to the findings of the Opposition Division.

*Comparison of the signs*

52 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).

53 The relevant consumers, when perceiving a verbal sign, will break it down into elements that suggest a concrete meaning, or that resemble words that they already know (13/02/2007, T-256/04, RESPICUR / RESPICORT, EU:T:2007:46, § 57; 13/02/2008, T-146/06, ATURION / URION, EU:T:2008:33, § 58).

54 The mark applied for, ‘SUPERR’, is a composition of the word ‘super’, with a variation of the last letter ‘R’, which has been repeated. Although the trade mark contains two ‘R’s at the end it will be related with the word ‘super’. The repeating of the final letter is clearly a misspelling and will be pronounced by a rolling ‘r’. Hence, the second ‘R’ at the end would be noticed by the relevant consumer with an average to high degree of attention.

- 55 'Super', as a word-forming element, expresses, in connection with nouns or other verbs (1) that something is regarded as excellent, outstanding, or, (2) that something has a particularly high degree. The first component of the earlier sign designates a higher value in quality and/or quantity and merely serves to highlight positive aspects of the goods and services (19/05/2010, T-464/08, Superleggera, EU:T:2010:212). As correctly established by the Opposition Division, it is therefore only very weakly distinctive.
- 56 Due to its laudatory character and widespread use, the basic English term 'super' will be understood in the whole European Union (and therefore also by the Romanian reference public) as a non-distinctive element for the goods and services at issue. The distinctive force of the trade mark applied for, 'superr', lies in the repeated letter 'r'.
- 57 Furthermore, the contested decision correctly noted that the element 'BET' of the earlier sign 'SUPERBET' is an English word meaning a sum of money or valued item placed against someone else's money or valued item on the basis of the outcome of an unpredictable event such as a race or game and therefore is merely a descriptive element of the relevant goods and services for this part of the public.
- 58 The Boards have already noted that the word 'BET' will be perceived by the targeted public in the European Union as a descriptive term in relation to the goods and services, which either refers *expressis verbis* to betting and gambling services or covers a broad category which includes those services (25/06/2014, R 1436/2013-5, bet 24, § 25). Similarly, in decision of 29/09/2011, R 1647/2010-4, BET 365/ BET 3000, § 20). Betting also involves an element of gaming and/or gambling as it involves a prognosis on an uncertain future event, as well as a wager of money. Due to the widespread publicity of betting services on the Internet also in English, the relevant public has met that word in relation to the services at issue.
- 59 Considering the combined meaning of these words, the earlier sign 'SUPERBET' will be understood by the relevant public as a laudatory expression, indicating that the goods and services in question feature the expectation of 'a super outcome from the placing of a bet' (02/05/2017, R 2131/2012-1, Winbet Online (fig.), § 31-32, which further supports the sense given).
- 60 Thus, the earlier mark has an inherently weak distinctive force. Its distinctive character in terms of Article 8(1)(b) EUTMR will lie in particular on the combination of the English word 'bet' and the promotional term 'super'.
- 61 Visually and aurally, the signs 'SUPERR' and 'Superbet' coincide in 'S-U-P-E-R-'. However, they differ in the letters 'B-E-T' of the earlier marks and the repeated 'R' of the contested sign. Therefore, considering the distinctiveness of the elements explained above, the signs are correctly found as visually and aurally similar to a very low degree.
- 62 Conceptually, reference is made to the previous assertions concerning the semantic content conveyed by the marks. Considering that the element 'BET' will be understood by the relevant Romanian consumer, the signs are conceptually rather different because the earlier sign has the clear meaning of 'excellent betting services', whereas the sign applied for is a rather vague laudatory sign of 'SUPERR' with incorrect spelling and no connection with 'betting'. Since the coinciding component 'SUPER' does not have force to distinguish between two companies as to their origin, its impact on the conceptual comparison of the signs is very limited.

*Distinctiveness of the earlier sign*

- 63 For the reasons set out above, the earlier mark, as a whole, does convey a meaning in relation to the relevant goods and services from the perspective of the Romanian public.
- 64 Therefore, the inherent distinctiveness of the earlier mark in the sense of Article 8(1)(b) EUTMR must be seen as low, as noted in the contested decision, and relies on the combination of the indication of the English word ‘bet’ and the promotional indication ‘super’.
- 65 As regards the enhanced distinctiveness through use of the earlier marks, the existence of an above-average degree of distinctiveness as a result of the public’s awareness of the reputation of a mark on the market necessarily presupposes that that mark is known by at least a significant part of the relevant public, but not necessarily that it has a reputation within the meaning of Article 8(5) EUTMR. It is not possible to say in general terms, e.g. with reference to certain percentages of the level of recognition of the mark among the relevant trade circles, that a trade mark has increased distinctive character. However, there is a certain interdependence between the reputation of a mark among the relevant public and its distinctive character. In order to assess whether a mark has a highly distinctive character as a result of its reputation among the public, all the relevant facts of the individual case must be taken into account, in particular the market share held by the mark, how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark, the proportion of the relevant class of persons who, because of the mark, identify the goods or services as originating from a particular undertaking, and statements from chambers of commerce and industry or other business and professional associations (12/07/2006, T-277/04, Vitacoat, EU:T:2006:202, § 34-35 and the case-law cited).
- 66 It is not necessary for the evidence submitted to prove enhanced distinctive character acquired through use to refer directly to the market share held by the mark or to the proportion of the relevant class of persons who identify the goods or services as originating from a particular undertaking; it is sufficient that that evidence allows conclusions to be drawn about that market share or share (14/05/2019, T-12/18, Triumph/Triumph, EU:T:2019:328, § 62). The relevant period is prior to the filing date of the contested application (14/05/2019, T-12/18, Triumph/Triumph, EU:T:2019:328, § 63-64).
- 67 As regards the change in the distinctiveness of the signs that have a low degree of distinctiveness, the Court ruled as follows: the more distinctive the sign as registered, the easier it is to be influenced by the addition of a distinctive element, and the more so the mark in question ceases to be capable of being perceived as an indication of the origin of the goods (13/09/2016, T-146/15, DARSTELLUNG EINES VIELECKS (fig.), EU:T:2016:469, § 29).
- 68 Thus, the opponent claimed that its earlier Romanian mark has a reputation. As per the provided documents, the opponent is a company established in 2008 in Romania and becoming one of the leading betting operators. The number of the videos/materials posted by Superbet (over 10 000 posts on Instagram and 2.5 k videos on YouTube) also proves that the opponent has made an effort to advertise its business. The opponent has also won awards in the betting and gambling field in 2018, 2019 and 2022. As per the articles provided, the Romanian company Superbet enters the top 30 largest gaming companies in

the world. Thus, it is shown that the opponent has some degree of recognition on the market for *gambling services* and *betting services* in Class 41.

- 69 This is the most favourable position for the opponent and means that the earlier mark ‘SUPERBET’, which is inherently weak, would have an enhanced degree of distinctive character on account of its extensive use in Romania. However, this does not mean that its distinctive force is high.

*Overall assessment of the likelihood of confusion*

- 70 The appreciation of likelihood of confusion on the part of the public depends on numerous elements and, in particular, on the recognition of the earlier mark on the market, the association which can be made with the registered mark, the degree of similarity between the marks and between the goods or services identified. It must be appreciated globally, taking into account all factors relevant to the circumstances of the case (22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 18; 11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 22).
- 71 Such a global assessment of a likelihood of confusion implies some interdependence between the relevant factors, and in particular, the similarity between the trade marks and between the goods or services. Accordingly, a greater degree of similarity between the goods or services may be offset by a lower degree of similarity between the marks, and vice versa (22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 19; 11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 24; 29/09/1998, C-39/97, Canon, EU:C:1998:442, § 17). The more distinctive the earlier mark, the greater the risk of confusion, and marks with a highly distinctive character, either per se or because of the reputation they possess on the market, enjoy broader protection than marks with a less distinctive character (29/09/1998, C-39/97, Canon, EU:C:1998:442, § 18).
- 72 In the present case, the contested goods in Class 9 and services in Class 42 are only similar to a low degree to the goods and services of the earlier mark. Even if it was a well-known fact that the goods and services are similar to an average degree, the evaluation would not change. The signs are visually and aurally similar to a low degree whereas conceptually they are either similar to a very low degree or even dissimilar.
- 73 Thus, there is no likelihood of confusion even taking into consideration that the distinctiveness of the earlier sign is enhanced due to its extensive use for the relevant public whose attentiveness varies from average to high. In the perception of the trade mark applied for, ‘SUPERR’, the repeated letter ‘r’ will not go unnoticed. The additional and different aspects are clearly perceivable and sufficient to exclude any likelihood of confusion between the marks, bearing in mind also that the common element has only little distinguishing force and is not dominant in the signs.
- 74 A company is certainly free to choose a mark or components with a low degree of distinctive character and use it in the market. However, in doing so it must accept that competitors are equally entitled to use marks with similar or identical descriptive or non-distinctive components (05/10/2020, T-602/19, NATURANOVE, EU:T:2020:463, § 71). The Court of Justice has consistently held that there may be a public interest in not monopolising certain signs, in particular to protect competitors or consumers with regard to signs lacking any distinctive character or being exclusively descriptive of the goods and services (06/05/2003, C-104/01, Libertel, EU:C:2003:244; 23/05/2012, R 1790/2011-5,



4REFUEL (FIG. MARK) / REFUEL). In light of the foregoing, taking into account the relevant factors like the level of attention of the relevant public and the (low) degree of similarity between the respective goods and services in question and their mutual interdependence, the Board finds that there is no likelihood of confusion between the signs in conflict even if the distinctiveness of the earlier sign is considered enhanced through use.

*Other earlier signs*

75 The opponent has also based its opposition on the following earlier trade marks:

- national trade mark (Cyprus) No 91 927  ;
- national trade mark registration (Romania) No 178 023,  ;
- national trade mark registration (Romania) No 178 027,  ;
- national trade mark registration (Romania) No 178 028,  .

76 Since these marks are essentially identical or differ only in non-distinctive graphic aspects with no trade mark significance, to the one that has been compared and cover the same or a narrower scope of goods and services, the outcome cannot be different with respect to goods and services for which the opposition has already been rejected. Therefore, no likelihood of confusion exists with respect to those goods and services.

*Article 8(5) EUTMR*

77 Article 8(5) EUTMR provides that ‘upon opposition by the proprietor of a registered earlier trade mark within the meaning of paragraph 2, the trade mark applied for shall 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 EU trade mark, the trade mark has a reputation in the European 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 trade mark applied for would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark’.

78 It is clear from the wording of Article 8(5) EUTMR that its application is subject to the following conditions: (i) the marks at issue must be identical or similar; (ii) the earlier mark cited in opposition must have a reputation; and (iii) there must be a risk that the use without due cause of the trade mark applied for would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark. Those conditions are cumulative and failure to satisfy one of them is sufficient to render that provision inapplicable (25/05/2005, T-67/04, Spa-Finders, EU:T:2005:179, § 30).

79 The types of injury referred to in Article 8(5) EUTMR, where they occur, are the consequence of a certain degree of similarity between the earlier and later mark, by virtue of which the relevant section of the public makes a connection between those two marks, that is to say, establishes a link between them even though it does not confuse them (14/09/1999, C-375/97, Chevy, EU:C:1999:408, § 23; 27/11/2008, C-252/07, Intel, EU:C:2008:655, § 30).

*Reputation of the earlier mark*

- 80 The existence of reputation is a condition for applying Article 8(5) EUTMR. The Opposition Division found that the earlier mark does not have a reputation. The opponent's submissions before the Board of Appeal focus exclusively on this point. Consequently, it is appropriate to focus on this criterion.
- 81 The contested sign was filed on 30 October 2022. The opponent had to prove its mark had a reputation by then.
- 82 A mark has a reputation within the meaning of EU law where it is known by a significant part of the public concerned by the goods or services covered by that mark, within a substantial part of the territory of the European Union (28/06/2018, C-564/16 P, DEVICE OF A JUMPING ANIMAL (fig.) / PUMA (fig.) et al., EU:C:2018:509, § 55). The territory of a Member State may be considered to constitute such a substantial part of the territory of the European Union (06/10/2009, C-301/07, Pago, EU:C:2009:611, § 30; 03/09/2015, C-125/14, Be impulsive / Impulse, EU:C:2015:539, § 19).
- 83 A trade mark's reputation must be assessed by reference to the perception of the relevant public, which consists of average consumers of the goods or services for which that mark is registered, who are reasonably well informed and reasonably observant and circumspect (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 34).
- 84 The Board must take into consideration all the relevant factors of the case, in particular, the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it (14/09/1999, C-375/97, Chevy, EU:C:1999:408, § 27; 28/06/2018, C-564/16 P, DEVICE OF A JUMPING ANIMAL (fig.) / PUMA (fig.) et al., EU:C:2018:509, § 56).
- 85 The opponent claims that its mark has a reputation in Romania. Thus, the Board will examine whether the evidence clearly and convincingly proves that the earlier mark is known by a significant part of the general public in Romania.
- 86 In its statement of grounds, the opponent challenges the Opposition Division's finding of no reputation, claiming to have submitted exhaustive material and evidence showing a high level of recognition of its mark by the relevant public. It claims that the duration and intensity of use and its specific market position clearly indicate that there is a high degree of trade mark awareness.
- 87 In its submission before the Opposition Division, the opponent claims '*Founded back in 2008, Superbet has become the leader of the retail gaming market in Romania. Superbet has won numerous awards, including Best Sports Betting Operator in CEE for 2022, awarded at the Central and Eastern European Gaming Conference*'. Furthermore, the opponent states that the number of the videos/materials posted by Superbet (over 10 000

posts on Instagram and 2.5 k videos on YouTube) also proves intense activity. SUPERBET has won important awards in the gambling and betting field, namely:

- BEST OVERALL SPORTS BETTING OPERATOR AT CEEGC Awards 2017 <https://europeangaming.eu/portal/latest-news/2017/09/27/9729/superbet-wins-best-overall-sports-betting-operator-ceegc-awards-2017/> article published on 27 September 2017;
- BEST OVERALL SPORTS BETTING OPERATOR 2018 at CEEG Awards 2018 Budapest -article published at <https://e-playonline.com/ceeg-awards-2018-budapest-official-list-of-winners/> on 1 October 2018;
- Best Overall Online Casino 2019/ Best Customer Support in Online Casino 2019/ Best Overall Sports Betting Operator 2019/ Best Customer Service in Sports Betting 2019 at CEEG Awards 2019 <https://europeangaming.eu/portal/press-releases/2019/09/26/55088/ceeg-awards-2019-official-list-of-winners-released-congrats-to-all-competitors/>, article posted on 26 September 2019;
- BEST TRADITIONAL (LAND-BASED) BETTING OPERATOR IN 2022 at the ROMANIAN GAMBLING CELEBRATION – Casino Inside Gala Awards <https://www.casinoinside.ro/en/superbet-received-the-award-for-best-traditional-land-based-betting-operator-in-2022-at-the-romanian-gambling-celebra...>, article posted on 19 December 2022;
- Best online betting operator in 2022 at The Romanian Gaming Celebration - Casino Inside Gala Awards, 8th edition <https://www.casinoinside.ro/en/the-romanian-gaming-celebration-casino-inside-gala-awards-8th-edition/>, article posted on 5 January 2023;
- BEST SPORTS BETTING OPERATOR IN CEE at CEEG Awards 2022, article posted on 19 September 2022 <https://europeangaming.eu/portal/press-releases/2022/09/19/121210/the-winners-of-ceeg-awards-2022-have-been-announced-on-16-september-at-the-ritz-carlton-budapest/>

88 Thus, based on the documents provided, the opponent is leading on the market of betting and gambling services in Romania. Nevertheless, it should be noted that the market of betting and gambling services is usually strictly regulated with limited numbers of market operators. The opponent did not prove the opposite. Therefore, its reputation should be considered as normal.

89 The General Court clarified that: ‘the fact that a trade mark applied for and an earlier trade mark are similar and that the earlier mark enjoys an exceptional reputation is not automatically sufficient to affirm a link between those marks’ (10/03/2021, T-71/20, Puma system/PUMA (fig.) et al., EU:T:2021:121, § 71).

90 It follows that in the case of trade marks which are extraordinarily well known but not singular, that is to say are not fanciful designations invented by the trade mark proprietor, the conceptual association does not go as far as may be the case with fanciful designations. It does not extend to market sectors that are very different from the area where reputation has been proven.

- 91 The situation is different in the case of trade marks which have a low degree of inherent distinctive character and have a normal reputation. In the judgment 14/06/2016, T-789/14, MEISSEN (fig.)/Meissen et al., EU:T:2016:349, the Court opposed the existence of a mental association in respect of goods which were not radically far removed from one another, but were rather closer to one another.
- 92 This was also further confirmed in the most recent judgment T-604/22, TOUR DE X (fig.)/TOUR DE FRANCE et al. of 12 June 2024. The Court considered that a conceptual association does not necessarily have to exist even in the area in which the earlier mark is well known. In this case, the earlier trade mark was well known in respect of ‘organisation of cycling competitions’ in Class 41, whereas the contested sign claimed protection for ‘sporting activities’ (also in Class 41). Despite the fact that the signs overlapped in ‘tour de’ and some of the services were identical, the Court found that there was no conceptual association mainly because of the weak distinctive character of the element ‘*tour de*’. In doing so, the Court observed that ‘the descriptive expression ‘*tour de*’, which is very frequently used in connection with cycling competitions and therefore has only a low degree of distinctive character, if at all, will not cause the relevant public to perceive a link between the rights at issue, even if the reputation of the earlier rights were extraordinarily high’ (12/06/2024, T-604/22, TOUR DE X (fig.)/TOUR DE FRANCE et al., EU:T:2024:377, § 83).
- 93 It follows from this that in the case of a well-known earlier trade mark at a rather normal degree which, however, has a low degree of inherent distinctive character, the conceptual association, if any, does not go far beyond the sector in respect of which the reputation exists.
- 94 It can be concluded from all the foregoing that both the inherent distinctive character and the degree of reputation of the earlier trade mark play a decisive role in the scope of the link.
- 95 Furthermore, the opponent failed to prove how exactly the applicant could take unfair advantage of its reputation. The fact that the opponent is a market leader on the gambling and betting services market does not prove that any company using the laudatory term ‘Super’ on another market (like communication software and hosting services) with its incorrect spelling alterations would benefit from it. In particular, the evidence submitted does not sufficiently indicate the characteristics for which the earlier mark has a reputation. That is to say, which positive characteristics, such as luxury, reliability or efficiency, is the earlier mark associated with. Without a clear explanation, and proof of such an association, it is unclear how a link with the earlier mark could take unfair advantage of it (as being luxurious, or reliable, etc.) and give no reasons as to why the image transfer could take place. The opponent must first prove that there are some positive associations between consumers and the earlier mark and not only that it has a strong market position on the relevant market. It is impossible to prove that a link between the two marks would misappropriate the powers of attraction or exploitation of the image and prestige of that mark without first proving the powers of attraction and image of the earlier mark. Proving reputation, in the sense of the mark being known to a substantial part of the public, is not the same as proving that the mark is associated with particular characteristics. Many products are widely known but not associated with any particular characteristics. In that case, there is no protected subject matter – the mark does not fulfil a function which is worthy of protection under Article 8(5) EUTMR.

- 96 For the avoidance of doubt, the Board notes that the opponent has also not proved that a link with the earlier mark would dilute its functioning or tarnish its reputation. The opponent has not established a serious risk that consumers will change their economic behaviour, nor has it proven any harmful effects that the use of the contested sign could cause.

### *Conclusion*

- 97 The Opposition Division was correct to find that Article 8(1)(b) and Article 8(5) EUTMR cannot apply and to refuse the opposition. The appeal is dismissed.

### **Costs**

- 98 Pursuant to Article 109(1) EUTMR and Article 18 EUTMIR, the opponent, as the losing party, must bear the applicant's costs of the opposition and appeal proceedings.
- 99 However, the applicant has not spent any fees and the applicant was not represented by a professional representative in either the appeal or the opposition proceedings. Pursuant to Article 18(1)(c) EUTMIR and Article 120(1) EUTMR, only representation costs incurred in relation to professional representatives may be reimbursed (17/07/2012, T-240/11, MyBeauty TV, EU:T:2012:391). Therefore, no representation costs may be awarded.

**Order**

On those grounds,

THE BOARD

hereby:

**Dismisses the appeal.**

Signed

V. Melgar

Signed

Ph. von Kapff

Signed

R. Ocquet

Registrar:

Signed

H. Dijkema

