

**DECISION
of the Grand Board of Appeal
of 27 May 2026**

In joined cases R 1719/2019-G and R 1922/2019-G

The Estate of the Late Sonia Brownell Orwell

A.M.Heath Literary Agents, 6 Warwick Court, Holborn
London WC1R 5DJ
United Kingdom

Applicant / Appellant

represented by Sipara Sweden AB, Nannavägen 22, SE-187 73 Täby, Stockholm,
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APPEALS relating to European Union trade mark applications No 17 869 420 and
No 17 869 425

THE GRAND BOARD OF APPEAL

composed of S. Stürmann (Chairperson), V. Melgar (Rapporteur), G. Humphreys
Bacon, N. Korjus, C. Negro, S. Martin, R. Ocquet, C. Bartos and Ph. von Kapff
(Members)

Registrar: K. Zajfert

gives the following

Decision

Summary of the facts

- 1 By an application filed on 6 March 2018, The Estate of the Late Sonia Brownell Orwell ('the applicant') sought to register the word mark

ANIMAL FARM

('the contested sign 1') as a European Union trade mark ('EUTM') for, inter alia, goods and services in Classes 9, 16, 28, and 41, as amended on 22 June 2018.

- 2 By an application filed on 6 March 2018, the applicant also sought to register the word mark

1984

('the contested sign 2') as an EUTM for, inter alia, goods and services in Classes 9, 16, and 41, as amended on 22 June 2018.

Notices of grounds for refusal of the signs 'ANIMAL FARM' and '1984'

- 3 On 28 March 2018, the examiner issued a notice of grounds for refusal for each application, stating that the signs were found to be partially ineligible for registration under Article 7(1)(b) and (c) EUTMR because they described certain characteristics of the goods and services for which protection was sought, and were also devoid of any distinctive character. The reasoning of these objections was the following:

(i) In relation to the sign 'ANIMAL FARM'

- The objection was raised only in relation to some of the goods and services in Classes 9, 16, 28, and 41.
- The relevant average English-speaking consumer would understand the sign as meaning the famous book 'ANIMAL FARM' by the famous English writer George Orwell. The meaning of the contested sign can be supported by the following dictionary references: www.oxfordreference.com and www.britannica.com.
- The sign will immediately evoke the famous and widely known book 'ANIMAL FARM'. Consumers will perceive it primarily as indicating that the goods and services relate to that work. While Class 16 goods (e.g. *printed matter, books, electronic publications*) are typical examples of content-based goods, the same objection applies to other goods and services such as recorded media, films, games, shows, seminars and educational services. The sign 'ANIMAL FARM' does not only designate the book itself but also describes goods and services

concerning or based on that story, including its numerous adaptations. It directly describes a characteristic, namely the subject matter, of the goods and services in question.

- Given that the sign has a clear descriptive meaning in connection with the goods and services, it is also devoid of any distinctive character under Article 7(1)(b) EUTMR for those goods and services. In addition, it is also devoid of any distinctive character for other reasons.
- The book ‘ANIMAL FARM’ is widely known and read worldwide. Consequently, for publications, multimedia content, information, games, cultural activities, film, television, events, festivals and exhibitions, the sign ‘ANIMAL FARM’ will not be perceived as an indicator of origin, but as a reference to the work itself.
- The fame of the novel ‘ANIMAL FARM’ precludes its registration for the goods and services at issue. The relevant public is sufficiently familiar with that title to perceive the contested sign not as the title of a well-known book or story (online examples): <https://www.telegraph.co.uk/culture/books/5453633/The-genius-of-George-Orwell.html>, <https://www.famousauthors.org/george-orwell>, <https://www.theguardian.com/books/2001/may/05/artsandhumanities.highereducation>, <https://www.independent.co.uk/arts-entertainment/books/news/george-orwells-animal-farmtops-list-of-the-nations-favourite-books-from-school-a6994351.html>, <http://www.editoreric.com/greatlit/books/Animal-Farm.html>.
- ‘ANIMAL FARM’ is the most famous by far of all twentieth-century political allegories. Its account of a group of barnyard animals who revolt against their vicious human master, only to submit to a tyranny erected by their own kind, can fairly be said to have become a universal drama <https://www.penguinrandomhouse.com/books/124976/animalfarm-by-george-orwell/9780679420392/>.
- Further online examples referring to the novel ‘ANIMAL FARM’ provided by the examiner are the following: <http://www.imdb.com/title/tt0204824/> <https://www.mercurytheatre.co.uk/event/animal-farm/> <https://www.questia.com/library/literature/fiction/novels/animal-farm> https://lareviewofbooks.org/article/getting-to-no-snowballs-chance-animal-farm-and-exemplarytruth/#!https://www.audible.com/pd/Fiction/Study-Guide-George-Orwells-Animal-Farm-Audiobook/B01C9D1N0Ghttps://podtail.com/en/podcast/effortless-english-podcast-learn-english-with/animal-farmchapter-1-ee-book-club/http://schools-wikipedia.org/wp/a/Animal_Farm.htm https://www.rottentomatoes.com/m/animal_farm/reviews/?page=5&type=user http://www.agora-theater.net/cms/index.php?article_id=322&clang=0.
- ‘ANIMAL FARM’ is a satirical and allegorical book that can teach high school students about history and analysis. On the surface, the book is about the farm animals taking control of the farm and kicking out all the humans. [...] The deeper meaning to the book, however, is about Communist Russia under Joseph Stalin. ANIMAL FARM is the perfect book to help high school students understand what was happening in Russia as well as analyse how allegories can be used to raise

awareness about Communism. [...]. ANIMAL FARM can teach high school students to wake up [their] senses, enrich [their] feelings, and deepen [their] thoughts. They will feel sorrow, taste and smell what the animals do, and begin to think about who Stalin, Trotsky, and Tsar Nicholas II represent in the book. (https://www.varsitytutors.com/scholarship_entries/nichole-4111).

- ‘ANIMAL FARM’ is een fabel, waarbij de types van karakters belangrijker zijn dan de individuele karakters. Het drijft een soort van spot met de totalitaire regimes en verwijst naar de Russische revolutie in 1917. Zo verwijzen sommige personages naar personen uit die tijd. Een oud varken, genaamd Old Major, heeft een droom gehad waarin alle dieren vredig met elkaar samenleefden zonder mensen die hen misbruikten en gebruikten. Daarom roept hij alle dieren van Manor Farm bij elkaar in de schuur. Hij vertelt ze hoe ze te werk moeten gaan tegen ‘the Rebellion’ richting het paradijs, en hij ze het liedje ‘Beasts of England’. In dat liedje wordt zijn droom beschreven. Wanneer Old Major 3 dagen later dood gaat, nemen de varkens Snowball, Napoleon en Squealer de leiding onder een stroming die ze Animalism noemen. Op een avond verjagen ze de boer Mr. Jones en ze hernoemen de boerderij tot ANIMAL FARM (<https://www.scholieren.com/boekverslag/70781>). [ANIMAL FARM is a fable in which the types of characters are more important than the individual characters. It satirises the totalitarian regimes that emerged after the Russian Revolution of 1917. Some characters refer to people from that period. (Unofficial partial translation provided by the Rapporteur)].
- ‘ANIMAL FARM’ Zeitlose Parabel über Macht George Orwell hat mit ANIMAL FARM einen Klassiker der politischen Literatur geschrieben. Das Buch ist eine Generalabrechnung mit der kommunistischen Revolution 1917. Seine weitsichtige Kritik kam zu Zeiten des Zweiten Weltkriegs vielen zu früh: In Großbritannien wollte zunächst niemand das Werk veröffentlichen’ (<https://www.deutschlandfunk.de/animal-farm-zeitlose-parabel-ueber-macht-100.html>). [George Orwell wrote a classic of political literature with ANIMAL FARM. The book is a sweeping condemnation of the communist revolution of 1917. His far-sighted critique came too early for many during the Second World War: in Britain, at first, nobody wanted to publish the work. (Unofficial translation provided by the Rapporteur)].
- ‘ANIMAL FARM’ er en af de der klassikere, som mange taler himmelvendt begejstret om. Det er egentlig en børnebog. De fleste, der læser den som barn, forstår kun bogens bogstavelige lag – altså at vi har en flok dyr, der bliver træt af ikke at få foder om aftenen, fordi bonden er fuld, og derfor beslutter sig for at kuppe gården og indføre en alternativ gårdlivsstil med fælleseje og fællessang. Kuppet bliver dog kuppet af grisene, som viser sig at være nogle værre svin. Oversvinet, Napoleon, sætter sig enevældigt på magten, og forvandler sig efterhånden til en diktator meget lig den bonde, de i sin tid smed på porten’ (<https://www.aabenraabib.dk/nyheder/anbefalinger/george-orwell-animal-farm>). [ANIMAL FARM is one of those classics that many people talk about with starry-eyed enthusiasm. (Unofficial partial translation provided by the Rapporteur)].

(ii) In relation to the sign '1984'

- The objection was raised in relation to all the goods and services in Classes 9, 16, and 41 listed in paragraph 2 above.
- The relevant average English-speaking, consumer would understand the sign as meaning the famous book '1984' by the famous English writer George Orwell. The meaning of the sign can be supported by the following dictionary reference: <https://www.britannica.com>.
- The denomination '1984' will immediately evoke the famous and widely known book '1984'. The relevant public will perceive the sign primarily as indicating that the goods and services relate to that work. While Class 16 goods are typical examples of content-based goods, the same objection applies equally to other goods and services such as recorded media, films, games, shows, seminars and educational services, where 'subject matter' and 'content' are interchangeable. The sign '1984' not only designates the book itself but also describes goods and services concerning or based on that story, including its various adaptations. It directly describes a characteristic, namely the subject matter or content, of the goods and services in question.
- Given that the sign has a clear descriptive meaning in connection with the goods and services, it is also devoid of any distinctive character and therefore objectionable under Article 7(1)(b) EUTMR for those goods and services. It is also devoid of any distinctive character for other reasons.
- The book '1984' is known and read by people all over the world and, consequently, the sign '1984' will not be understood as an indicator of origin for publications, multimedia content, information, games, cultural activities, film, television, events, festivals, exhibitions, etc.
- The fame of the title '1984' precludes its registration for the goods and services in question. The title is famous enough for the relevant consumer to be well-acquainted with it and the contested sign may be perceived, with respect to the goods and services, as essentially denoting the title of a book or well-known story. See the following websites:

<https://www.telegraph.co.uk/culture/books/5453633/The-genius-of-George-Orwell.html>, <http://www.imdb.com/title/tt0087803/>,
<https://www.famousauthors.org/george-orwell>,
<https://www.theguardian.com/books/2001/may/05/artsandhumanities.highereducation>, <https://www.nytimes.com/2017/01/26/books/why-1984-is-a-2017-must-read.html>.
- 'Set in a world where an invasive government keeps a malevolently watchful eye on its citizens, this radical and much lauded staging explores surveillance, identity and why Orwell's vision of the future is as relevant now as ever. Orwell's fiction has become our reality. Produced by UK theatrical innovators Headlong, together with Nottingham Playhouse and the Almeida Theatre, George Orwell's dystopian classic came roaring onto the stage in 2013 and, since then, has become an international phenomenon. Seen by over 500 000 people worldwide, it has

enjoyed three hugely successful West End seasons and a season on Broadway. Now Auckland Theatre Company has teamed up with the Auckland Festival and GWB Entertainment to present the New Zealand premiere of this international touring phenomenon as part of our 25th-birthday subscription season. A literary masterpiece meets sheer theatrical ambition as one of the twentieth century's greatest novels is given new life by some of British theatre's fastest-rising stars' (<https://www.atc.co.nz/auckland-theatre-company/2017-18/1984/>).

- “Following four wildly successful UK runs, the hair-raisingly vivid stage adaptation of George Orwell’s dystopian masterpiece, *1984*, comes to New York in what The Huffington Post calls ‘an unforgettable jolt of high-voltage theatre that is literally shocking’. One of the most widely referenced and best-known fiction titles of all time, *1984* has sold over 30 million copies worldwide and has been translated into more than 65 languages. Now, Robert Icke and Duncan Macmillan have adapted this iconic novel into ‘a chilling, ingenious 101 minutes of theatre (The London Times) starring Tom Sturridge, Olivia Wilde, and Reed Birney” (<http://www.thehudsonbroadway.com/whatson/1984-the-play/>).
- “A week after President Donald Trump’s inauguration, George Orwell’s ‘*1984*’ is the best-selling book on Amazon.com”
<https://www.independent.co.uk/news/world/politics/2017-isn-t-1984-it-s-stranger-than-orwell-imagined-a7555341.html>.
- “*1984* de George Orwell sube a la escena de Teatro Galileo. Una bota aplastando una cara humana...eternamente. Eso es el futuro. Eso es *1984*. Solo existe el control del Partido sobre toda la sociedad: el Hermano Mayor vigila cada movimiento. La tecnología, las cámaras de vigilancia, la manipulación asfixia cualquier resquicio de libertad. El pensamiento, el amor, el sexo y cualquier recuerdo son actividades que han de ser controladas, aun a costa de las más atroces torturas. Pero Winston, un hombre corriente, empieza a concebir la esperanza de escapar de ese mundo totalitario, gracias a un amor clandestino y unos pensamientos que esconde bajo la máscara de fidelidad absoluta al Hermano Mayor. ¿Es posible hoy *1984*? ¿Es posible hoy el terror reflejado por Orwell en *1984*? Hoy sí existe una tecnología capaz de controlar hasta el último movimiento de cualquier ciudadano... Y esa tecnología se está utilizando. ‘El Hermano Mayor te vigila’. Hoy sí existe una capacidad de manipular el pensamiento y el lenguaje, con medios más poderosos que lo que soñaron Goebbels o Stalin” (https://www.atrapalo.com/entradas/1984-de-georgeorwell_e4811816/ consulted on 12/02/2026). [*1984* by George Orwell comes to the stage of Teatro Galileo. [...] That is *1984*. There is only the Party’s control over the whole of society: Big Brother watches every move. Technology, surveillance cameras, manipulation suffocate any last trace of freedom. Thought, love, sex, and any memory are activities that must be controlled, even at the cost of the most atrocious torture. [...] Is *1984* possible today? Is the terror portrayed by Orwell in *1984* possible today? Today there is technology capable of controlling every last movement of any citizen... and that technology is being used. ‘Big Brother is watching you’. Today there is an ability to manipulate thought and language, with means more powerful than what Goebbels or Stalin ever dreamed of... (unofficial partial translation provided by the Rapporteur)].

- George Orwell’s chilling vision of a dystopian future is brought to life in a radical multimedia production. Called ‘a brilliant retelling’ by the Guardian, Headlong’s production of 1984 explores surveillance, identity, and the security state. See why Orwell’s 1949 novel of a totalitarian world – the definitive book of the 20th century – is as relevant now as ever, and particularly resonant in the political environment of Washington, D.C.’
<http://www.shakespearetheatre.org/events/1984/> (consulted on 12/02/2026).

Applicant’s observations to the examiner’s objections

- 4 On 26 July 2018, the applicant replied to the objections of the examiner.
- (i) In relation to the sign ‘ANIMAL FARM’
- The acceptance of the trade mark ‘Le Journal d’Anne Frank’ (31/08/2015, R 2401/2014-4, Le journal d’Anne Frank) constitutes a persuasive precedent that should be followed in the present case. It cannot be maintained that the mere fame of a literary work precludes registration of its title as a trade mark.
 - The novel ‘ANIMAL FARM’ remains subject to copyright protection. According to the EUIPO Guidelines, where copyright subsists, there is a presumption of good faith and the mark should, in principle, be accepted for registration. Any use of the sign to date is likely to relate to authorised versions or adaptations of the work. The present case is not comparable to ‘PETER PAN’, ‘CINDERELLA’ or ‘THE ILIAD’, which are no longer protected by copyright.
 - The examiner failed to explain why any requirement for availability exists. The legal concept of ‘requirement for availability’ does not exist under EU law.
 - The provisions of Article 14(1)(b) EUTMR will protect the position of persons who produce films or books about the ‘ANIMAL FARM’ story.
 - There are many prior book titles that have been accepted as trade marks for the refused goods and services in Classes 9, 16 and 41. Examples are: ‘GOLDFINGER’, ‘OLIVER TWIST’, ‘WINNIE THE POOH’, ‘HARRY POTTER AND THE GOBLET OF FIRE’, ‘THE DA VINCI CODE’, ‘PETER PAN’, ‘THE HOBBIT’.
- (ii) In relation to the sign ‘1984’
- In view of the decision of 31/08/2015, R 2401/2014-4, Le journal d’Anne Frank, it is clear that the mark ‘1984’ is distinctive for the goods or services applied for. It refers to just a single work, and the titles of works are intended to distinguish one work from another and cannot be said to be devoid of distinctive character. The book title ‘1984’ is distinctive as the consumer should also be able to recognise the goods and services covered as originating from the owner and should be distinguishable from those of competitors.

- Given that George Orwell died in 1950, the work ‘1984’ is still subject to copyright protection. EUIPO Guidelines specifically state that where copyright is still running there is a presumption of good faith and the mark should be registered.
- The finding in the decision of 31/08/2015, R 2401/2014-4, *Le journal d’Anne Frank* that the requirement for availability does not exist under EU law, should be applied to this case. The refusal on those grounds should be waived in relation to all goods and services.
- It is disputed that ‘1984’ would immediately create a link to the story, and that the sign would be seen as providing information about the book. Even if this were the case, in relation to the refused goods and services the Board has clearly found in 31/9/2015, R-2401/2014-4, *Le journal d’Anne Frank*, § 33 that the consumer would be able to distinguish the goods of the owner from those of third parties.
- The mark ‘1984’ is not descriptive of goods or services in Classes 9, 16 or 41 as it has no meaning in relation to such goods or services and should not be refused under Article 7(1)(c) EUTMR.
- This contested sign is clearly distinguishable from 12/06/2007, T-339/05, *LOKTHREAD*, EU:T:2007:172 cited because ‘1984’ is a reference to a year as well as a possible reference to a book rather than a made up word, so any third party publishing a book or producing a film about the book ‘1984’ would have a defence under Article 14(1)(b) EUTMR. Where ‘1984’ forms part of the title of such book or film, as such use would clearly concern characteristics of the goods or services. There is no requirement to keep the sign free for use by others.
- The ‘1984’ novel is still subject to copyright protection – the references in the refusal letter will all relate back to authorised versions or the work, or authorised productions of films and so on. There should be a presumption of good faith in relation to this application.

Contested decisions

- 5 On 5 June 2019 and 4 July 2019, the examiner took decisions partially refusing the signs ‘ANIMAL FARM’ and ‘1984’ applied for, under Article 7(1)(b) and (c), in conjunction with Article 7(2) EUTMR (‘the contested decisions’). The contested decisions were based on the following main findings:
 - (i) The contested decision in relation to the sign ‘ANIMAL FARM’
 - Ample evidence was provided showing that ‘ANIMAL FARM’ is an extremely well-known story. In this evidence, ‘ANIMAL FARM’ is described as ‘the most famous by far of all twentieth-century political allegories’, ‘a universal drama’, ‘a fable’, ‘a classic’.
 - While book titles may, in principle, function as trade marks and repute alone does not preclude registrability, the decisive issue is whether the relevant public perceives the title as indicating commercial origin. Certain titles have become so well established and widely known that they have ‘entered into the language’,

acquiring a broader thematic meaning beyond the specific content of the work. A relevant example is the title ‘THE JUNGLE BOOK’ (18/03/2015, R 118/2014-1, THE JUNGLE BOOK). In the case of ‘ANIMAL FARM’, it can similarly be argued that everyone knows the story given its importance in 20th century English literature and that George Orwell was a highly influential literary figure of his time.

- The novel ‘ANIMAL FARM’ is particularly a teachers’ favourite, and it has appeared very frequently as a set-text for the syllabus of ‘O’ Level, CSE and GCSE school exams in the UK. It is known particularly for its allegorical themes. In Orwell’s own words, he aimed ‘to fuse political purpose and artistic purpose into one whole’ to produce his famous parable about totalitarianism. In this respect it is a work which lends itself to being adapted, with small changes, to various political contexts.
- The ‘ANIMAL FARM’ story has formed the subject of a number of adaptations originating from many different sources. This well-known fact has not been disputed by the applicant and some references served merely to exemplify some treatments of the story.
- Whilst it is true that the fame of a work of literature is not in itself a barrier to its registration as a trade mark, it is nevertheless necessary to consider each case on its merits and to take into account the public’s experience of exposure to the title over the years. On the one hand, ‘Le Journal D’Anne Frank’ represents, in the narrative trajectory, a day-by-day factual account of events experienced by the authoress; such a work does not lend itself to significant re-imaginings. On the other hand, works such as ‘THE JUNGLE BOOK’ (18/03/2015, R 118/2014-1, THE JUNGLE BOOK) and ‘PINOCCHIO’ (04/03/2015, R 1856/2013-2, PINOCCHIO) are works whose themes have acquired the status of fable, with multiple adaptations weakening the link with the underlying original works. ‘ANIMAL FARM’ also falls into this second category since it is a political fable which has been re-imagined in various contexts whilst still maintaining its central message. In this respect the decision of 31/08/2015, R 2401/2014-4, Le journal d’Anne Frank is not analogous.
- EUIPO will not verify whether the applicant is the holder of copyright in the work whose title has been applied for as a trade mark. It is a basic principle of trade mark examination that a decision must be reached on registrability by considering the mark’s meaning and impact vis-à-vis the goods and services claimed. There is no exception in this regard when copyrighted works are at issue, the questions of who is applying, and their entitlement to do so, are not relevant for the assessment of registrability under Article 7 EUTMR. George Orwell died in January 1950, so under the provisions of Council Directive 2006/116/EC of 12 December 2006 copyright expired in the EU in January 2020. Therefore, the use made of the mark to date will relate back to authorised versions of the work or authorised productions of films and so on. However, for examination under Article 7 EUTMR the existence of copyright protection is a factor which should be considered in combination with other factors.

- A finding of non-distinctiveness will be more likely when multiple adaptations have reached a wide audience, in particular when a work has passed into the public domain once copyright protection has expired. Nevertheless, the existence of copyright protection is not, in itself, a decisive factor when it comes to considering whether a title of a book is capable of performing a trade mark function. Copyright and Trade Marks concern different exclusive rights based on distinct qualities, that is to say the original nature of a creation on the one hand and the ability of a sign to distinguish the commercial origin of the goods and services on the other. It is the relevant consumer's perception of the mark which is of paramount importance when considering whether it serves to distinguish commercial origin.
- The relevant public may well be unaware whether 'ANIMAL FARM' is still in copyright or not, indeed as a purchaser he or she may neither know nor care; however, he will certainly be aware that it is a story which has acquired widespread fame and which, through its universal themes, has become a kind of modern fable. In this respect the mark is considered to be on all fours with 'THE JUNGLE BOOK'. These works constitute creations of the mind which form part of the universal cultural heritage (opinion of Advocate General Ruiz-Jarabo Colomer, C-283/01, Musical notation, EU:C:2003:641, § 52).
- The requirement for availability does not exist under EU law. Nevertheless, the words 'ANIMAL FARM' have entered into the language as designating a particular story which, having no other name, cannot easily be referred to in another way. The applicant's assertions made concerning 'need to keep free' therefore have no bearing on the question of registrability of the mark.
- The applicant's reliance on Article 14(1)(b) EUTMR is unfounded, as the availability of a defence for descriptive use has no bearing on the assessment of registrability; there is no interplay between the exclusion from registration and the limitation of liability for infringement.
- As regards the existence of prior registrations of book titles, each case must be assessed on its own merits following a stringent and comprehensive examination, taking into account that consumer perception may be influenced by what is typical in the marketing of the relevant goods and services.
- Titles of books and films are not per se unregistrable, and consumers may be aware of franchising practices. However, certain well-known titles that have entered into common language may lack trade mark capacity. Moreover, Office practice has evolved, particularly since the 'THE JUNGLE BOOK' decision, and earlier registrations cited by the applicant reflect a more lenient approach than that applied in the present case.
- Pursuant to Article 7(1)(b) and (c) and Article 7(2) EUTMR, the sign 'ANIMAL FARM' was rejected for part of the goods and services applied for, which are the following:

Class 9: Video tapes; audio tapes; compact discs; video discs; laser discs; DVDs; CD-ROMs; electronic publications; digital media and recordings; pre-recorded digital media and recordings; downloadable electronic publications;

downloadable digital media and recordings; downloadable digital media and recordings containing sound, images, text, information; webcasts; podcasts; vodcasts; electronically recorded data; downloadable digital media and recordings containing teaching apparatus and instruments; computer games; educational computer games; downloadable computer games; animated cartoons and other imagery; downloadable screensavers, video, games and information; cinematographic films; animated cartoons; movies; magnetic recordings; optical recordings; magneto-optical recordings; solid-state recordings; multimedia discs and publications; multimedia recordings and publications; laser-readable discs; sound recordings; pre-recorded disks; recording disks; gramophone records; compact discs-interactive CD-roms; mobile phone games; digital games, mobile phone games; DVD games; pre-recorded audio and video compact discs, DVDs, motion picture films, television programmes and other digital recording media; musical sound recordings; parts and fittings for all of the above goods.

Class 16: Printed matter; photographs; books; publications; comic books; magazines; newsletters; newspapers; albums; periodicals; journals; leaflets; posters; instructional and teaching materials; instructional and teaching materials for education and information; book covers; drawings; paintings; prints; pictures.

Class 28: Games, toys and playthings; electronic games; board games; playing cards; action figures; figurines; electrical and video amusement apparatus and instruments; peripheral devices for use with home video game machines; amusement apparatus for use with a television monitor or some other form of display apparatus; jigsaws; card games; interactive games adapted for use with television receivers; parts and fittings for all of the above goods.

Class 41: Entertainment; cultural activities; educational services; theme park services; amusement park services; provision of educational services via electronic media, multimedia content, videos, movies, television programmes, pictures, images, text, photos, user-generated content, audio content, and related information via the Internet and other communications networks; providing online entertainment and cultural information by way of multimedia content, podcasts, vodcasts, viral videos, interviews, audio visual programmes, videos, video recordings, photos, images, text, data, games, music, sound recordings and/or films; provision of films, games and audio or visual information online (not downloadable); organisation of events, festivals, seminars, conferences, congresses, workshops, exhibitions, cultural activities, webinars, competitions and/or stage shows; interactive entertainment services in relation to films, sound and/or video recordings; online entertainment services; providing television programmes and films online; advisory, consultancy and information services for all of the above.

(ii) The contested decision in relation to the sign ‘1984’

- ‘1984’, the seminal work of George Orwell, is an extremely well-known novel. In the evidence provided, it is described as ‘one of the most widely referenced and best-known titles of all time having sold over 30 million copies worldwide

and having been translated into more than 65 languages'. While book titles are capable of being trade marks and that repute is not, in itself, an argument against registrability, the key question to be answered in each case is whether, according to the perception of the consumer, a particular title designates a commercial origin and thus performs a trade mark function.

- Everyone knows the novel '1984' given its importance in 20th century English literature and given that Orwell was a highly influential literary figure of his time. The title '1984' is well known even by people who have never read the book because it is immediately associated with certain concepts appearing in the novel. Concepts, invented by Orwell, are terms which have gained a life of their own, being widely used in everyday speech. '1984' is a book which is widely studied in schools and in higher education. With its themes of repressive control, official deception, secret surveillance and manipulation of recorded history the novel has become a frequent reference point for political discourse and commentary, the influence of its political vision thus extends beyond its purely literary reputation. The '1984' story has also been given new life by radical and innovative theatrical adaptations such as the following:
 - Film adaptations – 1984 (1956 film), Nineteen Eighty-Four (1984 film), Me and the Big Guy (1999), 1984 (2019).
 - Television adaptations – CBS's Studio One: 1984 (1953), Sunday Night Play: 1984 (1954), The World of George Orwell: 1984 (1965).
 - Radio adaptations – NBC: Nineteen Eighty-Four (1949) and (1953), MBN (Australia): Nineteen Eighty-Four (1955), BBC: Nineteen Eighty-Four (1965), (2015), (2018).
 - Other theatre adaptations, opera adaptations and ballet adaptations.
- While the fame of a literary work does not in itself preclude registrability, each case must be assessed on its merits, taking into account the public's long-standing exposure to the title. Unlike 'Le Journal d'Anne Frank', which is a factual narrative not prone to reinterpretation, works such as 'THE JUNGLE BOOK' (18/03/2015, R 118/2014-1) and 'PINOCCHIO' (25/02/2015, R 1856/2013-2) have evolved into fables with numerous adaptations, weakening their link to a single source. '1984' likewise falls into this category, as a dystopian work open to reinterpretation while retaining its core message. Accordingly, 'Le Journal d'Anne Frank' is not comparable to the present case.
- Copyright protection for '1984' is currently still in force. George Orwell died in January 1950, so under the provisions of Council Directive 2006/116/EC of 12 December 2006, copyright will not expire in the European Union ('EU') until January 2020. Given the existence of copyright protection to date it may be assumed that the usage made of the mark to date will relate back to authorised versions of the work or authorised productions of films.
- A finding of non-distinctiveness will be more likely when multiple adaptations have reached a wide audience, in particular when a work has passed into the public domain once copyright protection has expired. Nevertheless, the existence

of copyright protection is not, in itself, a decisive factor when it comes to considering whether or not a title of a book is capable of performing a trade mark function. Copyright and trade marks concern different exclusive rights based on distinct qualities, that is to say the original nature of a creation on the one hand and the ability of a sign to distinguish the commercial origin of the goods and services on the other.

- It is the relevant consumer’s perception of the mark which is of paramount importance when considering whether it serves to distinguish commercial origin. The average relevant consumer may well be unaware whether ‘1984’ is still in copyright or not, indeed as a purchaser he may neither know nor care; however, he will certainly be aware that it is a story which has acquired widespread fame and which, through its universal themes, has become a kind of modern fable. In this respect the mark is considered to be on all fours with ‘THE JUNGLE BOOK’. They both constitute creations of the mind which form part of the universal cultural heritage.
- The requirement of availability does not exist under EU law. Nevertheless, in the present case, the title ‘1984’ has entered into the language as designating a particular story which, having no other name, cannot easily be referred to in another way. Although there is a public interest underlying Article 7(1)(c) EUTMR that descriptive terms should not be registered as trade marks so as to remain freely available to all competitors, it is not necessary for the Office to show that there is, on the part of third parties, a present or future need to use, or concrete interest in using, the descriptive term applied for. The assertions made concerning ‘need to keep free’ have no bearing on the question of registrability of the mark.
- The fact that a defence to infringement is available for descriptive use of a sign in accordance with honest practices in industrial or commercial matters has no decisive bearing or intrinsic role to play in relation to the exclusion from registration; there is no interplay to be considered between the scope of the exclusion from registration and the scope of the exclusion from liability for infringement of the rights conferred by a valid registration.
- The contested sign ‘1984’ was rejected pursuant to Article 7(1)(b) and (c) and Article 7(2) EUTMR, for part of the goods and services applied for, which are the following:

Class 9: Video tapes; audio tapes; compact discs; video discs; laser discs; DVDs; CD-ROMs; electronic publications; digital media and recordings; pre-recorded digital media and recordings; downloadable electronic publications; downloadable digital media and recordings; downloadable digital media and recordings containing sound, images, text or information; webcasts; podcasts; vodcasts; electronically recorded data; downloadable digital media and recordings containing teaching apparatus and instruments; computer games; educational computer games; downloadable computer games; animated cartoons and other imagery; downloadable screensavers, video, games and information; cinematographic films; animated cartoons; movies; magnetic recordings; optical recordings; magneto-optical recordings; solid-state recordings; multimedia discs and publications; multimedia recordings and publications; laser-readable

discs; sound recordings; pre-recorded disks; recording disks; gramophone records; compact discs-interactive CD-roms; mobile phone games; digital games, mobile phone games; DVD games; pre-recorded audio and video compact discs, DVDs, motion picture films, television programmes and other digital recording media; musical sound recordings; parts and fittings for all of the above goods.

Class 16: Calendars; Printed matter; photographs; books; publications; comic books; magazines; newsletters; newspapers; albums; periodicals; journals; leaflets; posters; instructional and teaching materials; instructional and teaching materials for education and information; book covers; drawings; paintings; prints; pictures.

Class 41: Entertainment; cultural activities; educational services; theme park services; amusement park services; provision of educational services via electronic media, multimedia content, videos, movies, television programmes, pictures, images, text, photos, user-generated content, audio content, and related information via the Internet and other communications networks; providing online entertainment and cultural information by way of multimedia content, podcasts, vodcasts, viral videos, interviews, audio visual programmes, videos, video recordings, photos, images, text, data, games, music, sound recordings and/or films; provision of films, games and audio or visual information online (not downloadable); organisation of events, festivals, seminars, conferences, congresses, workshops, exhibitions, cultural activities, webinars, competitions and/or stage shows; interactive entertainment services in relation to films, sound and /or video recordings; online entertainment services; providing television programmes and films online; advisory, consultancy and information services for all of the above services.

Notices of appeal and statements of grounds in appeals R 1719/2019-5 and R 1922/2019-5

- 6 On 5 August 2019 and 28 August 2019, the applicant filed appeals R 1719/2019-5 and R 1922/2019-5 against the contested decisions, requesting that they be set aside insofar as the applications were rejected. The statements of grounds of the appeals were received on 7 October 2019 and 4 November 2019. The arguments raised in the statements of grounds may be summarised as follows:

(i) Appeal R 1719/2019-5 in relation to the sign ‘ANIMAL FARM’

- There is a distinction between the simplistic fables such as ‘PINOCCHIO’ or ‘THE JUNGLE BOOK’ and more complex stories. The fact that consumers know the nature or genre of best-selling books does not disqualify them from trade mark protection. If the fact that ‘everyone knows the story’ was a significant influence in disqualifying a title from trade mark protection, then that would mean the title of any relatively popular book would then be unlikely to function as a trade mark.
- More popular and better-known stories are validly registered and function as trade marks even though they are famous exponents for their genre (e.g. ‘AND THEN THERE WERE NONE’ is a classic crime ‘whodunnit’).

- It is true that when a story has ‘entered into the language’ then the trade mark significance can be lost. Examples would be ‘PINOCCHIO’ meaning someone who tells lies, or ‘POLLYANNA’ being an excessively cheerful or optimistic person. In the case of ‘THE JUNGLE BOOK’, when the story has been adapted many times and in particular where additional episodes or spin-offs are based loosely on the original work, then the link with the author may be lost and it is the general theme that is recognised by the consumer. The novel ‘ANIMAL FARM’ may have been described as a political fable, but the story is complex and cannot be summarised in a few words.
- The adaptations made of ‘ANIMAL FARM’ into other media have faithfully followed the original book and been carefully controlled by the applicant. The very fact that it is studied at secondary school supports the submission that there is only one version of the work.
- It is common for a famous novel to be dramatised into a film or a play, and the contested sign is no different. The key element is that the plot is substantively faithful to the original. With the exception of a Wikipedia reference, the examiner has not provided any evidence of any differences in the adaptations which might affect the ability of the trade mark to indicate the origin of the goods or services (as the work of the author George Orwell).
- Enclosure A contains an example of an agreement with a film company to produce a film based on the book ‘ANIMAL FARM’. Clause 3 of the agreement demonstrates the need for the adaptation to stay true to the original.
- The evidence provided by the examiner in his objections does not support the finding that the contested sign is devoid of distinctive character because the story ‘ANIMAL FARM’ has ‘entered into the language’. Indeed, this evidence shows the association of the mark with George Orwell so that the consumer has been educated to understand that the use of the mark is ‘origin specific’ being either relating to the original novel or an adaptation based on the novel by Orwell. By comparison, the references to the Jungle Book more often do not refer to the original author (Rudyard Kipling).
- The decision of 31/08/2015, R 2401/2014-4, Le journal d’Anne Frank is analogous to the current case, where the trade mark was recognised as sufficiently distinctive. In that decision, it was found that the title of the ‘Anne Frank’ publication was known only in relation to a specific book and is therefore unique. The same situation exists here in relation to the contested sign.
- The Anne Frank publication was also adapted into other formats including plays and films. The Anne Frank’s Diary has also sold more copies than the Orwell publication (35 million approximate sales over 20 million for ‘ANIMAL FARM’, see https://en.wikipedia.org/wiki/List_of_best-selling_books). This supports the proposition that the mere fact that a novel has sold well or has been adapted into other formats which are authorised and faithful to the original work does not prevent the title from functioning as a trade mark. If editorial control has weakened or the use has commercially expanded beyond the original work, then the ability of the title to act as a trade mark may also weaken but that is not the case for the subject application.

- The applicant has taken care to ensure that the adaptations of the novel are consistent with the original work and the context of the use of the sign ‘ANIMAL FARM’ has maintained the link with the author George Orwell. This use means that the trade mark has maintained its ability to designate origin and the proposition that the phrase has developed a more general thematic meaning is not supported.
- ‘ANIMAL FARM’ is subject to copyright protection and should be accepted according to the Guidelines. The findings that ‘ANIMAL FARM’ is ‘a story which has acquired widespread fame and which, through its universal themes, has become a kind of modern fable’ and which is ‘part of the universal cultural heritage’ is contested.
- The manner of the use of the trade mark ‘THE JUNGLE BOOK’ is quite different from that of ‘ANIMAL FARM’, specifically:
 - a) the more complex nature of the novel ‘ANIMAL FARM’ meaning that whilst many people may know it is a political satire, it does not have a simple plot which gives it a universal theme.
 - b) the close association with the author George Orwell and the relatively few adaptations mean it has retained its ability to designate origin. The editorial control to associate the sign ‘ANIMAL FARM’ with Orwell is evidenced by the agreement (confidential Enclosure A).
- In relation to the reference to the ‘universal cultural heritage’ (opinion of Advocate General Ruiz-Jarabo Colmer, 27/11/2003, C-283/01, Musical notation, EU:C:2003:641, § 52), this comment was made by the Advocate General as a ‘final brief digression’ and appears to have been made out of concern that a musical work, previously protected by copyright, was going to be monopolised indefinitely when not even the author’s estate would enjoy such a right. The case here is distinguishable being to assess the distinctiveness of a word trade mark.
- The words ‘ANIMAL FARM’ have not ‘entered into the language’. The words operate to designate a product or service from the applicant. The contested sign is not descriptive of a genre of books or other products covered by the specification.
- There is a distinction between the perception of the words ‘THE JUNGLE BOOK’ which is associated with several adaptations and spin-offs where the story differs substantively, and that of the trade mark ‘ANIMAL FARM’ which has maintained its ability to designate origin in the eyes of the relevant consumer.
- (ii) Appeal R 1922/2019-5 in relation to the sign ‘1984’ (Similar arguments to those set out in relation to ‘ANIMAL FARM’ were also advanced concerning the sign ‘1984’. In order to avoid unnecessary repetition, only those arguments specifically pertaining to ‘1984’ are addressed below).
- The novel ‘1984’ may have been described as a dystopian fable but the story is complex and cannot be summarised in a few words. The adaptations made of ‘1984’ into other media have faithfully followed the original book and been

carefully controlled by the trade mark owner. The very fact that it is studied at secondary school supports the submission that there is only one version of the work. It is common for a famous novel to be dramatised into a film or a play and the contested sign is no different. The key element is that the plot is substantively faithful to the original.

- The examiner has not provided any evidence of any differences in the adaptations which might affect the ability of the trade mark to indicate the origin of the goods or services (as the work of the author George Orwell).
- Enclosure A contains examples of agreements with theatre and television companies granting authorisation to make use of the applicant's rights. Examples of clauses are annexed to demonstrate the need for the adaptation to stay true to the original.
- The evidence relied upon by the examiner does not support the finding that the contested sign is devoid of distinctive character because the story '1984' has entered into the language. This evidence shows the association of the trade mark with George Orwell so that the consumer has been educated to understand that the use of the trade mark is 'origin specific' being either relating to the original novel or an adaptation based on the novel by Orwell. All the adaptations provided by the examiner were authorised by the applicant and the producers of the adaptations were restricted by agreement from deviating from the book plot.
- The Anne Frank's Diary has sold more copies than the Orwell publication (35 million approximate sales over 30 million for '1984'). It has been translated into more languages than the Orwell publication (70 languages over 65 languages for '1984'). This supports the proposition that the mere fact that a novel has sold well or has been adapted into other formats which are authorised and faithful to the original work does not prevent the title from functioning as a trade mark. If editorial control has weakened or the use has commercially expanded beyond the original work, then the ability of the title to act as a trade mark may also weaken but that is not the case for the subject application.
- The applicant has taken care to ensure that the adaptations of the novel are consistent with the original work and the context of the use of the trade mark '1984', has maintained the link with the author George Orwell. This use has ensured that the trade mark has maintained its ability to designate origin. The finding that the sign has developed a more general thematic meaning is not supported.
- The examiner's finding that the sign '1984' is 'a story which has acquired widespread fame and which, through its universal themes, has become a kind of modern fable' and which is 'part of the universal cultural heritage'.
- The manner of the use of the trade mark 'THE JUNGLE BOOK' is quite different from that of '1984', specifically:
 - a) the more complex nature of the novel '1984' meaning that whilst many people may know it is a dystopian satire, it does not have a simple plot which gives it a universal theme;

b) the close association with the author George Orwell and the relatively few adaptations mean it has retained its ability to designate origin. The editorial control to associate the trade mark ‘1984’ with Orwell is evidenced by the clauses of two agreements with theatre companies at Enclosure A.

Referrals to the Grand Board of Appeal pursuant to Article 165(3) EUTMR

7 By interim decisions of 29 June 2020, R 1719/2019-5, ANIMAL FARM and of 2 July 2020, R 1922/2019-5, 1984, the Fifth Board referred the cases to the Grand Board of Appeal pursuant to Article 165(3) EUTMR. The main reasons in both decisions were the following:

- The cases were referred because the Office and the Boards of Appeal have issued diverging decisions with respect to the registrability of titles of books or names of well-known characters of artistic works for goods and services such as *videos; CDs; movies* (Class 9), *printed matter; photographs; books; paintings* (Class 16), or *entertainment; cultural activities; educational services* (Class 41). The following decisions were noted:
- In 18/03/2015, R 118/2014-1, THE JUNGLE BOOK, § 24-25, it was stated that in case that the public perceives a sign purely as a reference to the author’s work or type of story without any additional element which could impart distinctive character to the sign indicating the business origin, it is to be considered as descriptive and non-distinctive in the context of goods and services. The Board also held that trade marks consisting solely of the title of books that have undergone many adaptations are usually not distinctive in relation to the goods and services which could have that story as their subject matter.
- In 25/02/2015, R 1856/2013-2, PINOCCHIO, § 26, it was found that if a title is famous enough to be truly well known to the relevant public where the mark can be perceived in the context of the goods or services as primarily signifying a famous story or book title, a mark may be perceived as non-distinctive. A finding of non-distinctiveness in this regard will be more likely where it can be shown that a large number of published versions of the story have appeared and/or where there have been numerous television, theatre and film adaptations reaching a wide audience. ‘PINOCCHIO’ belongs to this category of titles. It is indeed a title of a story that is long established and well known as a reference to a children’s story.
- In 14/03/2008, R 670/2005-2, Frühlingsfest der Volksmusik, § 37-40, it was found that the sign applied for was descriptive and devoid of distinctive character because it was seen as a title of an event, and hence in its name function, for inter alia goods and services in Classes 9, 16 and 41.
- In 31/08/2015, R 2401/2014-4, Le journal d’Anne Frank, it was found that although the story of Anne Frank is widely known and popular among the public, it does not describe the goods and services in Classes 9, 16 or 41. It does not indicate any characteristic of these goods or services. Thus, the public when confronted with that sign will identify the producer of those goods in Classes 9 or 16 or the providers of the services in Class 41.

- In 02/02/2015, R 881/2014-5, Der kleine Hey, § 16, it was found that ‘Hey’ was perceived as a name or a fantasy element and that the cancellation applicant did not provide evidence that the contested mark was perceived as a reference to the content or the subject matter of the goods and services.
- In 22/03/2017, R 1297/2016-2, WINNETOU, § 38-39, it was found that the sign was descriptive and non-distinctive for goods and services in Classes 9, 16, 28 and 41 because, apart from being the title of a famous invented figure in literature, it had acquired an additional abstract and independent meaning referring to an honourable native American.
- EUIPO Guidelines are not very specific in connection with titles of books as, on the one hand, it is mentioned that a title of a book, in particular if it is well known, might be perceived as indicating the subject matter or content of goods such as publications etc. but, on the other hand, the Guidelines condition the application of Article 7(1)(b) EUTMR to the fact that the title ‘entered into the language’.

Division of the EUTM applications

- 8 On 21 September 2020, pursuant to Article 50(1) EUTMR, the applicant filed an application for division for both EUTM applications for goods and services in Classes 18, 21, 25, 28 (this class only in relation to the sign ‘1984’) and 45 as these goods and services were not objected to by the examiner.
- 9 The divisional application of ‘ANIMAL FARM’ under No 18 333 117 was registered on 29 March 2024 for goods and services in Classes 18, 21, 25, 45.
- 10 The divisional application of ‘1984’ under No 19 009 643 was registered on 31 October 2024 for goods and services in Classes 18, 21, 25, 28, 45.

INTA’s written observations in relation to the signs ‘ANIMAL FARM’ and ‘1984’

- 11 On 3 March 2021, after the publication in the Official Journal of the Office of the referral to the Grand Board on 4 January 2021, the International Trademark Association (‘INTA’) sent its written observations pursuant to Article 37(6) EUTMDR. The main arguments are the following:
 - Adopting a priori rules that automatically bar trade mark protection for titles of famous artistic works should be avoided, since such titles should not face stricter distinctive-character assessment than other signs and blanket approaches should be discouraged.
 - Titles, including those of famous literary and artistic works, are not inherently descriptive or non-distinctive for particular goods or services. Like any other trade mark, such titles may indicate commercial origin unless specific factors suggest otherwise. Distinctiveness must therefore be assessed case by case, in light of all the circumstances, to determine whether the relevant public would perceive the title as a badge of origin for the goods or services concerned.

- The Grand Board should clarify that titles of artistic works are not among those signs for which, according to the established case-law, it is deemed more difficult to establish distinctive character (such as slogans and colours).
- The Grand Board should give due deference to the fact that, once registered, the scope of protection as trade marks of the signs at issue would not affect the right of third parties to use the relevant titles in a descriptive, non-trade mark, manner, in accordance with Article 14 EUTMR.
- There is no doubt that titles of artistic works – including famous ones – are signs, which can be registered, capable, at the very least *in abstracto*, of distinguishing the goods or services of one undertaking from those of other undertakings. This is confirmed by the interim decision, the diverging decisions mentioned therein and the EUIPO Guidelines, Part B Examination, 2.7.2. All these sources support the conclusion that the fact that a sign is a title of an artistic work is not per se an obstacle to obtain trade mark protection.
- The signs ‘ANIMAL FARM’ and ‘1984’ should be considered as signs eligible for registration pursuant to Articles 4 and 7(1)(a) and EUTMR, irrespective of the fact that they are titles of famous books.

Applicant’s comments on INTA’s written observations

- 12 On 6 April 2021, the applicant submitted its observations on INTA’s observations, which can be summarised as follows:
- The applicant agrees with INTA’s observations regarding the subject matter/content of the goods and services. The books which are the subject of these applications are not descriptive of a type of story, they are merely well-known examples of that genre. The use in everyday language is illustrative rather than generic. Otherwise, an author would be in the unenviable position of trying to ‘suppress’ the success or recognition of the work to avoid a challenge to the validity of the trade mark.
 - Trade marks are very fact specific and that it is possible for a story to ‘enter into the language’, meaning that then the trade mark significance can be lost. The EUTMR allows for this possibility in permitting descriptive use under Article 14 EUTMR and attacks on the validity of any registration under Article 59(1)(a) EUTMR.
 - The novels ‘ANIMAL FARM’ and ‘1984’ have complex storylines and the adaptations made of the stories have followed the original books and been carefully controlled by the applicant.

Joining of appeals

- 13 Cases R 1719/2019-G, ANIMAL FARM, and R 1922/2019-G, 1984, were joined after express consent was given by the applicant on 12 May 2023, pursuant to Article 35(5) EUTMDR.

Communication of the Grand Board

- 14 On 20 November 2023, the Grand Board addressed the following matters in a communication:
- The evidence cited by the examiner which pertained to the UK was no longer relevant due to the UK’s withdrawal from the EU. However, equivalent evidence could be found, and was cited, for the remaining English-speaking public in the EU, in particular evidence relating to educational curricula in Ireland and Malta.
 - ‘ANIMAL FARM’ was part of the prescribed texts in the English curriculum for junior cycle students in Ireland from 2018-2023, whereas ‘1984’ was part of the prescribed material for Leaving Certificate English in 2018, 2019 and 2020 (<https://circulars.gov.ie/pdf/circular/education/2017/06.pdf>; <https://circulars.gov.ie/pdf/circular/education/2018/24.pdf>; <https://assets.gov.ie/11914/95b15e85ae4548c2946d695ed3bd8b0b.pdf>).
 - George Orwell’s works are studied at the University of Malta (<https://www.um.edu.mt/courses/studyunit/ENG2281> consulted on 26/10/2023) and would be known by the general public of that Member State. ‘ANIMAL FARM’ appears to be part of the standard materials for students of Year 10 English.

Applicant’s restriction requests

- 15 On 8 April 2024, the applicant unconditionally requested a restriction of the goods and services of both applications, as follows:
- (i) In relation to the sign ‘ANIMAL FARM’
- Class 9: *Video tapes; audio tapes; compact discs; video discs; laser discs; DVDs; CD-roms; electronic publications; digital media and recordings; pre-recorded digital media and recordings; downloadable electronic publications; downloadable digital media and recordings; downloadable digital media and recordings containing sound, images, text or information; webcasts; podcasts; vodcasts; downloadable digital media and recordings containing teaching apparatus and instruments; computer games; educational computer games; downloadable computer games; animated cartoons and other imagery; cinematographic films; animated cartoons; movies; mobile phone games; digital games, mobile phone games; DVD games; pre-recorded audio and video compact discs, DVDs, motion picture films, television programmes and other digital recording media; all of the aforesaid goods consisting of content on the subject of political fiction.*
 - Class 16: *Printed matter; books; publications; comic books; magazines; periodicals; journals; posters; instructional and teaching materials; instructional and teaching materials for education and information; all of the aforesaid goods consisting of content on the subject of political fiction.*

- Class 28: *Games, toys and playthings; electronic games; board games; interactive games adapted for use with television receivers; **all of the aforesaid goods consisting of content on the subject of political fiction.***
- Class 41: *Entertainment; educational services; provision of educational services via electronic media, multimedia content, videos, movies, television programmes, pictures, images, text, photos, user-generated content, audio content, and related information via the Internet and other communications networks; providing online entertainment and cultural information by way of multimedia content, podcasts, vodcasts, viral videos, interviews, audio visual programmes, videos, video recordings, photos, images, text, data, games, music, sound recordings and/or films; provision of films, games and audio or visual information online (not downloadable); organisation of events, festivals, seminars, conferences, congresses, workshops, exhibitions, cultural activities, webinars, competitions and / or stage shows; online entertainment services; providing television programmes and films online; **all of the aforesaid services consisting of content on the subject of political fiction.***

(ii) In relation to the sign ‘1984’

- Class 9: *Video tapes; audio tapes; compact discs; video discs; laser discs; DVDs; CD-roms; electronic publications; digital media and recordings; pre-recorded digital media and recordings; downloadable electronic publications; downloadable digital media and recordings; downloadable digital media and recordings containing sound, images, text or information; webcasts; podcasts; vodcasts; downloadable digital media and recordings containing teaching apparatus and instruments; computer games; educational computer games; downloadable computer games; cinematographic films; animated cartoons; movies; mobile phone games; digital games, mobile phone games; DVD games; pre-recorded audio and video compact discs, DVDs, motion picture films, television programmes and other digital recording media; musical sound recordings; **all of the aforesaid goods consisting of audio, visual, electronic and/or recorded content on the subject of political fiction.***
- Class 16: *Printed matter; books; publications; comic books; magazines; periodicals; journals; posters; instructional and teaching materials; instructional and teaching materials for education and information; **all of the aforesaid goods consisting of content on the subject of political fiction.***
- Class 41: *Entertainment; cultural activities; educational services; provision of educational services via electronic media, multimedia content, videos, movies, television programmes, pictures, images, text, photos, user-generated content, audio content, and related information via the Internet and other communications networks; providing online entertainment and cultural information by way of multimedia content, podcasts, vodcasts, viral videos, interviews, audio visual programmes, videos, video recordings, photos, images, text, data, games, music, sound recordings and/or films; provision of films, games and audio or visual information online (not downloadable); organisation of events, festivals, seminars, conferences, congresses,*

workshops, exhibitions, cultural activities, webinars, competitions and / or stage shows; online entertainment services; providing television programmes and films online; all of the aforesaid services consisting of content on the subject of political fiction.

The Grand Board's interim decision regarding the applicant's restriction request

- 16 On 17 July 2024, by way of interim decision, the Grand Board accepted the restriction requested by the applicant, pursuant to Article 49(1) EUTMR.

Grand Board's questions to the Executive Director of the Office and his comments

- 17 On 22 July 2024, the Grand Board invited the Executive Director to submit comments on questions of general interest pursuant to Article 29 EUTMDR, which arose during the above proceedings. The comments were submitted on 19 February 2025. For ease of reference and to avoid repetitions only the comments are summarised here and not the questions.

A) *Comments on the interaction between trade mark law, copyright and book title law*

- Copyright
 - Copyright protection for the title of a work as a 'work' itself is not excluded from the broad definition of 'literary and artistic works' under Article 2 of the Berne Convention for the Protection of Literary and Artistic Works. At EU level, the CJEU confirmed in case 16/07/2009, C-5/08, Infopaq, EU:C:2009:465 that copyright within the meaning of Article 2(a) of Directive 2001/29 is liable to apply only in relation to a subject matter that is 'original' in the sense that it is its author's own intellectual creation. It is possible under EU law for the various parts of a work to enjoy copyright protection, if they contain elements that reflect the author or the work's intellectual creativity. Consequently, if a book title meets the condition for originality, it can benefit from copyright protection in the EU. Whether the threshold for copyright protection of titles subject to an EU-level 'originality' criterion is met requires a case-by-case assessment. As explained in the study on how national legal orders in the EU protect titles of books, names of films and titles of other intellectual works (2021) ('the Study') (https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/contentPdfs/about_euipo/boards_of_appeal/studies/Study_on_Titles_of_Work_en.pdf accessed on 29 January 2026) commissioned by the Boards of Appeal, the protection of the title of a work is not harmonised at national level in the EU. Various approaches are adopted, such as unfair competition, *sui generis* rights, and copyright protection.
- Trade marks
 - Titles of literary works may function as trade marks when they are capable of designating the commercial origin goods and services. Importantly, for books, the

function of the trade mark is to identify commercial origin, not to identify the specific literary work in a book.

- Law protecting book titles (*sui generis* right for titles)
- Germany is the only EU Member State that has opted to explicitly protect work titles ('Werktitelschutz') as 'commercial designations'. This includes names or special designations of printed publications, cinematic works, music works, stage works or other comparable works – under the Act on the Protection of Trade Marks and other Signs (Articles 5 and 15 MarkenG). Consequently, a 'commercial designation' is a right that is distinct from trade marks and copyright, although they may converge in the object of protection (a title of a work).
- When it comes to the protection of 'titles of works', the three regimes above overlap to the extent that the same object (i.e. a title of a book) (i) can be an original work of authorship for copyright, (ii) can serve to identify and distinguish one undertaking's goods and services from others as a trade mark and (iii) can be a name or special designation that serves to distinguish a printed work from others (*sui generis* right). However, any overlap is limited by the fact that these regimes pursue different goals: protecting indications of commercial origin in the case of trade marks; protecting original intellectual creations in the case of copyright and protecting commercial designations of printed works. The overlap does not include the material protection afforded by the respective rights.
- There is no a priori exclusion of protection between the different protection regimes, to the extent that the same object (i.e. title of a work) can, in principle, enjoy protection under them. However, they diverge in very important aspects: the nature of the rights conferred, the conditions of protection, their duration, their territorial scope and their justifications.
- The absolute grounds examination under Article 7 EUTMR does not provide a basis for prohibiting the registration of a trade mark consisting of the title of a book because it enjoys copyright protection or a *sui generis* right such as *Werktitelschutz*.
- According to the Office's approach, when a sign consists of the title of a book, the impact of the expiration of copyright protection can only be relevant in the absolute grounds' examination to the extent that it may affect the consumer's perception of the sign.
- As regards relative grounds before the Office, the different regimes may conflict in opposition and cancellation proceedings. The existence of a prior copyright at national level can serve as a basis for an opposition under Article 8(4) EUTMR or for invalidating the EUTM under Article 60(2)(c) EUTMR where the prior copyright is capable of preventing the use of the trade mark for the goods and services in question.
- Titles of books can, in principle, meet the requirements under Articles 4 and 7(1)(a) EUTMR. Under Article 7(1)(b), (c), (d) and (g) EUTMR, the perception of the relevant consumer is the key point in the examination.

- A word mark does not fall under Article 7(1)(e) EUTMR and, in any case the title of the book could not be considered as ‘another characteristic’ under Article 7(1)(e)(iii) EUTMR on substantial value. The existence of copyright protection and/or legislation on the protection of titles of works does not affect these conclusions.
- Under Article 7(1)(f) EUTMR, the Office objects to applications that are contrary to (i) public policy or (ii) accepted principles of morality. The fact that a sign protected by copyright is registered as a trade mark does not go against EU fundamental norms or moral values and standards protected through Article 7(1)(f) EUTMR and therefore cannot be used as a basis for objection. The same is true for the German national law protecting titles of works.
- If there is interest in creating a new EU *sui generis* right for the protection of work titles on the basis of Article 118(1) and Article 207(2) TFEU, the initiative must come from the European Commission, which is responsible for proposing EU legislation under Article 17(1) and (2) TEU. The Office, as the EU agency managing EUTMs, registered EU designs, geographical indications for craft and industrial products, and related IP cooperation, acts only within competences defined by existing EU legislation or mandates from the Commission. It is therefore not in a position to confirm whether such political interest exists.

B) Comments on the examination of a title or of the title of a ‘series of books’

- There is no, a priori, different treatment for the registration of signs consisting of the title of a single literary work and, consequently, for signs consisting of the title of a series of works.
- There are *dicta* of the General Court (30/06/2009, T-435/05, DR. NO / DR.NO, EU:T:2009:226, § 25-31) relating to proof of use of a trade mark that suggest that, under certain circumstances, the relevant public would be more likely to perceive the title of a series of works as a badge of commercial origin than the title of an individual work, which will be seen as indicating the artistic origin of an individual work (e.g. films). Therefore, under Office practice, the distinction between a single book title and the title of a series of books could, depending on circumstances and the evidence presented, be relevant for proving use when demonstrating that the marks in question are being used to identify the commercial origin of books. However, this distinction is not considered at the examination stage for a trade mark.

C) Comments on Article 7(1)(b) EUTMR

- Consumers distinguish between the different functions of the various identifiers associated with books (title, author, publisher). The title of the book has the function of identifying a specific literary work. For consumers, it works in combination with the author and publisher to identify the product they seek. Publishers and authors can obviously produce more than one book, so the title is required to identify the specific work in question. As such, the consumer’s perception of the relevant goods involves interplay between the title of a specific work, its author and its publisher.

- Nevertheless, the title of the book is not perceived by the consumer as indicating commercial origin (publisher). The distinction between title and trade mark is not ‘unrealistic and artificial’. The same sign may be protected as an original creative work by copyright and as an indicator of commercial origin by trade mark law. It is a matter of different exclusive rights based on distinct qualities, that is to say the original nature of a creation, on the one hand, and the ability of a sign to distinguish the commercial origin of the goods and services, on the other (21/10/2008, T-73/06, *FORME D'UN SAC* (fig.), EU:T:2008:454, § 32).
- When applying for a trade mark consisting of a book title for books, applicants need to bear in mind that, after registration, they may be required to prove use of the sign as an indication of commercial origin, which means demonstrating that the sign is being used to identify the publisher of the book.

D) Comments on Article 7(1)(c) EUTMR

- The title of a book allows a specific literary work to be identified. In this sense it ‘designates’ the book so that it can be distinguished from other literary works. This function, however, does not relate to the object of the absolute grounds examination, which considers the mark’s ability to indicate the commercial provenance of the book (i.e. the publisher).
- A title of a book can be registered as a trade mark provided it can identify the commercial origin of the relevant goods (books). The same applies to services. The Office will not raise an objection on the basis of Article 7(1)(c) EUTMR merely because the sign is the title of a book unless the sign can be perceived by the relevant public as describing the subject matter of the goods or services (e.g. the content of CDs or DVDs in Class 9, books in Class 16 or entertainment and educational services in Class 41). This requires a case-by-case assessment, where various factors are taken into account.
- The registration of a sign consisting of the book title as a trade mark grants its owner an exclusive right to prohibit use of the sign as a trade mark on the relevant goods within the EU. However, it does not allow the proprietor to prevent competitors from referring to a book by its title, which is not use as a trade mark because it is a function other than and distinct from indicating commercial origin.
- Consequently, the prohibition in Article 7(1)(c) EUTMR not allowing descriptive terms to be registered as a trade marks ensures that competitors may freely use any term to describe relevant characteristics, for example, the subject matter of a book. However, as regards the title of the book, the Office does not consider that Article 7(1)(c) EUTMR has the purpose of ensuring that competitors should be free to refer to that book by its title because the registration of a trade mark of the title of a book would not prevent a competitor from using the title to refer to the specific literary work.

*E) Comments on the timing and Article 7(1)(b)(c) and (d) EUTMR
Article 7(1)(d) EUTMR*

- The examination of Articles 7(1)(b) to (d) EUTMR calls for a case-by-case assessment regarding the relevant factor under each ground. For all grounds, the perception of the consumer at the filing date of the trade mark application is the relevant point in time. This perception can, in theory, be affected by the presence of literary works on the market and how they are being exploited because this may affect how the sign is perceived by the relevant consumer. The moment a book is placed on the market can be a relevant factor in the examination of Article 7(1)(b) to (d) EUTMR when it is combined with other factors.
- It is not possible to determine in the abstract what the effect will be. If a book was placed on the market a long time ago and is still actively purchased, adapted and discussed, it can be an indication of its ‘status’ and whether it might be the subject matter of later books. On the other hand, recent publications that are highly successful can quickly become the subject of genres or the subject matter of later books and works. Also, the timing of a book being placed on the market can affect how and when merchandising and adaptations take place, which, in turn, may affect the perception of consumers. The relevant calculus is how the consumer will understand a sign and this, may be influenced by, but is not dependant on the moment a related book is placed on the market.
- Similarly, the change of the ‘character’ of a book to an important work of literature can be a relevant criterion for the consumers perception. For example, it can be an indication that the book is more or less likely to be the subject matter of later books, or such a book title might come to refer to something more than just a particular book and encompass other meanings that might be relevant to Article 7(1)(d) EUTMR.
- Copyright protection and title protection can have an indirect influence on the examination of Article 7(1)(b) to (d) EUTMR because they might have consequences on the market and impact the perception of the consumer.
- Ultimately, the assessment of the distinctive nature of a sign, its descriptiveness and genericness involves an overall assessment of various elements to understand the relevant consumer’s perception. This perception may vary over time and be affected by many factors, but it must be examined at the time of the filing date.

F) Comments on books titles – synonyms of political circumstances

- Whether a book title has become synonymous with political circumstances and statements, in particular, by providing a critique of the prevailing political climate is a factual assessment.
- The Courts have given guidance on what a political slogan is, namely, ‘an expression, used in a political or social context, repetitive of an idea or purpose, with the goal of persuading the public or a target group within it’ (13/11/2024, T-82/24, RUSSIAN WARSHIP, GO F**K YOURSELF (fig.), EU:T:2024:821, § 26). The question of whether a book title has become synonymous with political circumstances and statements has not been considered sufficiently by the EU

judicature to set out a priori ‘conditions under which’ such a determination can be made. Therefore, whether a book title has assumed this meaning is a question of consumer perception that must be determined on a case-by-case basis.

- The Office’s approach to determining this is to examine the semantic meaning of the word in the normal way. This examines the ordinary understanding of the word in question by the relevant public, which may be arrived at by checking in dictionaries, searching for examples of the use of the term in a descriptive manner on the Internet, social media and publications. The manner in which the sign is being used in the various sources will show if it has come to have a political meaning for the relevant consumer.
- The fact that a book title has become synonymous with political circumstances and statements is relevant when a sign is examined under Articles 7(1)(b) and (c) EUTMR. If the sign is perceived only as a political slogan, it will be incapable of fulfilling the function of a trade mark and devoid of any distinctive character under Article 7(1)(b) EUTMR for all goods and services. If the sign is perceived only as a critique of the prevailing political climate, it may be descriptive of the ‘subject matter’ of certain goods and services under Article 7(1)(c) EUTMR.

G) Comments on Article 7(1)(f) EUTMR

- An application consisting of the title of a book synonymous with political circumstances and statements might be considered contrary to public policy if the meaning contravened and/or incited, glorified, trivialised or justified the violation of EU fundamental norms protected through Article 7(1)(f) EUTMR. An application consisting of the title of a book synonymous with political circumstances and statements might be considered contrary to accepted principles of morality. The perception of the sign may vary depending on the context and circumstances of the part of the EU concerned, but it can potentially lead to an objection under Article 7(1)(f) EUTMR if it is perceived as offensive after applying the relevant criteria. Overall, this article calls for a case-by-case assessment on the perception of the sign by the relevant consumer and how this relates to the values protected under public policy and accepted principles of morality; if there is a conflict between the two, there may be an objection.

Observations of the applicant on the Executive Director’s comments

- 18 On 26 February 2025, the Registry of the Boards of Appeal submitted the comments of the Executive Director to the applicant.
- 19 On 26 March 2025, the applicant provided the following observations in relation to the comments of the Executive Director:

A) The functions of a trade mark and book titles and author names

- The Executive Director is correct in his view that book titles can, in principle, meet the requirements under Article 7(1) the EUTMR.

- In judgment of 25/07/2018, C-129/17, Mitsubishi, EU:C:2018:594, the Court identified several functions of the trade mark, including the indication of origin and quality (§ 35), as well as investment and advertising functions (§§ 36-37). The case-law further shows that these functions are not exhaustively defined but have evolved progressively over time.

B) Signs that denote artistic origin and the distinction (if any) with commercial origin

- Book titles serve as markers of commercial origin just as much as they serve as markers for artistic origin. If such a sign is capable in principle of indicating commercial origin, it should be registrable as a trade mark. The existence of copyright protection in a literary work associated with a mark does not preclude trade mark protection being available for the same mark (07/06/2023, T-735/21, DEVICE OF A STYLISED DEPICTION OF A BLACK BAT INSIDE A WHITE OVAL FRAME (fig.), EU:T:2023:304, § 44).
- The Executive Director’s comments are potentially far reaching. It is not just book titles that may be affected, but also the names of bands and musical groups, the names of artists and/or the titles of artworks, the names of films, actors, actresses and film directors. In each case, these marks are associated with copyright works including sound recordings, musical compositions, artistic works, dramatic works and films, in which there is time limit to the copyright protection.
- Book titles, like other commercial signs, are capable of performing the essential function of a trade mark by distinguishing goods according to their commercial origin. Titles also fulfil ancillary functions recognised in the case-law, including advertising and communication functions, in that they attract consumers’ attention and convey information about the provenance and expected quality of the work. According to the applicant, consumers rely primarily on titles, rather than on publishers’ names, when selecting or recommending books, such that titles may serve as more significant indicators of origin in practice.
- A sharp distinction between signs denoting trade origin (whose use involves trade mark use) and signs denoting artistic origin (whose use may not involve trade mark use) is unwarranted. In many cases, the artistic and commercial origin of a work is in substance one and the same thing and there should be trade mark rights to protect signs that fulfil the functions of a trade mark.
- The analysis is always fact specific and depends on how the works are marketed, the types of parties involved in creating and marketing them and the way in which marks and signs associated with the work are presented to the consumer at every relevant step. The analysis will have different results for different types of work. To an extent, the analysis will vary even from book to book, film to film and/or music product to music product, as each specific work will be presented and/or marketed in different ways.

C) The context of the infringement of trade marks consisting of book titles

- Where a work remains protected by copyright, unauthorised copies are unlawful on that basis alone. However, trade mark protection in the title may provide additional protection by preventing the use of identical or similar signs on such copies, where the conditions of Article 9(2)(a)–(c) EUTMR are met.
- Once copyright expires third parties may lawfully publish copies of the work without the consent of the rightsholder. In principle, trade mark rights in the titles of works would not obstruct third party entry into the market for such public domain works. To make use of signs corresponding to the title of a work in order to market such products, third parties could claim the benefit of the defence under Article 14(1)(c) EUTMR permitting use of an EUTM.
- Nevertheless, even after a work falls into the public domain, there is a role for trade mark protection in signs corresponding to the titles of works. By way of example, a publisher of public domain works may choose to publish altered or edited versions of an author’s work following its entry into the public domain. Examples might include censoring particular sections of the work, conversely adding offensive material into the work that was not previously present or attempting to condense or abridge the work by excising large passages of the work.
- Such altered works might be presented as works of the author although they do not reflect either the author’s opinions or views and/or although they adversely affect the average consumer’s impression of the quality of the author’s works. Such uses would plainly adversely affect the origin, quality and investment functions of any trade marks corresponding to the author’s name. Claims could be brought under Article 9(2)(a) and (b) and, assuming the trade marks have a reputation, (c) EUTMR. A defence under Article 14 EUTMR would not arise in this context as such uses would not be in keeping with honest commercial practices. Of course, it would remain possible in this scenario for third parties to publish bowdlerised or altered versions of public domain works. The role of trade mark protection would be to prevent such works being wrongly attributed to the original author. In this sense, trade mark protection would be consistent with the interests of consumer protection, enabling genuine copies of an author’s work to be distinguished from non-genuine and/or altered versions.
- Each of these points would raise fact specific issues in any scenario in which they arise. Nevertheless, they identify an important reason why an author or an author’s estate has an interest in continuing trade mark protection following the author’s works falling into the public domain. That is so not least in relation to authors like George Orwell whose works are commonly used in education and/or other contexts where it is important that consumers can guarantee the authenticity of the copy or version from which they are working.
- As for copyright itself, this does not prevent unauthorised use of the title of a work but instead the work itself. Indeed, words or short phrases will typically not attract copyright protection. In *C-5/08 Infopaq International A/S / Danske Dagblades Forening*, EU:C:2009:465, § 51, it was held that in principle a short extract of work in the form of a sentence or phrase of eleven words could enjoy

copyright protection, but only if it expressed the author's own intellectual creation. Book titles generally consist of fewer than five words and are therefore unlikely to be copyright works.

- The subject matter of a trade mark covering a book title is completely different to the subject matter of copyright. This is not a situation of trade marks offering parallel protection to copyright.
- A final point relates to the effect of a copyright work entering the public domain on the distinctiveness of book titles as trade marks. This may be one factor among many that affects the assessment of distinctive character in relation to an author's name but this will always remain a fact specific assessment. Many books become popular long after their initial publication. There is no evidence, of which the applicant is aware, that shows that, in general, the expiry of copyright in a book results in a loss of distinctiveness of the book title as a trade mark. It is difficult to address these points in the abstract without detailed evidence on consumer perception or behaviour and the general features of the relevant market.
- The issue of parallel protection arising from different types of IP rights in this area is not a factor which should curtail the availability of trade mark rights. Trade marks protect different kinds of interests to rights like copyright and moral rights. This is not therefore a situation of completely parallel protection where there is a good foundation for the position that authors or creators should be restricted to copyright or moral rights.

D) Public policy and Article 7(1)(f) EUTMR

- The view of the Executive Director is that the registration of a book title would not in principle offend against Article 7(1)(f) EUTMR although this assessment will be fact specific. Notably, a decision of the EFTA Court, E-5/16 Municipality of Oslo, has addressed this point in relation to the Trade Mark Directive. It concerned a trade mark application relating to a famous Norwegian sculpture that entered the public domain and was no longer subject to copyright protection. This case found that the registration of such a sign would not be contrary to Article 3(1)(f) of the Trade Mark Directive (§ 102).

Reasons

- 20 All references made in this decision should be seen as references to the EUTMR (EU) 2017/1001 (OJ 2017 L 154, p. 1), codifying Regulation (EC) No 207/2009 as amended, unless specifically stated otherwise.
- 21 The appeals comply with Articles 66, 67 and 68(1) EUTMR. They are admissible. However, the appeals are not well founded.
- 22 The Grand Board is competent on the basis of Article 165(3) EUTMR and Article 37(6) EUTMDR following the referral by the Fifth Board.

I. Scope of appeals

- 23 The applicant contested the decisions of the examiner in their entirety.
- 24 However, the examiner only partially rejected the contested signs. Therefore, the scope of the appeals R 1719/2019-G and R 1922/2019-G brought by the applicant is limited to the refused goods and services, taking into account the accepted restriction of the lists of goods and services of 17 July 2024 (paragraphs 15 and 16), namely:

(i) In relation to the sign ‘ANIMAL FARM’

*Class 9: Video tapes; audio tapes; compact discs; video discs; laser discs; DVDs; CD-roms; electronic publications; digital media and recordings; pre-recorded digital media and recordings; downloadable electronic publications; downloadable digital media and recordings; downloadable digital media and recordings containing sound, images, text or information; webcasts; podcasts; vodcasts; downloadable digital media and recordings containing teaching apparatus and instruments; computer games; educational computer games; downloadable computer games; animated cartoons and other imagery; cinematographic films; animated cartoons; movies; mobile phone games; digital games, mobile phone games; DVD games; pre-recorded audio and video compact discs, DVDs, motion picture films, television programmes and other digital recording media; **all of the aforesaid goods consisting of content on the subject of political fiction.***

*Class 16: Printed matter; books; publications; comic books; magazines; periodicals; journals; posters; instructional and teaching materials; instructional and teaching materials for education and information; **all of the aforesaid goods consisting of content on the subject of political fiction.***

*Class 28: Games, toys and playthings; electronic games; board games; interactive games adapted for use with television receivers; **all of the aforesaid goods consisting of content on the subject of political fiction.***

*Class 41: Entertainment; educational services; provision of educational services via electronic media, multimedia content, videos, movies, television programmes, pictures, images, text, photos, user-generated content, audio content, and related information via the Internet and other communications networks; providing online entertainment and cultural information by way of multimedia content, podcasts, vodcasts, viral videos, interviews, audio visual programmes, videos, video recordings, photos, images, text, data, games, music, sound recordings and/or films; provision of films, games and audio or visual information online (not downloadable); organisation of events, festivals, seminars, conferences, congresses, workshops, exhibitions, cultural activities, webinars, competitions and / or stage shows; online entertainment services; providing television programmes and films online; **all of the aforesaid goods consisting of content on the subject of political fiction.***

(ii) In relation to the sign '1984'

Class 9: *Video tapes; audio tapes; compact discs; video discs; laser discs; DVDs; CD-roms; electronic publications; digital media and recordings; pre-recorded digital media and recordings; downloadable electronic publications; downloadable digital media and recordings; downloadable digital media and recordings containing sound, images, text or information; webcasts; podcasts; vodcasts; downloadable digital media and recordings containing teaching apparatus and instruments; computer games; educational computer games; downloadable computer games; cinematographic films; animated cartoons; movies; mobile phone games; digital games, mobile phone games; DVD games; pre-recorded audio and video compact discs, DVDs, motion picture films, television programmes and other digital recording media; musical sound recordings; all of the aforesaid goods consisting of audio, visual, electronic and/or recorded content on the subject of political fiction.*

Class 16: *Printed matter; books; publications; comic books; magazines; periodicals; journals; posters; instructional and teaching materials; instructional and teaching materials for education and information; all of the aforesaid goods consisting of content on the subject of political fiction.*

Class 41: *Entertainment; cultural activities; educational services; provision of educational services via electronic media, multimedia content, videos, movies, television programmes, pictures, images, text, photos, user-generated content, audio content, and related information via the Internet and other communications networks; providing online entertainment and cultural information by way of multimedia content, podcasts, vodcasts, viral videos, interviews, audio visual programmes, videos, video recordings, photos, images, text, data, games, music, sound recordings and/or films; provision of films, games and audio or visual information online (not downloadable); organisation of events, festivals, seminars, conferences, congresses, workshops, exhibitions, cultural activities, webinars, competitions and / or stage shows; online entertainment services; providing television programmes and films online; all of the aforesaid services consisting of content on the subject of political fiction.*

- 25 The examiner refused the contested signs on the basis of Article 7(1)(c) EUTMR and, independently, under Article 7(1)(b) EUTMR. The Grand Board will first examine whether the examiner correctly rejected the signs under Article 7(1)(c) EUTMR, after which it will assess whether the signs are also objectionable under Article 7(1)(b) EUTMR.

II. Evidence submitted before the Grand Board of Appeal

- 26 According to Article 95(2) EUTMR, the Office may disregard facts or evidence which are not submitted in due time by the parties concerned.
- 27 In accordance with settled case-law (13/03/2007, C-29/05 P, ARCOL / CAPOL, EU:C:2007:162, § 43-44; 11/12/2014, T-235/12, GRASS IN BOTTLE (other) / Bottle with strand of grass (3D) et al., EU:T:2014:1058, § 62), which is now enshrined in Article 27(4) EUTMDR, the Grand Board may accept facts or evidence submitted for the first time before it only where those facts or evidence

are on the face of it, likely to be relevant for the outcome of the case and 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 (09/02/2022, T-520/19, Heitec, EU:T:2022:66, § 36).

- 28 Those same principles are reiterated in Article 54(1) BoA RP, according to which such facts or evidence may also not be disregarded if they were not available before or at the time the contested decision was taken or are justified by any other valid reason.
- 29 The applicant provided on appeal additional evidence (Enclosures A and B and Annex 1) in response to the examiner's findings in the contested decisions on the descriptive character and lack of distinctiveness of the signs. The Grand Board, in the exercise of its discretion, accepts the additional evidence on appeal, which supplements the evidence presented before the examiner, and is relevant for the outcome of the present cases.

III. On the applicant's confidentiality request

- 30 Article 114(4) EUTMR as well as Article 6(1) BoA RP provide that files may contain certain documents which are withheld from inspection, in particular if the party concerned showed a special interest in keeping them confidential.
- 31 In the event that a special interest in keeping a document confidential is invoked in accordance with Article 114(4) EUTMR as well as Article 6(1) BoA RP, the Office must check whether a special interest is sufficiently shown. Such a special interest must exist because of the confidential nature of the document or its status as a trade or business secret.
- 32 In these cases, the applicant marked both statements of grounds as confidential. The Grand Board notes that the applicant did not sufficiently demonstrate its special interest in keeping its submissions confidential. The requests are therefore rejected.
- 33 The applicant marked as confidential the evidence submitted as Enclosure A, which includes examples of agreements with theatre, film and television companies granting authorisation to make use of the applicant's rights. The Grand Board considers that the confidentiality request should be granted, as the information contained in Enclosure A relates to business contracts containing sensitive information which should be kept confidential.

IV. Article 7(1)(c) EUTMR

- 34 Under Article 7(1)(c) EUTMR, trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the services, or other characteristics of the goods or services, shall not be registered.

- 35 Article 7(1)(c) EUTMR pursues the aim, which is in the public interest, of ensuring that signs or indications that are identical to the usual way of designating the goods or services in question, or that describe characteristics of the goods or services for which registration is being sought may be freely used by all economic operators. All companies must be free to use the product name or indications that describe characteristics of their own goods or services. Hence, this provision does not permit such signs and indications to be reserved for the use by one undertaking as a consequence of their registration as a trade mark (04/05/1999, C-108/97 & C-109/97 Chiemsee, EU:C:1999:230, § 25; 08/04/2003, C-53/01, C-54/01 & C-55/01, Linde, EU:C:2003:206, § 73; 06/05/2003, C-104/01, Libertel, EU:C:2003:244, § 52; 12/02/2004, C-363/99, Postkantoor, EU:C:2004:86, § 55).
- 36 Accordingly, the descriptiveness of a mark must be assessed first, by reference to the goods or services in respect of which registration is sought and, second, by reference to the perception of the relevant public (12/01/2005, T-367/02 – T-369/02, SnTEM, SnPUR & SnMIX, EU:T:2005:3, § 17 and the case-law cited; 09/03/2017, T-400/16, MAXPLAY, EU:T:2017:152, § 20).
- 37 According to settled case-law, the signs and indications covered by Article 7(1)(c) EUTMR are those which may serve in normal usage from the point of view of the relevant public to designate, either directly or by reference to one of their characteristics, the goods or services in respect of which registration is sought or contested (10/09/2015, T-610/14, BIO organic (fig.), EU:T:2015:613, § 14; 25/10/2018, T-122/17, Devin, EU:T:2018:719, § 18).
- 38 By using the terms ‘the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or services’ in Article 7(1)(c) EUTMR, the EU legislature made it clear, first, that those terms must all be regarded as corresponding to characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account (07/05/2019, T-423/18, Vita, EU:T:2019:291, § 42).
- 39 The fact that the EU legislature chose to use the word ‘characteristic’ indicates that Article 7(1)(c) EUTMR applies only to signs which serve to designate a property of the goods or services that is easily recognisable by the relevant class of persons. Accordingly, a sign may be refused registration under that provision only where it is reasonable to believe that the relevant class of persons will actually perceive it as describing one of those characteristics (10/03/2011, C-51/10 P, 1000, EU:C:2011:139, § 50).
- 40 Furthermore, although it is irrelevant whether such a characteristic is commercially essential or ancillary, a characteristic, within the meaning of Article 7(1)(c) EUTMR, must nevertheless be objective and inherent to the nature of those goods or services and intrinsic and permanent with regard to it (21/12/2022, T-554/21, Cash4life, EU:T:2022:841, § 41).

- 41 In order to refuse registration of a trade mark on the basis of Article 7(1)(c) EUTMR, it is not necessary that the signs and indications composing the mark that are referred to in that article actually be in use at the time of the application for registration in a way that is descriptive of goods or services such as those in relation to which the application is filed, or of characteristics of those goods or services. It is sufficient, as the wording of that provision itself indicates, that such signs and indications may be used for such purposes. A sign must therefore be refused registration under that provision if at least one of its possible meanings designates a characteristic of the goods or services concerned (23/10/2003, C-191/01 P, DOUBLEMINT, EU:C:2003:579, § 32).
- 42 The application of that provision does not depend on the existence of a real, current or serious need to leave a sign free (07/10/2015, T-292/14, ΧΑΛΛΟΥΜΙ, EU:T:2015:752, § 55 and the case-law cited). The competent authority must also determine whether the trade mark for which registration is sought is reasonably capable of being perceived by the relevant public, in the future, as descriptive of the characteristics of the goods or services (12/02/2004, C-363/99, Postkantoor, § 56).
- 43 The relevant date for analysing whether the contested signs comply with Article 7(1)(c) EUTMR is that of the filing of the application for registration of the signs in question, namely 6 March 2018.
- 44 In the light of those considerations, it is necessary to examine whether the examiner was right to find that the signs ‘ANIMAL FARM’ and ‘1984’ are descriptive regarding the goods and services concerned.

A) The relevant public

- 45 The goods and services at issue (paragraph 24) are in Classes 9, 16, 28 and 41. They cover in particular audio video, magnetic and digital carriers, books, printed matter, toys and games, education and entertainment-related services.
- 46 The goods and services are aimed both at the general public who might be looking for media products with pre-recorded content as well as professionals in the education, publications, media, entertainment and games sectors. Therefore, the general relevant public’s level of attention will be that of the average consumer who is reasonably well informed and reasonably observant and circumspect.
- 47 For the sake of completeness, the Court has held that the degree of attentiveness of the relevant public is irrelevant in the assessment of descriptiveness (and distinctiveness) of a sign (20/12/2023, T-779/22 Haus & Grund, EU:T:2023:854, § 40; 23/02/2022, T-806/19, Andorra (fig.), EU:T:2022:87, § 28).
- 48 The examiner assessed the descriptive character of the signs ‘ANIMAL FARM’ and ‘1984’ from the perspective of the average English-speaking consumers in the EU.
- 49 Given that the contested signs correspond to the titles of literary works by a British author, the Grand Board considers that the assessment of the descriptive character of these signs may be carried out on the basis of the perception of the

Irish and Maltese public, since, for historical, linguistic and cultural reasons, that part of the EU has the closest connections with the United Kingdom. In addition, Ireland shares a land border with the United Kingdom and has long-standing and significant trade links with that country. The assessment of the applicability of the absolute grounds is undertaken with reference to consumers in those territories (19/12/2025, R 2248/2019-G, GEORGE ORWELL, § 44).

- 50 It should also be recalled that, pursuant to Article 7(2) EUTMR, a trade mark shall not be registered even if the grounds of non-registrability are met only in part of the EU. Therefore, an obstacle pertaining to the abovementioned territories of the EU is deemed to be sufficient to reject a trade mark application.

B) Meaning of the contested signs

- (i) ‘ANIMAL FARM’: A reference to George Orwell’s novel

- 51 The Grand Board considers that it is common knowledge among the relevant public that ‘ANIMAL FARM’ is the title of an allegorical novel by the English novelist, poet, essayist and journalist George Orwell, first published in England on 17 August 1945 (19/12/2025, R 2248/2019-G, GEORGE ORWELL, § 79). That fact is amply demonstrated by the numerous items of evidence produced by the examiner. INTA, in its observations, also claimed that ‘ANIMAL FARM’ is a title of a famous book. The applicant has not contested that finding.
- 52 The novel tells the story of a group of farm animals who rebel against their human farmer in the hope of creating a society in which the animals are equal, free, and happy. Ultimately, however, the rebellion is betrayed, and the farm ends up in a state as bad as it was before, under the dictatorship of a pig named Napoleon.
- 53 The applicant does not deny that the novel has become very well known, but it denies that it has entered everyday language and, for this reason, it cannot be descriptive for the goods and services in question.
- 54 In that regard, the Grand Board recalls that, for the purposes of Article 7(1)(c) EUTMR, the assessment of descriptiveness must be based on the concrete perception of the relevant public, that is, on whether the sign will be understood immediately and without further reflection as designating a characteristic of the goods or services concerned.
- 55 Contrary to the applicant’s submissions, the examiner’s reference to the fact that the work has ‘entered everyday language’ does not constitute an autonomous or additional legal criterion under Article 7(1)(c) EUTMR, which applies only to signs consisting of titles of literary works. Rather, it forms part of the assessment aimed at establishing how the relevant public perceives a sign which consists of a title of a literary work, which is an essential step for the test for the assessment of the descriptiveness of the sign.
- 56 In particular, where a sign coincides with the title of a well-known literary work such as ‘ANIMAL FARM’, the competent authority may take into account a range of factual indicators, including the longevity, dissemination and cultural impact of the work, in order to determine whether that sign is immediately

recognised by the relevant public as such. The more popular or well known the literary work, the more likely it is that its title will be readily recognised, even in isolation, as referring to that work. These elements do not constitute independent legal criteria but serve to substantiate the decisive question for the purposes of Article 7(1)(c) EUTMR, namely how the relevant public perceives the sign in question, in particular whether it is immediately perceived as the title of, or a reference to, a specific literary work.

- 57 The Grand Board does not agree with INTA's contention that treating the fame of a book as a factor rendering its title descriptive and therefore ineligible for registration is arbitrary. INTA argues that, if reputation were to operate as a bar to registration, it should apply uniformly across all categories of signs, leading to the untenable conclusion that any mark would become unregistrable upon acquiring reputation. By way of example, it submits that the strong association of 'COCA COLA' with soft drinks in the minds of consumers worldwide does not preclude the registration of further 'COCA COLA' marks. In that regard, INTA maintains that the degree of reputation is irrelevant for the assessment of descriptiveness, except in the context of acquired distinctiveness.
- 58 However, that line of reasoning conflates two fundamentally distinct concepts, namely the reputation of a trade mark and the notoriety of a creation of the mind, such as a literary work. In the case of trade marks, reputation cannot operate as a bar to registration, since trade marks are, by their nature, intended to function as indicators of commercial origin. By contrast, the primary function of a book title is to designate and distinguish a specific work, enabling the relevant public to recognise and refer to that particular literary creation. It thus operates as a reference to content, rather than as an indication of commercial provenance.
- 59 This functional distinction is decisive. Whereas a trade mark guarantees the commercial origin of goods or services, a book title directs the consumer to the intellectual work itself, rather than to the undertaking responsible for its publication. It is precisely for that reason that the fame and popularity of a literary work constitute relevant factors in assessing how a sign consisting of its title will be perceived by the relevant public. Where, upon encountering the sign, the relevant consumers immediately understand it as the title of a well-known work, the sign is liable to be perceived as referring to the subject matter of the goods or services. In such circumstances, as it will be analysed below, it may fall within the scope of Article 7(1)(c) EUTMR and, consequently, be refused registration.
- 60 In the present case, the evidence provided by the examiner demonstrates that 'ANIMAL FARM' enjoys a particularly high degree of recognition among the relevant public. The work has been described as 'the most famous by far of all twentieth-century political allegories', 'a masterpiece', 'a universal drama', 'a fable', or 'a classic'. This signals a significant degree of recognition, dissemination, and perceived significance of the work within a society.
- 61 The examiner also found that 'everyone knows the story' having regard to its importance in twentieth-century English literature, and given that Orwell was a highly influential literary figure of his time (see also, 19/12/2025, R 2248/2019-G, GEORGE ORWELL, § 85). The Grand Board considers that this is the case, at least, in relation to the Irish and Maltese public.

- 62 That recognition is further reinforced by the novel's presence in educational contexts. Evidence shows that 'ANIMAL FARM' has formed part of the prescribed texts in the English curriculum for junior cycle students in Ireland from 2018 to 2023 (https://www.curriculumonline.ie/getmedia/d97431bc-e9f9-4896-b953-989631c871ce/JC_English_Text_List_2018-2023.pdf – consulted on 19 May 2026) (see also, 19/12/2025, R 2248/2019-G, GEORGE ORWELL, § 149). Moreover, the Grand Board in its communication of 20 November 2023, noted that George Orwell's works re studied at the University of Malta (<https://www.um.edu.mt/courses/studyunit/ENG2281> consulted on 19 May 2026) and would be known by the general public of that Member State. This contributes decisively to the novel's assimilation into the cultural knowledge of the relevant public.
- 63 In addition, at the time of the trade mark application, more than 70 years had elapsed since the novel's first publication. That passage of time has contributed to its renown and reinforced, in the mind of the relevant public, the association between the work and George Orwell.
- 64 The evidence further shows that the novel is particularly known for its allegorical dimension. As indicated by the examiner, the work constitutes a political fable about totalitarianism.
- 65 In this regard, the applicant submits that, although the novel has been described as a political fable, its narrative is complex and cannot be reduced to a simple meaning. It argues that this distinguishes it from stories that have entered into everyday language and thereby lost their capacity to indicate the origin of goods or services and are commonly used to describe specific situations or characteristics.
- 66 However, the Grand Board considers that the potential complexity of a literary narrative, or the fact that it cannot be reduced to a single meaning, is not relevant for the assessment of the perception of the relevant public and, consequently, for the assessment of the descriptiveness of the sign. A narrative may, notwithstanding its complexity, become deeply embedded in the public's perception through its dissemination in culture, with its core ideas functioning as established reference points. The decisive criterion is not the degree of narrative complexity, but whether the sign, when encountered, triggers an immediate semantic association in the mind of the relevant public and will be recognised, first and foremost, as a book title.
- 67 In that regard, the applicant draws a flawed comparison between 'ANIMAL FARM' and 'THE JUNGLE BOOK', suggesting that the latter was refused registration on account of the simplicity of its message. By contrast, the decisive criterion is not the degree of narrative complexity, but whether the relevant public readily associates the sign with commonly understood ideas or characteristics. This is illustrated by other literary works, such as Shakespeare's 'Romeo and Juliet', which, despite its narrative complexity, conveys core themes that are immediately recognised by the relevant public and may therefore function as established cultural reference points in the perception of consumers.

- 68 The Grand Board considers that ‘ANIMAL FARM’ is commonly understood as a political allegory illustrating how revolutionary movements may lead to systems of oppression and totalitarian rule. That conceptual meaning, which is consistently reflected in the evidence on file, constitutes the primary manner in which a significant part of the relevant public will perceive the sign.
- 69 The evidence also shows that the novel has been widely disseminated beyond its original literary form, including through film, television and theatrical adaptations. As a result, the relevant public may have been exposed to its content through multiple channels. This circumstance further strengthens the immediate association between the sign and the underlying work and its themes.
- 70 The applicant’s argument that it controls different adaptations of the work by means of contractual arrangements has little bearing on how consumers perceive the contested sign. Commercial or licensing agreements are not, as a rule, known to the public and do not shape the immediate semantic content consumers attribute to a sign. Moreover, it has not been proven, nor even rendered likely, that those efforts have had any effect on consumer perception of the sign.
- 71 Consequently, the Grand Board considers that the examiner was correct in holding that ‘ANIMAL FARM’ has acquired, in the perception of the relevant public, a clear conceptual meaning, which is readily and automatically evoked when the sign is encountered. In particular, a significant part of the relevant public in Ireland and Malta will immediately recognise the sign ‘ANIMAL FARM’ as the title of the famous novel by George Orwell, a political allegory or political fable. This has been demonstrated by the novel’s widespread fame, its inclusion in educational curricula (a fact not contested by the applicant), and its enduring popularity over several decades. Furthermore, successful adaptations of Orwell’s works have reinforced the association of the title ‘ANIMAL FARM’ with the corresponding literary work and its underlying political theme.
- (ii) ‘1984’: A reference to George Orwell’s novel
- 72 The Grand Board finds that it is common knowledge among the relevant public that ‘1984’ is the title of a dystopian novel by the English writer George Orwell. That finding is supported by the evidence on file and is not contested by the applicant.
- 73 Thematically, ‘1984’ centres on the consequences of totalitarianism, mass surveillance, and repressive regimentation of persons and behaviours within society. Orwell, himself a democratic socialist, modelled the authoritarian novel’s government on Stalinist Russia. More broadly, the novel examines the role of truth and facts within politics and the ways in which they can be manipulated.
- 74 For the reasons set out in paragraphs 53 to 59 above, the applicant’s argument that ‘1984’ has not ‘entered everyday language’ must be rejected.
- 75 The evidence provided by the examiner demonstrates that ‘1984’ enjoys a particularly high degree of recognition among the relevant public. The work has been described as ‘dystopian masterpiece’, ‘a literary masterpiece’, ‘one of the most significant novels of the twentieth century’, ‘the famous and widely known

book’, ‘the definitive book of the twentieth century’. This signals a significant degree of recognition, dissemination, and perceived significance of the work within a society.

- 76 The novel ‘1984’ has become a classic literary example of political and dystopian fiction. Its cultural impact is reflected by the popularisation of the term ‘Orwellian’ as an adjective, and many terms from the novel have entered common usage, including ‘Big Brother’, ‘doublethink’, ‘Thought Police’, ‘thoughtcrime’, ‘Newspeak’, ‘memory hole’, ‘2 + 2 = 5’, ‘proles’, ‘Two Minutes Hate’, ‘telescreen’, and ‘Room 101’ (19/12/2025, R 2248/2019-G, GEORGE ORWELL, § 49, 50).
- 77 As the examiner noted, ‘1984’ is among the most widely referenced and best-known works of political and dystopian fiction of all time (19/12/2025, R 2248/2019-G, GEORGE ORWELL, § 83, 84). The examiner also provided the information that the novel has sold more than 30 million copies worldwide and has been translated into 65 languages. Moreover, he highlighted the importance of this novel in twentieth-century English literature given that Orwell, was a highly influential literary figure of his time.
- 78 That recognition is further reinforced by the novel’s presence in educational contexts. ‘1984’ is a book which is studied in schools and in higher education. For instance, it was part of the prescribed material for English studies in the Irish Leaving Certificate, years 2018, 2019 and 2020 (<https://circulars.gov.ie/pdf/circular/education/2017/06.pdf>; <https://circulars.gov.ie/pdf/circular/education/2018/24.pdf>; <https://assets.gov.ie/11914/95b15e85ae4548c2946d695ed3bd8b0b.pdf> – consulted on 19 May 2026). Furthermore, George Orwell’s works have been studied at the University of Malta (the Grand Board’s communication of 20 November 2023 <https://www.um.edu.mt/courses/studyunit/ENG2281> – consulted on 19 May 2026). This contributes decisively to the novel’s assimilation into the cultural knowledge of the relevant public.
- 79 In addition, at the time of the trade mark application, almost 70 years had elapsed since the novel’s first publication. That passage of time has contributed to its renown and reinforced, in the mind of the relevant public, the association of the work with George Orwell.
- 80 The evidence also shows that the novel has been widely disseminated beyond its original literary form, including through film, television, opera, ballet, and theatrical adaptations. As a result, the relevant public may have been exposed to its content through multiple channels. This circumstance further strengthens the immediate association between the sign and the underlying work and its themes.
- 81 The Grand Board considers that ‘1984’ is commonly understood as a dystopian allegory centred on oppressive control, state surveillance and the manipulation of reality. Those themes constitute the primary framework through which a significant part of the relevant public will perceive the sign.

- 82 In that regard, the Board finds that that conceptual meaning is not limited to those who are familiar with the detailed narrative of the work. Even for a significant part of the relevant public that has not read the novel, the sign ‘1984’ immediately evokes the idea of a society characterised by excessive control and surveillance, in particular due to the widespread use of concepts derived from the work.
- 83 Consequently, the Grand Board considers that the examiner was correct in finding that ‘1984’ has acquired, in the perception of the relevant public, a clear and immediately recognisable conceptual meaning. A significant part of the relevant public will readily understand the sign as referring to the famous novel by George Orwell and, more broadly, to its underlying political themes. In those circumstances, the sign is liable to be perceived as a reference to content of the goods and services.

C) The notion of ‘subject matter and the descriptive character of titles of literary works’

- 84 The Grand Board considers it appropriate, as a preliminary matter, to set out the analytical framework governing the notion of ‘subject matter’ and the application of the absolute ground for refusal based on descriptiveness under Article 7(1)(c) EUTMR. To that end, it will first examine the provisions of EUTMR together with the settled principles developed in the case-law of the Court of Justice, the General Court and the Boards of Appeal. Then, the relevant guidance contained in the EUIPO Guidelines and in the Common Practice CP16, will also be examined. The Grand Board will also refer, by way of example, to selected cases from EU Member States and third countries that deal with the notion of ‘subject matter’ of goods and services. This review will be undertaken with particular attention to the application of descriptiveness in relation to the goods and services concerned in Classes 9, 16, 28, and 41, where issues of ‘subject matter’ frequently arise in connection with, inter alia, digital content and software, printed and paper goods, games and playthings, and education, training, entertainment and cultural services.

(i) The EUTM Regulation

- 85 As noted above, by using the terms ‘the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or services’ in Article 7(1)(c) EUTMR, the EU legislature made it clear, first, that those terms must all be regarded as corresponding to characteristics of goods or services and, secondly, that that list is not exhaustive, since any other characteristics of goods or services may also be taken into account (07/05/2019, T-423/18, Vita, EU:T:2019:291, § 42).
- 86 The reference to ‘other characteristics’ in Article 7(1)(c) EUTMR can be understood to include, inter alia, the subject matter/content of the goods or services in question. However, no clear definition exists as to which goods and services can be considered as having ‘subject matter’, or how the descriptiveness of such subject matter can be assessed.

(ii) Case-law of the GC/CJEU in relation to the notion of subject matter

- 87 In Memory (14/03/2011, C-369/10 P, Memory, EU:C:2011:148), the Court of Justice held that the use of the word ‘characteristics’ in Article 7(1)(c) EUTMR referred, in general, to terms which serve to designate a property, easily recognisable by the relevant class of persons, of the goods or the services in respect of which registration is sought (§ 53).
- 88 The Grand Board notes that one of the earliest judgments to deal with the notion of subject matter of the goods or services as a characteristic within the meaning of Article 7(1)(c) EUTMR is *Electronica* (05/12/2000, T-32/00, *Electronica*, EU:T:2000:283). In that case, the General Court held that, since the sign referred to the basic subject area to which the goods and services applied for related (such as, catalogues for electronic trade fairs, organisation of electronic trade fairs and conferences, publishing and distributing of catalogues for electronic trade fairs) and because those goods and services were identifiable by their relationship to that subject, the mark was considered descriptive of an essential characteristic of the goods and services in question and could not serve to indicate their commercial origin (§ 43 and 44).
- 89 The criteria used to arrive at this conclusion are well illustrated in *Transcendental Meditation* (06/02/2013, T-412/11, *Transcendental Meditation*, EU:T:2013:62; 06/02/2013, T-426/11, *Méditation Transcendantale*, EU:T:2013:63, concerning a parallel case). This judgment concerned an application for a word mark for, inter alia, instructional and teaching material (except apparatus) in Class 16 and education; providing of training; entertainment in Class 41. The General Court held that the mark applied for was entirely apt to designate the subject matter of the goods and services (§ 81). In particular, with regard to books and other publications, the relevant public would, without further reflection, understand the thematic content of the goods at issue – namely, the application of a meditation method (§ 82). This immediate identification of the subject matter was deemed to establish a sufficiently direct and specific link with the goods and services concerned, enabling the relevant public to perceive, without further thought, a description of their characteristics (§ 84, 91).

(iii) Case-law of the Boards of Appeal in relation to the notion of subject matter

- 90 The Boards of Appeal have found that book titles such as ‘PINOCCHIO’ (04/03/2015, R 1856/2013-2, PINOCCHIO), ‘THE JUNGLE BOOK’ (18/03/2015, R 0118/2014-1, THE JUNGLE BOOK) and ‘WINNETOU’ (28/03/2018, R 1297/2016-2, WINNETOU) were descriptive for goods and services in Classes 9, 16, 28, 41, as the signs indicated the subject matter of the goods and services at hand.
- 91 By way of example, in 22/03/2018, R 1297/2016-2, WINNETOU, the sign ‘WINNETOU’ designates a fictional character who appears in numerous novels and tales by the author Karl May that were published between 1875 and 1910 (§ 34). The Board found that for the relevant German-speaking public, ‘WINNETOU’ describes the thematic content of films, animated films, video films, recorded data carriers, recording discs and computer programs in Class 9

as well as printed matter and instructional and teaching material in Class 16 (§ 50).

- 92 In its decision of 01/12/2016, R 331/2016-4, DIRTY DANCING, the Board held that the sign was descriptive, as it merely informed consumers that the services offered entertainment in the form of ‘dirty dancing’, whether as a film, stage play, television programme, computer game, DVD, contest, or similar event (§ 15). It further found that, in relation to exhibition services, the relevant public would immediately perceive the sign as indicating the subject matter of the exhibition (§ 17). The same reasoning was applied to publication services, including online and in various media formats, as these could likewise relate to the subject of ‘dirty dancing’ (§ 20).
- 93 In the decision of 14/03/2008, R 670/2005-1, Frühlingsfest der Volksmusik, the Board found that the sign applied for described the precise content of the goods and services, namely folk music in spring, whether as a song CD, a concert video, karaoke computer game program, database, song book, programme, entertainment event (§ 23).
- 94 According to the case-law, in order for the objection to apply, the reference to the subject matter of the goods and services has to be sufficiently clear and specific. In BI-Bot (22/03/2018, R 1753/2017-4, BI-Bot), for instance, which was an application for a word mark for goods in Class 9 (*software*) and services in Classes 38, 41 and 42, the Board annulled the examiner’s decision, which had found the mark descriptive of the subject matter of the goods and services in question. It held that it had not been established that the relevant public would understand ‘BI’ as an acronym for ‘business intelligence’. In any event, even if that were the case, the term was, at best, vague, and this vagueness was not reduced by the additional word ‘Bot’. Accordingly, the sign as a whole did not bear a sufficiently direct and concrete relationship with the goods and services for which registration was sought.

(iv) The EUIPO Guidelines

- 95 The Grand Board notes that the Guidelines are not binding legal acts for the purpose of interpreting provisions of EU law (24/03/2021, T-354/20, figurative mark representing a fish, EU:T:2021:156 § 57; 19/12/2012, C-149/11, Leno Marken, EU:C:2012:816, § 48). However, they have been carefully considered by the Grand Board as they reflect the EUIPO’s practice.
- 96 The EUIPO Guidelines expressly clarify that the notion of ‘content’ is used interchangeably with ‘subject matter’, it applies to certain goods and services only (books, CDs, films, etc.) and it may concern all kinds of marks.
- 97 According to the Guidelines, where a sign consists exclusively of a word that describes what may be the subject matter or content of the goods or services in question, it should be objected to under Article 7(1)(c) EUTMR. Commonly known terms likely to be linked to a particular thing, product or activity by the relevant public are capable of describing subject matter and should therefore be kept free for other traders (12/06/2007, T-339/05, Lokthread, EU:T:2007:172, § 27). The essential question is whether the sign applied for may be used in trade

in relation to the goods or services applied for in a manner that will be undoubtedly perceived by the relevant public as descriptive of the subject matter of those goods or services for which protection is sought. The Guidelines provide the example that a widely known name, such as ‘VIVALDI’, will immediately create a link to the famous composer and, therefore, will not be understood as an indicator of origin for music.

- 98 In particular, in relation to book titles, the Guidelines explain that the fact that a sign applied for is the title of a book is not per se an obstacle for registration as a trade mark (Part B Examination, Section 4 Absolute grounds for refusal, Chapter 4 Descriptive trade marks under Article 7(1)(c) section 2.7.2 titles of books). However, the Office will refuse the mark when it can be perceived as describing the subject matter of the goods and services.
- 99 Trade marks consisting solely of a book title may be descriptive under Article 7(1)(c) EUTMR in relation to goods and services that could be perceived as containing or dealing with the well-known story, a new version of it or a theme linked to the story. The reason for this is that certain stories (or their titles) have been established for so long and become so well known that they have ‘entered into the language’. They are no longer linked exclusively with the original book, but have rather become well known, universal and autonomous commonplace expressions to denote a certain type of story or an entire genre. By way example, it is stated in the Guidelines that ‘The Jungle Book’ or ‘Robinson Crusoe’ are book titles originally attributable to a particular literary work and a particular author (Rudyard Kipling; Daniel Defoe). Due to the enormous popularity of the books, and facilitated by the passing of time, their titles have, in the public’s perception, gradually gained a thematic significance, which extends beyond the actual content of the books concerned. They have entered into everyday language as synonyms for a particular type of story or genre (e.g. young humans succeeding on their own in the wilderness; struggle against nature, hardship, privation, loneliness). Such famous book titles will be incapable of performing an independent role in relation to goods and services that could merely have the general story or genre as their content (e.g. publications, data carriers or cultural events). The assessment of whether a book title has reached a sufficient degree of recognition depends on a thorough case-by-case analysis, taking account of the particularities of the individual case.
- 100 Finally, the Guidelines state that the assessment of whether a book title will be perceived as descriptive of the subject matter may be informed by a non-exhaustive set of factors, including: the extent to which the underlying story has generated numerous published versions and wide-reaching television, theatre or film adaptations; whether the work has become part of the cultural heritage (for example, through inclusion in high-profile encyclopaedias, frequent use in school or university curricula, and sustained scholarly analysis), suggesting a ‘Classic’ status; and the time elapsed since first publication, which may allow the plot, characters and title to acquire autonomy from a particular author or the original story. On that basis, objections may be raised, depending on the mark, for categories such as printed matter, films, recordings, plays and shows. By way of illustration, titles such as ‘Pinocchio’, ‘The Jungle Book’ and ‘Winnetou’ were treated as descriptive in part.

- (v) The Common Practice CP16 in the context of the European Intellectual Property Network (EUIPN)
- 101 Since 2011, the European Intellectual Property Network (EUIPN) has been actively working to harmonise trade mark and design practices across Europe. By collaborating with national and regional IP Offices and user associations, common principles based on court decisions have been established with a view to creating a more efficient and predictable IP system for all stakeholders (<https://www.euipn.org/en/practices> accessed on 09/02/2026).
- 102 The EUIPO, together with the Member States' Intellectual Property Offices (MS IPOs), and the Benelux Office for Intellectual Property have developed the CP16 Common Practice to assist examiners, applicants, and their representatives in the assessment of signs describing the subject matter of the goods and services for which protection is sought under Article 4(1)(c) of the Directive (EU) 2015/2436 to approximate the laws of the Member States relating to trade marks (TMD). CP16 draws upon various sources, in particular the EUIPO Guidelines, MS IPOs' Guidelines, and the EUIPO Boards of Appeal Case-law Research Report on descriptiveness of a sign suggesting the subject matter of advertising services.
- 103 The CP16 Common Practice was adopted unanimously by the Management Board of the EUIPO in November 2025. On 16 February 2026, CP16 Common Practice was published (<https://www.euipn.org/en/practices/cp16-signs-describing-the-subject-matter-of-goods-and-or-services> consulted on 16 February 2026).
- 104 Although this Common Practice is not binding on the Grand Board, it is a helpful source for interpreting the notion of 'subject matter' in the context of Article 7(1)(c) EUTMR.
- 105 CP16 focuses on the assessment of signs describing the subject matter of goods or services whose 'nature' allows them to contain or relate to a specific thematic content. Thus, to assess whether the nature of the goods or services at issue allows them to contain or relate to a specific subject matter, the following will be considered:
- a) When goods are at issue: whether one of their inherent features, qualities or characteristics is that they are able to contain a specific subject matter in any form. This will be the case, for example, for goods that can physically store information (e.g. books, magazines, instructional and teaching materials, games), or digital goods, which can store information electronically (e.g. software, data carriers, e-books, electronic publications), as they are inherently designed to contain information, ideas, or artistic expression.
 - b) When services are at issue: whether the field or category of activity provided to third parties is able to provide or create specific subject matter. This will be the case, for example, for educational or tutoring services, or services such as writing and publishing, which by nature, are capable of providing or creating subject matter in several forms.

- 106 Furthermore, it should be assessed whether, from the perspective of the identified relevant public, there is a direct and immediate relationship between the meaning of the sign and the specific subject matter that the goods or services relate to. As part of the assessment, it will have to be determined whether, in the context of the relevant goods and services, at least one of the possible meanings of the sign could be immediately understood by the relevant public such that it is reasonable to believe that it will be recognised as describing the specific subject matter of the goods and services for which protection is sought. This may be the case when one of the possible meanings of the sign either provides commercially relevant information on what may be the main topic, genre, category, or any other subject matter of the goods at issue and provides commercially relevant information about what may be the main subject matter that the services at issue relate to.
- 107 The Grand Board notes that, although signs consisting of the titles of well-known books fall outside the scope of that Common Practice, it considers that useful analogies may nevertheless be drawn from it, in particular as regards goods and services capable of having subject matter or content.
- (vi) The assessment of descriptiveness and the notion of subject matter in other jurisdictions
- Belgium
- 108 The Brussels Court of Appeal confirmed the refusal of the mark ‘HET DAGBOEK VAN ANNE FRANK’ (in the language of the proceedings: ‘The Diary of Anne Frank’) for goods and services in Classes 9, 16, 39 and 41 substantially similar to those at issue in these proceedings (03/10/2013, Anne Frank-Fonds v. BOIP, 2012/AR/02166). The mark had been refused on the basis that the designation was descriptive and lacked distinctiveness in relation to such goods and services. The Court concluded that when faced with the sign ‘Het dagboek van Anne Frank’ affixed to the goods or designating the services, consumers would immediately perceive it as the title of Anne Frank’s work, which is known all over the world, incorporated into a book, a DVD or any other physical medium or the subject of a theatre production or exhibition. The mark would not indicate the undertaking offering such goods and services.
- Denmark
- 109 The Boards of Appeal of the Danish Patent and Trade Mark Office have refused to register a number of trade marks consisting of the titles of fairy tales by Hans Christian Andersen for similar goods and services as in the case at stake (see ‘Prinsessen på ærten’ (‘The Princess and the Pea’) (06/12/2021, AN 2021 00025), ‘Den grimme ælling’ (‘The ugly duckling’) (06/12/2021, AN 2021 00022), ‘Den lille havfrue’ (‘The little mermaid’) (06/12/2021, AN 2021 00024), and ‘Kejserens nye klæder’ (‘The Emperor’s new clothes’) (06/12/2021, AN 2021 00023).

110 The Danish Board noted that the titles of several of the fairy tales that H.C. Andersen wrote are so well known in Denmark that the use of them as signs for goods and services undoubtedly entails that the relevant circles of trade in Denmark will create associations between the sign and the relevant fairy tale. A sign containing the title of a well-known H.C. Andersen fairy tale will be descriptive for goods and services in Classes 9 and 41 as can contain or include reproductions of, or adaptations of, all or parts of the fairy tale, or which in another way can contain elements referring to the content of the fairy tale, including the characters in the fairy tale. For such goods and services, the sign can thus serve to indicate characteristics of the goods and services. For instance, in relation to the sign ‘Den grimme ælling’ (in the language of the proceedings: ‘The ugly duckling’), the ground for refusal was that the mark applied for could indicate a characteristic of the goods and services in Classes 9 and 41. In particular, the sign informs consumers that the contested computer software, including for use in connection with betting, gaming operations are based on H.C. Andersen’s fairy tale ‘The Ugly Duckling’, or that the service provider offers gaming services concerning the fairy tale ‘The Ugly Duckling’. For the contested electronic publications in Class 9, the sign can indicate a characteristic of the goods, namely that it is a publication in the form of a literary reproduction of H.C. Andersen’s fairy tale ‘The Ugly Duckling’.

- United Kingdom

111 The Appointed Person confirmed the refusal of the registration of the signs ‘THE DIARY OF A YOUNG GIRL’ and ‘THE DIARY OF ANNE FRANK’ for goods and services in Classes 9, 16, 39 and 41 on the basis that they were descriptive and non-distinctive (11/06/2015, (O-287-15), https://www.ipo.gov.uk/t-challenge-decision-results/t-challenge-decision-results-bl?BL_Number=O/287/15 accessed on 13/04/2026). This decision was published during the time that the UK was still a Member State of the EU.

112 The Appointed Person noted that titles of books and films are not per se unregistrable for books and films because they indicate the subject matter of the goods. However, he upheld the Hearing Officer’s finding that the marks referred to the subject matter of books and entertainment services. He added that the ‘subject matter’ can be regarded as ‘a property, easily recognisable by the relevant class of persons, of the goods or services in respect of which registration is sought’. The Appointed Person also noted that the fame of a name does not preclude it from being descriptive or otherwise non-distinctive when used in relation to goods or services conveying information about what that name denotes. A sign may be both well known and descriptive of the content or character of the relevant goods or services. Where that is the case, it may be excluded from registration for those goods. Fame does not, in itself, enable a sign to distinguish goods or services of all kinds as originating from a single undertaking.

- (vii) The conclusions of the Grand Board about the definition of subject matter
- 113 The Grand Board notes that ‘subject matter’ is not expressly defined in the EUTMR or the TMD. However, in the context of Article 7(1)(c) EUTMR, it refers to a specific form of descriptiveness, namely where a sign designates the thematic or intellectual content of the goods or services concerned. It is, in that respect, a specific form of descriptiveness. It refers to the description of a characteristic of the goods or services, namely their subject matter or content, which, although it is not expressly mentioned in Article 7(1)(c) EUTMR, falls within the non-exhaustive reference to ‘other characteristics’ (see in this regard, 19/12/2025, R 2248/2019-G, *GEORGE ORWELL*, § 69; 14/07/2016, R 1969/2015-2, *Van Gogh Museum Amsterdam (fig.)*, with respect to a ‘direct reference to the subject matter’).
- 114 EU case-law employs the notion of ‘subject matter’ to refer to the key element (14/03/2011, C-369/10 P, *Memory*, EU:C:2011:148, § 56), the content (23/09/2015, T-633/13, *Infosecurity*, EU:T:2015:674, § 53; 10/02/2021, T-153/20, *Lightyoga*, EU:T:2021:70, § 61; 26/06/2019, T-117/18, *200 PANORAMICZNYCH*, EU:T:2019:447, § 45), area (05/12/2000, T-32/00, *Electronica*, EU:T:2000:283, § 43; 23/09/2015, T-633/13, *Infosecurity*, EU:T:2015:674, § 51), activity (06/02/2013, T-412/11, *TRANSCENDENTAL MEDITATION*, EU:T:2013:62, § 85, 87; 07/11/2014, T-567/12, *KAATSU*, EU:T:2014:937, § 39; 10/02/2021, T-153/20, *Lightyoga*, EU:T:2021:70, § 68), field (18/10/2016, T-56/15, *Brauwelt*, EU:T:2016:618, § 67, 69; 17/09/2008, T-226/07, *PRANAHAUS*, EU:T:2008:381, § 35 (appealed and confirmed), or theme (18/10/2016, T-56/15, *Brauwelt*, EU:T:2016:618, § 72) that any good or service relates to or consists of.
- 115 An objection to a sign on the ground that it describes the subject matter may, in principle, be raised only in respect of goods or services which contain information about other matters or refer to them, such as for instance, software, books, magazines, and entertainment, cultural or training services.
- 116 In summary, a mark falls under Article 7(1)(c) EUTMR if it is liable to convey an indication about the subject matter of a good or a service (18/10/2016, T-56/15, *Brauwelt*, EU:T:2016:618, § 58).
- 117 The Grand Board concurs with the statements of the Executive Director, the examiner, and INTA that the EUIPO will not raise an objection on the basis of Article 7(1)(c) EUTMR merely because the sign is the title of a book unless the sign can be perceived by the relevant public as describing the subject matter of the goods and services. This always requires a case-by-case assessment, where various factors are taken into account.
- 118 There are limiting considerations which prevent excessively broad application of the concept of descriptiveness. The exclusion of a sign from registration in a case such as the present depends on (a) whether the potential for goods or services of the kind specified to provide consumers with imagery or information about someone or something denoted by the sign is sufficiently real and significant to be a material consideration and (b) whether it is reasonable to believe that the sign

will actually be recognised by the relevant class of persons as a description of the content or character of such goods or services.

- 119 The second requirement is not fulfilled where the reference to content is liable, at the same time, to be perceived as indicating that the goods or services originate from a specific undertaking linked to that sign, in particular where the relevant public would understand it as denoting an ‘official’ source, having regard to the usual marketing practices in the sector concerned.

D) Connection between the meaning of the signs ‘ANIMAL FARM’ and ‘1984’ and the goods and services that fall within the scope of the present proceedings

- 120 For the assessment of descriptiveness, the decisive consideration is the way the relevant public perceives these signs for the goods and services in question.
- 121 In the publishing, audiovisual, gaming and education or entertainment sectors, titles of works are routinely used to identify the work that a book, recording, film, game or service contains, reproduces, adapts or deals with, and consumers rely on titles precisely to select content.
- 122 Accordingly, where the sign is immediately perceived as the title of a known work, its use in relation to goods and services that are defined by, or inherently capable of having, thematic content will be understood primarily as designating that content. In that market context, the signs convey directly and without further cognitive steps commercially relevant information about the subject matter of the goods and services within the meaning of Article 7(1)(c) EUTMR.
- 123 The combined effect of the cultural impact, the passage of time and the adaptations has led a significant part of the relevant public to perceive ‘ANIMAL FARM’ and ‘1984’ as literary work titles, namely references to specific novels by George Orwell. It is precisely because George Orwell’s underlying stories come to consumers or professional’ minds when they encounter those signs, in the context of the goods and services in question, that the signs will be perceived as indicating the intellectual content or subject matter of the relevant goods and services. More specifically, the relevant public will perceive the signs as providing the direct information that the goods and services are or contain or are based on the political allegory or fiction novels by George Orwell.
- 124 As analysed below, a significant part of the relevant public, when encountering the contested sign at the time of purchasing the goods in Classes 9, 16 and 28 or the services in Class 41, will understand those goods and services as relating specifically to the political allegory of ‘ANIMAL FARM’ or the political and dystopic fiction of ‘1984’.
- 125 The examination of absolute grounds for refusal must be carried out in relation to each of the goods or services for which trade mark registration is sought and the decision by which the competent authority refuses registration of a mark must, in principle, state reasons in respect of each of those goods or services (23/09/2015, T-633/13, Infosecurity, EU:T:2015:674, § 45; 18/03/2010, C-282/09 P, P@yweb card / Payweb card, EU:C:2010:153, § 37, 22/11/2011, T-275/10, Mpay24, EU:T:2011:683, § 52).

- 126 However, in respect of that latter requirement, the Court of Justice has held that the competent authority may confine itself to general reasoning for all of the goods or services concerned in the case where the same ground of refusal is given for a category or group of goods or services (23/09/2015, T-633/13, Infosecurity, EU:T:2015:674, § 46 and the case-law cited therein and 22/11/2011, T-275/10, Mpay24, EU:T:2011:683, § 53, and the case-law cited therein).
- 127 According to the cited case-law, an option of this nature can extend only to goods or services which have a sufficiently direct and specific link to each other to the extent that they form such a sufficiently homogenous category or group of goods or services that it allows general reasoning to be applied (03/03/2015, T-492/13 & T-493/13, Darstellung eines Spielbretts, EU:T:2015:128, § 40). Moreover, for that purpose the mere fact that the goods or services in question are in the same class under the Nice Agreement is not sufficient since those classes often contain a wide variety of goods or services which do not necessarily have a sufficiently direct and specific link to each other (03/09/2014, T-686/13, Deux lignes et quatre étoiles, EU:T:2014:737, § 15, and the case-law cited therein).

(i) *Goods in Class 9*

- 128 As the Grand Board stated above, for the purposes of Article 7(1)(c) EUTMR, the ‘subject matter’ of goods capable by their nature of having content means the thematic, storyline, informational or expressive content which those goods or services are intended to contain, convey, reproduce, provide, or be about. A sign describes that ‘subject matter’ where, immediately and without further cognitive steps, the relevant public will perceive it as indicating that thematic or informational content as a characteristic of the goods.
- 129 It has been established above, that a significant part of the relevant public will immediately associate the contested signs ‘ANIMAL FARM’ and ‘1984’ with the titles of the political allegory or fiction novels by George Orwell.
- 130 The contested goods in Class 9 are inherently capable of containing, conveying, reproducing, providing, or being about a specific content. In particular, the contested goods in this class comprise a broad range of carriers and formats intended to store, convey and make available audiovisual, audio, textual and informational content, whether on physical media or in digital and downloadable form. They include, in particular, analogue and optical recording media (such as *video tapes, audio tapes, compact discs, video discs, laser discs, DVDs and CD-roms*), electronic publications and other digital media and recordings, including pre-recorded and downloadable content containing sound, images, text or information. They further encompass forms of online or digital dissemination (such as *webcasts, podcasts and vodcasts*), as well as interactive entertainment and educational software, including computer games, educational computer games, downloadable computer games, digital games and mobile phone games, including DVD games. By their nature, these goods can contain and deliver subject matter, including animated cartoons and other imagery, cinematographic films, movies, television programmes and other recorded audiovisual works.

- 131 As regards the contested goods in Class 9, and in particular *video tapes, audio tapes, compact discs, video discs, laser discs, DVDs and CD-roms, pre-recorded digital media, computer games, webcasts, podcasts and vodcasts, pre-recorded audio and video compact discs, DVDs, motion picture films, television programmes and other digital recording media*, as well as *electronic publications*, their subject matter or content constitutes commercially relevant information for the relevant public. Consumers typically select such goods on the basis of what they contain or are about; accordingly, indications that designate that content will be perceived as describing a characteristic of the goods.
- 132 The Grand Board considers that the relevant consumer will understand the contested signs, at first sight, as a direct indication that the carriers, recordings, digital files or software offered under them contain, reproduce or make available the political allegory ‘ANIMAL FARM’ and the political fiction ‘1984’, or content based on those works (such as film or television adaptations, audiobooks, electronic publications, or related interactive educational or entertainment software). Given the nature of the goods in Class 9 as media and formats whose essential function is to store and disseminate audiovisual, audio or textual material, the signs will be perceived immediately and without further cognitive steps as designating the thematic content of the goods.
- 133 Accordingly, the sign provides information that the various types of computer games may contain the narrative and characters of the political allegory and political fiction novels ‘ANIMAL FARM’ and ‘1984’ respectively. This is further supported by the game adaptation of ‘ANIMAL FARM’ example identified by the examiner. The contested *cinematographic films, movies, animated cartoons*, etc. may contain adaptations of the political allegory and political fiction novels ‘ANIMAL FARM’ and ‘1984’ respectively. The contested *webcasts, podcasts and vodcasts* may consist of, or are based on, those works (for example, readings, discussions, dramatisations or adaptations).
- 134 Finally, the Grand Board considers that the limitation to ‘all the aforesaid goods consisting of content on the subject of political fiction’ makes it even clearer that the goods are defined by their thematic content. Since a significant part of the relevant public will immediately recognise ‘ANIMAL FARM’ and ‘1984’ as the titles of George Orwell’s well-known novels, that limitation directly links the goods to the very subject matter conveyed by those signs. As a result, the signs are even more likely to be perceived, at first sight and without further cognitive steps, as indicating the thematic content of the goods, and therefore as descriptive within the meaning of Article 7(1)(c) EUTMR.
- 135 For the relevant public, the signs ‘ANIMAL FARM’ and ‘1984’ immediately describe the subject matter or content of political allegory or political fiction in relation to the contested goods in Class 9.
- 136 The aforementioned conclusion of the Grand Board is further supported by a number of judgments where the General Court examined the descriptive character of a mark applied for as referring to the subject matter or content of goods in Class 9 (07/11/2014, T-567/12 Kaatsu, EU:T:2014:937; 18/10/2016, T-56/15, Brauwelt, EU:T:2016:618).

(ii) *Goods in Class 16*

- 137 The contested signs also provide direct information as to the subject matter of the contested goods in Class 16.
- 138 To begin with, the contested *printed matter; books; publications; comic books; magazines; periodicals; journals; posters; instructional and teaching materials; instructional and teaching materials for education and information; all of the aforesaid goods consisting of content on the subject of political fiction* in Class 16 are, by their nature, capable of containing, reproducing or conveying thematic or informational content and, accordingly, have a subject matter. The examiner also stated that the contested goods in Class 16 are ‘prime examples’ of goods that can contain subject matter.
- 139 The thematic content of these goods constitutes commercially relevant information for the relevant public. Consumers typically choose such goods primarily by reference to what they deal with or contain, in particular where the specification is expressly limited to goods ‘consisting of content on the subject of political fiction’. Accordingly, a sign that designates that content will be perceived as describing a characteristic of the goods.
- 140 The relevant public will, therefore, expect that a book bearing the mark ‘ANIMAL FARM’ or ‘1984’ is a book containing or is about the well-known political allegory or political fiction novel by George Orwell. Where the signs are used for *journals, periodicals or magazines*, they will be understood as indicating issues containing articles, interviews, reviews or literary and political commentary about the novels, their themes and their reception. In the case of comic books, the signs will naturally be taken to describe graphic adaptations or illustrated retellings based on the novels’ storylines and characters. As regards posters, the signs will be understood as denoting posters featuring imagery, quotations, promotional material or artwork relating to the novels or their adaptations. Also, for instructional and teaching materials (including those for education and information), the signs will be seen as designating study guides, lesson plans, classroom worksheets and examination materials focused on the novels, their narratives and their political themes. The examiner specifically referred to the educational value of George Orwell’s novels in question. Therefore, the contested signs immediately inform the relevant consumers about the subject matter of the goods in Class 16.
- 141 Finally, the Grand Board considers that the limitation to ‘all the aforesaid goods consisting of content on the subject of political fiction’ makes it even clearer that the goods are defined by their thematic content. Since a significant part of the relevant public will immediately recognise ‘ANIMAL FARM’ and ‘1984’ as the titles of George Orwell’s well-known novels, that limitation directly links the goods to the very subject matter conveyed by those signs. As a result, the signs are even more likely to be perceived, at first sight and without further cognitive steps, as indicating the thematic content of the goods, and therefore as descriptive within the meaning of Article 7(1)(c) EUTMR.

142 The aforementioned conclusion of the Grand Board is further supported by a number of judgments where the General Court examined the descriptive character of a mark applied for as referring to the subject matter or content of goods in Class 16 (05/12/2000, T-32/00, ELECTRONICA, EU:T:2000:283; 18/10/2016, T-56/15, BRAUWELT, EU:T:2016:618).

(iii) *Goods in Class 28 (only in relation to the sign ‘ANIMAL FARM’)*

143 Following the analysis concerning the contested goods in Classes 9 and 16, the Grand Board considers that the contested signs also provide direct information as to the subject matter of the contested goods in Class 28, under the contested sign ‘ANIMAL FARM’.

144 The contested goods in Class 28 are capable of containing subject matter. For instance, the contested *electronic games and interactive games adapted for use with television receivers* are, by their nature, designed to deliver subject matter in digital form, including audiovisual material, programmed gameplay mechanics, levels, narratives, characters and interactive scenarios. Their operation depends on embedded software and/or audiovisual outputs, meaning they necessarily contain and provide access to content. Likewise, *board games*, which are included in the broader category of the contested *games*, are recreational products involving structured play that can vary widely in theme and format, including strategy-based games, role-playing games, educational games, or games based on fantasy, professions, or daily life. This is also supported by the Common Practice CP16.

145 The thematic content of these goods likewise constitutes commercially relevant information for the relevant public. Consumers commonly select such goods by reference to their thematic, storyline, characters or educational, entertainment concept, which form an integral part of the product experience, particularly in the case of electronic and interactive games. Moreover, where the specification is expressly limited to goods ‘consisting of content on the subject of political fiction’, the content is not incidental but defines a characteristic of the goods. Accordingly, a sign that designates that theme will be understood as describing the subject matter of the goods.

146 Therefore, for the contested goods, namely *games, toys and playthings; electronic games; board games; interactive games adapted for use with television receivers; all of the aforesaid goods consisting of content on the subject of political fiction*, the relevant consumer will perceive the sign ‘ANIMAL FARM’ as a reference to George Orwell’s famous book. The sign immediately conveys information about the subject matter or content of the goods, namely that they feature, reproduce or are based on the storyline, characters and themes of that novel, for example through game narratives and scenarios drawn from the plot, game pieces or visuals depicting the protagonists, and gameplay designed around the political allegory conveyed by the work.

147 Finally, the Grand Board considers that the limitation to ‘all the aforesaid goods consisting of content on the subject of political fiction’ makes it even clearer that the goods are defined by their thematic content. Since a significant part of the relevant public will immediately recognise ‘ANIMAL FARM’ as the title of

George Orwell's well-known novel. That limitation directly links the goods to the very subject matter conveyed by the sign. As a result, the sign is even more likely to be perceived, at first sight and without further cognitive steps, as indicating the thematic content of the goods, and therefore as descriptive within the meaning of Article 7(1)(c) EUTMR.

- 148 The aforementioned conclusion of the Grand Board is further supported by the case-law of the Boards of Appeal (04/03/2015, R 1856/2013-2, PINOCCHIO).

(iv) *Services in Class 41*

- 149 Following the analysis concerning the contested goods in Classes 9, 16, and 28, the Grand Board considers that the contested signs also provide direct information as to the subject matter of the contested services in Class 41.
- 150 The Grand Board considers that the contested services in Class 41 inherently contain subject matter because their very object is the creation, selection, production, communication and making available to the public of expressive content, namely narratives, themes, characters, plots, ideas and messages, delivered through audiovisual works, audio programmes, text, images, games and live or recorded performances. Entertainment activities, the provision of educational services via electronic media, the online provision of films, programmes and other audiovisual material, and the organisation of events and shows are all ways through which such content is presented and experienced.
- 151 As regards the contested services in Class 41, the subject matter or their content constitutes commercially relevant information for the relevant public. Consumers choose such services primarily by reference to the content offered. Accordingly, a sign that designates such content will be perceived as indicating what the services are about.
- 152 When the content is specified by the applicant as political fiction, the subject matter is not incidental but defines the substance of the service, since the consumer receives precisely that content as the core of what is offered.
- 153 For education related services, the signs 'ANIMAL FARM' and '1984' will be perceived by a significant part of the relevant public, immediately and without further cognitive steps, as indicating the subject matter of those services, such as teaching, training or educational activities focused on the respective works. In particular, where such services consist of lectures, courses, seminars, workshops, tutoring, or the provision of educational materials, the titles directly inform the consumer that the instruction concerns the study and analysis of George Orwell's novels, including their narratives, characters and political themes.
- 154 In relation to entertainment and cultural services, including the provision of films, games and audio or visual information online (not downloadable), online entertainment services, and the provision of television programmes and films online, as well as the organisation of events, festivals, seminars, conferences, congresses, workshops, exhibitions, webinars, competitions and/or stage shows, the signs 'ANIMAL FARM' and '1984' will be understood by a significant part of the relevant public, immediately and without further cognitive steps, as

indicating that the content of those services concerns, reproduces or is based on the works bearing those titles. Given their widespread recognition as the titles of well-known novels by George Orwell, the signs will be perceived as directly designating the theme, storyline or cultural subject of the films, programmes, games, performances or events offered, rather than as indicating their commercial origin, and thus as describing the subject matter of the services.

- 155 Therefore, the Grand Board considers that the relevant public will understand that the services concern or relate to the works ‘ANIMAL FARM’ or ‘1984’, is cultural or purely for entertainment, and irrespective of whether the events depicted are real or fictional, refers to George Orwell’s fictional works, in particular because all the services relate to goods consisting of content on the subject of political allegory or political fiction.
- 156 Regarding the services in Class 41, such as education, training or entertainment, the General Court has decided that marks may be refused as descriptive of the subject matter in relation to these services (23/09/2015, T-633/13, INFOSECURITY, EU:T:2015:674).

E) Conclusion as to descriptiveness of the contested signs

- 157 The Grand Board concludes, as the examiner did, that the signs applied for are descriptive for all the goods and services mentioned in paragraph 24 above, because a significant part of the relevant public will immediately recognise ‘ANIMAL FARM’ and ‘1984’ as the titles of George Orwell’s novels and will therefore perceive those signs, at first sight and without further cognitive steps, as designating the subject matter of the relevant goods and services.
- 158 In particular, in relation to Class 9, the signs indicate that the media, recordings, digital files or software contain, reproduce or make available those works or content based on them; in relation to Class 16, they indicate that the publications and printed materials are about, reproduce or are derived from those works; in relation to Class 28 (as regards ‘ANIMAL FARM’), they indicate that the games and playthings are based on the narrative, characters and themes of that work; and in relation to Class 41, they indicate that the education, entertainment and cultural services, including the provision of films, programmes, games and events, concern or are based on the corresponding works. This conclusion is reinforced by the applicant’s limitation to goods and services ‘consisting of content on the subject of political fiction’, which makes the thematic content a defining characteristic of the specification and therefore strengthens the immediate descriptive link between the signs and the subject matter of the goods and services.

V. Article 7(1)(b) EUTMR

- 159 It is sufficient for one of the absolute grounds of refusal to apply for the sign not to be registered as an EUTM.

- 160 A mark which is descriptive of characteristics of the goods and services for the purposes of Article 7(1)(c) EUTMR is necessarily devoid of any distinctive character in relation to those goods and services within the meaning of Article 7(1)(b) EUTMR (12/02/2004, C-363/99, Postkantoor, EU:C:2004:86, § 86).
- 161 The examiner refused registration of the marks on the ground that, being descriptive, they are devoid of distinctive character. The Grand Board upholds this finding.
- 162 In addition, the Grand Board considers, as the examiner also did, that the contested signs also lack distinctiveness with respect to the contested goods and services for the purpose of Article 7(1)(b) EUTMR, independently of their descriptiveness.
- 163 Distinctive character within the meaning of Article 7(1)(b) EUTMR means that the sign applied for must serve to identify the goods or services in respect of which registration is applied for as originating from a particular undertaking. It thus serves the purpose of distinguishing the trade marked goods or services from those of other undertakings (21/10/2004, C-64/02 P, Das Prinzip der Bequemlichkeit, EU:C:2004:645, § 33).
- 164 The distinctiveness of a trade mark must be assessed both by reference to the goods or services in the application and to the perception of them by the relevant public (12/02/2004, C-363/99, Postkantoor, EU:C:2004:86, § 34, 35).
- 165 The general interest underlying Article 7(1)(b) EUTMR is, manifestly, indissociable from the essential function of a trade mark, which is to guarantee the identity of origin of the marked product or service to the relevant public by enabling the relevant public, without the possibility of confusion, to distinguish the product or service from other goods or services which have a different origin (15/09/2005, C-37/03 P, BioID, EU:C:2005:547, § 60; 08/05/2008, C-304/06 P, Eurohypo, EU:C:2008:261, § 56).
- 166 The key question to be answered in these cases is whether, according to the perception of the relevant consumer, a particular work title designates a commercial origin and thus performs a trade mark function and is not perceived as the purely artistic reference.
- 167 The Executive Director commented that, in general, the title of the book has the function of identifying a specific literary work. For consumers, it works in combination with the author and publisher to identify the product they seek. Publishers and authors can obviously produce more than one book, so the title is required to identify the specific work in question. As such, the consumer's perception of the relevant goods involves interplay between the title of a specific work, its author and its publisher. Nevertheless, the title of the book is not perceived by the consumer as indicating commercial origin, namely the publisher.

- 168 The Executive Director added that, when it comes to registration as a trade mark, signs consisting of book titles are not inherently distinctive or non-distinctive merely because they are titles. Normal rules for assessing signs must be applied to decide whether a specific title falls within the grounds for refusal of Article 7(1)(b) EUTMR. When applying for a trade mark consisting of a book title for books, applicants need to bear in mind that, after registration, they may be required to prove use of the sign as an indication of commercial origin, which means demonstrating that the sign is being used to identify the publisher of the book.
- 169 INTA submits that the mere fact that a sign consists of the title of an artistic work, even a famous one, is not sufficient to conclude that it lacks distinctive character. Distinctiveness must be assessed on a case-by-case basis, by examining whether the sign is capable of indicating that the relevant goods or services originate from a single undertaking. In that assessment, INTA considers it relevant to take into account the circumstances likely to influence the public's perception, including the right holder's efforts to control third-party use, its own use of the title, and the extent and manner of third-party use, whether authorised or not.
- 170 The Grand Board observes that, in the fields concerned, the relevant public primarily rely on titles and authors to identify and select works. By contrast, they rely on publishers or other trade indicators to identify the commercial origin of the relevant goods and services. When used in relation to goods and services whose nature is to contain or provide expressive content, a work title will be perceived first and foremost as identifying the work itself, rather than as indicating that the goods or services originate from one undertaking. In the absence of evidence that the relevant public has been educated through use to perceive the work titles as badges of origin, the signs cannot fulfil the essential origin function of a trade mark.
- 171 In that regard, the Grand Board notes that titles like 'ANIMAL FARM' and '1984' are famous enough to be immediately perceived as titles of literary works by the relevant public. Consequently, when used in relation to the goods and services at issue, those signs will be perceived as referring to those works and not as indicating their commercial origin.
- 172 This finding of non-distinctiveness applies not only in relation to books, but also in relation to the remaining goods and services at issue. The evidence shows that the works in question have been widely disseminated through numerous television, theatre and film adaptations, reaching a broad audience. As a result, the relevant public will continue to perceive the contested signs as references to those works, irrespective of the specific medium through which the content is delivered.
- 173 In the present case, the difficulty in registering titles of famous works as trade marks arises from the fundamentally different functions performed by titles of artistic works and trade marks. Whereas a trade mark serves to identify the commercial origin of goods or services, the title of a work serves primarily to designate and distinguish the work itself. In the absence of any established market practice whereby the title of a single work is used as an indicator of the undertaking responsible for the goods or services, the relevant public is not

accustomed to perceiving such titles as badges of origin. Consequently, and by analogy with other categories of signs, such as three-dimensional marks or promotional slogans, it follows that, in practice, it may be more difficult for such signs to fulfil the essential origin function of a trade mark.

- 174 The Grand Board concludes that, in the present case, the relevant public will understand the contested signs ‘ANIMAL FARM’ and ‘1984’ as descriptive, and therefore, non-distinctive indications in relation to the content or subject matter of the goods and services. In addition, the signs ‘ANIMAL FARM’ and ‘1984’ will be primarily perceived by the relevant consumers as the titles of or as a reference to the famous novels by George Orwell. They are therefore devoid of any distinctive character pursuant to Article 7(1)(b) EUTMR in respect of the goods and services mentioned at paragraph 26.

VI. Descriptive or non-distinctive character of the work titles and copyright

- 175 The Executive Director provided comments regarding the possibility of protecting a work title under copyright. In particular, he stated that copyright protection for the title of a work as a ‘work’ in itself is not excluded from the broad definition of ‘literary and artistic works’ under Article 2 of the Berne Convention for the Protection of Literary and Artistic Works (‘BC’). He also noted that, at EU level, the CJEU confirmed in case 16/07/2009, C-5/08, Infopaq, EU:C:2009:465 that copyright, within the meaning of Article 2(a) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, is liable to apply only in relation to a subject matter that is ‘original’ in the sense that it is its author’s own intellectual creation. It also found that it is possible under EU law for the various parts of a work to enjoy copyright protection, if they contain elements that reflect the author or the work’s intellectual creativity. Consequently, if a book title meets the condition of originality, it can benefit from copyright protection in the EU. According to the Executive Director, when the title includes invented or fanciful terms related to the story or characters of the associated work, it is more likely that the title will meet the originality requirement as a result of the author’s creative intellectual effort.
- 176 The Executive Director also added that different approaches are adopted across Member States, including protection of titles of literary works under unfair competition law, *sui generis* rights, and copyright.
- 177 The EUTMR draws no distinction based on the legal nature of the sign which a trade mark may consist of. Copyright protects the original character of a creation, whereas trade mark law protects the ability of a sign to distinguish the commercial origin of goods or services (see judgments of 21/10/2008, T-73/06, FORME D'UN SAC (fig.), EU:T:2008:454, § 32, and 30/06/2009, T-435/05, DR. NO / DR.NO, EU:T:2009:226, § 26). There is, in principle, no prohibition on the cumulation of copyright and trade mark protection (see, by analogy, EFTA Court, 06/04/2017, E-5/16, Municipality of Oslo, § 62).

- 178 The Grand Board agrees with the applicant and INTA when they argue that book titles are capable of functioning as trade marks and that the fame of a literary work is not, in itself, a ground for refusing to register a mark. The examiner never stated anything different. This principle is also contained in the Office's Guidelines (Guidelines for Examination in the Office, Part B Examination, Version 1.3, 2025 Edition).
- 179 The Grand Board concurs with the case-law of the Boards of Appeal that 'the title of an (artistic) work may benefit from trade mark protection and, where appropriate, title protection (indication of origin on the one hand, description of the author's intellectual performance in the form of a name, with greater reference to the content, on the other), provided that, as far as trade mark protection is concerned, the sign applied for has an indication of origin function, i.e. it has distinctive character' (04/03/2015, R 1856/2013-2, PINOCCHIO; 18/03/2015, R 118/2014-1, THE JUNGLE BOOK, § 23).
- 180 By way of example, the Grand Board refers to the case-law from other jurisdictions examining the interplay between trade mark and copyright protection. In those cases, the competent authorities found that titles of famous literary works could not function as trade marks.
- 181 The Brussels Court of Appeal, in its decision refusing registration of the mark 'HET DAGBOEK VAN ANNE FRANK' for goods and services in Classes 9, 16, 39 and 41 (03/10/2013, Anne Frank-Fonds v. The Benelux Intellectual Property Organization, 2012/AR/02166), observed, inter alia, that although the refusal was not based on copyright, the copyrights held by the Anne Frank Fonds were due to expire in the near future. The work, which was already part of humanity's cultural heritage, would soon enter the public domain. Consequently, registration of the sign would give the 'Anne Frank Fonds' a de facto perpetual monopoly over the work, preventing any economic operator from publishing it under its original title. The Court recalled that one purpose of refusing registration of a mark may be to prevent the exclusive and permanent right conferred by a trade mark from being used to extend the duration of other rights that the legislature has deliberately made subject to limited periods. It considered it unacceptable for a creation of the mind that forms part of the universal cultural heritage to be appropriated indefinitely by a person, to be used on the market to distinguish the goods it produces or the services it provides, with an exclusivity that not even the author's estate enjoys. Such appropriation would be contrary to the general interest, and there was nothing to indicate that the general interest would be better served if Anne Frank's work were distributed by a single undertaking.
- 182 In the refusals issued by the UKIPO in respect of the marks 'THE DIARY OF A YOUNG GIRL' and 'THE DIARY OF ANNE FRANK' for goods and services in Classes 9, 16, 39 and 41, on the ground that they were descriptive and non-distinctive (11/06/2015, O-287-15, <https://www.ipo.gov.uk/t-challenge-decision-results/o28715.pdf> consulted on 12/02/2026), the Appointed Person observed that the pattern of trade in goods or services conveying images or information about something can be affected by the existence or absence of related copyright protection. In that way, the existence or absence of such copyright protection may have a bearing on whether the designation in question

is liable to be regarded as descriptive of content or character by the relevant class of persons. Accordingly, ownership and exploitation of copyright may have a factual role to play in the assessment. In that case, however, those considerations were not determinative of the trade mark assessment.

- 183 The Grand Board is of the opinion that the registration of titles of literary works as trade marks, irrespective of whether such titles are protected under copyright or any other *sui generis* right, must be assessed in accordance with the general principles of EUTM law. The fundamental requirement for a sign to qualify for trade mark protection is that it possesses distinctive character.
- 184 The decisive question is whether a sign consisting of the title of a literary work, when used in relation to goods and services such as books, printed matter, digital data carriers, education and entertainment services, would be perceived by the relevant public not merely as designating the work itself, but primarily as an indication of the commercial origin of those goods or services. In other words, it must be determined whether such a sign is capable of fulfilling the essential function of a trade mark, namely to distinguish the goods or services of one undertaking from those of other undertakings.
- 185 In this regard, it is important to place the assessment in its proper commercial context. A single literary work may be published, reproduced, and distributed by different publishers operating under distinct trade marks. Those trade marks serve to indicate the commercial origin of the physical or digital goods and services placed on the market, as well as to signal a certain level of quality associated with the undertaking responsible for their production and distribution. By contrast, the title of the literary work, as such, primarily designates the intellectual content of the goods, that is, the protected work itself.
- 186 Accordingly, while trade marks affixed to books or related services inform consumers about the undertaking responsible for their manufacture, distribution, or provision, the title of a literary work will generally be perceived as referring to the intellectual content of those goods or services. It follows that such a title will only fulfil a trade mark function where, in the perception of the relevant public, it departs from that primary descriptive role and is instead understood, first and foremost, as an indicator of commercial origin.
- 187 The applicant submits that the evidence demonstrates that the signs ‘ANIMAL FARM’ and ‘1984’ are closely associated with George Orwell, such that the relevant public has been educated to perceive the use of that sign as origin specific being related either to the original novel or to adaptations derived from that work. However, this line of argument merely confirms the position previously set out by the Grand Board.
- 188 It is not disputed that the titles ‘ANIMAL FARM’ and ‘1984’ are intrinsically linked to George Orwell as the author of the literary works in question. Yet this association relates to the intellectual origin of the works, not to the commercial origin of the goods and services on which the sign is used. In practice, the signs ‘ANIMAL FARM’ and ‘1984’ function as a reference to the underlying literary content and signal to consumers that the subject matter of the goods or services in question reproduce, adapt, or otherwise relate to that specific work.

- 189 Consequently, the sign does not indicate that the goods or services themselves originate from George Orwell or his foundation as a commercial undertaking. Rather, it conveys information about the authorship and content of the work embodied in those goods or services. Such use does not fulfil the essential function of a trade mark, which is to identify the commercial origin of the goods or services and to distinguish them from those of other undertakings.
- 190 The Grand Board does not dispute that copyright may constitute a relevant factual consideration when assessing whether a sign will be perceived as descriptive or devoid of distinctive character. This is because copyright protection may influence the manner in which content-bearing goods and services are created, marketed, and distributed, and may therefore shape consumer perception of the sign in question.
- 191 However, while such considerations may have an impact on the overall assessment of distinctiveness, they are not, in themselves, determinative. The existence of copyright does not alter the fundamental criteria under EU trade mark law, which require that the sign be capable of distinguishing the goods or services of one undertaking from those of others. Accordingly, the assessment must remain focused on the perception of the relevant public and on whether the sign, in the context of the goods and services, performs the essential function of a trade mark. Copyright may therefore provide contextual background, but it cannot, on its own, confer or preclude distinctive character within the meaning of EUTM law.
- 192 In the present cases, the applicant has failed to put forward a coherent and substantiated line of argument, supported by evidence, demonstrating that the existence or exercise of copyright has given rise to specific market conditions capable of altering the descriptive or non-distinctive perception of the signs at issue. In particular, there is no evidence on file, whether in the form of established trade patterns or otherwise, showing that the relevant public perceives a connection between the marks applied for and a specific commercial undertaking. Nor is there any indication that the existence of copyright, in and of itself, has determined or materially influenced the perception of the signs by the relevant public. Accordingly, the material before the Grand Board does not support the conclusion that copyright considerations have affected the assessment of the signs' distinctive character within the meaning of EUTM law.

VII. The applicant's other arguments

A) Similar registrations

- 193 The applicant makes reference to other signs that are allegedly comparable with the signs in question and that the Office has registered as EU trade marks in respect of similar goods, such as films and printed matter, etc.
- 194 It is recalled that decisions concerning registrability of a sign as an EUTM are adopted in the exercise of circumscribed powers and are not a matter of discretion. Accordingly, the legality of the registration must be assessed solely on the basis of the EUTMR and not on the basis of a previous decision-making practice. In

addition, the principle of equal treatment only applies at the level of the same decision-making body, and the Board of Appeal is therefore not bound by the decisions of the examiners who decided to register those signs in the abovementioned cases (22/05/2014, T-228/13, EXACT, EU:T:2014:272, § 48).

- 195 It follows that although the registrations mentioned by the applicant are currently entered in the EUTM register, this does not automatically mean that those trade marks have in fact also been used as trade marks, that is to say as an indication of the commercial origin of the goods and services identified thereby, or are capable of being used in such a way in the first place.
- 196 In addition, the Grand Board cannot be bound by decisions of first instance Office departments (for example the Examination or Cancellation Division) which have not been appealed (see, with respect to Opposition Division decisions, 27/03/2014, T-554/12, Aava Mobile, EU:T:2014:158, § 65, second sentence).
- 197 In this respect, it must be noted that with respect to the cases referred to by the applicant, the examination decisions concerning these earlier EUTM registrations have not been appealed or assessed by the Boards of Appeal. The Boards of Appeal have had no opportunity to state their opinion on the registrability of the signs referred to.
- 198 Accordingly – whilst the Boards strive for decision-making consistency – the legality of the decisions of the Boards must be assessed on the basis of that Regulation, as interpreted by the EU judicature, and not on the basis of a previous decision-making practice of the Office or the Boards (05/12/2000, T-32/00, *Electronica*, EU:T:2000:283, § 47; 05/12/2002, T-130/01, *Real People, Real Solutions*, EU:T:2002:301, § 31; 03/07/2003, T-129/01, *Budmen*, EU:T:2003:184, § 61; 11/05/2005, T-390/03, *CM*, EU:T:2005:170; 15/09/2005, C-37/03 P, *BioID*, EU:C:2005:547).
- 199 Finally, as stated in the communication from 29 June 2020, the reason why this case has been referred to the Grand Board lies precisely in the fact that the Office has issued diverging decisions with respect to the registrability of titles of books and names of well-known characters of artistic works for goods and services such as videos; CDs; movies (Class 9), printed matter; photographs; books; paintings (Class 16), games, toys, figurines (Class 28) or entertainment; cultural activities; educational services (Class 41). Consequently, the fact that the EUTMs on which the applicant relies have been registered can in the current proceedings not justify a registration of the sign at hand.
- 200 In any case, the Grand Board has considered the earlier registrations that have been claimed by the applicant but nevertheless comes to the conclusion that the contested signs are purely descriptive and non-distinctive in the context of the goods and services applied for.

B) Article 14 EUTMR

- 201 The applicant has claimed that the scope of protection of an EUTM shall be limited insofar as any possible descriptive uses, made in accordance with Article 14 EUTMR, would be allowed. Therefore, any use made by third parties

in the course of trade and in accordance with honest practices, to denote the kind, quality, intended purpose, or other characteristics of the goods or services, namely any non-trade mark use of the same, would not amount to trade mark infringement.

- 202 The Grand Board observes that Article 14 EUTMR provides for limits on the effects of a trade mark once it has been registered, which is not the case here. This provision does not amount to less strict examination of the trade mark applications and should not lead to allowing descriptive signs on the register (06/05/2003, C-104/01, Libertel, EU:C:2003:244, § 58-59; 12/02/2004, C-363/99, Postkantoor, EU:C:2004:86, § 123).
- 203 In that regard, in the first place, the Grand Board acknowledges that, under Article 14(1)(b) EUTMR, ‘[an EU] trade mark shall not entitle the proprietor to prohibit a third party from using in the course of trade indications concerning the geographical origin of the goods or of rendering of the service, or other characteristics of the goods or service’.
- 204 Nevertheless, the Court of Justice has considered that, by limiting the effects of the exclusive rights of a trade mark proprietor, Article 14 EUTMR seeks to reconcile the fundamental interests of trade mark protection with those of free movement of goods and freedom to provide services in the internal market in such a way that trade mark rights are able to fulfil their essential role in the system of undistorted competition which the TFEU seeks to establish and maintain (see, to that effect and by analogy, 10/04/2008, C-102/07, Adidas II, EU:C:2008:217, § 45 and the case-law cited).
- 205 Specifically, Article 14(1)(b) EUTMR seeks to ensure that all economic operators have the opportunity to use descriptive indications. That provision therefore gives expression to the requirement of availability. However, that requirement of availability cannot in any circumstances constitute an independent restriction of the effects of the trade mark in addition to those expressly provided for in that article (15/12/2022, R 1238/2019-G, Iceland, § 193 confirmed by 16/07/2025, T-105/23, Iceland, EU:T:2025:729).
- 206 It is important to note that the general interest underlying Article 7(1)(c) EUTMR is not contradicted by Article 14(1)(b) EUTMR, which also does not have a decisive influence on the interpretation of the former provision. Indeed, Article 14(1)(b) EUTMR, which aims, inter alia, to address the problems posed by the registration of a mark consisting wholly or partly of a term that describes the content of the goods and services, does not confer on third parties the right to use that term as a trade mark. Rather, it merely guarantees their right to use it descriptively, that is, as a description of the subject matter, provided that it is used in accordance with honest practices in industrial or commercial matters (15/10/2003, T-295/01, Oldenburger, EU:T:2003:267, § 55).
- 207 As the examiner correctly pointed out, the fact that a defence to infringement is available for descriptive use of a sign in accordance with honest practices in industrial or commercial matters has no decisive bearing or intrinsic role to play in relation to the exclusion from registration; there is accordingly no interplay to be considered between the scope of the exclusion from registration and the scope

of the exclusion from liability for infringement of the rights conferred by a valid registration.

VIII. Final obiter dictum remarks

- 208 INTA observations explored other possible grounds of refusal, and the Grand Board raised these further grounds in the questions to the Executive Director. Those additional grounds were not raised by the examiner in the contested decisions. However, in the context of the present proceedings, the Executive Director's comments addressing those issues were communicated to the applicant, who was afforded the opportunity to submit observations in reply.

A) Article 7(1)(f) EUTMR

- 209 Article 7(1)(f) EUTMR stipulates that trade marks must be refused if they are contrary to public policy or accepted principles of morality. However, it is accepted that not every norm of national law qualifies as being one of public policy or accepted principles of morality.
- 210 In its judgment of 6 April 2017 in case E 5/16, Municipality of Oslo, considering a series of 3D marks filed by the municipality and reproducing the sculptures of Gustav Vigeland, EFTA Court, when interpreting Article 3(1)(f) of the Trade Mark Directive (Directive 2008/95/EC) in force at that time, which is identical to Article 7(1)(f) EUTMR, held that 'certain pieces of art may enjoy a particular status as prominent parts of a nation's cultural heritage, an emblem of sovereignty or of the nation's foundations and values' and that a 'trade mark registration may even be considered a misappropriation or a desecration of the artist's work' (§ 92). EFTA Court concluded that the notion of 'public policy' referred to principles and standards regarded to be of a fundamental concern to the State and the whole of society (§ 94) and registration of a sign may only be refused on the basis of the public policy exception provided for in that Article, if the sign consists exclusively of a work pertaining to the public domain and registration of this sign would constitute a genuine and sufficiently serious threat to a fundamental interest of society (§ 95).
- 211 There is no officially agreed interpretation of the expression 'cultural heritage' but it can be inferred from various definitions and usage to be a broad term that covers tangible and intangible aspects of a society or community such as values, traditions, art (literature, music, painting, etc.). As mentioned by the Executive Director, inclusion in the UNESCO World Heritage List may constitute an objective indication that something is part of 'cultural heritage'. However, this kind of official recognition is not a condition, as a community can still perceive a work, place or tradition as part of its cultural heritage.
- 212 EUIPO's Guidelines suggest that the fact that a book, or its story, is included in a high-profile encyclopaedia, that it frequently forms part of school/university curricula and that it is subject to ample scientific research and abstract analysis of its main themes, might be an indicator that it is considered a 'classic', that is to say, a work that has reached a universal importance that stretches beyond its

actual content and that actively forms part of the cultural DNA of the general public (e.g. ‘The Odyssey’, ‘The Divine Comedy’, ‘Don Quixote’).

- 213 The Grand Board takes the view that the registration of a title of a literary work as a trade mark will not violate this provision. According to the Vigeland judgment, cultural heritage is morally violated by trade mark registration if the public would find the registration offensive in two main ways: first, that it represents an offensive misappropriation or desecration of an artist’s work or, second, that the public perceives it as a misappropriation of a prominent part of the nation’s cultural heritage, an emblem of its sovereignty, or foundational values. The Vigeland judgment even went so far as to state that trade mark registration for culturally significant works should be excluded on grounds of public policy and morality, even if the work is not inherently shocking, because the act of commercialising it is what violates public morality (see 19/12/2025, R 2248/2019-G, GEORGE ORWELL).
- 214 Authors and artists of all kinds, and their heirs and estates, habitually seek to monetise their names, works and activities by whatever means are lawfully available. Seeking to commercialise a work – either through the obtention, registration or exploitation of IP rights or otherwise – without any malevolent intent, is not in the normal course of events a morally reprehensible pursuit but is simply a natural corollary of the market economy. Even if, in the present case, however, such registration cannot be secured through trade mark registration, for the reasons set out above.
- 215 In the present case, the trade marks applied for correspond to the title of a famous literary works. Applying to register the title of one of its main works of that person in relation to the goods and services at issue in no way desecrates his prestige or renown – quite the contrary. It would not violate any set of fundamental norms, principles and values of societies in the EU at the time of filing of the trade mark application.
- 216 In particular, the Grand Board fails to see how it could breach the universal values of the EU, such as human dignity, freedom, equality and solidarity, and the principles of democracy and the rule of law, as proclaimed in the Charter of Fundamental Rights of the EU. Nor, from the perspective of a person of normal levels of sensitivity or tolerance, would it be contrary to the accepted principles of morality, that is, the fundamental moral values and standards accepted by a society in the EU. It is not shocking, offensive or otherwise morally reprehensible.

B) Article 7(1)(d) EUTMR

- 217 Under Article 7(1)(d) EUTMR, signs shall not be registered if they ‘consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade’ for goods and services. As INTA points out, this absolute ground applies to signs which are or have become generic. The relevant criterion is usage in the relevant trade sectors. The evidence must show that the contested designation is not perceived as a trade mark but rather as a common name of a product.

- 218 A sign is customary under this ground when, as a result of significant use in the current language or in the bona fide and established practices of the trade, it has become a common term to designate the goods and services applied for.
- 219 As outlined by the Executive Director in its answers, signs covered by Article 7(1)(d) EUTMR are excluded from registration because their current usage designates those goods and services (e.g. a red and white pole indicates a barber shop though it does not describe them).
- 220 The Grand Board does not exclude that in some cases the titles of famous books may be refused under this provision if the titles of books become customary in relation to books. For this to happen, the titles would have to have been used to a significant extent as a common term to designate books themselves or books with certain characteristics (and not just to designate the title of a book). The Grand Board does not consider that these circumstances apply to the cases at hand.

C) Article 7(1)(e)(iii) EUTMR

- 221 In accordance with Article 7(1)(e)(iii) EUTMR, signs, which consist of the shape, or another characteristic, which gives substantial value to the goods, are excluded from registration.
- 222 In case 23/04/2020, C-237/19, Gömböc, EU:C:2020:296, the Court of Justice held that Article 7(1)(e) EUTMR serves to delimit property rights that are limited in time, such as patent, design, copyright on the one hand, and trade mark law, on the other hand. By the last legislative reform, the legislator has extended protection to signs which consist exclusively of the shape which gives substantial value to the goods, to other characteristics (at § 50, 60).
- 223 In this respect it is also important to note that the Court of Justice in its judgment of 16/07/2009, C-202/08 P, RW FEUILLE D'ÉRABLE, EU:C:2009:477, held that the body of relevant Union law provisions do not distinguish, in principle, between trade marks for goods and service marks (§ 75).
- 224 The question is whether the title of a literary work constitutes a characteristic of books in Class 16, which gives substantial value to the books, if that description includes the books that he or she has written.
- 225 The Grand Board agrees with the arguments given by the Executive Director in this regard. Marks consisting of the titles of reputed books cannot be considered a characteristic that gives substantial value to these books within Article 7(1)(e) EUTMR. In any case, word marks do not fall within Article 7(1)(e) EUTMR and Article 7(1)(e)(iii) EUTMR does not support treating the titles of books as a characteristic that gives substantial value to books.
- 226 It is clear that the stated objective of Article 7(1)(e) EUTMR is to prevent the exclusive and permanent rights that a trade mark confers from serving to extend the life of other IP rights indefinitely, which the EU legislature has sought to make subject to limited periods. Registering a trade mark for the title of a literary work for books, would not extend the life of other IP rights. This is because the author is merely the initial owner of the copyright in the books they have written. It is

the literary work itself (not the name of the author), which is protected by copyright and which, once in the public domain, can be freely used, reproduced and adapted (subject to possible restrictions regarding the moral rights of the author).

- 227 As explained by the Advocate General in *Louboutin* (12/06/2018, C-163/16, *Louboutin and Christian Louboutin*, EU:C:2018:423, Opinion of the Advocate General) that ‘substantial value’ should be exclusively based on the value added to the goods by the shape (or another characteristic) and not by other factors such as the reputation of the designer, a principle that has also been applied by the Board of Appeal (16/01/2013, R 2520/2011-5, *Shape of Guitar Body (3D)*, § 19 and 14/12/2010, R 486/2010 2, *Shape of a Chair (3D)*, § 20-21).
- 228 The famous book titles cannot give substantial value to any of the goods within the meaning of Article 7(1)(e)(iii) EUTMR, finally this provision does not apply to services.

D) Article 7(1)(g) EUTMR

- 229 The Grand Board raised with the Executive Director the question whether the mark may be considered misleading if the applicant was neither the author himself; nor the heir of the author; nor the holder of any copyright or title right.
- 230 The Executive Director takes the view that the identity of the applicant has no impact in the *ex officio* examination of trade mark applications regarding the absolute grounds for refusal of Article 7 EUTMR. Therefore, none of the scenarios presented will change the assessment of Article 7(1)(g) EUTMR on deceptiveness which is evaluated independently of who the applicant is. Article 7(1)(g) EUTMR cannot extend to anything other than the goods or services in question, on the one hand, and the perception of the mark by the relevant public, on the other.
- 231 As correctly explained by the Executive Director, the Grand Board considers that the examination of the deceptive character of a trade mark is restricted to the interaction between how the consumer will perceive the sign in relation to the goods and services as worded in the specification and, whether, taking account of the market reality of how the consumer purchases such goods and services, there is a sufficiently serious risk that the consumer will be deceived as to the nature, quality or geographical origin of the goods or services.
- 232 Therefore, it is concluded that it is irrelevant for the examination of Article 7(1)(g) EUTMR whether the applicant is/was or not (a) the author themselves, (b) the author’s heir or (c) the holder of any copyright or title right.

E) Sui generis protection of titles of books

- 233 While the Grand Board refuses the EUTM applications, it is apparent that the applicant is seeking a form of legal protection for the titles of literary works. In the present case, however, such protection cannot be secured through trade mark registration, for the reasons set out above.

- 234 That said, certain jurisdictions provide specific protection for titles of works as *sui generis* IP rights (or comparable title-protection regimes).
- 235 At national level, Germany and France seem to be the only Member States that have opted to explicitly protect work titles ('Werktitelschutz' and as 'commercial designations'). This includes names or special designations of printed publications, cinematic works, music works, stage works or other comparable works – under the Act on the Protection of Trade Marks and other Signs (Trade Mark Act – MarkenG). This Act regulates trade marks, commercial designations and geographical indications. Consequently, a 'commercial designation' is a right that is distinct from trade marks and copyright, although they may converge in the object of protection (a title of a work). It is only a national right within a specific EU Member State.
- 236 In relation to France, the Grand Board notes that Article L-112-4 of Code de la Propriété Intellectuelle confers a specific protection to titles of artistic works, 2003).
- 237 Against that background, the Grand Board encourages the EU legislator to consider whether an EU-wide right for work titles should be created, to address the legitimate interests in protecting work titles.

IX. Conclusion

- 238 The signs applied for are non-distinctive and descriptive within the meaning of Article 7(1)(b) and (c) EUTMR. The examiner was correct to refuse the EUTM applications for the goods and services at issue in the appeal.
- 239 The appeals are dismissed.

Order

On those grounds,

THE GRAND BOARD

hereby:

Dismisses the appeals.

Signed

S. Stürmann

Signed

V. Melgar

Signed

G. Humphreys Bacon

Signed

N. Korjus

Signed

C. Negro

Signed

S. Martin

Signed

R. Ocquet

Signed

C. Bartos

Signed

Ph. von Kapff

Registrar:

Signed

K. Zajfert

