DECISION
of the Fourth Board of Appeal
of 10 November 2025

In case R 391/2024-4

Bharat Biotech International Limited
Genome Valley, Turkapally, Shameerpet
500078 Hyderabad
India Applicant / Appellant
represented by Durán - Corretjer, S.L.P., Còrsega, 329 (Pº de Gracia/Diagonal), 08037 Barcelona, Spain

v

Sanofi Pasteur
14, Espace Henry Vallée
69007 Lyon
France Opponent / Defendant
represented by Casalonga Alicante, S.L., Plaza de los Luceros, 17 8º Oficinas, 03004 Alicante, Spain

APPEAL relating to Opposition Proceedings No B 3 183 338 (European Union trade mark application No 18 724 865)

THE FOURTH BOARD OF APPEAL

composed of N. Korjus (Chairperson), C. Govers (Rapporteur) and A. Kralik (Member)

Acting Registrar: K. Zajfert

gives the following

Decision

Summary of the facts

1 By an application filed on 28 June 2022, Bharat Biotech International Limited ('the applicant') sought to register the figurative mark

('the contested sign') as a European Union trade mark ('EUTM') for the following goods:

Class 5: *Vaccines for human use.*

2 The applicant claimed the colours 'Turquoise, green and black', and described the mark as follows: 'It consists of the word COVAXIN, in stylised turquoise capital letters, and the left half of the letter X is depicted in green. Under this word, there is a border made up of a green line and a black line. Underneath, in smaller capital letters, the word BHARAT is displayed in green and, at the bottom of the sign and in smaller capital letters depicted in black, the word BIOTECH is displayed.

3 The application was published on 22 August 2022.

4 On 18 November 2022, Sanofi Pasteur Europe, predecessor in title of Sanofi Pasteur following total transfer registered on15 April 2025 ('the opponent'), filed an opposition against the registration of the published trade mark application for all the goods ('the contested goods').

5 The grounds of opposition were those laid down in Article 8(1)(b) EUTMR.

6 The opposition was based on EUTM No 8 176 158 for the word mark

COVAXIS

('the earlier mark') filed on 24 March 2009 and registered on 2 September 2009 and renewed until 24 March 2029 for the following goods:

Class 5: *Vaccines.*

7 On 19 December 2022, the applicant requested that the opponent submit proof that the earlier mark was put to genuine use in the European Union.

8 On 30 May 2023, within the time limit, the opponent submitted Annexes 1.1 to 1.5 as evidence of use.

9 On 15 September 2023, after expiry of the time limit, the opponent submitted additional evidence, namely New Annex 1.

10 By decision of 21 December 2023 ('the contested decision'), the Opposition Division upheld the opposition and refused the trade mark applied for, for all the contested goods. It ordered the applicant to bear the costs and gave, in particular, the following reasons for its decision:

Proof of use

- The opponent was required to prove that the earlier mark on which the opposition is based was put to genuine use in the European Union from 28 June 2017 to 27 June 2022, inclusive, in relation to the relevant goods: *vaccines* in Class 5.

- The issue of whether or not the Office may exercise the discretion conferred on it by Article 95(2) EUTMR to take into account the additional evidence submitted by the opponent after the time limit can remain open, as the evidence submitted within the time limit (Annexes 1.1 to 1.5) is sufficient to prove the required genuine use of the earlier mark.

Place and time of use

- The place and the time of use are satisfactorily proved, mainly because most of the documents, in particular the invoices and marketing materials, refer to the relevant period and sales to customers in the EU, in particular, in Germany. This can be inferred from the language of these documents (German), the currency mentioned (EUR) and the addresses located in that country.

- Even if the samples of the packaging are undated, images of products/product packaging may serve to show how the mark was used in relation to the relevant goods and to provide information regarding the type of goods the proprietor manufactures/markets, and therefore cannot be ignored in the evidence's overall evaluation.

- It is admittedly true, as the applicant claims, that the evidence, taken as a whole, is mostly limited to Germany.

- However, taking into account the territorial extent of Germany and the fact that the invoices were sent to clients located in different German cities, it is considered that use in Germany is sufficient to maintain or create a market share in the European Union. Overall, the evidence of use relates to the relevant territory.

Extent of use

- The number of units sold and revenue shown in the sales report submitted as Annex 1.5 for 2015-2022, although not significantly high, are not negligible (in

particular since 2019) considering that the goods concerned are not everyday consumer goods.

– The fact that this document was probably generated by the opponent and not by a third party does not mean that this information does not have any probative value at all. Although it is true that statements and information in relation to the sales figures coming from the sphere of the owner of the earlier mark are generally given less weight than independent evidence, because the perception of the party involved in the dispute may be more or less affected by personal interests in the matter, the final outcome depends on the overall assessment of the evidence in the particular case.

– The rest of the documents submitted, particularly the invoices, provide sufficient information concerning the commercial volume, the territorial scope, the duration, and the frequency of use. It is clear from these documents that, during the whole relevant period, the opponent was selling goods under its mark to clients located in different cities around Germany.

– It the fact that the sales figures shown in this document do not match the figures of the invoices, does not mean that the sales report lacks probative value or that it is contradictory. It must be noted that, as the opponent states, Annex 1.1 shows a selection of invoices. Indeed, the numbering of the invoices provided by the opponent is not consecutive, which demonstrates that other invoices were issued in between them. Consequently, it can be inferred that the submitted invoices are examples that indicate a larger volume of sales and support other sales information provided by the opponent.

– The fact that the invoices were issued by Sanofi-Aventis Deutschland GmbH (rather than by the opponent itself, Sanofi Pasteur Europe) does not affect their probative value, nor materially affect the present assessment of genuine use. In this regard, use by companies economically related to the trade mark proprietor, such as members of the same group of companies (affiliates, subsidiaries, etc.) is similarly to be considered as authorised use. Therefore, it can be presumed that the evidence submitted by the opponent is an implicit indication that use of their mark was made with their consent and is thus deemed to constitute use by the opponent.

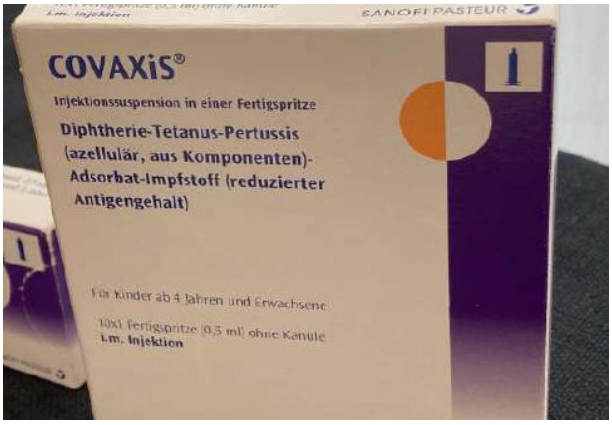
– Taking into account all these factors, the opponent has provided sufficient indications concerning the extent of use of the earlier mark.

Nature of use

– The excerpt from the MRI Product Index and the marketing materials clearly identify ‘COVAXIS’ as a vaccine against tetanus, diphtheria and pertussis. These documents also establish the doses and quantities in which the product is marketed. The invoices submitted clearly show sales of goods under the mark ‘COVAXIS’. The fact that these goods correspond to the pharmaceutical product described above can be inferred from their description in the invoices:

Position	PZN	Menge/ME	Chargenbez.	Materialbezeichnung Verfalldatum	Einzelpreis
1	12590107			Covaxis ISU i d Fertigspritze 10St	

– As shown in the product sample submitted by the opponent, the ‘COVAXIS’ mark was also affixed to the box in which the goods at issue are sold, along with the mentioned dosage and number of syringes:



– Therefore, the representation of the sign in question on, inter alia, the invoices and product packaging, constitutes direct evidence that the mark was used publicly and outwardly and with a view to ensuring an outlet for the goods that it represents. Moreover, the evidence does show use of the mark as it has been registered.

– Taking into account the evidence in its entirety, although not particularly exhaustive, it does reach the minimum level necessary to establish genuine use of the earlier mark during the relevant period in the relevant territory in relation to *vaccines* in Class 5.

Likelihood of confusion

– The contested *vaccine for human use* is included in the earlier mark’s broader category of *vaccines*. Therefore, the goods are identical.

– The goods target the public at large and professionals in the medical sector, such as doctors and pharmacists. Indeed, even if vaccines are normally administrated by medical professionals, they can also be sold under medical prescription to individual patients by pharmacies and not only to healthcare professionals. Insofar as pharmaceutical preparations are concerned, whether or not issued on prescription, the relevant public’s degree of attention is relatively high. It is apparent from the case-law that, insofar as pharmaceutical preparations are concerned, whether or not issued on prescription, the relevant public’s degree of attention is relatively high (15/12/2010, T-331/09, Tolposan, EU:T:2010:520, § 26; 15/03/2012, T-288/08, Zydus, EU:T:2012:124, § 36). Medical professionals have a high degree of attentiveness when prescribing medicines. Non-professionals also have a higher degree of attention, regardless of whether the pharmaceuticals are sold without prescription, as these goods affect their state of health.

– The relevant territory is the European Union.

– It cannot be excluded, as the applicant claims, that part of the relevant public (e.g. those who understand English) may perceive the element ‘VAXIS’ in the earlier (or simply ‘VAX’), as alluding to the term ‘vaccine’, and therefore, it is considered weak in relation to the goods at issue. The same applies to the letters ‘VAXIN’ in the verbal element ‘COVAXIN’ of the contested sign.

– However, for the majority of the public in the relevant territory, both signs are meaningless single-word marks that will be perceived as a whole and have, therefore, a normal degree of distinctiveness.

– The contested sign’s verbal element ‘BIOTECH’ will be understood as an abbreviation of ‘biotechnology’ by a large part of the relevant publicis considered to be at best weakly distinctive in relation thereto.

– The contested sign’s remaining verbal element ‘BHARAT’, although meaningless and distinctive per se, may be perceived by the relevant public, in conjunction with the term ‘BIOTECH’, as a subsidiary indication of the name of the provider of the goods in question. Moreover, due to its size and its presence at the bottom part of the contested sign, this element will likely be overshadowed by the initial element ‘COVAXIN’, which is the dominant element in the contested sign.

– The contested sign’s figurative element may be perceived by consumers either as the three-dimensional double helix structure of DNA, and thus as a weakly distinctive element in relation to the products concerned, or as a geometrical decorative ribbon, with no trade mark significance.

– The contested sign’s stylisation is also not particularly striking and will be perceived as merely decorative.

– Visually and aurally, the signs coincide in almost all the letters (and their pronunciation) of the earlier mark’s only verbal element and the dominant element in the contested sign, with the sole exception of their last letters ‘S’ / ‘N’.

– Considering the distinctiveness of the coinciding and differing elements, as described above, the signs are visually and aurally similar to at least an average degree.

– Conceptually, the signs are similar for the part of the public who will perceive the components ‘VAXIS / VAXIN’ within the signs and associate them with the concept of a ‘vaccine’. However, since this coinciding component is weak, its impact on the conceptual comparison of the signs is very limited.

– For the remaining part of the public in the relevant territory, although they will perceive the meaning of ‘BIOTECH’ (and perhaps of the figurative element) in the contested sign, the other sign has no meaning. Therefore, since a conceptual comparison is not possible, the conceptual aspect does not influence the assessment of the similarity of the signs.

- The earlier trade mark has no clear and immediate meaning for the relevant goods from the perspective of the majority of the public in the relevant territory. Therefore, the distinctiveness of the earlier mark must be seen as normal.

- It is highly conceivable that, in view of the identical goods and the almost coincidence in the main elements 'COVAXIS / COVAXIN', the relevant consumer will perceive the contested mark as a sub-brand or a variation of the earlier mark, configured in a different way according to the type of goods or services that it designates.

- The applicant argues that there are several registrations including the letters 'OVAXI' in the EU or national registries, which allegedly coexist with the earlier mark. However, in the absence of convincing arguments and evidence, this applicant's argument must be rejected as unfounded.

- Taking into account the considerable similarities between the signs and the identity of the goods, and applying the abovementioned principle of interdependence, the minor differences between the signs are insufficient to dispel the likelihood of confusion, even for the part of the public which displays a higher degree of attention. Therefore there is a likelihood of confusion on the part of the public.

- The opposition is well founded on the basis of the earlier mark. The contested trade mark must be rejected for all the contested goods.

11 On 16 February 2024, the applicant, filed an appeal against the contested decision, requesting that the decision be entirely set aside. It also submitted the statement of grounds of the appeal on the same day, together with Annexes 1 to 5.

12 On 23 February 2024, the applicant requested the suspension of the appeal proceedings until a final decision is issued in the revocation proceedings C 64 302 filed against the earlier mark on the basis of Article 58(1)(a) EUTMR.

13 On 11 March 2024, the Registry of the Boards of Appeal ('the Registry') informed the parties that according to the Chairperson's instructions, the appeal was suspended until a final decision is rendered in the revocation proceedings C 64 302.

14 By decision of 21 March 2025, the Cancellation Division partially upheld the application for revocation and revoked the earlier mark as from 13 February 2024 for some of the contested goods, namely:

Class 5: *Vaccines except those for human use.*

The earlier mark remained registered for all the remaining goods, namely:

Class 5: *Vaccines for human use.*

15 On 31 July 2025, the Registry informed the parties that the revocation proceedings C 64 302 were closed, and the appeal resumed, and invited the opponent to file a response to the appeal.

16 In its response received on 8 September 2025, the opponent requested that the appeal be dismissed.

Submissions and arguments of the parties

17 The arguments raised by the applicant in the statement of grounds may be summarised as follows:

Lack of proof of genuine use of the earlier mark

- Proof of the earlier mark was not established so the opposition should be rejected on this basis.

- Proof of use must be examined according to the characteristics of the goods or services in question, namely the pharmaceutical sector. In the pharmaceutical sector, it is very common for companies to market and promote the same pharmaceutical product under different names. This is the case, for example, with generic and trade names of medicines, which may have radically different names but refer to the same products. Furthermore, in order to avoid potential confusion, pharmaceutical companies must obtain approval from national and regional agencies for each proposed trade mark to sell their pharmaceutical products.

- Therefore, pharmaceutical companies must obtain the necessary authorisations to market a given pharmaceutical product under a given name, and it is common for the same pharmaceutical products to be marketed under different names; for example, Ibuprofen is also marketed under names such as Advil or Motrin; Ferinject is authorised and marketed in the EU under names such as Injectafer (in Luxembourg) and Iroprem (in Slovenia); Amoxicilline Centrient is sold in the Netherlands, however in Spain it is marketed under Amoxicilina Almus and in France under Amoxicilline Almus (see Annex 2).

- The opponent's vaccine has only been authorised to be marketed under the opposing mark 'COVAXIS' in Germany and Austria, and in the rest of the countries in the European Economic Area the opponent requested authorization under different names. This proves that the opponent never intended to make potential use of the opposing trade mark in the EU territory, but rather merely a national use in Germany (and Austria) – see Annex 3.

- As to the place of use, the documents submitted by the opponent as proof of use of all refer to use exclusively in Germany. The (few) invoices and links to the opponent's website submitted as Annex 1 were all in German, the same happened with the links to German pharmacies allegedly selling the earlier goods, and the marketing material and photographs of the packaging all in German.

- Taking into account the limited level of sales that reflected the invoices, and taking into account that all documents referred only to one country (Germany), it is clear that that use was not sufficient to be regarded as genuine use in the European Union.

- It is submitted as Annex 3 an extract from the Spanish packaging leaflet of the Spanish Agency for Medicine and Health Products, dated 2023, for the earlier mark.

This expressly states that the opponent's vaccine was authorised for marketing under the name 'Covaxis' only in Germany and Austria, while for other countries it was authorised under different names, that is to say 'Triaxis' and 'Adacel'. This document constitutes complementary evidence supplementing previous argumentation and submitted in order to challenge the findings of the Opposition Division. Moreover, the document is relevant for the outcome.

– This document proves that the opponent never had any intention of marketing its vaccines under the mark 'COVAXIS' outside Germany (and Austria), since its vaccines were authorised under different names/trade marks in all other EU Member States.

– The fact that the opponent never received (or even requested) authorisation to market its vaccines under the mark 'COVAXIS' in other EU countries is conclusive evidence that it had no intention of using its earlier mark in the EU, but rather used it to prevent competitors from freely using similar trade marks, while continuing to sell its 'COVAXIS' vaccines exclusively on the German national market.

– Evidence is also insufficient in particular with regard to the extent of use. The opponent has, at most, made 'token' use of the earlier mark, for the sole purpose of preserving the rights conferred by the mark, as is clear from the negligible number of sales reported on the invoices.

– The few invoices submitted by the opponent, which show sales of very limited number of units in the five-year period of reference, are not sufficient to prove genuine use of the earlier mark, especially since they all relate to sales made in a single country (Germany) and, therefore, there was no extensive or regular use of that trade mark in the EU which could compensate for the very low commercial volume.

– In addition, the marketing material and photographs of the packaging did not display a date, and the opponent did not demonstrate that they had been distributed publicly and externally to the relevant consumers.

– As regards the other arguments, reference is made to the observations submitted in the first instance in the opposition proceedings, and it is requested that they are taken into account in this appeal.

Incorrect assessment of the likelihood of confusion

– The fact that the goods at issue are identical is irrelevant, since, taking into account the global assessment of all the relevant factors, there is no likelihood of confusion and/or association on the market.

– Given the highly specialised nature of vaccines, both consumers and medical professionals will pay a high degree of attention when prescribing and/or purchasing these products on the market, which makes it unlikely that they will ever confuse the signs at issue and will notice the differences between the signs at issue.

– The signs do not coincide in even one of their terms. The elements ‘BHARAT’ and ‘BIOTECH’ as well as the figurative components of the contested sign are completely different and have no equivalent in the earlier mark and the presence of these components in the contested sign has far more relevance than the opponent plays it out to be.

– The term ‘BHARAT’ occupies a significant position in the contested sign (since it is almost in a central position) and it is a word that will be perceived by the relevant public as fanciful and, thus, it is likely that it will leave a long-lasting impression in consumers. The term ‘BHARAT’, while represented in slightly smaller capsize, is clearly visible and it is not negligible, with the result that it is likely to attract attention and mitigate, in the context of an overall impression, the effect produced by the elements of similarity in the compared signs. Moreover, the fact that ‘BHARAT’ is represented in a striking green confirms that the public will not neglect this term when perceiving the sign.

– Contrary to the Opposition Division’s findings, the contested sign’s figurative elements do not merely play a decorative role. The abstract, graphic symbol  , the layouts and striking colours used, and the letter ‘X’ depicted in two colours, and the specific and fanciful typography of ‘BARAT’ contribute to forming the image that the relevant public will keep in mind and therefore will not be overlooked.

– The differences between the signs inevitably cause that the pronunciation of both signs differ significantly. The confronted signs differ in more syllables than they have in common and that they only share 6 letters out of the 20 letters that make up the sign applied for. Therefore, the sign applied for definitely exhibits enough visual and phonetic differences from an overall point of view to exclude any likelihood of confusion.

– This is further demonstrated by the fact that the sequence ‘-OVAXI’ is widely used in trade marks designating goods in Class 5; there are in fact several EUTMs already registered that coincide in the sequence ‘-OVAXI’ for goods in Class 5:

- EUTM No 18 524 489, ‘BIOVAXIN’.
- EUTM No 3 605 698, ‘BIOVAXID’.
- Greek trade mark registration No D162374, ‘MOVAXIN’
- UK trade mark registration No 11 878 345, ‘INNOVAXIS’.
- Czech trade mark registration No R.318339, ‘NOVAXIL PLUS’.
- Czech trade mark registration No 301 576, ‘NEFRO VAXIN’.
- Slovak trade mark registration No 223 995, ‘NEFRO VAXIN’.
- Danish trade mark registration No VA 2020 01 470, ‘COVAXIX’.

– The mere coincidence in this same sequence '-OVAXI' is not enough to consider that the signs are confusingly similar, especially when it comes down to such specialised goods as *vaccines* for which consumers and medical professionals pay a higher-than-average degree of attention and considering that the confronted signs differ in all the other word and figurative elements.

– Moreover, the other elements in the contested sign, especially 'BIOTECH', contribute to further differentiate the signs from a conceptual point of view, since the earlier mark does not have any equivalent for these terms.

– In the light of the above, the signs are visually, aurally and conceptually dissimilar.

– The General Court has held that there was no likelihood of confusion on previous analogous cases where the confronted trade marks were similar regarding one of their terms (sharing all of their letters but one), but the difference in their structure, additional terms and/or figurative elements were sufficient to exclude likelihood of confusion, for example in 04/05/2022, T-298/21, ALEGRA DE BERONIA / ALEGRO, EU:T:2022:275.

– The applicant submitted the following documents:

  • Annex 1: copy of the application for declaration of revocation filed by the applicant against the earlier mark.

  • Annex 2: extracts and medical leaflets of pharmaceutical products sold under different names.

  • Annex 3: extract from the Spanish Agency for Medicine and Health Products, from 2023, regarding the Spanish package leaflet of the opponent's 'COVAXIS' vaccine (dated March 2023).

  • Annex 4: copy of 14/12/2022, T-18/22, NEMPORT LİMAN İŞLETMELERİ (fig.) / Newport et al., EU:T:2022:815.

  • Annex 5: copy of 04/05/2022, T-298/21, ALEGRA DE BERONIA / ALEGRO, EU:T:2022:275.

18 The arguments raised by the opponent in response to the appeal may be summarised as follows:

– The cancellation division decided in revocation proceedings C 64 302 that genuine use of the earlier mark had been provided with respect to *vaccines for human* use in Class 5.

Lack of proof of genuine use of the earlier mark

– Regarding the place of use, it is referred to the Cancellation Division which considered that the earlier mark mainly used in Germany can be considered as use of the contested mark in the European Union.

– Regarding extent of use, the number of units sold and revenue shown in the sales report submitted as Annex 1.5 for the years 2015-2022, evidenced a not negligible use (in particular since 2019) considering that the goods concerned are not everyday consumer goods.

– Further, the sales records were corroborated by other documents, namely by a sample of invoices which proved the effective commercialization of the products. In this respect, the opponent refers to all the evidence provided before the Opposition Division.

On Article 8(1)(b) EUTMR

– The contested trade mark application is a figurative mark composed of the term 'COVAXIN' reproduced in blue capital letters in a sensibly bigger size than the terms 'BHARAT' and 'BIOTECH' which are represented below in capital letters in a noticeable smaller size.

– It cannot be contested that the term 'COVAXIN' because of its size and position in the sign appears to be individualised and constitutes, the dominant element of the contested sign. Although all the components of the applied sign shall be considered for the overall assessment of the similarity between the signs, it is clear that the element 'COVAXIN' remains outstanding and more distinctive that the remaining components.

– The earlier trade mark is a word mark composed of the term 'COVAXIS' reproduced in standard black capital letters.

– The dominant elements 'COVAXIS' and 'COVAXIN' are strikingly similar on a visual basis as they have the same length, namely 7 letters and the same structure. Further, they share 6 letters, namely 'C', 'O', V', 'A', 'X' and 'I' placed in the same order and having the same position.

– The additional elements represented in a smaller size 'BHARAT' and 'BIOTECH' and the graphical element have no counterpart in the earlier trade mark. Nevertheless, they are not sufficient to counteract the important similarity created by the almost identical dominant element 'COVAXIN / COVAXIS' (only component of the earlier trade mark). The contested sign shares the first six letters 'COVAXI', element of attack of the earlier mark.

– From a phonetic point of view, the signs are highly similar since the dominant element of trade mark application consists of the term 'COVAXIN', which is reproduces almost in its entirety in the earlier trade mark '**COVAX**IS'.

– It is not very likely that the additional elements 'BHARAT' and 'BIOTECH' will be pronounced. Even if they were, the signs would still be similar in light of the almost identical dominant element 'COVAXIN/COVAXIS'. As a result, the rhythm and the intonation of both signs is similar to a high degree, which will be indubitably noticed at first sight by the consumer who will be very likely to confuse the signs at stake.

- Conceptually, the applicant's arguments on the meaning of the element 'VAX' for the European Union consumers cannot apply to the vast majority of them who will not understand its meaning. In any case, the signs overall will be perceived as fanciful terms and will have no meaning for the European Union consumers.

- It is referred to the decision 30/11/2022, R 1110/2022-4, COVAXIN / COVAXIS between the same parties, which confirmed the existence of a likelihood of confusion between the marks at issue. In the present case and in spite of the presence of additional elements in the contested sign, the term 'COVAXIN' appears as dominant and most distinctive element creating a risk of association with the earlier mark 'COVAXIN'.

- The list of trade marks registered in the European Union provided by the applicant containing the sequence of letters 'OVAXI' are irrelevant as the rest of their components is entirely different to the earlier mark and there is no possible risk of confusion.

- The high similarity between the marks at stake indubitably ought to carry great weight in the assessment of the likelihood of confusion, even if the degree of attention of consumers for medical products is above average.

- There is a likelihood of confusion including a risk of association on the part of the relevant public.

Reasons

19 All references made in this decision to the EUTMR should be seen as references to Regulation (EU) 2017/1001 (OJ 2017 L 154, p. 1), codifying Regulation (EC) No 207/2009 as amended, unless specifically stated otherwise.

20 The appeal complies with Articles 66, 67 and Article 68(1) EUTMR. It is admissible.

Scope of appeal

21 Following the partial revocation of the earlier mark which became final, as detailed above in paragraph 14, the earlier mark's goods to be taken into account in the present appeal are the following:

Class 5: *Vaccines for human use.*

Admissibility of the evidence submitted for the first time before the Board

22 As a preliminary remark, the Board notes that previous General Court judgments are available to the public and, therefore, can be taken into account at any stage of the proceedings. This applies to the applicant's Annexes 4 and 5 as listed above in paragraph 17.

23 Regarding the other documents submitted by the applicant for the first time before the Board, namely Annexes 1 to 3, the Board must assess their admissibility.

24 Pursuant to Article 95(2) EUTMR, the Office may disregard facts or evidence which are not submitted in due time by the parties concerned. Pursuant to Article 27(4) EUTMDR, the Board of Appeal may accept facts or evidence submitted for the first time before it only where those facts or evidence 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 filed to contest findings made or examined by the first instance of its own motion in the decision subject to appeal.

25 Those same principles are reiterated in Article 54(1) Rules of Procedure of the Boards of Appeal, 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.

26 In the present case, the evidence aims to challenge the Opposition Division's findings regarding the assessment of the genuine use of the earlier mark. Therefore, its submission for the first time before the Board is justified. Furthermore, it may be prima facie relevant for the outcome of the case.

27 Consequently, the Board decides to take these documents into account.

Proof of use

28 According to Article 47(2) and (3) EUTMR, the applicant of a European Union trade mark application may request proof that the earlier mark on which an opposition is based has been put to genuine use during the five-year period preceding the date of filing of the application, provided that the earlier mark has, at that date, been registered for more than five years. If the earlier mark has been used in relation to only part of the goods or services for which it is registered it shall, for the purposes of the examination of the opposition, be deemed to be registered in respect only of that part of the goods or services.

29 In the absence of proof of use, the opposition shall be rejected, pursuant to Article 47(2), second sentence, EUTMR and Article 10(2) EUTMDR.

30 According to the case-law, there is 'genuine use' of a trade mark where the mark is used in accordance with its essential function, which is to guarantee the identity of the origin of the goods or services for which it is registered, in order to create or preserve an outlet for those goods or services; genuine use does not include token use for the sole purpose of preserving the rights conferred by the mark (11/03/2003, C-40/01, Minimax, EU:C:2003:145, § 43; 19/12/2012, C-149/11, Onel / Omel, EU:C:2012:816, § 29; 14/04/2016, T-20/15, Piccolomini, EU:T:2016:218, § 42). In addition, the condition relating to genuine use of the trade mark requires that the mark, as protected in the relevant territory, is used publicly and outwardly (11/03/2003, C-40/01, Minimax, EU:C:2003:145, § 37; 18/01/2011, T-382/08, Vogue, EU:T:2011:9, § 27; 05/02/2020, T-44/19, TC Touring Club (fig.) / TOURING CLUB ITALIANO et al., EU:T:2020:31, § 52).

31 When interpreting genuine use, the ratio for the requirement that the contested mark must have been put to genuine use is not to assess commercial success or to review the economic strategy of an undertaking, nor is it intended to restrict trade mark protection to the cases of large-scale commercial use (26/09/2013, C-609/11 P, Centrotherm, EU:C:2013:1449,

§ 72; 29/11/2018, C-340/17 P, ALCOLOCK, EU:C:2018:965, § 90; 13/10/2021, T-1/20, INSTINCT, EU:T:2021:695, § 33).

32 When assessing whether use of the trade mark is genuine, regard must be taken to all the facts and circumstances relevant to establishing whether the commercial exploitation of the mark is real, particularly whether such use is viewed as warranted in the economic sector concerned to maintain or create market share for the relevant goods or services, the nature of those goods or services, the characteristics of the market and the scale and frequency of use of the mark (11/03/2003, C-40/01, Minimax, EU:C:2003:145, § 38, 39; 19/12/2012, C-149/11, Onel / Omel, EU:C:2012:816, § 29).

33 In order to examine, in a particular case, whether a trade mark has been put to genuine use, an overall assessment must be carried out which takes into account all the relevant factors of the particular case. That assessment implies that a certain interdependence between the factors be taken into account. Thus, a low volume of goods marketed under the trade mark may be compensated for by a high intensity or a certain consistency over time of the use of that trade mark or vice versa. In addition, the turnover and the volume of sales of goods marketed under the earlier mark cannot be assessed in absolute terms but must be looked at in relation to other relevant factors, such as the volume of business, production or marketing capacity or the degree of diversification of the undertaking using the mark and the characteristics of the products or services on the relevant market. As a result, use of the mark at issue need not always be quantitatively significant in order to be deemed genuine. Even minimal use can therefore be sufficient to be deemed genuine, provided that it is viewed as warranted in the economic sector concerned in order to maintain or create a market share for the goods or services protected by the mark (08/07/2004, T-203/02, Vitafruit, EU:T:2004:225, § 42; 02/02/2016, T-171/13, MOTOBI B PESARO, EU:T:2016:54, § 72).

34 Genuine use of a trade mark cannot be proved by means of probabilities or suppositions but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned (13/06/2019, T-398/18, DERMAEPIL SUGAR EPIL SYSTEM (fig.) / dermépil Perron Rigot (fig.), EU:T:2019:415, § 56; 23/09/2020, T-677/19, Syrena, EU:T:2020:424, § 44).

35 Pursuant to Article 10(4) EUTMDR, the evidence shall be limited to the submission of supporting documents and items such as packages, labels, price lists, catalogues, invoices, photographs, newspaper advertisements and statements in writing as referred to in Article 97(1)(f) EUTMR.

36 The Board will assess whether the evidence submitted demonstrate genuine use of the earlier mark ‘COVAXIS’ in the European Union, in relation to the goods covered by the mark, namely *vaccines for human use* in Class 5 following its partial revocation (see paragraph 14 above).

37 The evidence taken into account in the opposition proceedings can be summarised as follows - without disclosing any potentially sensitive commercial information:

- Annex 1.1: numerous invoices dated between 2018 and 2022, addressed to clients located in different cities in Germany (i.e. Leipzig, Berlin, Kiel, Rostock, Frankfurt or Munich), emitted by the opponent’s German subsidiary *Sanofi-Aventis Deutschland GmbH* referring to the sale of, inter alia, vaccines in pre-filled syringes

bearing the mark ‘COVAXIS’. The product codes and description in the invoices match the images and product information provided in other annexes (in particular, Annexes 1.2 and 1.3). The invoices are issued in German and in Euros (€) and include the total number of units sold, the price per unit and the total turnover.

Impfstoff	Handelsform	PZN	Anzahl Packung/en
COVAXIS® Injektions-suspension	1 Fertigspritze (0,5 ml) mit 2 separaten Kanülen. N1	12590099	
	10×1 Fertigspritze (0,5 ml) ohne Kanüle.	12590107	

– Annex 1.2: marketing and promotional materials (including mailing advertisements sent to addresses in Germany, product catalogues and posters) for the period 2017-2021, showing the products (vaccines against tetanus, diphtheria and pertussis) under the ‘COVAXIS’ mark. The materials, in German and English, are issued by the opponent or its subsidiaries and show all the specifications of the product – including the product code – and its packaging.

– Annex 1.3: undated samples of product packaging in Germany showing the earlier mark in the following format: COVAXiS® in relation to vaccines (*Injektionssuspension in einer Fertigspritze*):

– Annex 1.4: an extract from *Compumark/Clarivate-Serion Pharma In-Use database* for ‘COVAXIS’ in Germany, showing the launch date of the product (01/03/2002) and indicating that the vaccine is still marketed in 2021.

– Annex 1.5: an internal chart showing the sales volume of the product (in number of doses) and its annual turnover (in Euros) in Germany during the period 2015-2022. The table is dated 15 May 2023 and is signed by the Head of the opponent’s Europe Com Ops Vaccines.

38 According to Article 10(3) EUTMDR, the evidence of use must indicate the place, time, extent and nature of use of the earlier mark for the goods and services for which it is registered and on which the opposition is based.

39 An overall assessment of all the items of evidence must be made, taking account of all the relevant factors in the particular case, which entails a degree of interdependence of the factors presented (18/01/2011, T-382/08, Vogue, EU:T:2011:9, § 30; 05/03/2019,

T-263/18, MEBLO (fig.), EU:T:2019:134, § 38). In particular, Article 10(3) EUTMDR does not state that each item of evidence must necessarily give information about all four elements to which proof of genuine use must relate, namely the place, time, extent and nature of use. An accumulation of evidence may allow the necessary facts to be established, even though each of those items of evidence, taken individually, would be insufficient to constitute proof of the accuracy of those facts (17/04/2008, C-108/07 P, Ferro, EU:C:2008:234, § 36; 16/11/2011, T-308/06, Buffalo Milke, EU:T:2011:675, § 61; 05/03/2019, T-263/18, MEBLO (fig.), EU:T:2019:134, § 84).

40 The Board is required by the courts to consider the submitted evidence in its totality in assessing its value in sum regarding the narrative it provides in relation to the use of a sign. In other words, each item of evidence is not to be analysed separately, but rather together – in order to determine the most likely and coherent meaning that it presents regarding the activities of the relevant undertaking. It is noted from 12/12/2002, T-39/01, Hiwatt, EU:T:2002:316, § 47, '… that genuine use of a trade mark cannot be proved by means of probabilities or suppositions but must be demonstrated by solid and objective evidence of effective and sufficient use of the trade mark on the market concerned'.

Assessment of the evidence

41 As a preliminary remark, as already stated in the contested decision, the applicant individually challenges the items of evidence submitted, pointing out that some are undated (such as the pictures of products' packaging), while the assessment must be done on the evidence as a whole. Therefore, the applicant's arguments in that respect reiterated before the Board must be rejected.

42 Furthermore, the internal table signed by the head of Europe Com Ops Vaccines submitted as Annex 1.5, although made by an employee of the opponent, constitutes as mean of proof of use pursuant to Article 10(4) EUTMDR and as listed in Article 97(1)(f) EUTMR.

43 In order to assess the probative value of the document, it is necessary to check the plausibility and truthfulness of the information that it contains. In that regard, account must be taken of, inter alia, the origin of the document, the circumstances of its preparation, the person to whom it was addressed, and whether it seems from the content to be sensible and reliable (07/06/2005, T-303/03, Salvita, EU:T:2005:200, § 42; 15/12/2005, T-262/04, Briquet à Pierre, EU:T:2005:463, § 78; 18/11/2015, T-813/14, Cases for Portable computers, EU:T:2015:868, § 26).

44 In the present case, the table is signed by the person in charge of vaccines in Europe for the opponent and its content is corroborated inter alia by the invoices, pictures of packaging and advertising materials displaying the sign 'COVAXIN'. Therefore, it be considered as relevant and a probative item of evidence.

45 The opponent included hyperlinks in its submissions for proof of use before the Opposition Division. However, the provision of links to online content or website addresses is not a valid form of evidence in inter partes proceedings. In accordance with Article 95(1) EUTMR, in proceedings relating to relative grounds for refusal of registration, the Office is restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought. It is not for the Office's decision taking bodies to search websites for the relevant data (04/10/2018, T-820/17, Alfrisa (fig.) / Frinsa F (fig.), EU:T:2018:647, § 61-63). Websites are easily updated, and most do not provide any

archive of previously displayed material or display records that enable members of the public to establish precisely when any particular content was published. The authenticity and integrity of the information cited using only a hyperlink to a website cannot, therefore, be verified.

46 Therefore, the hyperlinks provided by the opponent will not be taken into account by the Board.

(i) Time of use

47 As stated by the Opposition Division, most of the evidence is dated within the relevant period, namely from 28 June 2017 to 27 June 2022. In particular, the numerous invoices submitted in Annex 1.1 are dated regularly from 2018 to 2022, and the sales figures provided in Annex 1.5 cover, inter alia, the relevant period. Moreover, contrary to the applicant's claims, the marketing materials provided are also dated within the relevant period (see Annex 1.2).

48 Therefore, the Board confirms that the evidence contains sufficient indication concerning the time of use.

(ii) Place of use

49 Since the earlier mark is an EUTM, the evidence must show that it has been genuinely used in the European Union (see Article 18(1) EUTMR and Article 58(1)(a) EUTMR).

50 It is not disputed that the evidence mostly refers to use of the sign in Germany. This can be inferred in particular from the invoices' addresses located in several cities in Germany (Annex 1.1), or the language in these invoices and on the products' packaging or the marketing materials (Annexes 1.2 and 2.3). Furthermore, the signed table concerns sales in Germany (Annex 1.5).

51 Germany represents a substantial part of the territory of the European Union. Therefore, contrary to the applicant's arguments, use in one Member State, as Germany, is sufficient to be considered as use of the mark in the European Union (07/11/2019, T-380/18, INTAS / INDAS (fig.) et al., EU:T:2019:782, § 81 and the case-law cited). Moreover, in the present case, as stated by the Opposition Division, the invoices are addressed to several cities throughout the territory of Germany, including its capital Barlin, and other important cities such as Leipzig, Munich and Frankfurt, representing very significant metropolitan areas.

52 The applicant further argues that the opponent was only authorised to market its vaccine under the name 'COVAXIN' in Germany, while it was distributed under different names in other countries. It states that the opponent never had any intention of using the sign 'COVAXIN' in the whole EU and that it uses this trade mark registration to illegitimately and voluntarily block out competitors.

53 However, the Board notes that the document submitted by the applicant before it as Annex 2 only confirms use of the opponent's sign 'COVAXIN' in Germany, which is sufficient. Furthermore, it is recalled that any argument raised by the applicant regarding the alleged unfair competition behaviour of the opponent cannot be examined since, pursuant to Article 46 EUTMR, an opposition can be filed only on the basis of the grounds

of Article 8 EUTMR which does not comprise the grounds for bad faith. Therefore, the applicant's arguments are irrelevant and must be rejected.

(iii) Extent of use

54 Concerning the extent of use made of the earlier mark, account must be taken, in particular, of the commercial volume of all the acts of use on the one hand, and the duration of the period in which those acts of use occurred, and the frequency of those acts, on the other (08/07/2004, T-334/01, Hipoviton, EU:T:2004:223, § 35). However, the use of the earlier mark need not always be quantitatively significant for it to be deemed genuine (08/07/2004, T-334/01, Hipoviton, EU:T:2004:223, § 36).

55 Although the concept of genuine use excludes all minimal and insufficient use as the basis for a finding that a mark is being put to real and effective use on a given market, nevertheless the requirement of genuine use does not seek to assess commercial success or to review the economic strategy of an undertaking, nor is it intended to restrict trade mark protection to the case where large-scale commercial use has been made of the marks (15/09/2011, T-427/09, CENTROTHERM, EU:T:2011:480, § 26 and case-law cited).

56 In the present case, as stated in the contested decision, the opponent submitted numerous invoices which are furthermore dated between February 2018 and June 2022, that is, almost all the relevant period.

57 Moreover, it can be inferred from the invoices' numbers that they are only an illustrative sample of the invoices sent during this period, which corroborates the figures provided in the signed tabled (Annex 1.5). The number of sales and of doses sold during the relevant period in Germany indicated in this declaration must be considered as significative.

58 Therefore, contrary to the applicant's arguments, the opponent sufficiently proved the extent of use of the earlier mark which is not merely token use.

(iv) Nature of use

59 In the context of Article 10(3) EUTMDR, the expression 'nature of use' includes evidence of use of the sign in accordance with its function, of use of the mark as registered, or of a variation thereof according to Article 18(1), second subparagraph, point (a) EUTMR, and of its use for the goods and services for which it is registered. As a trade mark has, inter alia, the function of operating as a link between the goods and services and the person responsible for their marketing, the proof of use must establish a clear link between the use of the mark and the relevant goods and services.

60 It is not disputed by the parties that the evidence shows use of the sign 'COVAXIN' as a word and as figurative signs, especially in the packaging and marketing materials dated during the relevant period, as detailed above in paragraph 37.

61 In that respect, although, as the applicant pointed out, the opponent did not provide proof of distribution of the packaging or materials to the public, it can be inferred from the nature itself of these elements that they were indeed distributed to the public.

62 It follows that evidence shows that the sign 'COVAXIN' was used publicly and outwardly, with the view of indicating the commercial origin of the goods. Therefore, it constitutes use of the sign as a trade mark.

63 Moreover, the Board confirms that the additional features, mainly the colours, in the figurative sign as used on part of the evidence is decorative or negligible (such as the symbol '®') so they do not alter the earlier mark's distinctive character. Therefore, evidence shows genuine use of the trade mark within the meaning of Article 18(1)(a) EUTMR.

64 Finally, in view of the evidence as detailed in paragraph 37, it is clear that the sign has been used in relation to the relevant goods, namely *vaccines for human use*. This is furthermore confirmed by the applicant's Annex 2 submitted before the Board showing that vaccines were circulated, inter alia, in Germany under the name 'COVAXIN'.

65 Therefore, genuine use of the earlier mark has been demonstrated for the goods as registered.

Article 8(1)(b) EUTMR

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

67 According to settled case-law, the likelihood of confusion is to be understood as being the risk that the public might believe that the goods or services covered by the earlier mark and those covered by the mark applied for come from the same undertaking or, as the case may be, from economically linked undertakings. The existence of such a risk must be assessed globally, taking into account all factors relevant to the particular case (22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 17, 18; 05/03/2020, C-766/18 P, BBQLOUMI (fig.) / HALLOUMI, EU:C:2020:170, § 63, 67; 11/06/2020, C-115/19 P, CCB (fig.) / CB (fig.) et al., EU:C:2020:469, § 54).

68 Those factors include, inter alia, the degree of similarity between the signs at issue and the goods or services in question and also the strength of the earlier mark's reputation and its degree of distinctive character, whether inherent or acquired through use (24/03/2011, C-552/09 P, TiMiKinderjoghurt, EU:C:2011:177, § 64; 04/03/2020, C-328/18 P, BLACK LABEL BY EQUIVALENZA (fig.) / LABELL (fig.) et al., EU:C:2020:156, § 57; 11/06/2020, C-115/19 P, CCB (fig.) / CB (fig.) et al., EU:C:2020:469, § 55).

Relevant public and territory

69 In the global assessment of the likelihood of confusion, account should be taken of the average consumer of the category of goods or services concerned, who is reasonably well informed and reasonably observant and circumspect. It should also be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question (22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 26; 13/02/2007, T-256/04, Respicur, EU:T:2007:46, § 42).

70 The Board agrees with the Opposition Division's findings that the goods at issue, namely *vaccines for human use*, target the public at large and professional from the medical

sectors, such as doctors and pharmacists (30/06/2015, R 1154/2014-2, CINQAPAR / CINQAIR et al., § 23-24; 30/11/2022, R 1110/2022-4, COVAXIN / COVAXIS, § 32-35).

71 Regarding the level of attention, it is settled case-law that professionals display a high level of attention with respect to pharmaceutical preparations, including *vaccines for human use*. As regards general end-consumers, their level of attention will be higher than average, since medicines, whether or not issued on prescription, affect a consumer's state of health (30/11/2022, R 1110/2022-4, COVAXIN / COVAXIS, § 36, and case-law cited).

72 Since the earlier mark is an EUTM, the relevant territory for the assessment of the likelihood of confusion is the territory of the European Union as a whole.

Comparison of the goods

73 Goods and services are identical when they appear with the same wording in both lists of goods and services or when they are included in a more general category designated by the other mark (13/09/2018, T-94/17, Tigha, EU:T:2018:539, § 46; 05/02/2020, T-44/19, TC Touring Club, EU:T:2020:31, § 91).

74 The contested sign and the earlier mark cover identical goods, namely *vaccines for human use*.

Comparison of the signs

75 The global assessment of the likelihood of confusion must, so far as concerns the visual, phonetic or conceptual similarity of the signs at issue, be based on the overall impression given by those signs, bearing in mind, in particular, their distinctive and dominant elements. The perception of the signs by the average consumer of the goods or services in question plays a decisive role in the global assessment of that likelihood of confusion. The average consumer normally perceives a mark as a whole and does not engage in an analysis of its various details (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 23; 22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 25; 08/05/2014, C-591/12 P, Bimbo Doughnuts, EU:C:2014:305, § 21; 22/10/2015, C-20/14, BGW / BGW, EU:C:2015:714, § 35).

76 Two marks are similar when, from the point of view of the relevant public, they are at least partially identical as regards one or more relevant aspects, namely the visual, aural and conceptual aspects (23/10/2002, T-6/01, Matratzen + Matratzenmarkt Concord (fig.), EU:T:2002:261, § 30; 15/12/2010, T-331/09, Tolposan, EU:T:2010:520, § 43; 17/03/2021, T-186/20, The time / Timehouse, EU:T:2021:147, § 21).

77 For the purpose of assessing the distinctive character of an element of a mark, an assessment must be made of the greater or lesser capacity of that element to identify the goods for which the mark was registered as coming from a particular undertaking, and thus to distinguish those goods from those of other undertakings. In making that assessment, it is necessary to take into account, in particular, the inherent characteristics of that element and to ask whether it is at all descriptive of the goods for which the mark has been registered (03/09/2010, T-472/08, 61 a nossa alegria, EU:T:2010:347, § 47 and case-law cited).

78 The signs to be compared are the following:

COVAXIS	
Earlier mark	*Contested sign*

79 The earlier mark is a word mark consisting of the seven-letter verbal element ‘COVAXIS’.

80 In the case of word marks, it is the word as such that is protected and not its written form (07/10/2010, T-244/09, acsensa (fig.) / accenture (fig.) et al., EU:T:2010:430, § 28 and the case-law cited). Furthermore, those marks do not have dominant elements.

81 The contested sign is a figurative mark composed of the verbal element ‘COVAXIN’ depicted in upper-case stylised letters, light blue with the exception of the first part of the ‘X’ in green. Below are placed the verbal elements ‘BHARAT’ and ‘BIOTECH’ in two separated lines, also depicted in upper-case letters but of a reduced size. The first element is depicted in stylised green letters and the second in standard black ones. In the centre between is placed a figurative element which may be perceived by consumers in the context of medical goods as a three-dimensional double helix structure of DNA, or as a purely decorative ribbon.

82 Even though the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details, they will nevertheless, when perceiving a verbal sign, break it down into elements that suggest a concrete meaning or that resemble known words (10/02/2015, T-85/14, DINKOOL, EU:T:2015:82, § 46 and the case-law cited). In this respect, it is possible for the relevant consumer to split up a word mark even if only one of the elements making up that mark is familiar to them (22/05/2012, T-585/10, Penteo, EU:T:2012:251, § 72 and the case-law cited.

83 In the present case, the Board agrees with the Opposition Division’s findings that, at least, part of the relevant public will identify the element ‘VAXIN’ in the contested sign’s element ‘COVAXIN’ as a reference to the English term ‘vaccine’. The Board finds that this meaning will be perceived by, at least, the English-speaking part of the average consumers as well as the relevant professional public across the EU who is likely to be familiar with the English term ‘vaccine’ (06/03/2015, T-513/13, SafeSet, EU:T:2015:140, § 32). To some extent, this may also apply to the element ‘VAXIS’ of the earlier mark. But in this case, this link will be less evident (30/11/2022, R 1110/2022-4, COVAXIN / COVAXIS, § 47). Overall, the two elements ‘VAXIN’ and ‘VAXIS’ of both elements ‘COVAXIN’ and ‘COVAXIS’ are weak for the goods at issue for this part of the public.

84 Nevertheless, the verbal elements ‘COVAXIN’ and ‘COVAXIS’, considered in their entirety, are meaningless. Therefore, despite the presence of a weak element for, at least, the English-speaking part of the public, the verbal elements ‘VAXIN’ and ‘VAXIS’ and the denominations ‘COVAXIN’ and ‘COVAXIS’ are distinctive to an average degree, as stated in the contested decision.

85 As regards the remaining part of the average consumers, they will only perceive the denominations 'BCOVAXIN' and 'COVAXIS', as a whole, as meaningless. Therefore, the elements 'VAXIN' and 'VAXIS' and the denominations 'BCOVAXIN' and 'COVAXIS' are distinctive to an average degree for this part of the public.

86 The second verbal element 'BHARAT' in the contested sign is meaningless for the relevant public. Therefore, it is distinctive to an average degree.

87 It is not disputed that the additional verbal element 'BIOTECH', in the context of the relevant medical goods, will be understood as an abbreviation of 'biotechnology' by a large part of the relevant public, as stated in the contested decision. This element will be thus perceived as an indication that living things, such as cells and bacteria, were used to produce the medical treatments at issue (https://dictionary.cambridge.org/dictionary/english/biotech consulted by the Board on 10 November 2025). Therefore, the Board finds that the word 'biotech' is descriptive and non-distinctive for the goods at issue.

88 The figurative element placed between the first and the second verbal element is weak in relation to the goods at issue for the part of the public who will perceive the reference to the DNA. For the other part of the public, it is a purely decorative element and thus has a low distinctiveness.

89 Likewise, as stated in the contested decision, the stylisation of the verbal elements in the contested sign is not particularly striking and is merely decorative. Therefore, it is also of a low distinctiveness. In that respect, contrary to the applicant's claims, use of green and blue in relation to medical goods is not particularly uncommon and is not likely to retain consumers' attention.

90 Considering the position and size of the respective elements within the contested sign, the Board agrees that the verbal element 'COVAXIN' is the dominant element as it is placed in the first line and in much larger letters than the other components.

91 It follows that, although the other components of the contested sign, including the verbal elements 'BHARAT' and 'BIOTECH', cannot be disregarded as negligible, as claimed by the applicant, they have a secondary importance within the overall impression of the contested sign.

92 Furthermore, it is recalled that when signs consist of both verbal and figurative components, in principle, the verbal component of the sign usually has a stronger impact on consumers than the figurative component. This is because the public does not tend to analyse signs and will more easily refer to the signs in question by their verbal element than by describing their figurative elements (14/07/2005, T-312/03, Selenium-Ace / SELENIUM SPEZIAL A-C-E (fig.), EU:T:2005:289, § 37). This principle applies to the contested sign's figurative element which is in addition of a reduced size.

93 Visually, the signs coincide to the extent that the contested sign's dominant element share the same sequence of letters 'COVAXI-' with the earlier mark's sole element, and only differ by the substitution of the letter 'S' by 'N'. This difference has a very limited impact and is not enough to counteract the overall visual impression of similarity created by the common letters (30/11/2022, R 1110/2022-4, COVAXIN / COVAXIS, § 49).

94 The signs differ in the additional verbal elements ‘BHARAT’ and ‘BIOTECH’ in the contested sign as well as by its graphical depiction, including its colours and figurative element.

95 As detailed above, these elements are of secondary importance within the overall impression due to their reduced size (‘BHARAT’ and ‘BIOTECH’) and/or are non-distinctive (‘BIOTECH’). Therefore, the differences between the signs, although they contribute to the overall impression of the signs, cannot be sufficient to outweigh the similarities.

96 Moreover, even if the elements ‘VAXIN’ in the contested sign’s dominant element and ‘VAXIS’ of the earlier mark are weakly distinctive for the part of the relevant public who will perceive the reference to ‘vaccines’, the visual coincidence between the signs is not limited to these elements but encompasses the sequence of six out of seven letters ‘COVAXI-’ composing the earlier mark’s sole element and the contested sign’s dominant element. Therefore, the weak distinctiveness of the elements ‘VAXIN’ and ‘VAXIS’ is also not sufficient to neutralise the similarities between the signs arising from the reproduction of the same sequence of six letters, even for the part of the relevant public who will perceive the reference to ‘vaccines’ in the signs.

97 Consequently, the Board finds that the signs are visually similar to below-average degree.

98 Aurally, the pronunciation of the signs coincides to the extent that the contested sign’s dominant element and the earlier mark sole element share the same syllables /co/va/ and highly similar final syllables /xin/ and /xis/ (30/11/2022, R 1110/2022-4, COVAXIN / COVAXIS, § 52).

99 The signs differ in the sounds of the additional words in the contested sign, namely ‘BHARAT’, which is distinctive, and ‘BIOTECH’, which is descriptive and non-distinctive.

100 However, the Board finds that it is very likely that at least the word ‘BIOTECH’ will not be pronounced taking into count the principle that a mark which includes several words will generally be abbreviated aurally to something easier to pronounce and the secondary or even negligible role these elements play in the overall impression of the sign (30/11/2006, T-43/05, Brothers by Camper, EU:T:2006:370, § 75; 03/07/2013, T-206/12, LIBERTE american blend, EU:T:2013:342, § 43, 44). The same can apply to the word ‘BHARAT’ which is also of a secondary importance in the contested sign and clearly separated from the first and dominant element ‘COVAXIN’ by the use of a figurative element.

101 Therefore, for the part of the public who will only pronounce the contested sign’s dominant element ‘COVAXIN’, the signs are aurally highly similar (30/11/2022, R 1110/2022-4, COVAXIN / COVAXIS, § 52).

102 For the other part of the public who will pronounce the additional elements in the contested sign, the signs are aurally similar at most to an average degree.

103 Conceptually, as stated above in paragraphs 83 and 84, part of the relevant public will perceive the same reference to the English term ‘vaccine’ in both signs. Furthermore, the contested sign contains the reference to ‘biotechnology’ and to the DNA, for part of the

public. Considering that the coinciding concept is weak with respect to the goods at issue, the signs are only conceptually similar to a low degree.

104 For the remaining part of the public who will not associate the elements ‘VAXIN’ and ‘VAXIS’ with any meaning (see paragraph 85 above), the earlier mark is meaningless, so a conceptual comparison is not possible.

Overall assessment of the likelihood of confusion

105 The global assessment of the likelihood of confusion implies some interdependence between the relevant factors, in particular between the similarity of the trade marks and that of the goods or services covered. Accordingly, a low degree of similarity between those goods or services may be offset by a high degree of similarity between the trade marks, and vice versa (29/09/1998, C-39/97, Canon, EU:C:1998:442, § 17; 18/12/2008, C-16/06 P, Mobilix, EU:C:2008:739, § 46; 05/03/2020, C-766/18 P, BBQLOUMI (fig.) / HALLOUMI, EU:C:2020:170, § 69).

106 It is also settled case-law that the more distinctive the earlier mark, the greater will be the likelihood of confusion, and therefore marks with a highly distinctive character, either per se or because of the recognition they possess on the market, enjoy broader protection than those with a less distinctive character (11/11/1997, C-251/95, Sabèl, EU:C:1997:528, § 24; 29/09/1998, C-39/97, Canon, EU:C:1998:442, § 18; 22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 20).

107 In the present case, the opponent did not explicitly claim that the earlier mark would enjoy enhanced distinctiveness. Consequently, the assessment of the distinctiveness of the earlier mark will rest on its distinctiveness per se. Considered as a whole, the earlier mark must be considered as having an average degree of inherent distinctiveness, despite the presence of the element ‘VAXIS’ which is weak for part of the relevant public who will perceive the reference to the English term ‘vaccine’.

108 The goods at issue are identical and they target average consumers and professional from the medical sector. The relevant public will display a high(er) level of attention considering the potential impact of the goods to the consumer’s state of health.

109 Nevertheless, the Board recalls that the average consumer only rarely has the chance to make a direct comparison between the different marks but must place their trust in the imperfect picture of them that they have kept in mind (22/06/1999, C-342/97, Lloyd Schuhfabrik, EU:C:1999:323, § 26). Even those consumers with a high degree of attention will still be subject to the imperfect recollection of trade marks (21/11/2013, T-443/12, ancotel, EU:T:2013:605, § 54).

110 The signs coincide in the same sequence of letters ‘COVAXI-‘, that is, six out of seven letters composing the contested sign’s dominant element. The contested sign contains additional verbal and figurative elements which, however, play a secondary role within the overall impression. Therefore, the signs are considered visually similar to a below-average degree, and aurally to a high degree for part of the public. Conceptually, there is a low degree of similarity for the part of the relevant public who will perceive the reference to the English word ‘vaccine’ in the signs, which is weak in relation to the goods at issue. For the other part of the public, the earlier mark is meaningless, so the conceptual aspect does not play a role in the overall assessment.

111 In view of the above, taking into account all the relevant factors, in particular the below-average degree of visual similarity and the high degree of aural similarity of the signs for part of the public, and the identity of the goods, there is a risk that the relevant public might believe that the goods covered by the earlier mark and the goods covered by the contested sign are provided by the same undertaking, or, as the case may be, from economically linked undertakings. Therefore, in the global assessment, a likelihood of confusion cannot be excluded.

112 The high(er) degree of attention of the relevant public cannot alter these findings, especially considering that, as recalled above, even consumers with a high degree of attention must rely on the imperfect recollection of trade marks (21/11/2013, T-443/12, ancotel, EU:T:2013:605, § 54), and taking into account that the goods are identical and that the contested sign's dominant element reproduces six out of seven letters of the earlier mark's sole element.

113 The judgments referred to by the applicant in its statement of grounds cannot alter the above findings. In the case 04/05/2022, T-298/21, ALEGRA DE BERONIA / ALEGRO, EU:T:2022:275, the signs under comparison were word marks and the additional elements 'DE BERONIA' in the contested sign were considered to have the same importance within the overall impression as the common letters 'ALEGR-'. The same reasoning does not apply in the present case where the contested sign is a figurative mark and the additional elements are of a secondary importance within its overall impression. In 14/12/2022, T-18/22, NEMPORT LİMAN İŞLETMELERİ (fig.) / Newport et al., EU:T:2022:815, the earlier mark had a weak distinctive character, which is not the case here. Therefore, the applicant's argumentations in respect to those judgments are irrelevant and must be rejected.

114 Finally, the applicant reiterates before the Board that the coincidence in the letters 'OVAXI' would not retain consumers' attention and that this is illustrated by the fact that there exist other trade mark registrations containing the sequence of letters 'OVAXI'. However, apart from the fact that the existence of eight trade mark registrations in the EU cannot be considered as sufficient to show a dilution of this element, as already stated in the contested decision, formal coexistence in the registry is not per se particularly relevant in the absence of any evidence with respect to an actual coexistence on the market (24/11/2005, T-135/04, Online Bus, EU:T:2005:419, § 68; 08/03/2013, T-498/10, David Mayer, EU:T:2013:117, § 77; 02/12/2014, T-75/13, Momarid, EU:T:2014:1017, § 85). Therefore, this argument must also be rejected.

Conclusion

115 The Opposition Division correctly upheld the opposition in its entirety.

116 Consequently, the appeal must be dismissed.

Costs

117 Pursuant to Article 109(1) EUTMR and Article 18 EUTMIR, the applicant, as the losing party, must bear the opponent's costs of the opposition and appeal proceedings.

118 As to the appeal proceedings, these consist of the opponent's costs of professional representation of EUR 550.

119 As to the opposition proceedings, the Opposition Division ordered the applicant to bear the opponent's costs, fixed at EUR 620. This decision remains unaffected. The total for both proceedings is therefore EUR 1 170.

Order

On those grounds,

THE BOARD

hereby:

1. **Dismisses the appeal.**
2. **Orders the applicant to bear the opponent's costs in the appeal proceedings, which are fixed at EUR 550. The total amount to be paid by the applicant in the opposition and appeal proceedings is EUR 1 170.**

Signed	Signed	Signed
N. Korjus	C. Govers	A. Kralik

Acting Registrar:

Signed

p.o. R. Vidal Romero