

**DECISION  
of the Fifth Board of Appeal  
of 14 March 2019**

In Case R 2145/2018-5

**Gibson Brands, Inc.**

309 Plus Park Boulevard  
Nashville Tennessee 37217  
United States of America

EUTM proprietor / Appellant

represented by Allen & Overy LLP, One Bishops Square, London E1 6AD, United Kingdom

v

**MUSIC Group IP Ltd.**

P.O. Box 146 Trident Chambers,  
Wickhams Cay  
Road Town, Tortola  
British Virgin Islands

Cancellation applicant / Defendant

represented by Stephan Dirks, Knooper Weg 75, 24116 Kiel, Germany

APPEAL relating to Cancellation Proceedings No 14 179 C (European Union trade mark registration No 441 519)

**THE FIFTH BOARD OF APPEAL**

composed of C. Govers as a single Member having regard to Article 165(2) and (5) EUTMR, Article 36 EUTMDR and Article 7 of the Decision of the Presidium on the organisation of the Boards of Appeal as currently in force

Registrar: H. Dijkema

gives the following

## Decision

### Summary of the facts

- 1 By an application filed on 11 December 1996, Gibson Brands, Inc. ('the EUTM proprietor') sought to register the word mark

### OBERHEIM

for the following list of goods

Class 15 - Electronic synthesizers, sequencers, filters, phase shifters and amplifiers for modifying the sounds produced by electrified musical instruments comprising electric guitars, wind instruments with pickups, electric keyboard instruments and digital piano/controllers; parts and fittings for all the aforesaid goods.

- 2 The application was registered on 2 September 1998.
- 3 On 14 December 2016, MUSIC Group IP Ltd. ('the cancellation applicant') filed a request for a declaration of revocation of the registered mark for all the above goods.
- 4 The grounds of the request for a declaration of revocation were those laid down in Article 58(1)(a) EUTMR.
- 5 By decision of 5 September 2018 ('the contested decision'), the Cancellation Division revoked the contested EUTM in its entirety.
- 6 On 2 November 2018, the EUTM proprietor filed an appeal against the contested decision.
- 7 By a communication dated 5 November 2018, the Registry of the Boards of Appeal acknowledged receipt of the notice of appeal. It also reminded the EUTM proprietor that a written statement of grounds must be filed within a non-extendable time-limit of four months counted from the date of notification of the contested decision in accordance with Article 68(1) EUTMR.
- 8 No statement of grounds was filed.
- 9 By a communication dated 28 January 2019, the Registry of the Boards of Appeal informed the EUTM proprietor that the appeal was likely to be deemed inadmissible as no statement of grounds had been filed within the time-limit which expired on 10 January 2019.
- 10 The EUTM proprietor did not reply to this communication.

**Reasons**

- 11 All references made in this decision should be seen as references to the EUTMR (EU) No 2017/1001 (OJ 2017 L 154, p. 1), codifying Regulation (EC) No 207/2009 as amended, unless specifically stated otherwise in this decision.
- 12 In accordance with Article 68(1) EUTMR, a statement of grounds of appeal shall be filed within four months of the date of notification of the contested decision.
- 13 In accordance with Article 23(1)(d) EUTMDR, the Board of Appeal shall reject the appeal as inadmissible where the statement of grounds has not been filed within the time-limit.
- 14 As the EUTM proprietor failed to submit the statement of grounds within the prescribed time-limit, in accordance with the provisions cited above, the appeal has to be rejected as inadmissible.

**Costs**

- 15 Pursuant to Article 109(5) EUTMR, where a case does not proceed to judgment, the costs shall be at discretion of the Board of Appeal. In the present case, as the EUTM proprietor's appeal is inadmissible and there has been no procedural activity on the part of the cancellation applicant, for reasons of equity, the Board decides that each party should bear its own costs of the appeal proceedings.

**Order**

On those grounds,

THE BOARD

hereby:

- 1. Dismisses the appeal as inadmissible;**
- 2. Orders each party to bear its own costs of the appeal proceedings.**

Signed

C. Govers

Registrar:

Signed

H.Dijkema

