CANCELLATION NO C 69 364 (INVALIDITY)

Fish products Carofiglio S.R.L., Via P. Mascagni, 5-7-9-11, 70132 Bari, Italy and **Vivimax S.R.L. Di Carofiglio M. & Figli**, Via Pietro Mascagni 5-7-9, 70132 Bari, Italy (the applicants), represented by **Alessandro Rendina**, via Cenisio 72, 20154 Milan, Italy (professional representative)

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Silvestro Carofiglio, Corso Alcide De Gasperi 413C, 70124 Bari, Italy and **Domenico Carofiglio,** 2 Traversa Pizzillo No 27, 70128 Bari, Italy (owners of European Union trade marks), represented, respectivamnete, by **Riccardo Bianchi**, Via Verdi 6, 20825 Barlassina (MB), Italy (professional representative) and **Matteo Maria Maggio**, Corso Unità d'Italia 36, 22063 Cantù, Italy (professional representative).

On 04/02/2026, the Cancellation Division makes the following

DECISION

1. Rejects the application for a declaration of invalidity in its entirety.

2. Orders the applicants to bear the costs, fixed at EUR 450.

MOTIVATIONS

On 05/12/2024, the applicants filed an application for a declaration of invalidity against European Union trade mark No 18 985 983 (figurative mark) (previously, the European Union trade mark). The application is directed against all the goods and services covered by the EUTM, namely against all the goods and services in Classes 29, 31, 35, 40 and 43. The application mentions European Union trade mark registration (EU) No 18 930 651 as an earlier right.

in relation to which Article 60(1)(a) EUTMR in conjunction with Article 8(1)(a) EUTMR and Article 8(1)(b) EUTMR is invoked.

SUMMARY OF SUBMISSIONS OF THE PARTIES

In **their** arguments filed together with the application for a declaration of invalidity, the applicants expressly submit: '*in open infringement of Article 60 in conjunction with Article 8.2 EUTMR, the contested trade mark (in particular the word 'GAGANG' referred to therein) is identical to the earlier trade mark registered by Carofiglio S.r.l.' ISPs and the goods and services for which the trade mark was applied for are the same as the goods and services for which the earlier trade mark is protected. Furthermore, in breach of Article 60 in conjunction with Article 8.4 EUTMR, because of the identity or similarity of the trade mark 'Boutique DEI Fruit DI MARE GAGANG' with the earlier trade mark 'CAROFIGLIO DI MICHELE GAGANG pescherie & QUALITY FOOD' and the identity of the goods and services covered by the two 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*.' In the context of the same arguments, the applicants also claim: '*therefore, without prejudice to the clear priority, at European level, of the trade mark 'CAROFIGLIO DI MICHELE GAGANG pescherie & QUALITY FOOD', including on Italian territory, Carofiglio Srl, as a licensee of the trade mark 'GAGANG' (owned by VIVIMAX S.r.l. di Carofiglio M. & Figli), has consistently and continuously used that trade mark to identify and advertise its business and product since at least April 2014, that is, more than one year earlier than the local registration of the competing trade mark'*.

In addition, the applicants add that 'under national legislation..., one of the requirements for the validity and registrability of a trade mark is first and foremost the 'novelty' (Article 12 of Legislative Decree No 30 of 10 February 2005, the Industrial Property Code, the text of which they contain), and they conclude that '*what has just been observed should be sufficient in itself to demonstrate the invalidity of the trade mark registered by Boutique dei Frutti di Mare S.r.l. for failure to comply with the legal (i.e. novelty) requirements at local level, in accordance with the combined provisions of Articles 12 and 25 of the Industrial Property Code. Without prejudice to the above, and in any event, even if and absurd could be demonstrated by Boutique dei Frutti di Mare S.r.l., the novelty of the trade mark 'da Gagang' (which is denied and strongly doubts), given the prior use by the Carofiglio S.r.l. fish products (as well as the unquestionable reputation, not only locally) of the distinctive marks/signs 'Gagang' and 'Carofiglio di Michele Gagang pescherie & Quality Food', any use of the latter is not only permitted to be used by that company but, in any event, entirely legitimate, as provided for in Article 12 (l) (a) of the CPI and under Article 2571 of the Italian Legislative Decree.'*

In annex, applicants are in the following documents:

— European Union trade mark registration certificate N.018930651 'CAROFIGLIO DI MICHELE GAGANG pescherie & QUALITY FOOD

— Three screenshots with dates of April 2014:







Following a finding made by the Office regarding the proprietorship of the earlier right indicated in the application for a declaration of invalidity, the applicants have specified that: products Carofiglio S.r.l. are the proprietor of European Union trade mark N.018930651 'CAROFIGLIO DI MICHELE GAGANG pescherie & QUALITY FOOD'; VIVIMAX S.r.l. di Carofiglio M. & Figli, on the other hand, is the proprietor of the de facto trade mark at national level, 'GAGANG', licensed to Carofiglio S.r.l. for sales outlets under a contract of 27/11/2015, which was registered on 4/12/2015 (annex).

In summary, **the proprietors of the EU trade mark** submit as follows:

— First of all, the two trade marks are completely different and the only common element (the word GAGANG) is the subject of exclusive rights in the availability of Mr Silvestro and Mr Domenico Carofiglio.

— In the present case, the documents submitted and the documents submitted by the counterparties are so **incomplete and undetermined** that the following elements cannot be identified, thereby infringing the rights of defence of the proprietors of the contested trade mark: the legal basis on which the application for a declaration of invalidity is based; the prerequisites for the enforceability of the earlier rights invoked; the classes of goods on which the application is based; of the parties involved in the present proceedings.

— The application for a declaration of invalidity was initially based exclusively on EUTM No 018930651 owned by the company Products Carofiglio S.r.l.: only following the Office's communication of 13/01/2025, the applicants indicated the de facto trade mark at national level GAGANG. In particular, the **application for a declaration of invalidity was based solely on registered EUTM No 018930651,** as can be seen from the application form for a declaration of invalidity and the other parties expressly based the action as a ground for invalidity **only under Article 60 (1) (a) EUTMR in conjunction with Article 8 (1) (a) and 8 (1) (b) EUTMR.**

— In their arguments in support, the opposing parties refer to Articles 12 and 25 of the Italian Industrial Property Code (hereinafter 'CPI') and Article 2571 of the Italian Civil Code ('the Italian Civil Code'), without, however, identifying which alleged earlier right should be substantiated. Assuming that the counterparties wished to report the Italian rules relied on to the alleged de **facto trade mark** of Vivimax S.r.l. di Carofiglio M. & Figli, the counterparties – in the open infringement of the relevant rules and indications in the EUIPO Guidelines – have not provided the content of the national provisions invoked, let alone the official publications of the relevant provisions or case-law, nor identified and substantiated the conditions for acquiring and extending the applicable right invoked. The screenshots of three posts published in a social media and a private agreement between them have not even been the subject of a superficial analysis and are, in any event, entirely insufficient to justify any claim made by the invalidity applicants, since these are documents of 2014 – 2015 and therefore there is a temporal vacuum of more than ten years than the filing date of the contested trade mark and the application for a declaration of invalidity. In any case, under the legislation in force in Italy, a de facto trade mark must, in order to be able to benefit from legal protection (and for the purpose of declaring a registered trade mark invalid), be widespread intensively and consistently in such an extensive geographical dimension in the Italian territory as to make the sign known to a large number of consumers (the proprietors make express reference to recent case-law of Italian courts). In the *present case, the opposing party has not adduced any evidence to prove the general reputation of the claimed de* facto mark.

— Further ambiguity regarding the **classes of goods**: in the application initiating the present proceedings, it was first of all stated that the application is based on some of the goods and services of EUTM No 018930651 by the other party (Classes 29, 31 and 35), unless it then immediately indicates after the same application is based on all the goods and services claimed by the same registration (Classes 25, 29, 30, 31 and 35).

— In relation to the action insofar as it is based **on Article 60 (1) (a) EUTMR in conjunction with Article 8 (1) (a) and 8 (1) (b) EUTMR:** the trade marks under examination are clearly dissimilar to each other, and this excludes any likelihood of confusion, even if any similarity exists between the respectively claimed goods or services. Not only are the trade marks as a whole totally different, but there is also no single figurative component (either as regards the graphic elements or as regards the colour elements) that are the same or similar in the signs under comparison. The word components also differ, with the exception of the only common term 'GAGANG', which, however, is placed in a completely different position and size, given that the earlier EUTM is reproduced so small in size that it is illegible. The signs are also aurally and conceptually dissimilar. The level of attention of the relevant public must be considered to be average to high, in view of the fact that these are averagely expensive goods in respect of which consumers' sensitivity has grown considerably over recent years, including in relation to environmental, ethical and sustainability issues. The earlier EUTM has low/no distinctiveness with regard to the figurative element (representation of a fish and a fishing network) and the word elements 'pescherie & QUALITY FOOD', which must be considered descriptive/laudatory of the goods and services claimed.

Lastly, the holders refer to **interlocutory proceedings brought by Boutique dei Frutti** di Mare S.r.l., of which Mr Silvestro Carofiglio is legally representing and president of the Board of Directors, in order to urgently prevent the improper and unauthorised use of the distinctive sign 'DA GAGANG' by the Italian companies Carofiglio S.r.l. and Vivimax S.r.l. and Vivimax S.r.l. di Carofiglio M. & Figli. Indeed, the company Boutique dei Frutti di Mare S.r.l. is the proprietor of Italian national word mark No 302015902347784 'DA GAGANG' dating back to

May 2015 for goods and services in Classes 29, 31, 33 and 43 and other distinctive signs containing 'DA GAGANG'. By order of March 2025, the General Court prohibited the applicants 'from *using the trade mark DA GAGANG'* and ordered them to *'remove it from the signs of all sales outlets, websites and all advertisements'.*

The proprietors submit the following documentation:

— Accession to the lodging of observations by Boutique dei Frutti di Mare S.r.l.

— Registration certificate for the renewal of Italian trade mark No 302015902347784 'DA GAGANG' in the name of Boutique dei Frutti di Mare S.r.l.

— Italian trade mark licence agreement No 302015902347784 'DA GAGANG' from Boutique dei Frutti di Mare S.r.l. to the proprietors

— Precautionary order issued by the Court of Bari on 01/03/2025 (RG 2025/429)

In response, the **invalidity applicants** note, essentially, the following:

Vivimax and PIC are the two hubs of the same business reality (attached to Signor Michele Carofiglio and the children, Viviana and Massimiliano) operating one, Vivimax, in the relevant market, the pugliese and Italian territory and the other, PIC, at international level, being focused on wholesale and import/export trade in fish products (*see* goods in question 2, 3 and 4). Conversely, the activity falling within the scope of this counterpart is limited at local level, in the province of Barese. The Tribunale di Bari, Specialised Chamber in Materia di Impresa, R.G. 3076/2025 (by **order of** 07/07/2025) established the prior use of the GAGANG trade mark by Vivimax and therefore recognised Vivimax's right to full use.

The use of the word 'GAGANG', the word element of the earlier EUTM cited, certainly leads **to a likelihood of confusion and/or association** with the earlier trade mark, irrespective of the respective graphic representation and/or coexistence of other terms and logos.

The **misleading nature** of the use of the pare'GAGANG' is obvious.

Moreover, the proprietors **do not** market any products in the European Economic Area, nor have they never expressed an intention of them to that effect. Indeed, they have not in any way documented the **actual use of the contested trade mark** in relation to the classes for which it was registered; it is thus clear that it does not make use of it or have any real legitimate interest in that regard. This highlights the absolute **bad faith** for which registration of the trade mark 018985983 'Boutique of seafood – GAGANG' was applied for, without the further and absorbing reason for its invalidity *under* Article 59 (1) (b) EUTMR. It is also indisputable that the proprietors were largely aware of the existence of the earlier right represented by the mark registered in 2013 by PIC and already used by the licensor Vivimax at national level since at least 2013.

Applicants submit the following documentation:

1. Order given on 7/07/2025 by the Court of Bari, Specialised Chamber in Materia di Impresa, R.G. 3076/2025;
2. Photographic documentation relating to packaging, labels from external goods;
3. Copies of foreign sales invoices June 2025;
4. Copy of foreign sales invoices sold over 1 half of 2025;
5. European trade mark application No 018930651;

6. Receipt for an application for European figurative trade mark with word elements No 018930651

The **holders** in the further statement of reply:

I)It reiterated the previous arguments **concerning the lack of confusion between the signs.**

(II) They contend that the new arguments raised by the applicants for:

a. **non-use of the contested trade mark**: the proprietor of a registered trade mark is not under any obligation to prove the use of its registered trade mark before five years have elapsed since its registration and, until then, the certificate of registration confers full protection on the trade mark with respect to the goods/services claimed. Since the contested mark was registered on 30/05/2024, the proprietors have no obligation to demonstrate actual use of it, giving it registration full and unconditional protection in respect of all the goods and services claimed in Classes 29, 31, 35, 40 and 43.

b. **deceptiveness of use**: the deceptive nature of a trade mark is not one of the grounds on which a relative application for a declaration of invalidity under Article 60 EUTMR can be validly based.

c. **filing in bad faith**: the alleged bad faith of the registrant pursuant to Article 59 EUTMR is not one of the grounds on which an invalidity action under Article 60 EUTMR may be based, given by the counterparties themselves underlying these invalidity proceedings.

(III) They note that the Court of Bari confirmed the injunction against the use of the trade mark 'GAGANG' against Carofiglio S.r.l.' Inetic Products (Carofiglio Srl ittic *Products [...]) in order to identify in the territory the trade acceptance of the distinctive sign 'da Gagang' to identify that company*'s peaks and merely local significance ('in Barese *territory')* of the use of the same sign by Vivimax S.r.l. di Carofiglio M. & Figli.

PRELIMINARY REMARKS

Addition of earlier rights and extension of grounds

On 05/12/2024, the applicants filed an application for a declaration of invalidity against the contested trade mark and expressly indicated, as grounds for invalidity, Article 60(1)(a) EUTMR in conjunction with Article 8(1)(a) EUTMR and Article 8(1)(b) EUTMR, both based on the (only) earlier right consisting of EUTM No 18 930 651 cited twice (ground for invalidity 1 and ground for invalidity 2). In relation to this earlier right, *in* both cases the '*owner/owner' box and the goods/*services used as the basis of the action were ticked as *Classes 29, 31 and 35 (with some of the goods and services) due to*

the ground for invalidity 1 and which included Classes 25, 29, 30, 31 and 35 (*based on all the goods and services*) on the *ground of invalidity 2.*

The arguments filed at the same time as the application for a declaration of invalidity make clear reference to EUTM No 18 930 651, as the only earlier right invoked, and to the identity/likelihood of confusion of the contested trade mark with respect to that earlier right, even where the applicants refer to Article 8(4) EUTMR ('... in breach of Article 60 EUTMR in conjunction with Article 8.4 EUTMR, due to the identity or similarity of the trade mark 'Boutique DEI GAGANG' with the ***earlier trade mark 'CAROFIGLIO DI MICHELE GAGANG pescherie & QUALITY FOOD' and the identity of*** the goods and services for which the two trade marks are applied for, there is a likelihood of confusion on the part of the public in which the earlier trade mark is protected). In addition, the trade mark 'GAGANG' is referred to without any specification of its actual legal classification (registered or de facto mark) or of its legal *status* as an earlier right expressly invoked on the basis of the proceedings and, similarly, the same provisions of the Italian Industrial Property Code appear to be cited for the sole purpose of demonstrating the lack of novelty of the contested trade mark and not the invocation of an additional earlier right, which is otherwise qualified in relation to the earlier European Union trade mark already invoked (see the passage: *'It is therefore clarified the above (also at EU level), and in view of the unquestionable posterity of the registration by Boutique dei Frutti di Mare S.r.l. (resulting from* ***the registration of Carofiglio's fish products, which had been filed on 29 September 2023 and duly registered on 12 January 2024) by Boutique dei Frutti di Mare S.r.l.*** *(emphasis added)*.

As already indicated above, it is only in response to the Office's remark regarding the actual ownership of the earlier right indicated in the application for a declaration of invalidity that the applicants claimed that VIVIMAX S.r.l., Carofiglio M. & Figli, had the de facto trade mark owned at national level 'GAGANG'.

However, according to Article 12(2)(a) EUTMDR, the application for a declaration of invalidity must contain an identification of the earlier right on which the application is based, in accordance with Article 2(2)(b) EUTMDR, which applies mutatis mutandis.

According to Article 15(2) EUTMDR, if the application does not comply with Article 12(2)(a) EUTMDR, the Office will reject the application as inadmissible. It follows that the application is rejected as inadmissible in so far as the applicant invokes, as a basis of the application, any other earlier right filed after the filing of that application.

Since the applicant cannot introduce an additional earlier right on the basis of the application for a declaration of invalidity after the filing of this application, in **the present case the application for a declaration of invalidity is clearly inadmissible in so far as it is based on the Italian de facto trade mark 'GAGANG'**. In addition, the Cancellation Division observes, for the sole purpose of exhaustiveness, that the action based on that earlier right is, in any event, unfounded because the applicants failed to comply with the obligation laid down in Article 7(2)(d) EUTMDR. In view of the documentation submitted by the invalidity applicants, and *in light of the observations made by the proprietors in part,* it appears that the applicants have not provided any manifestly insufficient evidence of use of this right in the course of trade of more than mere local significance (requirements to be interpreted under European Union law) on the date of filing of the contested EUTM, and also, at the time of filing of the application for a declaration of invalidity, as well as evidence of its acquisition, continued existence and scope of protection under Italian law and a clear identification of the national law relied on, by producing publications of the relevant provisions or case-law (e.g. extracts from an official journal, legal contributions or court judgments).

Moreover, during the course of the proceedings, and specifically in the observations of 18/07/2025, namely around seven months after the filing of the application for a declaration of

invalidity, the applicants referred to additional grounds which should lead to a declaration of invalidity of the contested mark, in particular the misleading nature of the **use of the trade mark** and **bad faith in the filing of the contested trade mark.**

As is clear from Article 12(1)(b) EUTMDR, an application for invalidity must contain the grounds on which it is based, namely the identification of the specific provisions of the EUTMR justifying the request. As also indicated in the Guidelines on Trade Marks of the Office (*Part D, Section 1 Cancellation Proceedings, 2.5.1.8 Identification of grounds),* the applicant may limit the grounds on which the application was initially based, while it is not possible to extend the scope of the application by giving further reasons during the proceedings.

According to Article 15(2) EUTMDR, if the application does not comply with Article 12(1)(b) EUTMDR, the Office will reject the application as inadmissible.

It follows that the application must also be rejected as **inadmissible** in so far as the applicants put forward the abovementioned other grounds for invalidity.

Finally, as regards the assertions made by the applicants in their observations dated 18/07/2025 concerning **the lack of proof of use of the contested trade mark**, it is sufficient to recall that only one trade mark that has been registered for more than five years may be requested for proof of genuine use in cancellation proceedings (see Article 64(2) EUTMR). In the case at hand, the contested trade mark was registered on 30/05/2024, therefore on the date of filing of the application for a declaration of invalidity (05/12/2024), the five-year period had not yet elapsed.

Likelihood of confusion – Article 60(1)(a) EUTMR in conjunction with Article 8(1)(b) EUTMR

Pursuant to Article 8(1)(b) EUTMR, a likelihood of confusion exists if there is a likelihood that the public might believe that the goods or services in question, if they bear the trade marks in question, originate from the same undertaking or, as the case may be, from economically-linked undertakings. The existence of a likelihood of confusion depends on the assessment of an overall assessment of a number of interdependent factors. These factors include the similarity between the signs, the similarity between the goods and services, the distinctive character of the earlier trade mark, the distinctive character and dominant elements of the conflicting signs, and the relevant public.

As mentioned above, the application is based on European Union trade mark registration (EU) No 18 930 651.

(a) Goods and services

The relevant factors for the comparison of goods or services include, *inter alia*, their nature, their intended purpose, their method of use and whether they are in competition with each other or are complementary (‘Canon criteria’). Account must also be taken, in addition to the Canon criteria, of other factors, including distribution channels, the relevant public and the usual origin of the goods or services (02/06/2021, 177/20, Hispano Suiza/Hispano Suiza, EU:T:2021:312, § 21-22).

As correctly pointed out by the proprietors, the application for a declaration of invalidity has a certain lack of precision with regard to the list of goods and services on which the action is based: in relation to the *ground for invalidity 1*, *Classes 29, 31 and 35* (‘*in part of the goods*

and services') are indicated, in relation to the *ground for invalidity 2*, in Classes 25, 29, 30, 31 and 35 ('*based on all the goods and services'*).

The Cancellation Division will proceed by assuming that the action is based on all the goods and services protected by the earlier registration as a scenario most favourable to the invalidity applicants. Those goods and services on which the action is based are, therefore, the following:

Class 25: *Clothing; tee-shirt; mesh; mesh Polo; tops [clothing]; shorts; sweaters; cardigan; pullover; sweatshirts; shirts; sports shirts; trousers; skirts; jeans; overcoats; dresses; jackets; jackets; Coats; waterproof clothing; folders; belts; shaws; scarves; neckties; swimming costumes; underwear; headgear; hats; footwear.*

Class 29: *Fish; preserved fish; smoked fish; processed fish; marinated fish; cooked fish; salmon [not live]; smoked salmon; tuna [preserved]; tuna [not live fish]; sword fish, not live; ORATE not live; polyms [not live]; seppies, not live; calamaries [ready]; aragoste; mergers [not live]; shrimp, not live; shrimp, not live; sea shams, not live; shafts, not live; fish fillets; fish, seafood and molluscs, not live; processed seafood; frozen seafood; mugs, not live; sea urchins [not live]; vongoles not live; non-living crustaceans; oysters, not live; fish dishes; food products made from fish; processed fish products for human consumption.*

Class 30*: Sandwiches; sandwiches containing fish; food pastes; fresh pasta; filled pasta; pasta dishes; preparations for bakery products; baked products; sauces; fish sauces; shrimp sauce; preparations for sowing; seasonings; seasonings of seafood; flavourings made from fish.*

Class 31: *Agricultural and aquaculture crops, horticulture and forestry; live fish; live crustaceans; live molluscs; live seafood; live salmon; tuna, live; live aragoste; live astics; anchovy, live; herrings, live; live coins; live shafts; live oysters; sardines, live; fish eggs; farmed products; live animals, organisms for breeding; live fish for food purposes; live fish for human consumption.*

Class 35: *Advertising, marketing and promotional services; Business advertising services relating to franchising; Business management; Administration of the business affairs of affiliates; transcriptions of communications [office functions]; sales promotion for third parties; Provision of an online marketplace for buyers and sellers of goods and services; Promoting the goods and services of others via a global computer network; Retail services relating to foodstuffs; Mail order retail of foodstuffs; Retail services via global computer networks related to food products; Wholesale services in relation to seafood; Retail services in relation to seafood.*

The contested goods and services are as follows:

Class 29: *Processed fish products for human consumption; Seafood under glass; Fish; Smoked fish; Pickled fish; Marinated fish; Preserved fish; Frozen fish; Dry fish; Processed fish; Cooked fish; Fish, seafood and molluscs, not live; Fish dishes; Fish fillets; Fish preserves; Non-living crustaceans; Tinned fish; Fish balls; Savoury fish.*

Class 31: *Live fish; Live crustaceans; Live molluscs.*

Class 35: *Retail services relating to foodstuffs.*

Class 40: Fish *processing; Smoking of fish.*

Class 43: *Catering services; Catering; Catering services; Mobile catering services; External catering services; Business catering services; Provision of food and drink; Catering for food and drink for receptions.*

It is easy to note that the contested **goods and services do not have any appearance in common with the earlier mark's goods in Class 25.** The goods and services are completely different in nature and method of use and are intended to meet entirely heterogeneous needs and thus target a different public and certainly not in competition with each other or complementary. Furthermore, they are normally produced/supplied by different companies and distributed through different channels.

Similar considerations apply in relation to the comparison of the contested goods and services with respect to the **following services in Class 35** covered by the earlier trade mark: *Advertising, marketing and promotional services; Business advertising services relating to franchising; Business management; Administration of the business affairs of affiliates; transcriptions of communications [office functions]; sales promotion for third parties; Provision of an online marketplace for buyers and sellers of goods and services; Promoting the goods and services of others via a global computer network.* Nature, method of use, needs met and consumers to whom they are addressed are completely different. In addition, these are goods and services normally provided by different economic operators using completely different infrastructure and Expertises. Even the channels through which the earlier services *in question* and the contested goods and services are provided have no point in common.

Therefore, the contested **goods and services** are **dissimilar** to the **goods in Class 25** and the **services in Class 35**, such *as advertising, marketing and promotional services; Business advertising services relating to franchising; Business management; Administration of the business affairs of affiliates; transcriptions of communications [office functions]; sales promotion for third parties; Provision of an online marketplace for buyers and sellers of goods and services; Promoting the goods and services of others via a global computer network, as referred* to in the earlier mark. This primarily excludes any likelihood of confusion within the meaning of Article 8(1)(b) EUTMR, given that similarity between the goods is a necessary condition for a finding of likelihood of confusion.

As regards the remaining goods and services of the earlier trade mark, for reasons of procedural economy, the Cancellation Division shall not carry out an exhaustive comparison of those goods and services with respect to the contested goods and services. The examination of the application will therefore be carried out **by assuming that all of the contested goods and services are identical to those covered by the earlier trade mark**, which for the applicants is the best scenario in which the cancellation application can be examined.

b) Relevant public – degree of attention

The average consumer of the category of products or services concerned is deemed to be 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).

In the present case, the goods and services assumed to be identical target the general public in part and partly target a commercial clientele made up of individuals with specific professional knowledge and skills. The degree of attention is therefore deemed to vary from average (in relation to the goods) to medium to high (in relation to the services, which have a specialised nature).

c) The signs

Earlier mark	Contested trade mark
carofiglio DI MICHELE GAGANG PESCHERIE & QUALITY FOOD	Boutique DEI FRUTTI DI MARE GAGANG

The relevant territory is the European Union, because the earlier trade mark is protected by a European Union trade mark registration.

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

As regards the distinctive and dominant elements of the two signs, the Cancellation Division notes the following.

The **earlier mark** is a figurative mark composed of verbal elements and figurative elements, such as: the word 'CAROFIGLIO', placed in central position and written in slightly stylised lower-case letters, particularly in relation to the letter 'G'; the letter G of the word 'CAROFIGLIO' shows an extension to the left of the descending stroke, a line which 'highlights' the letter combination 'CAROFIG-' and contains, on the right-hand side, the text 'DI MICHELE GAGANG' in white upper case letters of fine thickness and size much smaller than 'CAROFIGLIO' for being barely perceptible to a summary observation; the thick line culminating, on the left, in a celeste and white figurative element represented by a spherical element reminiscent of the earth's globe with above a fish; at the bottom of the word 'CAROFIGLIO' and the line line are the words 'pescherie & QUALITY FOOD' written in capital letters, which are almost standard, of a thickness and a red colour of a size equal to approximately half of those of the word 'CAROFIGLIO'.

The word component 'CAROFIGLIO' and the figurative component as a whole/fish are the elements that have a greater visual impact owing to their size and position so that they can qualify as dominant elements of the sign.

As regards the distinctive elements, it is observed that: the word 'CAROFIGLIO' will be perceived as a fanciful element that has no meaning or, by some of the relevant consumers

(such as, for example, Italian-speaking consumers), as a patronymic or a word combining the adjective ‘caro’ (an *online version of the Italian language Treccani online*, https://www.treccani.it/vocabolario/ricerca/caro/, accessed on 23/01/2026: ***caro*** *[1] AGG. [lat. carus “Amato, diletto” and thus also “researched, costly”]. — **1 (a)**, of which he wrote; **b.** amability, which fears well for its obtainous quality; **2.** Much merit or importance, which is regarded as valuable in itself, therefore, to preserve*) and the noun ‘son’ (*Wocabolario della italiana Treccani online version*, https://www.treccani.it/vocabolario/figlio/, accessed on 23/01/2026: ***Iide*** *s. m. [lat. fīlius, of the family of fecundus, feminine na, etc.]. — **1. A** generated in relation to parents (sometimes also compared with proparents): my, your f. (normally without article*); the word ‘pescherie’ will be associated by the public with knowledge of Italian language with fish outlets (by the term ‘pescheria’, the plural version of which is the plural form: *see Vocabolario della Lingua italiana Treccani online version*, https://www.treccani.it/vocabolario/pescheria/, accessed on 23/01/2026: ***pests*** *(ant. and region. **pesa**) f. (R. piscaria (der. of piscarius “pescivendolo”, der. of “fish”), adapted to the series of names in -ery indicating negotiators]. — **1.** Market, or market sector, where fish is sold; also a shop for the sale of fish (sent as a sign*); the symbol “&” will be easily understood as the conjunction (“*and*”) between the components “pescherie” and “QUALITY FOOD”; the expression ‘QUALITY FOOD’ is composed of terms taken from the English language and commonly used in trade that they may be regarded as easily understood throughout the European Union as referring to quality foodstuffs (16/02/2017, T-71/15, Land Glider/LAND ROVER (fig.) et al., EU:T:2017:82, § 43, and the case-law cited therein; 25/06/2025, T-431/24, Regal/PREMIUM QUALITY REGAL BAKERY (fig.), ECLI:EU:T:2025:636, § 78); the figurative component of globo with fish, both Azzurri, readily evokes the concepts of sea and fish. Finally, as described above, the earlier trade mark contains the written expression ‘DI MICHELE GAGANG’, which, if perceived visually, is likely to be associated overall, at least by the Italian public, with the name of a natural person or understood as a fanciful expression.

However, given that the relevant goods and services of the earlier mark all refer expressly to fish or food products in the broad sense (see goods in Classes 29, 30 and 31 and the relevant part of the services in Class 35), it is easy to conclude that the verbal component ‘pescherie & QUALITY FOOD’ will be easily perceived – by the public which understands its meaning – as descriptive or at least strongly allusive to the designated goods/services, including through the combination with the figurative element of the globo with fish. For those who do not understand the meaning of the word “pescherie”, only the expression “QUALITY FOOD” and the figurative element will be perceived as allusive. As regards the words ‘DI MICHELE GAGANG’, given the extremely small size and secondary and marginal position within the sign as a whole, it seems doubtful that that element can actually help to identify the goods and services for which the trade mark is registered as coming from a particular undertaking, and thus to distinguish those goods/services from those of other undertakings (03/09/2010, T-472/08, 61 a nossa allegria, EU:T:2010:347, § 47 and 65). If, on the other hand, this expression were perceived as such, it will be distinctive.

The **contested mark** is a figurative mark made up of word and figurative elements in white, contained within a rectangle with a blue background. At the top level are: the figurative component made up of two curved elements reminiscent of two angles and the word ‘boutique’ (in slightly stylised letters of high thickness, with the capital letter B and the other letters in lower case). Underneath the letter combination ‘BOUTIQ-’ is the text ‘DEI A OF MARE’ in letters (all in upper-case block letters) of much smaller size and thickness much thinner. Even lower, the word ‘GAGANG’ is written in standard upper-case letters and bold that is clearly the same size as the word ‘DEI A DI MARE’, side both sides of two thin white segments.

The component ‘boutique’ and the figurative element, owing to its position, size and graphic prominence, constitute the elements with the most visual and therefore dominant impact of the sign.

As regards the distinctive elements, it appears that: in the absence of any other element, the term ‘GAGANG’ will be perceived as a fanciful element, having no meaning precisely in the eyes of the relevant consumer; the French word ‘boutique’ could be understood as a fanciful element by a section of the public who does not understand its meaning, but certainly some of the consumers (for example at least French and Italian) will attribute to it its own meaning of ‘shop’ and in particular shop selling goods of a certain degree of merit/elegance (see *Dictionnaire de français Larousse*, https://www.larousse.fr/dictionnaires/francais/boutique/10757, ***boutique*** *nom Féminin 1. Local où if tient a commerce de détail, où exerts an art. Synonyme: magasin*; *Italian language vocabulary Treccani*, *online version,* https://www.treccani.it/vocabolario/pescheria/, accessed on 23/01/2026: ***P.G. butik Folliard-Monguiral*** *s. f., fr. — Word corresponding to bottega ital.: in Italy it has endeavoured to designate elegant negotiators mainly for women’s and dressmaking clothing (but, with extensive use, also b. perfumes, food, meat b., etc.)*; the expression ‘A OF A DI MARE’ will be understood by the Italian-speaking public as a reference to the fact that the ‘boutique’ in question is a shop that sells seafood items, perceived possibly by the figurative element, whereas it will presumably not be understood by the remaining part of the relevant public. Given that the contested goods and services all make express reference to fish (see goods in Classes 29 and 31 and services in Class 40) and, to a lesser extent, to foodstuffs (see services in Classes 35 and 43), it is easy to conclude that the word ‘GAGANG’ is the distinctive element for all relevant consumers, while the additional word elements (‘boutique’ and the entire expression ‘boutique DEI A DI MARE’) will be distinctive for consumers who are unable to grasp their meaning and allusive/descriptive for the remaining part, just as they are not particularly distinctive will be perceived by all consumers as the figurative element and the blue box.

Visually, the signs have a very different structure and are characterised by completely different word, figurative and chromatic elements. The only element in common is the term ‘GAGANG’. However, this term is almost imperceptible within the earlier mark: this is due to the extremely small size, graphic stylisation which is not visually striking, and the prominent position within the line that highlights the word ‘CAROFIGLIO’, the secondary position also in relation to the two words ‘DI MICHELE’, which make its visual impact, overall, significantly limited. In this respect, it should also be recalled that consumers generally tend to focus their attention on the first element of a sign when faced with a trade mark (25/03/2009, T- 109/07, SPA THERAPY/SPA, EU:T:2009:81, § 30; 15/12/2009, T-412/08, TRUBION/BION, TriBion Harmonis (fig.), EU:T:2009:507, § 40; 06/10/2011, 176/10, SEVEN FOR ALL MANKIND/SEVEN, EU:T:2011:577, § 39). That assertion is justified by the fact that the public reads from left to right, which means that the part of the sign situated on the left-hand side (the initial part) will be the first to attract the attention of the reader. Even in the context of the contested trade mark, the word ‘GAGANG’ is smaller and secondary than the other components, which play a much more significant visual role.
In the light of those considerations, it is concluded that the trade marks can be considered to be visually similar only to an extremely small extent (and only in the event that the consumer assumes a close presence of the word ‘GAGANG’ within the earlier trade mark).

Similar considerations also apply to the **phonetic comparison**: irrespective of the different rules of pronunciation in different parts of the relevant territory, the pronunciation of the signs could have coinciding elements only in the sound of the letters ‘GAGANG’, whereas it differs completely in relation to the sound made by all the other verbal components of the two signs (namely ‘CAROFIGLIO’, ‘DI MICHELE’, ‘pescherie & QUALITY FOOD’, in the case of the earlier trade mark, and ‘boutique DEI A DI MARE’, in the case of the contested trade mark). Figurative components will not be presumably pronounced, as indicated by settled case-law (see, inter alia, 30/04/2025, 95/24, THE Vert DE CHINE 4011 ALJAMAL ALJAMAL 4011 B 552 (fig.)/4011 B 552 (fig.) et al., EU:T:2025:418, § 74).

As regards the element ‘GAGANG’ in the earlier mark, however, as has already been pointed out, given its extremely small size and secondary position within the sign, it is highly unlikely that it will be pronounced. As confirmed by case-law, consumers generally cite the dominant elements, while the secondary elements are not pronounced (03/07/2013, 206/12, LIBERTE american blend (fig.)/La LIBERTAD et al., EU:T:2013:342, § 43-44; 25/06/2025, T-431/24, Regal/PREMIUM QUALITY REGAL BAKERY (fig.), ECLI:EU:T:2025:636, § 93). Moreover, consumers tend by their very nature to abbreviate long trade marks in order to reduce them to the elements that are easier to cite and remember (28/09/2016, 539/15, SILICIUM ORGANIQUE G5 LLR-G5 (fig.)/Silicium Organique G5 – Glycan 5 – Si-Glycan 5 – SI- G5 et al., EU:T:2016:571, § 56). Therefore, given the multiplicity of word elements present in the earlier trade mark, it is highly likely that the relevant public will tend to limit the oral transmission of the sign to the most striking word, namely the word ‘CAROFIGLIO’. It cannot be excluded that such an approach may also be taken in relation to the contested trade mark and only ‘boutique DEI fruitori DI MARE’ (or ‘boutique’) is mentioned.

In view of the above, it is concluded that the signs are not aurally similar.

Conceptually, reference is made to the previous assertions concerning the semantic content conveyed by the signs. The only element that could be considered in common, namely the word ‘GAGANG’, does not evoke any specific concept, whether on its own (as in the contested trade mark) or in association with the words ‘DI MICHELE’ (as in the earlier trade mark, in which it could, at most, be understood as forming part of a surname). The remaining components of the signs evoke specific and distinct concepts in each sign: sea/fish/sale of high quality fish and food products with regard to the earlier trade mark and fishing/shop/seafood in relation to the contested mark.

d) Distinctive character of the earlier mark

The distinctive character of the earlier trade mark is one of the factors to be taken into account in the overall assessment of the likelihood of confusion.

Applicants have not explicitly claimed that the mark has a particularly distinctive character by virtue of intensive use or reputation. Consequently, the assessment of the distinctive character of the earlier trade mark had to be based on its *inherent* distinctive character. In the present case, the earlier trade mark, when taken as a whole, will not convey any meaning to the public of the relevant territory in relation to the goods and services in question, despite the presence of several word and graphic elements that evoke the relevant goods/services. Its distinctiveness should therefore be considered as normal overall, despite the presence of certain weak elements.

(e) Overall assessment, other arguments and conclusions

The contested goods and services are identical to (*rectius*, some of the) goods and services of the earlier trade mark and target both the general public and the specialist public, whose level of attention varies from average to high.

The earlier mark has, overall, an average degree of distinctiveness.

The signs are visually similar only to an extremely limited extent (in the sole event that the consumer assumes cogent on the presence of the word ‘GAGANG’ within the earlier trade mark), whereas there is no aural or conceptual similarity.

As already observed, the similarities between the signs are limited to the presence, in both, of the letter combination ‘GAGANG’, while the structure of each of them is clearly very different, characterised by completely different word, figurative and chromatic elements, and their respective dominant and distinctive elements have nothing in common.

As regards the common word ‘GAGANG’, if it is smaller in size and secondary position in relation to the other components in the contested mark, it is even difficult to perceive it in the earlier mark. The reasons for that finding have already been made: these dimensions, a decidedly ordinary graphic component and a secondary location both within the trade mark as a whole and within the context of the string ‘DI MICHELE (GAGANG)’. In this respect, according to settled case-law, the beginning of a sign has a significant influence on the overall impression produced by the mark and will be that which will attract the consumer’s attention more (17/03/2004, T-183/02 & T-184/02, Mundicor, EU:T:2004:79, § 81; 16/03/2005, T-112/03, FLEXI Air, EU:T:2005:102, § 64-65). And, as has already been observed above, consumers often tend to abbreviate trade marks or refer only to their dominant elements, in particular in a commercial context (03/07/2013, T-206/12, LIBERTE american blend (fig.)/La LIBERTAD et al., EU:T:2013:342, § 43-44). It follows that all those just set out are aspects which make the presence of the element ‘GAGANG’ in the earlier mark almost negligible from a comparative perspective, since it is an element which is not capable of specifically affecting the determination of the visual, rhythmic and semantic aspects of the sign and, consequently, of creating any link with the contested mark in the actual perception of the relevant consumer.

The Cancellation Division therefore considers that the aforesaid element of similarity is not sufficient to give rise to a likelihood of confusion on the part of the public of the European Union even in respect of identical goods and services, in particular taking into account the level of attention of the relevant consumers, which will vary from average to high, the presence of completely different dominant and distinctive elements in the two signs (see, by way of analogy, 09/07/2025, 291/24, FIZI AQUA (fig.)/FRISE et al., EU:T:2025:694, § 67-68) and the established principles according to which the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (12/06/2007, 334/05 P, Limoncello della Costiera Amalfitana shaker (fig.)/LIMONCHELO, EU:C:2007:333, § 35) and only rarely has the chance to make a direct comparison between the different marks but must place his trust in the imperfect picture of them that he has kept in his mind (22/06/1999, C-342/97, Lloyd Schuhfabrik Meyer, ECLI:EU:C:1999:323, § 26). In fact, it does not appear likely that the consumer will either directly confuse the marks or make a link between the signs at issue and be led to believe that the designated goods and services belong to the same undertaking or to economically linked undertakings (29/09/1998, 39/97, Canon, EU:C:1998:442, § 29).

Conclusion

Considering the above, even if the goods and services are identical, the Cancellation Division considers that there is no likelihood of confusion on the part of the relevant public. Consequently, the application must be rejected.

The application for cancellation must also be rejected as it is based on the grounds of Article 8(1)(a) EUTMR in conjunction with Article 60(1)(a) EUTMR, since it is clear that the signs are not identical.

EXPENDITURE

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

Since the applicants have been unsuccessful, they must bear the costs incurred by the EUTM proprietors during these proceedings.

According to Article 109 (1) and (7) EUTMR and Article 18(1)(c) (ii) EUTMIR, the costs to be reimbursed to proprietors of the EUTM are representation costs, which must be determined on the basis of the maximum amounts set therein.

The Cancellation Division

Angela DI BLASIO Maria Luce Capostagno Aldo BLASI

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