

COURT OF FIRST INSTANCE

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE

of 15 November 2001

in Case T-151/01 R: Der Grüne Punkt — Duales System Deutschland AG v Commission of the European Communities**(Interlocutory proceedings — Abuse of a dominant position — Article 82 EC — Trade-mark law — Prima facie case — Urgency — Weighing of interests)**

(2002/C 68/20)

(Language of the case: German)

In Case T-151/01 R: Der Grüne Punkt — Duales System Deutschland AG, established in Cologne (Germany), represented by W. Deselaers, B. Meyring, E. Wagner and C. Weidemann, lawyers, with an address for service in Luxembourg, v Commission of the European Communities (Agent: S. Rating), supported by Vfw AG, established in Cologne, represented by H.F. Wissel, lawyer, with an address for service in Luxembourg, Landbell AG, established in Mainz (Germany), represented by A. Rinne, lawyer, with an address for service in Luxembourg, and Bellandvision GmbH, established at Pegnitz (Germany), represented by A. Rinne, lawyer, with an address for service in Luxembourg — application for suspension of operation of Article 3 of Commission Decision 2001/463/EC of 20 April 2001 relating to a proceeding pursuant to Article 82 of the EC Treaty (Case COMP D3/34493 DSD) (OJ 2001 L 166, p. 1), and of Articles 4, 5, 6 and 7 of that decision in so far as they refer to the said Article 3 — the President of the Court of First Instance made an order on 15 November 2001, the operative part of which is as follows:

1. *The application for interim measures is dismissed.*
2. *The costs are reserved.*

Action brought on 10 December 2001 by Henkel KGaA against the Office for Harmonisation in the Internal Market**(Case T-308/01)**

(2002/C 68/21)

(Language of the case: English)

European Communities on 10 December 2001 by Henkel KGaA, represented by Mr Holger Wissel and Dr Christian Osterrieth (Clifford Chance Pünder) of Düsseldorf (Germany).

The applicant claims that the Court should:

- annul the decision of the Third Board of Appeal of the OHIM of 12 September 2001 in appeal proceedings no. R 738/2000-3
- order the defendant to pay the costs of the action

Pleas in law and main arguments

Applicant for the Community trade mark:	LHS Ltd.
The Community trade mark concerned:	The word mark 'Kleencare' for goods in classes 1, 3, 5 and 42.
Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	Henkel KGaA
Trade mark or sign asserted by way of opposition in the opposition proceedings:	The German word mark 'Carclin' for goods in classes 1 and 2.
Decision of the Opposition Division:	Rejection of the opposition by Henkel KGaA
Decision of the Board of Appeal:	Dismissal of the appeal lodged by Henkel KGaA
Grounds of claim:	Violation of Articles 57 and following of regulation 40/94 ⁽¹⁾ in that the Board of Appeal can review fully the decisions of the Opposition Division. Furthermore, violation of Article 76 (1) (f) of Regulation 40/94 by the refusal of a statement made by a person connected with the applicant.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 11, p. 1).