

Action brought on 19 May 2003 by Trudell Medical International against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-176/03)

(2003/C 184/93)

(Language of the case to be determined pursuant to Article 131(2) of the Rules of Procedure — language in which the application was submitted: English)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 19 May 2003 by Trudell Medical International, London, Ontario (Canada), represented by Helmut Eichmann, Gerhard Barth, Ulrich Blumenroder, Christa Niklas-Falter, Maximilian Kinkeldey, Karsten Brandt, Anja Franke, Ute Stephani, Bernd Allekotte, Elvira Pfrang, Karin Lochner, Babett Ertle, lawyers.

Fisons Limited was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade-marks and Designs) in the case R 643/2002-1 of March 17, 2003;
- order the costs of the proceedings to be borne by the defendant

Pleas in law and main arguments

Applicant for Community trade mark: Trudell Medical International

Community trade mark sought: Word mark 'AEROECLIPSE' for certain goods in Class 10 (application No 001098649)

Proprietor of mark or sign cited in the opposition proceedings: Fisons Limited

Mark or sign cited in opposition: National mark 'ECLIPSE' in respect of certain goods in Classes 5 and 10.

Decision of the Opposition Division: Opposition rejected.

Decision of the Board of Appeal: Appeal granted, decision of the Opposition Division annulled, registration refused.

Pleas in law:

- misapplication of Article 8 (1)(b), of Regulation 40/94 (¹). The applicant alleges that there was no risk of confusion between the two marks concerned.
- misapplication of Articles 74 (1) and 73 and of Regulation 40/94. The applicant alleges that the Board of Appeal examined alleged facts and arguments which were provided by neither party and further based its decision on reasons on which the parties concerned have had no opportunity to present their comments.

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

Action brought on 21 May 2003 by CeWe Color AG & Co. OHG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-178/03)

(2003/C 184/94)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 21 May 2003 by CeWe Color AG & Co. OHG, Oldenburg (Germany), represented by Chr. Spintig, lawyer.

The applicant claims that the Court should:

- annul the decision of the Third Board of Appeal of the defendant of 12 March 2003 in Case R 641/2002-3;
- order the defendant to pay the costs.