

ORDER OF THE COURT OF FIRST INSTANCE

of 29 September 2003

in Case T-354/02: Bristol-Myers Squibb International Corporation v Commission of the European Communities ⁽¹⁾

(Action for annulment — Withdrawal of the contested measure — No need to adjudicate)

(2003/C 304/55)

(Language of the case: English)

In Case T-354/02: Bristol-Myers Squibb International Corporation, established in Brussels (Belgium), represented by D. Anderson QC, K. Bacon, barrister, and I. Dodds-Smith, solicitor, against Commission of the European Communities (Agents: X. Lewis and H.C. Støvlbaek) — application for annulment of Commission Decision C(2002)3370 of 9 September 2002 concerning the placing on the market of the medicinal products for human use which contain the substance 'Captopril' — the Court of First Instance (Fourth Chamber), composed of V. Tiili, President, P. Mengozzi and M. Vilaras, Judges; H. Jung, Registrar, has made an order on 29 September 2003, the operative part of which is as follows:

1. *There is no need to adjudicate on the action;*
2. *The Commission is to bear its own costs and to pay those of the applicant.*

⁽¹⁾ OJ C 44 of 22.2.2003.

Action brought on 15 September 2003 by Volkswagen AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-317/03)

(2003/C 304/56)

(Language of the case to be determined pursuant to Article 131(2) of the Rules of Procedure — language in which the application was drafted: 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 15 September 2003 by Volkswagen AG, Wolfsburg (Germany), represented by S. Risthaus, lawyer. Nacional Motor S.A., Martorelles (Spain), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 17 June 2003 in Appeal R 610/2001-4;
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for Community trade mark: Volkswagen AG.

Community trade mark applied for: The word mark 'VARIANT' for goods and services in Classes 7, 12 and 37 (inter alia, motors and their parts, vehicles and repair).

Proprietor of mark or sign cited in the opposition proceedings: Nacional Motor S.A.

Mark or sign cited in opposition: The Spanish word marks 'DERBI-VARIANT', 'DERBI VARIANT', and 'VARIANTDERBI' for goods in Class 12 (inter alia vehicles).

Decision of the Opposition Division: Rejection of the opposition.

Decision of the Board of Appeal: Annulment of the decision of the Opposition Division and rejection of the application.

Pleas in law:

- Infringement of Article 74(1) of Regulation (EC) No 40/94;
- Misapplication of Article 8(1)(b) of Regulation (EC) No 40/94.