

*Decision of the Opposition Division:* Opposition upheld.

*Decision of the Board of Appeal:* Appeal allowed in part, to the extent that registration of the trade mark is allowed for 'bath-robés' (class 25).

*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark.

*Decision of the Opposition Division:* Rejection of the opposition

*Decision of the Board of Appeal:* Dismissal of the appeal

*Pleas in law:* Infringement of Article 43(2) and (3) of Regulation (EC) No 40/94 <sup>(1)</sup>, as the evidence submitted by the applicant was not regarded as sufficient proof of genuine use and infringement of Article 8(1)(b) of Regulation No 40/94 as there is a likelihood of confusion between the marks in opposition.

<sup>(1)</sup> Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

**Action brought on 21 March 2007 — Deichmann-Schuhe v OHIM — Design for Woman (DEITECH)**

(Case T-86/07)

(2007/C 117/42)

*Language in which the application was lodged:* German

**Parties**

*Applicant:* Heinrich Deichmann-Schuhe GmbH & Co. KG (Essen, Germany) (represented by: O. Rauscher, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

*Other party to the proceedings before the Board of Appeal of OHIM:* Design for Woman SA

**Form of order sought**

The applicant claims that the Court should:

- set aside the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 22 January 2007 (case number R 791/2006-2);
- reject Community trade mark application No 3 378 643 as regards all goods in Class 25 (Clothing, footwear, headgear);
- order the Office for Harmonisation in the Internal Market to pay the costs.

**Pleas in law and main arguments**

*Applicant for a Community trade mark:* Design for Woman SA

*Community trade mark concerned:* The figurative mark 'DEITECH' for goods in Classes 18 and 25 (Application No 3 378 643)

*Proprietor of the mark or sign cited in the opposition proceedings:* The applicant

*Mark or sign cited in opposition:* The German figurative mark 'DEI-tex' for goods in Class 25 and the international figurative mark 'DEI-tex' for goods in Class 25, the opposition having been brought against registration in Class 25

**Action brought on 22 March 2007 — Scil Proteins v OHIM — Indena (affilene)**

(Case T-87/07)

(2007/C 117/43)

*Language in which the application was lodged:* English

**Parties**

*Applicant:* Scil Proteins GmbH (Halle, Germany) (represented by: V. Dalichau, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

*Other party to the proceedings before the Board of Appeal:* Indena SpA (Milan, Italy)

**Form of order sought**

- The decision of the Second Board of Appeal of the defendant dated 23 January 2006, and the decision-corrigendum of the Second Board of Appeal of 31 January 2007, Case R 10/2006-2 be annulled as far as the opposition is dismissed with respect to the goods 'extracts of medical plants for use in the ... cosmetic and food industries, not for diagnostic purposes';
- the costs of the proceedings be borne by the defendant.

**Pleas in law and main arguments**

*Applicant for the Community trade mark:* Indena SpA

*Community trade mark concerned:* The figurative mark 'affilene' for goods in class 1 — application No 2 751 931

*Proprietor of the mark or sign cited in the opposition proceedings:* The applicant