

**Judgment of the Court of First Instance of 11 July 2007 —
Mühlens v OHIM/Minoronzoni (TOSCA BLU)**

(Case T-150/04) ⁽¹⁾

(Community trade mark — Opposition procedure — Application for figurative Community trade mark TOSCA BLU — Earlier national word mark TOSCA — Relative grounds for refusal — Well-known trade mark within the meaning of Article 6 bis of the Paris Convention — Article 8(1)(b) of Regulation (EC) No 40/94 — Article 8(5) of Regulation (EC) No 40/94)

(2007/C 199/57)

Language of the case: Italian

Parties

Applicant: Mühlens GmbH & Co. KG (Cologne, Germany) (represented by: T. Schulte-Beckhausen, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: M. Capostagno and O. Montalto, agents)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Minoronzoni Srl (Ponte San Pietro, Italy) (represented by: G. Florida, F. Poletti and R. Florida, lawyers)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 18 February 2004 (Case R 949/2001-1) relating to opposition proceedings between Mühlens GmbH & Co. KG and Minoronzoni Srl.

Operative part of the judgment

1. *The action is dismissed;*
2. *Mühlens GmbH & Co. KG are ordered to pay the costs.*

⁽¹⁾ OJ C 239, 25.9.2004.

**Judgment of the Court of First Instance of 11 July 2007 —
Asklepios Kliniken GmbH v Commission of the European
Communities**

(Case T-167/04) ⁽¹⁾

(State aid — Public hospitals — Compensation for operating losses and provision of guarantees — Complaint — Failure by the Commission to define its position — Action for failure to act — Locus standi — Admissibility — Reasonable time frame — Regulation (EC) No 659/1999)

(2007/C 199/58)

Language of the case: German

Parties

Applicant: Asklepios Kliniken GmbH (Königstein-Falkenstein, Germany) (represented by: K. Füsler, lawyer)

Defendant: Commission of the European Communities (represented by: V. Kreuzschitz and M. Niejahr, Agents)

Interveners in support of the defendants: Federal Republic of Germany (represented: initially by C.-D. Quassowski and A. Tiemann, and subsequently by W.-D. Plessing and C. Schulze-Bahr, Agents); and United Kingdom of Great Britain and Northern Ireland (represented: initially by M. Bethell, and subsequently by C. Gibbs and E. O'Neill, Agents)

Re:

Application for a declaration under Article 232 EC that, by failing to take a decision under Article 4(2), (3) or (4) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88] EC (O) 1999 L 83, p. 1) on the complaint lodged by the applicant concerning the award of allegedly unlawful aid to publicly-owned hospitals in Germany, the Commission has failed to fulfil its obligations under Article 88 EC and Articles 10(1) and 13(1) of Regulation No 659/1999.

Operative part of the judgment

The Court:

1. *Dismisses the action;*
2. *Orders Asklepios Kliniken GmbH to pay both its own costs and those incurred by the Commission;*
3. *Orders the Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.*

⁽¹⁾ OJ C 201, 7.8.2004.