

Action brought on 13 September 2007 — Ester v OHIM — Coloris Global Coloring Concept (COLORIS)

(Case T-353/07)

(2007/C 269/114)

*Language in which the application has been drafted: Spanish***Parties**

Applicant: Esber, S.A. (Vizcaya, Spain) (Represented by: J.A. Calderón Chavero and T. Villate Consonni and A. Yañez Manglano, lawyers)

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

Other party to the proceedings before the Board of Appeal: Coloris Global Coloring Concept, S.A.S.

Forms of order sought

- Annul the Decision of the First Board of Appeal of OHIM issued on 28 June 2007 in Case R-1060/2006-1;
- Consequently, upholding the decision of the Board of Appeal, dismiss the opposition filed and proceed to grant the contested trade mark;
- Order OHIM to pay the costs of the present proceedings if it contests them and reject its claims.

Pleas in law and main arguments

Applicant for the Community Trade Mark: The applicant.

Community trade mark concerned: figurative mark containing the word 'COLORIS' (application no 2.817.732) for goods in Class 2.

Proprietor of the mark or sign cited in opposition proceedings: COLORIS GLOBAL COLORING CONCEPT, S.A.S.

Mark or sign cited in the opposition proceedings: French national word mark 'COLORIS' for goods in Class 2 (no 98/717642).

Decision of the Opposition Division: Upheld the opposition.

Decision of the Board of Appeal: Rejected the appeal.

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

Action brought on 18 September 2007 — Pfizer v OHIM — Isdin (FOTOPROTECTOR ISDIN)

(Case T-354/07)

(2007/C 269/115)

*Language in which the application was lodged: English***Parties**

Applicant: Pfizer Ltd (Sandwich, United Kingdom) (represented by: V. von Bomhard, A. Renck, T. Dolde, lawyers, and M. Hawkins, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Isdin, SA (Barcelona, Spain)

Form of order sought

- Annul the Decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 June 2007 in Case R 567/2006-1; and
- order that the costs of the proceedings be borne by the defendant.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'FOTOPROTECTOR ISDIN' for products in among others class 5 — Community trade mark No 1 075 597

Proprietor of the Community trade mark: Isdin, SA

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The national word mark 'ISTIN' for goods in class 5

Decision of the Cancellation Division: Partial declaration of invalidity of the Community trade mark

Decision of the Board of Appeal: Annulment of the Cancellation Division's decision insofar as it declared the invalidity of the Community trade mark

Pleas in law: Violation of the applicant's right to be heard pursuant to Article 73 of Council Regulation No 40/94 and violation of Article 52 read in conjunction with Article 8(1)(b) of the regulation.