

Action brought on 28 December 2007 — GlaxoSmithKline v OHIM — SeroGenetics Institute (FAMOXIN)

(Case T-493/07)

(2008/C 51/107)

*Language in which the application was lodged: English***Parties***Applicant:* GlaxoSmithKline SpA (Verona, Italy) (represented by: G. Richard, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* SeroGenetics Institute SA (Evry, France)**Form of order sought**

- Annul the decision of the First Board of Appeal of 14 September 2007 in Case R 8/2007-1 and declare the request for invalidation brought by the applicant to be well founded;
- the applicant invites the Board to annul all cost orders made against the applicant by the Office for Harmonisation in the Internal Market, and to order the latter to bear the costs of the applicant.

Pleas in law and main arguments*Registered Community trade mark subject of the application for a declaration of invalidity:* The Community word mark 'FAMOXIN' for goods and services in Class 5 — Application No 2 491 298*Proprietor of the Community trade mark:* SeroGenetics Institute 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 'LANOXIN' for goods in Class 5*Decision of the Cancellation Division:* Rejected the application for invalidation in its entirety*Decision of the Board of Appeal:* Dismissed the appeal*Pleas in law:* Infringement of Articles 8(1)(b) and 52 of Regulation (EC) No 40/94.**Action brought on 31 December 2007 — IIC-Intersport International Corporation v OHIM — McKenzie Corporation (McKENZIE)**

(Case T-502/07)

(2008/C 51/108)

*Language in which the application was lodged: English***Parties***Applicant:* IIC-Intersport International Corporation GmbH (Ostermundigen, Switzerland) (represented by: P.J.M. Steinhauser, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* The McKenzie Corporation Ltd (Newcastle Upon Tyne, United Kingdom)**Form of order sought**

- Annul the appealed decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market of 15 October 2007 in Case R 1425/2006-2 and confirm the decision of the Opposition Division of the Office for Harmonisation in the Internal Market of 6 September 2006 by which the opposition of Intersport has been received in respect of certain of the goods concerned.

Pleas in law and main arguments*Applicant for the Community trade mark:* The McKenzie Corporation Ltd*Community trade mark concerned:* The Community figurative mark 'McKENZIE' for goods and services in Classes 18, 25, 36 and 37*Proprietor of the mark or sign cited in the opposition proceedings:* IIC-Intersport International Corporation GmbH*Mark or sign cited:* The earlier Community figurative mark 'MCKINLEY' for goods and services in Classes 18, 20, 22, 25 and 28 and the earlier Community word mark 'MCKINLEY' for goods and services in Classes 12, 18, 20, 22, 25 and 28.*Decision of the Opposition Division:* Upheld the opposition partially*Decision of the Board of Appeal:* Rejected the opposition in its entirety and allowed registration to proceed*Pleas in law:* Infringement of Article 8(1)(b) of Council Regulation (EC) No 40/94.