

Action brought on 22 December 2008 — 4care v OHIM — Laboratorios Diafarm (Acumed)**(Case T-575/08)**

(2009/C 55/76)

*Language in which the application was lodged: German***Parties***Applicant:* 4care AG (Kiel, Germany) (represented by: S. Redeker, 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:* Laboratorios Diafarm, SA (Barbera del Valles, Spain)**Form of order sought**

- Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 October 2008 in Case R 16636/2007-2 and reject the opposition entered by Laboratorios Diafarm, SA;
- order the defendant and Laboratorios Diafarm, SA to pay the costs.

Pleas in law and main arguments*Applicant for a Community trade mark:* The applicant.*Community trade mark concerned:* Figurative mark 'Acumed' for goods in Classes 3, 5 and 9 (application for registration No 4493136).*Proprietor of the mark or sign cited in the opposition proceedings:* Laboratorios Diafarm, SA.*Mark or sign cited in opposition:* Spanish word mark 'AQUAMED ACTIVE' (trade mark No 2506452) for goods in Class 5 and Community word mark 'AQUAMED ACTIVE' (No 2882272) for goods in Class 5.*Decision of the Opposition Division:* Opposition allowed.*Decision of the Board of Appeal:* Appeal dismissed.*Pleas in law:* Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 ⁽¹⁾, since there is no likelihood of confusion between the marks at issue.

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

Action brought on 23 December 2008 — Germany v Commission**(Case T-576/08)**

(2009/C 55/77)

*Language of the case: German***Parties***Applicant:* Federal Republic of Germany (represented by: M. Lumma and B. Klein)*Defendant:* Commission of the European Communities**Form of order sought**

- annul Commission Regulation (EC) No 983/2008 of 3 October 2008 adopting the plan allocating to the Member States resources to be charged to the 2009 budget year for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community;
- maintain the effects of the annulled regulation;
- order the defendant to pay the costs.

Pleas in law and main argumentsThe applicant seeks the annulment of Commission Regulation (EC) No 983/2008 of 3 October 2008 ⁽¹⁾, which contains the annual plan for 2009 in respect of the distribution of food to the most deprived persons in the Community.In the applicant's submission, the regulation has no legal basis in Community law. While it was adopted on the basis of Regulation (EC) No 1234/2007 ⁽²⁾, which in turn has the common agricultural policy of the Community (Articles 36 and 37 EC, in conjunction with Article 33 EC) as legal basis, it does not, however, meet the requirements laid down therein.

The plan was originally devised by way of a competence ancillary to the common agricultural policy as essentially available intervention stocks were used for a social purpose. For several years, on the other hand, the plan has been operating exclusively through the purchase of food on the market since, because of common foreign policy reforms, intervention stocks hardly remain. The applicant regards the plan today as a purely social-policy instrument of the Community for which there is no legal basis (principle of conferred powers).

The contested regulation is thus not compatible with the requirements in Article 27(2) of Regulation No 1234/2007 which allows the purchase of food for the plan only if intervention stocks have temporarily reached their capacity. In the meantime it has, however, become a permanent state of affairs that the purchase of food largely predominates.