

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

Other party to the proceedings before the Board of Appeal: Laboratorios Diafarm, SA (Barberá del Vallès, Spain)

Form of order sought

The applicant claims that the General Court should:

- stay the proceedings brought by the applicant before the General Court in its action against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 17 May 2011 until OHIM and Barcelona Commercial Courts Nos 4 and 8 have adjudicated upon the applications for a declaration of invalidity and for revocation on grounds of non-use;
- in the alternative, review, annul or, if necessary, vary decision R 298/2010-4 of the Fourth Board of Appeal as regards the contested goods in Class 5, so as to reject opposition B 996 506 in relation to that class, and consequently grant the applicant's application for Community trade mark No 4 504 049 'HEMOFARM' for all the goods in Class 5 and register that mark in Classes 5 and 35 as sought.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Word mark 'HEMOFARM' for goods and services in Classes 3, 5 and 35.

Proprietor of the mark or sign cited in the opposition proceedings: Laboratorios Diafarm, SA.

Mark or sign cited in opposition: Community and international word mark 'HEMOFARM' for goods in Classes 3 and 16 and national word marks 'HEMOPLANT' and 'HEMONET' for goods in Class 5.

Decision of the Opposition Division: Opposition upheld in part.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 207/2009, ⁽¹⁾ as there is no likelihood of confusion between the marks at issue.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).

Action brought on 30 August 2011 — Longevity Health Products v OHIM — Weleda Trademark (MENOCHRON)

(Case T-473/11)

(2011/C 311/84)

Language of the case: German

Parties

Applicant: Longevity Health Products, Inc. (Nassau, Bahamas) (represented by: J. Korab, 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: Weleda Trademark AG (Arlesheim, Switzerland)

Form of order sought

- declare the action by the company Longevity Health Products Inc. admissible;
- annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 July 2011 in Case R 2345/2010-4 and reject the opposition by Weleda Trademark AG to the trade mark registration CTM 005050752; and
- order the Office for Harmonisation in the Internal Market to bear the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Longevity Health Products, Inc.

Community trade mark concerned: Word mark 'MENOCHRON' for goods and services in Classes 3, 5 and 35.

Proprietor of the mark or sign cited in the opposition proceedings: Weleda Trademark AG

Mark or sign cited in opposition: Word mark 'MENODORON' for goods and services in Classes 3, 5 and 44.

Decision of the Opposition Division: The opposition was upheld.

Decision of the Board of Appeal: The appeal was dismissed.

Pleas in law: Infringement of Article 8 of Regulation No 207/2009, ⁽¹⁾ because there is no likelihood that the marks at issue would be confused.

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).