

**Action brought on 12 December 2012 — Wedi v OHIM — Mehlhose Bauelemente für Dachrand + Fassade (BALCO)**

(Case T-541/12)

(2013/C 46/37)

*Language in which the application was lodged: German***Parties***Applicant:* Wedi GmbH (Emsdetten, Germany) (represented by: O. Bischof, lawyer)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal:* Mehlhose Bauelemente für Dachrand + Fassade GmbH & Co. KG (Herford, Germany)**Form of order sought**

The applicant claims that the Court should:

- Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 25 September 2012 in Case R 2255/2011-4;
- Alternatively, suspend the proceedings in Case R 2255/2011-4 until a final decision has been made on the applicant's application of 15 November 2012 for a declaration of invalidity of the other party's Community trade mark No 006095889 Balkogrün; reference No 000007267 C of the Office for Harmonisation in the Internal Market (Trade Marks and Designs);
- Order the defendant to pay the costs.

**Pleas in law and main arguments***Applicant for a Community trade mark:* the applicant*Community trade mark concerned:* the word mark 'BALCO' for goods in Class 19 — Community trade mark application No 9 023 771*Proprietor of the mark or sign cited in the opposition proceedings:* Mehlhose Bauelemente für Dachrand + Fassade GmbH & Co. KG*Mark or sign cited in opposition:* the word marks 'Balkogrün', 'Balkoplan' and 'Balkotop' for goods in Classes 19, 21 and 27*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(1)(b) of Regulation No 207/2009**Action brought on 18 December 2012 — Teva Pharma and Teva Pharmaceuticals Europe v EMA**

(Case T-547/12)

(2013/C 46/38)

*Language of the case: English***Parties***Applicants:* Teva Pharma BV (Utrecht, Netherlands); and Teva Pharmaceuticals Europe BV (Utrecht) (represented by: K. Bacon and D. Piccinin, Barristers, G. Morgan and C. Drew, Solicitors)*Defendant:* European Medicines Agency**Form of order sought**

The applicants claim that the Court should:

- Annul the decision of the European Medicines Agency, contained in its letter of 26 November 2012, refusing to validate the applicants' application for a marketing authorisation for its generic version of abacavir/lamivudine; and
- Order the European Medicines Agency to pay the applicants' costs.

**Pleas in law and main arguments**

In support of the action, the applicants rely on one plea in law, alleging that the refusal to validate their application for the authorisation of a generic version of a fixed dose combination medicinal product, on the basis that the product was protected by a ten year period of exclusivity is contrary to Regulation (EC) No 726/2004<sup>(1)</sup> and Directive No 2001/83/EC<sup>(2)</sup> properly interpreted. In particular, the applicants contend that the marketing authorisation holder for the product is not entitled to enjoy a ten year period of data exclusivity, as the product is a fixed dose combination combining two active substances which have been supplied and used within the EU as components of a number of different medicinal products for some years. The applicants therefore contend that the product falls within