

ORDER OF THE PRESIDENT OF THE SECOND CHAMBER
OF THE COURT OF FIRST INSTANCE

6 May 2004 *

In Case T-325/03,

E-Sim Ltd, established in Jerusalem (Israel), represented by A. Ebert-Weidenfeller,
lawyer,

applicant,

v

**Office for Harmonisation in the Internal Market (Trade Marks and Designs)
(OHIM)**, represented by G. Schneider, acting as Agent,

defendant,

the other party to the proceedings before the Board of Appeal of the OHIM being:

Druckhaus Waiblingen Remstal-Bote GmbH, established in Waiblingen (Germany),

* Language of the case: German.

ACTION brought by the applicant for the word mark E-SIM for certain goods and services in Classes 9 and 42 seeking annulment of the decision of the Fourth Board of Appeal of the OHIM of 18 June 2003 (Case R 281/2002-4), dismissing the applicant's appeal against the decision of the Opposition Division refusing registration of the mark in the opposition proceedings brought by the proprietor of the national word mark ASIM for certain goods and services in Classes 9, 35, 41 and 42,

THE PRESIDENT OF THE SECOND CHAMBER OF THE COURT
OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

makes the following

Order

- 1 By letter received at the Registry of the Court of First Instance on 26 November 2003, the applicant informed the Court that, as Druckhaus Waiblingen Remstal-Bote GmbH had, by letter of 31 October 2003 addressed to the OHIM, withdrawn its opposition to the registration of the disputed trade mark, the applicant wished to abandon its application under Article 99 of the Rules of Procedure of the Court. It sought no order as to costs.

- 2 By letter received at the Registry of the Court of First Instance on 18 December 2003, the defendant submitted to the Court that the case should not be terminated by an order removing the case from the Register, but by an order that there was no need to give a ruling, in order to avoid the contested decision becoming *res judicata*. The defendant sought no order as to costs in its observations.

- 3 As the Court held in its order of 3 July 2003 in Case T-10/01 *Lichtwer Pharma v OHIM — Biofarma (Sedonium)* [2003] ECR II-2225, paragraph 15, opposition may, as with the application for registration, be withdrawn at any time. Accordingly, if opposition is withdrawn before the refusal of the application under Article 43(5) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) has become final, the decision of the Opposition Division and that of the Board of Appeal ruling on the opposition become redundant and cannot be an impediment to the registration of the trade mark.

- 4 Under Article 99 of the Rules of Procedure, if the applicant informs the Court in writing that he wishes to discontinue the proceedings, the President is to order the case to be removed from the Register.

- 5 In terms of the third subparagraph of Article 87(5) of the Rules of Procedure, where proceedings are discontinued and costs are not applied for in the written pleadings, the parties are to bear their own costs.

- 6 It must therefore be ordered that the case be removed from the Register and in the absence of any claim for costs that the parties are to bear their own costs.

On those grounds,

THE PRESIDENT OF THE SECOND CHAMBER
OF THE COURT OF FIRST INSTANCE

hereby orders:

- 1. Case T-325/03 is hereby removed from the Register of the Court of First Instance.**
- 2. The parties shall bear their own costs.**

Luxembourg, 6 May 2004.

H. Jung

Registrar

J. Pirrung

President