

Case T-218/06

Neurim Pharmaceuticals (1991) Ltd

v

**Office for Harmonization in the Internal Market
(Trade Marks and Designs) (OHIM)**

(Community trade mark — Opposition proceedings — Application for a Community figurative mark Neurim PHARMACEUTICALS — Earlier Community and national word marks EURIM-PHARM — Language of appeal proceedings — Time-limits — Admissibility of an appeal to the Board of Appeal — Principle of proportionality — Continuation of proceedings — Restitutio in integrum — Articles 59, 78 and 78a of Regulation (EC) No 40/94 — Rule 48(1) (c) and (2), Rule 49(1) and Rule 96(1) of Regulation (EC) No 2868/95)

Judgment of the Court of First Instance (First Chamber), 17 September 2008 . . . II - 2278

Summary of the Judgment

1. *Community trade mark — Appeals procedure — Time-limit and form of appeal (Council Regulation No 40/94, Art. 59; Commission Regulation No 2868/95, Art. 1, Rules 48(1)(c) and (2), 49(1) and 96(1))*

2. *Acts of the institutions — Presumption of legality*
(Art. 249 EC)
3. *Community trade mark — OHIM languages*
(Council Regulation No 2868/95, Art. 1, Rule 96(1))
4. *Community trade mark — Procedural provisions — Restitutio in integrum*
(Council Regulation No 40/94, Art. 78(2))

1. It is clear from Rule 48(1)(c) and (2) of Regulation No 2868/95 implementing Council Regulation No 40/94 on the Community trade mark that the notice of appeal is to contain a statement identifying the extent to which amendment or cancellation of the contested decision is requested and that that notice is to be filed in the language of the proceedings of that decision.

Pursuant to Rule 49(1) of Regulation No 2868/95, if the appeal does not comply *inter alia* with the conditions laid down in Rule 48(1)(c) and (2) of that regulation, the Board of Appeal is to reject it as inadmissible, unless each deficiency has been remedied before the period laid down in Article 59 of Regulation No 40/94 has expired, namely within two months after the date of notification of the contested decision.

It follows from Rule 49(1) of Regulation No 2868/95 that a failure to comply with Rule 48(1)(c) and (2) of that regulation will lead to the appeal being dismissed, directly and without prior notification, as inadmissible and that, in such an event, dismissal will occur after expiry of the period laid down in Rule 96(1) of that regulation, according to which, unless otherwise provided for in the regulation, any party may use any language of the Office for Harmonization in the Internal Market (Trade Marks and Designs) other than that of the proceedings if that party supplies a translation into that language within one month from the date of the submission of the original document. Neither the applicable legislation nor the case-law imposes an obligation on the Office to alert potential appellants to boards of appeal to the consequences of a failure to comply with the formalities laid down in that legislation.

Any practice by the Office of informing appellants of formal shortcomings in their notices of appeal cannot change the starting point for the period laid down

in Rule 96(1) of Regulation No 2868/95. Moreover, according to settled case-law, the rules on time-limits were laid down with a view to ensuring legal certainty and avoiding any discrimination or arbitrary treatment. That general statement applies also to time-limits laid down in regulations on the Community trade mark. Accordingly, the application of the time-limit laid down in Rule 96(1) does not breach the principle of equal treatment.

3. Rule 96(1), Rule 49(1), and Rule 48(1)(c) and (2) of Regulation No 2868/95 implementing Regulation No 40/94 on the Community trade mark form part of the provisions governing the language regime introduced by Regulation No 40/94. That language regime being, according to the case-law, compatible with the principle of proportionality, those rules cannot be considered to be contrary to that principle.

(see paras 37-39, 43, 44)

(see para. 54)

2. A refusal by the Board of Appeal to follow Rule 96(1), Rule 49(1), and Rule 48(1)(c) and (2) of Regulation No 2868/95 implementing Regulation No 40/94 on the Community trade mark which governs the admissibility of the appeal would have disregarded the presumption of legality, according to which Community legislation remains fully effective until it has been found to be unlawful by a competent court.

4. The period of two months laid down in Article 78(2) of Regulation No 40/94 on the Community trade mark in which to file an application for *restitutio in integrum* starts to run from the end of the non-observance as a result of which the applicant was unable to observe a time-limit with regard to the Office for Harmonization in the Internal Market (Trade Marks and Designs) and not from the moment when the Office finally notifies a deficiency in the procedure.

(see para. 52)

(see para. 77)