

**Judgment of the Court of First Instance (Eighth Chamber) of 10 September 2008 —  
Boston Scientific v OHIM — Terumo (CAPIO)**

**(Case T-325/06)**

(Community trade mark — Opposition proceedings — Application for Community word mark CAPIO — Earlier national word mark CAPIOX — Relative ground for refusal — Genuine use of the mark — Article 43(1) and (2) of Regulation (EC) No 40/94 — Likelihood of confusion — Article 8(1)(b) of Regulation No 40/94)

1. *Community trade mark — Observations of third parties and opposition — Examination of the opposition (Council Regulation No 40/94, Art. 43(2) and (3)) (see paras 28-34)*
  
2. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark (Council Regulation No 40/94, Art. 8(1)(b)) (see paras 99-102)*

**Re:**

ACTION brought against the decision of the Second Board of Appeal of OHIM of 14 September 2006 (Case R 61/2006-2), relating to opposition proceedings between Terumo Kabushiki Kaisha and Boston Scientific Ltd.

**Information relating to the case**

Applicant for the Community trade mark:	Boston Scientific Ltd
Community trade mark sought:	Word mark CAPIO for goods in Class 10 — Application No 2554434
Proprietor of the mark or sign cited in the opposition proceedings:	Terumo Kabushiki Kaisha
Mark or sign cited in opposition:	National word mark CAPIOX for goods in Class 10
Decision of the Opposition Division:	Opposition dismissed in its entirety
Decision of the Board of Appeal:	Decision of the Opposition Division annulled

**Operative part**

The Court:

1. Dismisses the action;
2. Orders Boston Scientific Ltd to pay the costs.