

2. The Commission is granted leave to intervene in Case T-190/08 in support of the form of order sought by the Council.
3. The Registrar shall send to the Commission a copy of every document served on the parties.
4. A period shall be prescribed within which the Commission may submit a statement in intervention.
5. The decision on the application for measures of organisation of procedure and for measures of inquiry is reserved.
6. CHEMK and KF are ordered to pay the costs relating to the plea of inadmissibility. As to the remainder, the costs are reserved.

**Judgment of the Court of First Instance (Eighth Chamber) of 13 May 2009 —
Schuhpark Fascies v OHIM — Leder & Schuh (jello SCHUHPARK)**

(Case T-183/08)

(Community trade mark — Opposition proceedings — Application for Community figurative and word mark jello SCHUHPARK — Earlier national word mark Schuhpark — Relative ground for refusal — Proof of use of earlier mark — Article 43(2) of Regulation (EC) No 40/94)

Community trade mark — Observations of third parties and opposition — Examination of the opposition — Proof of use of the earlier mark (Council Regulation No 40/94, Art. 43(2) and (3)) (see paras 20-24)

Re:

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 13 March 2008 (Case R 1560/2006-4), concerning opposition proceedings between Schuhpark Fascies GmbH and Leder & Schuh AG.

Information relating to the case

Applicant for the Community trade mark:	Leder & Schuh AG
Community trade mark sought:	Word and figurative mark jello SCHUHPARK for goods in Classes 1, 3, 9, 14, 16, 18, 21, 24 to 26 and 28 — Application No 1269372
Proprietor of the mark or sign cited in the opposition proceedings:	Schuhpark Fascies GmbH
Mark or sign cited in opposition:	German word mark Schuhpark for goods in Class 25 and, in that respect, the opposition was directed against registration in Classes 18, 21, 25 and 26
Decision of the Opposition Division:	Opposition upheld in part and application for registration rejected in part
Decision of the Board of Appeal:	Annulment of the appealed decision and rejection of the opposition

Operative part

The Court:

1. Dismisses the action;
2. Orders Schuhpark Fascies GmbH to pay the costs.