



Reports of Cases

Judgment of the General Court (Second Chamber) of 23 October 2017 – Tetra Pharm (1997) v EUIPO – Sebapharma (SeboCalm)

(Case T-441/16)

(EU trade mark — Opposition proceedings — Application for the EU word mark SeboCalm — Earlier EU word mark — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 (now Article 8(1)(b) of Regulation (EU) 2017/1001))

1. *EU trade mark – Definition and acquisition of the EU 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 – Criteria for assessment*

(Council Regulation No 207/2009, Art. 8(1)(b))

(see paras 15-17, 73, 74)

2. *EU trade mark – Definition and acquisition of the EU 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 – Refusal to register on a ground relating to refusal even limited to part of the Union*

(Council Regulation No 207/2009, Arts 1(2), 7(2) and 8(1)(b))

(see para 24)

3. *EU trade mark – Procedural provisions – Statement of reasons for decisions*

(Art. 296 TFEU; Council Regulation No 207/2009, Art. 75)

(see para 25)

4. *EU trade mark – Definition and acquisition of the EU 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 – Word marks SeboCalm and Sebotherm*

(Council Regulation No 207/2009, Art. 8(1)(b))

(see paras 27, 36, 37, 55, 62, 69, 75, 76)

5. *EU trade mark – Definition and acquisition of the EU 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 – Assessment of the likelihood of confusion – Attention level of the public*

(Council Regulation No 207/2009, Art. 8(1)(b))

(see paras 31, 32)

6. *EU trade mark – Definition and acquisition of the EU 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 – Similarity of the marks concerned*

(Council Regulation No 207/2009, Art. 8(1)(b))

(see para 38)

Re:

ACTION brought against the decision of the First Board of Appeal of EUIPO dated 19 May 2016 (Case R 852/2015-1), relating to opposition proceedings between Sebapharma and Tetra Pharm (1997).

Operative part

The Court:

1. Dismisses the action.
2. Orders Tetra Pharm (1997) Ltd to pay the costs.