



Reports of Cases

Judgment of the General Court (First Chamber) of 19 September 2019 – Unifarco v EUIPO — GD Tecnologie Interdisciplinari Farmaceutiche (TRICOPID)

(Case T-359/18)

(EU trade mark — Opposition proceedings — Application for EU word mark TRICOPID — Earlier national figurative mark TRICODIN — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EU) 2017/1001)

1. *EU trade mark — Appeals procedure — Action before the EU judicature — Jurisdiction of the General Court — Power to issue directions — None*

(European Parliament and Council Regulation 2017/1001, Art. 72(6))

(see para. 29)

2. *EU trade mark — Appeals procedure — Action before the EU judicature — Jurisdiction of the General Court — Re-evaluation of the facts in the light of evidence produced for the first time before it — Not included*

(European Parliament and Council Regulation 2017/1001, Art. 72)

(see para. 36)

3. *EU trade mark — Appeals procedure — Action before the EU judicature — Jurisdiction of the General Court — Review of the lawfulness of decisions of the Boards of Appeal — Annulment or variation for reasons appearing after judgment was delivered — Not included*

(European Parliament and Council Regulation 2017/1001, Art. 72(2))

(see para. 41)

4. *EU trade mark — Observations of third parties and opposition — Examination of the opposition — Proof of use of the earlier mark — Genuine use — Meaning — Criteria for assessment*

(European Parliament and Council Regulation 2017/1001, Art. 47(2))

(see paras 47-49, 56, 57)

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 — Criteria for assessment*

(European Parliament and Council Regulation 2017/1001, Art. 8(1)(b))

(see paras 64-66)

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 — Assessment of the likelihood of confusion — Determination of the relevant public — Attention level of the public — Cosmetic, beauty or personal care and personal hygiene products*

(European Parliament and Council Regulation 2017/1001, Art. 8(1)(b))

(see paras 70, 74, 76, 77, 80, 83, 85)

7. *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 mark TRICOPID and figurative mark TRICODIN*

(European Parliament and Council Regulation 2017/1001, Art. 8(1)(b))

(see paras 75, 84, 86-88, 100, 117, 120, 121, 125-127)

8. *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 — Similarity between the goods or services in question — Criteria for assessment*

(European Parliament and Council Regulation 2017/1001, Arts 8(1)(b) and 42(2) and (3))

(see paras 89-91)

9. *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 — Similarity of the marks concerned — Criteria for assessment — Composite mark*

(European Parliament and Council Regulation 2017/1001, Art. 8(1)(b))

(see paras 102-105, 118, 119)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 13 March 2018 (Case R 2150/2017-5), relating to opposition proceedings between GD Technologie Interdisciplinari Farmaceutiche and Unifarco.

Operative part

The Court:

1. Dismisses the action;
2. Orders Unifarco SpA to pay the costs, including those incurred by GD Technologie Interdisciplinari Farmaceutiche Srl before the Board of Appeal of the European Union Intellectual Property Office (EUIPO).