

Action brought on 23 August 2004 by Ontex N.V. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-353/04)

(2004/C 273/68)

(Language in which the application was lodged: English)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 23 August 2004 by Ontex N.V., Buggenhout (Belgium), represented by M. Du Tré, lawyer.

Curon Medical, Inc., Sunnyvale, California (USA) was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- annul the contested decision of the Second Board of Appeal of 5 July 2004
- order the Office for Harmonisation in the Internal Market to pay the costs

Pleas in law and main arguments:

Applicant for Community trade mark:	Curon Medical, Inc.
Community trade mark concerned:	Word mark 'CURON' for goods and services in classes 10, 41 and 42 (e.g. surgical, medical, dental and veterinary apparatus, instruments and devices except X-ray apparatus) — application No 1 934 868
Proprietor of mark or sign cited in the opposition proceedings:	The applicant
Trade mark or sign cited in opposition:	Community word mark 'EURON' for goods and services in class 10 (e.g. surgical, medical, dental and veterinary apparatus, instruments and devices except X-ray apparatus) — Community trade mark No 762 351

Decision of the Opposition Division:

Rejection of the trade mark application

Decision of the Board of Appeal:

Annulment of the decision of the Opposition Division and remittal of the case to the Opposition Division for further prosecution

Pleas in law:

Infringement of Article 8(1)(b) of Council Regulation No 40/94

Action brought on 27 August 2004 by SmithKline Beecham p.l.c. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-356/04)

(2004/C 273/69)

(Language in which the application was lodged: English)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 27 August 2004 by SmithKline Beecham, Brentford, (United Kingdom) represented by Dr V. von Bomhard, Dr A. Renck, Dr A. Pohlmann and I. Fowler, lawyers.

Warner-Lambert Consumer Healthcare S.Com.p.a. Milan, (Italy) was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- annul the Decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 June 2004 in Case R0018/2004-1
- order that the costs of the proceedings be borne by the defendant