

Action brought on 16 May 2007 — Longevity Health Products v OHIM — Celltech Pharma (Cellutrim)

(Case T-169/07)

(2007/C 155/72)

*Language in which the application was lodged: German***Parties***Applicant:* Longevity Health Products Inc. (Nassau, Bahamas) (represented by: J.E. Korab, Rechtsanwalt)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal of OHIM:* Celltech Pharma GmbH & Co. KG**Form of order sought**

- declaration that the application is admissible;
- annulment of the decision of the First Board of Appeal of 7 March 2007 and dismissal of the application by Celltech Pharma GmbH & Co. KG that Community trade mark registration No 3979036 be declared invalid; and
- order that the Office for Harmonisation in the Internal Market pay the costs.

Pleas in law and main arguments*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* The word mark 'Cellutrim' for goods and services in classes 3, 5 and 35 (Community trade mark No 3979036).*Proprietor of the Community trade mark:* The applicant.*Applicant for the declaration of invalidity:* Celltech Pharma GmbH & Co. KG.*Trade mark right of applicant for the declaration:* The word mark 'Cellidrin' for goods in class 5.*Decision of the Cancellation Division:* Cancellation of the Community trade mark concerned in relation to goods in class 5.*Decision of the Board of Appeal:* Appeal dismissed.*Pleas in law:* Faulty reasoning of the Board of Appeal, since there is no likelihood of confusion between the conflicting marks.**Action brought on 21 May 2007 — Volkswagen AG v OHIM**

(Case T-174/07)

(2007/C 155/73)

*Language of the case: German***Parties***Applicant:* Volkswagen AG (Wolfsburg, Germany) (represented by S. Risthaus, Rechtsanwalt)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)**Form of order sought**

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 March 2007, notified on 23 March 2007 (Case R 1479/2005-1);
- Order the defendant to pay the costs.

Pleas in law and main arguments*Community trade mark concerned:* The word mark 'TDI' for goods and services in classes 4, 7 and 37.*Decision of the Examiner:* Refusal of the application.*Decision of the Board of Appeal:* Dismissal of the appeal.*Pleas in law:*

- Infringement of Article 62(2) of Regulation (EC) No 40/94 by disregarding the decision of the Board of Appeal of 12 May 2003 in Case R 53/2002-4;
- Infringement of the first sentence of Article 74(1) of Regulation No 40/94 by improperly examining the facts of its own motion;
- Infringement of Article 7(1)(b) of Regulation No 40/94 by deciding that the trade mark applied for is devoid of any distinctive character;
- Infringement of Article 7(1)(c) of Regulation No 40/94 by deciding that the mark applied for has a descriptive function;
- Infringement of Article 7(3) of Regulation No 40/94 by deciding that the trade mark applied for has not become distinctive in consequence of the use which has been made of it.