

Form of order sought

- Annul the decision of the Second Board of Appeal of OHIM dated 25 October 2007;
- annul the decision of the Opposition Division of OHIM dated 11 October 2006; and
- order the intervener to bear the costs of the action.

Pleas in law and main arguments

Applicant for the Community trade mark: ALK-Abelló A/S

Community trade mark concerned: The Community word mark 'DIAQUEST' for goods in classes 1, 5 and 42

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: The Community word marks 'QUEST DIAGNOSTICS' for goods and services in classes 5, 10, 16, 35, 39 and 42 — application No 2 402 980 and No 1 958 589

Decision of the Opposition Division: Rejected the opposition in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) CTRM.

Action brought on 21 January 2008 — Laboratórios Wellcome de Portugal v OHIM — Sero Genetics Institute (FAMOXIN)

(Case T-26/08)

(2008/C 92/62)

Language in which the application was lodged: English

Parties

Applicant: Laboratórios Wellcome de Portugal Lda (Algés, Portugal) (represented by: R. Gilbey, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Sero Genetics Institute SA (Evry, France)

Form of order sought

- Annul the decision of the First Board of Appeal OHIM dated 20 November 2007 (Case R 10/2007-1) and declare the request for invalidation brought by the appellant well founded;
- annul all cost orders made against the appellant by the Office for Harmonisation in the Internal Market and order the latter to bear the costs of the appellant.

Pleas in law and main arguments

Registered Community trade mark subject of the application for a declaration of invalidity: The word mark 'FAMOXIN' for goods and services in class 5 — Community trade mark No 2 491 298

Proprietor of the Community trade mark: Sero Genetics Institute SA

Party requesting the declaration of invalidity of the Community trade mark: The applicant

Trade mark right of the party requesting the declaration of invalidity: The national word mark 'LANOXIN' for goods in class 5

Decision of the Cancellation Division: Rejection of the request for a declaration of invalidity

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Articles 8(1)(b), 52 and 56(2) and (3) of Council Regulation No 40/94, as the Board of Appeal found the earlier trade mark to be used for 'pharmaceutical preparations with digoxin for cardiovascular illnesses' and not 'pharmaceutical preparations with digoxin' and as it assessed the relevant public, the level of attentiveness of the different parts of the relevant public and the similarity of the conflicting trade marks and goods incorrectly.

Action brought on 21 January 2008 — Wellcome Foundation v OHIM — Sero Genetics Institute (FAMOXIN)

(Case T-27/08)

(2008/C 92/63)

Language in which the application was lodged: English

Parties

Applicant: The Wellcome Foundation Ltd (Greenford, United Kingdom) (represented by: R. Gilbey, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: Sero Genetics Institute SA (Evry, France)