Judgment of the General Court (Eighth Chamber) of 28 October 2010 — Farmeco v OHIM — Allergan (BOTUMAX)

(Case T-131/09)

(Community trade mark — Opposition proceedings — Application for the Community word mark BOTUMAX — Earlier Community word and figurative marks BOTOX — Relative grounds for refusal — Likelihood of confusion — Damage to reputation — Article 8(1)(b) and (5) of Regulation (EC) No 40/94 (now Article 8(1)(b) and (5) of Regulation (EC) No 207/2009)

1. *Community trade mark — Definition and acquisition of the Community 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 (Council Regulation No 40/94, Art. 8(1)(b)) (see paras 46, 65-67)*

2. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark enjoying a reputation — Protection of well-known earlier mark extended to dissimilar goods or services (Council Regulation No 40/94, Art. 8(5)) (see paras 82-86, 92-101)*

Re:

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 2 February 2009 (Case R 60/2008-4), relating to opposition proceedings between Allergan Inc. and Farmeco AE Dermokallyntika.

Information relating to the case

Applicant for the Community trade mark:	Farmeco AE Dermokallyntika
Community trade mark sought:	Word mark BOTUMAX for goods in Classes 3, 5 and 16 — Application No 3218237
Proprietor of the mark or sign cited in the opposition proceedings:	Allergan Inc.
Mark or sign cited in opposition:	Various Community and national trade mark registrations of the word mark or the sign BOTOX for goods and services in Classes 5, 16, and 42, respectively
Decision of the Opposition Division:	Opposition dismissed
Decision of the Board of Appeal:	Contested decision annulled; application for Community trade mark sought dismissed in part

Operative part

1. Dismisses the action;

2. Orders Farmeco AE Dermokallyntika to pay the costs.