Judgment of the Court of First Instance (Third Chamber) of 16 May 2007 — La Perla v OHIM — Worldgem Brands (NIMEI LA PERLA MODERN CLASSIC)

(Case T-137/05)

Community trade mark — Cancellation proceedings — Community word mark NIMEI LA PERLA MODERN CLASSIC — Earlier national figurative and word marks la PERLA and LA PERLA PARFUMS — Relative ground for refusal — Article 52(1)(a) of Regulation (EC) No 40/94 — Article 8(5) of Regulation No 40/94

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 (Council Regulation No 40/94, Art. 8(5)) (see para. 51)

Re:

APPEAL lodged against the decision of the First Board of Appeal of OHIM of 25 January 2005 (Case R 537/2004-1) relating to cancellation proceedings between Gruppo La Perla SpA and Worldgem Brands — Gestão e Investimentos L[da].

Information relating to the case

Registered Community trade mark of which cancellation sought:	Word mark NIMEI LA PERLA MODERN CLASSIC for goods in Class 14 — Application No 713446
Proprietor of the contested Community trade mark:	Worldgem Brands — Gestão e Investimentos L[da], formerly Cielo Brands — Gestão e Investimentos L[da]
Party applying for cancellation:	Gruppo La Perla SpA

Trade marks of the applicant for cancellation:	Italian marks: la PERLA, for goods in Class 25 — Figurative mark No 769526; LA PERLA PARFUMS, for goods in Class 3 — Word mark No 776082; la PERLA, for goods in Classes 3, 9, 14, 16, 18, 24, 25 and 35 — Figurative mark No 804992; la PERLA for goods in Class 3 — Figurative mark No GE 2002 C 000181
Decision of the Cancellation Division:	Application upheld; Community trade mark cancelled
Decision of the Board of Appeal:	Appeal allowed: decision of the Cancellation Division set aside

Operative part

The Court:

1. Annuls the decision of the First Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) of 25 January 2005 (Case R537/2004-1);

2. Orders the intervener to bear its own costs and to bear one third of the applicant's costs;

3. Orders the applicant to bear two thirds of its own costs;

4. Orders OHIM to bear its own costs.