ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
6 March 2001 *

In Case T-187/00,

Gödecke AG, established in Freiburg im Breisgau (Germany), represented by W. Schmid and A. Schabenberger, Rechtsanwälte,

applicant,

v

Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), represented by O. Montalto and J. Miranda de Sousa, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: English.

intervener before the Court of First Instance:

Teva Pharmaceutical Industries Ltd, established in Jerusalem (Israel), represented by G. Farrington, Solicitor,

APPEAL against the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 15 May 2000 (Case R 501/1999-1), notified to the applicant on 17 May 2000, relating to opposition proceedings between Gödecke AG and Teva Pharmaceutical Industries Ltd,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: P. Mengozzi, President, V. Tiili and R.M. Moura Ramos, Judges,

Registrar: H. Jung,

having regard to the application lodged at the Court Registry on 14 July 2000,

having regard to the response lodged at the Court Registry on 21 December 2000,

makes the following

Order

1 On 1 April 1996 the intervener before the Court, Teva Pharmaceutical Industries Ltd ('Teva') made an application for a Community trade mark to the Office for Harmonisation in the Internal Market (Trade Marks and Designs) ('the Office'), pursuant to Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), as amended.

2 The trade mark for which registration was sought is the word ACAMOL.

3 The products for which registration was sought are within Class 5 for the purposes of the Nice Agreement Concerning the International Classification of Goods and Services of 15 June 1957, as revised and amended ('the Nice Agreement'), and correspond to the description 'pharmaceutical preparations and substances'.

4 On 3 February 1998 the applicant Gödecke AG entered an opposition to the application for a Community trade mark. The earlier German mark on which the opposition is based is the word AGAROL registered for 'laxative' products within Class 5 for the purposes of the Nice Agreement.

5 By decision of 21 June 1999, the Opposition Division refused the application for a Community trade mark under Article 8(1)(b) and Articles 42 and 43 of Regulation No 40/94, on the ground that there was a likelihood of confusion between the earlier mark AGAROL and the Community mark applied for ACAMOL in respect of all the products referred to in the application for the Community mark.

6 On 13 August 1999 Teva appealed to the Office, pursuant to Article 59 of Regulation No 40/94, against the decision of the Opposition Division.

7 The Board of Appeal annulled the decision of the Opposition Division and rejected the opposition by decision of 15 May 2000.

8 On application by Teva, English became the language of the case, in accordance with the third subparagraph of Article 131(2) of the Rules of Procedure of the Court of First Instance.

9 By letter of 11 December 2000, Teva informed the Court of the withdrawal of its application for a Community trade mark pursuant to Article 44(1) of Regulation No 40/94.

10 By letter of 8 January 2001, the applicant informed the Court that in its opinion the withdrawal of the application for a Community trade mark by Teva had not brought the proceedings before the Court to an end, and that, should the Court consider that the proceedings had become devoid of purpose, it asked for Teva to be ordered to pay the costs in accordance with Article 87(5) of the Rules of Procedure.

11 By letter of 11 January 2001, the Office submitted that the proceedings before the Court had become devoid of purpose.

12 It must be concluded that, in view of the withdrawal of the application for a Community trade mark, the present proceedings have become devoid of purpose. There is therefore no longer any need to adjudicate.

Costs

13 Article 87(6) of the Rules of Procedure provides that where a case does not proceed to judgment the costs are in the discretion of the Court.

14 In the circumstances of the case, the Court considers that the parties should be ordered to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber),

hereby orders:

1. **There is no need to adjudicate.**

2. **The parties are to bear their own costs.**

Luxembourg, 6 March 2001.

H. Jung
Registrar

P. Mengozzi
President