Operative part

The Court:

1. Dismisses the actions;

2. Orders the applicant to pay the costs.

Judgment of the Court of First Instance (Third Chamber) of 16 May 2007 — Merant v OHIM — Focus Magazin Verlag (FOCUS)

(Case T-491/04)

Community trade mark — Opposition proceedings — Application for the Community word mark FOCUS — Earlier national figurative mark MICRO FOCUS — Likelihood of confusion — Similarity of signs — Article 8(1)(b) of Regulation (EC) No 40/04

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 (Council Regulation No 40/94, Art. 8(1)(b)) (see paras 47-65)

Re:

ACTION brought against the decision of the Second Board of Appeal of OHIM of 18 October 2004 (Case R 542/2002-2) in opposition proceedings between Merant GmbH and Focus Magazin Verlag GmbH.

Information relating to the case

Applicant for the Community trade mark:	Focus Magazin Verlag GmbH
Community trade mark sought:	Word mark FOCUS for goods and services in Classes 3, 6, 7, 8, 9, 14, 15, 16, 20, 21, 24, 25, 26, 28, 29, 32, 33, 35, 36, 38, 39, 41, 42 — Application No 53720
Proprietor of the mark or sign cited in the opposition proceedings:	Merant GmbH
Mark or sign cited in opposition:	International figurative mark MICRO FOCUS for goods and services in Classes 9, 16, 41 et 42
Decision of the Opposition Division:	Opposition partially upheld
Decision of the Board of Appeal:	Appeal by Focus Magazin Verlag GmbH upheld; opposition by Merant GmbH dismissed

Operative part

The Court:

1. Annuls the decision of the Second Board of Appeal of the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) of 18 October 2004 (Case R 542/2002-2);

2. Orders OHIM to bear its own costs and to pay those incurred by the applicant, Merant GmbH;

3. Orders the intervener, Focus Magazin Verlag GmbH, to bear its own costs.