



Press and Information

Court of Justice of the European Union

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Judgment in Case C-100/11 P
Helena Rubinstein SNC and L'Oréal SA v OHIM

The Court confirms the annulment of the Community trade marks 'BOTOLIST' and 'BOTOCYL' because of the existence of the 'BOTOX' trade marks

The use of the marks at issue would take unfair advantage of the reputation of the 'BOTOX' trade marks

In 2003, OHIM – the Community trade marks office – registered, in respect of cosmetic products, the word mark BOTOLIST following an application by Helena Rubinstein SNC and the word mark BOTOCYL for L'Oréal SA.

By two decisions issued in May 2008 and June 2008 respectively, those marks were annulled by OHIM following applications from Allergan Inc, the owner of a number of earlier Community and national marks relating to the sign 'BOTOX'. OHIM found that, although those marks would not be confused with the BOTOX marks, the use of the BOTOLIST or BOTOCYL marks would take unfair advantage of the reputation of those earlier marks.

On 16 December 2010, the General Court dismissed the actions brought by Helena Rubinstein and L'Oréal for annulment of those decisions and confirmed OHIM's findings¹.

Helena Rubinstein and L'Oréal lodged an appeal against that judgment before the Court of Justice.

In its judgment, delivered today, the Court **finds that the General Court did not err in law in concluding that OHIM's decision was valid.**

The General Court correctly analysed whether the earlier BOTOX marks had a reputation with the general public and health-care professionals in the UK on the basis of the evidence adduced by Allergan, such as press articles published in scientific journals or English daily newspapers and the inclusion of the word 'BOTOX' in English dictionaries. Furthermore, the General Court was legitimately able to conclude that there was a link between the marks concerned and, after an overall assessment of the relevant evidence, that the disputed marks sought to take advantage of the distinctive character and reputation acquired by the BOTOX trade marks.

Consequently, **the Court dismisses the appeal and confirms the annulment of the marks BOTOLIST and BOTOCYL.**

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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¹ Joined Cases [T-345/08](#) and [T-357/08](#) *Rubinstein and L'Oréal v OHIM – Allergan (BOTOLIST and BOTOCYL)*