

Case T-130/03

Alcon Inc.

v

**Office for Harmonisation in the Internal Market
(Trade Marks and Designs) (OHIM)**

(Community trade mark — Opposition proceedings — Earlier national word mark TRIVASTAN — Application for Community word mark TRAVATAN — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Third Chamber), 22 September 2005 II - 3861

Summary of the Judgment

*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 — Word marks TRAVATAN and TRIVASTAN
(Council Regulation No 40/94, Art. 8(1)(b))*

For end users, doctors and Italian pharmacists, there is a likelihood of confusion, within the meaning of Article 8(1)(b) of Regulation No 40/94 on the Community trade mark, between the word sign TRAVATAN, registration of which as a Community trade mark is sought in respect of 'Ophthalmic pharmaceutical preparations' in Class 5 of the Nice Agreement and the word mark TRIVASTAN, registered previously in Italy in respect of a 'peripheral vasodilator intended to treat peripheral and cerebral vascular disturbance and vascular disorders of the eye and ear' in the same class.

First, since the product covered by the earlier mark may be used for the treatment of vascular disorders of the eye, even if that product is intended for the general treatment of vascular problems, it must be regarded as analogous to an ophthalmic pharmaceutical product, since in both instances, the treatment of eye disorders is involved. Second, there is significant visual similarity and a phonetic similarity between the conflicting signs.

(see paras 60, 75-76)