

Pleas in law and main arguments

Applicant for Community trade mark:	The applicant
Community trade mark sought:	Figurative mark 'FABER' Application No 676.353 sought for products 1, 2 and 3 (chemicals and industrial adhesives)
Proprietor of mark or sign cited in the opposition proceedings:	Industrias Químicas NABER S.A.
Mark or sign cited in opposition:	Spanish trade marks 'NABER' (registration Nos 801.202, 2.072.120, 2.072.121, 2.072.122) for products in classes 1, 2 and 3
Decision of the Opposition Division:	Rejection of the opposition
Decision of the Board of Appeal:	Dismissal of the appeal
Grounds of the application:	Wrongful application of Article 8(1)(b) of (EC) Regulation No 40/94 (risk of confusion)

Action brought on 18 June 2003 by MyTravel Group plc against the Commission of the European Communities

(Case T-212/03)

(2003/C 200/51)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 June 2003 by MyTravel Group plc, Manchester, United Kingdom, represented by D. Pannick, QC, Mr A. Lewis, Barrister, Mr M. Nicholson and Ms S. Cardell, Solicitors.

The applicant claims that the Court should:

- order that the Commission should pay to the applicant under Article 288(2) EC Treaty as compensation for

damage either the sum of [CONFIDENTIAL] or such amount as the Court in its discretion might order;

- order that interest is payable in respect of the compensation awarded from the date of judgment establishing the obligation to make good the damage in this case at the rate of 8 % per annum or such other rate as the Court in its discretion may order;
- order that the costs of this application should be paid by the Commission.

Pleas in law and main arguments

The applicant, formerly known as Airtours plc, seeks compensation from the Commission by way of damages for harm caused to it by the decision of the Commission in Case No IV/M.1524 — Airtours/First Choice⁽¹⁾, declaring the concentration between the applicant and First Choice incompatible with the common market.

The applicant contends that the conduct of the Commission in carrying out its review of the proposed acquisition of First Choice by Airtours breaches rules of law which are intended to confer rights on individuals. The applicant claims more in particular that the Commission infringed Article 2 of Council Regulation 4064/89 on the control of concentrations between undertakings⁽²⁾ and the general principles of sound administration, care and diligence.

The applicant submits that in committing these breaches the Commission manifestly and gravely disregarded the limits of its discretion, and that these breaches were sufficiently serious to warrant reparation under Article 288 EC Treaty.

The applicant refers in this respect to the judgment in Case T-342/99, Airtours/Commission⁽³⁾, annulling the Decision of the Commission in Case No IV/M.1524 — Airtours/First Choice. The applicant submits that the Court of First Instance made due allowance for the margin of appreciation permitted to the Commission, but nonetheless found that the decision was vitiated by a series of manifest errors of assessment regarding the creation of a dominant position. Such a manifest error established in annulment proceedings equates according to the applicant, to a manifest disregard for the limits of discretion and constitutes a sufficiently serious breach.

The applicant also submits that the fact that the Commission enjoys a margin of discretion does not absolve it from the obligation to observe the principles of sound administration.

As a result of these breaches, the applicant claims to have suffered loss. This loss consists firstly of the profits generated by First Choice as reported in its audited accounts and that would have accrued to the applicant if the acquisition had not been prohibited by the Commission. Secondly, the applicant claims the loss of synergy costs savings that would have been obtained in consequence of the merger and, thirdly, the costs of the abortive bid for First Choice which were wasted as a result of the Decision of the Commission.

- (¹) 2000/276/EC: Commission Decision of 22 September 1999 declaring a concentration to be incompatible with the common market and the EEA Agreement (Case IV/M.1524 — Airtours/First Choice) (notified under document number C(1999) 3022) (Text with EEA relevance) (OJ L 93 of 2000, p. 1).
- (²) Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (text republished in OJ L 257 of 1990, p. 13).
- (³) Judgment of the Court of First Instance of 6 June 2002, Airtours/Commission, T-342/99, ECR II-2585.

Action brought on 13 June 2003 by Francesco Contesso against Commission of the European Communities

(Case T-213/03)

(2003/C 200/52)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 13 June 2003 by Francesco Contesso, residing in Paris, represented by Sebastien Orlandi, Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the decision drawing up the definitive staff report for the period from 1 July 1999 to 30 June 2001;
- order the Commission to pay the applicant a token one euro for compensation for the non-material damage sustained;
- order the defendant to pay the costs.

Pleas in law and main arguments

In support of his application, the applicant pleads infringement of the assessor's prior duty to consult senior assessors before finalising the staff report, infringement of the assessor's duty to require them to initial each of the pages and to sign the definitive staff report, infringement of the duty to give reasons, in so far as the appeal assessor did not state why he did not take account of the opinions of the hierarchical superiors consulted.

Action brought on 13 June 2003 by SIGLA, S.A. against the Office for Harmonisation in the Internal Market (OHIM)

(Case T-215/03)

(2003/C 200/53)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market (OHIM) was brought before the Court of First Instance of the European Communities on 13 June 2003 by SIGLA, S.A., with offices in Madrid, represented by E. Armijo Chávarri.

The applicant claims that the Court should:

- annul the decision of the Third Board of Appeal of OHIM no. R 1127/2000-3 of 1 April 2003 on the ground that it is inconsistent with Article 8(5) of Regulation No 40/94;
- in the alternative, annul the contested decision on the ground that it prejudices SIGLA's rights of defence and the principle underlying Article 74 of Regulation No 40/94; and
- order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for Community trade mark: ELLENI HOLDING BV

Community trade mark sought: Word mark 'VIPS' Application No 459.875 sought for products and services within classes 9, 35 and 42 and, subsequently, only for services within class 42 (computer programming services for hotels, restaurants and cafes)

Proprietor of mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited in opposition: Spanish word mark 'VIPS' (registration No 551.436) for products of class 42 (supplying prepared food and drink for consumption, restaurants, service stations, canteens, bars and cafeterias and hotel services)