

Action brought on 26 February 2002 by Brasserie Jules Simon & Cie against the Commission of the European Communities

(Case T-50/02)

(2002/C 131/36)

(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 26 February 2002 by Brasserie Jules Simon & Cie, established at Wiltz (Luxembourg), represented by Alexandre Carnelutti and Jerry Mosar, lawyers.

The applicant claims that the Court should:

- annul Article 1 of the Commission's decision of 5 December 2001 in Case COMP/37800/F3 — Brasseries Luxembourgeoises, in so far as it finds that the applicant has infringed Article 81(1) of the Treaty;
- in any event, annul Article 2 of the decision in so far as it imposes a fine on the applicant, or alternatively reduce that fine substantially;
- order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those put forward in Case T-49/02.

Action brought on 25 February 2002 by Kabushiki Kaisha Kenwood against the Office for Harmonisation in the Internal Market

A further party to the proceedings before the Board of Appeal was Karstadt Quelle Aktiengesellschaft

(Case T-58/02)

(2002/C 131/37)

(Language of the case: English)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 25 February 2002 by Kabushiki Kaisha Kenwood, represented by Mr Emiliano Garayar Gutiérrez, Mr Joaquín García-Romanillos Valverde and Ms Anna García Castillo of Gómez-Acebo & Pombo, Brussels (Belgium).

The applicant claims that the Court should:

- annul the contested decision no. R0612/1999-2,
- order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: Kabushiki Kaisha Kenwood (also trading as Kenwood Corporation)

The Community trade mark concerned: The word mark 'DualMags' for goods in classes 9, 37 and 38.

Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings: Karstadt Quelle Aktiengesellschaft

Trade mark or sign asserted by way of opposition in the opposition proceedings: The national German word mark 'Dual' for certain goods in class 9.

Decision of the Opposition Division: Partial rejection of the Community trade mark application because of likelihood of confusion for certain goods in class 9.

Decision of the Board of Appeal: Dismissal of the appeal by the applicant for the Community trade mark.

Grounds of claim: Violation of Article 8.1 (b) of Council Regulation 40/94 ⁽¹⁾ since there is no risk of confusion. According to the applicant, the word 'dual' should be considered as a descriptive complement to the distinctive trade mark 'Mags'. The opposing mark should further be considered as a weak trade mark due to its descriptive nature and the word 'dual' is a common element in several trade marks.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ L 11, 1994, p. 1).