

The applicant claims that the Court should:

- annul Decision REM 06/01 of 14 January 2002 and allow a rebate of the anti-dumping duties imposed to SFT Gondrand Frères.

Pleas in law and main arguments

The applicant is an authorised customs agent. In 1997 it released for circulation three cargo loads of urea ammonium nitrate solution from Poland. When making the customs declaration the applicant applied for an exemption from anti-dumping duty which applies to imports of that product from Poland. Following checks, the French customs authorities took the view that anti-dumping duty was due and demanded payment of the customs duty from the applicant.

The applicant then requested a rebate of the anti-dumping duty and the corresponding VAT. That request was sent by the French authorities to the Commission, which refused a rebate of the anti-dumping duties. The applicant is challenging that decision in this case.

The applicant claims that anti-dumping duties are not payable, as a result of EC Regulation No 3319/94⁽¹⁾. The applicant states that the goods were invoiced directly by the Polish company, Zakłady Azotowe Pulawy, to a French company, Evertrade. The price of the goods was, furthermore, higher than the minimum import price. In those circumstances the applicant claims that to subject the contested imports to anti-dumping duties is unjustified.

The applicant also claims that it was justifiable for the duties to be subject to a rebate in this case in the light of one particular factor. According to the applicant, the idea is to prevent dumping by means of import routes involving intermediate companies in third countries. That danger has been averted here, since the first buyer from the Polish exporter was a French company. Furthermore, the regulation in question poses difficulties of interpretation. The applicant claims that the French authorities interpreted it in the same way as the applicant. It also adds that its omission is a purely formal one and has not had any real effect on the proper functioning of the customs system.

Finally, the applicant argues that it cannot be accused of deception and that it has not acted with manifest negligence.

⁽¹⁾ Council Regulation (EC) No 3319/94 of 22 December 1994 imposing a definitive anti-dumping duty on imports of urea ammonium nitrate solution originating in Bulgaria and Poland, exported by companies not exempted from the duty, and collecting definitively the provisional duty imposed (OJ 1994 L 350, p. 20).

Action brought on 15 April 2002 by Grupo El Prado-Cervera, S.L. against Office for Harmonisation in the Internal Market

(Case T-117/02)

(2002/C 156/64)

(Language of the case: Spanish)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 15 April 2002 by Grupo El Prado-Cervera, S.L., whose registered office is at Valencia (Spain), represented by Patricia Koch Moreno.

The applicant claims that the Court should:

- declare the Decision of 12 February 2002 of the First Board of Appeal of the OHIM rejecting the opposition filed against Community trade mark application No 1021229, CHUFADIT, in Classes 29 and 31 incompatible with Article 8(1)(b) of Regulation (EC) No 40/94 on the Community Trade Mark and annul that decision;
- declare that there is a likelihood of confusion between Community trade mark application No 1021229, CHUFADIT, in classes 29 and 31, and Spanish trade mark No 1778419, CHUFI, registered in respect of goods in Class 29, and Spanish trade mark No 2063328, CHUFI, registered in respect of goods in Class 31;
- refuse Community trade mark application No 1021229, CHUFADIT, in Classes 29 and 31; and, finally,
- order the defendant and, if appropriate, the intervener to pay the costs of the proceedings.

Pleas in law and main arguments

Person applying to register the Community trade mark:	D.J. Debuschewits
Community trade mark concerned:	CHUFACIT — application for registration No 1021229 — application in respect of goods in Classes 29 and 31.
Proprietor of the trade mark or distinctive sign relied on in the opposition proceedings:	The applicant company.
Trade mark or distinctive sign relied on in the opposition proceedings:	Spanish Trade Mark CHUFI, registered in respect of goods in Class 29, and Spanish graphic-denominative mark CHUFI, with specific distinction, registered in respect of goods in Class 31.
Decision of the Opposition Division:	Appeal against the Opposition Division dismissed.
Decision of the Board of Appeal:	Appeal against the decision of the Opposition Division dismissed.
Grounds of appeal:	Unlawful application of Article 8(1)(b) of Regulation (EC) 40/94 on the Community Trade Mark.

Action brought on 17 April 2002 by Sunrider Corporation against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-124/02)

(2002/C 156/65)

(Language of the case to be determined pursuant to Article 131(2) of the Rules of Procedure — language in which the application was submitted: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 17 April 2002 by Sunrider Corporation, Torrance (USA), represented by A. Kockläuner, lawyer. Vitakraft-Werke Wührmann & Sohn, Bremen (Germany), was an additional party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- partially annul Decision R 368/2000-2 of the Second Board of Appeal of 17 January 2002 to the extent that the applicant was ordered to bear its own costs in the opposition and appeal proceedings and that reimbursement of the appeal fee was not ordered;
- order the Office to pay the costs.

Pleas in law and main arguments

The applicant filed an application for registration of the word mark 'VITATASTE' in respect of goods in Classes 5 and 29 at the Office for Harmonisation in the Internal Market (application no 156463). Vitakraft-Werke Wührmann & Sohn opposed that application. The opposition was based on the German marks 'VITAKRAFT' and 'VITA' in respect of goods in Class 5.

As a result of a private settlement with the opposing party, the applicant limited the category of goods by removing some of the goods claimed in Class 5. The opposing party later withdrew its opposition but sought a decision on costs.

The Opposition Division decided that the applicant should bear the costs of the opposition procedure. The Board of Appeal set this decision aside and ordered each of the parties to pay its own costs in respect of the opposition and appeal proceedings.

The applicant is appealing against the decision of the Board of Appeal and claims that Article 81(4) of Council Regulation (EC) No 40/94⁽¹⁾, not Article 81(3), is applicable in the present case. Furthermore, the defendant failed to consider that the requirements of Rule 51 of the implementing regulation⁽²⁾ were satisfied so that the Board of Appeal should have ordered reimbursement of the appeal fee. Finally, the Board of Appeal failed to comply with its obligation to state reasons.

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

⁽²⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1)