

- 'sportswear, jackets; T-shirts, sweatshirts, polo shirts, volley shorts, training shorts and short pants; swimming suits; hats; wet suits; wet suit boots; dry suits; water ski boots; water ski vests, water ski gloves; spray legs, all meant to be used for the practice of wakeboard' in international class 25;
- 'water sport tow ropes, water sport tow handles; water sport tow floats; inflatable tubes for recreational use in water; towable water toys designed to carry a rider; wake boards; wake board bindings; wake board fins; water skis; trick water skis; jump skis; water ski bindings; adjustable ski fins; water ski boat tow harnesses; water ski gloves; knee boards; water sport boards; water sport gear bags; water ski, wakeboard and knee board bags; water sport goods; dampers for use with water skis; wake boards to limit vibration and adjust flex, all meant to be used for the practice of wakeboard' in international class 28.
- order the defendant to pay the costs, fees and disbursements of this case and of the previous proceedings and appeals before OHIM Examination Division and the Third Board of Appeal respectively.

Pleas in law and main arguments

The trade mark concerned:	The word mark 'HYPERLITE' — application No 997122
Goods or service concerned:	Goods in classes 18, 25 and 28
Decision contested before the Board of Appeal:	Refusal of registration by the examiner
Decision of the Board of Appeal:	Annulment of the decision of the examiner in so far as it rejects registration of the application for 'wakeboards, wakeboard bindings; wakeboard fins; wakeboard bags; dampers for use with wake boards to limit vibration and adjust flex', all in class 28, and dismissal of the appeal for the remainder.

Grounds of claim:

The decision is contradictory in that although the Board of Appeal recognises that all the different observations and documents filed by the H.O. Sports, Inc. in their entirety constantly refer to the particular market of wakeboard, it sustains that acquired distinctiveness under Article 7 (3) of Regulation No. 40/94 ⁽¹⁾ has been established for certain goods only.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20.12.1993 on the Community trade mark (OJ L 11, p. 1).

Action brought on 11 October 2002 by H.O. Sports Inc. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-319/02)

(2003/C 7/41)

(Language of the case: English)

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 11 October 2002 by H.O. Sports Inc., Redmond, Washington, U.S.A., represented by Mr Fabrizio Jacobacci, lawyer.

The applicant claims that the Court should:

- amend the decision of 17 July 2002 (File No. R 140/2002-3) of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and allow the Community Trade Mark Application to proceed to registration in connection with the following goods:
 - 'backpacks; travel bags; duffel bags for practice of wakeboard' in international class 18;
 - 'sportswear, jackets; T-shirts, sweatshirts, polo shirts, volley shorts, training shorts and short pants; swimming suits; hats; wet suits; wet suit boots; dry suits; water ski boots; water ski vests, water ski gloves; spray legs, all meant to be used for the practice of wakeboard' in international class 25;

- 'water sport tow ropes, water sport tow handles; water sport tow floats; inflatable tubes for recreational use in water; towable water toys designed to carry a rider; wake boards; wake board bindings; wake board fins; water skis; trick water skis; jump skis; water ski bindings; adjustable ski fins; water ski boat tow harnesses; water ski gloves; knee boards; water sport boards; water sport gear bags; water ski, wakeboard and knee board bags; water sport goods; dampers for use with water skis; wake boards to limit vibration and adjust flex, all meant to be used for the practice of wakeboard' in international class 28.
- order the defendant to pay the costs, fees and disbursements of this case and of the previous proceedings and appeals before OHIM Examination Division and the Third Board of Appeal respectively.

Pleas in law and main arguments

The pleas in law and main arguments advanced are identical to those put forward in Case T-318/02 (H.O. Sports Company, Inc. / OHIM).

Action brought on 22 October 2002 by Paul Vannieuwenhuyze-Morin against European Parliament and Council of the European Union

(Case T-321/02)

(2003/C 7/42)

(Language of the case: French)

An action against the European Parliament and the Council of the European Union was brought before the Court of First Instance of the European Communities on 22 October 2002 by Paul Vannieuwenhuyze-Morin, residing in Grigny (France), represented by Guy Dupaigne, lawyer.

The applicant claims that the Court should:

- annul Article 13(1) and (2) of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), published in the Official Journal on 31 July 2002, and the words 'either without the consent of the

subscribers concerned or' and 'the choice between these options to be determined by national legislation' in Article 13(3);

- make an appropriate order as to costs.

Pleas in law and main arguments

The applicant, a frequent user of direct mailing over the internet and founder of the internet site Internet-libre.net, seeks the annulment of the abovementioned provisions of Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37).

In support of its arguments, the applicant alleges lack of legal basis to the contested act insofar as its adoption was not necessary for the single market.

Furthermore, the directive in question fails to observe the right to freedom of expression mentioned in Articles 5 of the Declaration of Fundamental Rights and Freedoms, 11 of the Charter of Fundamental Rights of the European Union and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedom and the principle of free trade recognised by all the Member States and that of free competition, enshrined in particular in Articles 3 and 4 and Title VI of the Treaty.

Action brought on 14 October 2002 by Monique Breton against Court of Justice of the European Communities

(Case T-323/02)

(2003/C 7/43)

(Language of the case: French)

An action against the Court of Justice of the European Communities was brought before the Court of First Instance of the European Communities on 14 October 2002 by Monique Breton, residing in Howald (Luxembourg), represented by Albert Coolen, Jean-Noël Louis and Étienne Marchal, avocats.