

*Pleas in law and main arguments*

Applicant for the Community trade mark: The applicant

Community trade mark concerned: Word mark 'VITAKRAFT' for goods in Classes 1, 3, 4, 12 and 19 (inter alia, Chemicals used in industry, science, photography, as well as in agriculture, horticulture and forestry, Bleaching preparations and other substances for laundry use, Industrial oils and greases, Vehicles and Building materials (non metallic)) — Application No 303909

Owner of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings: KRAFFT, S.A.

Trade mark or sign asserted by way of opposition in the opposition proceedings: The Spanish figurative marks 'krafft' for goods in Classes 1, 3, 4, 12 and 19 (inter alia, Chemicals used in industry, science, photography, as well as in agriculture, horticulture and forestry, Bleaching preparations and other substances for laundry use, Industrial oils and greases, Vehicles and Building materials (non metallic))

Decision of the Opposition Division: Refusal of registration as regards Classes 1 and 3 and dismissal of the opposition in so far as it concerned Classes 4, 12 and 19

Decision of the Board of Appeal: Dismissal of KRAFFT S.A.'s appeal with regard to the following goods in the application, 'candles, wicks' in Class 4, 'Vehicles, apparatus for locomotion by land, air or water' in Class 12 and 'non-metallic transportable buildings; monuments, not of metal' in Class 19 and dismissal of the applicant's appeal in respect of all goods in the application in Classes 1 and 3

Grounds of claim: — Infringement of Article 43(2) of Regulation (EC) No 40/94<sup>(1)</sup> and Rule 22(2) of the implementing Regulation<sup>(2)</sup>;  
— Infringement of Article 8(1)(b) of Regulation (EC) No 40/94.

<sup>(1)</sup> Council Regulation (EC) No 40/94 of 20 December 1993 on the Community Trade Mark (OJ 1994 L 11, p. 1).

<sup>(2)</sup> 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).

**Action brought on 27 November 2002 by Wolf-Dieter Graf Yorck von Wartenburg against the Commission of the European Communities**

**(Case T-360/02)**

(2003/C 55/76)

*(Language of the case: German)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 27 November 2002 by Wolf-Dieter Graf Yorck von Wartenburg, Wittibreit, Germany, represented by H.-H. Heyland, Rechtsanwalt, with an address for service in Luxembourg.

The applicant claims that the Court should:

- Declare that, in amending the decision of 22 June 2000 and in its conduct of the complaint procedure R/332/2002 which followed, the Commission disregarded the prescribed legal and administrative provisions inasmuch as it announced a change in the decision of 22 June 2000, carried out no hearing with representation of the parties following an objection by the applicant and the direct beneficiaries of the decision, ignored the formal requirements for attachment under German and Belgian law, even though these had been notified to it in writing, and instead instructed bailiff M to draw up a partition scheme, which it received and, without giving reasons, then failed to carry out;

- Order the Commission to carry out the partition scheme of bailiff M of 19 August 2002, at least in relation to the amount of his pension, which under Belgian law has protection against the seizure order of bailiff V of 18 March 2002;
- Order the Commission to compensate the applicant for the loss (including that incurred through interest payments on bridging loans and non-material damage at the discretion of the court, not being less than EUR 100, together with costs incurred in enforcing his rights) arising from the fact that, since May 2002, his pension has been entirely deposited with bailiff M, although the Commission is or must be aware that such conduct is unlawful, the amount of compensation for material damage on account of the continuing illegality to be determined in the event of the declaration being granted.

*Pleas in law and main arguments*

The applicant, a former temporary servant now in retirement, draws a pension from the Communities. He claims that the Commission has unlawfully made maintenance payments out of his pension to his former wives.

The applicant argues that, in making deductions from his pension, the Commission disregarded the prescribed legal and administrative rules and infringed his right to a proper hearing.

The applicant claims that the Court should:

- annul the decision of the defendant of 25 September 2002 in the appeal procedure R 338/2001-1;
- order the defendant to pay the costs.

*Pleas in law and main arguments*

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| Community trade mark applied for:    | Word mark 'SnTEM' — Application No 1421734   |
| Goods or services:                   | Goods in Class 6 (inter alia, metallic semi-finished products in the form of sheets, trips, wires, tubes, sections and rods) |
| Decision before the Board of Appeal: | Refusal of registration by the examiner  |
| Decision of the Board of Appeal:     | Dismissal of appeal  |
| Pleas in law:                        | — Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 since the mark is not descriptive.                     |

**Action brought on 9 December 2002 by Wieland-Werke AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

**(Case T-367/02)**

(2003/C 55/77)

*(Language of the case: 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 9 December 2002 by Wieland-Werke AG, Ulm (Germany), represented by S. Gruber and F. Graf von Stosch, lawyers.

**Action brought on 9 December 2002 by Wieland-Werke AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

**(Case T-368/02)**

(2003/C 55/78)

*(Language of the case: 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 9 December 2002 by Wieland-Werke AG, Ulm (Germany), represented by S. Gruber and F. Graf von Stosch, lawyers.