

Action brought on 11 February 2003 by Pi-Design AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-51/03)

(2003/C 101/79)

(Language of the case: Danish)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 11 February 2003 by Pi-Design AG, Triengen (Switzerland), represented by Jacob S Ørndrup, lawyer

The applicant claims that the Court should:

- annul the decision of the defendant of 5 December 2002 in Case No R452/2001-2 concerning EC trade mark application No 000353854;
- order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark sought: A three-dimensional trade mark in the form of a 'cafetière' (push-down coffee pot) — application No 353854

Goods or services: Nice classification 21 (non-electric coffee makers)

Decision before the Board of Appeal: Refusal of registration by the examiner

Decision of Board of Appeal: Dismissal of appeal

- Pleas in law:
- The defendant's decision is contrary to Article 7(1)(b) of Regulation No 40/94 ⁽¹⁾;
 - The trade mark has the necessary distinctive character.
 - The fact that the plaintiff's cafetière design is copied should not in itself lead to the trade mark application's being refused on grounds of lack of distinctive character.

- There is no basis for stating that the cafetière in question is a manifestation of the 'usual shape of the product'.

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

Action brought on 14 February 2003 by BPB plc against the Commission of the European Communities

(Case T-53/03)

(2003/C 101/80)

(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 14 February 2003 by BPB plc, Slough, United Kingdom, represented by Thomas Sharpe QC and Mr Alexandre Nourry, Solicitor with an address for service in Luxembourg.

The applicant claims that the Court should:

- Annul Articles 1 and 2 of the contested Decision insofar as it relates to BPB
- In the alternative, annul Article 3 of the Decision insofar as it relates to BPB or, in the further alternative, reduce the fine imposed on BPB to such amount as the Court determines in accordance with law
- Subject to the annulment of Article 3 of the Decision or the reduction in the fine, order repayment of the principal sum paid by BPB together with such interest as the Court should determine in accordance with law
- Order the Commission to pay BPB's costs.

Pleas in law and main arguments

By its decision which forms the subject matter of the present action, the defendant found that the applicant and three other undertakings, namely Gebrüder Knauf Westdeutsche Gipswerke KG, Société Lafarge SA and Gyproc Benelux, had infringed Article 81 paragraph 1 EC by participating in a complex and continuing agreement from 1992 until 1998 with the object of stabilising the principal EU markets in plasterboard. The applicant denies that any agreement of the type alleged existed.