

**Action brought on 23 June 2003 by Ulf Jacoby against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

(Case T-242/03)

(2003/C 200/57)

(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 23 June 2003 by Ulf Jacoby, Lahnau (Germany), represented by K. Müller, lawyer, of Kanzlei Krieger Froese & Kollegen. Leo Pharmaceutical Products BV, Weesp (Netherlands), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- annul the decision of the Fourth Board of Appeal of 14.3.2003, thereby granting the applicant's application to the Board of Appeal for *restitutio in integrum*, occasioned by his failure to observe the time-limit for payment of the appeal fee;
- declare that the appeal is to be regarded as having been lodged.

*Pleas in law and main arguments*

The applicant sought registration of the word mark 'leovat' with the defendant office in respect of goods in Classes 3, 4, 5 and 31 (application No 657221). Leo Pharmaceutical Products BV, proprietor of the international word mark 'Leo' for goods in Classes 3 and 5, lodged an opposition to registration.

By decision of 6 July 2001, the Opposition Division allowed the opposition on the ground that there was a likelihood of confusion owing to the high level of similarity of the goods and the signs. The applicant lodged an appeal against that decision in good time. On 19 September 2001, the Registry of the Board of Appeal informed the applicant that the appeal fee had not been received by the office before the expiry, on 6 September 2001, of the time-limit for bringing an appeal, and gave the applicant the opportunity to submit his observations on the matter. On 24 September 2001 the applicant effected payment of the appeal fee and simultaneously applied

for *restitutio in integrum* occasioned by his failure to pay the appeal fee in good time.

By the contested decision, the Board of Appeal rejected the application and declared that the appeal was to be regarded as not having been lodged.

The applicant submits that usually time-limits are entered in a diary for that purpose kept by his former lawyer in order to comply with and monitor the time-limits for bringing appeals and payment of the appeal fee, and the time-limits are only then crossed out of that diary after they have been observed. In order to avoid any accidental crossing out of an entry in the diary, the member of that lawyer's staff responsible for overseeing the time-limits is required to initial any crossing out of a deadline. Since that long-standing, consistently reliable member of his staff had crossed out and initialled the time-limit entered in respect of the appeal case, the lawyer acting for the applicant was entitled to assume that the appeal fee had been paid in good time. Since the failure to observe the time-limit for payment of the appeal fee was not caused by any fault of the lawyer acting for the applicant, the application for *restitutio in integrum* is founded and the action must be granted.

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**Action brought on 30 June 2003 by Flavia Angeletti against the Commission of the European Communities**

(Case T-244/03)

(2003/C 200/58)

(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 30 June 2003 by Flavia Angeletti, residing in Nice (France), represented by Juan Ramon Iturriaga-goitia and Karine Delvolvé, avocats.

The applicant claims that the Court should:

- annul the decision of the Directorate-General Personnel and Administration of 5 May 2003;
- order a challenge to two of the members of the medical committee;
- order the Commission to pay the costs in their entirety.