

Some of these documents became the object of a disagreement between the applicants and the Commission. According to the applicants, the seizure and handling of these documents violate the general principle of legal professional privilege as recognized under European Community Law.

In Commission Decision C(2003)1533 regarding a claim of legal privilege in the context of an investigation pursuant to Article 14(3) of Council Regulation No 17 in Case No COMP/E-1/38.589 the Commission firstly rejected the applicants' request to return or destroy all copies of the documents in dispute and secondly, indicated it will proceed to join all documents in dispute to the Commission's file.

With the present application, the applicants seek the review of the legality and the annulment of this Decision. The applicants submit that the Commission has committed an infringement of the Treaty and of general principles of Community law and has violated Regulation 17/62 as interpreted by the Courts of Justice of the European Communities.

The applicants contend that the Commission has violated the principle of legal professional privilege by violating the procedures relating to the application of this principle as set out by case law, by its unjustified denial of legal professional privilege and by violating the applicants' fundamental rights (such as the right to privacy) which form the basis of the aforementioned principle.

⁽¹⁾ The applicants have lodged an application for the annulment of Commission Decision C(2003) 559/4 in as far as it has been interpreted as legitimating the Commission's action of seizing, reviewing and reading of documents allegedly covered by legal professional privilege (Case T-125/03, OJ [2003] C 146 of 21.6.2003, p. 42).

Action brought on 15 July 2003 by Internet Photonics, Inc against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-257/03)

(2003/C 239/40)

(Language of the case: English)

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 July 2003 by Internet Photonics, Inc., New Jersey, USA, represented by M. Chapple, Barrister.

The applicant claims that the Court should:

- decide that the mark 'INTERNET PHOTONICS' is eligible for registration as a community trade mark since it does comply with Article 7(1)(b) of Regulation (EC) No 40/94 ⁽¹⁾;
- annul the decision dated the 13th May 2003 by the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) concerning case Number R 765/2002-2;
- allow the application for the mark to be remitted to the Examination Division of the Office for further consideration of eligibility for registration under Article 7(1)(c) of Regulation (EC) No 40/94 ⁽¹⁾ having regard to the distinctive character of the mark as a whole, or alternatively to remit the application for the mark for a decision by a Board of Appeal of the Office as to whether the mark is eligible for registration as a community trade mark under Article 7(1)(c) of Regulation (EC) No 40/94 ⁽¹⁾ on the original appeal from the examiner.
- order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments

The trade mark concerned: The word mark 'INTERNET PHOTONICS' — application No 002275600

Goods or service concerned: Goods and services in Classes 9, 37, 42 (computer software and hardware etc.)

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

Decision of the Board of Appeal: Dismissal of the appeal

Grounds of claim: — misapplication of Article 7(1)(b) of Regulation (EC) No 40/94 ⁽¹⁾
— misapplication of Article 7(1)(c) of Regulation (EC) No 40/94 ⁽¹⁾

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