

The applicants claim that the Court should:

- declare that the Community has, through the European Parliament and the Council, incurred non-contractual liability, and order the defendants to make good all loss suffered by the applicants on account of the directive in question;
- declare that interest at the annual rate of 8 % (or at an appropriate rate to be fixed by the Court) is payable from the date of the Court's decision finding the Community liable until the time of payment;
- order the defendants to pay the costs.

- violates the principle of proportionality;
- treats the applicants unequally in comparison with traders active in the sphere of foodstuffs for human beings;
- was adopted on the wrong legal basis. The directive at issue ought to have been based on Article 37 of the EC Treaty and not on Article 152(4)(b) of the EC Treaty, since it has nothing to do with the veterinary and phytosanitary field.

(<sup>1</sup>) OJ L 63 of 6 June 2002, p. 23.

#### *Pleas in law and main arguments*

This application claims compensation for the damage supposedly caused by Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002 amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC (<sup>1</sup>).

The abovementioned directive introduces a requirement that manufacturers of compound feedingstuffs should indicate on their labels the precise quantities (in percentages) of all feed materials included in each feedingstuff. By so doing it establishes quite new labelling rules for compound feedingstuffs which, according to the applicants, will result in the compulsory divulgence of the know-how and fundamental commercial secrets of the compound feedingstuff manufacturers. The introduction of those rules will enable the compound feedingstuff manufacturers' customers to know not only the formula but also the exact cost of the feed materials, so that the applicants will, they argue, lose their greatest vehicle of competition and their very existence could be jeopardised.

In support of their claims the applicants maintain that the contested directive:

- infringes their know-how and commercial secrets which are protected in the Community legal order;
- fails to have regard to protection of undistorted competition, to reinforcement of the competitiveness of the Community industry and encouragement of technological R. & D.;
- infringes the right to property and the right to carry on economic activity freely;
- militates against improvement of agricultural products and protection of the environment;

#### **Action brought on 12 September 2003 by La Baronia de Turis against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)**

**(Case T-323/03)**

(2003/C 275/86)

*(Language of the case: Spanish)*

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 12 September 2003 by La Baronia de Turis, Cooperativa Valenciana, established in Turis, Valencia (Spain), represented by Juan José Carreño Moreno, lawyer.

The applicant claims that the Court should:

- annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 9 July 2003 in Case R 57/2003-2;
- order that registration be refused in respect of Community trade mark No 2 057 487 'LA BARONNIE', owned by the undertaking Baron Philippe de Rothschild SA, to designate products within Class 33 of the Nice Classification.

#### *Pleas in law and main arguments*

Applicant for Community trade mark: Baron Philippe de Rothschild SA.

Community trade mark sought:	Word mark 'LA BARONNIE' — Application No. 2 057 487 for products in Class 33 (alcoholic beverages, except beers).	— annul the decision of the Commission not to include his name on the list of promoted officials published in AN No 2002-69 of 14 August 2002;
Proprietor of mark or sign cited in the opposition proceedings:	The applicant.	— order the Commission to pay him token damages of EUR 1 for the damage suffered by him as a result of the failure to draw up the staff report for the period 1997 to 1999;
Mark or sign cited in opposition:	National word mark 'BARONIA' for products covered by Class 33 ('wines of all types').	— order the Commission to pay the costs.
Decision of the Opposition Division:	Opposition refused.	<i>Pleas in law and main arguments</i>
Decision of the Board of Appeal:	Appeal dismissed.	In support of his application, the applicant alleges infringement of Article 45 of the Staff Regulations, breach of the principle of equal treatment and non-discrimination and manifest error of assessment.
Pleas in law:	Incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 (likelihood of confusion).	

**Action brought on 15 September 2003 by Heinrich Winter against Commission of the European Communities**

**(Case T-324/03)**

(2003/C 275/87)

*(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 15 September 2003 by Heinrich Winter, residing in Overijse (Belgium), represented by Sébastien Orlandi, Albert Coolen, Jean-Noël Louis and Étienne Marchal, lawyers.

The applicant claims that the Court should:

- annul the decision of the Commission not to include his name on the list of officials deemed to be most deserving of promotion to Grade A 4 for the 2002 promotions procedure published in Administrative Notices (AN) No 2002-68 of 12 August 2002;

**Action brought on 25 September 2003 by O<sub>2</sub> (Germany) GmbH & Co. OHG against Commission of the European Communities**

**(Case T-328/03)**

(2003/C 275/88)

*(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 25 September 2003 by O<sub>2</sub> (Germany) GmbH & Co. OHG, Munich, Germany, represented by Mr N. Green QC, Mr K. Bacon, Barrister, Mr B. Amory, lawyer and Ms Francesca Marchini Camia, lawyer.

The applicant claims that the Court should:

- annul articles 2 and 3(a) of the Commission Decision of 16 July 2003 in case COMP/38.369;
- order the Commission to pay the applicant's costs;
- make any such further order as the Court deems appropriate.