

Pleas in law and main arguments

Community trade mark sought:	The word mark 'CLIMATIC' — Application No 1705557
Goods or services:	Goods and services in Classes 11, 12 and 37 (<i>inter alia</i> , apparatus for heating, steam generating, refrigerating, drying and ventilating; repair)
Decision contested before the Board of Appeal:	Refusal by the examiner to register the mark in respect of goods and services in Classes 11 and 37
Decision of the Board of Appeal:	Dismissal of the appeal
Pleas in law:	— Infringement of Article 74(1) of Regulation (EC) No 40/94 — Legally incorrect application of Article 7(1)(b) of Regulation (EC) No 40/94

Action brought on 11 September 2003 by Kreuzer Medien GmbH against the European Parliament and the Council of the European Union

(Case T-310/03)

(2003/C 289/57)

(Language of the case: German)

An action against the European Parliament and the Council of the European Union was brought before the Court of Justice of the European Communities on 11 September 2003 by Kreuzer Medien GmbH, represented by Dr U. Kornmeier and Dr D. Valbert.

The applicant claims that the Court should:

- declare Article 3(1) of Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products⁽¹⁾ void;
- order the defendant to bear the costs.

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The applicant runs a medium-sized publishing company and publishes the Leipzig magazine 'Kreuzer'. The magazine is financed *inter alia* by tobacco advertising.

The applicant seeks a declaration that Article 3(1) of Directive 2003/33/EC is void. It argues that the directive breaches Community law from several points of view. The directive infringes Article 251 EC as the published version of the directive differs from that adopted by the Council and the Parliament. Further, the directive breaches Article 95 EC, as, in the case of a local or regional magazine such as that produced by the applicant, there are no internal market implications and the Community legislature thus has no role to play.

The applicant submits further that the directive is vague and thus breaches the constitutional requirement of certainty. It also infringes the requirement under Article 253 EC that reasons should be stated, as no reasons are actually given regarding the existence of obstacles to trade which could be removed by the directive.

Furthermore, the applicant submits that the directive infringes the freedom of expression safeguarded by Article 11 of the Charter of fundamental rights of the European Union and Article 10(1) of the ECHR. That includes the right to 'commercial speech'. The directive prejudices the placing of advertising and positive editorial reporting, without thereby in any way allowing the objective of the directive to be attained. Finally, the directive infringes entrepreneurial freedom, the property rights of the applicant and the prohibition on going beyond what is necessary laid down by the third paragraph of Article 5 EC.

⁽¹⁾ OJ 2003 L 152, p. 16.

Action brought on 15 September 2003 by Hans-Peter Wilfer against the Office for Harmonisation in the Internal Market (Trade marks and Designs) (OHIM)

(Case T-315/03)

(2003/C 289/58)

(Language of the case: German)

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 15 September 2003 by Hans-Peter Wilfer, represented by A. Kockläuner, lawyer.