— order the office for Harmonisation in the Internal Market to pay the costs of the opposition and appeal proceedings and of the present action.

Pleas in law and main arguments:

Applicant for Community trade mark:	The applicant
Community trade mark sought:	The figurative mark 'O orsay' for goods in Classes 23, 24 and 25 (yarn, woven and knitted fabric; bed and table covers; articles of clothing; boots, shoes and slippers; headgear) – Application No 1 042 613
Proprietor of mark or sign cited in the opposition proceedings:	José Jiménez Arellano S.A.
Mark or sign cited in opposition.	The Spanish and Portuguese figurative mark 'D'ORSAY' for, inter alia, goods in Class 25
Decision of the Opposition Division:	Refusal of the application for registration in respect of the goods 'articles of clothing; boots, shoes and slippers; headgear'. Rejection of the remainder of the opposition.
Decision of the Board of Appeal:	Dismissal of the applicant's appeal
Pleas in law:	— The Office's decision was adopted in breach of Article 8(1) of Regulation (EC) No 40/94. — There can be no likelihood of confusion in aural terms where the opposed marks 'O orsay' and 'D'ORSAY' are compared. — Both a likelihood of confusion as a result of the typography and a likelihood of association can be ruled out.

Action brought on 13 February 2004 by Gela Sviluppo S.C.p.A. (in liquidation) against the Commission of the European Communities

(Case T-65/04)

(2004/C 106/141)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 13 February 2004 by Gela Sviluppo S.C.p.A. (in liquidation), represented by Patrizio Menchetti, lawyer.

The applicant claims that the Court should:

— annul the Commission decision in the communication of 16 December 2003, ref. 116515 Regio E2/JHR/rs D(2003) 621494, refusing the application for payment of the balance of the financing of the global grant for Gela Sviluppo;

— cancel the Commission decision reducing the financing of the global grant for Gela Sviluppo, Sicily 94-99 ERDF 98.05.26.001;

— annul the Commission decision writing off the sum of EUR 2 348 580.42 from the balance sheet;

— annul the Commission decision in the debit note for the sum of EUR 85 806.66, for repayment of the surplus paid;

— if Article 6.2 of the Guidelines for the financial closure of operational assistance (1994—1999) of the Structural Funds adopted by Decision (ESA) 1999/1316 of 9/9/1999 is considered part of a decision within the meaning of Article 249 EC, annul that decision;

— establish the non-contractual liability of the Commission with respect to failure to pay the final balance of the financing of the global grant for Gela Sviluppo, Sicily 94/99 ERDF 98.05.26.001, and order the Commission to compensate for damage under Article 235 EC and Article 288 ECin the sum of EUR 2 348 580.42, plus interest, or to an extent considered fair;

— establish the breach of contract and the contractual liability of the Commission in relation to the agreement signed on 13.09.1999 by Gela Sviluppo and the European Commission, recognised by the Region of Sicily, and amended on 31.05.2002, also recognised by the Region of Sicily, declare that the sum of EUR 85 806.66 is not payable by the Commission, order the Commission to perform its contractual obligations with regard to the payment of the sum of EUR 2 262 777.76 or to compensate for damage in the same amount, or to an extent considered fair;

— order the Commission to pay the costs.

Pleas in law and main arguments:

The action relates to the Commission decision not to pay the final balance of the financing of the global grant for Gela Sviluppo, Sicily 94—99 ERDF 98.05.26.001, and to demand the sum already paid of EUR 85 806 66.

The applicant pleads:

— the Commission did not give an adequate statement of reasons for the decisions reducing the financing, or for Decision (ESA) 1999/1316 of 9.9.1999;

— the Commission was in breach of the principle of due process because it refused to take action in relation to the applicant's request to be heard, and of the principles of legitimate expectations, proportionality and legal certainty concerning that reduction, and finally of essential procedural requirements in relation to the presentation of Decision (ESA) 1999/1316 of 9/9/1999;

— unlawfulness of the method of calculation used by the Commission for the closure of the final balance;

— the non-contractual liability of the Commission by reason of infringement of the principle of legitimate expectations, good administrative practice and the rules governing the management of the financing of the structural funds;

— the contractual liability of the Commission in relation to the agreement signed by the Commission, Gela Sviluppo and the Region of Sicily, in breach of Articles 1453,1175 and 1375 of the Italian Civil Code.

Action brought on 20 February 2004 by SGL Carbon AG against the Commission of the European Communities

(Case T-68/04)

(2004/C 106/142)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 20 February 2004 by SGL Carbon AG, Wiesbaden (Germany), represented by Martin Klusmann and Andreas von Bonin, lawyers.

The applicant claims that the Court should:

— annul Commission Decision C(2003) 4457 final of 3 December 2003 in so far as it concerns the applicant;

— in the alternative, reduce appropriately the amount of the fine imposed on the applicant in the contested decision;

— order the defendant to pay the costs.

Pleas in law and main arguments:

In the contested decision the Commission imposed on the applicant a fine in the sum of EUR 23 640 000 for infringement of Article 81(1) EC and Article 53(1) EEA by taking part in a series of agreements and concerted practices on the market in carbon and graphite-based products for electrical and mechanical applications.

In support of its action, the applicant claims, first, that the basic amount of the fine was incorrectly determined to its detriment. In addition, the applicant pleads that the Commission failed to have regard to the upper limit of 10 % for the fine laid down in Article 15(2) of Regulation 17/62 [1] through the imposition of several separate fines of an amount exceeding 10 % of the group turnover. The applicant was also adversely affected by the unjustified application of the 10 % upper limit in favour of another undertaking which has a group relationship with a third undertaking. According to the applicant, the Commission also incorrectly assessed the cooperation of the applicant and in this respect reduced the fine by too little, and incorrectly took into consideration the actual deterrent effect in fixing the amount of the fine. The applicant also claims that the Commission wrongfully refused to take into account the applicant's inability to pay when calculating the fine. Finally, the applicant contests the assessment of the amount of interest in respect of pending proceedings and default interest in the contested decision.

[1] EEC Council: Regulation No 17: First Regulation implementing Articles [81] and [82] of the Treaty (OJ, English Special Edition 1959—1962, p. 87).

Action brought on 20 February 2004 by Schunk GmbH and Schunk Kohlenstofftechnik GmbH against the Commission of the European Communities

(Case T-69/04)

(2004/C 106/143)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 20 February 2004 by Schunk GmbH, Thale (Germany), and Schunk Kohlenstofftechnik GmbH, Heuchelheim (Germany), represented by Rainer Bechtold and Simon Hirsbrunner, lawyers.

The applicants claim that the Court should:

— annul the contested decision of the Commission of 3 December 2003 (Case COMP/E-2/38.359 — carbon and graphite-based products for electrical and mechanical applications);