

Action brought on 31 March 2004 by Cargo Partner AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-123/04)

(2004/C 168/10)

(Language of the case: 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 31 March 2004 by Cargo Partner AG, Fischamend (Austria), represented by M. Wolner, lawyer.

The applicant claims that the Court should:

- vary the contested decision so as to allow registration of the trade mark sought;
- in the alternative, refer the case back to the Office for Harmonisation in the Internal Market (Trade Marks and Designs); and,
- in any event, award costs to the applicant.

Pleas in law and main arguments:

Community trade mark sought:	The word mark CARGO PARTNER — Application No 2697290.
Goods or services:	Goods and services in Classes 36 (insurance) and 39 (transport; packaging and storage of goods; travel arrangement).
Decision contested before the Board of Appeal:	The examiner's partial refusal to register the mark in respect of the transport, packaging and storage services in Class 39.
Decision of the Board of Appeal:	Dismissal of the appeal.
Pleas in law:	The mark is distinctive and therefore registrable.

Action brought on 1 April 2004 by Develey Holding GmbH & Co. Beteiligungs KG against the Office for Harmonisation in the Internal Market

(Case T-129/04)

(2004/C 168/11)

(Language of the case: German)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 1 April 2004 by Develey Holding GmbH & Co. Beteiligungs KG, Unterhaching (Germany), represented by H.P. Kunz-Hallstein and R. Kunz-Hallstein, lawyers.

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) of 20 January 2004;
- order the defendant Office to pay the costs.

Pleas in law and main arguments:

Community trade mark sought:	A three dimensional mark in the shape of a plastic bottle – Application No 2579381.
Goods or services:	Goods in Classes 29, 30 and 32 (inter alia, tomato pulp, milk and milk products, mayonnaises, ketchup, fruit drinks).
Decision contested before the Board of Appeal:	Refusal by the examiner to register the mark.
Decision of the Board of Appeal:	Dismissal of the appeal.
Pleas in law:	Infringement of Articles 74(1) and 45 of Regulation (EC) No 40/94 ⁽¹⁾ , infringement of Article 73 of Regulation (EC) No 40/94, insofar as the defendant Office stated that it is not bound by earlier registrations in Member States, and infringement of Article 7(1) of Regulation (EC) No 40/94.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).