

Action brought on 13 May 2004 by Carmelo Morello against the Commission of the European Communities

(Case T-166/04)

(2004/C 179/27)

(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 13 May 2004 by Carmelo Morello, living in Brussels, represented by Jacques Sambon and Pierre Paul Van Gehuchten, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Annul the implied rejection of his application of 28 March 2003 and so far as necessary annul the rejection of his complaint;
2. Order the Commission to pay him EUR 1 000 000 in damages for non-material damage and EUR 1 000 000 in damages for material damage;
3. Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant, a Commission official, had applied in the context of another case for the annulment of the nomination of another official to a post of head of unit for which he had himself applied. The Court of First Instance upheld his action by annulling the appointment in question.

At the time of the delivery of the judgment in the previous case, the official appointed to the post in question had already been promoted and moved to another post, while the post of head of unit thus vacated had been filled by the reinstatement of another official at the end of his leave on personal grounds.

After the delivery of the judgment in the previous case, the applicant applied to the Commission for implementation of the judgment in question, and then lodged a complaint against the implied rejection of his application. The Commission rejected that complaint, holding that, in the absence of an available post, it was unable to take measures implementing the previous judgment.

The present action is directed against the rejection of the applicant's application. In support of his claims, the applicant pleads infringement of Article 233 EC, infringement of Articles 4, 7, 24, 25 and 45 of the Staff Regulations, infringement of the principle of sound administration and misuse of powers or procedure. He also claims to have suffered material and non-material damage by losing a serious chance of reaching Grade A3 by the end of his career, and seeks compensation in that regard.

Action brought on 12 May 2004 by Calliope S.A. against the Office for Harmonisation in the Internal Market

(Case T-169/04)

(2004/C 179/28)

(Language of the case: French)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 12 May 2004 by Calliope S.A., established in Mourenx (France), represented by Stéphanie Legrand, lawyer.

BASF AG was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- annul the decision of the First Board of Appeal of the OHIM of 4 March 2004 dismissing appeal No R 289/2003-1;
- order the OHIM to register the application for Community trade mark 'CARPOVIRUSINE' No 1 422 641 for the goods referred to in the application;
- order the OHIM to pay the costs.

Pleas in law and main arguments:

Applicant for Community trade mark:	Applicant
Community trade mark sought:	Word mark 'CARPOVIRUSINE' – application No 1 422 641 in respect of goods in Class 5 (insecticides etc.)
Proprietor of mark or sign cited in the opposition proceedings:	BASF AG
Mark or sign cited in opposition:	National and international word mark 'CARPO' for goods in Class 5
Decision of the Opposition Division:	Registration refused
Decision of the Board of Appeal:	Appeal dismissed
Pleas in law:	Wrongful application of Article 8(1)(b) of Regulation (EC) No 40/94 ¹

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11 of 14.01.94, pp. 1-36).