

**Action brought on 25 May 2004 by Przedsiębiorstwo Polmos Białystock against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)**

(Case T-180/04)

(2004/C 217/38)

(Language of the case: English)

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 25 May 2004 by Przedsiębiorstwo Polmos Białystock, Białystock, Poland, represented by Ms C. Bercial Arias, lawyer.

V & S Vin & Sprit AB 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 March 16, 2004 in case R 430/2003-1 confirming the Opposition's Division Decision No. 1200/2003 upholding opposition No. B 432 635
- order the Office to pay costs, including those incurred in the opposition proceedings and before the Boards of Appeal

*Pleas in law and main arguments:*

Applicant for Community trade mark:	the applicant
Community trade mark sought:	Figurative mark 'ABSOLWENT B GRADUATE VODKA WÓDKA' for goods in class 33 (beer etc.)
Proprietor of mark or sign cited in the opposition proceedings:	V & S Vin & Sprit AB
Mark or sign cited in opposition:	Word national mark 'ABSOLUT'
Decision of the Opposition Division:	Registration refused
Decision of the Board of Appeal:	Appeal rejected
Pleas in law:	Inapplicability of Articles 8(1)(b) and 8(2)(c) of Regulation 40/94. In this context, the applicant submits that the signs in question are dissimilar.

**Action brought on 25 May 2004 by Tokai Europe GmbH against the Commission of the European Communities**

(Case T-183/04)

(2004/C 217/39)

(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 25 May 2004 by Tokai Europe GmbH, Mönchengladbach (Germany), represented by G. Kroemer, lawyer.

The applicant claims that the Court should:

- annul Commission Regulation (EC) No 384/2004 of 1 March 2004 concerning the classification of certain goods in the Combined Nomenclature; <sup>(1)</sup>
- order the defendant to pay the costs.

*Pleas in law and main arguments:*

The applicant manufactures cigarette lighters and imports cigarette lighters and parts for cigarette lighters. It contests Commission Regulation (EC) No 384/2004.

The applicant submits that, by classifying, in the contested regulation, the base metal wheels imported for the manufacture of cigarette lighters in Mexico and Hong Kong as parts (of cigarette lighters) under subheading 961390 of the customs nomenclature, the Commission extended the scope of that subheading beyond its wording. As a result, primary products also used in other goods which cannot be classed under heading 9613 were classified as parts for cigarette lighters. The Commission thereby exceeded the limits of its discretion.

The applicant also claims that, in taking account of the intended use of the metal wheels in the manufacture of cigarette lighters, the Commission acted in breach of the principle that goods are to be classified according to their objective nature. In the reasons stated in the regulation, express reference is made to the wheels' intended use.

Moreover, the applicant submits that, when classifying the metal wheels, the Commission failed to comply with the explanatory notes on the Harmonised System (HS) issued by the Customs Cooperation Council in that, as is stated in the reasons, it based the classification of the wheels in the customs tariff on the criterion of intended use rather than applying the criterion of appearance.

<sup>(1)</sup> OJ 2004 L 64, p. 21.