

Action brought on 25 May 2004 by Lancôme Parfums et Beauté & Cie against the Office for Harmonisation in the Internal Market

(Case T-185/04)

(2004/C 217/40)

(Language of the case: French)

An action against the Office for Harmonisation in the Internal Market (OHIM) was brought before the Court of First Instance of the European Communities on 25 May 2004 by Lancôme Parfums et Beauté & Cie, established in Paris, represented by Muriel Antoine-Lalance, lawyer.

Jacqueline Baudon was also a party to the proceedings in the proceedings before the Fourth Board of Appeal.

The applicant claims that the Court should:

- annul the decision of the Fourth Board of Appeal of OHIM of 11 March 2004 (Case R 0039/2002-4) relating to the opposition procedure between Lancôme Parfums et Beauté & Cie and Madame Jacqueline Baudon;
- order OHIM to pay the costs.

Pleas in law and main arguments:

Community trade mark subject of invalidity application:	Word mark AROMACOSMETIQUE – Application No 886.335, for products entered in classification 3 (cosmetic, beauty and make-up preparations)
Owner of the mark subject of invalidity application:	The applicant company
Cancellation application:	Mme Jacqueline Baudon, holder of the French word marks 'AROMACOSMETIQUE', No 92/408 786, for services in classification 42, and No 98/739 256, for products in classifications 3 and 5
Decision of the cancellation division:	Cancellation of the Community trade mark AROMACOSMETIQUE allowed due to the risk of confusion with the earlier national trade mark No 98/739 256
Decision of the Board of Appeal:	Appeal dismissed
Pleas in law:	Infringement of Articles 61, 62, 73 and 79 of Regulation No 40/94 on the Community trade mark, Article 41 of the Charter of Fundamental Rights of the European Union and Article 6(1) of the European Convention on Human Rights.

Action brought on 24 May 2004 by Freixenet S.A. against the Office for Harmonisation in the Internal Market

(Case T-188/04)

(2004/C 217/41)

(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 24 May 2004 by Freixenet S.A., established in Sant Sadurní d'Anoia (Spain), represented by Fernand de Visscher, Emmanuel Cornu, Eric De Gryse and Donatienne Moreau, lawyers.

The applicant claims that the Court should:

- annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 11 February 2004 and order that trade mark application No 32540 be published pursuant to Article 40 of Regulation No 40/94;
- in the alternative, the decision of 11 February 2004 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market;
- order the Office for Harmonisation in the Internal Market to pay the costs.

Pleas in law and main arguments:

Applicant for Community trade mark:	Freixenet S.A.
Community trade mark applied for:	Three-dimensional trade mark in the form of a frosted black matt bottle (No 32540)
Products or services:	Products in classification 33 (sparkling wines)
Decision of the examination division:	Application rejected
Decision of the Board of Appeal:	Appeal dismissed
Pleas in law:	Violation of the rights of the defence and Article 73 of Regulation No 40/94 ⁽¹⁾ in so far as the applicant was not able to express a view on all of the facts, and infringement of Articles 7(1)(b) and 7(3) of Regulation 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).