

## JUDGMENT OF THE COURT OF FIRST INSTANCE

of 6 October 2004

in Case T-294/02: Miguel Vicente-Núñez v Commission of the European Communities <sup>(1)</sup>

*(Compliance with a judgment of the Court of First Instance — Decision on promotion — Seniority in grade — Date of taking effect)*

(2004/C 314/43)

(Language of the case: French)

In Case T-258/01: Miguel Vicente-Núñez, an official of the Commission of the European Communities, residing in Kraainem (Belgium), represented by M.-A. Lucas, lawyer, against Commission of the European Communities (Agents: C. Berardis-Kayser and L. Lozano Palacios, with an address for service in Luxembourg) — application for annulment of the Commission's decision promoting the applicant to Grade A 5, Step 3 under the 1998 procedure, adopted in order to comply with the judgment delivered by the Court of First Instance on 9 March 2000 in Case T-10/99, in so far as it limits its effect to 1 April 2000, and, second, a claim for damages, the Court of First Instance (Third Chamber), composed of J. Azizi, President, M. Jaeger and F. Dehousse, Judges; H. Jung, Registrar, gave a judgment on 6 October 2004, in which it:

1. Annuls the Commission's decision of 11 June 2002, in so far as it does not have the effect of replacing Mr Vicente-Núñez in a situation comparable, from the point of view of his seniority in grade, to the situation in which he would have been had he been promoted to Grade A 5 on 1 April 1998;
2. Dismisses the remainder of the application;
3. Orders the Commission to pay the costs.

<sup>(1)</sup> OJ No C 289 of 23.11.2002

## JUDGMENT OF THE COURT OF FIRST INSTANCE

of 6 October 2004

in Case T-356/02: Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) <sup>(1)</sup>

*(Community trade mark — Opposition proceedings — Earlier figurative mark including the verbal element 'Krafft' — Application for Community word mark VITAKRAFT — Relative ground for refusal — Genuine use of the earlier mark — Similarity of the signs — Article 8(1)(b) of Regulation (EC) No 40/94 — Rule 22(2) of Regulation (EC) No 2868/95)*

(2004/C 314/44)

(Language of the case: German)

In Case T-356/02: Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG, established in Bremen (Germany), represented by U. Sander, lawyer, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. Apostolakis and G. Schneider), the other party to the proceedings before the OHIM Board of Appeal and intervener before the Court of First Instance being Krafft, SA, established in Andoain (Spain), represented by P. Koch Moreno, lawyer — ACTION seeking the annulment of the decision of the Fourth Board of Appeal of OHIM of 4 September 2002 (Joined Cases R 506/2000-4 and R 581/2000-4) in opposition proceedings between Krafft, SA, and Vitakraft-Werke Wührmann & Sohn GmbH & Co. KG — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, A.W.H. Meij and N.J. Forwood, Judges; B. Pastor, Deputy Registrar, for the Registrar, has given a judgment on 6 October 2004, in which it:

1. Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 September 2002 (Joined Cases R 506/2000-4 and R 581/2000-4) in so far as it allowed the intervener's appeal before the Board of Appeal concerning the goods 'industrial oils and greases; lubricants; fuels (including motor spirit) and illuminants' (Class 4) and the goods 'building materials (not metallic); non-metallic rigid pipes for building, asphalt, pitch and bitumen' (Class 19) contained in the Community trade mark application;
2. Dismisses the remainder of the action;
3. Orders the parties to bear their own costs.

<sup>(1)</sup> OJ C 55, 8.3.2003.