

Pleas in law and main arguments

Applicant for Community trade mark:	Netscout Systems, Inc.
Community trade mark concerned:	The word mark 'NGENIUS' for goods and services in classes 9, 16 and 42 (Computers, computer hardware and computer software; printed matter; computer programming; ...) — application No 1 830 900
Proprietor of mark or sign cited in the opposition proceedings:	KYE Systems Corporation
Trade mark or sign cited in opposition:	The national figurative mark 'GENIUS' for goods in class 9 (computers, disk units, printers, fax machines, ...)
Decision of the Opposition Division:	Rejection of the trade mark application for all goods covered by it in class 9
Decision of the Board of Appeal:	Dismissal of the appeal
Pleas in law:	Infringement of Article 8(1)(b) of Council Regulation No 40/94

Action brought on 18 February 2005 by the Italian Republic against the Commission of the European Communities

(Case T-83/05)

(2005/C 106/76)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 February 2005 by the Italian Republic, represented by Antonio Cingolo, *Avvocato dello Stato*.

The applicant claims that the Court should:

1. annul the Commission's decisions of: 16 December 2004 (P.E.P. Sicily 2000-2006), 13 January 2005 (P.E.P. Calabria

Ob. 1 2000-2006), 13 January 2005 (P.E.P. Apulia Ob. 1 2000-2006), 17 January 2005 (Docup Lombardy Ob. 2 2000-2006), 17 January 2005 (P.E.P. Calabria Ob. 1 2000-2006) and 26 January 2005 (P.E.P. Sardinia Ob. 1 2000-2006), all intended to make implementation of the payment of certain advances in the sphere of aid schemes conditional upon fulfilment of obligations not required by the legislation in force, for the purpose of improperly limiting the expenditure which is eligible for the use of the Structural Funds concerned;

2. order the Commission to pay the costs.

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The pleas in law and main arguments are those raised in Case T-345/04 *Italian Republic v Commission* (1).

(1) O.J.E.U. C 262 of 23 October 2004, p. 55.

Action brought on 17 February 2005 by Nicole Schmit against the Commission of the European Communities

(Case T-84/05)

(2005/C 106/77)

(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 17 February 2005 by Nicole Schmit, residing in Ispra (Italy), represented by Eric Boigelot, lawyer.

The applicant claims that the Court should:

- order the production of all files concerning the applicant and sealed by OLAF;
- order the production of the report which concludes the internal investigation into the applicant;
- annul the investigation into the applicant;
- annul the Note from OLAF containing 'notification of the investigation and the information of the Italian judicial authorities';