

2. order the Commission to pay the costs.

Action brought on 1 July 2005 by The Black & Decker Corporation against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Pleas in law and main arguments

(Case T-239/05)

The applicant has brought two actions for annulment before the Court of First Instance, the first (Case T-279/04) ⁽¹⁾ being against the Commission's decision of 7 January 2004 declaring the concentration operation whereby Lagardere was to acquire exclusive control of the assets of Vivendi Universal Publishing, subject to honouring the latter's undertakings, compatible with the common market (COMP.M/2978 — Lagardere/Natexis/VUP), and the second (Case T-452/04) ⁽²⁾ being against the Commission's decision of 30 July 2004, concerning the approval of Wendel Investment as the acquirer of the assets surrendered in accordance with the decision of 7 January 2004.

(2005/C 205/60)

(Language in which the application was lodged: English)

On 27 January 2005, the applicant asked the Commission, on the strength of Article 255 EC and Regulation No 1049/2001, for access to certain documents concerning that case. The Commission sent only one of the documents requested, maintaining that the others were covered by exceptions to the principle of public access to documents. On 18 February 2005, the applicant made a confirmatory application, which was likewise rejected by the Commission on 7 April 2005.

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 1 July 2005 by The Black & Decker Corporation, established in Towson, Maryland (USA), represented by P. Harris, Solicitor.

Atlas Copco Aktiebolag, established in Stockholm (Sweden), was also a party to the proceedings before the Board of Appeal.

In support of its action against that latter decision, the applicant argues that it is void because it was based on an examination by categories of document requested and not on a specific and individual examination of each document.

The applicant claims that the Court should:

It also argues that the Commission made clear errors of assessment in applying each of the exceptions under Article 4(2) of Regulation No 1049/2001, which it relied upon in dismissing the request. More particularly, the exceptions concern protection of the purpose of investigation activities, the protection of commercial interests, the protection of the decision-making process, and the protection of the Commission's legal opinions. In the applicant's submission, the Commission has not applied any of those exceptions correctly.

— annul the contested decision of the First Board of Appeal of the OHIM of 19 April 2005 (Case R 727/2004-1);

— declare opposition proceedings B497 596 inadmissible;

— order that the costs occasioned by the applicant in the course of the present proceedings and its appeal be borne by the OHIM.

The applicant also claims that the Commission has infringed its right to at least partial access to the documents concerned.

Pleas in law and main arguments:

Finally, the applicant claims that the proportionality principle has been infringed because the Commission did not balance the exceptions referred to in Article 4(2) of Regulation No 1049/2001 against the higher public interest justifying disclosure of the documents requested.

Applicant for Community trade mark: The applicant

⁽¹⁾ OJ C 262 of 23.10.04, p. 33

⁽²⁾ OJ C 45 of 19.02.05, p. 24

Community trade mark concerned:

Coloured three-dimensional mark in black and yellow, in the form of a tool for goods in Class 7 (manually operated portable electric power tools etc.)

Proprietor of mark or sign cited in the opposition proceedings:	Atlas Copco Aktiebolag	Atlas Copco Aktiebolag, established in Stockholm (Sweden), was also a party to the proceedings before the Board of Appeal.
Trade mark or sign cited in opposition:	Non-registered trade marks and signs, used in the course of trade in all Member States for power tools.	The applicant claims that the Court should: <ul style="list-style-type: none"> — annul the contested decision of the First Board of Appeal of the OHIM of 19 April 2005 (Case R 729/2004-1); — declare opposition proceedings B490 336 inadmissible; — order that the costs occasioned by the applicant in the course of the present proceedings and its appeal be borne by the OHIM.
Decision of the Opposition Division:	Rejects opposition as inadmissible	
Decision of the Board of Appeal:	Annuls the contested decision and remits the case to the Opposition Division for further prosecution	
Pleas in law:	The applicant claims that the opposition should have been declared inadmissible as it did not identify sufficiently clearly the earlier marks and signs relied on, in violation of Rule 18(1) of Regulation No 2868/95 ⁽¹⁾	<i>Pleas in law and main arguments</i>

⁽¹⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark, OJ L 303, 15/12/1995 p. 1

Applicant for Community trade mark:	The applicant
Community trade mark concerned:	Coloured three-dimensional mark in black and yellow, in the form of a tool for goods in Class 7 (manually operated portable electric power tools etc.)

Action brought on 1 July 2005 by The Black & Decker Corporation against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-240/05)

(2005/C 205/61)

(Language in which the application was lodged: English)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 1 July 2005 by The Black & Decker Corporation, established in Towson, Maryland (USA), represented by P. Harris, Solicitor.

Proprietor of mark or sign cited in the opposition proceedings:	Atlas Copco Aktiebolag
Trade mark or sign cited in opposition:	Non-registered trade marks and signs, used in the course of trade in all Member States for power tools.
Decision of the Opposition Division:	Rejects opposition as inadmissible
Decision of the Board of Appeal:	Annuls the contested decision and remits the case to the Opposition Division for further prosecution