

Pleas in law: It is irrelevant from a legal viewpoint that the mark applied for is a geometric figure, since in respect of the role of trade marks and their capability of working as company signs, only the assessment of the average consumer who is reasonably well informed and reasonably observant and circumspect is relevant. The defendant has breached that principle of assessment in the contested decision. The figure in the form of a pentagon is unusual and striking and therefore has distinctive character and indicates the company origin. Article 7(1)(b) of Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark does not thereby preclude registration of the mark of the applicant for which protection is sought.

**Action brought on 10 August 2005 — Italian Republic/
Commission of the European Communities**

(Case T-308/05)

(2005/C 257/30)

Language of the case: Italian

Parties:

Applicant: Italian Republic (represented by: Antonio Cingolo, Avvocato dello Stato)

Defendant: Commission of the European Communities

Form of order sought:

The applicant claims that the Court should:

- annul memorandum No 05272 of 7 June 2005 of the Regional Policy Directorate General of the European Commission — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — Italy and Malta — concerning POR Campania Ob. 1 — 2005-2006 (No CCI 1999 IT 16 1 PO 007) — Declaration of interim expenditure and request for payment;
- annul memorandum No 05453 of 8 June 2005 of the Regional Policy Directorate General of the European Commission — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning DOCUP Ob. 2 — Latium 2005-2006 (No CCI 2000 IT 16 2 DO 009) — Payment from the Commission different from the amount requested;
- annul memorandum No 05726 of 17 June 2005 of the Regional Policy Directorate General of the European

Commission — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning POR Apulia 2005-2006 (No CCI 1999 IT 16 PO 009) — Payment from the Commission different from the amount requested;

- annul memorandum No 05728 of 17 June 2005 of the Regional Policy Directorate General of the European Commission — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning POR Apulia 2005-2006 (No CCI 1999 IT 16 PO 009) — Payment from the Commission different from the amount requested;
- annul memorandum No 05952 of 17 June 2005 of the Regional Policy Directorate General of the European Commission — Programmes and projects in Cyprus, Greece, Hungary, Italy, Malta and the Netherlands — concerning POR Apulia 2005-2006 (No CCI 1999 IT 16 PO 009) — Payment from the Commission different from the amount requested;
- annul all related and prior measures; and
- order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments:

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

⁽¹⁾ OJ C 262 of 23.10.2004, p. 55.

Action brought on 10 August 2005 — Microsoft/Commission

(Case T-313/05)

(2005/C 257/31)

Language of the case: English

Parties:

Applicant(s): Microsoft Corporation (Washington, USA) [represented by: J.-F. Bellis, lawyer, I. Forrester, QC]

Defendant(s): Commission of the European Communities