

Action brought on 19 August 2008 — Hess Group v OHIM — Coloma Navarro (COLOMÉ)

(Case T-341/08)

(2008/C 272/81)

*Language in which the application was lodged: Spanish***Parties***Applicant:* Hess Group AG (Berna, Switzerland) (represented by: E. Armijo Chávarri, A. Castán Pérez-Gómez, lawyers)*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)*Other party to the proceedings before the Board of Appeal of OHIM:* José Félix Coloma Navarro (Badajoz, Spain)**Form of order sought**

— Declare the action against the Decision of the First Board of Appeal of OHIM of 21 May 2008 lodged in time and in the required form and, via the appropriate procedure, order the annulment of that decision and order expressly that OHIM pay the costs.

Pleas in law and main arguments*Registered Community trade mark in respect of which a declaration of invalidity has been sought:* Word mark 'COLOMÉ' for goods in Class 33 (wines) (Application for Registration No 2.140.283).*Proprietor of the Community trade mark:* The applicant.*Applicant for the declaration of invalidity:* D. José Félix Coloma Navarro.*Trade mark right of applicant for the declaration:* Spanish figurative marks 'COLOMA' for goods in Class 33 (wines).*Decision of the Cancellation Division:* Application for declaration of invalidity upheld.*Decision of the Board of Appeal:* Dismissal of the appeal.*Pleas in law:* Breach of Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark.**Action brought on 18 August 2008 — Batchelor v Commission**

(Case T-342/08)

(2008/C 272/82)

*Language of the case: English***Parties***Applicant:* Edward William Batchelor (Brussels, Belgium) (represented by: F. Young, Solicitor, A. Barav, Barrister and D. Reymond, lawyer)*Defendant:* Commission of the European Communities**Form of order sought**

- Annul the implied negative decision deemed, pursuant to Article 8(3) of the Access Regulation, to have been made by the European Commission on 11 June 2008, the express negative decision SG/E/3/HP/cr D(2008)5545, made by the Commission on 3 July 2008, and the express negative decision SG/E/3/EV/psi D(2008)6636, made by the Commission on 7 August 2008, relating to a request for access to documents presented pursuant to Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43);
- Order the Commission to pay its own costs and the applicant's costs in relation to these proceedings.

Pleas in law and main arguments

This application for annulment, pursuant to Article 230(4), is brought against the Commission's implied negative decision of 11 June 2008 and express negative decisions, SG/E/3/HP/cr D(2008)5545 of 3 July 2008 and SG/E/3/EV/psi D(2008)6636 of 7 August 2008, made pursuant to Regulation (EC) No 1049/2001⁽¹⁾ ('the Access Regulation') by which the Commission rejected the applicant's request for access to documents the Commission sent to, and received from, the Belgian authorities, relating to the notification of measures taken under Article 3a(1) of Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities⁽²⁾, as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997⁽³⁾.

The applicant claims that the Commission's failure to provide adequate and sufficient reasons for denying access to the documents requested, amounts to a violation of Article 253 EC and Article 8(1) of the Access Regulation and that, consequently, the contested decision is vitiated by an infringement of an essential procedural requirement, as envisaged in Article 230(2) EC.