

The applicant claims that the Court should:

- annul the First Board of Appeal's decision of 27 May 2002 in Case R 830/2001-1;
- remit the case to the First Board of Appeal;
- order each party to bear its own costs.

- Registration of the Scala Inc's Community trade mark application is an infringement of Article 8(1) of Council Regulation No 40/94, as the applicant is the owner of two earlier and identical trade marks which are registered for identical or similar goods.

Pleas in law and main arguments

Applicant for the Community trade mark:	Scala Inc., USA
The Community trade mark concerned:	Word mark SCALA for 'computer software' in class 9.
Proprietor to the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	The Applicant
Trade mark or sign asserted by way of opposition in the opposition proceedings:	Danish trade mark registration no. VR 1300 1989 SCALA (word mark), registered on 17 March 1989, and German trade mark registration no. 2059843 SCALA (Word mark), registered on 15 March 1994. These two marks are registered for a range of goods in classes 9 and 16. The applicant's opposition was based on some of the goods for which the earlier mark was registered, specifically 'counterprograms stored on datacarriers' and 'date processing programs stored on data carriers' in class 9, and was directed against all the goods specified in Scala Inc's application
Decision of the Opposition Division:	Refusal of the application
Decision of the Board of Appeal:	Refusal of the application
Grounds of claim:	<ul style="list-style-type: none"> — The documents submitted by the Applicant to the Opposition Division did comply with Rule 16(2) of Regulation (EC) No. 2868/95, implementing Council Regulation No 40/94, on the Community Trade Mark

Action brought on 8 August 2002 by Luigi Marcuccio against the Commission of the European Communities

(Case T-236/02)

(2002/C 233/60)

(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 8 August 2002 by Luigi Marcuccio, represented by Luciano Garofalo, lawyer.

The applicant claims that the Court should:

- annul the decision changing the 'affectation de l'emploi A7/A6 et de son titulaire M. Luigi Marcuccio (n. Personnel 048092), fonctionnaire de grade A7' ('transferring the A6/A7 post and its holder, Mr Luigi Marcuccio (Staff No 048092), a grade A7 official') from the Directorate-General for Development, Commission's Delegation in Luanda (Angola) to the Directorate-General for Development in Brussels; the said decision was adopted by the Director-General for Development, Mr Koos Richelle, on 18 March 2002;
- order the defendant:
 - to pay compensation for the non-material, existential, biological, physical, psychological and material damage suffered by the applicant as a result of the decision contested in these proceedings, in the sum of 100 000 (one hundred thousand) euros or such greater or lesser sum as the Court may think fair and equitable;
 - to pay all the salary-related allowances connected with the performance by the said Marcuccio of his duties in Angola, with effect from the date on which his transfer took effect (1 April 2002), together with interest thereon at the rate of 10 % per annum, compounded annually;
 - to pay the costs.

Pleas in law and main arguments

The applicant in the present case is contesting the decision to transfer him from the Commission's delegation in Luanda to the Directorate-General for Development in Brussels. That decision is allegedly connected with illness caused by personal conflicts in which he was involved within the said delegation in Luanda.

In support of his claims, the applicant pleads:

- failure to provide a statement of reasons, inasmuch as the mere reference to the interests of the service cannot be regarded as satisfactory in that respect;
- infringement of the principle of proper administration, alternatively failure to discharge the duty to have regard for the welfare and interests of officials;
- non-compliance with the principle that the interested party should be heard in advance of the adoption of a decision, inasmuch as the contested decision was taken without any prior notice to the person concerned;
- the decision at issue is indicative in several respects of a misuse of powers, since it is apparent from the overall circumstances of the case that the objective actually pursued was not of a merely organisational nature but was to distance the applicant from Angola and from the functions which he was responsible for performing there.

Action brought on 8 August 2002 by Technische Glaswerke Ilmenau GmbH against the Commission of the European Communities

(Case T-237/02)

(2002/C 233/61)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 8 August 2002 by Technische Glaswerke Ilmenau GmbH, whose registered office is at Ilmenau (Germany), represented by G. Schohe and Ch. Arhold, lawyers, acting as agents, with an address for service in Luxembourg.

The applicant claims that the Court should

- annul the Commission's decision of 28 May 2002 concerning the applicant's application for access to documents — D(2002) 330168 — except for the part in which access is refused to documents directly connected with the pending aid procedure concerning Schott;
- order the defendant to pay the costs.

Pleas in law and main arguments

By application of 15 April 2002 the applicant, a manufacturer of special glass, requested, pursuant to Article 6(1) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council⁽¹⁾, access to documents relating to various State aid procedures. Two of those procedures concerned the applicant itself as a presumed recipient of State aid; the others concerned one of its competitors on the special glass markets, the firm Schott Glass. The applicant's action is directed at the Commission's decision of 28 May 2002 in so far as it refuses to grant access to the documents in the aid procedures concerning the applicant itself and in procedures concerning Schott Glass and are already completed.

The applicant submits that the Commission's refusal manifestly infringes Article 2(1) and (4) of Regulation (EC) No 1049/2001. The applicant had a right to access which was not restricted by Article 4 of the regulation. In particular, the Commission had not proved the existence of any specific impairment of the protected interests set out in Article 4(2) of the regulation.

Furthermore, the applicant submits that the Commission wrongly relied on the exception relating to the protection of the purpose of inspections, investigations and audits. Referring to Article 4(7) of the regulation, the applicant submits that it has at the very least the right to access to documents in examination procedures which have already been completed. Moreover, it ought to have been possible for the Commission to grant the applicant access to a document in which business secrets had been obscured and thus to grant partial access in accordance with Article 4(6) of the regulation.

Finally, the Commission infringed its obligation to state reasons in accordance with Article 253 EC, since it had merely given a general statement of reasons.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145 p. 43).

Action brought on 9 August 2002 by José Barbosa Gonçalves against Commission of the European Communities

(Case T-238/02)

(2002/C 233/62)

(Language of the case: Portuguese)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 9 August 2002 by José Barbosa