

*Decision of the Opposition Division:* upheld the opposition and rejected the application for registration.

*Decision of the Board of Appeal:* dismissed the appeal.

*Pleas in law:*

Infringement of the principle of continuity in terms of their functions between the various departments of the Office for Harmonisation in the Internal Market in that a decision that a party appearing before the authorities ruling at first instance which has failed to provide evidence as to matters of fact or law within the prescribed time-limits cannot, pursuant to Article 74(2) of Council Regulation No 40/94 on the Community trade mark, rely on such evidence before the Board of Appeal is contrary to that principle.

Infringement of Article 8(1)(b) of that Regulation.

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**Action brought on 26 September 2005 — Mische/Parliament**

(Case T-365/05)

(2005/C 315/28)

*Language of the case: English*

**Parties**

*Applicant(s):* Harald Mische (Brussels, Belgium) [represented by: G. Vandersanden, L. Levi, lawyers]

*Defendant(s):* European Parliament

**Form of order sought**

— Order the cancellation of the grading given on the 4 October 2004 in the appointment decision of the Nominating Authority which was to take effect 16 November to grade him on his recruitment to DG Competition as ‘junior lawyer’ at category A\*, grade 6, step 1, implying the reinstatement of all his rights as deriving from a legal and regular employment, i.e. a legal and regular grading as of 16 November 2004, which means at minimum an A7/3 grading (valid as of 1 November 2003) or its equivalent according to Articles 1-11 of Annex XIII of the Staff Regulations (A\*8/3);

— grant the award of damages with (i) Aintéréts de retard@, compensation for his prejudice to his career, and (ii) other damages in form of a legal and regular pay, notably the application of the transitional provision contained in Article 21 of Annex XIII of the Staff Regulation in force as of 1 May 2004 or, alternatively, the lowering of contributions to the pension scheme based on the principle of equal pay. These rights will have to be duly evaluated at a later stage and are now evaluated, provisionally and *ex aequo et bono*, at a minimum of 10 000 euros per year;

— order that the Parliament pays all the costs.

**Pleas in law and main arguments**

The applicant, an official appointed after the entry into force of the new Staff Regulations on 1st May 2004, but from a reserve list drawn up on the basis of a competition organised before that date, contests his appointment grade. He invokes the same pleas and arguments he had already invoked in Case T-288/05 (1).

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(1) OJ C 229, 17/09/05, p. 35

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**Action brought on 23 September 2005 — UPC France v Commission**

(Case T-367/05)

(2005/C 315/29)

*Language of the case: French*

**Parties**

*Applicant(s):* UPC France Holding BV (Schiphol-Rijk, Netherlands) (represented by: M.D. Powell and N. Flandin, lawyers)

*Defendant(s):* Commission of the European Communities

**Form of order sought**

The applicant(s) claim(s) that the Court should:

— annul Commission Decision State Aid No 382/2004 — France;

— order the Commission to pay the costs.