A further party to the proceedings before the Board of Appeal was Juan Espadafor Caba, Granada, Spain.

The applicant claims that the Court should:

— annul the Decision of the First Board of Appeal of the defendant dated 8 April 2002 in case R 1046/2000-1;

— order the Office to bear the costs of the proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark:	The applicant
The Community trade mark concerned:	The word mark 'VITAFRUIT' for certain goods in classes 5, 29 and 32 (a.o. beers, mineral and aerated waters and other non-alcoholic drinks, fruit and vegetable drinks, fruit juices; syrups and other preparations for making beverages; herbal and vitamin beverages)
Proprietor of the right to the trade mark or sign asserted by way of opposition in the opposition proceedings:	Juan Espadafor Caba
Trade mark or sign asserted by way of opposition in the opposition proceedings:	The national mark 'VITAFRUT' for goods in classes 30 and 32 (a.o. non-alcoholic and non-therapeutic carbonic drinks, fruit and vegetable juices without fermentation, lemonades, orangeades, cold beverages, soda water)
Decision of the Opposition Division:	Upheld opposition insofar as it was based on the goods 'fruit and vegetable juices without fermentation, lemonades, orangeades' and insofar as it was directed against the goods 'mineral and aerated waters and other non-alcoholic drinks, fruit and vegetable drinks, fruit juices; syrups and other preparations for making beverages; herbal and vitamin beverages'.
Decision of the Board of Appeal:	Dismissal of the appeal by the applicant.
Grounds of claim:	— Infringement of Article 43 of Regulation 40/94 [1], since there was no satisfactory proof of the genuine use of the opposing trademark. — Infringement of Article 8 (1) b of Regulation 40/94 since there is no danger of confusion with regard to certain goods.

(1) Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ L 11, p. 1).

Action brought on 10 July 2002 by Commune de Champagne and Others against Council of the European Union and Commission of the European Communities

(Case T-212/02)

(2002/C 233/50)

(Language of the case: French)

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 10 July 2002 by Commune de Champagne and Others, Canton de Vaud (Switzerland), represented by Denis Waelbroeck, lawyer.

The applicant claims that the Court should:

— annul Article 1 of Decision 2002/309/EC, Euratom Decision of the Council and of the Commission as regards the Agreement on Scientific and Technological Cooperation, of 4 April 2002 on the conclusion of seven Agreements with the Swiss Confederation in so far as the Council and the Commission thereby approved Article 5(8) of Title II of Annex 7 to the Agreement between the European Community and the Swiss Confederation on Trade in Agricultural Products ('the Champagne Clause');

— in so far as necessary, annul that decision inasmuch as the Council and the Commission approved the other articles of the Agreement between the European Community and the Swiss Confederation on Trade in Agricultural Products, as well as the Agreement on Mutual Recognition in Relation to Conformity Assessment between the European Community and the Swiss Confederation, the Agreement between the European Community and the Swiss Confederation on Certain Aspects of Government Procurement, the Agreement on Scientific and Technological Cooperation between the European Community and the European Atomic Energy Community, of the one part, and the Swiss Confederation, of the other part, the Agreement between the European Community and the Swiss Confederation on the Carriage of Goods and Passengers by Rail and Road, the Agreement between the European Community and the Swiss Confederation on Air Transport, the Agreement on the Free Movement of Persons between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other part;

— declare that the European Community, as represented by the Council and the European Commission, is liable and order the defendants to compensate in full the applicant wine growers for all damage arising from the 'Champagne Clause';

— order the Council and the Commission to pay the costs.

Pleas in law and main arguments

The applicants are, on the one hand, owners of vineyards in the municipality of Champagne, in the canton of Vaud in Switzerland and, on the other, acting in defence of the interests of those wine growers.

By the contested decision, the Council and the Commission approved seven bilateral agreements between the Community and the Swiss Confederation; one of those agreements concerns agricultural trade. One of the annexes to that agreement includes a provision prohibiting use of the name 'Champagne' for wine originating in the canton of Vaud.

In support of their arguments, the applicants allege, first, breach of general principles of law including right to their identity, to property and to the freedom to pursue professional activities. The word 'Champagne' is also protected in Swiss law, where it is an appellation communale d'origine contrôlée (registered municipal designation of origin). Moreover, the name 'Champagne' has been used in the production of wine in the area for many years and is thus the industrial and commercial property of the applicants.

Furthermore, a total ban on the use by the applicants of the name 'Champagne' does not observe the principle of proportionality. The applicants point out that the wine they produce is a non-sparkling wine which does not compete with French champagne. There is therefore no likelihood of confusion. In addition, there are less restrictive ways in which to achieve the same objective, such as by indicating the country of origin on the label.

Action brought on 12 July 2002 by SNF S.A. against the Commission of the European Communities

(Case T-213/02)

(2002/C 233/51)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 12 July 2002 by SNF S.A., represented by Koen Van Maldegem and Claudio Mereu at McKenna Long & Aldridge LLP in Brussels, Belgium

The applicant claims that the Court should:

— order the partial annulment of the Twenty-Sixth Commission Directive 2002/34/EC of 15 April 2002 adapting to technical progress Annexes II, III and VII to Council Directive 76/768/EEC on the approximation of the laws of the Member States relating to cosmetic products [1], so as to remove polyacrylamides from the measure;

— order the Commission to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

The applicant seeks the partial annulment of the abovementioned Directive due to the fact that the Commission has placed restrictions on the use of the applicant's products, polyacrylamides, as ingredients in cosmetic products. The