

Decision of the Opposition Division: Dismissal of the applicant's application for 'clothing, footwear and toys'. Dismissal of the opposition as to the remainder.

Decision of the Board of Appeal: Dismissal of the applicant's appeal.

Pleas in law:

- infringement of Article 8(1)(b) of Regulation (EC) No 40/94<sup>(1)</sup>;
- absence of risk of confusion;
- little distinctive character of the opposing trade mark
- lack of similarity of trade marks
- products largely dissimilar.

<sup>(1)</sup> Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

- the decision of the College of Commissioners of 5 December 2001 improperly terminating the framework agreement of 20 September 1974, reiterating its approval of 'operational rules concerning the levels of concertation, the concertation body and the relevant procedures' dated 20 January 2000 and an alleged 'agreement' of 4 April 2001 on the 'resources to be made available to the central and the local staff committees and the unions';

- annul, to the extent necessary, the abovementioned decisions of 15 January 2002, 23 January 2002 and 5 December 2001;

- order the defendant to pay damages amounting to EUR 100 000;

- order the defendant to pay the costs of the action, pursuant to Article 69(2) of the Rules of Procedure and the expenses necessarily incurred for the purpose of the proceedings, in particular the travel and subsistence expenses and the remuneration of agents, advisers or lawyers, under Article 73(b) of those rules.

# **Action brought on 4 February 2003 by André Hecq and Syndicat des Fonctionnaires Internationaux et Européens (SFIE) against Commission of the European Communities**

**(Case T-34/03)**

(2003/C 101/68)

*(Language of the case: French)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 4 February 2003 by André Hecq, residing in Mondercange (Luxembourg), and Syndicat des Fonctionnaires Internationaux et Européens (SFIE), whose main offices are in Brussels, represented by Lucas Vogel, lawyer.

The applicant claims that the Court should:

- annul the decision of the appointing authority of 4 October 2002, notified to the applicant on 9 October 2002 but received by him on 25 October 2002, rejecting the applicant's complaint, lodged on 24 April 2002, pursuant to Article 90(2) of the Staff Regulations in which he criticised various decisions, in particular:
  - two separate decisions notified on 15 January 2002 and 23 January 2002 respectively;

## *Pleas in law and main arguments*

The applicant is an official of the Commission and secretary general of the 'Syndicat des Fonctionnaires Internationaux et Européens' (SFIE) trade union.

In support of his application, the applicant alleges, first, infringement of the framework agreement of 20 September 1974, in particular of the final provisions thereof, and breach of the general principles of contract law. According to the applicant, the framework agreement does not provide for unilateral termination.

The applicant also alleges infringement of Articles 11 and 12 of the framework agreement of 20 September 1974 in that the abovementioned provisions had not been agreed to by all the unions.

The applicant alleges next infringement of Article 24a of the Staff Regulations, Articles 18, 19 and 20 of the framework agreement of 20 September 1974, manifest error of assessment and breach of the principle of non-discrimination. According to the applicant, the criteria relating to representativeness are erroneous and arbitrary and favour certain unions.

Finally, the applicant alleges breach of the principle of non-discrimination in that the contested decisions deprived the union of which the applicant is the secretary general of all manner of human and material resources without taking account of its representativeness.

compensation for the material damage he allegedly suffered in the period between 1 July and 31 December 2001 and has made the present application. In support of his arguments, he alleges infringement of the abovementioned article of the Staff Regulations.

**Action brought on 31 January 2003 by José Pedro Pessoa e Costa against Commission of the European Communities**

**(Case T-36/03)**

(2003/C 101/69)

*(Language of the case: French)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 31 January 2003 by José Pedro Pessoa e Costa, residing in Brussels, represented by Albert Coolen, Jean-Noël Louis et Étienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

- declare that the Commission committed an administrative fault by not reinstating the applicant to the first vacancy at Grade A 5 commensurate with his abilities;
- order the Commission to reconstitute his career and, in particular, to pay him the remuneration to which he is entitled in respect of the period from 1 August to 31 December 2001 together with default interest calculated at the rate of 1.5 % per annum;
- order the defendant to pay the costs.

*Pleas in law and main arguments*

The applicant, an official working for the defendant, on leave on personal grounds until 30 June 2001, requested his reinstatement, in accordance with Article 40(4)(d) of the Staff Regulations of officials of the European Communities. On 30 May 2002, the applicant lodged a complaint claiming that the defendant had failed to reinstate him to the first vacancy corresponding to his grade and abilities. The applicant claims that that complaint was partially rejected so far as concerns

**Action brought on 7 February 2003 by DaimlerChrysler AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)**

**(Case T-39/03)**

(2003/C 101/70)

*(Language of the case: to be determined pursuant to Article 131(2) of the Rules of Procedure — Language in which the application was submitted: German)*

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 7 February 2003 by DaimlerChrysler AG, Stuttgart, Germany, represented by M. Trimborn, lawyer. AXON Leasing GmbH, Grasbrunn, Germany, was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- annul the decision of the Fourth Board of Appeal of 4 November 2002 in appeal No R 329/2001-4 and dismiss the appeal;
- order the defendant Office to pay the costs.

*Pleas in law and main arguments*

Applicant for Community trade mark:

Community trade mark sought:

Proprietor of mark or sign cited in the opposition proceedings:

The applicant

The word mark 'AXOR' for goods and services in Classes 12 and 37 (automobiles and parts therefor (included in Class 12) and motor vehicle maintenance and repair) — application No 1111061

AXON Leasing GmbH