

The applicant claims that the Court should:

- order the Commission to make good the damage suffered by it as a result of incomplete compliance with the judgment of the Court of 28 February 2002;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicant has brought this action seeking a declaration that the Commission is liable for failing to comply entirely with the judgment of the Court ⁽¹⁾ reducing the amount of the fine imposed on the applicant by the Commission in decision 94/601/CE (Plasterboard), relating to a proceeding pursuant to Article 85 of the EC Treaty (IV/C/33.833-Plasterboard) ⁽²⁾.

In the applicant's view, the Commission should still pay the interests due on the difference between the sum paid and the amount of the fine finally fixed by the Court of First Instance together with the costs, agreed by common accord of the parties at EUR 50 000. The defendant incurs non-contractual liability for the damage arising therefrom.

⁽¹⁾ Case T-308/94 Cascades SA v Commission [2002] ECR II-0000.
⁽²⁾ OJ 1991 L 243, p. 1.

Action brought on 30 April 2003 by Pascal Millot against the Commission of the European Communities

(Case T-162/03)

(2003/C 171/64)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 30 April 2003 by Pascal Millot, residing in Brussels, represented by Sébastien Orlandi, Albert Coolen, Jean-Noël Louis and Étienne Marchal, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the decision of the Commission of 6 May 2002 definitively recruiting the applicant in Grade A 7 at step 3;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicant took up his duties as a probationary official on 1 August 2001 and was provisionally recruited at step 1 in grade A 7. The applicant made a request for recruitment at a higher grade. That request was refused.

In support of his application the applicant submits that there was a breach of Article 31(2) of the Staff Regulations in so far as the Commission did not take account of the specific requirements of the service. The applicant also submits that there was a manifest error of assessment.

Action brought on 12 May 2003 by Sergio Rossi S.p.A. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-169/03)

(2003/C 171/65)

(Language of the case: Italian)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 12 May 2003 by Sergio Rossi S.p.A., represented by Alessandro Ruo, lawyer.

Sissi Rossi s.r.l. was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- declare that there is a likelihood of confusion between the trade marks in question with regard to all the goods referred to and annul the contested decision at issue; in the alternative, declare that the trade marks are inconsistent with each other so far as concerns 'ladies' bags' and 'ladies' shoes' and declare that there is an affinity between such goods;
- order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for Community trade mark:	Sissi Rossi S.r.l.
Community trade mark sought:	The trade mark 'SISSI ROSSI' - Application No 837.906 for goods in Classes 14, 18, 25 and 26
Proprietor of mark or sign cited in the opposition proceedings:	The applicant
Mark or sign cited in opposition:	Italian trade mark No 553.016 and international trade mark No 577.643 'MISS ROSSI', for goods in Class 25 (ladies' shoes)
Decision of the Opposition Division:	Opposition upheld and application for registration refused
Decision of the Board of Appeal:	Appeal upheld and opposition decision dismissed
Pleas in law:	Likelihood of confusion by association and similarity between the trade mark applied for and the trade mark cited in opposition (Article 8(1)(b) of Regulation No 40/94)

Action brought on 14 May 2003 by British American Tobacco (Investments) Limited against the Commission of the European Communities

(Case T-170/03)

(2003/C 171/66)

(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 14 May 2003 by British American Tobacco (Investments) Limited, London, United Kingdom, represented by Mr S. Crosby, lawyer.

The applicant claims that the Court should:

- annul the refusal of the Defendant comprising the failure to give access to certain documentation requested in the Applicant's confirmatory application of 17 January 2003.
- order the Defendant to pay all the Applicant's costs pursuant to Article 87 of the Rules of Procedure of the Court of First Instance.

Pleas in law and main arguments

The applicant in the present case challenges the refusal of the defendant to grant it access to certain documents relating to the classification of expanded tobacco for Customs and Excise duty purposes. Regarding this topic, it points out that it has a vital interest in knowing why a given product — expanded tobacco — is treated as smoking tobacco within the meaning of Article 5(1) of Directive 95/59/EC of 27 November 1995, on taxes other than turnover taxes which affect the consumption of manufactured tobacco⁽¹⁾, and thus as an excisable product. The applicant considers the product an intermediary product, unsmokable without further processing, and therefore not excisable. It is stressed that there has been no published decision determining the issue and giving the reasons for the classification chosen.

As regards two of the sets of requested documents (a complete set of documents of the Customs Cooperation Council on the Classification of expanded tobacco for customs classification purposes and all the attendance lists of all meetings of the Committee on Excise Duties, or any other relevant Committee, at which the definition of 'smoking tobacco' was debated), the applicant submits that the Commission infringed Article 8(1) and (2) of Regulation(EC) 1049/2001⁽²⁾, by not responding within the regulatory time-limits thereof.

In relation to the full minutes of all meetings of Excise duties, or any other relevant committee, at which the definition of 'smoking tobacco' was debated, including the full minutes of discussions on other agenda points, the applicant claims that the contested refusal:

- Misapplied the principle of proportionality. In particular, the Commission made no attempt to confer informally with the applicant with a view to finding a fair solution, pursuant to Article 6 of Regulation (EC) 1049/2001