

- Has not given due weight to the applicant's interest in receiving the requested documentation

Moreover, the applicant doesn't accept the Commission's contention that the Member States would have to be consulted in relation to the submissions made by them in the minutes. It is the applicant's position that, in accordance with Article 4(4) of Regulation (EC) 1049/2001, a consultation with a Member State shall take place only when it is not clear whether a document shall or shall not be disclosed. Furthermore, the final decision as to whether or not a document shall be released remains with the Commission, and this must be reasoned and clearly justified as falling within one of the exemptions provided for in the access regulation.

(¹) OJ L 291 of 6.12.1995, p. 40.

(²) Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31.5.2001, p. 43).

Action brought on 19 May 2003 by New Look Limited against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-171/03)

(2003/C 171/67)

(Language of the case: Spanish)

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 19 May 2003 by New Look Limited, established in Weymouth, Dorset (United Kingdom), represented by R. Ballester and G. Marín, lawyers.

The applicant claims that the Court should:

- annul the decision of OHIM (First Board of Appeal) of 15 April 2003 in Case No R 019/2003-1;
- order OHIM and any intervener to pay the costs.

Pleas in law and main arguments

Applicant for Community trade mark:

The applicant.

Community trade mark sought:

Figurative mark NLCollection — Application No 1082809 for goods in Class 25 (articles of clothing, footwear and headgear).

Proprietor of mark or sign cited in the opposition proceedings:

NAUOVER SA

Mark or sign cited in opposition:

Figurative mark NL (Community trade mark No 13417 and Spanish trade mark No 1329084).

Decision of the Opposition Division:

Rejection of the opposition.

Decision of the Board of Appeal:

Annulment of the decision of the Opposition Division and acceptance of the opposition with respect to Community trade mark No 13417.

Pleas in law:

Misapplication of Article 8(1)(b) of Regulation (EC) No 40/94 (likelihood of confusion).

Action brought on 19 May 2003 by Anne Geddes against the Office for Harmonisation in the Internal Market

(Case T-173/03)

(2003/C 171/68)

(Language of the case: English)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 19 May 2003 by Anne Geddes, Auckland, New Zealand, represented by Mr G. Farrington, Solicitor.

The applicant claims that the Court should:

- annul the decision adopted on 13 February 2003 by the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) in case R 839/2001-4;
- order the Defendant to remit the application to its Examination Division for re-examination of Community Trade Mark number 1864107.

Pleas in law and main arguments

The trade mark concerned: The word mark 'NURSERYROOM' — application No 1864107

Goods or service concerned: Goods in Class 16, 18, 21, 25 and 28 (e.g. books, clothes, plush toys)

Decision contested before the Board of Appeal: Refusal of registration by the examiner

Decision of the Board of Appeal: Dismissal of the appeal

Grounds of claim: Misapplication of Article 7(1)(c) of Regulation (EC) No 40/94 ⁽¹⁾.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20.12.1993 on the Community trade mark (OJ L 11, p. 1).

Action brought on 21 May 2003 by Auna Operadores de Telecomunicaciones, S.A., Retecal Sociedad Operadora de Telecomunicaciones de Castilla y León, S.A. Euskaltel, S.A., Telecable de Asturias, S.A. (a company arising from the merger between Telecable de Avilés, S.A., Telecable de Oviedo, S.A. and Telecable de Gijón, S.A.), R. Cable y Telecomunicaciones Galicia, S.A. and Tenaria, S.A. against Commission of the European Communities

(Case T-180/03)

(2003/C 171/69)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the

European Communities on 21 May 2003 by Auna Operadores de Telecomunicaciones, S.A., whose registered office is in Barcelona (Spain) represented by Antonio Creus Carreras and Natalia Lacalle Mangas, lawyers, Retecal Sociedad Operadora de Telecomunicaciones de Castilla y León, S.A. whose registered office is in Boecilli, Valladolid (Spain) Euskaltel, S.A., whose registered office is in Zamudio, Bizkaia (Spain) Telecable de Asturias, S.A. (a company arising from the merger between Telecable de Avilés, S.A., Telecable de Oviedo, S.A. and Telecable de Gijón, S.A.), whose registered office is in Oviedo (Spain), R. Cable y Telecomunicaciones Galicia, S.A., whose registered office is in A Coruña (Spain), and Tenaria, S.A., whose registered office is in Cordovilla, Navarra (Spain) represented by José M^a Jiménez Laiglesia, lawyer.

The applicants claim that the Court should:

- annul the decisions of the Commission of 14 March 2003 in so far as the Commission took the view that the agreement of 29 January 2003 did not give rise to a new concentration;
- order the Commission to pay the entire costs of the proceedings.

Pleas in law and main arguments

The applicants in the present action are contesting the decisions of 14 March 2003 by which the Commission decided to take no further action on the complaints lodged by them against an agreement between the companies Sogecable and Telefónica on 29 January 2003 which, in their view, gives rise to a new concentration by comparison with the concentration previously notified on 3 July 2002, which was referred to the national authorities by decision of 14 August 2002 ⁽¹⁾.

According to the applicants, the abovementioned agreement of 20 January 2003 envisages the possibility, which had initially been discarded, that Telefónica's final share of Sogecable's capital (23 %) should be greater than the share held by the company's reference partners. The agreement also provides that Telefónica will waive certain rights affecting questions of policy arising from the major shareholding of those assets by Prisa and Groupe Canal+. On the other hand, Telefónica would remain a shareholder in Sogecable with effect from the implementation of the concentration operation. Furthermore, with the purpose of assisting the integration of their platforms, Prisa, Groupe Canal+ and Telefónica each agreed to provide Sogecable with a loan with profit participation amounting to EUR 50 million repayable in 10 years. It was also agreed