

Action brought on 23 June 2003 by Ulf Jacoby against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-242/03)

(2003/C 200/57)

(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 23 June 2003 by Ulf Jacoby, Lahnau (Germany), represented by K. Müller, lawyer, of Kanzlei Krieger Froese & Kollegen. Leo Pharmaceutical Products BV, Weesp (Netherlands), 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 14.3.2003, thereby granting the applicant's application to the Board of Appeal for *restitutio in integrum*, occasioned by his failure to observe the time-limit for payment of the appeal fee;
- declare that the appeal is to be regarded as having been lodged.

Pleas in law and main arguments

The applicant sought registration of the word mark 'leovat' with the defendant office in respect of goods in Classes 3, 4, 5 and 31 (application No 657221). Leo Pharmaceutical Products BV, proprietor of the international word mark 'Leo' for goods in Classes 3 and 5, lodged an opposition to registration.

By decision of 6 July 2001, the Opposition Division allowed the opposition on the ground that there was a likelihood of confusion owing to the high level of similarity of the goods and the signs. The applicant lodged an appeal against that decision in good time. On 19 September 2001, the Registry of the Board of Appeal informed the applicant that the appeal fee had not been received by the office before the expiry, on 6 September 2001, of the time-limit for bringing an appeal, and gave the applicant the opportunity to submit his observations on the matter. On 24 September 2001 the applicant effected payment of the appeal fee and simultaneously applied

for *restitutio in integrum* occasioned by his failure to pay the appeal fee in good time.

By the contested decision, the Board of Appeal rejected the application and declared that the appeal was to be regarded as not having been lodged.

The applicant submits that usually time-limits are entered in a diary for that purpose kept by his former lawyer in order to comply with and monitor the time-limits for bringing appeals and payment of the appeal fee, and the time-limits are only then crossed out of that diary after they have been observed. In order to avoid any accidental crossing out of an entry in the diary, the member of that lawyer's staff responsible for overseeing the time-limits is required to initial any crossing out of a deadline. Since that long-standing, consistently reliable member of his staff had crossed out and initialled the time-limit entered in respect of the appeal case, the lawyer acting for the applicant was entitled to assume that the appeal fee had been paid in good time. Since the failure to observe the time-limit for payment of the appeal fee was not caused by any fault of the lawyer acting for the applicant, the application for *restitutio in integrum* is founded and the action must be granted.

Action brought on 30 June 2003 by Flavia Angeletti against the Commission of the European Communities

(Case T-244/03)

(2003/C 200/58)

(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 30 June 2003 by Flavia Angeletti, residing in Nice (France), represented by Juan Ramon Iturriaga-goitia and Karine Delvolvé, avocats.

The applicant claims that the Court should:

- annul the decision of the Directorate-General Personnel and Administration of 5 May 2003;
- order a challenge to two of the members of the medical committee;
- order the Commission to pay the costs in their entirety.

Pleas in law and main arguments

The applicant, a former Commission official, worked for many years in the Berlaymont building, which was then contaminated with asbestos. In 1996, the applicant applied for recognition of the occupational nature of her illness and, in 1998, requested that a medical committee be consulted in accordance with Article 21 of the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease. That medical committee issued a first majority opinion in 2000, but, after a complaint by the applicant, the Commission decided to refer to it a second time. On 23 April 2003, the applicant sent a diagnosis to the Commission, requesting that it be examined by the medical committee. In reply to that request, the Commission stated, by letter of 5 May 2003, that the medical committee had already finished its work and that it was therefore impossible to submit the diagnosis sent by the applicant to it for its opinion. The applicant challenges that latter decision, which she claims should be annulled. She also argues that the composition of the medical committee should have been changed at the time of the second reference to it, and therefore requests that two of its members be challenged. In support of her claims, she alleges misuse of powers, lack of independence and neutrality on the part of the medical committee, infringements of the principle of sound administration and the duty to pay due regard to the welfare of officials, and infringement of the principle of the protection of legitimate expectations.

Action brought on 20 June 2003 by Fédération Nationale des Syndicats d'Exploitants Agricoles (FNSEA) and Others against Commission of the European Communities

(Case T-245/03)

(2003/C 200/59)

(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 20 June 2003 by Fédération des Nationale des Syndicats d'Exploitants Agricoles (FNSEA), the Fédération Nationale Bovine (FNB), the Fédération Nationale des Producteurs de Lait (FNPL) and Jeunes Agriculteurs (JA), Fédération Nationale, established in Paris, represented by Bruno Néouze and Valérie Ledoux, lawyers, with an address for service in Luxembourg.

The applicants claims that the Court should:

- annul the Commission Decision of 2 April 2003, No C.38.279/F3 — French beef in respect of the FNSEA, the FNB, the FNPL and the JA;
- alternatively, cancel the fines imposed on them;
- further and alternatively, reduce the amount of the fines;
- order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The contested decision in the present case is the same as that in Case T-217/03 Fédération Nationale de la Coopération Bétail et Viande (FNCBV) v Commission ⁽¹⁾.

The pleas and main arguments are the same as those put forward in that case.

⁽¹⁾ See p. 30 of this Official Journal.