

Pleas in law and main arguments

Applicant for the Community mark:	Whitbread PLC.
Community mark for which application was made:	Figurative mark 'David Lloyd' — Application No 488.999 for products in Classes 3, 5, 25, 28, 36, 41 and 42.
Holder of the mark or sign bringing the opposition proceedings:	Applicant
Opposing mark or sign:	No 807.974/9 and No 278.853 'LLOYD'S', for goods in Class 25 (clothing and general accessories)
Decision of the Opposition Division:	Opposition rejected
Decision of the Board of Appeal:	Appeal dismissed
Reasons relied on:	Incorrect application of Article 8(1)(b) (likelihood of confusion), 8(2)(c) (well known earlier mark) and 8(5) Regulation (EC) No 40/94

Action brought on 30 September 2003 by European Dynamics S.A. against the Commission of the European Communities

(Case T-345/03)

(2003/C 289/72)

(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 30 September 2003 by European Dynamics S.A., Athens, (Greece), represented by S. Pappas, lawyer.

The applicant claims that the Court should:

- annul the Commission's (Enterprise Directorate General) decision to evaluate European Dynamics' tender as not successful;

- order the Commission (Enterprise Directorate General) to re-evaluate the tender submitted by European Dynamics;
- order the Commission to pay European Dynamics' legal and other fees and expenses incurred in connection with this Application.

Pleas in law and main arguments

The object of the present case is the annulment of the Decision of the European Commission to reject the applicants bid, filed in response to the Call of Tender ENTR/02/055 — CORDIS for the 'Development and Provision of Services in support of the Community R&D Information Service (CORDIS)' Lot 2 'Development' (OJ 2002/S 225-178776). This Decision concluded that the TRASYs/Intrasoft International Consortium bid was superior to that of the applicant.

CORDIS, the European Commission's research and development information service, is an informatics tool offering practical information on the European research programs and funding opportunities, facilitating research results take up and technology transfers, hosting services on European innovation, covering all research and innovation related news developments and providing a central access to European and National contact points

In support of its conclusions, the applicant submits that:

- The violation of the principles of transparency and non-discrimination, in as much as the provisions on non-paid running-in periods seriously restrict competition by favouring the incumbent contractor since it has been given major financial advantages by the contracting authority unilateral, which allowed it to submit an offer significantly cheaper than any other competitor. Besides, the time-limit for providing information about the role of Autonomy in CORDIS (Enterprise Directorate General addresses such information just four weeks before the tender submission deadline) has given a big advantage to the TRASYs/Intrasoft consortium in relation to other Lot 2 tenderers. Additionally, ensuring the call for tender procedure, all bidders -except the incumbent contractor — were prevented from having access to a number of highly critical technical information on the actual status of the CORDIS projects and particularly on the CORDIS DATABASE SERVICE. Moreover, the Commission declined to communicate to all tenderers significant and useful details on the HW/SW, scripts, technology and processes currently in use for operating the CORDIS database services, while, at the same time, it asked the tenderers to specify what part of that 'unknown' equipment is to be taken over, whilst all this information was fully available to TRASYs/Intrasoft right from the beginning.

— The Commission's assessments are based on wrong or unfounded assumptions. Contrary to what has been stated by the Commission, the proposed platform by the applicant was explained in great detail. Concretely, the Commission wrongly assumed that the Service Delivery Framework was not ITIL and that there was no mention

of Prince2. All other assessments are not supported by the data of the file.

The applicant also invokes a violation of the duty of motivation of the legal acts.
