

**Action brought on 18 May 2004 by FederDOC and Others
against the Commission of the European Communities**

(Case T-170/04)

(2004/C 179/29)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 May 2004 by FederDOC – National Confederation of voluntary associations for the protection of designations of origin and typical geographical indications of Italian and other wines, represented by Luciano Spagnuolo Vigorita, Paolo Tanoni and Roberto Gandin, lawyers.

The applicants claim that the Court should:

- Annul Commission Regulation (EC) No 316/2004 of 20 February 2004 (OJ 2004 L 55, p. 16) amending Regulation (EC) No 753/2002 laying down certain rules for applying Council Regulation (EC) No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products.
- In the alternative, annul in whole or in part, Article 1(3), (8a), (9a), (9b), (10) and (18) of Regulation No 316/2004 and, consequently, Annex II thereto.
- Order the Commission to pay the costs.

Pleas and main arguments

The present action is directed against Commission Regulation (EC) No 316/2004 of 20 February 2004 amending Regulation (EC) No 753/2002 laying down certain rules for applying Council Regulation (EC) No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products ⁽¹⁾.

Essentially, the applicants point to the real danger that implementation of the contested regulation could result in a degree of liberalisation, in favour of third-country producers, as regards the use of the following traditional indications which distinguish specific Italian wines known throughout the world: Amarone, Cannellino, Brunello, Est!Est!Est!, Falerno, Governo all'uso toscano, Gutturino, Lacryma Christi, Lambiccato, Morelino, Recioto, Sciacchetrà, Sciac-trà, Sforzato (or Sfurzat), Torcolato, Vergine, Vino Nobile, Vin santo (or Vino Santo or Vinsanto). That would prejudice the position which has, by dint of their efforts, been achieved by the producers of the Member States in the wine market (producers bound by observance of strict parameters as to quantity and quality) and, above all, would result in unacceptable damage to consumer confidence. Third-country producers would not in fact be required to observe the relevant production parameters and

could ultimately place in circulation within the Community products without the oenological and organoleptic qualities which the wines in question must possess.

Under national legislation all the applicants are legitimately entitled to secure the use of the abovementioned traditional indications or, at any rate, to use them.

In support of their claims the applicants consider, in particular, that the Commission has exceeded the competences conferred on it and adopted the contested regulation without an adequate statement of reasons and without first obtaining the opinion of the Management Committee for wine established under Regulation No 1493/1999 or seeking the views of the applicants themselves.

The applicants further consider that certain provisions of the contested regulation contravene important principles undermining the EC Treaty such as those in the sector of agriculture, of competition, consumer protection, equal treatment, proportionality, acquired rights and legal certainty. Specific provisions of Regulation No 1493/1999 (Articles 47, 48 and 49) are then also infringed by the contested regulation which also runs counter to Articles 23(3) and 24(4) of the Marrakesh Trips Agreement of 15 April 1994 (Trade Related Intellectual Property Rights) to which the Community is a party.

The applicants also claim that the contested regulation contravenes the obligation to provide a statement of the reasons on which it is based.

⁽¹⁾ OJ 2004 L 55, p. 16.

**Action brought on 17 May 2004 by Telefónica S.A. against
the Office for Harmonisation in the Internal Market
(Trade Marks and Designs) (OHIM)**

(Case T-172/04)

(2004/C 179/30)

(Language of the case: Spanish)

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 17 May 2004 by Telefónica S.A. established in Madrid, represented by Mr Andrea Sirimarco, lawyer.

The applicant claims that the Court should:

- annul the decision of the First Board of Appeal of OHIM of 12 March 2004 in Case R 676/2002-1;

- register the Community trade mark No 1.694.157 'emergia' (figurative mark) to designate 'telecommunications by networks of undersea cables for the electronic transmission of voice, data and video communications' in class 38 of the International Classification; and
- order the Office for Harmonisation in the Internal Market and any party entering an appearance as intervener to pay the costs.

Pleas in law and main arguments:

Applicant for Community trade mark:	The applicant.
Community trade mark sought:	Figurative mark 'emergia'— application No 1.694.157 for products and services in Classes 9, 38 and 42.
Proprietor of mark or sign cited in the opposition proceedings:	D. Branch.
Mark or sign cited in opposition.	Community word mark 'EMERGEA' for products and services including, in class 38, 'data transmission service by national and international networks and communications by computer terminals'.
Decision of the Opposition Division:	Opposition upheld in part in so far as the opposition concerned 'tele-communications, communications by computer networks' in class 38.
Decision of the Board of Appeal:	Appeal dismissed.
Pleas in law:	Article 8(1)(b) of Regulation No 40/94 (likelihood of confusion) wrongly applied.

Action brought on 14 May 2004 by Jürgen Carius against Commission of the European Communities

(Case T-173/04)

(2004/C 179/31)

(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 14 May 2004 by Jürgen Carius,

residing at Brussels, represented by N. Lhoëst, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

- Annul the decision of the Director General of DG ADMIN of 21 May 2003 which confirms, without amendment, the applicant's career development review for the period from 1 July 2001 to 31 December 2002;
- Annul, so far as necessary, the Commission's Decision of 23 December 2003, rejecting the applicant's complaint;
- Order the defendant to pay all the costs of the proceedings.

Pleas in law and main arguments:

In support of his action, the applicant pleads the illegality of the new appraisal system based on non-objective criteria which do not enable the subject to ascertain, in sufficient time, the contents of his appraisal report in order to be able, if appropriate, to submit observations to the appraiser.

The applicant also pleads infringement of the duty to state reasons, in that the significant decline in the appraisal of his merits was not properly explained, and a manifest error of assessment.

Action brought on 6 May 2004 by Petrotub S.A., against the Council of the European Union

(Case T-174/04)

(2004/C 179/32)

(Language of the case: English)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 6 May 2004 by Petrotub S.A., Romania, represented by Mr A.L. Merckx, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

- Annul Article 1 of Council Regulation (EC) No 235/2004 of 10 February 2004 amending Regulation (EC) No 2320/97 imposing definitive anti-dumping duties on imports of certain seamless pipes and tubes of iron or non-alloy steel originating in, inter alia, Romania in so far as it concerns imports into the European Community of products manufactured by Petrotub S.A. and Republica S.A (!).
- order the defendant to pay the costs