

Pleas in law and main arguments:

Applicant for Community trade mark:	Spaform Limited
Community trade mark sought:	Word mark 'SPAFORM' — application No 609 776 for goods in Classes 7 (pumps, etc.), 9 (apparatus and instruments for measuring pressure) and 11 (whirlpool baths)
Proprietor of mark or sign cited in the opposition proceedings:	The applicant
Mark or sign cited in opposition.	The national mark SPA for products in Classes 32 (mineral waters, etc.)
Decision of the Opposition Division:	Dismissal of the application
Decision of the Board of Appeal:	Dismissal of the appeal
Pleas in law:	Infringement of Article 18(1) of Regulation (EC) No 2868/95 ⁽¹⁾ . On the basis of that article, the Opposition Division held that the information available to the Office at the end of the opposition period did not permit identification of the earlier mark relied on. The applicant calls in question that finding.

⁽¹⁾ Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (OJ 1995 L 303, p. 1).

Action brought on 19 May 2004 by DJ (*) against the Commission of the European Communities

(Case T-187/04)

(2004/C 201/41)

(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 19 May 2004 by DJ (*), represented by Carlos Mourato, lawyer.

The applicant claims that the Court should:

- Annul the decision of 22 July 2003 of the Appeal Assessor concerning the applicant's career development report for the period 1 July 2001 to 31 December 2002;
- Annul the appointing authority's implied decision of 20 February 2004 giving a negative reply to the applicant's complaint;
- Order the defendant to pay the costs of the case and also the essential costs incurred for the purposes of the proceedings, in particular the costs of domiciliation, travel and lodging, and also lawyers' fees.

Pleas in law and main arguments

In support of his action, the applicant claims first of all that there has been a series of breaches of the assessment procedure and of the provisions for the implementation of Article 43 of the Staff Regulations, namely:

- the fact that a different official should have been his assessor, since it was the official who was his hierarchical superior and not the assessor who appears in the contested report,
- failure to consult his previous superiors,
- the belated nature of the second dialogue and also of the opinion of the Appeal Assessor,
- the allegedly unlawful appointment of the President of the Joint Assessment Committee.

The applicant also claims that there has been a breach of the principle of the independence of internal auditors, on the ground that one of the members of the Joint Assessment Committee was from a Directorate-General audited by the applicant and that the applicant's Appeal Assessor was the Secretary-General of the Commission, who was himself liable to be audited. The applicant claims that in the light of that situation, it is the Vice-President responsible for the reform of the Commission who should have been his Appeal Assessor. Last, the applicant relies on breach of the obligation to state reasons and of the principle of equal treatment and also on manifest errors of assessment by the assessor.

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.