

On 5 December 2003 the applicant requested the Commission, on the basis of Regulation 1049/2001⁽¹⁾, to grant it full access to the minutes of a meeting on this matter, which took place on 11 October 1996 between representatives of the Commission, the United Kingdom government and breweries. In particular, the applicant asked the Commission to reveal the identity of certain persons whose names had been blanked out in the minutes previously disclosed to the applicant. The Commission rejected the applicant's request and confirmed its refusal in a letter of the Secretary General to the applicant, dated 18 March 2004. In support of its refusal it invoked the need to protect personal data of the persons present at the meeting, as well as a potential risk to the Commission's ability to carry out investigations in such cases if the identity of persons giving information to the Commission were to be disclosed.

By its application, the applicant requests first of all a declaration against the Commission's decision to suspend the procedure against the United Kingdom. In this respect, the applicant invokes a violation of Articles 28 and 12 EC.

Concerning the Commission's refusal to grant it access to the documents requested, the applicant submits that Article 2 of Regulation 1049/2001⁽¹⁾ obliges the Commission to make full disclosure of the persons who attended the meeting in question, and that none of the exceptions contained in Article 4 apply. The applicant further contends that the exception in Article 4 paragraph 3 may be disregarded because there is overwhelming public interest in disclosure.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001 P. 43 - 48

Action brought on 27 May 2004 by Madaus Aktiengesellschaft against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-202/04)

(2004/C 201/45)

(Language of the case to be determined pursuant to Article 131(2) of the Rules of Procedure - language in which the application was submitted: English)

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 27 May 2004 by Madaus Aktiengesellschaft, Köln, (Germany), represented by I. Valdelomar Serrano, lawyer.

The Optima Health Limited was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- recognise that the OHIM made a judicial error when issuing the contested decision;
- annul the contested decision.

Pleas in law and main arguments:

Applicant for Community trade mark: Optima Healthcare Ltd, changed to The Optimal Health Ltd.

Community trade mark sought: The word mark 'ECHINAID' for goods in class 5 (vitamins, food supplements, herbal preparations, pharmaceutical and medical preparations) (CTM application No 1666239)

Proprietor of mark or sign cited in the opposition proceedings: Madaus AG

Mark or sign cited in opposition: The international trade mark registration of the word mark 'ECHINACIN' for goods in class 5 (chemical pharmaceuticals)

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Dismissal of the appeal brought by Madaus

Pleas in law: The applicant submits that the Board of Appeal erred in applying the concept of relevant territory and relevant public. The applicant also claims that the prefix Echina is not descriptive and that there is a likelihood of confusion between the marks.