

COURT OF FIRST INSTANCE

Action brought on 14 May 2004 by L&D S.A. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-168/04)

(2004/C 273/55)

(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 14 May 2004 by L&D S.A., Huerca de Almeria (Spain), represented by M. Knospe, lawyer.

Julius Sämann Ltd., Zug (Switzerland), was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- annul Paragraphs 1 and 3 of the operative part of the decision of the defendant Office of 15 March 2004 in Case R 326/2003-2 concerning application No 252 288 for registration of a Community trade mark;
- order the defendant Office to pay the costs.

Pleas in law and main arguments:

Applicant for Community trade mark:	The applicant.
Community trade mark sought:	The figurative mark 'Aire Limpio' for goods and services in Classes 3, 5 and 35 (<i>inter alia</i> , perfumery and essential oils, scented air fresheners and advertising) — Application No 252 288.
Proprietor of mark or sign cited in the opposition proceedings:	Julius Sämann Ltd.
Mark or sign cited in opposition:	National and international figurative marks and figurative Community trade mark No 91 991 consisting of fir-tree shapes bearing various words and registered for goods in Class 5 (air fresheners).

Decision of the Opposition Division:

Rejection of the opposition.

Decision of the Board of Appeal:

Partial annulment of the decision of the Opposition Division. Refusal to register in respect of goods in Classes 3 and 5

Pleas in law:

Infringement of Article 8(1) of Regulation (EC) No 40/94;
No similarity between the signs;
Infringement of Article 73 of Regulation (EC) No 40/94.

Action brought on 21 June 2004 by Alain Crespinet against the Commission of the European Communities

(Case T-261/04)

(2004/C 273/56)

(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 21 June 2004 by Alain Crespinet, resident in Rosières (Belgium), represented by Sébastien Orlandi, Albert Coolen, Jean-Noël Louis and Etienne Marchal, lawyers.

The applicant claims that the Court should:

- annul the decision awarding his priority points for the 2003 promotions exercise and the decision not to include the applicant in the list of officials promoted to grade A5 in the same exercise;
- order the defendant to pay the costs.

Pleas in law and main arguments:

In the present case, the applicant objects to the refusal by the appointing authority of the institution to promote him to grade A5 in the 2003 promotions exercise, following the awarding, for that exercise, of an insufficient number of priority points to attain the points threshold necessary to be taken into consideration for a promotion.

The applicant alleges the following in support of his action:

- infringement of Articles 5, 7 and 26 of the Staff Regulations;
- infringement of Articles 43 and 45 of the Staff Regulations and the appurtenant general provisions for implementing them;
- infringement of the principle of correlation between grade and position;
- infringement of the principle of career development;
- infringement of the principle of equal treatment and non-discrimination.

The applicant alleges in particular that the awarding of one point per year in the grade, as provided for in Article 12(3) of the general provisions for implementing Article 45 of the Staff Regulations, rewards grade seniority of officials eligible for promotion without taking account of their actual merit as demonstrated by them during those years and in relation to which the staff reports were drawn up.

Action brought on 6 July 2004 by Jean-Paul Keppenne against the Commission of the European Communities

(Case T-272/04)

(2004/C 273/57)

(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 6 July 2004 by Jean-Paul Keppenne, resident in Etterbeek (Belgium), represented by Paul-Emmanuel Ghislain, lawyer.

The applicant claims that the Court should:

- annul the Commission's decision not to increase the number of DG propriety points awarded to the applicant in the evaluation for the 2003 appraisal year and not to promote the applicant to grade A5 in the 2003 promotions exercise;
- order the Commission to pay the applicant the amount of EUR 3 000 by way of compensation for the non-material damage suffered by him;
- order the Commission to pay the costs.

Pleas in law and main arguments:

The applicant, an official with the Commission, intends to establish that the decision not to promote him is illegal, first, because it is, in his view, punishment for his having been seconded to the Court of Justice from 1996 to 2003 and, second, because it did not take appropriate account of his merits.

The applicant alleges the following in support of his action:

- infringement of the principle of non-discrimination, infringement of Article 2(1) of the general provisions for implementing Article 45 of the Staff Regulations and misuse of powers;
- infringement of Article 6(3)(ii) and (4)(a) of the general provisions for implementing Article 45 of the Staff Regulations and infringement of the principle of proportionality;
- infringement of Article 12(3)(a) of the general provisions for implementing Article 45 of the Staff Regulations;
- infringement of Article 2(1)(2) of the general provisions for implementing Article 43 of the Staff Regulations;
- infringement of Article 45 of the Staff Regulations.

In the alternative, the applicant alleges infringement of the obligation to state reasons and of Article 13 of the general provisions for implementing Article 45 of the Staff Regulations.

Action brought on 16 July 2004 by Enviro Tech Europe, Ltd., and Enviro Tech International, Inc., against the Commission of the European Communities

(Case T-291/04)

(2004/C 273/58)

(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 16 July 2004 by Enviro Tech Europe, Ltd., Kingston upon Thames, United Kingdom and Enviro Tech International, Inc., Illinois, USA, represented by Mr C. Mereu and Mr K. Van Maldegem, lawyers.

The applicant claims that the Court should:

- I. partially annul Commission Directive 2004/73/EC of 29 April 2004 (OJ L 152, p. 1) with respect to the listing of nPB as a highly flammable (R11) and a Category 2 substance for reproductive toxicity (R60);