

Pleas in law and main arguments

Applicant for Community trade mark:	SmithKline Beecham p.l.c.
Community trade mark concerned:	Word mark ACTIFAST for goods and services in class 5 (pharmaceutical applications) — application number OHMI 1 902 568
Proprietor of mark or sign cited in the opposition proceedings:	Warner-Lambert Consumer Healthcare S. Com.p.a.
Trade mark or sign cited in opposition:	National word mark ACTIFED for goods and services in class 5
Decision of the Opposition Division:	Opposition rejected
Decision of the Board of Appeal:	Appeal allowed, opposition allowed, registration denied
Pleas in law:	Violation of Article 8(1)(b) Council Regulation No 40/94

Action brought on 3 September 2004 by Leonid Minin against the Commission of the European Communities

(Case T-362/04)

(2004/C 273/70)

(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 3 September 2004 by Leonid Minin, represented by Tito Ballerino and Corso Bovio, Lawyers.

The applicant claims that the Court should:

- annul point 13 of Annex I to Commission Regulation (EC) No 1149/2004 of 22 June 2004 amending Council Regulation (EC) No 872/2004 concerning further restrictive measures in relation to Liberia;
- annul that regulation in its entirety since it was adopted on the basis of an unlawful regulation (Regulation No 872/2004);
- declare the inapplicability of Regulation No 872/2004 under Article 241 EC.

Pleas in law and main arguments:

The applicant in this case states that, by means of Regulation No 872/2004 of 29 April 2004, adopted on the basis of Council Common Position 2004/487/CFSP concerning the freezing of funds of the former Liberian President Charles Taylor and the persons and entities associated with him, the Community ordered the freezing of funds and economic resources owned or controlled, directly or indirectly, by those persons and entities, as listed in Annex I. Subsequently, on the basis of Article 11(a) of Regulation No 872/2004, the Commission issued Regulation (EC) No 1149/2004 of 22 June 2004 which amended the abovementioned Annex I, and named the applicant as also being covered by the measure.

In support of his claims, the applicant argues:

- unlawfulness of Regulation No 872/2004 ⁽¹⁾ and Regulation No 1149/2004 ⁽²⁾, in so far as the resolutions of the United Nations Security Council, on the basis of which the Council Common Position 2004/487/CFSP was adopted, were addressed only to the Member States, as is apparent from the UN's status as a body having authority in international relations but no supranational power;
- incorrect legal basis of the contested measures: Regulation No 872/2004 purports to have as its legal basis Articles 60 and 301 of the EC Treaty, despite the fact that the two regulations in question relate to matters which fall outside the scope of those articles;
- infringement of the right to property, a fundamental right protected by the Community order;
- breach of the rights of the defence, in so far as, first, the Community drafted the regulations in question in a round-about way, issuing measures which are essentially a bundle of individual decisions and failing to carry out any real enquiry concerning the frozen funds, and secondly, the applicant is referred to in the measure by a series of personal descriptions for which no explanation is given and which may have misled the UN inspectors.

⁽¹⁾ Council Regulation (EC) No 872/2004 of 29 April 2004 concerning further restrictive measures in relation to Liberia (OJ L 162 of 30.4.2004, p. 32).

⁽²⁾ Commission Regulation (EC) No 1149/2004 of 22 June 2004 amending Council Regulation (EC) No 872/2004 concerning further restrictive measures in relation to Liberia (OJ L 222 of 23.6.2004, p. 17).