

Pleas in law and main arguments

Applicant for the Community trade mark:	The applicant
The trade mark applied for:	Word mark 'Caipi' for goods in Class 33 (alcoholic beverages (not including beer)), application No 2 655 967
Decision of the examiner:	Refusal to register the mark applied for
Decision of the Board of Appeal:	Dismissal of the appeal
Grounds of claim:	Infringement of Article 7(1)(b) and (c) and of Article 12 of Regulation (EC) No 40/94. ⁽¹⁾ Wrongful failure to take account of earlier national registrations.

⁽¹⁾ Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 11 October 2004 by the Federal Republic of Germany against the Commission of the European Communities

(Case T-414/04)

(2004/C 314/57)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 11 October 2004 by the Federal Republic of Germany, represented by C.-D. Quassowski and C. von Donat, lawyer.

The applicant claims that the Court should:

- annul the Commission decision notified by letter of the Directorate-General for Regional Policy of 9 August 2004 in so far as the Community assistance from the European Regional Development Fund for the Operational Programme RESIDER II North Rhine-Westphalia 1995-1999 (ERDF No 94.02.10.036 / ARINCO No 94.DE.16.051) was reduced to EUR 72 794 851.67 and payment to the German authorities of the balance of EUR 2 268 988.33 was refused;
- order the Commission to pay the costs.

Pleas in law and main arguments:

By the contested decision, the Commission reduced the Community assistance from the ERDF Structural Funds for the Operational Programme RESIDER II North Rhine-Westphalia 1995-1999 (ERDF No 94.02.10.036 / ARINCO No 94.DE.16.051) to EUR 72 794 851.67 and refused to pay the German authorities the balance of EUR 2 268 988.33. The reason for the reduction is that, compared with the indicative financial plan, recourse to the programme was lower with respect to certain measures and higher with respect to others. A balance between the more and less heavily used measures was not achieved within the individual priorities of the programme but rather at the level of the programme as a whole.

In support of its action, the applicant first of all observes that, under Article 24 of Regulation No 4253/88, ⁽¹⁾ Community assistance may be reduced only if there has been a significant change affecting the nature or conditions of the operation or measure. In the applicant's view, the adjustments made do not constitute such a significant change.

If those adjustments are to be regarded as a significant change, the applicant submits that the Commission gave prior approval in its 'Guidelines on the closure of operational programmes (1994-1999) of the Structural Funds' (SEC(1999) 1316).

The applicant also complains that the Commission abused its discretion by failing to even exercise it and that there are errors in the reasoning for the contested decision.

⁽¹⁾ Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).

Action brought on 8 October 2004 by Bunker & BKR, S.L. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-423/04)

(2004/C 314/58)

(Language of the case: Spanish)

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 8 October 2004 by Bunker & BKR, S.L., established in Almansa (Spain), represented by José Enrique Astiz Suárez, lawyer.

The applicant claims that the Court should:

— vary the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 30 June 2004 in Case R 458/2002-4 as regards its findings as to the similarity of the signs and the goods, ordering that the opposition be rejected and the application granted in respect of all the goods for which protection is sought; and

— in the alternative, annul the decision and refer the case back to the opposition division in order that a new and accurate comparison of the remaining signs may be carried out, regard being had to the visual and phonetic differences between 'BOOTS & SHOES B.K.R. MADE IN SPAIN' and 'BK RODS' and to their compatibility on the market, there being no risk that consumers associate them as regards the origin and quality of the goods which they designate.

Pleas in law and main arguments:

Applicant for Community trade mark: CALZADOS BUNKER, S.A. (ownership in the application was subsequently transferred to the applicant).

Community trade mark sought: Figurative mark comprising the initials 'BKR' set in a diamond shape, with the words 'Boots & Shoes — Made in Spain' — Application No 649.756 for goods in classes 18 and 25 and services in class 39.

Proprietor of mark or sign cited in the opposition proceedings: MARINE STOCK LIMITED.

Mark or sign cited in opposition: Various national trade marks, including the Austrian word mark 'BK RODS' (No 149.254) for goods in class 25 (clothing and footwear). The opposition was directed against all the goods and services covered by the Community trade-mark application at issue in the proceedings.

Decision of the Opposition Division: Opposition upheld in respect of the goods in class 25 and rejected in respect of goods in class 18 and services in class 39.

Decision of the Board of Appeal: Dismissed the appeal.

Action brought on 15 October 2004 by Angel Angelidis against European Parliament

(Case T-424/04)

(2004/C 314/59)

(Language of the case: French)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 15 October 2004 by Angel Angelidis, residing in Luxembourg, represented by E. Boigelot, lawyer.

The applicant claims that the Court should:

— Annul the Parliament's decision of 16 July 2004 rejecting the complaint lodged by the applicant;

— Annul the applicant's staff report for 2002;

— Order the Parliament to pay the applicant compensation for non-material harm, evaluated on an equitable basis at EUR 20,000, owing to the various substantial faults committed at various levels in the establishment of his staff reports and owing to the significant delay in definitively establishing those reports;

— Order the defendant to pay the costs.

Pleas in law and main arguments

The pleas in law on which the applicant relies are identical to those in Case T-416/03, (¹) brought by the same applicant.

⁽¹⁾ OJ C 59 of 06.03.2004, p. 25.