Action brought on 19 September 2003 by Telefon und Buch Verlagsgesellschaft m.b.H against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-322/03)

(2005/C 6/73)

(Language of the case: 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 19 September 2003 by Telefon und Buch Verlagsgesellschaft m.b.H, Salzburg (Austria), represented by H. G. Zeiner, lawyer. The other parties to the proceedings before the Board of Appeal were HEROLD Business Data GmbH & Co KG (previously Harold Business Data AG), Mödling, Austria.

The applicant claims that the Court should:

— vary the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 June 2003 in the joined cases R 580/2001 and R 592/2001 to the effect that the application for cancellation of the Community trade mark WEISSE SEITEN No 371.096 is dismissed in its entirety; in the alternative

— set aside the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 June 2003 in the joined cases R 580/2001 and R 592/2001 and instruct the Office for Harmonisation in the Internal Market (Trade Marks and Designs), possibly after supplementary proceedings, to come to a new decision and to dismiss in its entirety the application for cancellation of the Community trade mark WEISSE SEITEN No 371.096; order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments:

Registered Community trade mark in respect of which an application for cancellation was made:	The word mark WEISSE SEITEN for goods and services in Classes 9, 16, 41 and 42 — Community trade mark No 371.096
Owner of the Community trade mark:	The applicant
Applicant for the cancellation of the Community trade mark:	HEROLD Business Data GmbH & Co KG
Decision of the Cancellation Division:	Part cancellation of the Community trade mark in respect of telephone directories of names in printed form or on electronic storage media (Classes 9 and 16) and in respect of the publication of those telephone directories of names (Class 41)
Decision of the Board of Appeal:	Dismissal of the appeal
Grounds for the action:	— The registered trade mark has distinctive character for the purposes of Article 7(1)(b) of Regulation (EC) No 40/94. — The registered sign is not descriptive of any of the goods or services in the list of goods and services in accordance with Article 7(1)(c). — The registered mark is not an indication in common use for the purposes of Article 7(1)(d).

Action brought on 23 September 2004 by Heuschen & Schrouff Oriëntal Foods Trading B.V. against the Commission of the European Communities

(Case T-382/04)

(2005/C 6/74)

(Language of the case: Dutch)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 23 September 2004 by Heuschen & Schrouff Oriëntal Foods Trading B.V., established in te Landsgraaf (Netherlands), represented by Hendrik Cornelis De Bie.

The applicant claims that the Court should:

— annul Commission Decision REM 19/2002 of 17 June 2004 in so far as it holds the request for remission of duties unjustified;

— order the Commission to pay the costs.

Pleas in law and main arguments:

The applicant imports, inter alia, rice paper, which, for several years, was declared under the same CN code. However, following the adoption of Commission Regulation No 1196/97 of 27 June 1997, ([1]) the goods had to be declared under a different CN code. The applicant concedes that this was not done in its case. However, according to the applicant, its case is a special situation in that the Netherlands customs authorities committed several errors when carrying out their controls. The applicant points out that the Netherlands customs authorities failed to notice that the rice paper had been wrongly classified, even in the course of various controls carried out over a period of eight months. The applicant also argues that it cannot be accused of deception or obvious negligence.

In support of its application, the applicant alleges infringement of Article 239 of Regulation No 2913/92, ([2]) erroneous assessment of the facts by the Commission and breach of the duty to state reasons. The applicant also alleges infringement of the principles of sound administration and equal treatment, given that the Commission reached a different conclusion in previous decisions. Finally, the applicant alleges infringement of the principle of proportionality.

([1]) Commission Regulation (EC) No 1196/97 of 27 June 1997 concerning the classification of certain goods in the combined nomenclature (OJ 1997 L 170, p. 13).
([2]) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1).

Action brought on 27 September 2004 by EnBW Energie Baden-Württemberg AG against the Commission of the European Communities

(Case T-387/04)

(2005/C 6/75)

(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 27 September 2004 by EnBW Energie Baden-Württemberg AG, Karlsruhe (Germany), represented by C.- D. Ehlermann, M. Seyfarth, A. Gutermuth and M. Wissmann, lawyers.

The applicant claims that the Court should:

— annul the Commission's decision of 7 July 2004 on the national plan for the allocation of greenhouse gas emission allowances, communicated by Germany in accordance with Directive 2003/87/EC; ([1])

— order the Commission to pay the costs.

Pleas in law and main arguments:

The applicant is a German utility company. Insofar as the power stations operated by the applicant emit greenhouse gases, as from 1 January 2005 the applicant is subject to the Community scheme for greenhouse gas emission allowance trading introduced by Directive 2003/97/EC.

The applicant challenges, save for a number of matters which are not relevant in the present case, the decision of the Commission which endorsed the national plan communicated by Germany for the allocation of greenhouse gas emission allowances. In particular, the applicant complains of a rule in respect of transfers contained in the plan which allocates to a power station operator who decommissions an old installation and replaces it with a new one the quantity of allowances which it had for the decommissioned installation for a period of four years. In the applicant's view, that gives rise to an over-allocation of allowances which amounts to State aid within the meaning of Article 87(1) EC and cannot be justified. The defendant's different assessment in the contested decision is subject to manifest errors in the statement of reasons and does not show sufficient investigation of the facts. The contested decision therefore infringes Article 87(3) EC and Article 88(2) EC.

Further, in breach of Article 88(2) EC, the defendant failed to initiate the formal State aid procedure, although it must have had considerable doubt about the compatibility of that rule with the EC Treaty.

In addition, the contested decision infringes Article 9(3) of Directive 2003/87/EC and criterion 5 of Annex III thereto, as the over-allocation of emission allowances unduly favours competitors of the applicant, which are strengthened because undertakings like the applicant, which have to decommission nuclear power stations in the near future owing to statutory rules, are unjustifiably placed at a disadvantage.

Finally, the contested decision infringes Article 253 EC owing to numerous gross errors in the statement of reasons.

([1]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, OJ L 275 of 25.10.2003, p. 32.