

Pleas in law and main arguments:

In support of his application the applicant relies on pleas alleging a breach of Article 45 of the Staff Regulations, a breach of the general implementing provisions for Article 45, a breach of the administrative guide to appraisal and promotion of officials and a breach of the principle of non-discrimination. The applicant also relies on the prohibition on arbitrary procedures and alleges a breach of the duty to state reasons and misuse of powers. He also alleges a breach of the principle of legitimate expectations and of the 'patere legem quam ipse fecisti' rule and, finally, a breach of the duty to have regard for the welfare of officials.

Decision of the Board of Appeal:

Annulment of the contested decision with regard to the services financial analysis, investment affairs, insurance affairs in Class 36. Dismissal of the remainder of the appeal.

Pleas in law:

Infringement of the first sentence of Article 74(1) of Regulation (EC) No 40/94

Misinterpretation of Article 7(1)(b)

Action brought on 5 November 2004 by Eurohypo AG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-439/04)

(2005/C 45/54)

(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 5 November 2004 by Eurohypo AG, Eschborn (Germany), represented by M. Kloth, Hamburg (Germany), lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 August 2004 (Case R-829/2002-4), in so far as it dismisses the appeal;
- order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark

The applicant

The trade mark applied for:

The word mark EUROHYPO for services in Class 36 (financial affairs; monetary affairs; real estate affairs; provision of financial services; financing; financial analysis; investment affairs; insurance affairs)

Decision of the examiner:

Rejection of the application in respect of all services

Action brought on 8 November 2004 by Éditions Odile Jacob SAS against the Commission of the European Communities

(Case T-452/04)

(2005/C 45/55)

(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 8 November 2004 by Éditions Odile Jacob SAS, established in Paris, represented by Wilko van Weert and Olivier Fréget, lawyers.

The applicant claims that the Court should:

- annul the contested decision on the ground that it repeated the failure to comply with the conditions and undertakings imposed on Lagardère in the decision of 7 January 2004;
- order the defendant to pay the costs.

Pleas in law and main arguments:

The applicant contests the Commission Decision of 30 July 2004 concerning the approval of Wendel Investissement as the acquirer of the assets sold by Lagardère, in accordance with the Commission Decision of 7 January 2004 declaring a concentration compatible with the common market and the functioning of the EEA Agreement⁽¹⁾ ('the Compatibility Decision'). The concentration was authorised subject to the sale by Lagardère of certain assets, namely Editis. The applicant submitted an offer to purchase Editis but was unsuccessful.

In support of its action the applicant claims, in the first place, that the contested decision was adopted on the basis of the report of a trustee who was not appointed in accordance with the conditions laid down by paragraph 15 of Annex II to the Compatibility Decision. The applicant argues that the trustee in question was not independent, particularly of Editis, contrary to the duty incumbent on Lagardère in consequence of the Compatibility Decision.

Second, the applicant claims that the Commission failed in its duty to supervise the sale of Editis, allowing a selection procedure for purchasers to be put in place which was discriminatory and anti-competitive. According to the applicant, the Commission should have required the organisation of a call for prospective purchasers which was transparent, objective and non-discriminatory. Furthermore, the Commission should not have approved the terms of the confidentiality agreement between Lagardère and the potential purchasers, which included the applicant, preventing them from bringing an action. The Commission should have taken steps to rectify the procedure when the applicant drew its attention to the failures to comply with the competition rules in the EC Treaty. Finally, the Commission denied the applicant the minimum protection to which it considered it was entitled as an interested third party.

Third, the applicant relies on a manifest error by the Commission in its assessment of whether the conditions laid down in respect of the purchaser by the Compatibility Decision were complied with. The applicant argues that the purchaser is not an operator capable of restoring a situation of effective competition.

Finally, the applicant relies on a breach of the duty to state reasons.

(¹) Case COMP/M.2978 – Lagardère/Natexis/VUP (OJ 2004 L 125, p. 54)

Action brought on 22 November 2004 by Au Lys de France against the Commission of the European Communities

(Case T-458/04)

(2005/C 45/56)

(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 22 November 2004 by Au Lys de France, a company established in Le Raincy (France), represented by G. Lesourd, lawyer.

The applicant claims that the Court should:

- annul the Commission's decision of 17 September 2004 and all its legal consequences.

Pleas in law and main arguments:

The applicant was carrying on a retail business in the terminal at Paris/Charles de Gaulle airport. It lodged a complaint with the Commission relating to abuse of a dominant position within the meaning of Article 82 EC by the public undertaking, Aéroports de Paris, on the commercial concessions market in the public airport sector.

By the contested decision, the Commission notified the applicant that there was no sufficient Community interest in the complaint to justify the opening of a formal investigation.

In support of its action, the applicant relies, first, on error of law and manifest error of assessment in the decision as to the lack of a sufficient Community interest. According to the applicant, the Commission was mistaken in finding the absence of a sufficient interest to pursue the investigation of the case and in deciding that there was sufficient protection of the applicant's rights before the national courts.

Secondly, the applicant pleads an insufficient statement of reasons in breach of Article 253 EC because the Commission did not deal with various elements of the applicant's arguments.

Thirdly, the applicant pleads breach of Article 82 EC, because the Commission refused to investigate the complaint whereas, according to the applicant, there is abuse of a dominant position.

Action brought on 22 November 2004 by Jorge Manuel Pinheiro de Jesus Ferreira against the Commission of the European Communities

(Case T-459/04)

(2005/C 45/57)

(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 22 November 2004 by Jorge Manuel Pinheiro de Jesus Ferreira, residing in Brussels, represented by Georges Vandersanden, lawyer.