

According to the applicant, the appointing authority committed a manifest error of assessment in selecting a candidate who did not satisfy the conditions set out in the notice of vacancy. The appointment of that candidate should for that reason be set aside. The applicant also asserts that there has been an infringement of the principle of equal treatment and of the rules governing the deliberations of the selection board. She claims that certain members of the selection board were not adequately qualified and/or lacked the impartiality and objectivity necessary for sitting on such a board. Furthermore, the staff reports of the applicant and of the candidate appointed evaluate their respective activities and profiles according to different criteria and provisions of the Staff Regulations. In conclusion, the applicant submits that the appointing authority infringed the principle of equality as between men and women. She argues that she was more meritorious than the candidate who was appointed. Moreover, in the event that her merits should be deemed to have been no more than equivalent to those of that candidate, priority ought to have been given to the applicant by reason of the fact that she is a woman.

---

**Action brought on 24 April 2003 by 'U' and Others against the Council of the European Union and the Commission of the European Communities**

**(Case T-138/03)**

(2003/C 158/47)

*(Language of the case: French)*

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 24 April 2003 by 'U' and Others, represented by François Honnorat, lawyer.

The applicants claim that the Court should:

- order compensation for the non-material or material damage suffered by them as a consequence of the infection of their close relatives with BSE;
- order the defendants to pay the costs.

*Pleas in law and main arguments*

The applicants all live in France and are victims, either indirectly or as persons entitled under or through persons who have died in France, of a 'variant' form of Creutzfeldt-Jakob disease. By this action, the applicants are lodging a claim for damages to compensate for the material or non-material damage allegedly suffered as a consequence of the death of persons infected with BSE.

The applicants submit that the defendants made a manifest error of assessment, misused their powers and violated the legitimate expectations of European consumers.

The applicants maintain that the defendants made a manifest error of assessment in their management of the risks associated with the BSE epidemic by not recommending a forward scientific evaluation of the risk of BSE developing BSE in the various geographical areas of the Union at the time of identification of the causes of the epidemic and of adoption of the first protective measures in the United Kingdom. That manifest error of assessment is also evidenced by the failure of the defendants to call for a retrospective study to shed light on the cause of the infections subsequently recorded in France.

In support of their claims, the applicants submit that the defendants' conduct in this case constitutes a misuse of powers inasmuch as it was aimed only at protecting in an ill-considered manner the interests of the market and of the beef sector. According to the applicants, the defendants' action consisted in dissuading the Member States from adopting unilateral protective measures.

The applicants further maintain that the defendants' internal disorganisation led their staff to underestimate the risks of BSE developing and by that very fact constitutes a serious breach of the legitimate expectations of European consumers.

The applicants draw attention to the abnormal and special nature of the damage suffered by them as a result of the non-natural cause of BSE and of the inapplicability of the European system of producers' liability for defective products to the case in point.

---

**Action brought on 28 April 2003 by Forum 187 against the Commission of the European Communities**

**(Case T-140/03)**

(2003/C 158/48)

*(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 28 April 2003 by Forum 187, Brussels, Belgium, represented by Mr A. Sutton and Mr J. Killick, Barristers.

The applicant claims that the Court should:

- annul the Contested Decision in whole or in part,
- order the Commission to pay the costs of this Case and of Case T-276/02.

*Pleas in law and main arguments*

The applicant in the present case is the same association as in case T-276/02, Forum against Commission (1). The applicant challenges the final decision relating to the same Belgian State Aid measure which was, as far as the decision to open the procedure as foreseen by Article 88(2) of the Treaty was involved, the object of that case. The grounds and main arguments are those submitted in that aforementioned case.

(1) OJEC C 289, 23.11.02, p. 28.

**Action brought on 2 May 2003 by Biofarma against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)**

**(Case T-154/03)**

(2003/C 158/49)

*(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 2 May 2003 by Biofarma, represented by Antonia Ruiz López and Víctor Gil Vega, lawyers.

The applicant claims that the Court should:

- annul the decision of the OHIM (Third Board of Appeal) of 5 February 2003 and declare that there is a likelihood of confusion between the trade marks ARTEX and ALREX, which designate similar goods.
- order the OHIM to pay the costs.

*Pleas in law and main arguments*

Applicant for Community trade mark: Bausch & Lomb Pharmaceuticals Inc.

Community trade mark: Word mark 'ALREX' — Application No 789461 for goods in Class 5 (ophthalmological products)

Proprietor of mark or sign cited in the opposition proceedings:

Mark or sign cited in opposition:

Decision of the Opposition Division:

Decision of the Board of Appeal:

Pleas in law:

The applicant

Word mark 'ARTEX' registered in France, Portugal and the Benelux for goods in Class 5

Opposition upheld

Annulment of the decision of the Opposition Division and dismissal of the appeal

Misapplication of Article 8(1)(b) of Regulation (EC) No 40/94 (likelihood of confusion)

**Action brought on 9 May 2003 by Industrias Químicas del Vallés, S.A. against Commission of the European Communities**

**(Case T-158/03)**

(2003/C 158/50)

*(Language of the case: Spanish)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 9 May 2003 by Industrias Químicas del Vallés, S.A., whose registered office is in Mollet del Vallés (Barcelona, Spain), represented by Cani Fernández Vicién, Paloma González-Espejo and Julio Sabater Marotias, lawyers.

The applicant claims that the Court should:

- annul Commission Decision 2003/308/EC of 2 May 2003,
- order the European Commission to pay all the costs, including those incurred for the purposes of making an application for interim relief.

*Pleas in law and main arguments*

This action is directed against Commission Decision 2003/308/EC of 2 May 2003 concerning the non-inclusion of metalaxyl in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant-protection products containing this active substance (1).

In support of its claims, the applicant company relies on the following pleas in law and main arguments: