

The applicant claims that the Court should:

- set aside the decision of the First Board of Appeal of OHIM of 9 July 2003 in Case R 0576/2002-1;
- refuse to register as a Community mark No 488.940 DAVID LLOYD in Class 25, and
- order the other party or parties to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those already put forward in Case T-341/03 *El Corte Inglés v OHIM*.

The Community trade mark which is the subject of the dispute is the mark 'DAVID LLOYD' (Application No 488.940, for goods in Classes 3, 5, 25, 28, 36, 41 and 42). The applicant, the marks cited in the opposition proceedings, the proprietor and the decisions of the Opposition Division and the Board of Appeal are identical to those referred to in that case.

Action brought on 2 October 2003 by SAIWA S.p.A. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-344/03)

(2003/C 304/59)

(Language of the case: Italian)

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 October 2003 by SAIWA S.p.A., represented by Giuseppe Sena, Paola Tarchini, Jean-Pierre Karsenty and Martine Karsenty-Ricard, lawyers. Barilla Alimentare S.p.A. was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

- annul the decision of the Fourth Board of Appeal of OHIM of 18 July 2003 in Case R 480/2002-4; order that registration be refused in respect of Barilla's Community trade mark application No 289405; order the defendant to pay all the costs.

Pleas in law and main arguments

Applicant for Community trade mark:

Barilla Alimentare S.p.A.

Community trade mark sought:

Figurative mark including the words 'SELEZIONE ORO' and 'BARILLA' — Application No 289.405 for products in Class 30 (pasta, flour and preparations made from cereals, bread, pastry and confectionery, yeast, baking-powder, sauces).

Proprietor of mark or sign cited in the opposition proceedings:

The applicant.

Mark or sign cited in opposition:

Word marks 'ORO' (Italian trade mark No 307376 and international trade mark No 435773) and 'ORO SAIWA' (Italian trade mark No 332.864) for products in Class 30.

Decision of the Opposition Division:

Opposition refused.

Decision of the Board of Appeal:

Appeal dismissed.

Pleas in law:

Incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 (likelihood of confusion).

Action brought on 30 October 2003 by Frischpack GmbH & Co KG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-360/03)

(2003/C 304/60)

(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 30 October 2003 by Frischpack GmbH & Co KG, Mailling (Germany), represented by P. Bornemann, lawyer.

The applicant claims that the Court should:

- alter the decision in Appeal R 236/2003-2, and annul it in part, namely in respect of the goods ‘cheese slices in large packs, not intended for the final consumer’;
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The trade mark applied for: Three-dimensional mark in the form of a cheese box — Application No 2 631 745.

Goods or services concerned: Goods in Class 29 (foodstuffs in sliced form, in particular slices of cheese).

Decision contested before the Board of Appeal: Refusal of registration by the examiner.

Decision of the Board of Appeal: Appeal dismissed.

- Grounds of action:
- Article 7(1)(b) of Regulation (EC) No 40/94 has been infringed.
 - It is not to be denied that the mark has the distinctiveness necessary for registration.
 - A need to preserve availability is not apparent.

Action brought on 31 October 2003 by Antonio Milano against the Commission of the European Communities

(Case T-362/03)

(2003/C 304/61)

(Language of the case: Italian)

An action against the European Commission was brought before the Court of First Instance of the European Communities

on 31 October 2003 by Antonio Milano, represented and defended by Stefano Scarano.

The applicant claims that the Court should:

- annul the act of the European Commission — European Communities Personnel Selection Office — communicated by memorandum of 24 March 2003 and notified to the applicant on 31 March 2003, in which the selection board decided that the applicant’s application was inadmissible on the basis of the request for review made by Mr Milano, annul the decision of 10 February 2003 of the Commission in which the selection board refused the applicant admission to the oral test in open competition COM/A/4/02 ‘Administrators’, and annul the decision of 17 July 2003 of the appointing authority in which the complaint submitted by Mr Milano under Article 90(2) of the Staff Regulations and lodged at DG ADMIN on 24 April 2003 with number R/187/03 was rejected;
- full compensation in damages for economic and moral loss
- recovery of costs

Pleas and main arguments

This action is brought against the decision of the selection board for open competition COM/A/4/02 ‘Administrators’, through qualifications and an oral test, with a view to constituting a reserve list for the recruitment of a head of representation in grade A3 in Rome, excluding the applicant from admission to the oral test in the above-mentioned competition.

In particular, the ground that the applicant does not have thorough knowledge of Community institutions, programmes and policies is contested.

In support of his arguments, the applicant claims that this ground is unfounded, unjustified, illogical and inconsistent.