

*Pleas in law and main arguments:*

Applicant for Community trade mark:	The applicant
Community trade mark sought:	The word mark 'Online Bus' for services in Class 35 (including drawing up statistics in the field of economics, marketing, market research and market analysis, business consultancy and organisation consultancy)
Proprietor of mark or sign cited in the opposition proceedings:	BUS-Betreuungs- und Unternehmensberatungs-GmbH
Mark or sign cited in opposition.	German figurative mark 'BUS' for services in Classes 35, 40, 41 and 42 (including business consultancy, in particular organisation consultancy and economic consultancy)
Decision of the Opposition Division:	Registration refused
Decision of the Board of Appeal:	Dismissal of the applicant's appeal
Pleas in law:	<ul style="list-style-type: none"> <li>— The intervener has failed to furnish proof of the use of the mark on which the opposition is founded, and the opposition should be rejected under the second sentence of Article 43(2) of Regulation (EC) No 40/94.</li> <li>— As there is no similarity between the opposing marks, there is no likelihood of confusion within the meaning of Article 8(1)(b) of Regulation (EC) No 40/94.</li> </ul>

**Action brought on 8 April 2004 by Domäne Vorderriss, Rasso Freiherr von Cramer-Klett and Rechtlerverband Pfronten against the Commission of the European Communities**

(Case T-136/04)

(2004/C 190/28)

(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 8 April 2004 by Domäne Vorderriss, of Lenggries (Germany), Rasso Freiherr von Cramer-Klett, residing in Aschau i. Chiemgau (Germany), and Rechtlerverband Pfronten, of Pfronten (Germany), represented by T. Schönfeld, lawyer.

The applicants claim that the Court should:

- annul the Commission decision of 22 December 2003 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Alpine biogeographical region; <sup>(1)</sup>
- order the Commission to pay the costs of the proceedings.

*Pleas in law and main arguments*

The applicants are the owners of tracts of forest which are managed by forestry businesses operated by the respective applicants and which now, under the contested decision, have been named as sites of Community importance (SCI) for the Alpine biogeographical region.

The applicants submit that the contested decision infringes their fundamental rights guaranteed by the general principles of the Community legal order. That infringement of fundamental rights is formally unlawful because upon adoption of the Commission Decision (and upon implementation of Directive 92/43/EEC) <sup>(2)</sup> no form of right of participation is bestowed upon the property owners concerned.

The applicants further submit that the contested decision also materially infringes the applicants' property rights because no consideration was given to the private property rights of the applicants (and the other persons affected) at the time of designation of the SCIs and there was therefore no balancing of the importance of the intended designation of SCIs against that of the applicants' private rights. Furthermore, the contested decision is contrary to the provisions of Directive 92/43/EEC itself because the question of the compensation to be paid remains entirely open and unresolved.

The applicants also submit that the contested decision is disproportionate since it is of itself not suitable to create a coherent European ecological network, and a 'list of individual units' for only one biogeographical region is thus incapable of achieving the directive's objective of providing protection. The contested decision is inappropriate also because the required Community-wide coordination was not achieved.

<sup>(1)</sup> OJ L 14, 21.1.2004, p. 21.

<sup>(2)</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).