

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal wrongly concluded that there was no similarity of the goods and/or services covered by the trade marks in question

Appeal brought on 25 February 2009 by the European Parliament against the judgment of the Civil Service Tribunal delivered on 11 December 2008 in Case F-148/06, Collée v Parliament

(Case T-78/09 P)

(2009/C 102/42)

Language of the case: French

Parties

Appellant: European Parliament (represented by C. Burgos and A. Lukošiušė, acting as Agents)

Other party to the proceedings: Laurent Collée (Luxembourg, Luxembourg)

Form of order sought by the appellant

- annul in its entirety the judgment of the Civil Service Tribunal under appeal;
- give final judgment in the matter by dismissing the action brought by Mr Collée as unfounded;
- make an appropriate order as to costs.

Pleas in law and main arguments

By this appeal, the Parliament seeks the annulment of the judgment of the Civil Service Tribunal (the Tribunal) of 11 December 2008 in Case F-148/06 *Collée v Parliament*, by which the Tribunal annulled the Parliament's decision to award two merit points to Mr Collée under the 2004 promotion procedure.

In support of its appeal, the Parliament relies on four grounds of appeal alleging:

- a distortion of the facts and of the evidence, as the Tribunal stated that Mr Collée had not received a third merit point on the sole ground that his merits were not superior to those of officials who had obtained three points, although the comparative examination carried out with a view to responding to Mr Collée's administrative complaint stated that his staff report was not of a level equivalent to that of officials who had obtained three points;
- failure to state reasons, on the ground that the Tribunal did not explain why it departed from earlier case-law, and contradictory reasoning, first, in paragraphs 42 and 46 as against paragraph 18 of the judgment under appeal and, secondly, in paragraphs 43 and 46 as against paragraphs 44 and 45 of that judgment;
- infringement of Article 45 of the Staff Regulations of Officials of the European Communities and of the case-law relating thereto, in so far as the requirement of superiority of merits applied by the Parliament for the award of a third point is not inconsistent with Article 45 of the Staff Regulations; thus an official must be superior in the decreasing order of merit, to the last official who received three points;
- infringement of the principle of equal treatment as the Tribunal stated that the Parliament had infringed that principle although Mr Collée was not in a situation comparable to that of officials who had received three merit points.

Appeal brought on 23 February 2009 by the Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 9 December 2008 in Case F-52/05, Q v Commission

(Case T-80/09 P)

(2009/C 102/43)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by V. Joris and B. Eggers, acting as Agents)

Other party to the proceedings: Q (Brussels, Belgium)