

*Decision of the Opposition Division:* Upheld the opposition

*Decision of the Board of Appeal:* Allowed the appeal in part

*Pleas in law:* Infringement of Article 8(1)(b) Council Regulation 207/2009 as the Board of Appeal wrongly held that there was a likelihood of confusion between the trade marks concerned; infringement of Article 42 Council Regulation 207/2009 as the Board of Appeal erred when taking into account evidence for proof of use submitted by the other party to the proceedings before the Board of Appeal which did not meet the requirements of the said legal provision and did not show place, time, extent and nature of use.

**Appeal brought on 17 August 2009 by Vahan Adjemian and Others against the judgment of the Civil Service Tribunal delivered on 4 June 2009 in Joined Cases F-134/07 Adjemian and Others v Commission and F-8/08 Renier v Commission**

**(Case T-325/09 P)**

(2009/C 256/55)

*Language of the case:* French

**Parties**

*Appellants:* Vahan Adjemian (Angera, Italy), Matteo Ambietti (Gallarate, Italy), Elisabetta Avanti (Vedano Olona, Italy), Daniela Baiguera (Cadrezzate, Italy), Douglas James Beare (Azzale, Italy), Valentina Benzi (Varese, Italy), Maria Nicoletta Berta (Buguggiate, Italy), Conrad Bielsky (Ispra, Italy), Maria Bielza Diaz-Caneja (Ispra), Roberta Bino (Ispra), Kristin Boettcher (Ranco, Italy), Valeria Boschini (Taino, Italy), Mounir Bouhifd (Arolo di Leggiuno, Italy), Cristina Brovelli (Ispra), Daniela Brovelli (Ranco), Clementine Burnley (Taino), Daniela Buzica (Ispra), Giovanni Calderone (Leggiuno, Italy), Marco Canonico (Refrancore, Italy), Stefano Casalegno (Angera), Javier Castro Jimenez (Ispra), Denise Ceconello (Cocquio Trevisago, Italy), Francesca Cellina (Varese), Francesca Cenci (Travedona Monate, Italy), Laura Ceriotti (Dairago, Italy), Houtai Choumane (Laveno), Graziella Cimino Reale (Guidonia Monticelio, Italy), Marco Clerici (Legnano, Italy), Bruno Combal (Besozzo, Italy), Costanza Giulia Conte (Ispra), Tatiana Conti (Vedano Olona), Domenica Cortellini (Brescia, Italy), Orna Cosgrove (Varese), Giulio Cotogno (Rovellesca, Italy), Cristina Croera (Taino), Ana Maria Cruz Naranjo (Cardana di Besozzo, Italy), Barbara Cuniberti (Angera), Bianca D'Alimonte (Sesto Calende, Italy), Miranta Dandoulaki (Athens, Greece), Alexander De Meij (Leggiuno), Wim Decoen (Brescia), Christiane Deflandre (Travedona Monate), Riccardo Del Torchio (Gemonio, Italy), Elena Demicheli (Sesto Calende), Manuela Di Lorenzo (Sangiano, Italy), Stefano Donadello (Arsago Seprio, Italy), Anna Donato (Taino), Bruno Duarte De Matos E Sousa Pereira (Ispra), Sami Dufva (Biantronno, Italy), Wesley Duke (Gavirate, Italy), Diego Escudero Rodrigo (Taino), Claudio Forti (Malgesso, Italy), Monica Gandini (Buguggiate), Aliko Georgakaki (Alkmaar, Netherlands), Giovanni Giacomelli (Laveno), Alessandra Giallombardo (Gavirate), Nadia Giboni (Brescia), Maria Giovanna Giordanelli (Vergiate, Italy), Maria Giuseppina Grillo (Sangiano), Manuela Grossi (Ranco), Laurence Guy-Mikkelsen (Angera), Rachel Margaret Harvey-Kelly (Cardana di Besozzo), Paul Hasenohr (Arolo di Leggiuno),

Ulla Marjaana Helminen (Laveno), Gea Huykman (Db Anna Paulowna, Netherlands), Elisabeth Marie Cecile Joossens (Biantronno), Lyudmila Kamburska (Ranco), Maria Cristina La Fortezza (Arsago Seprio), Debora Lacchin (Brescia), Rafal Leszczyna (Varese), Amin Lievens (Taino), Silvia Loffelholz (Gavirate), Davide Lorenzini (Varese), Chiara Macchi (Casalzuigno, Italy), Andrew John Edgar MacLean (Varese), Andrea Magistri (Ispra), Alessia Maineri (Varese), Simone Malfara (Ispra), Adriana Marino (Taino), Patrizia Masoin (Brussels, Belgium), Matteo Mazzucato (Legnano), Stefania Minervino (Cittiglio, Italy), Eduardo Luis Montes Torralbo (Ispra), Davide Moraschi (Seville, Spain), Claudio Moroni (Besozzo), Giovanni Narciso (Ispra), Andrew Darren Nelson (Angera), Elisa Nerboni (Angera), Isabella Claudia Neugebauer (Arolo di Leggiuno), Francesca Nicoli (Laveno), Victor Alexander Nievaart (Am Alkmaar), Magdalena Novackova (Am Alkmaar), Joanna Nowak (Ispra), Victoria Wendy O'Brien (Angera), Davide Orto (Gallarate), Alessio Ossola (Brescia), Silvia Parnisari (Arona, Italy), Manuela Pavan (San Felice, Italy), Immaculada Pizzaro Moreno (Seville, Spain), Marina Pongilupi (Ranco), Marsia Pozzato (Sesto Calende), Elisa Pozzi (Taino), Giovanna Primavera (Angera), Michele Rinaldin (Sesto Calende), Alice Ripoli (Gavirate), Emanuela Rizzardi (Laveno), Michela Rossi (Taino), Andrew Rowlands (Bodio, Italy), Helen Salak (Cocquio Trevisago), Jaime Sales Saborit (Ispra), Maria Sonia Salina (Vergiate), Anne Marie Sanchez Cordeil (Besozzo), Ferruccio Scaglia (Oleggio, Italy), Niels Schulze (Sesto Calende), Francesca Serra (Cadrezzate), Penka Shegunova (Geel, Belgium), Donatella Soma (Ispra), Monica Squizzato (Inarco, Italy), Alan Steel (Laveno), Robert Oleij Strobl (Ranco), Marcel Suri (Brescia), Malcolm John Taberner (Monvalle, Italy), Martina Telo (Vicenza, Italy), Saara Tetri (Cittiglio), Barbara Claire Thomas (Cocquio Trevisago), Donatella Turetta (Ranco), Adamo Ubaldi (Cardana di Besozzo), Monica Vaglica (Osmate, Italy), Paulo Valente De Jesus Rosa (Travedona Monate), Corinna Valli (Leggiuno), Federica Vanetti (Cittiglio), Christophe Vantongelen (Besozzo), Irene Vernacotola (Legnano), Ottaviano Veronese (Segrate, Italy), Patricia Vieira Lisboa (Angera, Italy), Maria Pilar Vizcaino Martinez, (Monvalle), Giulia Zerauscheck (Trieste, Italy), Marco Zucchelli (Ternate, Italy), Erika Adorno (Travedona Monate), Valeria Bossi (Comerio, Italy), Barbara Cattaneo (Leggiuno), Claudia Cavicchioli (Caravate, Italy), Fatima Doukkali (Varese), Orla Hurley (Ranco), Romina La Micela (Besozzo), Lucia Martinez Simon (Ranco), Daniela Piga (Roggiano, Italy), Pamela Porcu (Cittiglio), Silvia Sciacca (Varese), Sarah Solda (Brescia), Cristina Zocchi (Bregano, Italy), Angela Baranzini (Besozzo), Elly Bylemans (Balen, Italy), Sabrina Calderini (Solbiate Arno, Italy), Davide Capuzzo (Vergiate), Ivano Caravaggi (Besozzo), Elisa Dalle Molle (Ranst, Belgium), Wendy De Vos (Groot-Bijgaarden, Belgium), Volkmar Ernst (Weingarten, Germany), Matteo Fama (Sangiano, Italy), Arianna Farfaletti Casali (Varese), Sasa Gligorijevic (Monvalle), Raffaella Magi Galluzzi (Varese), Sophie Mühlberger (Karlsruhe, Germany), Pamela Muscillo (Varese), Jan Paepen (Balen), Marco Paviotti (Bagnaria Arsa, Italy), Slavka Prvakova (Eg Alkmaar, Netherlands), Andreas Ratzel (Linkenheim, Germany), Thierry Romero (Strasbourg, France), Jose Pablo Solans Vila (Monvalle), Susan Wray (TM Tutjenhoin, Netherlands), Sven Wurzer (Linkenheim), Sylvia Zamana (RZ Castricum, Netherlands), Uwe Zweigner (Leopoldshafen, Germany), Colette Renier (Brussels) (represented by S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

*Other parties to the proceedings:* Commission of the European Communities and Council of the European Union

### Form of order sought by the appellants

- Set aside the judgment of 4 June 2009 in Joined Cases F-134/07 *Adjemian and Others v Commission*, supported by the Council of the European Union and F-8/08 *Renier v Commission*, supported by the Council of the European Union;
  
- Giving judgment itself, having declared the decision of the Commission of the European Communities of 28 April 2004 concerning the maximum duration of the recourse to non-permanent staff in its services to be unlawful, and Article 88 of the Conditions of Employment of other servants of the European Communities to be inapplicable in so far as it limits the duration of the contracts of auxiliary contract staff,
  
- annul the Commission's decisions of 23 August and 31 October 2007 rejecting complaints R/263/07 and R/492/07 brought against the decisions of the Commission to renew the engagement of the appellants as contract staff only for a fixed period;
  
- annul the decision of 31 October 2007 rejecting complaint R/390/07 brought against the decisions of the Commission to conclude a contract or to renew the engagement of the appellants (*Adorno and others* — appellants' list No 2) as contract staff only for a fixed period;
  
- annul the Commission's decision of 5 September 2007 rejecting the appellants' applications of 31 May and 20 July 2007 for an extension for an indefinite period of the appellants' contracts as members of the contract staff;
  
- annul the Commission's decision of 28 November 2007 rejecting the complaint brought against the decision of 5 September 2007 rejecting the appellants' applications of 31 May and 20 July 2007 for an extension for an indefinite period of their contracts as members of the contract staff;
  
- annul the Commission's decisions laying down the respective conditions of the appellants' employment in so far as their engagement or the extension thereof is limited to a fixed period;
  
- Order the defendant to pay the costs of the proceedings at first instance and of the appeal.

### Pleas in law and main arguments

By their appeal, the appellants ask the Court to set aside the judgment of the Civil Service Tribunal ('the Tribunal') delivered

on 4 June 2009 in Joined Cases F-134/07 *Adjemian and Others v Commission* and F-8/08 *Renier v Commission* dismissing the applications by which the appellants had sought the annulment of the Commission's decisions — and the rejection of their complaints in that regard — to renew their contracts as members of the contract staff only for a fixed period rather than for an indefinite period.

In support of their appeal, the appellants put forward a number of grounds of appeal alleging:

- that the Tribunal erred in law in deciding that Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP <sup>(1)</sup> could not sustain a plea of illegality in respect of a provision of the Conditions of Employment of other servants of the European Communities ('Conditions of Employment');
  
- that the Tribunal erred in law in deciding that the framework agreement on fixed-term work — intended to establish a framework to prevent abuse arising from the use of successive fixed-term employment contracts or relationships — could not sustain pleas of illegality in respect of Article 88 of the Conditions of Employment and the Commission's decision of 28 April 2004 concerning the maximum duration of the recourse to non-permanent staff in the Commission's services, and in deciding that the reasons given for Article 88 of the Conditions of Employment were sufficient;
  
- that the Tribunal erred in law and in fact in assessing the appellants' situation as against the Commission's obligation to observe the minimum requirements applicable at Community level arising from the framework agreement on fixed-term work and Article 10 EC;
  
- that, having defined the scope of the duty to act in good faith and of the principles of cooperation in good faith and consistency required to be observed by the Commission, the Tribunal failed to draw the appropriate conclusions from their infringement in the present case;
  
- that the Tribunal erred in law in deciding that the decisions at issue were sufficiently reasoned notwithstanding the fact that, according to the appellants, the decisions contain only formal statements of reasons and do not provide information enabling the appellants to assess their merits or the Community judicature to carry out a judicial review.

<sup>(1)</sup> OJ 1999 L 175, p. 43.