

Form of order sought

- Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 4 May 2012 in case R 1855/2011-1;
- Order OHIM to pay the costs incurred by the applicant during these proceedings; and
- Order Nanu-Nana Handelsgesellschaft mbH für Geschenk-artikel & Co.KG to pay the costs incurred by the applicant in the proceedings before the OHIM Cancellation Division and Boards of Appeal.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The figurative mark representing a device of a checked pattern for goods in class 18 — Community trade mark application No 370445

Proprietor of the Community trade mark: The applicant

Applicant for the declaration of invalidity of the Community trade mark: The other party to the proceedings before the Board of Appeal

Grounds for the application for a declaration of invalidity: The other party to the proceedings before the Board of Appeal filed its request for declaration of invalidity against the CTM on the basis of absolute grounds, namely Article 52(1)(a) in connection with Article 7(1)(b), (c), (d), (e)(iii) and (f) of Council Regulation No 207/2009, and on absolute grounds under Article 52(1)(b) of Council Regulation No 207/2009

Decision of the Cancellation Division: Upheld the request for invalidity in its entirety

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law:

- Infringement of Article 7(1)(b) of Council Regulation No 207/2009; and
- Infringement of Article 7(3) and Article 52(2) of Council Regulation No 207/2009.

Appeal brought on 17 August 2012 by the European Commission against the judgment of the Civil Service Tribunal of 13 June 2012 in Case F-63/11, *Macchia v Commission*

(Case T-368/12 P)

(2012/C 311/19)

Language of the case: French

Parties

Appellant: European Commission (represented by J. Currall and D. Martin, acting as Agents)

Other party to the proceedings: Luigi Macchia (Brussels, Belgium)

Form of order sought by the appellant

- Set aside the judgment of the Civil Service Tribunal of 13 June 2012 in Case F-63/11 *Macchia v Commission*;
- Dismiss the action brought by Mr Macchia in Case F-63/11;
- Hold that each party shall bear its own costs of the present instance;
- Order Mr Macchia to pay the costs incurred before the Civil Service Tribunal.

Pleas in law and main arguments

In support of the appeal, the appellant relies on four pleas in law.

1. First plea in law, alleging infringement of the prohibition on ruling *ultra petita*, since the CST, firstly, extended the subject-matter of the dispute by annulling the Commission's decision not only because it refuses any prolongation of Mr Macchia's contract, but also because of its refusal to award him a new contract, while the petition in the application at first instance referred only to the annulment of the Commission's decision not to renew his contract and, secondly, distorted the subject-matter of the dispute by holding that there was no need to examine the complaint of the applicant at first instance, Mr Macchia, that the ground for refusal based on the eight-year rule, despite the fact that that complaint lay at the heart of the action at first instance.
2. Second plea in law, alleging infringement of the adversarial principle, since the CST extended and distorted the subject-matter of the dispute without giving the Commission the opportunity of submitting observations in that regard.

3. Third plea in law, alleging infringement of the prohibition on ruling *ultra vires* in that, firstly, the CST annulled the Commission's decision because the Commission failed to ascertain whether there was another post to which the person concerned could usefully be appointed and, secondly, it held that it has the power to ascertain whether the grounds given by the administration for refusing to renew a contract are not such as to call into question the criteria and conditions which have been laid down by the legislature in the Staff Regulations seeking to ensure that contractual staff are able to benefit, over time, from a certain continuity of employment, although that there is nothing in the provisions of the Conditions of Employment of Other Servants of the European Union.
4. Fourth plea in law, alleging distortion of the interest of the service and disregard of the case-law of the Court of Justice, firstly, by holding that the interest of the service must be reconciled with the duty of care and requires the possibility of giving the person concerned new duties to be examined and, secondly, by wrongly deducing from the case-law of the Court of Justice that the Commission cannot validly claim a lack of any interest of the service in renewing the contract of the person concerned, since Article 8 of the Conditions of Employment of Other Servants of the European Union must be understood as guaranteeing a certain continuity of employment to staff holding a fixed-term contract.

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Action brought on 22 August 2012 — France Télécom v Commission

(Case T-385/12)

(2012/C 311/20)

Language of the case: French

Parties

Applicant: France Télécom (Paris, France) (represented by: S. Hautbourg and S. Cochard-Quesson, lawyers)

Defendant: European Commission

Form of order sought

- Annul the decision;
- Order the Commission to pay all the costs.

Pleas in law and main arguments

By its application, the applicant seeks the annulment of Commission Decision C(2011) 9403 final of 20 December

2011 declaring compatible with the internal market, under certain conditions, the aid implemented by the French Republic in favour of France Télécom concerning the reform of the method of financing the pensions of public-service employees working for France Télécom (State aid No C 25/2008 (ex NN 23/2008)).

In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging, principally, errors of law and assessment and infringement of the duty to state reasons since the Commission categorised as State aid, within the meaning of Article 107(1) TFEU, the reduction in the contribution to be paid to the State in respect of pensions awarded to officials of France Télécom. The applicant argues that the Commission made these errors:
 - by finding that there was an economic advantage;
 - by taking the view that the measure is selective;
 - by taking the view that the measure is liable to distort competition; and
 - by finding that it was State aid despite the fact that the Commission accepts that the advantage was neutralised at least until 31 December 2010 by payment of an exceptional lump-sum contribution.
2. Second plea in law, alleging, in the alternative, errors of law and assessment in that the Commission made the compatibility of the alleged aid subject to the conditions laid down in Article 2 of the contested decision. The applicant submits that the Commission made these errors by taking the view that the applicant is subject to lower social charges than its competitors and by refusing to apply the precedent of 'La Poste' to the France Télécom proceeding.
3. Third plea in law, alleging, in the alternative, errors in assessment and infringement of the duty to state reasons in the assessment of the period during which the aid defined by the contested decision was neutralised by the exceptional lump-sum contribution. The applicant submits that the Commission made these errors:
 - by including the charges of compensation and over-compensation in the calculation of the reduction in the charges which follows from the reduction in the employer's contribution;
 - by holding that the exceptional lump-sum contribution should be capitalised at the discount rate of 5,53 % instead of 7 %.
4. Fourth plea in law, alleging, in the alternative, infringement of the procedural rights of the applicant.