

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* French Republic

### **Details of the proceedings before EUIPO**

*Applicant of the trade mark at issue:* Applicant

*Trade mark at issue:* EU figurative mark containing the word elements 'FRANCE.com' — Application for registration No 13 158 597

*Procedure before EUIPO:* Opposition proceedings

*Contested decision:* Decision of the First Board of Appeal of EUIPO of 20 October 2016 in Case R 2452/2015-1

### **Form of order sought**

The applicant claims that the Court should:

- submit the following preliminary questions to the Court of Justice: (i) In the light of Articles 8(2) and 41(1) of the European Trade Marks Regulation and of Rules 15(2)(b) and 17 of the European Union Trade Marks Implementing Regulation, in an opposition procedure, does the Applicant, as the defendant to the opposition have the right to invoke prior rights, which could constitute prior rights to the earlier trademark used as a prior right in the opposition? (ii) Does the French State have any kind of prior intellectual property right on the word 'France' which is not the official name of the French State and which is just a geographical entity? (iii) If the answer to the question (ii) is 'No', should the name 'France' be considered as a word which is in the public domain and on which no one can claim any intellectual property right? (iv) If the answer to the question (ii) is 'Yes', should the fact that the French State as of this day has never claim any rights in the word 'France' except against France.com be considered as a discrimination against the Applicant?
- annul the contested decision;
- rejects the opposition filed by the French State against the registration of the European semi-figurative trademark 'France.com' applied for by France.com Inc.;
- dismiss the action as to the remainder;
- order EUIPO to bear its own costs and to pay those incurred by France.com Inc. for the purpose of the proceedings before the Court;
- order EUIPO and the French State each to pay half of the costs necessarily incurred by France.com Inc. for the purpose of the proceedings before the Board of Appeal of EUIPO.

### **Pleas in law**

- Infringement of Articles 8(1), 8(2) and 41(1) of Regulation No 207/2009;
- Infringement of Rules 15(2)(b) and 17 of Regulation No 2868/95.

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**Action brought on 3 February 2017 — RS v Commission**

**(Case T-73/17)**

(2017/C 112/57)

*Language of the case: French*

### **Parties**

*Applicant:* RS (represented by: S. Orlandi and T. Martin, lawyers)

*Defendant:* European Commission

**Form of order sought**

Declare and rule that

- The decision of the selection board of the competition of 11 April 2016 rejecting the applicant's application for internal competition COM/02/AST/16 is annulled;
- The European Commission is ordered to pay the applicant the sum of EUR 5 000 in respect of the non-pecuniary harm which he has suffered;
- The European Commission is ordered to pay the costs.

**Pleas in law and main arguments**

In support of the action, the applicant relies on a single plea in law, alleging infringement of the first paragraph of Article 27 of the Staff Regulations of Officials.

The applicant thus puts forward a plea of illegality of the notice of the contested internal competition insofar as it lays down a condition for admission to the competition which has the effect of refusing access to it to those temporary agents who have not been in an administrative position of active employment, on leave for military service, on parental or family leave or on secondment during the 12 months preceding the closing date for filing applications.

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**Action brought on 6 February 2017 — Schoonjans v Commission**

(Case T-79/17)

(2017/C 112/58)

*Language of the case: French*

**Parties**

*Applicant:* Alain Schoonjans (Brussels, Belgium) (represented by: S. Orlandi and T. Martin, lawyers)

*Defendant:* European Commission

**Form of order sought**

Declare and rule that

- The decision of the selection board of the competition of 11 April 2016 rejecting the applicant's candidature in Internal Competition COM/02/AST/16 is annulled;
- The European Commission is ordered to pay the applicant a sum of EUR 5 000 in respect of the non-pecuniary harm which he has suffered;
- The European Commission is ordered to pay the costs.

**Pleas in law and main arguments**

In support of the action, the applicant raises a plea of illegality of the competition notice based on two pleas in law.

1. First plea in law, alleging infringement of Article 82(7) of the Conditions of Employment of Other Servants (CEOS), inasmuch as the Commission restricted access to the internal competition organised for grade AST 2 to those members of the contractual staff in Function Group III.
  2. Second plea in law, alleging infringement of the first paragraph of Article 27 of the Staff Regulations of Officials of the European Union, inasmuch as that condition for admission is not, in any event, justified by the interest of the service or the type of posts to be filled.
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