[FR] Conseil d’Etat Upholds Change of Name for one Radio Station and one Television Channel

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The Conseil d’Etat has issued a pronouncement on the legality of the decision by the *Conseil Supérieur de l'Audiovisuel* (audiovisual regulatory body - CSA) in July 2007 to approve the application for a change of name submitted by the Lagardère Group, further to concluding a licence agreement with the holder of the Virgin brand name, to re-name its Europe 2 radio station Virgin Radio and its Europe 2 TV DDT television channel Virgin 17 (see IRIS 2007-8: extra). The radio station’s competitors called for the cancellation of both the authorisations for the services issued by the CSA on the grounds that it had exceeded its powers, and the conventions attached further to these changes of name, on the grounds that they would cause an “upheaval of the audiovisual scene” and alter the financial conditions for the functioning of the services which would challenge their contribution to musical diversity.

The Conseil d’Etat noted that it transpired from the documents in the file that the approval that had been granted was dependent on an undertaking on the part of the companies holding the authorisations to maintain the format of their programmes and their editorial independence in respect of the holder of the brand name to be used for their new names. This did not in itself have any effect on the methods of financing the companies or on observance of the imperative of musical diversity for the radio service. Furthermore, the Conseil d’Etat held that the name “Virgin” was not inappropriate to the content of the programmes offered, or was such as to affect its format. Nor did it have the effect of altering either the conditions for sharing advertising resources or the prospects for operating rival radio and television services. The Conseil d’Etat noted that it transpired from the licence agreement that companies holding authorisations did not receive any remuneration from the disputed brand. Use of the brand name, aimed at providing the services concerned with a higher profile and musical identification, did not, in view of the purpose sought by the editors of the services, constitute surreptitious advertising, which was prohibited by the Decrees of 06 April 1987 and 27 March 1992, for the other products and services marketed under the same brand name. The Conseil d’Etat also noted that, by means of codicils to the agreements concluded with the companies holding the authorisations, the CSA had imposed the identification of the channels concerned by logos which did not create confusion with those of other products and services distributed under the brand name and did not allow the services to broadcast

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advertising for such products and services or to conclude partnership agreements with them.

The purpose of all these rules is to prevent the subversion of the new name for advertising purposes in favour of other products or services distributed by the brand in question under conditions that would constitute a violation of the same Decrees. The Conseil d'Etat therefore concluded that the applicant companies had no reason to call for the cancellation of the CSA's decision authorising the contested name changes.

Conseil d'Etat (5e et 4e sous-sect.), 6 novembre 2009 - Stés NRJ Group et Vortex

Conseil d'Etat (5 th and 4 th sub-sections), 6 November 2009 - the companies NRJ Group and Vortex

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