There is hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party’s performance has increased or because the value of the performance a party receives has diminished, and

(a) the events occur or become known ot the disadvantaged party after the conclusion of the contract;
(b) the events could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contract;
(c) the events are beyond the control of the disadvantaged party; and
(d) the risk of the events was not assumed by the disadvantaged party.

According to article 6.2.3, paragraph 4:

If the Court finds hardship it may, if reasonable,

(a) terminate the contract at a date and on terms to be fixed, or
(b) adapt the contract with a view to restoring ist equilibrium

However, these provisions must be read in conjunction with article 6.2.1 which reads:

Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform ist obligations subject to the following provisions on hardship.

On the basis of the above-mentioned definitions, the Arbitral Tribunal admits that would be entitled to make an equitable modification of the Agreement, but it is not convinced that [Defendant] is being faced with a situation which may be characterized as "hardship".

[...]

The Arbitral Tribunal does not accept the view, expressed by the Claimants, that a change in the law cannot be the source of hardship. It may well be the case, when a new law makes the performance of the contractual obligations of a party more onerous or when the value it receives from the performance of the other party is severely reduced. However, the Arbitral Tribunal has already found that the introduction of the EEC Directive had no effect on the performance of the Agreement by the parties. In reality, [Defendant]'s position, in a nutshell, is that it would have had no reason to enter into the Agreement should the EEC Directive have been introduced before April 1987. This has nothing to do with hardship, which is a notion which may play a role when the performance of a contract is at stake but has no function in the formation of contracts. Even if it is probable that [Defendant] would have entered into the Agreement, as drafted in 1987, after the adoption of the EEC Directive in 1989, a subsequent evolution of the legislative context of a contract does not constitute a hardship when it does not destroy the balance of the parties respective obligations. Moreover, without denying that the parties had in mind the Italian Bima law when they executed the Agreement, it was not made to be enforced in Italy only nor in Europe.

[...]
The Arbitral Tribunal's view is that, with the 1987 Agreement, the parties have defined, with a view of its worldwide application, the respective status of the owner of the trademark... and of the owner of the name... irrespective of the legal precepts of any national law. Thus, there are no legal applicable precepts to be compared with in order to decide whether the Agreement just reproduces them or not. In such a situation, the Arbitral Tribunal must respect the intention of the parties which is clearly expressed in the Agreement and, as such, does not need to be supplemented by the usages of international trade, unless it would be contrary to international public policy. It is obviously not the case. First, although the right to terminate a perpetual obligation is recognized in many national laws, it does not amount to a rule of international public policy. But, more significantly, such right is generally excluded, as already mentioned, when the perpetual rights and obligations are just a reproduction of legal precepts. Thus, the perpetuity as such cannot amount to a violation of international public policy. After all, it would be enough to find just one national law in the world which embodies legal precepts comparable to those introduced by the parties within the Agreement to validate its perpetual character under that law.

[...]

**Referring Principles:**

- IV.5.1 - Intentions of the parties
- VIII.1 - Definition