

*Decision of the Board of Appeal:* Annulment of the Opposition Division's decision and rejection of the opposition in its entirety

*Pleas in law:* The trade marks in question are confusingly similar and the goods applied for are identical to those covered by the opposition trade marks.

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**Appeal brought on 16 April 2007 by Francisco Rossi Ferreras against the judgment of the Civil Service Tribunal delivered on 1 February 2007 in Case F-42/05 Rossi Ferreras v Commission**

(Case T-107/07 P)

(2007/C 129/35)

*Language of the case:* French

#### Parties

*Appellant:* Francisco Rossi Ferreras (Luxemburg, Grand Duchy of Luxemburg) (represented by F. Frabetti, lawyer)

*Other party to the proceedings:* Commission of the European Communities

#### Form of order sought by the appellant

- set aside the judgment of the Civil Service Tribunal of 1 February 2007 in Case F-42/05;
- grant the forms of order sought by the appellant at first instance and, primarily, declare the application in Case F-42/05 to be admissible and well founded;
- in the alternative, remit the case to the Civil Service Tribunal;
- make an order as to costs, expenses and fees and order the Commission to pay them.

#### Pleas in law and main arguments

In his appeal, the appellant seeks the annulment of the judgment of the Civil Service Tribunal dismissing his application for the annulment of his career development report for the period from 1 January to 31 December 2003 and an order requiring the Commission to compensate him for the damage that he claims to have suffered.

In support of his appeal, the appellant claims that the Civil Service Tribunal made several errors of law in its consideration of the two pleas in law put forward at first instance.

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#### Action brought on 8 April 2007 — Spira v Commission

(Case T-108/07)

(2007/C 129/36)

*Language of the case:* English

#### Parties

*Applicant:* Diamanthatel A. Spira BVBA (Antwerpen, Belgium) (represented by: J. Bourgeois, Y. van Gerven, F. Louis and A. Vallery, lawyers)

*Defendant:* Commission of the European Communities

#### Form of order sought

- Annul the Commission decision of 26 January 2007, pursuant to Article 7(2) of Council Regulation No 773/2004, in case COMP/38.826/B-2 — Spira/De Beers/DTC Supplier of Choice;
- order the Commission to pay the costs of the proceedings.

#### Pleas in law and main arguments

The applicant contests the Commission's decision of 26 January 2007 in competition Case COMP/38.826/B-2 — Spira/De Beers/DTC Supplier of Choice, by which the Commission rejected the applicant's complaint regarding violations of Articles 81 and 82 EC in connection with the Supplier of Choice system applied by the De Beers Group for the distribution of rough diamonds, with the reasoning that there is not sufficient Community interest to act further on the applicant's complaint.

The applicant alleges that De Beers — a producer of rough diamonds who, according to the applicant, was mainly involved upstream with the sale of rough diamonds — is trying through its Supplier of Choice system to extend its control of the market to cover the entire diamond pipeline from mine to consumer, i.e. also the downstream markets.

In support of its application, the applicant invokes three pleas in law.

Firstly, the applicant claims that the Commission failed to honour its duty to conduct a careful and impartial investigation of the complaint and to examine with proper care and impartiality the anticompetitive practices denounced in the complaint.

Secondly, the applicant alleges that the Commission could not claim that there was a lack of sufficient Community interest to act on the complaint, in light of the size of the undertaking involved, the geographic scope of the anticompetitive practices and the damage to competition and the internal market caused by the infringements.