

*Mark or sign cited in opposition:* Community and national word mark 'ran', for goods and services in Classes 9, 35, 38, 41 and 42.

*Decision of the Opposition Division:* Opposition rejected.

*Decision of the Board of Appeal:* Appeal allowed in part, in respect of some services in Classes 38 and 42.

*Pleas in law:* The contested decision is vitiated by a logical contradiction which consists in enunciating a series of correct legal principles stated to be mandatory in the assessment of the similarity between signs and goods/services for the purposes of establishing the ground of refusal under the first part of Article 73 of the Community trade mark regulation, whilst however applying different criteria in evaluating the actual case in point. Such logical contradiction therefore gives rise either to an error of law, by the application of legal principles different to those (correct) ones stated in the legal basis of the decision, or to inconsistency and insufficiency in the reasoning.

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**Action brought on 27 December 2007 — CB v Commission**

**(Case T-491/07)**

(2008/C 64/76)

*Language of the case: French*

## Parties

*Applicant:* Groupement des Cartes Bancaires (CB) GIE (Paris, France) (represented by: A. Georges, J. Ruiz Calzado, É. Barbier de La Serre, lawyers)

*Defendant:* Commission of the European Communities

## Form of order sought

- annul the contested decision in its entirety;
- order the Commission to pay the costs.

## Pleas in law and main arguments

By this action, the applicant seeks annulment of Commission Decision C(2007) 5060 final of 17 October 2007 relating to a proceeding under Article 81 EC (Case COMP/D1/38606 — GROUPEMENT DES CARTES BANCAIRES 'CB'), concerning tariff measures for membership of the Groupement applicable to new members and the 'sleeper member fee' applicable to members of the Groupement which have not developed significant business in banking cards since becoming members.

In support of its application, the applicant puts forward six pleas in law.

The first plea alleges infringement of Article 81 EC, the principle of equal treatment and a failure to state reasons on account of alleged defects in the method of analysis of the measures and the markets adopted by the Commission, in that it failed to take account of either the overall context, all the relevant information, or the specific circumstances in which they were adopted and in which their effects are felt.

Second, the applicant puts forward a plea alleging infringement of Article 81(1) EC on account of errors of law, fact and assessment that the Commission made during the examination of the purpose of the measures which were notified to it. The applicant takes the view that the Commission has failed to comply with the obligation to examine the purpose of a decision by an association of undertakings and has not established that that purpose is anticompetitive.

By the third plea, the applicant claims that the contested decision infringes Article 81(1) EC also because of errors of law, fact and assessment that the Commission made during the examination of the effect of the measures notified to it.

In the alternative, the applicant argues that the Commission infringed Article 81(3) EC in the examination of the applicability of the four conditions required in order to obtain an exemption.

The fifth plea relied on by the applicant alleges infringement of the principle of sound administration resulting from supposed omissions, contradictions and distortions of a number of its arguments in the contested decision.

The final plea alleges infringement of the principles of proportionality and legal certainty.

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