Reports of Cases

ORDER OF THE GENERAL COURT (Sixth Chamber)

3 February 2015 *

(Community trade mark — Period within which an action must be brought — Late submission — Manifest inadmissibility)

In Case T-708/14,

Marpefa, SL, established in Barcelona (Spain), represented by I. Barroso Sánchez-Lafuente, lawyer,

applicant,

v

Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM),

defendant,

the other party to the proceedings before the Board of Appeal of OHIM being

Kabushiki Kaisha Sony Computer Entertainment, established in Tokyo (Japan),

ACTION brought against the decisions of the Second Board of Appeal of OHIM of 2 and 4 July 2014 (Cases R 1813/2013-2, R 2013/2013-2, R 1626/2013-2 and R 1631/2013-2), relating to opposition proceedings between Marpefa, SL and Kabushiki Kaisha Sony Computer Entertainment,

THE GENERAL COURT (Sixth Chamber),

composed of S. Frimodt Nielsen (Rapporteur), President, F. Dehousse and A.M. Collins, Judges,

Registrar: E. Coulon,

makes the following

Order

Facts and Procedure

1 By decisions of 2 and 4 July 2014 (Cases R 1813/2013-2, R 2013/2013-2, R1626/2013-2 and R1631/2013-2), relating to opposition proceedings between Marpefa SL and Kabushiki Kaisha Sony Computer Entertainment ('the contested decisions'), the second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) rejected the opposition

* Language of the case: Spanish.

EN

introduced by the applicant against the registration of the word and figurative Community trade marks PSVITA and PLAYSTATION VITA. Those decisions were notified to the applicant on 11 and 15 July 2014.

2 The applicant brought the present action by an application filed by e-mail at the Registry of the General Court on 22 September 2014.

3 On 30 September 2014 a paper copy of the application, together with a covering letter dated 26 September 2014 and six certified copies of the application, plus some pages containing corrections to the application, were received at the Registry. The covering letter, which had not been submitted by e-mail, bore the handwritten signature of the applicant's lawyer. The application itself was a scanned copy bearing the scanned signature of the applicant's lawyer and not his handwritten signature. The applicant's lawyer's attention was drawn to this point by the Registry.

4 By letter of 1 October 2014, received at the Registry on 2 October 2014, the applicant's lawyer sent the final page of the application (page 17), bearing his handwritten signature, to the Registry. That signature was not, however, identical to the signature on the application sent by e-mail on 22 September 2014, and the applicant's lawyer was informed of this by fax on 23 October 2014.

Form of order sought by the applicant

5 The applicant claims that the Court should:

— annul the contested decisions;

— annul the registration of the trade marks for the goods and services in question;

— order OHIM to pay the costs.

Law

6 Under Article 111 of the Rules of Procedure of the General Court, where the action is manifestly inadmissible, the Court may, by reasoned order and without taking further steps in the proceedings, give a decision on the action.

7 In the present case, the Court considers that it has sufficient information from the documents in the file and has decided, pursuant to that article, to give its decision without taking further steps in the proceedings.

8 Article 65(5) of Regulation (EC) No 207/2009 of the Council of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1) provides that an action against a decision of a Board of Appeal of OHIM must be brought within two months of the date of notification of that decision. Under Article 102(2) of the Rules of Procedure, the prescribed time-limits are to be extended on account of distance by a single period of 10 days.

9 According to settled case-law that time-limit for bringing proceedings is mandatory, since it was established in order to ensure that legal positions are clear and certain and to avoid any discrimination or arbitrary treatment in the administration of justice, and the Courts of the European Union must ascertain, of their own motion, whether it has been observed (see, by analogy, judgment of 23 January 1997 in *Coen*, C-246/95, ECR, EU:C:1997:33, paragraph 21; judgment of 18 September 1997

in *Mutual Aid Administration Services* v *Commission*, T-121/96 and T-151/96, ECR, EU:T:1997:132, paragraphs 38 and 39; and order of 3 October 2012 in *Tecnimed* v *OHMI — Ecobrands (ZAPPER-CLICK)*, T-360/10, EU:T:2012:517, paragraph 12).

10 In the present case, as indicated at paragraph 1 above, the applicant was notified of the contested decisions on 11 and 15 July 2014.

11 It follows from the rules for calculating the periods for taking procedural steps, set out in Articles 101(1) and 102(2) of the Rules of Procedure, that the periods for bringing an action expired on 22 and 25 September 2014.

12 Pursuant to Article 43(1) of the Rules of Procedure, 'the original of every pleading must be signed by the party's agent or lawyer'.

13 By virtue of Article 43(6) of the Rules of Procedure, the date on which a copy of the signed original of a pleading is received at the Court Registry by fax or by e-mail is deemed to be the date of lodgment for the purposes of compliance with the time-limits for taking steps in proceedings only if the signed original of the pleading is lodged at the Registry no later than 10 days after receipt of the fax or e-mail. Furthermore, paragraph 7 of the Practice Directions to Parties before the General Court (OJ 2012 L 68, p. 23, corrigendum OJ 2012 L 73, p. 23) provides that, in the event of any discrepancy between the signed original and the copy previously lodged, only the date of lodgment of the signed original will be taken into consideration.

14 Therefore, if the text transmitted by e-mail does not fulfil the conditions of legal certainty imposed by Article 43 of the Rules of Procedure, the date of transmission of the copy of the application by fax or by e-mail cannot be taken into consideration for the purposes of compliance with the time-limits for taking steps in proceedings, and only the date of lodgment of the signed original will be taken into consideration for such purposes (see, by analogy, order of 13 December 2013 in *Marcuccio* v *Commission*, F-2/13, ECR-SC, EU:F:2013:214, paragraph 43, confirmed on appeal by order of 22 May 2014 in *Marcuccio* v *Commission*, T-148/14 P, ECR-SC, EU:T:2014:315, paragraph 9 and the case-law cited).

15 Moreover, for lodgment of a procedural act to be valid, Article 43 of the Rules of Procedure, governing the possibility of considering the date of transmission by e-mail of a copy of the signed original as the date of lodgment of an application, requires the party's representative to sign the original of the application by hand before transmitting it by e-mail and to lodge that original at the Registry no later than 10 days thereafter. In these circumstances, should it later appear that the signed original of the pleading physically lodged at the Registry within 10 days of being transmitted by e-mail does not bear, at the very least, the same signature as the one appearing on the document transmitted by e-mail, that element will suffice for considering the two documents to be different, even if the signatures have indeed been appended by the same person (see, by analogy, order in *Marcuccio* v *Commission*, EU:F:2013:214, paragraphs 40 and 41).

16 In the present case the application bearing a scanned signature was received at the Registry by e-mail on 22 September 2014, that is to say, before the expiry of the time-limit for bringing an action.

17 The paper version of the application was received at the Registry on 30 September 2014. However, it consisted of a scanned copy of the original of the application to which only the scanned signature of the applicant's lawyer was appended (see paragraph 3 above). That application did not, therefore, bear the handwritten signature of the applicant's lawyer. It is true that the covering letter, received at the Registry on 30 September 2014, bore the handwritten signature of the lawyer. That covering letter was not, however, part of the e-mail communication of 22 September 2014. The application cannot, therefore, be considered as having been signed by hand or as corresponding to the original of the application sent by e-mail.

18 It is clear that the document received at the Registry by e-mail on 22 September 2014 is not a reproduction of the original of the application subsequently lodged at the Registry on 30 September.

19 Moreover, the lodgement, on 2 October 2014, of the page of the original application bearing the handwritten signature of the applicant's lawyer cannot be regarded as having rectified the failure to lodge the signed original of that application within the 10-day period following receipt, by e-mail, of the copy of that application at the Registry. That lodgment, in which, moreover, the document lodged was not the full text of the original application, bears a signature that is not identical to that appended to the application sent by e-mail on 22 September 2014 (see paragraph 4 above).

20 Thus the signed original of the application was not lodged at the Registry within the 10-day period following receipt at the Registry of the e-mail version.

21 In this case, pursuant to Article 43(6) of the Rules of Procedure, only the date of lodgment of the signed original of the application may be taken into consideration for the purposes of compliance with the time-limit for bringing an action (orders of 28 April 2008 in *PubliCare Marketing Communications* v *OHIM (Publicare)*, T-358/07, EU:T:2008:130, paragraph 13, and of 28 November 2011 in *Noscira* v *OHIM — Agouron Pharmaceuticals (ZENTYLOR)*, T-307/11, EU:T:2011:697, paragraph 15).

22 In the present case, the documents sent by the applicant, together with a covering letter duly signed by hand, were received at the Registry on 30 September 2014, that is to say, after the expiry, on 22 and 25 September 2014, of the period for bringing an action.

23 Consequently it must be concluded that the application was not lodged before the expiry of the time-limit for doing so.

24 It should also be borne in mind that the failure to submit the original application signed by a duly authorised lawyer is not among the formal irregularities that are capable of being rectified under Article 44(6) of the Rules of Procedure. That requirement must be regarded as an essential procedural rule and be applied strictly, with the result that failure to comply with it leads to the inadmissibility of the application once the periods for taking steps in the proceedings have expired (see, to that effect, judgment of 22 September 2011 in *Bell & Ross* v *OHIM*, C-426/10 P, ECR, EU:C:2011:612, paragraph 42; order of 21 September 2012 in *Noscira* v *OHIM*, C-69/12 P, EU:C:2012:589, paragraphs 22 and 23; and judgment of 23 May 2007 in *Parliament* v *Eistrup*, T-223/06 P, ECR, EU:T:2007:153, paragraphs 48 and 51).

25 In addition, the applicant has not proved — or even invoked — either an excusable mistake or the existence of unforeseeable circumstances or *force majeure* such as would permit the Court to derogate from the time-limit in question on the basis of the second paragraph of Article 45 of the Statute of the Court of Justice, which is applicable to proceedings before the General Court pursuant to Article 53 of that Statute.

26 Under those circumstances the action must be dismissed as manifestly inadmissible and there is no need to serve it on OHIM.

Costs

27 Since this order has been adopted before service of the application on OHIM and before the latter could have incurred any costs, it is sufficient to order that the applicant must bear its own costs, in accordance with Article 87(1) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby orders:

1. **The action is dismissed.**

2. **Marpefa, SL shall bear its own costs.**

Luxembourg, 3 February 2015.

E. Coulon Registrar	S. Frimodt Nielsen President