



## Reports of Cases

ORDER OF THE COURT (Chamber determining whether appeals may proceed)

8 May 2023\*

(Appeal – EU trade mark – Determination as to whether appeals should be allowed to proceed – Article 170b of the Rules of Procedure of the Court of Justice – Request demonstrating that an issue is significant with respect to the unity, consistency or development of EU law – Appeal allowed to proceed in part)

In Case C-776/22 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 20 December 2022,

**Studio Legale Ughi e Nunziante**, established in Rome (Italy), represented by L. Cascone, A. Clemente, F. De Filippis and A. Marega, avvocati,

appellant,

the other party to the proceedings being:

**European Union Intellectual Property Office (EUIPO),**

defendant at first instance,

THE COURT (Chamber determining whether appeals may proceed),

composed of L. Bay Larsen, Vice-President of the Court, M. Safjan and N. Jääskinen (Rapporteur), Judges,

Registrar: A. Calot Escobar,

having regard to the proposal from the Judge-Rapporteur and after hearing the Advocate General, J. Richard de la Tour,

makes the following

\* Language of the case: Italian.

## Order

- 1 By its appeal, Studio Legale Ughi e Nunziante asks the Court of Justice to set aside the order of the General Court of the European Union of 10 October 2022, *Studio Legale Ughi e Nunziante v EUIPO – Nunziante e Ughi (UGHI E NUNZIANTE)* (T-389/22, not published, EU:T:2022:662; ‘the order under appeal’), by which the General Court dismissed Studio Legale Ughi e Nunziante’s action for annulment of the decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 8 April 2022 (Case R 407/2021-5), concerning proceedings for revocation of the EU trade mark Ughi e Nunziante, filed by Studio Legale Ughi e Nunziante.

### **The request that the appeal be allowed to proceed**

- 2 Under the first paragraph of Article 58a of the Statute of the Court of Justice of the European Union, an appeal brought against a decision of the General Court concerning a decision of an independent board of appeal of the European Union Intellectual Property Office is not to proceed unless the Court of Justice first decides that it should be allowed to do so.
- 3 The third paragraph of Article 58a of that statute provides that an appeal is to be allowed to proceed, wholly or in part, in accordance with the detailed rules set out in the Rules of Procedure of the Court of Justice, where it raises an issue that is significant with respect to the unity, consistency or development of EU law.
- 4 Under Article 170a(1) of the Rules of Procedure of the Court of Justice, in the situations referred to in the first paragraph of Article 58a of that statute, the appellant is to annex to the appeal a request that the appeal be allowed to proceed, setting out the issue raised by the appeal that is significant with respect to the unity, consistency or development of EU law and containing all the information necessary to enable the Court to rule on that request.
- 5 In accordance with Article 170b(1) and (3) of those rules, the Court’s decision on the request that the appeal be allowed to proceed is to be taken as soon as possible in the form of a reasoned order.
- 6 Pursuant to the second sentence of Article 170b(4) of those rules, the order referred to in the preceding paragraph is to be served, together with the appeal, on the parties to the relevant case before the General Court and is to specify, where the appeal is allowed to proceed in part, the pleas in law or parts of the appeal to which the response must relate.

### ***Arguments of the appellant***

- 7 In support of its request that the appeal be allowed to proceed, the appellant submits that the three grounds of appeal, alleging, first, infringement of Articles 119 and 126 of the Rules of Procedure of the General Court, second, infringement of Article 19 of the Statute of the Court of Justice of the European Union as well as Article 51 of the Rules of Procedure of the General Court and, third, infringement of Articles 47 and 52 of the Charter of Fundamental Rights of the European Union (‘the Charter’) and, possibly, of Article 51(4) and Article 55(1) of the Rules of Procedure of the General Court, all raise an issue that is significant with respect to the unity, consistency or development of EU law.

- 8 That is the case with the first ground of appeal, by which the appellant claims that the General Court infringed Articles 119 and 126 of the Rules of Procedure of the General Court in so far as that order does not contain an adequate statement of reasons. The order under appeal does not contain any arguments to justify the applicability of the requirement of independence of lawyers where the appellant is a law firm whose representatives before the General Court are, moreover, members of that firm. In addition, the appellant claims that the General Court failed to state the reasons for its finding, in paragraph 16 of the order under appeal, that the mere fact that the lawyers instructed were members of the firm was such as to prevent their independence.
- 9 By the second ground of appeal, the appellant submits that the General Court infringed Article 19 of the Statute of the Court of Justice of the European Union and Article 51 of the Rules of Procedure of the General Court by disregarding the case-law of the Court of Justice concerning the requirement of independence of a lawyer, according to which the interests protected by that requirement are the protection and defence of the interests of a client (see, to that effect, judgment of 14 July 2022, *Universität Bremen v REA*, C-110/21 P, EU:C:2022:555).
- 10 The appellant submits that, consequently, the General Court erred in law by finding that the partner of a law firm which is an appellant before it is not independent. The appellant states, in that regard, first, that, in the Italian legal system there is no employment relationship between a professional partnership and one of its members, since the legal profession in Italy is structurally incompatible with salaried employment, within the meaning of Italian law. Second, the provision of services to the partnership by its members falls fully within the scope of that law and the rules of professional conduct governing the practice of the profession in Italy, all of which lay down the duty of independence of lawyers.
- 11 In addition, the appellant refers to the case-law of the Court of Justice resulting from the judgment of 24 March 2022, *PJ and PC v EUIPO* (C-529/18 P and C-531/18 P, EU:C:2022:218, paragraph 72), according to which the existence of any contractual relationship whatsoever between a lawyer and his or her client is not sufficient for a finding that the lawyer is in a situation that clearly impairs his or her ability to defend his or her client's interests in accordance with the criterion of independence. In reality, the situation of the partner of a law firm instructed by the latter to represent it as an appellant before the General Court of the European Union does not involve any conflict of interest, but rather could involve shared interests.
- 12 Thus, the appellant submits that the order under appeal is 'rooted' in long-standing case-law and fails to take account of the recent 'reorientation' of that case-law by the Court of Justice, which seriously undermines the unity, consistency or development of EU law.
- 13 By the third ground of appeal, alleging infringement, in particular, of Articles 47 and 52 of the Charter, the appellant submits that the General Court did not allow the rectification of the appeal, on the ground that such rectification is not expressly provided for by its Rules of Procedure, and that it therefore declared the action automatically inadmissible. The appellant claims that the General Court thus overlooked the fact that the requirement that a lawyer be independent is the result of a body of case-law and that, on that basis, rectification is not expressly provided for on account of the absence of rules regarding independence. That requirement was, moreover, upheld in breach of the need for legislative provision, within the meaning of Article 52 of the Charter.

- 14 In addition, the appellant submits that, in the event of absence of representation, the automatic nature of the declaration of inadmissibility of the action would not respect the essence of the right of access to justice, the principle of proportionality or the constitutional traditions common to the Member States and the national laws and practices of the Member States.
- 15 It follows from the foregoing that the third ground of appeal raises an issue that is significant with respect to the unity, consistency or development of EU law, failing which there would be a serious breach of the rights enshrined in the Charter and of the provisions of the Charter concerning the possibilities of limiting those rights.

### ***Findings of the Court***

- 16 As a preliminary point, it must be recalled that it is for the appellant to demonstrate that the issues raised by its appeal are significant with respect to the unity, consistency or development of EU law (order of 10 December 2021, *EUIPO v The KaiKai Company Jaeger Wichmann*, C-382/21 P, EU:C:2021:1050, paragraph 20 and the case-law cited).
- 17 Furthermore, as is apparent from the third paragraph of Article 58a of the Statute of the Court of Justice of the European Union, read in conjunction with Article 170a(1) and the second sentence of Article 170b(4) of the Rules of Procedure of the Court of Justice, the request that an appeal be allowed to proceed must contain all the information necessary to enable the Court of Justice to give a ruling on whether the appeal should be allowed to proceed and to specify, where the appeal is allowed to proceed in part, the pleas in law or parts of the appeal to which the response must relate. Given that the objective of the mechanism provided for in Article 58a of that statute whereby the Court determines whether an appeal should be allowed to proceed is to restrict review by the Court of Justice to issues that are significant with respect to the unity, consistency or development of EU law, only grounds of appeal that raise such issues and that are established by the appellant are to be examined by the Court of Justice in an appeal (orders of 10 December 2021, *EUIPO v The KaiKai Company Jaeger Wichmann*, C-382/21 P, EU:C:2021:1050, paragraph 21, and of 30 January 2023, *bonnanwalt v EUIPO*, C-580/22 P, EU:C:2023:126, paragraph 11).
- 18 Accordingly, a request that an appeal be allowed to proceed must, in any event, set out clearly and in detail the grounds on which the appeal is based, identify with equal clarity and detail the issue of law raised by each ground of appeal, specify whether that issue is significant with respect to the unity, consistency or development of EU law and set out the specific reasons why that issue is significant according to that criterion. As regards, in particular, the grounds of appeal, the request that an appeal be allowed to proceed must specify the provision of EU law or the case-law that has been infringed by the judgment or order under appeal, explain succinctly the nature of the error of law allegedly committed by the General Court, and indicate to what extent that error had an effect on the outcome of the judgment or order under appeal. Where the error of law relied on results from disregard of the case-law, the request that the appeal be allowed to proceed must explain, in a succinct but clear and precise manner, first, where the alleged contradiction lies, by identifying the paragraphs of the judgment or order under appeal which the appellant is calling into question, as well as those of the ruling of the Court of Justice or the General Court alleged to have been infringed, and, second, the concrete reasons why such a contradiction raises an issue that is significant with respect to the unity, consistency or development of EU law (orders of 10 December 2021, *EUIPO v The KaiKai Company Jaeger Wichmann*, C-382/21 P, EU:C:2021:1050, paragraph 22, and of 30 January 2023, *bonnanwalt v EUIPO*, C-580/22 P, EU:C:2023:126, paragraph 12).

- 19 In accordance with the principle that the burden of proof lies with an appellant requesting that an appeal be allowed to proceed, the appellant must demonstrate that, independently of the issues of law invoked in its appeal, the appeal raises one or more issues that are significant with respect to the unity, consistency or development of EU law, the scope of that criterion going beyond the judgment under appeal and, ultimately, its appeal (orders of 16 November 2022, *EUIPO v Nowhere*, C-337/22 P, EU:C:2022:908, paragraph 32, and of 30 January 2023, *bonnanwalt v EUIPO*, C-580/22 P, EU:C:2023:126, paragraph 15).
- 20 In order to demonstrate that that is the case, it is necessary to establish both the existence and significance of such issues by means of concrete evidence specific to the particular case, and not simply by means of arguments of a general nature (orders of 16 November 2022, *EUIPO v Nowhere*, C-337/22 P, EU:C:2022:908, paragraph 33, and of 30 January 2023, *bonnanwalt v EUIPO*, C-580/22 P, EU:C:2023:126, paragraph 16).
- 21 In the present case, it should be noted, first, that the request that the appeal be allowed to proceed sets out precisely and clearly the three grounds relied on in the appeal, alleging, first, infringement of Articles 119 and 126 of the Rules of Procedure of the General Court, second, misapplication of the case-law of the Court of Justice relating to the application of the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union as well as Article 51 of the Rules of Procedure of the General Court, and, third, infringement of Articles 47 and 52 of the Charter and, possibly, of Article 51(4) and Article 55(1) of the Rules of Procedure of the General Court.
- 22 Further, as regards the first ground of appeal, it should be noted that the request that the appeal be allowed to proceed sets out to the requisite legal standard the alleged error resulting from the infringement of Articles 119 and 126 of the Rules of Procedure of the General Court. It is apparent from that request that the alleged error lies in the fact that the order under appeal does not, first, contain an adequate statement of reasons, since the General Court merely refers to one of its earlier decisions in which it had also failed to state reasons for the applicability of the requirement of independence of the lawyer where the appellant was a law firm and one of its members represented it before the General Court, without, however, setting out a full line of reasoning on that point. Second, despite citing it in the order under appeal, the General Court failed to take into account and apply the most recent case-law of the Court of Justice on the matter.
- 23 On the other hand, although the appellant identifies the issue raised by its first ground of appeal – which consists, in essence, in determining whether there is a failure to state reasons where the General Court merely refers by analogy to previous decisions on the point concerned – but without setting out full reasoning on that point, it has failed, in any event, to demonstrate to the requisite legal standard how the alleged failure to state reasons in the order under appeal raises an issue that is significant with respect to the unity, consistency or development of EU law. The appellant, who merely puts forward arguments of a general nature, has failed to produce any evidence to show that this ground of appeal raises an issue the importance of which exceeds the scope of the order under appeal and, ultimately, that of its appeal.
- 24 Third, in so far as concerns the issue raised by the second ground of appeal, it should be noted that the request that the appeal be allowed to proceed sets out to the requisite legal standard the alleged error resulting from the failure to have regard to the case-law, the extent to which that alleged error had an effect on the outcome of the order under appeal, and the concrete reasons why such an error, even if established, raises an issue that is significant with respect to the unity, consistency or development of EU law.

- 25 It is apparent from that request that the alleged error lies in the fact that the case-law resulting from the judgment of 14 July 2022, *Universität Bremen v REA* (C-110/21 P, EU:C:2022:555, paragraph 67), according to which the requirement of the independence of a lawyer laid down in EU law must be interpreted in such a way as to limit cases of inadmissibility solely to cases where it is obvious that the representative concerned is not in a position to carry out his or her task of defending his or her client by acting in the best interests of his or her client, with the result that that representative should be removed in the interests of the client, was disregarded by the order under appeal. According to that request, if such an error had been established, the action before the General Court would have been admissible.
- 26 Furthermore, the appellant identifies the question raised by its second ground of appeal, which consists, in essence, in determining whether the case-law resulting from the judgment of 14 July 2022, *Universität Bremen v REA* (C-110/21 P, EU:C:2022:555, paragraph 67), relating to the application of the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union, means that partners in a law firm who are instructed by that firm satisfy the requirement of independence as defined by the Court of Justice. By pointing out that, under Italian law, there is no employment relationship between a professional partnership of lawyers and one of its members and that the member instructed to represent that partnership in court cannot have a conflict of interest with it, the appellant suggests that the question of law raised by its second ground of appeal goes beyond the scope of its appeal, since the answer to that question will have repercussions which go far beyond the present case. In doing so, the appellant sets out the specific reasons why such an issue is significant with respect to the unity, consistency or development of EU law.
- 27 Fourth, as regards the issue raised by the third ground of appeal, it should be noted that the request that the appeal be allowed to proceed sets out to the requisite legal standard the alleged error resulting from the failure to have regard to the case-law, the extent to which that alleged error had an effect on the outcome of the order under appeal and the concrete reasons why such an error, even if established, raises an issue that is significant with respect to the unity, consistency or development of EU law.
- 28 It is apparent from that request that the alleged error of law consists, in essence, in the fact that the General Court, after establishing the absence of independence of the three lawyers who represented the appellant before it, found that no possibility of rectification was expressly provided for in the Rules of Procedure of the General Court. Otherwise, the appellant would have had the opportunity to prevent its action from being declared inadmissible.
- 29 In addition, first, the appellant identifies the question raised by its third ground of appeal, which consists, in essence, in determining whether, where a party is not, according to the General Court, duly represented by a lawyer, within the meaning of Article 19 of the Statute of the Court of Justice of the European Union, Articles 47 and 52 of the Charter imply that the General Court must, before adopting a decision dismissing the action, notify that party to that effect in order to allow it to be duly represented. Second, it is apparent from the request that the appeal be allowed to proceed that the significance of any obligation for the General Court to allow an appellant to rectify his or her action before finding that the action is inadmissible, without infringing the rights enshrined in the Charter, goes beyond the scope of the order under appeal alone. In that connection, it should be noted that such a question is not linked to a specific area of EU law, but concerns any type of dispute brought before the General Court in respect of which representation by a lawyer is required, within the meaning of the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union.

- 30 Taking into account the elements set out by the appellant, the present request that the appeal be allowed to proceed demonstrates to the requisite legal standard that the second and third grounds of appeal raise issues that are significant with respect to the unity, consistency or development of EU law.
- 31 In the light of the foregoing considerations, the appeal should be allowed to proceed in its second and third grounds of appeal, to which the response will have to relate, and should not be allowed to proceed as to the remainder.

### **Costs**

- 32 Under Article 170b(4) of the Rules of Procedure of the Court of Justice, where an appeal is allowed to proceed, wholly or in part, having regard to the criteria set out in the third paragraph of Article 58a of the Statute of the Court of Justice of the European Union, the proceedings are to continue in accordance with Articles 171 to 190a of those rules.
- 33 Under Article 137 of the Rules of Procedure, applicable to proceedings on appeal pursuant to Article 184(1) of those rules, a decision as to costs is to be given in the judgment or order which closes the proceedings.
- 34 Accordingly, since the request that the appeal be allowed to proceed must be allowed in part, the costs must be reserved.

On those grounds, the Court (Chamber determining whether appeals may proceed) hereby orders:

- 1. The appeal is allowed to proceed in part.**
- 2. The response shall relate to the second and third grounds of appeal.**
- 3. The costs are reserved.**

[Signatures]