



Reports of Cases

Case T-125/23

Synapsa Med sp. z o.o.

v

European Union Intellectual Property Office (EUIPO)

Order of the General Court (Second Chamber, Extended Composition) of 7 August 2024

(EU trade mark – Appointment of a new representative – Applicant having ceased to respond to requests from the Court – Article 131(2) of the Rules of Procedure of the General Court – No need to adjudicate)

Action for annulment – Action against a decision of a Board of Appeal of EUIPO – Applicant not represented by a lawyer – Inaction of the applicant – No need to adjudicate

(Rules of Procedure of the General Court, Art. 131(2); European Parliament and Council Regulation 2017/1001, Art. 71(3))

(see paragraphs 11, 12, 19, 22-24)

Résumé

By its order, the General Court clarifies the impact of a finding that there is no need to adjudicate on the effects of the contested decision in intellectual property cases where the applicant no longer responds to the Court's requests.

Synapsa Med sp. z o.o., the applicant, brought an action for annulment of the decision of the Board of Appeal of the European Union Intellectual Property Office (EUIPO) rejecting its appeal against the decision declaring the word mark GRAVITY invalid.¹

On 6 February 2024, the applicant's representative informed the Court that he was ceasing to represent the applicant. By letter of 9 February 2024, the Court replied that he would nevertheless remain its interlocutor until the applicant appointed a new representative. It also asked him to inform the applicant that it was up to the applicant to appoint a new representative.

Since the applicant had not appointed a new representative within the period prescribed, the Court asked the parties to state whether the Court could, under Article 131(2) of the Rules of Procedure of the General Court, declare of its own motion, by reasoned order, that there was no longer any need to adjudicate. The applicant did not reply to that question from the Court either.

¹ Decision of the Fifth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 9 January 2023 (Case R 923/2022-5) ('the contested decision').

Findings of the Court

First of all, the Court points out that, in order to bring an action, parties other than the Member States, the institutions of the European Union, the States, other than the Member States, which are parties to the Agreement on the European Economic Area (EEA) and the Surveillance Authority of the European Free Trade Association (EFTA) referred to in that Agreement must use the services of a third party authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement. In addition, such a party must ensure continuity of representation by a lawyer for the entire duration of the proceedings, namely from the lodging of the appeal until service of the court decision putting an end to the proceedings. It follows that where a lawyer ceases to represent an applicant in the course of proceedings, the applicant must appoint a new representative, without delay, in order to ensure continuity of representation.

Next, the Court points out that the applicant's failure to act occurred in the course of the proceedings and is therefore not such as to affect the admissibility of the action at the time it was brought. Moreover, as the failure to appoint a new representative in due and proper form may constitute sufficient evidence that the applicant no longer has an interest in bringing proceedings, it can lead only to a finding that there is no longer any need to adjudicate and not to a dismissal of the action as inadmissible.

Finally, the Court states that the fact that the applicant ceased to respond to the Court's requests, thereby waiving its right to defend its interests without, however, withdrawing its action, has no effect on the proceedings before EUIPO and, consequently, on the subject matter of the action before the Court, but only on the conditions for further consideration of the action before the Court.

In that context, a finding by the Court that there is no need to adjudicate on the basis of Article 131(2) of the Rules of Procedure of the General Court cannot prevent the contested decision from having effect. In that regard, the sole purpose of the mechanism established by Article 71(3) of Regulation 2017/1001² is to ensure that the decisions of the Boards of Appeal do not produce effects pending the outcome of the court proceedings, in order to guarantee the parties affected by EUIPO's decisions legal protection appropriate to the particular nature of trade mark law. There would be no point in registering a trade mark, then removing it from the register and, if necessary, re-registering it depending on the decisions handed down successively by EUIPO and the EU Courts. It follows that, while it is true that a finding that there is no need to adjudicate is not expressly mentioned in Article 71(3) of Regulation 2017/1001 as a term for the suspensive effect of actions brought against decisions of the Boards of Appeal, it must be held that, for the purposes of the application of that provision, a finding that there is no need to adjudicate on the basis of Article 131(2) of the Rules of Procedure must be treated as a dismissal of the action brought before the Court within the meaning of Article 71(3) of Regulation 2017/1001.

Accordingly, the Court declares of its own motion that there is no longer any need to adjudicate on the action.

² Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (OJ 2017 L 154, p. 1).