

ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)
8 December 1999 *

In Case T-79/99,

Euro-Lex European Law Expertise GmbH, a company incorporated under German law, having its head office in Emmerich (Germany), represented by Eckhard Benkelberg, Rechtsanwalt, Emmerich and Kleve, with an address for service in Luxembourg at the Chambers of Faltz and Kremer, 6 Rue Heinrich Heine,

applicant,

v

Office for Harmonisation in the Internal Market (Trade Marks and Designs), represented by Detlef Schennen, Head of the Legislation and International Legal Affairs Service, and Emmanuel Joly, Administrator in the Legal Affairs and

* Language of the case: German.

Litigation Department, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the Commission's Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment of the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 26 January 1999 (Case R 114/1998-1), which was notified to the applicant on 1 February 1999,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Second Chamber),

composed of: J. Pirrung, President, A Potocki and A.W.H. Meij, Judges,
Registrar: H. Jung,

having regard to the application lodged at the Registry of the Court of First Instance on 8 April 1999,

having regard to the Court's written question to the parties of 21 June 1999,

having regard to the observations lodged at the Registry of the Court of First Instance on 14 and 15 July 1999,

having regard to the response lodged at the Registry of the Court of First Instance on 16 August 1999,

makes the following

Order

Procedure

- 1 By the present action, the applicant is seeking an annulment of the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) ('the Office') of 26 January 1999 (Case R 114/1998-1) in so far as it affirms the decision of the examiner of the Office of 20 May 1998 to dismiss an application to register a Community trade mark.
- 2 The trade mark in respect of which registration was sought was the term 'Eu-Lex'.
- 3 For the purposes of putting its application in order under Article 44(6) of the Rules of Procedure of the Court of First Instance, the applicant has submitted an extract from the register of companies in compliance with Article 44(5)(b) of those Rules.

- 4 The Court has noted that it appears from the extract that Mr Benkelberg, the lawyer representing the applicant and who has signed the application, is one of the two directors ('Geschäftsführer') of the applicant.
- 5 By letter from the Registry of 21 June 1999, the parties were requested to express their view as to whether the application was in order and, consequently, as to whether the action was admissible from the point of view of the third and fourth paragraphs of Article 17, and the first paragraph of Article 19, of the EC Statute of the Court of Justice and Article 43(1) of the Rules of Procedure of the Court of First Instance, as well as from the point of view of the order of the Court of Justice in Case C-174/96 P *Lopes v Court of Justice* [1996] ECR I-6401.
- 6 The applicant and the Office submitted their observations within the period set by the Court.

Forms of order sought by the parties

- 7 The applicant claims that the Court should annul paragraph 3 of the operative part of the decision of the Office's First Board of Appeal of 26 January 1999.
- 8 The Office contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs of the proceedings.

Admissibility

- 9 Under Article 111 of the Rules of Procedure of the Court of First Instance, where an action is manifestly inadmissible, the Court may by reasoned order, without taking further steps in the proceedings, give a decision on the action.
- 10 In the present case, the Court considers that it has sufficient information from the documents before it and will give a decision pursuant to that provision.

Arguments of the parties

The applicant's arguments

- 11 The applicant is a company composed of several lawyers. Under German law, the directors of a company of that kind — who must be lawyers — may sue in the company's name.
- 12 The prohibition laid down in the Bundesrechtsanwaltsordnung (Federal Statute on Attorneys) according to which lawyers may not represent an undertaking applies only to the 'Syndikus-Anwalt', namely the salaried lawyer (attorney) whose function is advising the undertaking on legal questions.

- 13 Mr Benkelberg is neither the applicant's legal adviser nor its employee. He is, on the other hand, in his capacity as director, part of the applicant's 'controlling organ'.
- 14 In that respect, Mr Benkelberg is not prohibited, in his capacity of lawyer, from representing the applicant in the German courts.
- 15 The third and fourth paragraphs of Article 17 and the first paragraph of Article 19 of the EC Statute simply require that, before the Community judicature, the company concerned should be represented by a lawyer who is authorised to represent it in the national courts.
- 16 Since Mr Benkelberg is entitled to represent the applicant in the German courts, he is also authorised to represent it before the Community judicature.
- 17 The Court of Justice and the Court of First Instance are precluded from adopting any different solution since doing so would restrict the right of German lawyers to practise their profession.
- 18 The applicant claims that the application complies with the requisite formalities and that the action is admissible.

The Office's arguments

- 19 The rules of procedure which apply before the Community judicature can be distinguished from German civil procedure law in that the latter expressly authorises lawyers to represent themselves in court. Furthermore, the conditions laid down by the German regulations, which limit the right to represent third parties where there is a conflict of interests, are not fulfilled in the present case.
- 20 In the case giving rise to the order in *Lopes v Court of Justice*, one of the parties to the proceedings and its representative were one and the same person, which is not the case in the present instance. Here, the applicant, a legal person, is distinct from Mr Benkelberg, a lawyer and a natural person. The fact that Mr Benkelberg is a director of the applicant and, therefore, the 'controlling organ' of the applicant does not affect this analysis.
- 21 Mr Benkelberg's economic interests are undoubtedly the same as those of the applicant. In addition, in so far as Mr Benkelberg is acting on behalf of the applicant in the proceedings, he may, in his capacity as its director, give himself instructions as to the conduct of the proceedings. This does not present any obstacle so far as the admissibility of the action is concerned.
- 22 The Office contends that, in this respect, the application complies with the requisite formalities and that the action is admissible. It does, however, express some reservations as to the validity of the power of attorney granted by the applicant to Mr Benkelberg.

Findings of the Court of First Instance

- 23 Under the third and fourth paragraphs of Article 17 of the EC Statute which applies to the Court of First Instance by virtue of Article 46 of that Statute:

‘[...] parties must be represented by a lawyer.

Only a lawyer authorised to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area may represent or assist a party before the Court.’

- 24 The first paragraph of Article 19 of the EC Statute provides, in addition, that:

‘A case shall be brought before the Court by a written application addressed to the Registrar. The application shall contain the applicant’s name and permanent address and the description of the signatory [...]’

- 25 Finally, according to the first paragraph of Article 43(1) of the Rules of Procedure of the Court of First Instance:

‘The original of every pleading must be signed by the party’s agent or lawyer.’

- 26 Since those provisions are matters of Community law, they must be interpreted, so far as possible, independently, without reference to national law.
- 27 It is apparent from those provisions and, in particular, from the use of the term 'represented' in the third paragraph of Article 17 of the EC Statute that, for the purposes of bringing an action before the Court of First Instance, a 'party', within the meaning of that article, must use the services of a third party who must be authorised to practise as a lawyer before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area (see the order in *Lopes v Court of Justice*, paragraph 11).
- 28 The requirement to have recourse to a third party is based on a conception of the lawyer's role as collaborating in the administration of justice and as being required to provide, in full independence and in the overriding interests of justice, such legal assistance as his client needs. Such a conception reflects legal traditions common to the Member States and is also to be found in the Community legal order as is demonstrated by, precisely, Article 17 of the EC Statute (to this effect, see Case 155/79 *AM & S v Commission* [1982] ECR 1575, paragraph 24).
- 29 It follows that the lawyer representing the applicant, Mr Benkelberg, cannot be considered, for the purposes of the present case, as a 'third party' within the meaning of the order in *Lopes v Court of Justice* who is independent of the

applicant. Indeed, he is one of the two directors of the applicant. That means, as both parties have pointed out, that he is the 'controlling organ' of the applicant. In those circumstances, Mr Benkelberg may not represent the applicant in these proceedings.

30 Consequently, since the application initiating the proceedings was signed by Mr Benkelberg, the present action has not been brought in accordance with the third and fourth paragraphs of Article 17 of the EC Statute, the first paragraph of Article 19 of the EC Statute or Article 43(1) of the Rules of Procedure of the Court of First Instance.

31 It results from the above that the action must be dismissed as manifestly inadmissible.

Costs

32 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

33 Since the applicant has been unsuccessful, it must be ordered to pay the costs, since the Office has applied for costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby orders:

1. The action is dismissed as inadmissible.
2. The applicant is ordered to pay the costs.

Luxembourg, 8 December 1999.

H. Jung

Registrar

J. Pirrung

President