



Reports of Cases

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

30 January 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 Case C-580/22 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 1 September 2022,

bonnanwalt Vermögens- und Beteiligungsgesellschaft mbH, established in Bonn (Germany), represented by T. Wendt, Rechtsanwalt,

appellant,

the other parties to the proceedings being:

European Union Intellectual Property Office (EUIPO),

defendant at first instance,

Bayerischer Rundfunk, established in Munich (Germany),

Hessischer Rundfunk, established in Frankfurt am Main (Germany),

Mitteldeutscher Rundfunk, established in Leipzig (Germany),

Norddeutscher Rundfunk, established in Hamburg (Germany),

Rundfunk Berlin-Brandenburg, established in Berlin (Germany),

Saarländischer Rundfunk, established in Saarbrücken (Germany),

Südwestrundfunk, established in Mainz (Germany),

Westdeutscher Rundfunk Köln, established in Cologne (Germany),

Radio Bremen, established in Bremen (Germany),

* Language of the case: German.

interveners at first instance,

THE COURT (Chamber determining whether appeals may proceed)

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

Registrar: A. Calot Escobar,

having regard to the proposal from the Judge-Rapporteur and after hearing the Advocate General, G. Pitruzzella,

makes the following

Order

- 1 By its appeal, bonnanwalt Vermögens- und Beteiligungsgesellschaft mbH seeks to have set aside the order of the General Court of the European Union of 16 June 2022, *bonnanwalt v EUIPO – Bayerischer Rundfunk and Others (tagesschau)* (T-83/20, not published, EU:T:2022:369) ('the order under appeal') by which the General Court dismissed its action for annulment of the decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 12 December 2019 (Case R 1487/2019-2), concerning proceedings for revocation of an EU trade mark between bonnanwalt Vermögens- und Beteiligungsgesellschaft and the interveners at first instance.

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 EUIPO is not to proceed unless the Court of Justice first decides that it should be allowed to do so.
- 3 In accordance with the third paragraph of Article 58a of that statute, 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 Article 170a(1) of those rules provides that, 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.

Arguments of the appellant

- 6 In support of its request that the appeal be allowed to proceed, the appellant submits that its appeal raises issues that are significant with respect to the unity, consistency and development of EU law.
- 7 That is the case with the first part of the first ground of appeal, by which the appellant complains that the General Court held, in paragraph 33 et seq. of the order under appeal, that the case-law of the Court of Justice relating to a lawyer's independence in relation to their clients, arising, inter alia, 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), also applies where the client is a legal person.
- 8 In the alternative, by the second part of that first ground of appeal, the appellant submits that the General Court should, at the very least, have taken into account the fact that the revocation proceedings, provided for in Article 63(1) of 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), serve a public interest and that this interest coincides with the interest of any potential representative, so that lawyers representing applicants for revocation also act in their own interest.
- 9 By the second ground of appeal the appellant raises the significant question of whether, before dismissing an action or appeal as inadmissible, the General Court is obliged under Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') to notify the party concerned of this in order to enable that party to be duly represented, where that is not the case.

Findings of the Court

- 10 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).
- 11 Furthermore, as is apparent from the third paragraph of Article 58a of the Statute of the Court of Justice of the European Union, read together with Article 170a(1) and the second sentence of Article 170b(4) of the Rules of Procedure of the Court, the request that an appeal be allowed to proceed must contain all the information necessary to enable the Court to give a ruling on that request 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 to issues that are significant with respect to the unity, consistency and 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 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 16 November 2022, *EUIPO v Nowhere*, C-337/22 P, EU:C:2022:908, paragraph 24).
- 12 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 a 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 (order of 10 December 2021, *EUIPO v The KaiKai Company Jaeger Wichmann*, C-382/21 P, EU:C:2021:1050, paragraph 22 and the case-law cited).

- 13 In the present case, it should be noted, in the first place, that the request that the appeal be allowed to proceed sets out its two grounds of appeal precisely and clearly, alleging, first, incorrect application of the Court's case-law on the application of the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union, and, second, infringement of Article 47 of the Charter.
- 14 As regards, in the second place, 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 (i) the nature of the alleged error resulting from a disregard of the case-law, (ii) the extent to which that alleged error affected the outcome of the order under appeal, and (iii) the specific reasons why such an error, if established, raises an issue that is significant with respect to the unity, consistency or development of EU law. It is apparent from that request that the alleged error lies in the fact that the case-law arising from paragraph 81 of the judgment of 24 March 2022, *PJ and PC v EUIPO* (C-529/18 P and C-531/18 P, EU:C:2022:218), according to which, in a situation in which the client, a natural person, is himself or herself a partner and founding member of the law firm and may, therefore, exercise effective control over the associate, it must be held that the links between the associate lawyer and the partner client are such as manifestly to undermine the independence of the lawyer, was applied in paragraph 33 et seq. of the order under appeal to the appellant, which is a legal entity. According to that request, if such an error had been found, the action before the General Court would have been admissible.
- 15 In accordance with the burden of proof which 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 (order of 16 November 2022, *EUIPO v Nowhere*, C-337/22 P, EU:C:2022:908, paragraph 32 and the case-law cited).
- 16 In order to demonstrate that this 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 arguments of a general nature (order of 16 November 2022, *EUIPO v Nowhere*, C-337/22 P, EU:C:2022:908, paragraph 33 and the case-law cited).
- 17 In the present case, first, the appellant refers, to the issue raised by its first ground of appeal, which seeks essentially to determine whether the case-law arising from paragraph 81 of the judgment of 24 March 2022, *PJ and PC v EUIPO* (C-529/18 P and C-531/18 P, EU:C:2022:218), 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 there is a manifest impairment of the lawyer's independence even if the client is a legal person of which the director is the owner of the law firm at which the lawyer representing that client is employed.

- 18 Second, the appellant points out that the issue of law raised by its first ground of appeal exceeds the scope of that ground, since the answer to that issue will provide guidance on the representation of the client and, therefore, on the admissibility of actions that go far beyond the area of trade mark law. In so doing, the appellant sets out the specific reasons why that issue is significant with respect to the unity, consistency and development of EU law.
- 19 In the third place, as regards the issue raised by the second ground of appeal, it is important to note that the request that an appeal be allowed to proceed sets out to the requisite legal standard (i) the nature of the alleged error resulting from a disregard of the case-law, (ii) the extent to which that alleged error affected the outcome of the order under appeal, and (iii) the specific reasons why such an error, if established, raises an issue that is significant with respect to the unity, consistency or development of EU law.
- 20 It is apparent from that request that the alleged error of law consists, in essence, in the fact that the General Court failed to point out to the appellant that it was not duly represented by a lawyer within the meaning of Article 51(1) of the Rules of Procedure of the General Court and the third and fourth paragraphs of Article 19 of the Statute of the Court of Justice of the European Union, and did not enable it to be duly represented. In addition, the appellant explains to the requisite legal standard that the fact that, before declaring its action inadmissible, the General Court did not enable it to change its representative in good time affected the outcome of the order under appeal. If this had not been the case, the appellant would have had the opportunity to avoid having its action declared inadmissible.
- 21 Finally, the appellant sets out the issue raised by its second ground of appeal, which is, in essence, whether, where a party is not, in the view of the General Court, duly represented by a lawyer within the meaning of Article 51(1) of the Rules of Procedure of the General Court in conjunction with the third and fourth paragraphs of Article 19 of the Statute of the Court of Justice of the European Union, Article 47 of the Charter implies that the General Court must, before adopting a decision to dismiss the action, draw those circumstances to the attention of the party concerned and enable it to be duly represented. Moreover, it is apparent from the request that the appeal be allowed to proceed that the importance of the potential obligation for the General Court to enable an applicant to change its representative before declaring its action inadmissible exceeds the scope of the present order under appeal alone. In that connection, it should be noted that such an issue is not linked to a specific area of EU law, but concerns any type of dispute before the General Court in respect of which representation by a lawyer within the meaning of the third paragraph of Article 19 of the Statute of the Court of Justice of the European Union, read in conjunction with the first paragraph of Article 53 of that statute, is required.
- 22 In the light of the matters set out by the appellant, it must be held that this request that the appeal be allowed to proceed demonstrates to the requisite legal standard that the appeal raises issues that are significant with respect to the unity, consistency and development of EU law.
- 23 In the light of the foregoing considerations, the appeal should be allowed to proceed in its entirety.

Costs

- 24 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.
- 25 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.
- 26 Accordingly, since the request that the appeal be allowed to proceed must be allowed, 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.**
- 2. The costs are reserved.**

[Signatures]