Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

8 June 2022 *

(EU trade mark – Revocation proceedings – EU word mark UM – Genuine use of the mark – Use with the consent of the proprietor – Use in the form in which the mark was registered – Article 51(1)(a) of Regulation (EC) No 207/2009 (now Article 58(1)(a) of Regulation (EU) 2017/1001) – Representation by the proprietor of the trade mark – Evidence of use submitted within the time limit set)

In Case T-293/21,

Ulrike Muschaweck, residing in Munich (Germany), represented by C. Konle, lawyer,

applicant,

v

European Union Intellectual Property Office (EUIPO), represented by D. Walicka, acting as Agent,

defendant,

the other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court, being

Joachim Conze, residing in Munich, represented by H. Bolte, lawyer,

ACTION brought against the decision of the Second Board of Appeal of EUIPO of 15 March 2021 (Case R 2260/2019-2), relating to revocation proceedings between Ms Muschaweck and Mr Conze,

THE GENERAL COURT (Sixth Chamber),

composed of A. Marcoulli (Rapporteur), President, J. Schwarcz and C. Iliopoulos, Judges,

Registrar: E. Coulon,

having regard to the written part of the procedure,

* Language of the case: German.

having regard to the fact that no request for a hearing was submitted by the parties within three weeks after service of notification of the close of the written part of the procedure, and having decided to rule on the action without an oral part of the procedure, pursuant to Article 106(3) of the Rules of Procedure of the General Court,

gives the following

Judgment [1]

…

Forms of order sought

14 The applicant claims, in essence, that the Court should:

– annul the contested decision and the decision of the Cancellation Division of 6 August 2019 in so far as the application for a declaration of revocation was rejected for the services referred to in paragraph 11 above;

– uphold the application for a declaration of revocation in its entirety;

– order EUIPO to pay the costs.

15 EUIPO and the intervener contend that the Court should:

– dismiss the action;

– order the applicant to pay the costs.

Law

…

The second plea: late submission of observations by HUMJC medical practice to the Cancellation Division

…

38 In that regard, it is clear from the case-law that, although the EUIPO examination guidelines lack binding force, they are a reference source on EUIPO's practice in respect of trade marks (judgment of 18 September 2015, *Federación Nacional de Cafeteros de Colombia* v *OHMI – Hautrive (COLOMBIANO HOUSE)*, T-387/13, not published, EU:T:2015:647, paragraph 45).

[1] Only the paragraphs of the present judgment which the Court considers it appropriate to publish are set out here.

39 Those guidelines are a consolidated set of rules setting out the line of conduct which EUIPO itself proposes to adopt, with the result that, provided that those rules are consistent with legal provisions of higher authority, they constitute a self-imposed restriction on EUIPO, namely that of compliance with the rules which it has itself laid down (see judgment of 18 September 2015, *COLOMBIANO HOUSE*, T-387/13, not published, EU:T:2015:647, paragraph 46 and the case-law cited).

40 That stated, it is relevant that paragraph 4.3 of the EUIPO examination guidelines provides that, where a request is filed for an extension to an extendable time limit before this time limit expires and is not accepted, the party concerned will be granted at least one day to meet the deadline, even if the request for an extension arrives on the last day before the expiry of the time limit. In order to preserve the practical effective of paragraph 4.3 of the EUIPO Guidelines, it must be held that the new time limit will be granted from the date on which the adjudicating body of EUIPO before which the application for an extension of a time limit is brought provides its reply.

41 In the present case, first, the time limit in respect of which the extension was requested for a second time by HUMJC medical practice is an extendable time limit. In accordance with paragraph 4.3 of the EUIPO Guidelines, a second request for an extension of the same time period must be refused unless the party requesting it can explain and properly justify the 'exceptional circumstances' which prevented it from carrying out the required action during the previous two time periods (i.e. the original time limit plus the first extension) and still prevent the requester from carrying it out, so that more time is needed.

42 Second, it is apparent from the documents before the Court that the second request for an extension of the time limit for submitting evidence of use of the contested mark was submitted by HUMJC medical practice on the last day before the expiry of that time limit.

43 Third, the applicant, who herself refers to paragraph 4.3 of the EUIPO Guidelines in her written submissions, does not, in any way, argue that it is contrary to a higher-ranking legal provision. Indeed, it does not appear that the fact of granting, essentially on the grounds of fairness, at least one day of extension following a request for an extension of a time limit filed on the last day of that period would infringe such a provision.

44 Consequently, there being no need to rule on the substance of the Cancellation Division's response of 15 January 2018, it is sufficient to state that the Cancellation Division could not, in response to the second request for an extension of the time limit for submitting evidence of use of the contested mark, have merely dismissed that request, but that it had to, in accordance with the EUIPO examination guidelines and as it so did, grant further time, running from the date of the communication of its reply. Therefore, since the contested evidence was submitted between the submission of the second request for an extension of the time limit for submitting evidence of use of the contested mark and the Cancellation Division's response of 15 January 2018, that evidence could not, in any event, be regarded as having been submitted out of time. Therefore, neither the Cancellation Division nor the Board of Appeal erred by taking account, for the purposes of examining the use of the contested mark, of that evidence.

…

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. Dismisses the action;

2. Orders Ms Ulrike Muschaweck to pay the costs.

Marcoulli Schwarcz Iliopoulos

Delivered in open court in Luxembourg on 8 June 2022.

[Signatures]