ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)

26 June 2006 *

In Case T-453/05,

Vonage Holdings Corporation, established in Edison (USA), represented by J. Kääriäinen,

applicant,

v

Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM),

defendant,

ACTION brought against the decision of the First Board of Appeal of OHIM of 20 October 2005 (Case R 510/2005-1) concerning an application for registration of the word mark REDEFINING COMMUNICATIONS as a Community trade mark,

* Language of the case: English.

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

composed of: J. Pirrung, President, A.W.H. Meij and I. Pelikánová, Judges,

Registrar: E. Coulon,

makes the following

Order

Facts and procedure

1 By application lodged at the Registry of the Court of First Instance on 27 December 2005, the applicant brought an action against the decision of 20 October 2005 of the First Board of Appeal of the Office for Harmonization in the Internal Market (OHIM) (Case R 510/2005-1).

2 The application states that the applicant is represented by J. Kääriäinen, lawyer. The application is signed by J. Kääriäinen.

3 On 3 January 2006 the Court of First Instance, pursuant to Article 44(6) of its Rules of Procedure, requested J. Kääriäinen to lodge evidence that, as required by Article 19 of the Statute of the Court of Justice, he is authorised to practise as a lawyer before a court of a Member State. In response to this request, Mr Kääriäinen lodged on 24 January 2006 a certificate by J.-O. Brännström, a Judge of the Malmö District Court (Sweden), dated 10 April 2002, that J. Kääriäinen 'is a lawyer and entitled to represent clients and to alone appear in all [c]ourts in Sweden'.

4 Considering that this answer was not satisfactory, the Court requested J. Kääriäinen to produce evidence that he is admitted to the Bar as an 'advokat' within the meaning of Swedish legislation, or that he is authorised to practise, as a lawyer, before a court of another Member State or of another State which is a party to the Agreement on the European Economic Area, in accordance with the fourth paragraph of Article 19 of the Statute of the Court of Justice. The time-limit set out for answering that request expired on 10 April 2006.

5 On 10 April 2006, J. Kääriäinen explained that he is not admitted to the Sveriges Advokatsamfund (Swedish Bar Association) as an 'advokat', due to the fact that he is working at a firm specialising in patent law and that the Swedish Bar Association does not allow its members to practise in the same firm as patent attorneys having a technical education. He noted that the Swedish wording of the fourth paragraph of Article 19 of the Statute required the representative to be an 'advokat'. Furthermore, he indicated that he was aware of the order of the Court of First Instance of 28 February 2005 in Case T-445/04 *Energy Technologies ET* v *OHIM* [2005] ECR II-677.

6 However, J. Kääriäinen insisted on the fact that the Court of First Instance had not objected to the representation by a Swedish lawyer who was not a member of the Swedish Bar in Case T-219/00 *Ellos* v *OHIM (ELLOS)* [2002] ECR II-753. He also indicated that he had represented the appellant before the Court of Justice in Case C-150/02 P *Streamserve* v *OHIM* [2004] ECR I-1461. The Court of Justice had not objected to his acting either.

7 Lastly, J. Kääriäinen informed the Court that S. Eliasson and J. Runsten, both members of the Swedish Bar Association, had expressed their willingness to represent the applicant in the present case. Documents certifying that S. Eliasson and J. Runsten are members of the Swedish Bar were attached to the letter of 10 April 2006. No further documents were submitted to the Court.

Law

8 Article 111 of the Rules of Procedure of the Court of First Instance provides that, where an action brought before the Court is manifestly inadmissible or manifestly lacking any foundation in law, the Court may, by reasoned order, without taking further steps in the proceedings, give a decision on the action.

9 In the present case the Court decides, pursuant to that article, to give a decision on the action.

10 Pursuant to the third paragraph of Article 19 of the Statute of the Court of Justice, which is applicable to proceedings before the Court of First Instance by virtue of

Article 53 of that Statute, non-privileged parties must be represented before the Community Courts by a lawyer, that is to say, in the Swedish version, by an 'advokat'. According to Swedish legislation the title 'advokat' is reserved to persons who have a Master's qualification in law and have been admitted to the Bar.

11 Moreover, it is clear from the fourth paragraph of Article 19 of the Statute of the Court of Justice that two cumulative conditions must be satisfied in order for a person to be able validly to represent parties other than Member States and Community institutions before the Community Courts: that person must be a lawyer ('advokat', according to the Swedish version) and he must be authorised to practise before a court of a Member State or of another State which is party to the EEA Agreement. Those requirements are essential formal rules and failure to comply with them will result in the action being inadmissible.

12 The reason for the requirement imposed by Article 19 of the Statute of the Court of Justice is that a lawyer is regarded as a collaborator in the administration of justice, required to provide, in full independence, and in the overriding interests of that cause, such legal assistance as the client requires. The counterpart of that protection lies in the professional discipline laid down and enforced in the general interest by the institutions endowed with the requisite powers for that purpose. Such a conception reflects the legal traditions common to the Member States and is also to be found in the legal order of the Community (see, by way of analogy, the judgment in Case 155/79 *AM & S* v *Commission* [1982] ECR 1575, paragraph 24).

13 As J. Kääriäinen is not admitted as a member of the Bar, he is not a lawyer ('advokat') within the terms of Article 19 of the Statute of the Court of Justice. Consequently, even though he may, according to Swedish law, be able to represent parties in actions before the Swedish courts, he does not satisfy the first of the two cumulative

conditions set out in the fourth paragraph of Article 19 and is for that reason not authorised to represent the applicant before the Court of First Instance (see *Energy Technologies ET* v *OHIM*).

14 It is true that in the cases mentioned by the applicant (paragraph 6 above) neither the Court of Justice nor the Court of First Instance objected to representation by a lawyer who was not an 'advokat', although the Court notes that in neither of those cases was the representation question expressly addressed.

15 In any event, the applicant could not rely on the decisions mentioned in paragraph 6 above in order to obtain dispensation from the application of the provisions of the Statute of the Court of Justice or of the Rules of Procedure. According to Article 43(1) of the Rules of Procedure, the original of every pleading must be signed by the party's agent or lawyer. The applicant has not filed any document signed by a lawyer within the meaning of the fourth paragraph of Article 19 of the Statute. The submission of the certificates mentioned in paragraph 7 above and the assertion that the lawyers mentioned in those documents are willing to represent the applicant are not sufficient to comply with the requirement that an application must be signed by a lawyer within the meaning of Article 19 of the Statute.

16 It follows that the present application must be dismissed as manifestly inadmissible, without it being necessary to serve it on the defendant.

Costs

17 As the present order has been adopted before the application was notified to the defendant and before the defendant was able to incur costs, it suffices to decide that

the applicant shall bear its own costs, in accordance with Article 87(1) of the Rules of Procedure.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby orders:

1. The action is dismissed as manifestly inadmissible.

2. The applicant shall bear its own costs.

Luxembourg, 26 June 2006.

E. Coulon — Registrar

J. Pirrung — President