

ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

9 September 2004<sup>\*</sup>

In Case T-14/04,

**Alto de Casablanca, SA**, established in Casablanca (Chile), represented by A. Pluckrose,

applicant,

v

**Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)**, represented by O. Montalto, acting as Agent,

defendant,

the other party to the proceedings before the Board of Appeal of OHIM being

<sup>\*</sup> Language of the case: English.

**Bodegas Julián Chivite, SL**, established in Cintruénigo (Spain),

APPLICATION for annulment of the decision of the Second Board of Appeal of OHIM of 4 November 2003 (Case R 18/2003-2) concerning an application for registration of the word mark VERAMONTE as a Community trade mark,

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

composed of: P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges,

Registrar: H. Jung,

makes the following

**Order**

**Facts and procedure**

- 1 By application lodged at the Court Registry on 14 January 2004, the applicant brought an action against the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) ('the Office') of 4 November 2003 (Case R 18/2003-2).

2 The application states that the applicant is represented by Mr Pluckrose, a patent agent and fellow of the Chartered Institute of Patent Agents. Mr Pluckrose claims to be a 'registered trade mark attorney', a 'European Patent Attorney' and a 'European Trade Mark Attorney'. The application is signed by Mr Pluckrose.

3 On 13 May 2004 the Court, by way of measures of organisation of procedure under Article 64 of its Rules of Procedure, invited the Office to make observations limited to the admissibility of the action in the light of the fact that Mr Pluckrose was not a lawyer. The Office complied with that request on 7 June 2004.

## Law

4 Under Article 111 of the Rules of Procedure of the Court of First Instance, where an action 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.

5 In the present case, the Court considers that it has sufficient guidance from the written pleadings of the parties and has decided pursuant to that article to give a decision without taking any further steps in the proceedings.

6 Under Article 19 of the Statute of the Court of Justice, which applies to the procedure before the Court of First Instance pursuant to Article 53 of the Statute, non-privileged parties must be represented before the Community Courts by a lawyer. The fourth paragraph of Article 19 of the Statute of the Court of Justice

states that '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 [EEA] may represent or assist a party before the Court'. In order to ensure that Article 19 is observed, Article 44(3) of the Rules of Procedure provides that 'the lawyer acting for a party must lodge at the Registry a certificate that he is authorised to practise before a Court of a Member State or of another State which is a party to the EEA Agreement'.

- 7 In the present case, the applicant admits that Mr Pluckrose is neither a solicitor nor a barrister. However, it points out that he can represent clients before the courts and tribunals of the United Kingdom in litigation concerning intellectual property. The applicant infers from that that Mr Pluckrose can represent it in this action.
  
- 8 The Office submits that the present case raises a question of principle concerning the representation of parties before the Community Courts. It takes the view that Mr Pluckrose is not authorised to represent the applicant before those Courts. Although he is entitled to represent clients before certain courts and tribunals in the United Kingdom, he is not a lawyer within the meaning of Article 19 of the Statute of the Court of Justice.
  
- 9 The Court of First Instance finds that it is clear from Article 19 of the Statute of the Court of Justice that only a lawyer authorised to practice before a court of a Member State or of another State which is a party to the EEA Agreement may represent or assist parties other than the States and institutions referred to in the first and second paragraphs of that article (order in Case T-37/98 *FTA and Others v Council* [2000] ECR II-373, paragraph 20). That is an essential procedural requirement, which, if not observed, will lead to the action being inadmissible.

- 10 That requirement is based in the fact that a lawyer is considered to be a person who collaborates in the administration of justice, and who is required to provide, in full independence and in the overriding interests of the judicial system, such legal assistance as the client needs. The counterpart of that protection lies in the rules of professional discipline which are laid down and enforced in the general interest by 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, Case 155/79 *AM & S v Commission* [1982] ECR 1575, paragraph 24).
- 11 Plainly, patent and trade mark agents are not necessarily lawyers. Although Mr Pluckrose is entitled to represent parties in certain actions before the courts and tribunals of the United Kingdom, it remains the case that he is not a lawyer. As it is clear from Article 19 of the Statute of the Court of Justice that non-privileged parties must be represented before the Community Courts by a lawyer (see paragraph 6 above), it must be held that Mr Pluckrose is not authorised to represent the applicant before the Court of First Instance.
- 12 Furthermore, when an exception to that requirement is permitted, it is expressly laid down by the Statute. Thus, under the seventh paragraph of Article 19 of the Statute of the Court of Justice, university teachers who are nationals of a Member State whose law accords them a right of audience enjoy the same rights before the Court as are accorded to lawyers by that article. Mr Pluckrose has not shown in any way that such an exception applies to him.
- 13 It follows from the above that this action must be declared to be manifestly inadmissible.

**Costs**

- 14 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the Office has not applied for costs, it must be decided that each party should bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby orders:

- 1. The action is dismissed as manifestly inadmissible.**
- 2. Each party shall bear its own costs.**

Luxembourg, 9 September 2004.

H. Jung

Registrar

P. Lindh

President