



Le Greffe du Tribunal
de l'Union européenne

REPRESENTATION OF A PRIVATE PARTY BEFORE THE GENERAL COURT

IP CASE LAW CONFERENCE – ALICANTE, 7 MAY 2018
IONUȚ DRĂGAN

LEGAL BASIS

The Statute of Court of Justice

Article 19:

“[Private 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 [AEEA] may represent or assist a party before the Court.”

Article 21:

“The application shall contain [...] the description of the signatory [...].”

LEGAL BASIS

The Rules of procedure of GC

Art. 51(1):

“A [private] party must be represented by [...] a lawyer [...].”

Art. 177(1)(b) and 180(1)(b):

The application and the response shall contain “particulars of the status and address of the [party]’s representative.”

REPRESENTATION OF A PRIVATE PARTY

- CONDITIONS AND SANCTION -

- I. Be a lawyer;
- II. Be authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement;
- III. Be an independent third party;
- IV. Sanction – inadmissibility.

I. BE A LAWYER

- COMMON LEGAL TRADITIONS -

“[A] lawyer is regarded as collaborating in the administration of justice by the courts and as being required to provide, in full independence, and in the overriding interests of justice, such legal assistance as the client requires.

The counterpart of that protection lies in the rules of professional ethics and 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 European Union.”

Judgment of 18 May 1982,
AM & S Europe v Commission,
(155/79, EU:C:1982:157, §24)

I. BE A LAWYER

- TRADEMARK AGENTS -

“[P]atent and trade mark agents are not necessarily lawyers [a]lthough [they are] entitled to represent parties in certain actions before the [national] courts and tribunals [...].”

Order of 9 September 2004,
Alto de Casablanca v OHIM - Bodegas Chivite (VERAMONTE)
(T-14/04, EU:T:2004:258, §11)

II. BE AUTHORISED TO PRACTICE BEFORE A NATIONAL COURT

“[T]he person who signs the application must be a member of the Bar in order to be regarded as a lawyer for the purposes of Article 19 of the Statute; it is not sufficient that that person is entitled to represent parties in proceedings before the courts of a Member State.

[T]he notion of lawyer, for the purposes of Article 19 of the Statute, must be interpreted, as far as possible, independently and without reference to national law.”

Order of 11 May 2017,
Neonart svetlobni in reklamni napisi Krevh v EUIPO
(C-22/17 P, not published, EU:C:2017:369, §6)

III. INDEPENDENT THIRD PARTY

- REASON -

“[T]he essence of that requirement of representation by a third party is, first, to prevent private parties from acting on their own behalf before the Courts without using an intermediary and, second, to ensure that legal persons are defended by a representative who is sufficiently distant from the legal person which he represents.”

Order of 20 November 2017,
BikeWorld v Commission
(T-702/15, EU:T:2017:834; §33)

III. INDEPENDENT THIRD PARTY

- DEFINITION -

The notion of independence of the lawyer is defined by the absence not only of an employment relationship but also of any other relationship of dependence between the lawyer and his client. Thus, it can not be inferred from the mere absence of an employment relationship [...] that its representative is therefore an independent third-party.

Order of 14 November 2016,
Dimos Athinaion v Commission
(T-360/16, not published, EU:T:2016:694; §12)

III. INDEPENDENT THIRD PARTY

- EXAMPLES OF DEPENDENCY -

“[A] person who occupies a position at a high executive level within an association cannot act as its legal representative before the Courts of the European Union as an independent third party.”

Order of 26 January 2017,
European Social Enterprise Law Association v EUIPO
(EUROPEAN SOCIAL ENTERPRISE LAW ASSOCIATION)
(T-353/16, not published, EU:T:2017:40; §18)

As the applicant's lawyer is also its partner, he can not be regarded as a third party.

Order of 5 October 2017,
Hoyng Reimann Osterrieth Köhler Haft Monégier du Sorbier v EUIPO (We do IP.)
(T-345/17, not published, EU:T:2017:710; §11)

III. INDEPENDENT THIRD PARTY

- BREACH OF ART. 5(1) AND (2) READ IN CONJUNCTION WITH ART. 4(1) TEU? -

“[T]he interpretation of the notion of ‘lawyer’ in the context of Article 19 of that statute does not affect the representation of the parties before the courts of a Member State and cannot therefore breach either the principle of conferred powers or the principle of subsidiarity.

Judgment of 6 September 2012,
Prezes Urzędu Komunikacji Elektronicznej v Commission
(C-422/11 P and C-423/11 P, EU:C:2012:553; §40)

IV. SANCTION

- INADMISSIBILITY -

“[I]t is clear from the fourth paragraph of Article 19 of the Statute of the Court of Justice that **two cumulative conditions** must be met in order for a person to be validly permitted to represent parties other than Member States and EU institutions before the Courts of the European Union, namely that he or she **be a lawyer [...]** and that he or she **be authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement.**

Those requirements are **essential procedural requirements** and failure to comply with them will render the **action inadmissible.**”

Order of 9 December 2013,
Brown Brothers Harriman v OHIM (TRUST IN PARTNERSHIP),
(T-389/13, not published, EU:T:2013:691, §10)

IV. SANCTION

- NO PUTTING IN ORDER -

Later production of a certificate from a lawyer, but application signed only by a trade mark agent:

“[A]n application which is not signed by a lawyer is affected by a defect which is such as to entail the inadmissibility of the action upon the expiry of the procedural time limits, and cannot be put in order [...].

The mere production of a certificate provided to a lawyer authorised to practise in a Member State but who has not signed the application is incapable of putting the defect in that application in order.

It follows from the foregoing that the [...] action must be dismissed as being manifestly inadmissible [...].”

Order of 17 May 2017,
Olivetel v EUIPO – Polyrack Electronic Aufbausysteme (POLY RACK)
(T-28/17, not published, EU:T:2017:404, §§15-17)



The seal of the Court of Justice of the European Union is centered in the background. It features a pair of scales of justice, a sword, and a laurel wreath. The acronym 'CVRIA' is visible at the bottom of the seal.

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