



Paris Local Division

UPC_CFI_363/2024
Procedural order
of the Court of First Instance of the Unified Patent Court given on
26/02/2025
Concerning a request for security for costs (Rule 158 RoP)

APPLICANT - DEFENDANT

GISELA MAYER GmbH
Litzelsdorfer Straße 3
87700 - Memmingen - DE

Represented by
Frédéric PORTAL

PARTY TO THE PROCEEDINGS CONCERNED - CLAIMANT

N.J DIFFUSION SARL
44 Rue Paul Valéry
75016 - PARIS - FR

Represented by
Catherine Mateu

PATENT IN SUIT

<i>Patent number</i>	<i>Owner</i>
EP2404516	NJ DIFFUSION SARL

JUDGE WHO RULES

Judge-Rapporteur Camille Lignières

LANGUAGE OF PROCEEDINGS: French

ORDER

Facts and procedure

N.J DIFFUSION ("Plaintiff") brought an infringement action before this Division dated 1 July 2024 against GISELA MAYER ("Defendant").

On 7 February 2025, GISELA MAYER (the "Petitioner") filed an application seeking a guarantee for costs based on R. 158 RoP.

By preliminary order of February 11, 2025, the Judge-Rapporteur invited NJ DIFFUSION to file its written comments, which it did on February 21, 2025.

In its written comments, NJ DIFFUSION opposes all the requests of the present re-quest and provides information on its current financial situation.

Legal framework

Article 69 UPCA - Legal costs :

" 4. At the request of the defendant, the Court may order the claimant to provide appropriate security for the legal costs and other expenses incurred by the defendant which may fall to the claimant, in particular in the cases referred to in Articles 59 to 62.

R. 158 RoP - Security for the costs of a party :

"(1) At any time during the proceedings, upon a reasoned request by a party, the Court may order the other party to , provide within a specified period of time, appropriate security for the legal costs and other expenses incurred or to be incurred by the requesting party which may be awarded against the other party. Where the Court decides to order such security, it shall decide whether it is appropriate to order the security in the form a deposit of funds or a bank .guarantee

2. The shall Court give the parties an opportunity to be heard before making a security order. Rule 354 applies to the enforcement of the order.

3. The order .guarantee states that an appeal may be lodged in accordance Article Civil 73 of the Code of Procedure the Agreement and rule 220, § 2.

4. The Court, when specifying the time limit in paragraph 1, shall inform the party concerned that if the party fails to provide adequate security within the time limit specified, a default may be issued pursuant to Rule 355.judgment

5. If a party fails to provide adequate security within the time limit specified, the Court will may render a decision by default under Rule 355.

Designs

On the warranty claim for costs

The purpose of R. 158 RoP is to ensure that the applicant, in the event of a decision in his favour, will be able to enforce without difficulty an order that the other party pay the him costs of the proceedings. The Court must rule on this application for security, taking into account in particular the risk insolvency of the applicant and the amount of costs that may be recovered. However, the expected outcome of the case is irrelevant, as the guarantee must cover all costs recoverable, as the wording of R. 158.1 RoP makes clear. (ref: Tilmann/Plassmann, Unified Patent Protection in Europe (2018) R. 158 RoP, para 5, 7 and 8).

The relevant criteria to be taken account into when deciding on a guarantee application under the R. 158 RoP have been established by different divisions of the Court of First Instance and confirmed by the Court of Appeal of Luxembourg on several occasions, recalling that in the exercise of its discretion, the Court must determine whether the financial situation of the other party gives rise to a legitimate and real fear that a possible order to pay costs cannot be recovered and/or the likelihood that a possible order to pay costs by the Court cannot be enforced, or would be enforced under unreasonably difficult conditions (UPC_CoA_217/2024, 17 September 2024 and UPC_CoA_548/2024, 29 November 2024).

In the present case, the applicant submits that the plaintiff has apparently not filed its annual with the commercial court registry for several years and that the general meeting of shareholders decided on 28 June 2024 not to renew the mandate of its statutory auditor and not to replace him (exhibits accounts BP 22 to 25 from GISELA MAYER in support of its application). The applicant adds that, according to NJ DIFFUSION's own statements, the 's turnover latter on its range of wigs fell by 24% (exhibit 1bis NJ DIFFUSION). The claimant this concludes from that these factors give rise to fears of insolvency on the part of the claimant, or least that it will be particularly difficult for the defendant to comply with any decision ordering NJ DIFFUSION to reimburse its legal costs.

The points raised by the applicant in its request for a guarantee are relevant. However, in its written reply, NJ DIFFUSION provided sufficient justification of its current financial situation:

-a certificate from the company's chartered accountant dated 13 February 2025 stating that: "*the forecasts for 2025 are positive, based on forecast sales of €3,405,000 (...) the company is not behind with its customers or suppliers to date*" (exhibit G1)

-its accounts annual for 2023 and the auditor's report on the annual accounts 2023 (documents confidential G2 and G3)

The Court takes into account amount of costs likely to be incurred by the claimant as a result of this litigation, which would be limited, in the light of the value of the action as declared by the claimant, namely EUR 300,000, to a maximum amount payable of EUR 56,000, as estimated by the claimant in his application.

In view of NJ DIFFUSION's positive financial situation and in view of the estimated amount of the costs likely to be recovered, it has not been shown that there is a risk that the plaintiff would not be able to pay this sum - or would even encounter difficulties in doing so - if it were ordered to reimburse the costs to the defendant.

The conditions in this case are therefore not met for the granting of a guarantee as provided for by the provisions of R. 158 RoP, and GISELA MAYER's request will be thereforerejected.

the judge-rapporteur may grant leave to appeal in the present order

In the alternative, if its claims are dismissed, GISELA MAYER asks the Court to grant leave to appeal this decision.

The Luxembourg Court of Appeal recently pointed out that this type of order made not by the judge-rapporteur alone is subject to appeal: "*an order on security for costs pursuant to R. 158 RoP must be considered a case management order. Consequently, such orders are subject to review by the panel, as provided for in R. 333 RoP.* (UPC_CoA_651/2024, 14 January 2025).

Consequently, the 's applicant request that the judge-rapporteur grant a right appeal at this stage of the proceedings has no legal basis and will be rejected.

FOR THESE REASONS

The Judge-Rapporteur :

- Orders the dismissal of all of GISELA MAYER's claims in the present application,
- Recalls that this order may be reviewed by the panel in accordance with the conditions set out above.
seen by R. 333 RoP.

Issued in Paris on 26 February 2025.

The Judge-Rapporteur, Camille Lignières.

DETAILS OF THE ORDER

Order n° ORD_6886/2025 ACTION N°: ACT_39091/2024 UPC n° :
UPC_CFI_363/2024

Type action: Infringement action

Related procedure no. Application no.: 6598/2025

Type of request: Generic procedural request concerning an application for security for costs (R158 RoP)