

# DECISIONS OF THE QUARTER

Important Decisions of the Boards of Appeal – 2<sup>nd</sup> Quarter 2017

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## Menu

- Procedural Questions
  - Restitutio in Integrum
  - Assessment of evidence
- What's that
  - Clear and precise
- Let's meet at the kitchen
  - The legal cooking book
- Let's travel
  - Foreign letters
- Single letters
- Bad faith

# Procedural Questions ...

# Restitutio in Integrum

## R 0101/2017-1



- Instructions to pay appeal fee to secretary
- Payment not done
- Affidavit lawyer: '1<sup>st</sup> mistake in 20 years'
- Affidavit of secretary: 'I do not know why'

## R 1799/2016-4



- SoG not filed
- After deficiency letter, SoG filed in wrong language
- Affidavit of secretary: 'I do not know why – my 1<sup>st</sup> mistake in 20 years'.

## Assessment of evidence

R 0019/2016-4

*“Original”*



*“Reality”*

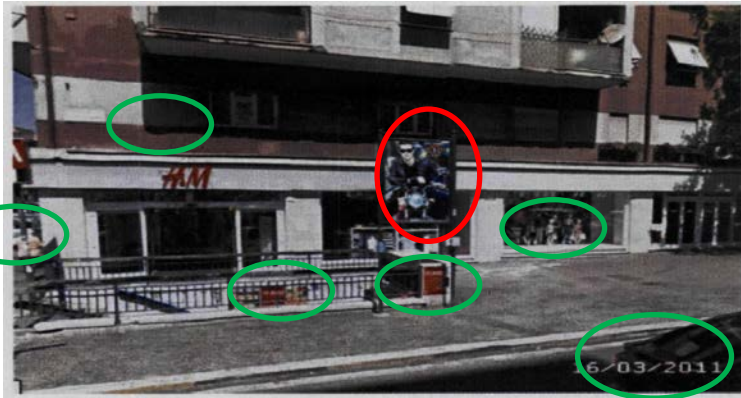


**One falsified piece of evidence destroys reliability of entire evidence**

## Assessment of evidence

R 0019/2016-4

*"Original"*



*"Reality"*

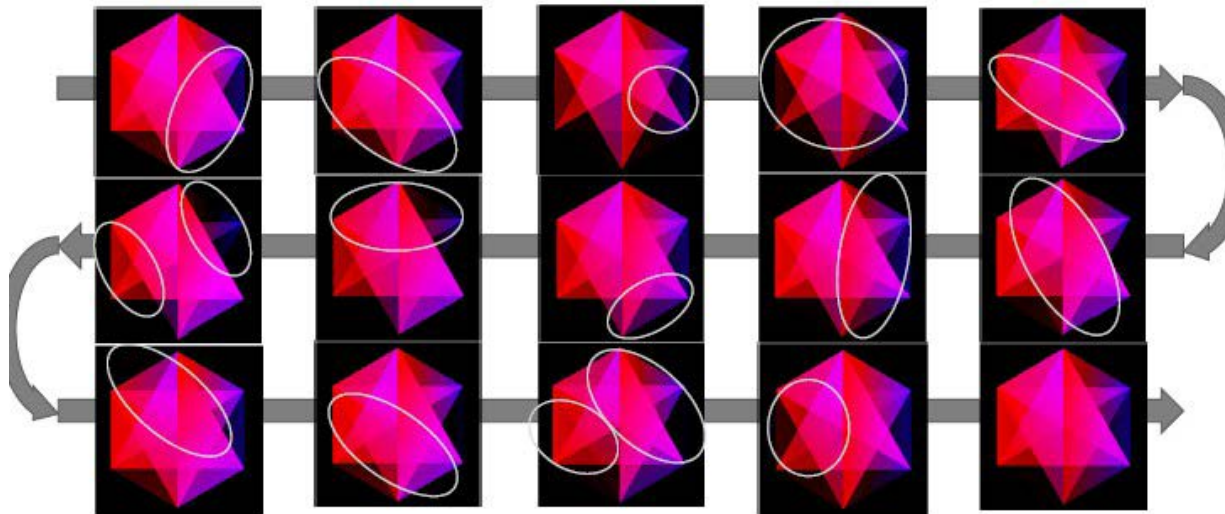


**One falsified piece of evidence destroys reliability of entire evidence**

What's that ...

# Clear and Precise

## R 1439/2016-2



movement mark, showing a transparent red-  
 . The movements in the mark show different  
 the hexagon in different red and purple shades in  
 angles, squares, diamond shapes and star shapes.  
 t occurs with a set interval. The colours of the  
 with variable light intensity and the total length  
 ed sequence is approx. 12 x the chosen set time  
 ncy) seconds, as the mark is made up of 12  
 s. The set time interval (frequency) can vary and  
 ion of movement (changing colours), typically the  
 .ween 0.5 and 2 seconds. The basic elements of  
 ade up of 12 triangles of different size, coloured  
 arent gradient of colours in a spectrum defined  
 HEX #ff0046 / #b400ff" in the angle: 0°. The

animated sequence is shown in the graphical representation in 3  
 rows of still photographs which are to be viewed from left to  
 right in the 1st row, from right to left in the 2nd row, and from  
 left to right in the 3rd row.



Let's meet at the kitchen ...

# Recepies

R 0317/2016-5

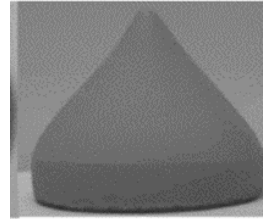
**ROCKSLIDE BROWNIE**

*Descriptive*

Cl. 30

Bakery goods

R 0723/2016-4



*Not distinctive*

Cl. 29, 39

Cheese (PDO 'Queso Tetilla'); retail services

# The legal cooking book

## **Brownies**

- Rockslide, *R 0317/2016-5*

## **Pizza**

- P. Napolitana, *Reg 97/2010, 5.2.2010, L 34/7*

Let's travel ...

# Cyrillic letters

## R 1017/2016-1

Национальный Продукт

Cl. 29 – 33

RU,  
'National product'

**Descriptive**

## R 2066/2016-1

Лидер

Cl. 29 – 33

BG & RU  
'Leader'

**Not distinctive**

## Chinese letters

### R 1907/2014-2

*EUTMA*



Cl. 35, 38, 42, 43

LoC

*Earlier TM<sub>(EU)</sub>*

友好中国

chinese friendly

Cl. 35, 41, 43

### R 0889/2016-2

*EUTMA*



Cl. 5, 30, 32

No LoC

*Earlier TM<sub>(BG)</sub>*

王老吉



# Single letters

## Single letters

### R 0549/2016-5

*EUTM*



Cl. 34

LoC for 'cheap goods'  
No LoC for rest

*Earlier TM<sub>(EU)</sub>*



Cl. 34

### R 1169/2016-5

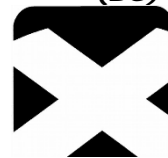
*EUTMA*



Cl. 18, 25, 28

No LoC

*Earlier TM<sub>(BG)</sub>*



Cl. 25, 28



# Bad faith

## I know your trade mark ...

### R 1737/2016-4

**EUTM**



**Bad faith**

- Cancellation applicant has various national TMs
- Proprietor knew about these TMs
- During negotiations concerning franchise system the EUTM is filed

Cl. 30, 35, 43

### R 1141/2016-4

**EUTMA**



**No Bad faith**

- Cancellation Applicant has TM<sub>(ES)</sub> in Cl. 14
- Proprietor is exclusive licensee of Cancellation Applicant (Cl. 14) since 2002, agreement until end of 2017, one single fee paid at beginning
- 2012 EUTM registered

Cl. 14, 16, 18, 25

# Thanks for your attention

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**Danke!**