



**OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)**

The President

DECISION No EX-14-3 OF THE PRESIDENT OF THE OFFICE

of 22 October 2014

concerning publicly available particulars of CTM and RCD applications and registrations

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THE PRESIDENT OF THE OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET (TRADE MARKS AND DESIGNS),

(1) Having regard to Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (CTMR) and Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (CDR),

(2) Having regard to Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark (as amended, hereinafter referred to as CTMIR) and Commission Regulation (EC) No 2245/2002 of 21 October 2002 implementing Council Regulation (EC) No 6/2002 on Community designs (CDIR),

(3) Having regard to Commission Regulation (EC) No 2869/95 of 13 December 1995 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) (as amended, hereinafter referred to as CTMFR) and Commission Regulation (EC) No 2246/2002 of 16 December 2002 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) in respect of the registration of Community designs (CDFR),

(4) Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data,

Whereas:

- (1) Pursuant to Article 124(2)(a) CTMR, the President of the Office will take all necessary steps, including the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Office.
- (2) Pursuant to Rule 87 CTMIR and Article 71 CDIR, the President of the Office will determine the conditions of access to the databank (CTMs) and database (RCDs) and the manner in which the contents thereof may be made available in machine-readable form.
- (3) In order to achieve the objective of full transparency and guarantee the predictability and consistency of the CTM and RCD systems, users need to have access to all relevant information about CTMs and RCDs, including particulars of the applications, entries into the Register and decisions in CTM and RCD proceedings. This need has also been expressly recognized in the proposal for the reform of the CTMR which is currently being discussed in the framework of the EU legislative process..
- (4) Particulars of CTM and RCD applications, as well as entries into the Register, need to be made publicly available as early as possible for consultation by public authorities and economic operators, in order to determine whether there are any prior rights belonging to third parties and to enable the users to exercise the rights conferred on them by the CTMR and CDR. As regards CTM applications, this is without prejudice to Article 38(7) CTMR, which does not refer to the public availability of the particulars of CTM applications but to the date of publication in the Community Trade Marks Bulletin for the purposes of, inter alia, calculating the period prescribed in Article 41(1) CTMR..
- (5) According to Decision EX-13-3, decisions refusing CTM applications based on absolute grounds shall be made publicly available in the Office database of case-law. The abovementioned objective of transparency dictates the need to make also publicly available the decisions in all the other main CTM and RCD proceedings.
- (6) If this information includes personal data, these must be processed and published in a way that is proportional and lawful. Accordingly, the obligation to respect the rights of data subjects within the meaning of Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data can be negated only by valid considerations of public interest.
- (7) Any such personal data must be collected, stored and kept in the databank (CTMs) or database (RCDs) in order to:
 - a) administer applications and/or registrations as described in this Regulation and any acts adopted pursuant to it;
 - b) access the information necessary for conducting the relevant proceedings more easily and efficiently;
 - c) communicate with the applicants and other parties to the proceedings;
 - d) produce reports and statistics enabling the Office to optimise its operations and improve the way the system operates.

HAS ADOPTED THE FOLLOWING DECISION:

Article 1

Databank/Database

- (1) The Office maintains an electronic databank (CTMs) and database (RCDs) with all the particulars of CTM or RCD applications or registrations submitted to it pursuant to the CTMR and CDR or the implementing regulations and rules. The contents of the database and databank may be accessed, viewed, copied and/or downloaded in various ways including, but not limited to, on-line platforms, CD-ROMs and DVDs.
- (2) These particulars include the personal data of CTM or RCD applicants and proprietors and of parties to the proceedings relating to those CTMs or RCDs.

Article 2

Access to CTM- or RCD-related data

- (1) The Office will make available to the public, in machine-readable form, all particulars of CTM or RCD applications or registrations, including in particular the personal data of applicants and other parties to the proceedings for these applications or registrations subject to the conditions laid down in Article 4 and the content of the decisions on CTM and RCD proceedings.

Part 1: Personal data

Article 3

Personal data

- (1) Within the meaning of Regulation (EC) No 45/2001, the personal data specifically covered by this decision are the name, address, phone and fax numbers and the e-mail addresses of natural persons.
- (2) The name of a natural person consists of the first name and surname.
- (3) The address is the postal address.
- (4) The third category of personal data relates to phone and fax numbers and e-mail addresses.

Article 4

Specific aspects of personal data

- (1) The Office will make available to the public the personal data included in CTM or RCD applications or registrations, the publication of which is specified in the CTMR or CDR or in the implementing regulations and rules.

- (2) The following personal data shall also be made available to the public:
 - a) the name and address of opponents
 - b) the name and address of applicants for invalidity/revocation or for counterclaims pursuant to Article 100(1) CTMR
 - c) the name and address of the representatives of any of the above parties.
- (3) The Office shall not make available any personal data the publication of which is not specified in the CTMR or CDR or in the implementing regulations and rules. This relates to the third category of personal data as referred to in Article 3(4).
- (4) The foregoing is not applicable if the affected party has given its explicit consent to the contrary and provided that the Office's IT systems support this.

Part 2: Content of CTM- and RCD-related decisions:

Article 5

Content of Office decisions

- (1) The content of Office decisions relating to the main proceedings for CTMs and RCDs shall be made publicly available in the Office database of case-law.
- (2) In addition to decisions refusing CTM applications based on absolute grounds that are made available to the public according to Decision EX-13-3, the following decisions shall also be made public:
 - a) the content of decisions closing opposition proceedings,
 - b) the content of decisions closing invalidity/revocation proceedings,
 - c) decisions of the Board of Appeal.
- (3) The database of case-law shall be accessible free of charge on the Office website. Where appropriate, the Office will announce the availability of the database on its website.

Article 6

Purpose

- (1) The purpose of collecting, storing or keeping personal data is to administer applications and/or registrations as described in this Regulation and any acts adopted pursuant to it; to access the information needed to conduct the relevant proceedings more easily and efficiently; to communicate with the applicants and other parties to the proceedings and to produce reports and statistics enabling the Office to optimise its operations and improve the way the system operates.
- (2) The purpose of making personal data available to the public is to provide third parties and public authorities with the information they need to enable them to exercise the rights conferred on them by the CTMR and CDR and to determine the existence of prior rights belonging to third parties.

Article 7

Keeping and correcting data

- (1) Data included in the CTM or RCD register shall be kept indefinitely.
- (2) However, unless a different procedure is provided for by a specific provision of the CTMR or CDR, the data contained in the databank (CTMs) or database (RCDs) may be corrected at the request of the interested party.

Article 8

Access conditions

- (1) The particulars of CTMs and RCDs may be accessed via the Office's tools and platforms; they are available for public inspection and access is free of charge.
- (2) The particulars of CTMs and RCDs can also be accessed by downloading the information after signing a licence agreement with the Office; access is subject to the terms and conditions laid down in the licence agreement.

Article 9

Entry into force

This Decision enters into force on 3 November 2014. It shall be published in the Official Journal of the Office.

Done at Alicante, 22 October 2014



António Campinos
President