

REGISTER NUMBER: 168

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 1/03/07

CASE NUMBER: 2007-128

NOTIFICATION OF: OHIM

LEGAL BASIS: Article 27-5 of the Regulation CE N° 45/2001¹

INFORMATION TO BE GIVEN²

1. Name and address of the controller

Office for Harmonization in the Internal Market (Trade Marks and Designs)
Avenida de Europa, 4
E-03008 Alicante
Spain

2. Organisational parts of the institution of body entrusted with the processing of personal data

- General Affairs and External Relations Department (GAERD)
Jorg Weberndörfer, Deputy-Director
- General Affairs and External Relations Department (GAERD)
Information Centre Sector
Martina Schneider, Head of the Information Centre Sector

3. Name of the processing

Silent Monitoring

4. Purposes of the processing

The processing operations consist in the punctual monitoring of incoming phone calls processed by the Information Centre Sector for the purpose of quality control.

OHIM's Information Centre Sector provides OHIM's customer with a two levels information service:

- A Switchboard
- An Information Centre

¹ OJ L 8, 12.01.2001.

² Please attach all necessary backup documents

Incoming phone calls are firstly caught by the Switchboard of OHIM. This activity has been recently outsourced. Depending on the subject of the call, the Switchboard puts the call through either to a specific person in OHIM or to the Information Centre who is competent to address general issues or further put the call through a specific person in OHIM.

During a “Silent Monitoring” exercise, incoming callers are firstly requested their prior consent to participate in the monitoring exercise. Upon their consent, a third party, namely the responsible of the Information Centre Sector, is silently listening to the conversation. While a call is monitored, a background signal is continuously emitted so that both the caller and the Switchboard or Information Centre are aware that the call is monitored by a third person. The call is not further monitored when it is put through to a specific person in OHIM.

Therefore, the purposes of the processing of operations referred to in the present notification for prior check, are to assess the quality of the service provided by the Switchboard and by the Information Centre as follows:

- Switchboard: Quality control and improvement of services in compliance with the SLA concluded with the external provider (Contractor, see annex 1, in particular point 4.4.).
- Information Centre: Quality control, improvement of services, staff appraisal.

The ultimate purpose of this monitoring activity is to improve OHIM’s customer satisfaction by providing a high quality service at the Information Centre Sector.

This monitoring activity is punctual. It is carried out several times a year during several consecutive days.

5. Description of the category or categories of data subjects

Staff dedicated to Switchboard by Contractor.
Staff dedicated to Information Centre (by OHIM).
Incoming callers.

6. Description of the data or categories of data (including, if applicable, special categories of data (article 10) and/or origin of data)

Evaluation reports (see samples in annexes 2 and 3).

These reports include:

- Name of staff monitored
- Date of monitoring
- Language monitored
- Assessment with regard to the substance of the reply provided to callers
- Assessment with regard to the form of the reply provided to callers
- Assessment with regard to the use of language

No personal data of the incoming callers are processed in this framework.

7. Information to be given to data subjects

Prior to the launching of a monitoring exercise, data subjects are sent a notice informing them about the launching of a monitoring exercise and appropriate data protection statement (see annex 4).

Incoming callers are requested oral consent prior to monitoring. At this occasion they are briefly explained the procedure and the purposes. They are not forced to accept such monitoring.

8. Procedures to grant rights of data subjects

Data subjects are to send a written request to the Head of the Information Centre Sector.

See data protection statement attached as annex 4.

9. Automated / manual processing operation

Not applicable.

10. Legal basis and lawfulness of the processing operation

Monitoring the Information Centre:

Article 5(a) of Regulation 45/2001 (“*processing is necessary for the performance of a task carried out in the public interest on the basis of the Treaties establishing the European Communities or other legal instruments adopted on the basis thereof [...]*”)

→ Legal instruments:

- Council Regulation 40/94 of 20 December 1993 on the Community Trade Mark
- Article 43 of the Staff Regulations (as applicable in accordance with article 112 of Regulation 40/94)

Monitoring the Switchboard:

Article 5(c) of Regulation 45/2001 (“*processing is necessary for the performance of a contract to which the data subject is party*”)

→ See SLA concluded with contractor (annex 1, in particular point 4.4.).

Incoming callers

Article 5(d) of Regulation 45/2001 (“*the data subject has unambiguously given his or her consent*”)

→ Although no personal data concerning incoming callers are processed, these are made aware of the processing and requested their prior consent.

11. The recipients or categories of recipient to whom the data might be disclosed

Head of the Information Centre Sector, Management of the Department (Director and Deputy Director), Coordinator of Contractor with regard to Switchboard evaluations

12. General indication of the time limits

For Blocking: immediate

And/or

For erasing: immediate as far as relevant during the retention period

Of the different categories of data (*please, specify the time limits for every category, if applicable*)

Data are kept:

- For 5 years (+2) with regard to Switchboard evaluations in accordance with article 38§6 of the Financial Regulation of the Office (“*The authorising officer shall conserve the supporting documents relating to operations carried out for a period of five years from the date of the decision granting discharge in respect of implementation of the budget*”).
- For 1 year with regard to Information Centre staff, corresponding to the appraisal reference period. This period may be extended in case of appeal in accordance with articles 90 and 91 of the Staff Regulations.

13. Historical, statistical or scientific purposes

If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification.

Not applicable.

14. Proposed transfers of data to third countries of international organisations

Not applicable.

15. The processing operations presents specific risks which justifies prior checking (*please describe*):

The purposes are related to the evaluation of personal aspects related to the data subjects.

As foreseen in:

- Article 27.2(a)**
Processing of data relating to health and to suspected offences, criminal convictions or security measures
- Article 27.2(b)**
Processing operations intended to evaluate personal aspects related to the data subject
- Article 27.2(c)**
Processing operations allowing linkages not provided for pursuant to national of Community legislation between data processed for different purposes
- Article 27.2(d)**

Processing operations for the purpose of excluding individuals from a right, benefit or contract

Other (general concept in Article 27.1)

16. Comments

17. Annexes

Original notification to the DPO including:

- Annex 1. Service Level Agreement with external provider (Switchboard)
- Annex 2. Model of evaluation report – Information Centre
- Annex 3. Model of evaluation report – Switchboard
- Annex 4. Model of data protection statements

Place and Date : Alicante, 23 February 2007

Data Protection Officer: Luc Dejaille

Institution of body: Office for Harmonization in the Internal Market (Trade Marks and Designs)