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correspondence

Subject: Prior-checking notification regarding OHIM's attestation procedure (ex-C and ex-D categories) (case 2013-0797)

Dear Ms Borrego,

On 28 June 2013, the European Data Protection Supervisor (EDPS) received from the Data Protection Officer (DPO) of the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) a notification for prior checking under Article 27 of Regulation (EC) No 45/2001 (the Regulation) on the processing operations related to the OHIM's attestation procedure (ex-C and ex-D categories). The EDPS received a revised notification on 17 October 2013, which contained amendments regarding the applicable conservation periods.

As the EDPS issued Guidelines on the evaluation of statutory staff in the context of annual appraisal, probation, promotion or regarding certification and attestation (henceforth: "Guidelines"), the EDPS will only address the existing data conservation policy which does not seem to be in conformity with the principles of the Regulation and with the Guidelines issued by the EDPS in July 2011.

According to the revised notification, the attestation decision of successful applicants is kept in the personal files, including the electronic files, for up to eight years after the extinction of all the rights of the person concerned and of any dependants, and for at least 120 years after

the date of birth of the person concerned. Following the closure of the attestation exercise, the supporting documents attached to the applications will be destroyed once the deadline for appeal has passed; in case of appeal, all documents are kept until the final resolution.

Article 4(1)(e) of the Regulation states that personal data can be kept in a form permitting identification of data subjects for no longer than necessary for the purpose for which they were collected or further processed.

The EDPS observes that conservation of attestation files of unsuccessful applicants for up to five years after the particular exercise can be considered as necessary for the related appeals. At the same time, there seem to be no sufficient evidence as to the necessity of storage of the actual attestation decisions beyond the end of the career at the OHIM. Therefore, the OHIM is invited to reconsider the existing time limit and to provide for precise justifications that will be taken into account in the on-going discussions with the relevant stakeholders.

In conclusion, the EDPS considers that there is no reason to believe that there is a breach of the Regulation provided that the recommendations contained in this Opinion are fully taken into account. To facilitate our follow-up, please provide the EDPS with all relevant documents within three months of the date of this letter which prove that all recommendations have been implemented.

Kind regards,

(signed)

Giovanni BUTTARELLI

cc.: Mr Gregor SCHNEIDER, DPO OHIM
Mr Eduardo GISPERT, Assistant OHIM DPO