

OHIM guidelines update clarifies "all due care" requirement for *restitutio in integrum*

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SEP 15

European Union - [ITEM doo](#)

On July 8 2015 the Office for Harmonisation in the Internal Market (OHIM) adopted a [revised set of guidelines](#), which became effective as of August 1 2015. With this latest revision, which covers a good half of the sections making up the guidelines, OHIM completed a full cycle of revision and accomplished its goal of issuing revisions for its guidelines on a yearly basis. OHIM is already reviewing the first revised set of guidelines (adopted in December 2014 and effective as of February 1 2015).

The majority of the recently revised guidelines have seen only minor changes. In general, the changes concern modifications to the format and structure of the guidelines, updated case law and cross-references, corrections of errors and clarifications in wording.

A few sections, however, have been substantially modified, although the modifications do not result in a change in OHIM's practice as such. For example, the part on *restitutio in integrum* (Part A: General Rules, Section 8, pages 3 to 4) has been completely re-drafted, due to comments from user associations. The principles of *restitutio in integrum* have been clarified and examples of where the party has exercised "all due care required by the circumstances" have been introduced.

The guidelines emphasise that the conditions for the application of *restitutio in integrum* have to be interpreted strictly, because observing time-limits is a matter of public policy and granting *restitutio in integrum* can undermine legal certainty.

Examples of where the "all due care" requirement has been fulfilled include:

- failure to deliver by the postal or delivery service (however, the parties' representatives should at least find out in advance from their delivery company what the usual delivery times are);
- a relevant error made by OHIM and its repercussions (in this case, the application for *restitutio in integrum* may be granted even if the party concerned has failed to take all due care);
- natural disasters; and
- general strikes.

The guidelines also include examples of where the "all due care" requirement has **not** been fulfilled:

- errors in the management of files caused by the representative's employees or by the computerised system itself (due care would require a system for monitoring and detecting any such errors);
- exceptional workload and organisational strains caused by new legislation becoming effective;
- erroneous calculation of the time limit;
- a clerical error in entering a deadline;
- misunderstanding of the applicable law;
- delay by the owner in providing instructions;
- the absence of a key member of staff;
- financial problems at the proprietor's business, its closure and the loss of jobs; and
- legal errors by a professional representative.

Although the OHIM guidelines are not legislative texts and, therefore, are not binding, the abovementioned examples, with references to relevant case law, may prove very useful when estimating the chances of success of an application for *restitutio in integrum*. In general, OHIM guidelines are a helpful source for users of the Community trademark system and professional advisers.

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