

Decision of the European Ombudsman in case 1746/2020/NH on the European Union Intellectual Property Office's (EUIPO) rejection of a request to be included on its list of professional representatives

Decision

Case 1746/2020/NH - **Opened on** 09/11/2020 - **Decision on** 09/11/2020 - **Institution concerned** European Union Intellectual Property Office (No maladministration found) |

Dear Sir or Madam,

On 9 October 2020, you submitted a complaint to the European Ombudsman against the European Union Intellectual Property Office (EUIPO).

I understand that your complaint concerns two issues:

- EUIPO's decision to reject your request to be included on its list of professional representatives under the exemption to the EEA [1] nationality requirement in the EU trade mark regulation ("EUTMR") [2] ;
- Your claim that the EEA nationality requirement in the EUTMR [3] is discriminatory.

Regarding the second issue :

Article 228 of the Treaty on the Functioning of the European Union stipulates that the European Ombudsman can only investigate complaints that concern the administrative work of the European Union's institutions, bodies and agencies. The Ombudsman is not competent to investigate complaints about the merits of EU law, such as the nationality requirement for professional representation before EUIPO, which is laid down in the EUTMR.

Regarding the first issue:

You made a request to the Executive Director of EUIPO to be exempted from the EEA nationality requirement in the EUTMR in order to be entered on EUIPO's list of professional representatives. The Executive Director of EUIPO may grant the status of professional representative to a non-EEA national if it is a "highly qualified professional" [4] . The Executive Director rejected your request.

The Executive Director of EUIPO considered that you had not provided sufficient evidence of



your experience in the field of trade mark and design matters. He found that your experience was rather in the field of patents. The Executive Director therefore did not consider you to be a “highly qualified professional” in the field.

It is not the role of the European Ombudsman to reassess a decision taken by the Executive Director of EUIPO under the EUTMR. The Ombudsman would question such a decision only in case of a procedural error or a manifest error of assessment.

In this case, there is nothing to suggest a manifest error of assessment. The decision sets out the factual elements on which it is based and it is in line with the specific guidelines adopted by EUIPO. [5]

In light of the above, we have decided to close the inquiry into this aspect of your complaint with the conclusion that **there was no maladministration by EUIPO.**

Although I understand that you may be disappointed with this outcome, we hope that you will find these explanations helpful.

Yours sincerely,

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 09/11/2020

[1] European Economic Area

[2] Article 120(4)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark (EUTMR), available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1001> [Link]

[3] Article 120(2)(a) of Regulation (EU) 2017/1001

[4] Article 120(4)(b) of Regulation (EU) 2017/1001

[5] Guidelines for Examination of European Union trade marks (EUTM) and registered Community designs (RCD), available at <https://guidelines.euiipo.europa.eu/1803468/1789816/trade-mark-guidelines/2-3-4-exemptions> [Link]