



## **Decision in case 739/2016/JAP concerning the European Union Intellectual Property Office's refusal to grant access to a downloadable version of its case law database**

Decision

**Case 739/2016/JAP - Opened on 28/06/2016 - Decision on 11/01/2017 - Institution concerned** European Union Intellectual Property Office ( No maladministration found ) |

The case concerned the handling of a request for information as how to obtain a downloadable version of a case law database held by the European Union Intellectual Property Office ('EUIPO'). The Ombudsman inquired into the issue and asked EUIPO to better explain its reasons why it could not comply with the request. The EUIPO's explanation was accurate and reasonable. Thus, the case was closed with the finding of no maladministration.

### **The background to the complaint**

1. The complainant requested information from the European Union Intellectual Property Office ('EUIPO') as how to obtain downloadable version of its e-Search Case Law database ('database'). The main activity of EUIPO, which is user funded, is to register trademarks and designs. The database at issue contains decisions taken by EUIPO as well as rulings of the EU courts and national courts. The database contains hundreds of thousands of documents. The database is available for use by the public on the EUIPO's website. However, the complainant wanted to obtain a downloadable version of the database. He argued that the Directive on the re-use of public sector information [1] ('PSI Directive') requires public bodies to grant such requests.
2. EUIPO informed the complainant that it does not provide this service for its e-Search Case Law but it is possible to download the EU trademarks database (EUTM).
3. Not being satisfied with that reply, the complainant turned to the Ombudsman.

### **The inquiry**

4. The complainant made two allegations, namely: (i) EUIPO had wrongly refused to provide the complainant with a downloadable version of its database and (ii) EUIPO's reply had not contained information about available means of redress.
5. The Ombudsman opened an inquiry into both allegations.



6. In the course of the inquiry, the Ombudsman received the reply of the EUIPO on the complaint and, subsequently, the comments of the complainant. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

### **Allegation of wrong refusal to provide the complainant with a downloadable version of a database**

Arguments made by the complainant and EUIPO

7. The complainant considered that the PSI Directive would oblige public bodies in the Member States to grant a request such as his. Hence, EU institutions and bodies should also grant such a request. Moreover, the complainant considered that his request would be granted under the Commission's decision 2011/833/EU [2] on the reuse of its documents. Since the EUIPO is supervised by the European Commission (and the European Parliament) it should grant the request. The complainant also considered that the request should be granted under the EUIPO's rules concerning public access to documents.

8. According to EUIPO, the legal texts referred to by the complainant did not impose an obligation on it to grant the request. In particular, the database does not exist in a manner that is readily downloadable. EUIPO added that it was investigating and evaluating possible technical solutions so as to be able in the future to provide a downloadable version of the database.

The Ombudsman's assessment

9. The Ombudsman notes in the first place that the database at issue is available to the public on the EUIPO's website. Article 87(b)(2) of the European Union Trade Mark Regulation provides that EUIPO *may provide online access to judgments of national and Union courts related to its tasks in order to raise public awareness of intellectual property matters and promote convergence of practices*. In accordance with the spirit of that provision, EUIPO has created and made available to the public the database at issue, the contents of which go far beyond what the provision foresees. Access to the database is unrestricted and results can be retrieved and downloaded by members of the public in the .pdf or .doc formats. The search tool is easy in use and allows for a more advanced search if needed.

10. In the second place, the Ombudsman notes that EUIPO is investigating and evaluating possible technical solutions so as to be able in the future to provide a downloadable version of the database. The Ombudsman commends EUIPO for this effort. The Ombudsman has no reasons to doubt that, as a matter of fact, the database currently does not exist in a downloadable format.

11. Against this background, the Ombudsman finds the EUIPO's answer to the complainant appropriate and reasonable.



## **Allegation of failure to inform the complainant of the available remedies**

Arguments made by the complainant and the institution

**12.** The complainant argued that EUIPO had not informed him of the available remedies in the reply to his initial request to download the database.

The Ombudsman's assessment

**13.** The request to EUIPO was formulated as a request for information rather than a request for access to documents. Currently, it is not usual that a reply to a request for information informs about possible remedies. Thus, it appears understandable that EUIPO did not provide information on the means of redress.

**14.** It thus follows that there was no maladministration.

### **Conclusions**

On the basis of the inquiry into this complaint, the case is closed with the following conclusion [3] :

**There was no maladministration on the part of the EUIPO.**

The complainant and the EUIPO will be informed of this decision.

Emily O'Reilly

European Ombudsman

Strasbourg, 11/01/2017

[1] Directive 2003/98/EC on the re-use of public sector information, as revised by Directive 2013/37/EU, OJ L 345, 31.12.2003, p. 90.

[2] Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents

OJ L 330, 14.12.2011, p. 39–42.

[3] Information on the review procedure can be found on the Ombudsman's website : <http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark>