

Case T-71/02

Classen Holding KG

v

Office for Harmonisation in the Internal Market
(Trade Marks and Designs) (OHIM)

(Community trade mark — Admissibility of appeal before the Board of Appeal — Formal requirements — Filing of a written statement setting out the grounds of appeal — Time-limit for applying for *restitutio in integrum* — Articles 59 and 78 of Regulation (EC) No 40/94)

Judgment of the Court of First Instance (Fourth Chamber), 17 September
2003 II - 3183

Summary of the Judgment

1. *Community trade mark — Provisions governing procedure — Restitutio in integrum — Time-limit for appeal — Starting point*
(Council Regulation No 40/94, Art. 78(2))
2. *Community trade mark — Provisions governing procedure — Restitutio in integrum — Appeal — Formal requirements*
(Council Regulation No 40/94, Art. 78(1) and (3))

3. *Community trade mark — Appeal procedure — Time-limit and form of the appeal — Statement of grounds to be filed within the time-limit — Conditions of admissibility*

(Council Regulation No 40/94, Art. 59; Commission Regulation No 2868/95, Art. 1, Rule 49)

1. The two-month period stipulated in Article 78(2) of Regulation No 40/94 on the Community trade mark for bringing an application for the re-establishment of rights (*restitutio in integrum*) starts to run from the removal of the impediment which prevented the applicant from complying with a time-limit in relation to the Office for Harmonisation in the Internal Market (Trade Marks and Designs), and not from the date on which the Office gives notification of a delay which may have occurred in the step having to be taken.

(see para. 41)

2. It is clear from Article 78(1) and (3) of Regulation No 40/94 on the Community trade mark that an application for the re-establishment of rights must be submitted in an application stating the grounds on which it is based and setting out the facts on which it relies. In addition, an application for the re-establishment of rights must be

made by a separate act, distinct from the act by which the appeal is brought.

(see para. 44)

3. Having regard to the combined provisions of Article 59 of Regulation No 40/94 on the Community trade mark and rule 49 of Regulation No 2868/95 implementing Regulation No 40/94, it a condition for the admissibility of an appeal before the Office for Harmonisation in the Internal Market (Trade Marks and Designs) that a statement setting out the grounds of appeal be filed within four months of notification of the contested decision.

(see paras 53-54)