

Council Regulation (EC) No 40/94 of 20 December  
1993 on the Community trade mark (repealed)

TITLE VII

**APPEALS**

*Article 57*

**Decisions subject to appeal**

- 1 An appeal shall lie from decisions of the examiners, Opposition Divisions, Administration of Trade Marks and Legal Divisions and Cancellation Divisions. It shall have suspensive effect.
- 2 A decision which does not terminate proceedings as regards one of the parties can only be appealed together with the final decision, unless the decision allows separate appeal.

*Article 58*

**Persons entitled to appeal and to be parties to appeal proceedings**

Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right.

*Article 59*

**Time limit and form of appeal**

Notice of appeal must be filed in writing at the Office within two months after the date of notification of the decision appealed from. The notice shall be deemed to have been filed only when the fee for appeal has been paid. Within four months after the date of notification of the decision, a written statement setting out the grounds of appeal must be filed.

*[<sup>F1</sup>Article 60*

**Revision of decisions in *ex parte* cases**

- 1 If the party which has lodged the appeal is the sole party to the procedure, and if the department whose decision is contested considers the appeal to be admissible and well founded, the department shall rectify its decision.
- 2 If the decision is not rectified within one month after receipt of the statement of grounds, the appeal shall be remitted to the Board of Appeal without delay, and without comment as to its merit.]

*Status: Point in time view as at 27/12/2004.*

*Changes to legislation: There are currently no known outstanding effects for the Council Regulation (EC) No 40/94 (repealed), TITLE VII. (See end of Document for details)*

#### Textual Amendments

- F1** Substituted by Council Regulation (EC) No 422/2004 of 19 February 2004 amending Regulation (EC) No 40/94 on the Community trade mark (Text with EEA relevance).

### *f<sup>2</sup>* Article 60a

#### Revision of decisions in *inter partes* cases

1 Where the party which has lodged the appeal is opposed by another party and if the department whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision.

2 The decision may only be rectified if the department whose decision is contested notifies the other party of its intention to rectify it, and that party accepts it within two months of the date on which it received the notification.

3 If, within two months of receiving the notification referred to in paragraph 2, the other party does not accept that the contested decision is to be rectified and makes a declaration to that effect or does not make any declaration within the period laid down, the appeal shall be remitted to the Board of Appeal without delay, and without comment as to its merit.

4 However, if the department whose decision is contested does not consider the appeal to be admissible and well founded within one month after receipt of the statement of grounds, it shall, instead of taking the measures provided for in paragraphs 2 and 3, remit the appeal to the Board of Appeal without delay, and without comment as to its merit.]

#### Textual Amendments

- F2** Inserted by Council Regulation (EC) No 422/2004 of 19 February 2004 amending Regulation (EC) No 40/94 on the Community trade mark (Text with EEA relevance).

### Article 61

#### Examination of appeals

1 If the appeal is admissible, the Board of Appeal shall examine whether the appeal is allowable.

2 In the examination of the appeal, the Board of Appeal shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Board of Appeal, on communications from the other parties or issued by itself.

### Article 62

#### Decisions in respect of appeals

1 Following the examination as to the allowability of the appeal, the Board of Appeal shall decide on the appeal. The Board of Appeal may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution.

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2 If the Board of Appeal remits the case for further prosecution to the department whose decision was appealed, that department shall be bound by the ratio decidendi of the Board of Appeal, in so far as the facts are the same.

3 The decisions of the Boards of Appeal shall take effect only as from the date of expiration of the period referred to in Article 63 (5) or, if an action has been brought before the Court of Justice within that period, as from the date of rejection of such action.

### *Article 63*

#### **Actions before the Court of Justice**

1 Actions may be brought before the Court of Justice against decisions of the Boards of Appeal on appeals.

2 The action may be brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty, of this Regulation or of any rule of law relating to their application or misuse of power.

3 The Court of Justice has jurisdiction to annul or to alter the contested decision.

4 The action shall be open to any party to proceedings before the Board of Appeal adversely affected by its decision.

5 The action shall be brought before the Court of Justice within two months of the date of notification of the decision of the Board of Appeal.

6 The Office shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

**Status:**

Point in time view as at 27/12/2004.

**Changes to legislation:**

There are currently no known outstanding effects for the Council Regulation (EC) No 40/94 (repealed), TITLE VII.