



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET  
(TRADE MARKS AND DESIGNS)

The Boards of Appeal

**DECISION**  
**of the Third Board of Appeal**  
**of 7 July 2014**

In Case R 1811/2013-3

**Meda AB**

Pipers väg 2A

Box 906

SE-170 09 Solna

Sweden

RCD holder / Appellant

represented by DENNEMEYER & ASSOCIATES, 55, rue des Bruyères, LU-1274  
Howald, Luxembourg

APPEAL relating to registered Community design No 798632-0001

**THE THIRD BOARD OF APPEAL**

composed of Th. M. Margellos (Chairperson), C. Bartos (Rapporteur) and E. Fink  
(Member)

Registrar: P. López Fernández de Corres

gives the following

## Decision

### Summary of the facts

- 1 On 28 September 2007, the registered Community design No 798632-0001 ('the RCD') was registered.
- 2 On 28 February 2012, the Office informed the RCD holder that the RCD would expire on 28 September 2012 and could be renewed as from 1 April 2012 until at the latest 1 April 2013, namely after a further six months grace period.
- 3 A transfer of ownership of the RCD was entered on the Register on 22 August 2012 along with a change of representatives.
- 4 On 16 April 2013, the Office informed the new RCD holder that the RCD expired on 28 September 2012.
- 5 On 4 June 2013, the RCD holder requested a *restitutio in integrum* and applied for the renewal of the RCD at the same time. All relevant fees were paid.
- 6 It argues that the instructions relating to the recordal of the transfer were duly dealt with but those relating to the renewal of the design were not received by the tax department of the company in charge of the renewals. A declaration signed by the Global Head of International Records as well as copies of communications between the Office and the representatives were filed.
- 7 With decision dated 19 July 2013 ('the contested decision'), the Office rejected the request for *restitutio in integrum* and confirmed the expiry of the RCD. It basically held that the non-renewal was due to negligence and that the representatives did not exercise all due care required by the circumstances. There was no evidence that a system of internal control and monitoring was maintained.
- 8 The RCD holder filed an appeal, followed by a statement of grounds. Interlocutory revision was not granted.
- 9 The RCD holder requests the contested decision to be annulled, the request for *restitutio in integrum* to be allowed and the renewal of the RCD to be accepted and asks for an oral hearing.
- 10 It argues that the Office mistakenly refers to a Mr S. instead of a Mr K. in the summary of facts in the decision. It also claims that the Office did not understand the relationship between Dennemeyer & Associates SA and Dennemeyer & Company Sàrl which are two different entities, dealing with either recordal matters (Dennemeyer & Associates D&A) or renewal matters (Dennemeyer & Company Sàrl). It alleges that Dennemeyer & Company Sàrl is a world leader in payment of renewal fees. The renewal would have been done had the instructions reached Dennemeyer & Company Sàrl, following their internal guidelines. It claims that it was the fact that the double-checking system failed in an exceptional manner thereby preventing the transmission of the instructions to

Dennemeyer & Company Sàrl for them to perform the payment of the renewal fee and set up a follow up mechanism. All due care required by the circumstances had been taken. Copies of the Annexes submitted previously and an additional Annex 8 referring to the internal guidelines relating to payment instructions were also filed.

### **Reasons**

- 11 The appeal is admissible. However, it is not well founded.

#### *Article 64 CDR*

- 12 The RCD holder submits a request pursuant to Article 64 CDR in order to obtain an oral hearing before the Board. However, the Board does not consider that the oral proceedings would be expedient or necessary in the present case. Therefore the request is rejected.

#### *Article 67 CDR*

- 13 It is apparent from Article 67 CDR that *restitutio in integrum* is subject to two conditions, first, that the party acted with all due care required by the circumstances and, second, that the non-observance of the time-limit by that party has the direct consequence of causing the loss of any right or means of redress (with respect to the identical provision of Article 81 CTMR, see order of 6 September 2006, T-366/04 ‘HENSOTHERM’, para. 48; judgment of 20 April 2010, T-187/08 ‘Representation of a dog’, para. 28).
- 14 It is also apparent from that provision that the requirement to exercise due care lies in the first instance with the RCD holder. Thus, if the RCD holder delegates administrative tasks relating to the renewal of a design, it must ensure that the person chosen offers the assurance necessary to enable it to be assumed that those tasks will be carried out properly. Moreover, since those tasks have been delegated, the person chosen is subject to the requirement to exercise due care just as much as the RCD holder. Since that person acts on behalf of and in the name of the RCD holder, its actions must be regarded as being the RCD holder’s actions (with respect to the identical provision of Article 81 CTMR, see judgment of 19 September 2012, T-267/11, ‘VR’, para. 19).
- 15 The words ‘all due care required by the circumstances’ require a system of internal control and monitoring of time-limits to be put in place that generally excludes the involuntary non-observance of time-limits. It follows that *restitutio in integrum* may be granted only in the case of exceptional events, which cannot therefore be predicted from experience (see judgment of 19 September 2012, T-267/11, ‘VR’, para. 20).
- 16 Consequently, it must be assessed whether the RCD holder or its representative acted with all due care required by the circumstances. As a next step, it must be assessed whether the agency responsible for paying the renewal fee acted with all

due care required by the circumstances. Finally, it is also necessary to evaluate the representative's action.

- 17 If a professional representative is instructed, the measure of due care is determined by their behaviour (see judgment of 13 May 2009, T-136/08 'Aurelia', para. 15). If the RCD holder or its representative have instructed a specialist firm with the payment of the renewal fee, the standard of due care requires that such firm has put in place a system of internal control and monitoring of time-limits that generally excludes the involuntary non-observance of time-limits. *Restitutio in integrum* therefore may only be granted in the case of exceptional events, which cannot be predicted from experience (see judgments of 20 April 2010, T-187/08, 'Representation of a dog', para. 29 and of 13 May 2009, T-136/08, 'Aurelia', para. 26). If the failure to observe the time-limit is caused by an action of an office employee, the due care requirements do not relate to the action of the office employee but to the organisation and control obligations of the representative.
- 18 According to the representative's submission, the error that gave rise to the non-observance of the time-limit to renew the design was the fact that the printed instructions were wrongly placed and transported by an employee preventing the double-check system of Dennemeyer & Associates SA and the follow up system of transmission of instructions of Dennemeyer & Company Sàrl.
- 19 A declaration of the Global Head of International Recordals dated 30 May 2013 is annexed to the representative's explanation of the recordal monitoring system.
- 20 The International Recordals Department of Dennemeyer & Associates SA handles the recordal of an assignment, a merger, a change of name or a change of address relating to, in particular, designs. It transpires from the declaration that if a request for payment of annuity or renewal fee is sent simultaneously, the International Recordals Department must forward by email the request to the Patent Annuity Department of the Dennemeyer Company. It further explains that Dennemeyer & Associates SA, referred to as D&A SA, deals with recordal matters and Dennemeyer & Company Sàrl referred either as D&A srl or D&A Co deals with the payment of renewal fees.
- 21 The appellant argues that the companies have double-checking and follow-up systems to ensure that the instructions are processed accordingly.
- 22 In the present case, it is clear from the facts that Dennemeyer & Associates SA are the recorded representatives of the RCD holder.
- 23 The representatives described the renewal procedure for RCDs based in particular on internal guidelines, which explains how to deal with renewal instructions. The instructions received by email are forwarded to the appropriate department within 24 hours. From then on, one employee prints the email, handles the instructions and indicates on the printed copy the list of his/her actions before placing the copy in a rack and delivers it to a second employee who performs a double check. Following the renewal and transfer instructions, the Global Head of International Recordals of Dennemeyer & Associates SA forwards this email to the department in charge of the transfer recordal within the company. The receiver of the email handles the transfer recordal, as shown in the email of 13 September 2012

(Annex 3 of the declaration of the Global Head of International Recordals dated 30 May 2013) but in this case it did not instruct the tax department to pay the renewal fees for the RCD, as explained in paragraph 13 of the said declaration.

- 24 The instructions received in the present case by the Global Head of International Recordals of Dennemeyer & Associates SA were sent to the recordal department but nobody took care of the instructions of renewal.
- 25 Although the RCD holder describes the existence of double-checking and follow-up systems to prevent right loss, it appears that they could only be performed at a later stage, namely once the instructions are properly forwarded to a second or third person. The systems do not exclude involuntary non-observance of time-limits. Besides, it does not transpire from the arguments and the evidence that the first and second receiver checked the status of the different actions requested by the client. According to the description given by the representative, its internal control and monitoring system does not provide for any control from reception of the instructions but only at a later stage. As shown in paragraphs 13 and 14 of the declaration in Annex 7 of the statement of grounds, nobody checked the status of the renewal of the design rights.
- 26 In the present case such a chain of errors can neither be regarded as 'exceptional circumstances' nor as 'an isolated oversight'. It shows the absence of due care. The RCD holder's representative did not verify that the renewal fee of the RCD was paid in due time and did not monitor the reception of the notification reporting the renewal of the design and the entry of the said renewal in the Register.
- 27 Finally, it must be mentioned, that not even the RCD holder acted with 'all due care'. It is apparent from the facts that it gave instructions to renew the RCD, however, it neither checked whether its instructions were performed nor requested a renewal certificate. The RCD holder failed to monitor the reception of the notification reporting of the renewal of the RCD and the entry of the said renewal in the Register.
- 28 Under these circumstance, both, the representative and the RCD holder showed that they did not act with all due care as required by Article 67 CDR.
- 29 Consequently, the appeal is dismissed.

**Order**

On those grounds,

THE BOARD

**Dismisses the appeal.**

Th. M. Margellos

C. Bartos

E. Fink

Registrar:

P. López Fernández de Corres