

FOI Release
Information released under the Freedom of Information Act

Title: Internal practice notes sent to trade mark examiners during October and November 2013

Date of release: 16 January 2014

Information request:

All internal practice notes (current practice notes) that have been sent internally to Trade Mark Examiners between October 2013 and November 2013.

Information released:

I can confirm that the Intellectual Property Office (IPO) does hold information falling within the scope of your request. However, some of this information is exempt under sections 43(2) and 36(2) (b) (ii) of the Freedom of Information Act and is therefore being withheld.

Section 43(2) exempts information, the disclosure of which would be likely to prejudice the commercial interests of proprietors of trade marks which are discussed in these documents. As you will be aware, some trade marks will inevitably prompt a degree of discussion regarding their acceptability for registration, both before and after publication. Furthermore, such discussions can take place whilst those marks are still in their opposition period i.e. where third parties are still able to submit observations and/or commence opposition proceedings. In circumstances where IPO has concluded that a particular mark may have been a 'borderline' acceptance, the publication of such conclusions may create a perception of vulnerability which could prejudice the commercial interests of the proprietor of a newly accepted mark – particularly if its validity was subsequently contested via the aforementioned observation and opposition routes.

Section 36(2) (b) (ii) exempts information that in the reasonable opinion of a qualified person, if disclosed, would be likely to inhibit the free and frank exchange of views for the purposes of deliberation. The reviewing of entries in the Trade Marks Journal would not serve the proper function of promoting consistency and quality in decision making if trade mark examiners and senior registry officers were inhibited from evaluating acceptances in a free and frank manner.

Both of these exemptions are 'qualified', so require the IPO to consider the balance of the public interest in relation to this request. Having considered the public interest, the IPO's decision is that, in all the circumstances of the case, the public interest in maintaining the exemptions outweighs the public interest in disclosing the information in full.

However, in the interests of rendering the process of deliberation more transparent, we are content to release redacted versions of the notes, as attached, with the marks and all references to them removed.