

Lord John Mogg
Chairperson Management Board
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Brussels 19 March 2010

Dear Lord Mogg,

**OHIM Cooperation Fund - Proposal for field 4, enforcement activities:
*A Tool for electronic exchange of data between OHIM, NPTOs, IP Enforcement
Authorities and right holders***

Following the last extraordinary joint meeting of the Administrative Board and Budget Committee of 24 February 2010 and your letter and annexes dated 5 March 2010, please find below comments and a proposal in connection with field 4, enforcement activities. This proposal, a tool for electronic exchange of data between OHIM, NPTOs, IP Enforcement Authorities and right holders, is supported by AIM, BUSINESSEUROPE, ECTA and INTA.

Current situation

Currently IP Enforcement Authorities (customs officers, police officers, officers of the different Ministries of Economic Affairs, etc.) face difficulties in detecting counterfeit products due to lack of access to the existing registered IP rights, lack of right holders' contact points and lack of means to detect fakes from original goods.

At the same time right holders are confronted with requests from national IP Enforcement Authorities to provide such information. They currently provide such information on a country by country basis leading to a multiplication of efforts to enforce their rights (for example, although a Community application for customs action is available, the information has to be circulated from one Member State to another). Moreover, the way that they are supposed to provide the information differs from country to country (a standard form exists for the application for customs action, but the information contained therein is normally not circulated to Enforcement Authorities other than customs).

Proposal

This proposal aims to set up an electronic tool to facilitate the exchange of data between OHIM, NPTOs, IP Enforcement Officers and right holders, among others, in the framework of the existing customs application for customs action. The tool should be designed to provide IP Enforcement Officers with a password protected web-based tool that contains relevant and visual information in a template structure in the IP Officers' preferred language. The tool will hold data concerning the registered IP rights (trade marks, designs) information about logistics and products, and will provide country specific or region specific information to the IP Enforcement Authorities. Obviously, also agents or right holders contact details will be shared with Authorities. As such the data contained in that database will be up to date on the existing IP rights such as currently available through tools such as TM view (and possibly later Design view) and data which the right holder will import through a password protected access.

Why does this proposal fit the goals of the Cooperation Fund?

This proposal supports the third goal of the Cooperation Fund, namely: *“Assisting the competent Authorities in the EU member states to better promote and enforce trade mark and design rights in their jurisdictions”* by giving those Authorities access through a secure database to the existing IP rights and information shared by the right holders. Moreover, in view of the fact that this will be a digital tool, it supports the National Offices in their aim to modernize and streamline along common lines the provision of effective and efficient services. A similar proposal features in the Inventory of Users' and National Offices' wish list (see note “Delivering the Cooperation Fund Program” of 2 February 2010) and was supported by Bulgaria, Czech Republic, Malta, Portugal, Slovak Republic, Slovenia, UK, AIM, BUSINESSEUROPE and ECTA).

Advantages of the tool

The tool will be an electronic application that will allow IP Enforcement Authorities to use one tool in the whole European Community to find information about registered trade mark and design rights, contact information about the right holders and specific information to allow detection of counterfeit goods (the value of the original goods on the legitimate market, the place and country of production of the goods or their intended destination, particulars identifying consignment or packages, (air)ports of origin, destination and the means of transport used, the identity of the importer, exporter or holder of the legitimate goods; the country or countries of production and the routes used by traffickers, the technical differences, if known, between the authentic and suspect goods). NPTOs will play a role as central national information provider by training national Enforcement Authorities on how to work with the tool and informing them about the relevance of the data regarding applied and registered data. They could also be entrusted to control and grant access to the National Enforcement Authorities. The tool builds on existing tools such as TM view. Since it will be managed by NPTOs, its access could be freely available to companies, SMEs and multinationals to distribute relevant information over the whole European Community through a single tool. The data must be maintained in a secure and safe environment at authority level and as such information uploaded by right holders will only be visible to the competent Enforcement Authorities.

Costs

The costs will be relatively low in view of the fact that a lot of the data is already contained in existing databases such as TM view. When challenged by TAXUD, right holders entered into discussion with software providers who indicated that such tool could be built for 500.000 Euro. 100.000 to 200.000 Euro should be budgeted to promote the tool with the competent Enforcement Authorities.

We remain of course at your disposal if you have any questions or need further clarifications.

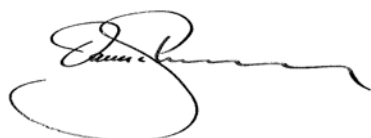
Yours sincerely,



Dawn Franklin, Chairman AIM Trademark Committee



Gerhard Bauer, Chairman BUSINESSEUROPE Trademarks & Designs Working Group



Marius Schneider, Chair of ECTA Anti-Counterfeiting Committee



Gabrielle Olsson Skalin, INTA Observer to the OHIM Administrative Board and Budget Committee