



European Communities Trade Mark Association

Mr Erik Nootboom
Head of Unit International Market DG

Mrs Pérez Ferreras
Industrial property, Markt/E/2
European Commission
Rue de la Loi, 200 (C 100 5/131)
B-1049 Brussels

Antwerp, March 7, 2005

Dear Mr Nootboom and Mrs Pérez Ferreras,

Re: The draft regulation amending Commission Regulation (EC) No 2869/95 of 13 December 1995 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs)

We hereby refer to your letter dated January 25, 2005 seeking comments on the draft Regulation for amending Commission Regulation (EC) No 2869/95 of 13 December 1995 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) for which we thank you.

With the letter dated January 13, 2005, ECTA has already provided you with comments on the subject. However, ECTA would like to take this opportunity to clarify some of the issues raised.

Please be informed that as a matter of principle ECTA welcomes any lowering of the fees.

From a financial point of view, ECTA understands that the OHIM has accrued such a surplus that action needs to be taken. From a legal point of view, however, ECTA would like to draw your attention to the following:

- the services rendered by the OHIM still need to be improved, in particular a reduction in the delays suffered by applicants waiting for a decision from the OHIM;
- one considering lowering of the fees, one should consider:
 - o The need to obtain a balance between the interests of all the parties concerned, namely the applicant and the defendant (in inter partes proceedings), and it is irrelevant whether these are large companies, SMEs or individuals. One must also not ignore the interests of consumers.

For example, ECTA members attach great importance to the fact that by lowering the application/registration fees but raising the opposition, appeal and cancellation filing fees, this will create or accentuate an imbalance between the rights of applicants and of defendants.

ECTA is therefore not in favour of the increase of the Opposition, Appeal and Cancellation fee as proposed in the draft amending Commission Regulation.

- The value of the right acquired and the legal certainty third parties may expect as regards registered marks.

For example, by lowering the application/registration fees too much you run the risk of watering down the resulting trade mark right by attracting into the system trade marks that do not need a full EU coverage and which for only marginally less cost could just as easily have been filed nationally.

This led ECTA in its earlier letter to state that “the fact that the OHIM does have a surplus should not necessarily lead to a significant decrease in official fees”; and to try to find some alternatives for how the surplus could be used, should there still be some surplus once the fees have been reasonably lowered. In this connection ECTA, amongst other things, suggested that some of the surplus might be paid back to the national Offices. If, as we now understand, that the surplus cannot be transferred as such to the national offices, ECTA wonders whether, as an alternative, some of the services rendered by national offices could be subsidized in the same way as for search reports. For example, it could perhaps be considered whether for each seniority claimed, the national offices could receive some disbursement for keeping available the data regarding the national trade mark registration for which the seniority has been claimed? Keeping full and updated data of national trade mark registrations for which seniority was claimed but which have subsequently been allowed to lapse is of interest not only to trade mark owners but also to third parties.

We do hope that these clarifications are helpful and we remain at your entire disposal for any further exchange of views on this subject.

Yours sincerely,



Max Oker-Blom
President



Sandrine Peters
Legal Co-ordinator