Blog

European Union - Commission consults with CTM users, aims for autumn deadline

By Adam Smith
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How do you look for something that you don't know how to detect? The question over whether the CTM register has become cluttered is now at stalemate. While it was among the topics that the European Commission discussed with user groups last week in light of the publication of the **European trademark study** (in the very same room where the 2008 Compromise Solution was negotiated), it is not clear how on earth the Commission is expected to make sense of the issue.

The Max Planck Institute study, so decisive in other aspects of the CTM system, equivocates: "There is no sustainable documentation showing that access to trade marks is substantially impaired by congestion of registers. On the other hand, it would equally be unwise to contend that the features of the present system which tend to invite a certain amount of cluttering are not giving rise to any problems at all, and will not do so in the future."

After the hearing last week, Christina Sleszynska, INTA's European representative, reported that "there seemed to be agreement that no one had yet been able to actually 'see' or 'find' the problem". This makes it perhaps the one issue raised in the study that will persist long after the genuine use issue is put to bed by the ECJ. Opposing views were aired before the Commission – mirroring, says Sleszynska, "INTA's own differing opinions on these questions within its committees". But while opponents on both sides are passionate about their arguments, neither has the data to prove them.

It has emerged that some attorneys are pressured by their partners – or even a more widespread culture – to advise clients that they can register in three classes for the price of one. Some people would probably say that this practice is enough to prove that cluttering is happening. Of course, one way to clear up the unseen problem is to ban the use of class headings and stick to one class, one fee. The study suggests "the introduction of fees which will make claiming additional classes more expensive than today". **Tove Graulund**, MARQUES representative, told *WTR* that she is "worried" that this idea will be carried forward because it will lead to an increase in OHIM's surplus (the implication being that cluttering is not a problem and that applicants will need to pay more for the three-class registration they wanted in the first place).

On genuine use, sources report that the Commission is tending to favour the dominant view– that the European Union is a single market, that political boundaries are not relevant and, in any case, the courts can decide on whether use of a particular mark in one particular area of the Community constitutes genuine use under Article 15 of the CTMR. "That's my feeling of where they're going," commented Graulund.

Another topic discussed on the day was the redistribution of fees from OHIM to the national office network. There is widespread agreement that money should be paid in exchange for services rendered, but exactly how to set a procedure in place for that is still open for debate. APRAM proposed checks and balances before and after the transfer. "This is a good proposal," said **Annick Mottett Haugaard**, president of ECTA, afterwards. "The important thing is that the interest of the user should be taken into account. There *should* be reporting afterwards to OHIM's Budget Committee."

The Commission intends to consult internally over the summer and then publish a set of proposals in October, despite scepticism over what is seen to be a tight schedule. "I am convinced they will do whatever it takes to get there," commented Graulund. "That's what they want – especially when people are saying they can't stick to that timeline."

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