

Master Program in Intellectual Property Law

Spring 2010

Module 2A

European Trade mark Law

General information

Most European countries have a long history of trade mark protection. Since the second half of the nineteenth century the main route to obtain the exclusive rights has been by means of registration. It was realised at the dawn of the common market that the territorial nature of those rights conflicted with the fundamental principle of free movement of goods and services. In order to make away with the trade mark related obstacles for cross border trade and to eliminate the most pertinent disparities between national laws, the First Council Directive (104/89/EEC) approximating the laws relating to trade marks in the Member States was adopted in 1998. The common market for branded goods was realised in 1994 when regulation 40/94 (EC) was adopted and introduced the Community Trade Mark (CTM). The CTM is a unitary character valid and enforceable throughout the EU by registration with the Office for harmonization of the Internal Market (OHIM). Thus, there are two parallel systems for trade mark protection in Europe. Today the trade mark directive is repealed by directive 2008/95/EC which entered into force on 28 November 2008, and the trade mark regulation is repealed by regulation 207/2009 which entered into force on 13 April 2009.¹ However, the wordings of the new statutes do not differ from those of the original ones, and since only the legislation in force at the material time for the facts in the main proceeding apply, the new trade mark statutes have so far not been given any interpretation.

We will focus primarily on the construction of the supranational trade mark statutes by the European Court of Justice (ECJ) and by the Court of First Instance (CFI). After the adoption of the Treaty on the Functioning of the European Union (TFEU) on 1 December 2009, the name of the ECJ has been changed to the Court of Justice of the European Union (CJEU) and the CFI has changed name into the General Court of the European Union (GCEU).

Aim and scope:

The course aims at deepening the understanding of trade mark protection as an essential element in the creation of a system of undistorted competition in Europe. The role of the trade mark in the flow of dealings is defined by the beginning of the rights, by the scope of protection afforded the proprietor, and by the duration of the rights. During the Course we investigate all three aspects of trade mark protection. As to the beginning of the rights, the Course addresses the particular questions relating to unconventional trade marks as well as the absolute and relative hindrances for registration. As to the scope of protection afforded the proprietor, the difference between ordinary trade marks and reputed trade marks are in the limelight. We also look into the limitations of the effects of a trade mark and parallel trade in

¹ Directive 2008/95/EC of the Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks, OJ 2008 L299, p. 25. Council Regulation (EC) No 207/2009 on the 26 February 2009 on the Community Trade Mark, OJ 2009 L78 p. 1.

this context. As to the duration of the trade mark rights, use of the sign as a mark is a central theme. Ultimately, the framing of all three aspects of trade mark protection sound in the social benefits from workable competition.

Legislation:

- First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks.
- Council Regulation 40/94 (EC) of 20 December 1993 on the Community Trade Mark.
- Directive 2006/114/EC concerning misleading and comparative advertising

Examination:

The examination of Module 2A Trade Mark Law consists of:

- 1) Writing an individual essay which is discussed at the examination seminar.
- 2) Active participation in a group assignment to write a petition and litigate the position of the group at the examination seminar.

Topics for individual essays and the group assignment are distributed at the beginning of the Course.

Important dates and times:

Friday April 9, 09.00: Course introduction.

Thursday April 29, 09.00: Submission of the individual essay and of the group petition by email to the Course Administrator.

Thursday May 6, 09.00: Examination, litigation between the groups and discussion of individual papers.

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