

Unitary Marks on Fragmented Markets? System Competition Between the CTM and National Trade Mark Law

Abstract

As a contractor of the European Commission, the Max-Planck-Institute for Intellectual property, Competition and Tax Law (MPI) currently carries out a Study on the Overall Evaluation of the European Trade Mark System. The Study involves all issues of interest for trade mark law, including (further) harmonisation within the present ambit of the trade mark directive and beyond, and can also make proposals for amendment of the Community Trade Mark Regulation (CTMR) in its substantive and/or procedural aspects. Most importantly, however, the Study will undertake an assessment of the way in which the Community system and the national trade mark systems co-exist now and in the foreseeable future. In this context, it will be addressed how the level of fees for acquisition and renewal of CTMs and national marks respectively impact users' choice of one or the other system (and how those fees should be distributed), as well as how cooperation can be improved between OHIM and the national offices on the one hand, and in-between the national offices on the other.

In addition, the Study will consider substantive issues of relevance for the interaction between the national systems and the CTM. This concerns in particular the notion of 'genuine use' of CTMs as compared to use of national trade marks, and other issues where the notion of a single unitary right being acquired, maintained or enforced within the entire European Union might arguably interfere with the interest to ensure a long-term perspective for national trade mark systems, and to avoid conflicts possibly ensuing from amassing unnecessarily broad trade mark rights in one single registry. Without being able to make any specific prognoses at this instance, it seems clear that political boundaries should not be decisive for adjudicating issues relating to CTMs. However, it is also important to realise that the concept of unitary rights should not be executed in a rigid and absolute manner, but that it must be understood and applied in the light of other important legal maxims, such as proportionality and, where appropriate, equity.

Beyond its actual relevance for the topic investigated by the Trade Mark Study, the issue might give an example for other situations where protection systems existing on different levels are in competition with each other. From that perspective, it is suggested that it may fit well with the general topic of this conference.

A. Kur, 6.4.2010