



OBJECTIONS TO THE ADOPTION OF “PLAIN PACKAGING” AND EXCESSIVE MEASURES RESTRICTING NORMAL USE OF TRADEMARKS

On 10 July 2013, the European Parliament's Environment, Public Health and Food Safety (ENVI) Committee will vote on the EU Commission's proposal for a revised Tobacco Products Directive (TPD).

The signatories of this statement call on the ENVI Committee members to **vote against extreme amendments such as those introducing plain packaging, excessively large health warning labels on packaging and arbitrary prohibition of trademarks and brands** as proposed in Article 12 of the revised TPD, because, if adopted, these measures will fully undermine the legal protection offered by intellectual property (IP) rights and other fundamental rights. In this respect, we wish to refer to the Opinion of the Committee on Legal Affairs (JURI) for the ENVI Committee of 25 June 2013, inter alia reciting in the Short Justification that:

"Some provisions in the Commission's proposal also raise serious doubts as to their conformity with fundamental rights such as the right to property, the right to freedom of expression and information and the freedom to conduct business. These rights are enshrined in the Charter of Fundamental Rights of the European Union ("the Charter") and may only be limited pursuant to Article 52(1) of the Charter if the limitation is necessary, genuinely meets objectives of general interest and is proportional. [...]"

Intellectual property rights such as trademarks are explicitly covered by the right to property in Article 17 of the Charter. The CJEU held that warnings on the unit packages are admissible "in a proportion which leaves sufficient space for the manufacturers of those products to be able to affix other material, in particular concerning their trademarks". Reducing the space available on the front and back surfaces to less than 25% would, however, make it difficult to sufficiently distinguish the products of one producer from those of others, thereby depriving the trade marks of one of their main functions. The trade marks could also not properly fulfil their other functions such as its advertising function. This would also not be in accordance with national constitutional law as well as international treaties such as the TRIPS Agreement."

We thus fully support the JURI Committee and the other Opinion Giving Committees which all voted against the amendments introducing plain packaging and excessively large health warning labels (by reducing the Commission's proposed size of 75% of the total packaging to 50%) and arbitrary prohibition of trademarks and brands as proposed in Article 12 of the revised TPD. We then urge the ENVI Committee's members to take on board the opinions expressed by five other parliamentary committees, as well as those expressed in the European Council's General Approach of 21 June 2013.

As underlined in our Joint Statement of 23 April 2012 (see <http://tinyurl.com/n5yxppy>), based upon the expertise and experience of our members -who include professional representatives and other practitioners, in-house counsel, IP owners representing all industry sectors, IP judges and law professors- we are dedicated to the protection and development of IP rights in general, and trademarks in particular. We are all united by the principle of advancing the cause of IP law to ensure that IP rights are protected against abuse and misappropriation.

Furthermore, we consider that the interests of IP right-holders need to be reconciled with the public interest in a balanced and well-functioning IP system, in order to protect consumers from deception and confusion. IP

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rights are a cornerstone of the European economy and the EU's Internal Market. They provide significant value to their owners and wider wholesale and retail circles. They are likewise essential to safeguard public confidence and the interests of consumers.

Trademarks and trade dress are particularly relied upon by consumers as signposts of genuine goods and services. This is true for both word trademarks and figurative (graphic) trademarks, and for trademarks combining the two, as well as so called "non-traditional" trademarks such as packaging shapes and colours *per se*. Trademarks also indicate the source of goods and services to assure consumers of the quality of the products that they purchase or that they would consider purchasing. This fundamental function cannot be fulfilled if trademarks are not noticeable, or unavailable, to consumers when selecting a product for purchase. The inability to recognise a brand or trademark on a product would lead to consumer confusion, and therefore diminish the goodwill acquired by that brand through considerable investment and effort over a significant period of time. In fact, the inability to recognise a brand also takes away consumers' freedom of choice.

Accordingly, we confirm our strong concerns about legislation precluding -fully or in part- brand owners from making legitimate use of their trademarks, which would amount to an indirect legislative expropriation of private IP and would lead to the extinction of their IP rights. Any such legislation would adversely affect markets, with harmful impacts on the European and worldwide economies, due to escalating counterfeiting and piracy. Where there is a need to achieve important public policy objectives, such as improving public health, any proposed legislation and/or policy options must ensure the preservation of an appropriate balance between achieving the policy objective and maintaining with legitimate IP and other proprietary rights, especially when there is no compelling evidence that extreme measures will help to achieve the public policy objectives. Additionally, such legislation could have a spill-over or domino effect on other products and industries, especially those which are already subject to specific mandatory constraints such as alcohol, food, medicines, confectionery, beverage, cosmetics and automotives.

We urge the members of the ENVI Committee to take into account the inconsistency between the proposed amendments on plain packaging and the 75% size health warning labels and the EU's international trade obligations, including those under the World Trade Organisation's Intellectual Property Agreement, as well as the threat such measures would pose to the ongoing EU-US trade negotiations.

It is crucial that the European Parliament does not send a worrying signal to the business community about its commitment to respecting and protecting IP rights.

Consequently, the signatories of this statement encourage the members of the ENVI Committee and, subsequently, the Members of the European Parliament, to vote against the introduction of plain packaging and extreme measures restricting normal use of trademarks such as 75% size health warning labels and arbitrary prohibition of trademarks and brands as proposed in Article 12 of the revised TPD.

APRAM - Association des Praticiens du Droit des Marques et des Modèles

BMM - Association Benelux pour le droit des Marques et des Modèles

ECTA - European Communities Trade Mark Association

MARQUES - The European Association of Trade Mark Owners

UNION-IP - UNION of European Practitioners in Intellectual Property

ASSOCIATIONS PRESENTATION

Enclosure to the Joint Statement of 03 July 2013: "OBJECTIONS TO THE ADOPTION OF "PLAIN PACKAGING" AND EXCESSIVE MEASURES RESTRICTING NORMAL USE OF TRADEMARKS".



APRAM - Association of Trade marks and Designs rights Practitioners– is an international Association for French-speaking specialists in industrial and intellectual property, in particular Trade marks and designs.

The association, which now has more than 850 members, was founded 35 years ago and is open to all French-speaking lawyers practicing, all over the world, in the field of Trade marks and designs. It gathers together in-house intellectual property specialists, Attorneys at law and Trade mark Attorneys.

The purpose of the association is notably to play an active role in, and be at the forefront of, further to consultation or on its own initiative, discussions concerning intellectual property and business law in France, Europe and the world.

As a prominent international intellectual property association, **APRAM** is notably member of the OHIM's users group and is observer at the World Intellectual Property Organization (WIPO).

More information about **APRAM** and its initiatives is available at <http://www.apram.com>



The Benelux Trademark Association (**BMM** or Beneluxvereniging voor Merken- en Modellenrecht / l'Association Benelux pour le droit des marques et des modèles) is the professional organisation that defends the interests of all trademark professionals in the three Benelux countries. The association has more than 600 members, which are active as trademark agents, in-house counsels, attorneys and academics. The **BMM** promotes trademark law and other forms of intellectual property law and guarantees the professional quality of the services rendered by its members, by organizing conferences and giving training. The organization imposes an ethical code to its members. The organization keeps close contacts with the Benelux Office for Intellectual Property Law and with OHIM. More information is available on the website <http://www.BMM.eu>.



ECTA, the European Communities Trade Mark Association, was formed in 1980.

ECTA numbers approximately 1.400 members, coming from all the Member States of the European Union with associate members from all over the

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world. It brings together all those persons practising professionally in the Member States of the European Community in the field of trade marks, designs and related IP matters. These professionals are lawyers, trade mark advisors, trade mark attorneys, in-house counsel and others who can be considered specialist practitioners in these areas.

The Association has always concentrated on those issues where the interests of all members coincide and has refrained from taking a position on matters in which there is no common viewpoint.

The extensive work carried out by the Association so far, following the above guidelines, combined with the high degree of professionalism and recognized technical capabilities of its members, has established **ECTA** at the highest level and has allowed the Association to achieve the status of a recognized expert spokesman on all questions related to the protection and use of trade marks, designs and domain names in and throughout the European Union, and for example, in the following areas:

- Harmonization of the national laws of the EU member countries;
- Community Trade Mark Regulation and Directive;
- Community Design Regulation and Directive;
- Organisation and practice of the OHIM.

In addition to having close links with the European Commission and the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM), **ECTA** is recognized by WIPO as a non-Government Organisation (NGO).

ECTA does also take into consideration all questions arising from the new framework affecting trade marks, including the globalization of markets, the explosion of the Internet and the changes in the world economy.

For more information: <http://www.ecta.org>



MARQUES is the European association representing brand owners' interests. The **MARQUES** mission is to be the trusted voice for brand owners.

Established in 1986 and later incorporated in the United Kingdom as a not-for-profit company limited by guarantee, **MARQUES** unites European and international brand owners across all product sectors to address issues associated with the use, protection and value of IP rights, as these are vital to innovation, growth and job creation, which ultimately enhance internal markets. Its membership crosses all industry lines and includes brand owners and IP professionals in more than 80 countries. The trade mark owners represented in the Association together own more than two million trade marks which are relied upon by consumers as signposts of genuine goods and services.

MARQUES is an accredited organisation before the Office for Harmonisation in the Internal Market (OHIM), appointed observer at the OHIM Administrative Board and Budget Committee, an official non-governmental observer at the World Intellectual Property Organisation and a registered interest representative organisation (ID 97131823590-44) in the Transparency Register set up by the European Parliament and the European

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Commission, which extends and replaces the former Register of Interest Representatives, opened by the commission in 2008.

An important objective of **MARQUES** is to safeguard the public interest by ensuring the proper protection of trade marks and to preserve the interests of trade mark proprietors with regard to the regime of trade mark protection. **MARQUES** attempts to achieve these objectives by advancing the cause of trade mark laws which protect the public from deception and confusion.

Intellectual property rights are a crucial aspect of the global economy and trade marks play a significant role in free trade and competition in the marketplace.

More information about **MARQUES** and its initiatives is available at <http://www.marques.org>



Foundation - In 1961, twenty two far-sighted Patent Attorneys from nine European countries founded the "**union** of European Patent Attorneys" with the intention of providing European colleagues with a forum for discussing and influencing forthcoming draft laws and international agreements, and also helping the profession in Europe to grow together. Although originally restricted to Patent Attorneys in the countries of the European Economic Community, **union** has meanwhile removed these limitations from its statutes today welcomes free and employed intellectual property practitioners from all (geographical) European countries, as expressed in the present name "**union** of European Practitioners in Intellectual Property". Still retained are the limitations to European membership and the concentration of activities on problems and developments which especially affect the professionals in Europe.

Aims – **union**, also referred to as **UNION-IP**, is an association of practitioners in the field of Intellectual Property, that is, of individuals whose principal professional occupation is concerned with Patents, Trademarks, Designs or Copyright and related subjects and who carry on their profession independently or as employees. **UNION-IP** is a private, free, international association that is not dependent on any national or international authority: it approves its own members, in accordance with its statutes, in total independence, and likewise decides on its own activities and its own budget. It aims on the one hand to work continuously on current developments in Intellectual Property in Europe, especially by making early submissions during the preparation of proposed laws and treaties with the intention of influencing them and on the other hand to devote itself to the improvement of professional and personal understanding between European practitioners in the Intellectual Property field in different countries and different branches of the profession.

For more information: <http://www.union-ip.org>