



European Communities Trade Mark Association

13 April 2015

**ECTA'S COMMENTS REGARDING ARTICLE 28(5) - RETROACTIVITY
PROPOSAL, OF 18 JULY 2014, FOR A REGULATION ON THE COMMUNITY
TRADE MARK**

One of the issues that ECTA has commented, regarding the Council Proposal No. 11826/14 for a Regulation on the Community trade mark, dated 18 July is **the wording "irrespectively of when the trademark was applied for or registered" of Article 28 (5).**

We have acknowledged that the wording "*irrespectively of when the trademark was applied for or registered*" has, at a very late stage, been inserted without any discussion in the European Council. This, we believe, indicates that the provision in question should be applied retroactively. Retroactive legislation fights against all sound principles of governance in all countries which follow the rule of law. This is the case, for instance, in the Nordic countries. It would mean, in this case, that trademark proprietors of an earlier mark cannot rely upon the rights they have once obtained and received.

If this is the case, we believe it would be better to either delete this text or to allow for a period during which a proprietor can adjust its trade mark coverage with the new provision, as provided for in the proposal made by the European Parliament (first reading, 25 February 2014). In this regard, the European Parliament is proposing a 6 month period while the European Commission is proposing 4 months.