



European Communities Trade Mark Association

5 December 2014

ECTA'S COMMENTS PRIOR TO THE MEETING WITH THE EUROPEAN COMMISSION ON 11 DECEMBER 2014

PROPOSAL, OF 18 JULY 2014, FOR A REGULATION ON THE COMMUNITY TRADE MARK

ECTA would like to comment and discuss the following issues with regard to the Council Proposal No. 11826/14 for a Regulation on the Community trade mark, dated 18 July.

1. **Article 28 (5) - the wording "irrespective of when the trademark was applied for or registered".**

We have acknowledged that the wording "*irrespective 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.

2. **Article 60 - time limit and form of appeal**

Article 60, 1a.

"If the appeal does not comply with Article 58, 59 or this Article, the Board of Appeal shall reject it as inadmissible, unless each deficiency has been remedied before expiry of the appeal period laid down in paragraph 1.

If the appeal does not comply with other provisions of the Regulation or an implementing act, it shall not be rejected as inadmissible before the appellant has had the opportunity to remedy the deficiencies detected by the Board of Appeal within the period to be fixed by the Board of Appeal."

The formal appeal consists of two separate legal acts, the notice of appeal and the statement of grounds. The proposal does not distinguish between these two acts and is therefore unclear and should be amended accordingly.



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Only the Notice of appeal must contain specific information in accordance with paragraph 1. By specifying the period 'to file the notice of appeal', no doubts can exist anymore which of the two time limits mentioned above under paragraph 1 would be applicable. This is also necessary in light of T-386/12, 9.4.2014.

If the appeal does not comply with other provisions of the Regulation or an implementing act, it shall not be rejected as inadmissible before the appellant has had the opportunity to remedy the deficiencies detected by the Board of Appeal within the period to be fixed by the Board of Appeal.

If either the notice of appeal or the statement of grounds does not comply with other provisions of the Regulation or an implementing act, it shall not be rejected as inadmissible before the appellant has had the opportunity to remedy the deficiencies detected by the Board of Appeal within the period to be fixed by the Board of Appeal.

Both, the notice of appeal and the statement of grounds may suffer any deficiencies.

The Commission shall adopt an implementing act specifying the mandatory elements of the notice of appeal and in detail the rules on admissibility.

That implementing act shall be adopted in accordance with the examination procedure referred to in Art 163(2).

The Commission shall adopt an implementing act specifying the mandatory elements of the notice of appeal, the statement of grounds and in detail the rules on admissibility. That implementing act shall be adopted in accordance with the examination procedure referred to in Art 163(2).

It appears an oversight, that the statement of grounds is not mentioned. The Commission shall also have the possibility to specify mandatory elements concerning the statement of grounds.