

# How safe are Trade Marks in the EU? SMEs' Perspectives

SME Europe, EPP, Round Table  
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European Parliament

# AIM - European Brands Association

- Represents brand manufacturers in Europe on key issues which affect their ability to design, distribute and market their brands.
- Membership groups some 1800 companies of all sizes through corporate members and national associations in 21 countries.

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# Trade Marks

- Fundamental legal basis for businesses to build brands and protect reputation.
- Reputation is critical for all businesses, regardless of size.
- Provide right to protect investment.
- Ensure customers are not misled by inferior copies.
- Provide the confidence to reinvest and grow.
- Brands benefit society through increased tax revenues, employment, consumer choice, fair competition.

# Trade Mark systems in Europe cater for different business needs

- National trade mark systems providing protection for businesses focused on a single country.
- Community Trade Mark system for companies that are expanding or intend to expand into other EU countries.
- International system for companies that expect to also trade in countries outside the EU.

# SMEs

- Important for European economy and future employment in Europe.
- Remember: all large companies started as small businesses.

# Do the Trade Mark systems in Europe work well for SMEs?

- Provide a careful balance between the interests of all the users of the systems.
- Always room for improvement in any system but what is needed is a gentle evolution, not drastic change that risks damaging that careful balance.
- Areas for improvement in the trade mark systems affect all users, regardless of size and the concerns that SMEs express are common to those of larger companies.



# Increased harmonisation between national systems and Community Trade Mark systems

- Via revisions to Trade Mark Directive
- Via convergence programmes of OHIM (the Community Trade Mark Office)
- To provide improvements in the user-friendliness of the systems, the time it takes to achieve registration in some countries, consistency in decisions on registrability and harmonisation of processes.

# Addressing concerns of SMEs

- Proposal voiced to reduce from 5 years to 3 years period a trade mark owner enjoys to start using that trade mark without fear of cancellation on the grounds of non-use – not pursued
- Proposal voiced to restrict the unitary nature of the Community Trade Mark, which protects trade marks in all EU countries even though the trade mark may as yet only been used in a few EU countries – not pursued.

# SMEs do have specific challenges

SMEs (particularly in the early stages of their development) tend to lack:

- in-house expertise
- financial resources
- human resources

# Limited in-house expertise

- Little awareness of the importance of trade marks and of Intellectual Property in general. UK-IPO study in 2010: only 50% of SMEs recognised the need to check for prior trade mark registrations before adopting a new name for a product or service – leads to inadvertent infringement of third party rights or to the adoption of descriptive names.
- May not establish the correct internal systems to ensure that their trade marks are correctly used and monitored to prevent third parties adopting them or misusing them - minor infringements of their trade mark may be missed or ignored until they start to have a serious impact on the business.
- To grow their businesses in different fields or new countries will need to work through third party distributors and licensees but lack the necessary expertise in licensing to put in place cast-iron agreements to protect their rights - not possible later to renegotiate terms.

# Limited financial resources

- All companies worry about their costs but for SMEs, financial concerns are more marked. Absolute cost of buying in external expertise and pursuing legal actions is similar for an SME or for a large corporation, but the costs clearly present a higher proportion of the SME's budget – risks: poorer quality advice or none at all; reluctance to pursue necessary legal actions.
- When presented with several copiers at one time, an SME may not be able to pursue several actions simultaneously – risks: other infringers become established; mark may be deemed generic.

# Limited human resources

- May be slower in developing their brands, leaving openings for others to pre-empt them in new markets.
- Lack the “feet on the ground” necessary to monitor activities of third parties or licensees and distributors.
- Misuse of their trade marks may be harder for them to police so less speedy in identifying third parties who infringe their rights or misuse their trade marks and slower in taking action against them.
- Harder to devote suitable resources to gather evidence to support legal cases, which may weaken their case. Even proving evidence of use of their own trade marks to pursue legal cases or maintain trade mark registrations can be particularly problematic for SMEs.

# Social media developments tend to favour SMEs

Infringement is a problem for all companies but:

- If SME blatantly infringes the trade marks of large company, large company has the resources to take action but risks a negative backlash and criticism of bullying (“David and Goliath” scenario where public opinion is inclined to support the smaller party regardless of merit).
- If the situation is reversed, SME may lack resources but can exert pressure on the infringer through social media to gain support and extract a favourable settlement.

Similarly, SMEs can develop a loyal following to monitor and report on activities that have the potential to damage their brands.

# Are legislative changes required to provide additional protection for SMEs?

NO

- Specific protection targeted at SMEs would disturb the careful balance in the trade mark system.
- Definition of the term SME encompasses micro businesses with fewer than 10 employees to medium-sized business with up to 250 employees and a turnover of 50 million Euros.



# Are there legislative changes that could particularly benefit SMEs?

- Reductions in the application and registration costs for Community Trade Marks (CTMs) benefited only new applicants so existing SMEs owning a single CTM have seen no benefit.
- Should reduce renewal fees to remove the anomaly whereby an existing SME pays more to renew its existing CTM registration than a new, competing entrant pays to register its new trade mark.

# What more could be done to improve Intellectual Property for SMEs?

- Improvements in the national education curricula to increase understanding of the importance and value of trade marks, branding and copyright.
- Opportunities through business links to increase awareness of the importance of IP for new and growing businesses.
- Training to help judges gain a greater understanding of the diversity of business models.
- Specialist IP courts.
- Access to cost-effective forms of court action to tackle infringement, e.g. Enterprise Court in the UK.

**Thank you for listening.**

Dawn M. Franklin

Chairman AIM Trade Mark Committee