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EDITORIAL

Entreprise plus que centenaire Renault place plus que jamais sa marque au cœur même de l'identité de l'entreprise et de ses réflexions stratégiques.

Sur tous les marchés, y compris en dehors de l'automobile, on observe une attention de plus en plus grande accordée à la marque. La marque est désormais considérée comme faisant partie du patrimoine de l'entreprise et comme une source de rentabilité.

On le sait, une marque forte donne au produit une valeur perçue par le client plus élevée et procure par la même un avantage concurrentiel. Dans le cas de l'automobile, le client en bénéficie puisqu'une marque forte génère également une augmentation de la valeur résiduelle du produit.

En favorisant la reconnaissance de la marque auprès des consommateurs, la marque communautaire est un outil qui participe à la renforcer. Elle permet d'éviter que ne coexistent sur le marché européen des marques identiques, détenues par différentes personnes, et garantis par la même au consommateur l'origine et la qualité des produits identiquement marqués.

La marque communautaire est également un outil qui participe à la création du grand marché

Européen. Pour Renault, qui est une société fortement exportatrice, bien implantée au niveau européen et tournée vers l'international, il est apparu nécessaire, dès la naissance de la marque communautaire, de tester ce nouvel instrument juridique qui répondait à son besoin d'être protégée sur l'ensemble du territoire de l'Union Européenne.

La marque communautaire en ce qu'elle constitue un titre de propriété industrielle unique ayant des effets juridiques identiques dans l'ensemble des Etats membres, contribue directement à l'unification du marché intérieur.

De même l'obtention d'un titre valable sur l'ensemble du territoire de la communauté encourage la libre circulation des produits et des services à l'intérieur de ce marché, dès lors que ce titre unique incitera son titulaire à être présent sur d'autres marchés régionaux dans lesquels le risque d'une contrefaçon sera diminué.

Même si des questions restent encore en suspens, trois ans de pratique de la marque communautaire permettent de constater que celle-ci répond aux attentes des entreprises soucieuses de défendre leurs marques et souhaitant être présentes dans l'espace économique européen. ■

The Irish Patents Office has informed the Office that, as result of a combination of several reasons, it has become necessary temporarily to suspend the establishment of search reports in respect of Community trade mark applications pursuant to Article 39 (2) of the Community Trade Mark Regulation. This measure applies as from May 1999. The Irish Patents Office has expressed the hope of being able to resume searching later in 1999.

Consequently, and until further notice, search reports for Community trade mark applications will not include search reports of the Irish Patents Office.

OPPOSITION PROCEEDINGS

Opposition proceedings are an important part of the registration process of a Community Trade Mark (CTM) application. They allow the proprietors of earlier marks to assert their rights in order to prevent the registration of a CTM application which is in conflict with them. This may be done by filing an opposition at the Office within three months following the publication of the contested CTM application.

Advantages

The advantages of choosing opposition proceedings as a means for protecting earlier rights are manifold.

On its own initiative the Office does not have the authority to reject applications for CTMs on the grounds that they conflict with earlier rights. It is up to the owners of the earlier rights to initiate proceedings for their protection. Opposition constitutes the only means of protection of earlier rights before the potential registration of CTM applications.

Since CTMs are only obtained by registration, a successful opposition is able to prevent the CTM, and the rights conferred thereby, from coming into existence. This shows the great importance of oppositions to the owners of earlier rights.

The proceedings are comparatively cheap. The opposition fee amounts to EURO 350. The opposition fee does not increase in cases where the opponent bases his opposition on a variety of earlier rights.

The CTM opposition system encourages the friendly settlement of the dispute. At the beginning of the proceedings the parties are given two months, which may be extended, in which they have the possibility of negotiating an amicable settlement. If the settlement is based on a limitation or withdrawal of the CTM application, the opposition fee is reimbursed to the opponent. About 40% of oppositions are settled during this period, better known as the cooling-off period.

Opposition Division

Within the Office oppositions are dealt with specifically by the Opposition Division. It is currently divided into 12 Units.

Each Unit consists of three legally qualified members who are generally of different nationalities and therefore usually have different linguistic and legal backgrounds. An assistant and two secretaries complete the Unit.

The decisions are taken by the Units collectively, after considering the proposals of the examiner of the case.

Earlier rights

An opposition may be based on the following earlier rights:

- applications or registrations for CTMs
- applications or registrations for trade marks in a Member State or for trade marks at the Benelux Trade Mark Office.
- international registrations having effect in a Member State
- trade marks which are well known in a Member State
- non-registered marks or signs which are protected by the law of the Member State governing that sign

As already mentioned above, an opposition may be based on more than one earlier right.

Grounds

The opponent has to indicate the grounds, i.e. the legal basis, for the opposition.

In particular, the opponent may claim a likelihood of confusion because of the identity or similarity of the trade marks and the identity or similarity of the goods and services covered by the trade marks.

If the owner of an earlier trade mark with reputation claims that the use of the CTM would take unfair advantage of, or be detrimental to, its distinctive character or its repute, he is entitled to seek protection for his trade mark even when dissimilar goods and services are involved.

Procedure

The Office will notify the applicant of the opposition(s) after both payment of the opposition fee and admissibility have been confirmed.

The proceedings are of an adversarial nature. All material submitted by each party will be forwarded to the other party. Both parties will be given enough time to submit their observations in reply.

The proceedings may be closed as a result of withdrawal/restriction of the application, withdrawal of the opposition, settlement between the parties or by a decision on the admissibility or on the substance of the case.

To the extent that a CTM application is withdrawn or refused the applicant may request its conversion into a national trade mark application.

Present Situation

By mid June 1999 the Opposition Division had received a total of about 16.000 oppositions. About 11.000 had been filed in 1998.

On average 18.6% of published applications are opposed. This means that more than 80% of applications, which overcome the hurdle of absolute grounds for refusal, move on to registration without being challenged by oppositions from third parties.

English is, by far, the most frequent language of proceedings with a percentage of 77%, followed by German (11%), French (6%), Spanish (5%) and Italian (1%).

A statistical analysis of the opponents' representatives shows that 76.4% of the oppositions come from three countries, Germany (33.8%), Spain (29.2%) and the United Kingdom (13.4%).

[On a basis of 350 decisions on substance, 60% of them rejected the opposition. Of the remaining 40% where the application was rejected, just over half (57%) were rejected in their entirety while the rest (43%) were rejected in part. ■

ERRORS IN REGISTRATION CERTIFICATES: CHANGES IN THE OFFING

Four basic types of error attributable to the Office have been present in certificates of registration: (1) the superimposition of owners' logos on top of the OHIM background starred circle emblem thereby resulting in a blurring effect on the certificate; (2) the colour of the certificate paper affecting the colours of the logo; (3) errors in the reproduction of the

logo due to defective scanning; (4) errors relating to seniorities.

What is the Office doing about them?

The first two types of error are caused by the paper and lay-out used for the certificate. The Office has, therefore, recently decided to order white certificate paper. This will enable owners' logos to be inserted on the certificate without

them being deformed. Current stocks of old-form certificate paper will continue to be used for word marks. For other types of mark, the new paper should be in use by about the middle of July.

The third kind of error can come to the attention of an applicant or owner – or even the Office itself – either prior to publication of the CTM application in Part A of the Bulletin, or after Part A

STATISTICS (SITUATION AT THE BEGINNING OF AUGUST 1999)

COMMUNITY TRADE MARK APPLICATIONS

BREAKDOWN BY COUNTRY

	1996-1998	%	1999 (02.08.99)	%	Total	%
TOTAL WORLD	101.820	100	21.292	100	123.112	100
TOTAL EUROPEAN UNION	61.656	60,55	13.585	63,80	75.241	61,12
BELGIQUE/BELGIË [BE]	1.623	1,59	339	1,59	1.962	1,59
DANMARK [DK]	1.705	1,67	350	1,64	2.055	1,67
DEUTSCHLAND [DE]	16.436	16,14	3.411	16,02	19.847	16,12
ELLAS/GREECE [GR]	228	0,22	51	0,24	279	0,23
ESPAÑA [ES]	6.227	6,12	1.431	6,72	7.658	6,22
FRANCE [FR]	5.632	5,53	1.467	6,89	7.099	5,77
IRELAND [IE]	788	0,77	210	0,99	998	0,81
ITALIA [IT]	6.659	6,54	1.746	8,20	8.405	6,83
LUXEMBOURG [LU]	397	0,39	105	0,49	502	0,41
NEDERLAND [NL]	2.854	2,80	498	2,34	3.352	2,72
ÖSTERREICH [AT]	1.608	1,58	329	1,55	1.937	1,57
PORTUGAL [PT]	576	0,57	169	0,79	745	0,61
SUOMI/FINLAND [FI]	970	0,95	215	1,01	1.185	0,96
SVERIGE [SE]	2.355	2,31	471	2,21	2.826	2,30
UNITED KINGDOM [GB]	13.598	13,35	2.793	13,12	16.391	13,31
TOTAL OUTSIDE EUROPEAN UNION	40.164	39,45	7.707	36,20	47.871	38,88
Amongst which=						
UNITED STATES OF AMERICA [US]	28.540	28,03	5.396	25,22	33.909	27,54
JAPAN [JP]	2.906	2,85	457	2,15	3.363	2,73
SWITZERLAND [CH]	1.958	1,92	375	1,76	2.333	1,90
CANADA [CA]	1.215	1,19	258	1,21	1.473	1,20
AUSTRALIA [AU]	830	0,82	207	0,97	1.037	0,84
TAIWAN [TW]	558	0,55	166	0,78	724	0,59

OTHER STATISTICS RELATING TO COMMUNITY TRADE MARKS

	1999 (30.07.99)	1996-1998	Total
Filing dates accorded	21.992	93.981	115.973
Number classifications checked	23.470	85.442	108.912
Applications published	21.363	59.226	80.589
Oppositions	4.962	11.622	16.584
Contested applications	3.687	8.820	12.507
Appeals	417	252	669
Registered Trade Marks	21.161	24.856	46.017
Published Registered Trade Marks	27.216	12.374	39.590
Requests for cancellation	47	19	66

OTHER OHIM FIGURES

	ON 06.08.99
Number of professional representatives	5.353
Number of current accounts	696
OHIM Personnel	459

publication, or, in the further alternative, post-registration. In the first case, the Office will simply rescan the document and the CTM application will continue as normal. In the second and third cases, the rescanned logo will have to be republished, with or without a new opposition period, depending on whether the correction "substantially" alters the mark.

The above procedure will only be followed where the fault for the

erroneous picture lies with the Office. Changes as compared to the representation as sent to the Office involve an amendment which will be treated as provided for in Article 44 CTMR.

Finally, the complications regarding seniorities have been reduced by the Communication of the President No 6/98. The CTM Register and certificate now only contain two items of information: the Member State for which seniority is claimed

and the registration number of the earlier registration. This means that where a previously issued certificate is found to contain erroneous information, over and above these two items, it will be reissued with corrections relating to those two matters. Any additional information, such as the dates of filing and registration, will no longer exist as an element of the Register or the certificate. ■

UNE INAUGURATION HAUT DE GAMME

Le 10 juin le Président du gouvernement espagnol José María Aznar faisait le déplacement de Madrid à Alicante pour inaugurer le nouveau siège de l'Office. C'était une journée de grande chaleur dont Alicante a le secret.

Le cortège du côté espagnol, était prestigieux : M. Federico Trillo, Président des Cortes, M. Josep Piqué, Ministre de l'industrie et de l'énergie, porte parole du Gouvernement, M. de Miguel, Secrétaire d'Etat aux affaires européennes, M. José Luis González Montes, Secrétaire d'Etat à la Justice et bien évidemment les autorités régionales avec à leur tête M. Eduardo Zaplana, Président de la Généralité de Valence, M. Luis Díaz Alperi, Maire d'Alicante, M. Hector Villalba, Président des Cortes de Valence, M. Julio de España, Président de la Députation Ceux que j'oublie voudront bien me pardonner.

Mais le plus impressionnant était la représentation de l'Union européenne. Plusieurs Institutions étaient présentes au plus haut niveau : M. José María Gil Robles, Président du Parlement, M. Jacques Santer, Président de la Commission et M. Mario Monti, Commissaire, M. Carlos Rodriguez

Iglesias, Président de la Cour de justice, M. Bo Vestendorf, Président du Tribunal de Première Instance, M. Aunus Salmi, Membre de la Cour des Comptes. Le Conseil était représenté par Dr. Hansjörg Geiger, Secrétaire d'état au Ministère de la Justice allemand.

Douze ambassadeurs de l'Union européenne en poste à Madrid avaient fait le déplacement.

Le monde de la propriété industrielle était représenté par M. Kamil Idriss, Directeur général de l'Organisation mondiale de la propriété intellectuelle et M. Ingo Kober, Président de l'Office européen des brevets ainsi que par de très nombreux chefs d'offices nationaux qui participaient par ailleurs à une session spéciale du Conseil d'administration et du Comité budgétaire. Les clients de l'Office, notamment les associations de spécialistes, sont venus nombreux marquer leur sympathie. Certains n'ont pas hésité à traverser l'Océan atlantique...

Jamais Alicante n'avait connu un tel rassemblement de si hautes personnalités le même jour.

Il faut y voir un succès d'estime pour l'Office. C'est extrêmement agréable et

réconfortant non seulement pour la présidence, mais plus encore pour l'ensemble du personnel qui par son travail et son engagement a permis ce magnifique succès.

C'était une belle cérémonie très réussie.

Jean-Claude COMBALDIEU



USEFUL NUMBERS

■ **Switchboard** telephone number:
+ 34-96-51 39 100

■ **General inquiries** telephone numbers:
+ 34-96-51 39 243; + 34-96-513 92 72;

■ **General inquiries** fax number:
+ 34-96-51 39 173

Requests for literature (leaflets, standard forms, official texts, places where to buy Office publications, etc.), questions concerning the filing of applications, questions concerning procedure (fees, priority, seniority, etc.).

■ **Fax number for the filing of any correspondence relating to community trade marks** (applications, letters to examiners, oppositions, cancellations, appeals, Register matters, etc.): + 34 -96-51 31 344

CTM applicants and proprietors and their representatives are strongly urged to use exclusively the above fax number where faxes arrive at an automatic fax server which does not involve any printing and physical handling of documents, for all communications relating to proceedings before the Office. This will facilitate and accelerate the handling of incoming faxes, whereas the sending of such communications to other fax numbers in the Office will require additional operations and creates substantial administrative burdens.

■ **Telephone number for obtaining information concerning means of payment:**
+ 34-96-51 39 340

Opening of current accounts, bank transfers, payments by cheques, etc.

■ **Telephone number for obtaining information about professional representatives:**
34-96-51 39 117

List of professional representatives, new entries, allocation of ID numbers, authorisations, etc.

■ **Obtaining information in relation to copies from the file and extracts from the register:**
+ 34-965 139 633

■ **Obtaining information in relation to transfers, licences, conversions:**
+ 34-965 139 515 and + 34-965 139 175

■ **Telephone number for obtaining information concerning subscriptions to our publications:**
+ 34-96- 51 39 102

OHIM's Official Journal, the Bulletin of CTMS (paper and CD-ROM), EUROM, etc.

■ **The Office's Internet site:** oami.eu.int