



International Trademark Association
Representing Trademark Owners Since 1878

October 6, 2008

Dr. Margot Fröhlinger
Directorate D -- Knowledge-Based Economy
DG Internal Market and Services
European Commission
B-1049 Brussels
Belgium

Dear Dr. Fröhlinger:

The Board of Directors of the International Trademark Association appreciated the opportunity to hear directly from you, Wubbo de Boer and Antonio Serge Campinos about the results of the Joint Meeting of the Administrative Board and Budget Committee of OHIM on September 18-19, and, specifically, about the Conclusions of Agenda Item “How to Better Balance OHIM’s Budget – the Way Forward” (the “Conclusions”).

INTA remains a strong supporter of OHIM and the CTM and will continue to encourage the necessary investments in the CTM system to ensure that the Office provides the best possible service to the users of the CTM system.

INTA has, from the outset of the creation of the office, contributed to OHIM and CTM-related debates and welcomes the willingness of DG Internal Market and Services to consult with CTM users and experts on possible ways to improve the system. Accordingly, we would like to share our views and concerns about the Conclusions, some of which were discussed when you addressed the Board on September 23rd. In sum, INTA:

- Supports the forthcoming Commission proposal to, in effect, eliminate the registration fee and reduce the application fee to around €1000, which can be further reduced by submitting the application electronically. However, we feel that a reduction in the current renewal fee of €1500 is also warranted. We realize that the maintenance of the renewal fee at its current level is tied to the diversion of funds to the national patent and trademark offices of the Member States (“national offices”), as discussed below, but given the size of the OHIM reserves and the likelihood that such reserves will continue to grow, a reduction in the renewal fee is appropriate and may encourage more renewals and hence not significantly reduce the amounts that under the current proposal will be diverted to the national offices.

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- Approves the institution of a formal biannual review of the finances of OHIM by the Commission in order to make adjustments to fees and other costs in light of the then-current financial situation of the Office.
- Continues to oppose the principle of diverting to the national offices user-generated fees, which, as expressed in past communications from INTA on this subject, should be used exclusively for OHIM-related purposes. Our greatest concern is that these funds will be re-diverted to the national budgets of Member States to fund expenditures unrelated to projects that would benefit the European trade mark system. Given, however, the difficult negotiations that have produced the Conclusions, INTA can accept the need for such a diversion on the understanding that: (1) this diversion would constitute a “one-off” case and would not be precedent for any subsequent diversions; and (2) that the Commission and the other parties involved continue to support the agreement set forth in the Conclusions that both the proposed €50 million Cooperation Fund and the funds diverted to the national offices will be used for projects “closely related” to the protection and promotion of trademarks and designs and to the harmonization of the European trade mark system. Even the phrase “closely related,” drawn from the Conclusions, may not be sufficiently limiting, and when the Conclusions are translated into legislative language, we suggest the use of “exclusively” or similar wording. Likewise, the legislative language should be sufficiently flexible to permit periodic review of this diversion such that it is not extended beyond a reasonable period of time.
- Strongly encourages the establishment of an oversight and governance mechanism which must include CTM user input as a means to ensure that the Cooperation Fund and fees diverted to the national offices will be used for purposes exclusively related to trademark issues.
- Accepts the necessity of a Reserve Fund of €190 million, which we understand to represent approximately 150% of the current operating budget of the Office, as a means to ensure the stability and effectiveness of the Office should there be unexpected consequences resulting from the turbulence in the global economy. Although not part of the current discussions of the reserve, it should be contemplated that a reduction to 100% of the OHIM operating budget through further fee reductions might be appropriate once current financial concerns have lessened and there is additional data concerning usage of the CTM system.
- Acknowledges that even if all parts of this package are implemented, there will still be a substantial reserve fund above the €190 million and confirms its belief that such funds must be used solely for the benefit of users of the CTM system, that is, to ensure that OHIM can maintain high standards of quality service in light of technological advances, an expected increase in the number of applications over time and other changes in the system.

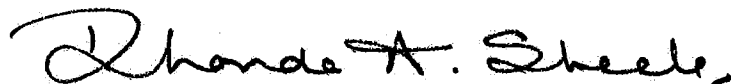
The Commission has announced that an overall examination of the CTM system will take place in 2009, and, of course, the results of that study will inform some of the decisions that have been, of necessity, left vague in the Conclusions. INTA looks forward to being involved in any CTM

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consultation mechanism that the Commission sets up as part of this overall CTM review and to being a part of the important oversight mechanisms that must be put in place to ensure that the fees paid to the Office by users over the years are used appropriately.

INTA congratulates all parties who were involved in the discussions that produced the Conclusions as it is important to resolve the vexing questions of the relationship between OHIM and the national offices so that all parties can move forward to improving the European trade mark system for the benefit of trademark owners throughout the world. Obviously, there is much uncertainty concerning the Conclusions and the many legislative steps that yet must be taken. Consistent with the comments above, however, INTA is committed to working with all interested parties to see that this compromise is effectuated.

Sincerely,

A handwritten signature in black ink that reads "Rhonda A. Sheets," with a comma at the end. The signature is written in a cursive, flowing style.

cc: Mr. Wubbo de Boer