

Survey response	
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IP address	216.70.221.131
Please indicate the User Association that you represent:	INTA (International Trademark Association)
Please indicate your name and email address (in case clarification is needed regarding any of your answers):	Hélène Nicora (hnicora@inta.org)
1. Do you think that the practices of the Member States IPOs regarding the assessment of distinctiveness of names of banks, newspapers/magazines, hotels and airports as trade marks are harmonised?	No
2. Do you think that agreeing on a Common Practice among the Member States IPOs regarding the distinctiveness of names of banks, newspapers/magazines, hotels and airports as trade marks would be beneficial for the users?	Yes
3. Please justify your answer to question 2:	INTA believes that there should be as much consistency as possible for trademark owners who want to protect their marks in the EU. The harmonization of office practices is beneficial for users in terms of predictability and legitimate expectations. Users would have more security in evaluating the chances of registering new trademarks and of the likelihood of success in opposition proceedings. Users would also have a better understanding of selecting the "best" trademarks during the trademark creation process. If a trademark owner files an application in one Member state, the criteria applied for examination of that mark should be the same in all Member States.
4. Do you foresee any difficulties that could arise during discussions to reach a Common Practice regarding the distinctiveness of names of banks, newspapers/magazines, hotels and airports as trade marks?	Some Member States may be reluctant to change their practices. We do not foresee insurmountable hurdles if there is a will to harmonize.
5. In your opinion, should an objection be raised	Yes

<p>in respect of an application for the word mark CENTRAL COMMERCIAL BANK for lack of distinctiveness in the classes below? Classes: 9 – Software; 16 – Banknotes; 35 – Commercial intermediation services; 36 – Banking. Please assume that evidence of acquired distinctiveness has NOT been submitted.</p>	
<p>6. Please provide us with any other comments that you find relevant for the analysis of this topic:</p>	<p>The answer depends on the class. The trademark may probably be distinctive for Classes 9 and 16 but the level of distinctiveness is very low for Classes 35 and 36. If registrable in those classes, the protection given should be narrow and minimal differences with other marks should be sufficient to avoid confusion.</p>
<p>7. Do you think that the practices of the Member States IPOs regarding likelihood of confusion between trade marks for pharmaceutical products are harmonised?</p>	<p>No</p>
<p>8. Do you think that agreeing on a Common Practice among the Member States IPOs regarding likelihood of confusion between trade marks for pharmaceutical products would be beneficial for the users?</p>	<p>Yes</p>
<p>9. Please justify your answer to question 8:</p>	<p>INTA believes that there should be as much consistency as possible for trademark owners who want to protect their marks in the EU. The harmonization of office practices is beneficial for users in terms of predictability and legitimate expectations. Users would have more security in evaluating the chances of registering new trademarks and of the likelihood of success in opposition proceedings. Users would also have a better understanding of selecting the "best" trademarks during the trademark creation process. If a trademark owner files an application in one Member state, the criteria applied for examination of that mark should be the same in all Member States.</p>
<p>10. Do you foresee any difficulties that could arise during discussions to reach a Common Practice regarding likelihood of confusion between trade marks for pharmaceutical products?</p>	<p>Some Member States may be reluctant to change their practices. We do not foresee insurmountable hurdles if there is a will to harmonize.</p>
<p>11. In your opinion, what would be the outcome of the assessment of likelihood of confusion in</p>	<p>No likelihood of confusion</p>

<p>the following case? Registered trade mark Opposed trade mark Ciprovvet Cipronex Class 5 (antibiotics) Class 5 (antibiotics)</p>	
<p>12. Please provide us with any other comments that you find relevant for the analysis of this topic:</p>	<p>INTA members were divided on the outcome of the assessment of likelihood of confusion in the above case. This case could be viewed from two perspectives: (a) From a health care professional and someone working in the pharmaceutical industry, it would be obvious that the prefix CIPRO is part of the INN Ciprofloxacin and therefore completely descriptive with a low range of protection. In addition the suffix vet is descriptive of veterinary products. The registered trademark should have narrow protection and the suffixes vet and nex sufficient to avoid confusion. As ciprofloxacin is an antibiotic available on prescription, the risk of confusion is further diminished. (b) From the point of view of the normal consumer without medical knowledge: it is likely that such consumer will not know the INN and will not realize that the marks are descriptive with regards to the active substance. Such consumer may confuse the marks if he has them at home and assume they come from the same source. Furthermore, he might also assume that both products are coming from the same source as they share the same prefix. As both perspectives could be used by different offices to evaluate the likelihood of confusion, a Common Practice to evaluate the likelihood of confusion between trademarks for pharmaceutical products could be useful.</p>
<p>13. Do you think that the different criteria applied by the Member States IPOs when assessing trade mark applications for International Non-Proprietary Names (INNs) are harmonised?</p>	<p>No</p>
<p>14. Do you think that agreeing on a Common Practice among the Member States IPOs regarding the criteria applied when assessing trade mark applications for International Non-Proprietary Names (INNs) would be beneficial for the users?</p>	<p>Yes</p>
<p>15. Please justify your answer to question 14:</p>	<p>INTA believes that there should be as much consistency as possible for</p>

	<p>trademark owners who want to protect their marks in the EU. The harmonization of office practices is beneficial for users in terms of predictability and legitimate expectations. Users would have more security in evaluating the chances of registering new trademarks and of the likelihood of success in opposition proceedings. Users would also have a better understanding of selecting the "best" trademarks during the trademark creation process. If a trademark owner files an application in one Member state, the criteria applied for examination of that mark should be the same in all Member States.</p>
<p>16. Do you foresee any difficulties that could arise during discussions to reach a Common Practice regarding the different criteria applied by the Member States IPOs when assessing trade mark applications for International Non-Proprietary Names (INNs)?</p>	<p>Some Member States may be reluctant to change their practices. We do not foresee insurmountable hurdles if there is a will to harmonize.</p>
<p>17. In your opinion, would the following trade mark be objectionable on absolute grounds? Applied mark Bamosir Class 5 (Medicine for inter-ocular pressure regulation) INN bamosiranum</p>	<p>Yes</p>
<p>17.a. Please indicate the grounds on which an objection would be based? [Lack of distinctiveness (in the sense of Art. 4(1)(b) TMD)]</p>	<p>No</p>
<p>17.a. Please indicate the grounds on which an objection would be based? - comment</p>	
<p>17.a. Please indicate the grounds on which an objection would be based? [Descriptiveness (in the sense of Art. 4(1)(c) TMD)]</p>	<p>No</p>
<p>17.a. Please indicate the grounds on which an objection would be based? - comment</p>	
<p>17.a. Please indicate the grounds on which an objection would be based? [Deceptiveness (in the sense of Art. 4(1)(g) TMD)]</p>	<p>No</p>
<p>17.a. Please indicate the grounds on which an objection would be based? - comment</p>	
<p>17.a. Please indicate the grounds on which an objection would be based? [Other. Please specify.]</p>	<p>No</p>
<p>17.a. Please indicate the grounds on which an objection would be based? - comment</p>	

<p>18. Please provide us with any other comments that you find relevant for the analysis of this topic:</p>	<p>As the mark Bamosir is the first part of the INN, the mark applied for is descriptive of the INN and should be rejected on absolute grounds as there are no additional or creative elements. It is difficult to assess how much of the identical letter sequence would need to be taken to avoid the descriptiveness element – would for example Bamos or Bamo be sufficiently non descriptive?</p>
<p>19. Do you think that the practices of the Member States IPOs regarding trade marks in conflict with flags and other symbols are harmonised?</p>	<p>No</p>
<p>20. Do you think that agreeing on a Common Practice among the Member States IPOs regarding the criteria for assessing trade marks in conflict with flags and other symbols would be beneficial for the users?</p>	<p>Yes</p>
<p>21. Please justify your answer to question 20:</p>	<p>INTA believes that there should be as much consistency as possible for trademark owners who want to protect their marks in the EU. The harmonization of office practices is beneficial for users in terms of predictability and legitimate expectations. Users would have more security in evaluating the chances of registering new trademarks and of the likelihood of success in opposition proceedings. Users would also have a better understanding of selecting the "best" trademarks during the trademark creation process. If a trademark owner files an application in one Member state, the criteria applied for examination of that mark should be the same in all Member States.</p>
<p>22. Do you foresee any difficulties that could arise during discussions to reach a Common Practice regarding the criteria for assessing trade marks in conflict with flags and other symbols?</p>	<p>Some Member States may be reluctant to change their practices. We do not foresee insurmountable hurdles if there is a will to harmonize.</p>
<p>23. The following example contains the same colours as the flag of Germany with a degree of stylisation. In your opinion, does this trade mark application represent heraldic imitation?</p>	<p>No</p>
<p>23. The following example contains the same colours as the flag of Germany with a degree of stylisation. In your opinion, does this trade mark application represent heraldic imitation? - comment</p>	<p>Consumers are likely to see this as a dog or a rabbit rather than a heraldic imitation.</p>

24. Please provide us with any other comments that you find relevant for the analysis of this topic:	
25. Do you think that the practices of the Member States IPOs regarding guarantee or certification marks are harmonised?	No
26. Do you think that agreeing on a Common Practice among the Member States IPOs regarding guarantee or certification marks would be beneficial for the users?	Yes
27. Please justify your answer to question 26:	INTA believes that there should be as much consistency as possible for trademark owners who want to protect their marks in the EU. The harmonization of office practices is beneficial for users in terms of predictability and legitimate expectations. Users would have more security in evaluating the chances of registering new trademarks and of the likelihood of success in opposition proceedings. Users would also have a better understanding of selecting the "best" trademarks during the trademark creation process. If a trademark owner files an application in one Member state, the criteria applied for examination of that mark should be the same in all Member States. As guarantee or certification marks are new to a number of EU countries, INTA supports a Common Practice and believes that the sooner there is a Common Practice the better.
28. Do you foresee any difficulties that could arise during discussions to reach a Common Practice regarding guarantee or certification marks?	Some Member States may be reluctant to change their practices. We do not foresee insurmountable hurdles if there is a will to harmonize.
29. In your opinion, would an application for the guarantee or certification mark depicted below and filed for 'fruit juices' in Class 32 be objectionable on absolute grounds? Please justify your answer.	No
29. In your opinion, would an application for the guarantee or certification mark depicted below and filed for 'fruit juices' in Class 32 be objectionable on absolute grounds? Please justify your answer. - comment	The combination of the different elements makes it distinctive.
30. Please provide us with any other comments that you find relevant for the analysis of this topic:	

31. Do you think that the practices of the Member States IPOs regarding deceptiveness as an absolute ground for refusal are harmonised?	No
32. Do you think that agreeing on a Common Practice among the Member States IPOs regarding the criteria for assessing the deceptiveness of a trade mark would be beneficial for the users?	Yes
33. Please justify your answer to question 32:	INTA believes that there should be as much consistency as possible for trademark owners who want to protect their marks in the EU. The harmonization of office practices is beneficial for users in terms of predictability and legitimate expectations. Users would have more security in evaluating the chances of registering new trademarks and of the likelihood of success in opposition proceedings. Users would also have a better understanding of selecting the "best" trademarks during the trademark creation process. If a trademark owner files an application in one Member state, the criteria applied for examination of that mark should be the same in all Member States.
34. Do you foresee any difficulties that could arise during discussions to reach a Common Practice regarding the criteria for assessing the deceptiveness of a trade mark?	Some Member States may be reluctant to change their practices. We do not foresee insurmountable hurdles if there is a will to harmonize. However given the differences in culture, history and social customs in each country, it may be difficult to reach a Common Practice.
35. In your opinion, would the following trade mark application be deceptive for any of the listed goods? "Gerivan Premium Whiskey" Class: 33 (Whiskey, Vodka, Rakia) and 32 (Beer, non-alcoholic beverages)	Yes
35.a. Please indicate the goods for which the application would be deceptive: [Class: 33 Whiskey]	Yes
35.a. Please indicate the goods for which the application would be deceptive: - comment	The mark is deceptive if these products are not whiskey
35.a. Please indicate the goods for which the application would be deceptive: [Class: 33 Vodka]	Yes
35.a. Please indicate the goods for which the application would be deceptive: - comment	The mark is deceptive for these products as they are not whiskey

35.a. Please indicate the goods for which the application would be deceptive: [Class: 33 Rakia]	Yes
35.a. Please indicate the goods for which the application would be deceptive: - comment	The mark is deceptive for these products as they are not whiskey
35.a. Please indicate the goods for which the application would be deceptive: [Class: 32 Beer]	Yes
35.a. Please indicate the goods for which the application would be deceptive: - comment	The mark is deceptive for these products as they are not whiskey
35.a. Please indicate the goods for which the application would be deceptive: [Class: 32 non-alcoholic beverages]	Yes
35.a. Please indicate the goods for which the application would be deceptive: - comment	The mark is deceptive for these products as they are not whiskey
35.b. Would it be possible to overcome the objection(s)?	
36. Please provide us with any other comments that you find relevant for the analysis of this topic.	
37. Do you think that the procedural matters of appeal proceedings among those Member States IPOs that have an internal Appeal Body are harmonised?	No
38. Do you think that the procedural matters of appeal proceedings among National External Appeal Bodies are harmonised?	Yes
39. Do you think that the benchmarking and approximation of procedural matters of appeal proceedings among Member States would be beneficial for the users?	Yes
40. Please justify your answer to question 39:	INTA supports the harmonization of practices and procedural matters as it is beneficial for users. Having common rules should help to minimize costs and lead to more predictable results.
41. Please provide us with any other comments that you find relevant for the analysis of this topic:	
42. Please rank the following topics in order of preference for launching a convergence project: [Ranking 1]	Likelihood of confusion for pharmaceutical trade marks
42. Please rank the following topics in order of preference for launching a convergence project: [Ranking 2]	Guarantee or certification marks
42. Please rank the following topics in order of preference for launching a convergence project: [Ranking 3]	Deceptiveness of a trade mark
42. Please rank the following topics in order of	Appeal Proceedings

<p>preference for launching a convergence project: [Ranking 4]</p>	
<p>42. Please rank the following topics in order of preference for launching a convergence project: [Ranking 5]</p>	<p>Distinctiveness of names of banks, newspapers / magazines, hotels and airports as trade marks</p>
<p>42. Please rank the following topics in order of preference for launching a convergence project: [Ranking 6]</p>	<p>Trade marks in conflict with flags and other symbols</p>
<p>42. Please rank the following topics in order of preference for launching a convergence project: [Ranking 7]</p>	<p>Trade mark applications for International Non-Proprietary Names (INNs)</p>
<p>43. Please provide us with a short summary of your comments on these proposed topics (approximately 10 lines) which may be included in the Analysis Paper and brought to the Working Group for discussion:</p>	<p>INTA considers that the convergence projects are an excellent way of harmonizing office practice as between the EUIPO and national offices. However, INTA does not consider that the convergence projects are the most appropriate way of clarifying the law, in circumstances where the law is unclear. This is a matter for the courts. INTA therefore supports further convergence projects which focus on office practices and procedures only. INTA believes that there should be as much consistency as possible for trademark owners who want to protect their marks in the EU. The harmonization of office practices is beneficial for users in terms of predictability and legitimate expectations. Users would have more security in evaluating the chances of registering new trademarks and of the likelihood of success in opposition proceedings. Users would also have a better understanding of selecting the "best" trademarks during the trademark creation process. If a trademark owner files an application in one Member state, the criteria applied for examination of that mark should be the same in all Member States. It is essential that all user associations be properly consulted on any new envisaged project before the project is suggested to the MBBC. INTA would support an early written consultation of all user associations (and not only those present in a working group) on any new envisaged project, to ensure that the practice arrived at is efficient, fair and beneficial to users across the EU. INTA</p>

	considers that convergence projects that involve the EUIPO and all national offices are to be preferred.
44. Are there any other topics on which you think it would be interesting to launch a convergence project?	No
44. Are there any other topics on which you think it would be interesting to launch a convergence project? - comment	
45. Please provide us with any additional comments that you consider relevant for this analysis of trade mark topics:	