

INTA Comments on the Ukrainian Draft Law May 2018

INTA would like to submit the following comments on the situation of IP in Ukraine ahead of the next EU-Ukraine IPR Dialogue in Kiev on June 20, 2018.

INTA is encouraged by the EU-Ukraine IPR Dialogue discussions, which hopefully, together with the EU-Ukraine Association Agreement, will lead to a process of further improvements in terms of protection and enforcement of trademark rights in Ukraine. Trademarks play a significant role in the economy and employment of a country, as illustrated for the EU by the [2016 IP Contribution Study of the EUIPO and the EPO](#). An efficient protection of trademark rights in Ukraine is therefore crucial to protect consumers and the business community.

1. GENERAL COMMENTS

A new IP agency was created but is not yet operational:

INTA commends Ukraine for its laudable efforts to reform intellectual property rights protection. Ukraine proposed the creation of a national agency for intellectual property as a public organization within the Economic Development and Trade Ministry, on the basis of the current State enterprise Ukrainian Intellectual Property Institute (Ukrpatent) and the State Service of Intellectual Property.

We welcome the creation of the national office for intellectual property and hope it will be fully equipped to register and administer trademark rights efficiently. The reorganization seems ongoing. As of May 2018, the functions of the State Service for Intellectual Property have not yet been transferred to the Intellectual Property Office since the latter has not been established yet, leaving its functions performed by the Ukrainian Ministry of Economic Development and Trade which has caused some delays in IP prosecution cases. The process is dependent on the adoption of the relevant decree by the government which, as of May 2018, had yet to adopt them. INTA hopes that the EU would be able to provide expertise and support to Ukraine in establishing this new entity.

Significant progress in the adoption of the new IP laws implementing the provisions of the EU-Ukraine Association Agreement.

INTA strongly welcomes the following most notorious achievements regarding the adoption of new IP laws implementing **the EU-Ukraine Association Agreement** signed and ratified by Ukraine in 2014, which came into force on September 1, 2017:

- In February 2018, the draft law No. 7538 revising the Law on inventions and utility models has reached the Parliament and is now reviewed by its Committees;
- On March 13, 2018, the draft laws on geographical indications (draft No. 6023) and topographies of integrated circuits (draft No. 5694) were adopted in the first hearing;
- A number of new draft laws submitted by the Ministry of Economic Development were registered in the Ukrainian Parliament in early April 2018, among them two draft laws related to court expertise (draft law No. 8223 (the Law on Court Expertise and Expert Self-Government) and draft No. 8249 (the Law on Revising Legislative Acts Aimed at the Improvement of the Court Expertise Procedures).

Avoidance of further delays in the adoption of remaining IP laws implementing IP-related provisions of the EU-Ukraine Association Agreement is critical

The IP-related provisions of the EU-Ukraine Association Agreement, signed and ratified by Ukraine in 2014, came into force on September 1, 2017, but the relevant laws implementing these provisions into the national laws have not been adopted yet. Consequently, the IPR community and the courts are already facing dilemmas, particularly the issue of direct applicability of the EU-Ukraine Association Agreement.

The longer this status quo is maintained, the more right holders will be faced with uncertainty and unpredictability in the practice of Trademark Offices and Courts, as well as unnecessary expenses involved with IPR enforcement.

Consistency and coherency are needed as several draft legislations are in the pipeline:

It appears that the draft laws proposed by the Ukrainian Ministry of Economic Development and Trade in the framework of the Implementation Plan for the EU-Ukraine DCFTA address several existing trademark issues. However, there seems to have been some delays in the legislative reform. The draft law concerning trademark rights that includes a part of an omnibus revision act "*On the Revision of Certain Laws of Ukraine Aimed at Strengthening Responsibility and Protection of Rights in the Intellectual Property Field*" amending the Civil Code, the Commercial Code and the major IP laws in Ukraine, has reached the Ukrainian Parliament on January 23, 2017 and assigned with the serial number 5699. As of May 2018, the process of examination by the relevant committees of the Ukrainian Parliament has been completed, and the draft law with a number of amendments has been recommended for the first reading by the Parliament. The initial draft law contained a trademark international exhaustion principle that was removed therefrom upon discussion in the parliamentary committee. INTA recommends that a national exhaustion principle is introduced into the draft law.

Another Draft Law no. 2157a "*On the Protection of Rights to Marks for Goods and Services*", dated May 24, 2015, has been submitted to the Parliament in May 2016 and addresses the implementation of the statutory damages mechanism. However, its future remains unclear and, as of May 2018, this draft law is still being considered by relevant parliamentary committees. This draft law introduces a very useful mechanism of statutory damages, but the proposed amount of damages varies from 10 to 50000 minimal guaranteed salaries.

It is important to emphasize the importance of consistency and coherency in this overall IP reform since for example, the mentioned omnibus act also contains provisions on statutory damages. It also contains provisions on the responsibility of infringers while other draft laws have been submitted to the Parliament by Customs.

Finally, a new law no.1404-VIII "*On Execution Proceedings*" of June 2, 2016 entered into force on October 5, 2016. INTA suggested the introduction of a mechanism to allow right holders to be involved in the execution proceedings and to oversee the process of destruction of infringing goods.

We understand that this mechanism has been introduced following exchanges in the EU-Ukraine IPR dialogues, for which we are grateful. According to this law, those who suffered from infringement of their IPRs are now listed among the participants to the execution proceedings for seizure or destruction of goods in accordance with Articles 176, 177 and 229 of the Criminal Code of Ukraine and Article 51-2 of the Code on Administrative Violations. We now look forward to the implementation of such a mechanism.

The treatment of parallel imports remains unclear:

On November 17, 2016, another draft law no. 5419 was submitted to the Parliament, which has been considered by the Parliamentary Committees and recommended for the first reading by the Parliament. This draft focuses notably on the definition of a national regime of exhaustion of rights. Ukrainian courts have adopted the principle of international exhaustion of rights. Again, coherency is essential among the various different draft laws: draft law No. 5419 advocates for a national regime of exhaustion while draft law no. 5699 provides for an international exhaustion regime. INTA supports the national exhaustion of trademark rights and we would thus recommend the adoption of the provision of the draft law no. 5419. In line with our Board Resolution, if Ukraine decides to follow international exhaustion, a “material differences” standard should be adopted in order to exclude parallel imports that are materially different from those products authorized for sale by the trademark owner in the domestic market.

The establishment of the new welcome specialized judiciary authority requires support:

Consistency is also needed in judicial reform. The judicial reform in the field of intellectual property has been substantially affected by the Law of Ukraine “*On Judiciary and Status of Judges*” of June 2, 2016 No. 1402-VIII and the relevant changes in the Ukrainian Constitution which entered into force as of September 1, 2016. This law introduces a new independent court in the Ukrainian judicial system – the High Intellectual Property Court. Nonetheless, to this day, this Court is not yet up and running.

The Council on Judicial Reform continues working on the approval of the structure of this court, its competences and jurisdiction, such as whether it has jurisdiction over criminal cases involving IP crimes. According to recently adopted changes to procedural legislation (see the below comment) the High Intellectual Property Court is due to have exclusive jurisdiction over all IP-related disputes, except for ones involving IP crimes and administrative offenses. It will be located in Kyiv.

With regards its structure, on September 29, 2017 the President signed a Decree on the establishment of the High IP Court. On the next day, the High Qualification Commission of Judges announced competitive examination for potential judges to hold 21 vacant positions. This way the formal requirements of the law were met giving extra time to complete all the procedures. However, this leaves room to delays with the beginning of operation of the specialized IP Court, which is not in the interest of stakeholders. Only in March 2018 the High Qualification Commission of Judges announced qualification exams for potential IP judges, scheduling the end of examination terms in the 3rd quarter of 2018. The candidate appraisal is to be completed by the end of 2018. Respectively, it is likely that the court will not start functioning this year, while some experts even express concerns as to the probability of having the IP Court in 2019. While we understand that the process should not be rushed through in order to ensure that the most qualified judges are selected, it is important that Ukraine be supported in its efforts to set up the Court as soon as possible.

INTA strongly supports this effort to provide for a specialized judiciary for IP. INTA has found that judges and prosecutors with substantive IP experience resolve IP disputes efficiently and fairly, and generate consistent case law which enhances understanding and certainty among IP users.

We believe that it is key that Ukraine be supported not only in making the necessary amendments to the Civil Procedural Code and the Commercial Procedural Code of Ukraine to ensure the training of the future judges of this court.

2. SPECIFIC ISSUES

INTA believes that there are several areas where improvement is needed for trademark protection and enforcement in Ukraine, as summarized below:

I. Criminal sanctions for counterfeiting

INTA encourages countries to enact legislation that go beyond the minimum enforcement standards contained in Part III of the TRIPS Agreement. Specifically, in order to increase the deterrent impact of fines, governments should develop calculation methods that lead to fines against counterfeiters commensurate to the harm caused.

Penalties are too low. Under Article 229 of Ukraine’s current Criminal Code, the only criminal sanctions for the illegal use of trademarks, irrespective of the crime and damages to the brand owner, are as follows: a fine from UAH 17,000/EUR 550 to UAH 255,000/EUR 8,225 and prohibition of the rights to proceed with certain activity or to occupy certain positions. These are rather low penalties compared to other European countries and are not a deterrent for counterfeiters.

Fines should not be the only sanction. In Ukraine, there are no sanctions of imprisonment, confiscation and destruction of counterfeit goods, equipment and materials used for their destruction. In fact, the Law “*On Amending the Criminal and Criminal Procedure Codes of Ukraine Aimed at Implementing the Recommendations of Section VI of the Report of the European Commission on the Status of the Fulfilment of the Implementation Plan for Liberalization of the Visa Regime for Ukraine in the Part of the Improvement of the Mechanisms of Seizure of Property and the Institute of Special Confiscation,*” which entered into force on February 28, 2016, deleted the sanction of confiscation and destruction of counterfeit goods and their manufacturing equipment. The deletion from Article 229 of the Criminal code on trademark infringement left just the existing low fines as the only available remedy. This is certainly a negative development and a serious step back in the fight against counterfeiting.

II. Suggested improvements to the Draft Law No. 5699 on Strengthening IP Protection

The Draft Law No. 5699 “*On the Revision of Certain Laws of Ukraine Aimed at Strengthening Responsibility and Protection of Rights in the Intellectual Property Field*” introduces:

- The publication of data on filed trademark applications in the official bulletin. This provides the possibility of opposing a trademark before registration thereof;
- The clarification of absolute grounds for refusal;
- The prohibition of unfair registration of agent’s marks;
- The international principle of exhaustion of rights;
- A deadline for cancellation action against the registered trademarks, which could significantly restrict the rights of trademark right holders against the squatted sign by non-practicing entities
- The statutory damages in case of filing an application with infringement of trademark rights, with the possibility of an alternative for the damages that varies from 10 to 50000 of minimal guaranteed salaries.

INTA strongly recommends the following amendments:

- **On exhaustion:** the provisions on the international exhaustion of rights should be deleted.
- **On Special confiscation:** The list of exceptions for “special confiscation” (Articles 96-1 and 96-2 of the Criminal Code) should include the “goods involving IPR infringements”, as well as “equipment and materials used for their manufacture”.
- **On administrative liability for IPR infringements** (Art 51-2) of the Ukrainian Code on Administrative Violations), provisions for higher fines and the destruction of infringing goods.
- **An efficient simplified destruction procedure** should be included.
- **The involvement of trademark holder in administrative proceedings initiated by the customs** (Article 497 and Article 399 of the Customs Code on the Suspension of Customs clearance of goods subject to IPR registered with customs) should be included. INTA recognizes that rights holders and their agents are best at identifying their own genuine products. Currently Customs can only accept “independent” expertise, conducted by court experts, in order to initiate administrative proceedings. Expert opinions in trademark

proceedings are costly, lengthy and unnecessary, unless there is another question of fact with a need for an independent party. IPR holders and their agents should be allowed to certify the nature of the suspected goods as they are the only ones capable of making the best assessment of the goods that infringe their trademarks.

- **Fines on the violation of customs rules** provided under Article 476 of the Customs Code should be increased.

Enhanced cooperation between departments of Customs authorities is needed.

INTA recommends that governments should revise their rules and procedures to provide prompt and reasonable access by trademark owners to relevant documents and information gathered by governments on counterfeiters for the trademark owners' use in conducting private investigations or the filing of complaints to the courts or other government agencies.

Necessary improvement regarding the destruction of counterfeit goods

All the issues listed last year remain applicable. The draft legislation should ensure that there is no room for issuance of judgments allowing the return of counterfeit goods to trade channels. It should also ensure appropriate conditions for storage and an improved simplified procedure of destruction of goods.

Effective destruction: INTA recommends that governments should take appropriate steps to ensure that all counterfeit goods are compulsorily destroyed, definitively removed from channels of commerce, or disposed of with the rights holders' consent in cases where there is no health or safety risk.

Ukrainian legislation lacks effective procedures and legal norms governing the destruction of seized counterfeit products and equipment used for their manufacture. As a result, counterfeit products and equipment are not always destroyed in a proper way and may even find their way back to the market. For instance, equipment may not be destroyed if it belongs to another person (e.g. if it is rented by an infringer).

The State Execution Service may dispose of the goods without asking consent from the IPR holder. Theoretically, the goods can be given for "*educational purposes, to medical institutions, or other social care of cultural institutions financed from the State budget, or should be processed or destroyed*" (Art. 243 of the Customs Code). This gives too much discretion to the authorities to dispose of "confiscated" counterfeits. It does not sufficiently guarantee the IP rights at stake and that the goods will not end up in the marketplace.

Moreover, in most instances, when a criminal case is initiated and later suspended, there is no clear direction to investigators and judges regarding what should be done with material evidence, including equipment and counterfeit products.

Final destination of counterfeit goods and manufacturing equipment seized within the criminal case may vary depending on the decision by the investigative body and courts. Such material evidences could be transferred for sale, utilization, destruction or returned to the owner, if the case is suspended or closed without applying criminal sanctions. Effective destruction procedures, properly monitored by law enforcement agencies and right holders, are crucial to prevent both counterfeit products from ending up into legitimate trade channels and manufacturing equipment from returning to illicit factories, regardless of the sanctions. Also, there are not enough adequate facilities with the necessary capacities and respective licenses to destroy certain types of counterfeit products, such as counterfeit agrochemicals.

Participation of right holders: Right holders should be granted access to or be allowed to participate in the destruction process and ensure that seized counterfeit products and equipment are properly destroyed. Currently, only the Customs and holders of goods (importers) are considered to be parties in the proceedings dealing with suspected goods.

In its comments submitted on the Draft law on the amendment of the Customs Code of Ukraine (border measures), INTA noted that the list of parties to administrative proceedings initiated by Customs still does not include trademark owners (Article 497 and Article 399 of the Customs Code on the Suspension of Customs clearance of goods subject to IPR registered with customs). INTA recognizes that rights holders and their agents are best at identifying their own genuine products. Currently, Customs can only accept “independent” expertise, conducted by court experts, in order to initiate administrative proceedings. Expert opinions in trademark proceedings are costly, lengthy and unnecessary, unless there is another question of fact with a need for an independent party. IPR holders and their agents should be allowed to certify the nature of the suspected goods as they are the only ones capable of making the best assessment of the goods that infringe their trademarks. INTA would thus like to stress again that, in our opinion, trademark holders should be involved in custom procedures related to protection of their trademarks.

Simplified procedure: Although the Ukrainian Customs Code provides for a simplified procedure, in practice it is still a time-consuming, complicated and expensive process, mainly because:

1. The holder of the goods (importer) who consents to destroy the counterfeit goods is entirely responsible for all stages of the destruction. He must find a recycling company and sign an appropriate agreement on destruction, find a proper vehicle for transportation of the counterfeits to the place of destruction and obtain all necessary documents and permits allowing the destruction.
2. Only a limited number of licensed recycling companies are eligible to destroy counterfeit goods. It is difficult to find a licensed company and to sign a corresponding agreement. It also happens that such company can be located far away from the customs point, in another city or even region. In order to speed up the process of destruction of counterfeit goods, it would be also very helpful that all Ukrainian Customs Offices cooperate with licensed recycling companies and provide adequate transportation means depending on the goods to be destroyed.

There is a limited experience and lack of knowledge about the simplified procedure among Ukrainian Customs officers. Only few Customs points in Ukraine are experienced in the process of simplified destruction.

There is still a need to further specify the simplified procedure (including the documents required to obtain the consent of the customs checkpoint to declare the goods in the customs regime of destruction) and the criteria recommended recycling companies shall comply with.

Furthermore, in its comments submitted on the Draft law on the amendment of the Customs Code of Ukraine (border measures), INTA is of the opinion that the draft needs clarification on some provisions and in particular the definitions provided. For instance, counterfeit goods are defined in the proposed law as goods that, without consent, bear a sign which is identical to a trademark duly registered in Ukraine, with respect to the same type of goods or which is non-distinguishable in its individual characteristics. However, the general trademark law does not contain the relevant definitions of “type of goods” and “non-distinguishable”. This may lead to the difficulties in enforcement.

Small consignments: It is also recommended to develop clear recommendations and standards for the procedure concerning the destruction of small consignments of counterfeit goods.

The situation with storage of seized counterfeit goods is also worrying. Sometimes the conditions of storage are so poor that our members report cases where there is practically nothing left to destroy by the end of a trial in a criminal case. This is particularly problematic for dangerous counterfeit products such as agrochemicals, which can leak in the soil.

Training of customs officers on a regular basis and harmonization of practices between customs checkpoints are needed. Perhaps the EU could consider technical assistance regarding the training of customs in Ukraine. Trainings done by trademark holders should be allowed and encouraged, in respect of the procedure, from recognition of counterfeits to seizure and destruction.

III. Unfair competition

Protection of Trademark holders against Unfair Competition is needed. According to Article 6 of the Law of Ukraine “*On Protection against Unfair Competition*”, outward appearance of products is protected against unfair competition. Unfortunately, this article does not seem to apply to products being protected as objects of intellectual property. Intellectual property right holders are thus formally deprived of the possibility to apply for protection to the Antimonopoly Committee, and are entitled to appeal only to the court. Nevertheless, the Antimonopoly Committee of Ukraine tends to accept such cases into consideration that creates an inconsistency in the enforcement practice. The aforesaid law should be amended or another draft law should explicitly resolve this inconsistency by inclusion of the protection of outward appearance of products protected as objects of intellectual property against unfair competition.

IV. Substantive trademark law

Refusal or invalidation on the grounds of bad faith should be allowed:

Bad faith trademark registrations are frequent in Ukraine. The Ukrainian Office and the Board of Appeal seem reluctant for the past few years to evaluate bad faith as a ground for refusal and are keen to pass the cases to the court.

There is no provision in Ukrainian law that would enable a right holder to oppose trademarks filed in bad faith. In fact, nothing prevents the registration in bad faith of trademarks that have reputation abroad. Applying article 6 *septies* of the Paris Convention in court proceedings is difficult in practice since Ukrainian courts are bound to the provisions of the national legislation when it comes to such definitions as “agent” or “representative” (for example, we refer to 174/2002 AZONIC/AZONIC in OHIM Guidelines on article 8(3) of the CTMR about “lifting the corporate veil”). Bad faith should be available and clearly defined both for opposition and invalidity proceedings in the trademark legislation. The draft law No. 5699 provides the effective measures for such cases, so, again, it is recommended to facilitate it’s consideration in the parliament.

INTA’s position is that the filing of a trademark application or procuring a registration in bad faith should be an available ground for trademark owners to oppose or seek to cancel the trademark application or registration. Therefore, INTA would support the introduction of such provisions in Ukrainian law. In its Board Resolution, INTA recommends that the following requirements be imposed for a finding of bad faith application/registration:

1. the applicant/registrant knew of the third-party’s rights or legitimate interests in a mark identical to or substantially identical to the mark applied for/registered, where such knowledge is actual or may be inferred from the surrounding circumstances; and
2. the applicant/registrant’s conduct in applying for/registering the mark is inconsistent with norms of reasonable, honest, and fair commercial behavior. In order to determine whether the applicant’s/registrant’s conduct is inconsistent with norms of reasonable, honest and fair commercial behavior should, INTA recommends that a non-exhaustive list of factors is considered.

Opposition proceedings are needed:

Under the current regulations third parties may file “oppositions” against a trademark application “before it is examined by the PTO”. There is no information available indicating whether an application has been already examined or not. Therefore, it is very difficult for third parties to establish whether they can still file oppositions against a certain application. Such system gives too much discretion to the PTO officials to accept or reject an opposition, and does not provide the legal certainty required for third parties to ensure they can defend their rights in a timely manner. Moreover, the deadline to file an opposition is rather short, often less than a week for a fast track procedure.

Also, third parties do not become a party in the proceedings, and their role is merely limited to submit their “observations” to the IPO. The chances to prevent any third party from obtaining similar trademark registration are: (a) filing a preliminary unofficial opposition at the stage of its examination or (b) filing a cancellation action before the court. However, costs for cancellations are high and the proceedings are challenging because effective competitiveness must be established.

INTA recommends the adoption of a proper opposition procedure, similar to the one existing in most EU countries, with trademarks being published for opposition after a certain procedure and with a certain sufficient period granted for oppositions to be filed by third parties. We recommend amending the trademark legislation to that end. The current Draft Law no. 5699 seems to be adequate in respect of opposition procedure, so, it is expedient to fasten its consideration by the Ukrainian Parliament.

Proof of Use

In order to prove trademark use, courts require that both the purchasing and the selling take place inside Ukrainian territory. This poses a problem to trademark owners which conduct business in Ukraine (e.g. via the Internet) without having a physical presence in the territory such as a store: they are not able to prove trademark use under these circumstances, which makes their trademarks vulnerable to cancellation actions due to “non-use” and thus not easily enforceable.

This, in turn, forces trademark owners to re-file new registrations in order to make sure they always have registrations which are within the post-registration grace period.

Article 16 of the Law of Ukraine “*On the Protection of Rights to Marks for Goods and Services*” (the Trademark Law of Ukraine) provides examples of evidence of use of a trademark which are not that restrictive: “...its application on any goods for which it was registered, their package, signboards related to these goods, labels, tabs, tags or any other subjects fixed to the goods, storing goods bearing the said mark for the purpose of offering for sale, offering these goods for sale, sale, importation and exportation of these goods; its use in business papers or advertising, as well as on the Internet”. Article 18 of that Law refer to use/non-use of a trademark by its owner or other person under control of the trademark owner on the territory.

According to some court guidelines (Y2012), a trademark owner must prove use of his trademark with evidences of conducting at least some of the activities provided for by Article 16 of the Law above. Such evidences, in particular, could be an example of products bearing the appropriate trademark, documents depicting the mark (catalogues, price lists proposals for the provision of services or delivery of goods, etc.). An extension of goods bearing the trademark on the territory of Ukraine can be confirmed by checks, receipts, invoices and other documents containing information on the name of the product and place of its acquisition. In case when the trademark owner is non-resident, customs declarations and other customs documents may serve as a confirmation of import of goods to Ukraine.

However, it seems that the courts are taking a case-by-case approach, and that evidences of sales in a third country and import in Ukraine are not sufficient to prove use of a trademark before the courts. Along with other evidences, a purchase and sale agreement bearing respective trademarks, an agreement on placement of advertising of these products at appropriate promotional materials etc. may be provided to the court in confirmation of a trademark use. The absence of real sales of the goods in Ukraine seems to play in favor of the trademark owner's opponent.

A clarification in the law is needed so that the approach of the courts is harmonized and not unduly restrictive regarding the nature of evidences to provide. It is essential also to summarize court practice in this respect and to publish some court guidelines for development of the stable and consistent court practice.

Moreover, stable and consistent court practice is needed with regards domain name disputes which appear currently rather inconsistent: while some courts allowed delegation of unfairly registered domain names to the trademark owners, some other courts refuses such delegation.

Non-traditional marks

In Article 5 of the draft Law number 5699 amending certain legislative acts of Ukraine to improve legal protection of intellectual (commercial) property), in order to be registered, a trademark must be "capable of being graphically represented". The new draft also extends the list of non-traditional marks that can be registered with the possibility to register product shapes and configuration (packaging). The current law only provides for 'registrability' of colors.

The new provisions on non-traditional marks meet the general requirements of the Association Agreement. However, the introduction of the graphical requirement may be regarded as outdated: the work on the proposed amendments to the Ukrainian IP-related laws started before the EU Trademark reform and the targeted harmonization with EU practice considered the provisions that preceded the reform. In order to achieve better alignment with the current EU legal framework that removed graphical representation as a registration condition, it is suggested that Ukrainian law is updated accordingly. INTA took the removal of the graphical representation requirement in the EU Trademark reform as a positive change from the point of view of non-traditional marks as it opened up possibilities for representation of such marks on the register and, therefore, the possibility of registering a broader range of marks.

V. Suggestion on the practices of the Ukrainian Patent and Trademark Office

Our members noticed inconsistency in the practice of the Office, for example regarding absolute grounds for refusal, and in particular the evidence regarding use to be provided by an applicant of a purely descriptive trademark. It is also recommended to formalize some standards regarding the use of certain evidence, such as the use of Internet sources. Perhaps the European Commission could offer training on these specific practices.

VI. Geographical Indications (GIs)

Following the entry into force of the EU-Ukraine Association Agreement, more than three thousands of EU geographical indications obtained protection in Ukraine. Meanwhile, before the Agreement's entry into force, different trademarks were registered in Ukraine, which are consonant with EU protected geographical indications. Such parallel existence of EU protected geographical indications and Ukrainian registered trademarks caused different disputes between right holders.

A contrario, INTA strongly welcomes the significant progress demonstrated in Ukraine regarding the rejection of trademarks filed with unfair use of EU protected designations of origin and protected

geographical indication which is essential for development of agriculture, rural development and the protection of local territories and know-how.

About INTA

The International Trademark Association (INTA) is a global association of brand owners and professionals dedicated to supporting trademarks and related intellectual property (IP) to foster consumer trust, economic growth, and innovation.

INTA's members are more than 7200 organizations from 191 countries. INTA members collectively contribute almost US \$12 trillion / €8.8 trillion / ¥73 trillion to global GDP annually. For comparison, the 2013 annual GDP of the top three markets was \$9.2 trillion (China), \$17.9 trillion (European Union) and \$16.7 trillion (United States). The Association's member organizations represent some 30,000 trademark professionals and include brand owners from major corporations as well as small- and medium-sized enterprises, law firms and nonprofits. There are also government agency members as well as individual professor and student members. INTA has 1,780 member organizations in the European Union and 33 members in Ukraine.

INTA undertakes advocacy work throughout the world to advance trademarks and related rights, and offers educational programs and informational and legal resources of global interest. Headquartered in New York City, INTA also has offices in Brussels, Shanghai, Singapore, Santiago de Chile and Washington D.C. and representatives in Geneva and New Delhi.

Further information about our Association can be found at www.inta.org.

For further information, please contact: H el ene Nicora, Representative Officer, Europe at hnicora@inta.org / +32 2 880 37 22.