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# European Community Trade Mark

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Two of the principles of the Treaty of Rome are among others the completion of the single market and the removal of barriers to free movement of goods and services. In order to put forward these objectives the European Community has taken another step by establishing a Community-wide trade mark protection, the Community trade mark.

Besides the existing alternatives of trade mark protection, namely national registration and international registration, a Community-wide trade mark protection has now become possible in Europe. It is therefore no longer required to apply for separate registration in each of the 15 Member States if a European-wide trade mark protection is desired. At present, one registration is available for the whole of the European Union.

The legal basis for the Community trade mark was set by Council Regulation (EC) No. 40/94 of 20 December 1993 of the Community trade mark, the Commission Regulation (EC) No. 2868/95 of 13 December 1995 concerning the enforcement of the Council Regulation (EC) No. 40/94 as well as Commission Regulation (EC) No. 2869/95 of 13 December 1995 on the Schedule of Fees of the Office for Harmonization in the Internal Market (trade marks and designs).

This Office for Harmonization in the Internal Market (trade marks and designs) is located in Alicante (Spain) (therefore "Alicante Office") and started its work on January 1, 1996. Application for Community trade marks may be filed with the Office beginning with April 1, 1996. Applications having been filed since January 1, 1996 are consequently deemed to have been filed on April 1, 1996. With this date the proprietor of the trade mark enjoys the right of priority in the entire European Union, if the trade mark application has been duly filed.

Due to the unitary character of the Community trade mark it has equal effect throughout the Community. Consequently it can only be registered, transferred, surrendered or revoked with respect to the entire Community. Therefore, a single ground for refusal in only one Member State is sufficient to prevent a registration.

Pursuant to Article 4 of Council Regulation (EC) No. 40/94, a Community trade mark may consist of any signs capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings.

Basically all natural or legal persons who are nationals of one Member State of the European Community or nationals of other states which are parties to the Paris Convention for the Protection of Industrial Property or to the Agreement establishing the World Trade Organization may apply for the registration of a Community trade mark. Registrations are also available for nationals of states which are neither parties of one of the above mentioned international treaties but are domiciled or have their seat or have real and effective industrial or commercial establishments within the territory of the European Union or of a state which is party to the Paris Convention.

During the registration procedures, the Alicante Office shall only examine whether Community trade mark applications satisfy the general requirements, whether the applicant may be proprietor of a Community trade mark and perform the examination as to absolute grounds for refusal. According to the procedures at the Office for Harmonization in the Internal Market (trade marks and designs) it is consequently the responsibility of third parties to ensure that conflicting marks are rejected.

Any natural legal person and any group or body representing manufacturers, producers, suppliers of services, traders or consumers may for that reason submit to the Alicante Office written observations explaining on which absolute grounds for refusal the trade mark shall not be registered ex officio.

Within a period of three months proprietors of earlier trade marks have in addition the possibility to give notice of opposition to registration of the trade mark on the relative grounds for refusal that it may not be registered.

Any attorney at law may represent natural or legal persons before the Alicante Office to that extent that he is admitted to the bar and entitled to act as a representative in trade mark matters in one of the Member States.

The trade mark will be registered as a Community trade mark if the application meets the general requirements, no notice of opposition has been filed or such a notice has been definitely rejected.

In any case the applicant or a proprietor of a Community trade mark may request the conversion of the Community trade mark application or Community trade mark into a national trade mark application.

Community trade marks are registered for a period of 10 years from the date of filing of the application. The fee for application for registration (3 classes) is 975 ECU, for registration 1.100,-- ECU, the additional class fee amounts to 200 ECU each time. Therefore, a Community trade mark could help to retrench one's expenses if a trade mark protection in at least several Member States of the European Community is sought or if the extension of activities to the entire European Union in the future is envisaged.

Hence, the Community trade mark is another possibility to protect your intellectual property which should be taken into consideration.