

COMMUNITY TRADEMARKS

DURATION – ADVANTAGES – AREA COVERED – WHAT IS A COMMUNITY TRADEMARK? – PROCEDURES – RIGHT OF PRIORITY – PRIOR EXISTENCE – PROTECTION AND ALLIED ASPECTS – BRANDS AND MAKETING

Duration

Registration of a Community trademark lasts for 10 years from filing date of the application and can be renewed an unlimited number of times for 10-year periods.

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Advantages

- The right to exclusive use of the Community trademark is valid throughout the Union.
- Centralization at Alicante means considerable simplification of procedures, a single application to register, a single language, a single administrative centre, a single file to handle.
- As an alternative to filing with OHIM, applications can be filed at the national office of the firm concerned.
- Centralization reduces costs to a considerable extent compared with those for separate registration in all EU countries or in some of them.
- The registration tax is paid only when obstacles no longer exist to registering the Community trademark.

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Area covered

The Council of Europe (CE) regulation No. 40/94 of December 20 1993 instituted a Community trademark valid through the whole of the EU that at present comprises the following 27 countries:

Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Great Britain, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg,



Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden,

Candidate countries: Croatia, Former Yugoslav Republic of Macedonia, Turkey.

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What is a Community trademark?

A Community trademark is not an ensemble of independent national trademarks, but is a single title valid throughout the EU, which means that its vicissitudes are simultaneously reflected on all EU countries. The distinctive signs of a Community trademark are defined in much the same way in the legislation of the individual countries.

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Procedures

An application to register must be filed with the Office for Harmonization in the Internal Market (OHIM) whose head office is at Alicante, Spain, or else with the Italian Patent and Trademark Office (UIBM) from where it must be forwarded to OHIM within two weeks from the date of filing.

The registration application must indicate one or more classes of products or services to which the trademark applies, making reference in so doing to the International classification of products and services established by the Nice Agreement of June 15, 1957, and subsequently amended.

Application can be expressed in one of the official languages of member states whether the trademark is new or is one already registered at national level in one of the EU countries.

A Community trademark can be registered by a natural or juridical person possessing citizenship or nationality of one of the member states or of a member state of the Paris Convention or of the Agreement instituting the world trade organization (GATT).

Only after verification of its requisites of validity and of the absence of prior references existing in the member states, can the trademark be published in the Community trademark bulletin .

Within three months after the date on which registration of the trademark was published, opposition to said registration can be made before the OHIM. If there is no opposition the trademark will be entered in the register of Community trademarks and published again following payment of a registration fee.



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Right of Priority

Quoted from Article 29, Regulation CE 40/94 (December 20 1993): “Anyone who has duly filed a trademark in or for one of the States signatory to the Paris Convention or to the Agreement instituting the World Trade Organization, or assignee (ayant cause), benefits, during the six months from date of filing the first application, by a right of priority for filing an application for a Community trademark for products or services identical to, or comprised within, those for which the trademark is filed”.

Further, the filing date of the Community trademark is recognised as a priority date for national and international filings, even if the applicant decides to transform his application or his/her own Community trademark into national applications.

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Prior existence

If an applicant or owner of a Community trademark already has a previous identical national trademark for identical products and services, he can claim this prior existence. This enables him to preserve his former rights even if he renounces the national trademark or fails to renew it.

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Protection and allied aspects

The OHIM arranges centralized handling of procedures concerning filing, examination, grant and entry in the register of Community trademarks.

Further, together with the judicial authorities of the countries forming part of the EU, OHIM shares the task of emitting enactments on applications for invalidation of Community trademarks subsequent to their registration.

Judicial protection of Community trademarks is carried out by specialized courts set up in each EU country. The legislation applied is that of the country hosting the court competent to act which, however, does not constitute a departure from the single nature of the trademark since the main legal measures governing national trademarks are fairly uniform in all countries of the EU.

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Brands and marketing

The Community trademark can be sold throughout the Union but, for a sale to be valid, the deed must be entered in the register of Community trademarks. Apart from a sale, a Community trademark can be licensed to single countries or to limited geographical areas. Both a sale and a licence can also be partial, in other words concern only some of the products and services for which the trademark was registered.

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