

EU Trade Mark

1. Basic principles

a) Principle of autonomy:

The law of the EU trade mark is an autonomous system independent of the respective national law. National regulations can only be applied to the EU trade mark if the EUTMR explicitly allows this.

b) Principle of uniformity:

The EU trade mark has effect for the entire territory of the European Union, unless otherwise provided, Art. 1 (2) EUTMR. It is a unitary, supranational right and therefore, in contrast to the IR trade mark, does not consist of a bundle of national trade marks.

c) Principle of coexistence:

The EU trade mark law does not replace the national trade mark rights but coexists with them, recital 6 EUTMR.

d) Principle of permeability:

Special legal provisions are to privilege the EU trade mark and interlock it with national trade mark law, thus creating stronger, permeable legal protection.

2. Pure register mark

Unlike a German trade mark, the EUTM can only be acquired by registration, Art. 6 EUTMR. Protection therefore does not arise through mere use or notoriety. The European Union Intellectual Property Office (EUIPO), based in Alicante, Spain, is responsible for registration.

3. Special features compared to German law

a) Absolute grounds for refusal:

The absolute grounds for refusal according to Art. 7 EUTMR are to be examined comprehensively ex officio, Art. 42 I EUTMR, cf. in contrast Sec. 37 (3) MarkenG. If a ground for refusal exists only in part of the EU, the application is refused with effect for the entire EU, Art. 7 II EUTMR.

b) Transmission:

In contrast to German law, where the assignment is informal according to Sec. 27 MarkenG in conjunction with Sec. 413, 398 BGB (German Civil Code), the EUTM can only be assigned in writing according to Art. 20 III EUTMR. The written form requirement only concerns the transfer in rem, but not the obligation transaction. The acquirer can only assert the rights from the EUTM after the transfer has been entered in the register, Art. 20 XI EUTMR. Under German law, the filing of the application for registration is sufficient, Sec. 28 (2) 1 MarkenG.

c) Opposition proceedings:

If there are no absolute grounds for refusal, the application for the EUTM is published, Art. 44 EUTMR. Within a period of three months, an opposition may be filed against the registration on the grounds that the registration is precluded by relative grounds for refusal according to Art. 8, Art. 46 I EUTMR. Only then the registration of the EUTM takes place (preceding opposition procedure). In contrast, the opposition procedure in German law is subsequent, Sec. 42 (1) MarkenG.

d) Rights-preserving use:

For a long time, the question of the territorial area in which the use preserving the right must take place according to Art. 18 I EUTMR was disputed. It was sometimes argued that the use must take place in at least three Member States, whereas the

Council and the Commission also considered the use within a single Member State to be sufficient. The ECJ, on the other hand, has ruled that the assessment of use must be based on the single internal market and that state borders are therefore disregarded (ECJ, GRUR 2013, 182, para. 42, 44 - *ONEL/OMEL*; *Sosnitza*, GRUR 2013, 105, 108 et seq.).