



## **TRADE MARK AND DESIGN USER COMMUNITY STRONGLY OPPOSES DIVERSION OF OHIM FUNDS AND CALLS ON EU LEGISLATORS TO FOCUS ON MAKING TRADE MARK REFORM A SUCCESS**

Trade mark-intensive industries account for 21% of all direct jobs in the EU and for 34% of the EU GDP. The EU's harmonised trade mark and design legislation played an important role in achieving these results.

In March 2013, the undersigned organisations, representing thousands of companies across all industry lines as well as entrepreneurs and small-to-medium-sized enterprises (SMEs) in Europe and beyond, welcomed European Commission plans to review the EU's 20 year-old legislation on trade marks and create a European Trade Mark and Design Network. At the core of the Single Market, the underlying vision of this ambitious project was to create a European-wide, lean, efficient and cost-effective environment for users of the system.

The objectives of the Commission proposals were to:

- Fine-tune and further harmonise trade mark legislation in Europe and converge practices between the Office for the Harmonisation in the Internal Market (OHIM), the Benelux Office and the 25 national trade mark offices;
- Improve the services provided by OHIM to its users;
- Invest in the national trade mark offices through a process called "cooperation";
- Avoid future surpluses and deal with the sizeable accrued surplus which is in direct contravention of the legal requirement that OHIM should operate with a balanced budget<sup>1</sup>;
- Finance the implementation of the trade mark reform using part of OHIM's accrued surplus and annual income.

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<sup>1</sup> As a result of its success, OHIM has accumulated over the last twenty years a sizeable surplus funded purely from trade mark and design registration and renewal fees, and which now equals approximately 300 million Euros, on top of its annual reserve of 190 million Euros.

As the legislative process moved into trilogue at the end of 2014, a number of proposals emerged that, if implemented, could seriously damage the European trade mark system instead of improving it.

Proposals being considered included:

- Diversion of part of OHIM's accrued surplus to the Member States through a mechanism called "compensation" or "off-setting" (in essence, a subsidy without strings attached) to be continued in case of future surpluses: in other words, imposition of indirect taxation;
- Use of a percentage of OHIM's annual income to finance the European Trade Mark and Design Network through the "cooperation" mechanism;
- Diversion of part of OHIM's funds to the European School in Alicante on a yearly basis, in contravention of the Convention that regulates the funding of European Schools;
- Diversion of part of OHIM's accrued surplus via the EU general budget to finance the Court of Justice of the EU (CJEU) to be continued in case of future surpluses, thus in effect asking trade mark and design owners to fund access to justice; and
- Transfer of any remaining surplus to the general budget of the EU: again, indirect taxation.

The fees paid by users are the sole reason for the surplus. Diverting those fees to non-IP related purposes was not legally permissible under the Community Trade Mark Regulation (CTMR). However, on 26<sup>th</sup> February 2015, the European Parliament's Committee on Budgets adopted an amendment to a Regulation on financial rules applicable to the budget of the European Union in order to provide retroactively a legal basis for this unacceptable diversion of funds from OHIM to the EU general budget.<sup>2</sup>

The undersigned organisations remain strongly opposed to most of these moves.

It is, after all, the companies, the SMEs, the entrepreneurs who finance OHIM through their fees in payment for the right to register a trade mark and design. The fees should cover all the reasonable running costs of OHIM. However, studies show that users have been overcharged for many years in contravention of the CTMR because fee reductions that would have prevented the accumulation of surpluses in OHIM have been blocked by the National Trade Mark Offices who control the OHIM's Administrative Board and Budget Committee and who are now asking to benefit from the surplus.

Under the above plans, the surplus that should rightly be used to improve the trade mark and design systems would instead be diverted elsewhere. As a result, right holder companies of all sizes, from micro-enterprises upwards, might end up indirectly subsidising the budget of the EU and of Member States, financing the European School in Alicante and the court systems<sup>3</sup>. This would be an unacceptable tax on industries relying on IPRs, while Europe's growth and innovation depend on them.

We are concerned that the focus of the trilogue has been diverted to reallocating the existing surplus and any future surplus. In our view, the trilogue should focus instead on providing important improvements to the trade mark system and ensuring that future OHIM budgets are balanced.

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<sup>2</sup> Regulation (EU, Euratom) No 966/2012 - Article 208 – paragraph 1 – subparagraph 3 a (new)

<sup>3</sup> The CJEU and European schools should continue being funded from the EU and/or Member States' budgets as is currently the case.

We call on the Commission, European Parliament and Council to ensure that the trade mark reform is a success in the interest of the users of the systems and request that:

- OHIM renewal fees be decreased to ensure that companies with existing IPRs are not disadvantaged and that OHIM is better able to operate a balanced budget while avoiding future surpluses;
- The fees already paid and to be paid by users in the future be dedicated to trade mark and design-related activities; and
- EU Legislators focus on achieving a European trade mark system which is efficient, harmonised and affordable for the benefit of companies, SMEs and entrepreneurs.

**8 April 2015**

## **List of signatory organisations**

**AIM** is the European Brands Association. It represents brand manufacturers in Europe on key issues which affect their ability to design, distribute and market their brands. AIM's membership groups some 1800 companies of all sizes through corporate members and national associations in 21 countries. EU consumers spent 640 bn euro on food, drink, home and personal care brands alone in 2012. AIM is both an observer to OHIM's AB/BC and an active member of its Users Group. [www.aim.be](http://www.aim.be)

Contact: Marie Pattullo, Senior Brand Protection Manager, [marie.pattullo@aim.be](mailto:marie.pattullo@aim.be)

**AmCham EU**, the American Chamber of Commerce to the European Union, speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €2 trillion in 2014 and directly supports more than 4.3 million jobs in Europe.

<http://www.amcham.eu>

Contact: Ava Lloyd, Policy Assistant, [ava.lloyd@amcham.eu](mailto:ava.lloyd@amcham.eu)

**APRAM**, the Association of Trademarks and Designs Rights Practitioners, founded 35 years ago is an international Association of over 850 French-speaking specialists in industrial and intellectual property, in particular trademarks and designs. Members include in-house intellectual property specialists, Attorneys at law and Trade-mark Attorneys with an international practice. The association plays an active role in discussions concerning intellectual property and business law in France, Europe and the world. **APRAM** is notably member of the OHIM's users group and the OHIM's Observatory, and is observer at the World Intellectual Property Organization (WIPO). [www.apram.com](http://www.apram.com)

Contact: Valérie Dorey, Vice-President, [dorey@tmark.fr](mailto:dorey@tmark.fr)

**BUSINESSEUROPE** is the leading advocate for growth and competitiveness at European level, standing up for companies across the continent and campaigning on the issues that most influence their performance. A recognised social partner, we speak for all-sized enterprises in 33 European countries whose national business federations are our direct members.

<http://www.businesseurope.eu>

Contact: Ilias Konteas, Senior Adviser – Legal Affairs, [i.konteas@businesseurope.eu](mailto:i.konteas@businesseurope.eu)

**EFPIA** - Through its direct membership of 33 national associations and 40 leading pharmaceutical companies, the European Federation of Pharmaceutical Industries and Associations represents on the EU scene about 1,900 companies committed to researching, developing and bringing to patients new medicines that will improve health and the quality of life around the world. EFPIA is an OHIM User Association.

Contact: Elise Melon, Senior Manager IP & Trade, [elise.melon@efpia.eu](mailto:elise.melon@efpia.eu)

**INTA**, the International Trademark Association, is the global association of trademark owners and professionals dedicated to supporting trademarks and related intellectual property in order to protect consumers and to promote fair and effective commerce. With a membership of more than 6,500 trademark owners and professionals—including almost 1400 in Europe—INTA is an observer to OHIM's Administrative Board and Budget Committee and an OHIM User Association.

<http://www.inta.org>

Contact: Christina Sleszynska, Chief Representative Officer – Europe, [csleszynska@inta.org](mailto:csleszynska@inta.org)

**MARQUES** is the European association representing brand owners' interests. **MARQUES'** mission is to be the trusted voice for brand owners. **MARQUES** is an accredited organisation before the Office for Harmonisation in the Internal Market (OHIM), appointed observer at the OHIM Administrative Board and Budget Committee, an official non-governmental observer at the World Intellectual Property Organisation and a registered interest representative organisation (ID 97131823590-44) in the EU Transparency Register. [www.marques.org](http://www.marques.org).

Contact: Alessandra Romeo, External Relations Officer, [aromeo@marques.org](mailto:aromeo@marques.org)

**TIE**, Toy Industries of Europe, is the trade association for the European toy industry. The toy industry is highly international and is one of the most dynamic business sectors in Europe. Over 99% of the sector is composed of small and medium sized enterprises (SMEs), which have less than 50 employees. Members of TIE include companies as well as national associations from Bulgaria, France, Germany, Italy, the Netherlands, Spain, Sweden, the UK and the Nordic region. TIE membership is open to both companies with a presence in Europe and national associations from European Union Member States (including candidate countries).

<http://www.tietoy.org>

Contact : Federica Miccoli, EU Affairs, [federica.miccoli@tietoy.org](mailto:federica.miccoli@tietoy.org)