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19 September 2001

REPORT

on the problem of the exhaustion of trade mark rights
(SEC(1999)2033 – C5-0354/2000 – 2187/2000(COS))

Committee on Legal Affairs and the Internal Market

Rapporteur: Hans-Peter Mayer

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PROCEDURAL PAGE

By letter of 1 December 1999 the Commission submitted to Parliament the Commission staff working paper on the exhaustion of trade mark rights (SEC(1999)2033 - 2187/2000(COS)).

At the sitting of 7 July 2000 the President of Parliament announced that she had referred this document to the Committee on Legal Affairs and the Internal Market as the committee responsible and the Committee on Industry, External Trade, Research and Energy for its opinion (C5-0354/2000).

At its meeting of 20 March 2000 the Committee on Legal Affairs and the Internal Market had appointed Hans-Peter Mayer rapporteur.

The committee considered the Commission's staff working paper and the draft report at its meetings of 28 November 2000, 24 January 2001, 5 March 2001, 11 April 2001, 14 May 2001, 25 June 2001, 10 July 2001 and 18 September 2001.

At the last meeting the committee adopted the motion for a resolution by 23 votes to 2.

The following were present for the vote: Rainer Wieland, acting chairman; Ward Beysen, vice-chairman; Hans-Peter Mayer, rapporteur; Paolo Bartolozzi, Luis Berenguer Fuster, Maria Berger, Raina A. Mercedes Echerer, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Gerhard Hager, Malcolm Harbour, Othmar Karas, Ioannis Koukiadis, Kurt Lechner, Klaus-Heiner Lehne, Toine Manders, Luís Marinho, Véronique Mathieu, Manuel Medina Ortega, Angelika Niebler, Antonio Tajani, Feleknas Uca, Theresa Villiers, Diana Wallis, Joachim Wuermeling and Stefano Zappalà.

The explanatory statement will be presented orally in plenary sitting.

The Committee on Industry, External Trade, Research and Energy decided on 12 July 2000 not to deliver an opinion.

The report was tabled on 19 September 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the Commission staff working paper on the exhaustion of trade mark rights (SEC(1999)2033 – C5-0354/2000 – 2187/2000(COS))

The European Parliament,

- having regard to the Commission staff working paper (SEC(1999)2033 - C5-0354/2000),
- having regard to the trade marks Directive of 21 December 1988¹ and Council Regulation No. 40/94 of 20 December 1993 on the Community trade mark², and in particular Article 7 and Article 13 thereof which reads as follows:

"Exhaustion of the rights conferred by a Community trade mark

(1) A Community trade mark shall not entitle the proprietor to prohibit its use in relation to goods which have been put on the market in the Community under that trade mark by the proprietor or with his consent.

(2) Paragraph 1 shall not apply where there exist legitimate reasons for the proprietor to oppose further commercialisation of the goods, especially where the condition of the goods is changed or impaired after they have been put on the market,"

- having regard to the opinion of the Economic and Social Committee of 24 January 2001 (ESC 42/2001),
 - having regard to the Commission's decision of 24 May 2000 not to submit any proposals to alter the current system of Community-wide exhaustion,
 - having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0311/2001),
- A. whereas the principle of national exhaustion originally applied in several Member States of the European Community,
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- B. whereas in 1974 the Court of Justice of the European Communities in respect of these countries extended national exhaustion to Community-wide exhaustion (judgment of 31.10.1974 in Case 16/74, Centrafarm v. Winthrop [1974] ECR 1183), giving the following reasons:

'In fact, if a trade mark owner could prevent the import of protected products marketed by him or with his consent in another Member State, he would be able to partition off

¹ 89/104/EEC, OJ L 40, 11.2.1989, p. 1, last amended by Council Decision 92/10/EEC of 10. 12.1991, OJ L 6 of 11.1.1992, p. 35.

² OJ L 11, 14.1.1994, p. 1, last amended by Council Regulation EC No. 3288/94 of 22.12.1994, OJ L 349, 31.12.1994, p. 83.

national markets and thereby restrict trade between Member States, in a situation where no such restriction was necessary to guarantee the essence of the exclusive right flowing from the trade mark' (paragraph 11 of the judgment),

- C. whereas the transition from national to Community-wide exhaustion led to greater competition,
- D. whereas in several Member States the principle of international exhaustion applied before the trade marks directive came into force;
1. On the grounds of the above considerations and findings, calls on the Commission:
- to produce a detailed study of the implications of a possible transition to the principle of international exhaustion for European manufacturers and consumers as well as for jobs;
 - to present a report on any cases of abuse of trade mark rights notified to the Commission, to explain how such cases of abuse have been addressed, including with regard to competition rules, and to identify possible deficiencies that may exist in current legal provision;
 - to examine the legal situation with regard to the exhaustion of trade mark rights in the most important trading nations;
 - to ascertain the prospects for the conclusion of an international agreement on harmonised rules on exhaustion of trade mark rights under the WTO or WIPO;
 - in the light of the most recent rulings by the Court of Justice, to examine the need for clarification of the directive, and in particular Article 7 thereof, in order to achieve a higher degree of legal certainty and legal clarity regarding the restrictions applying under competition law in respect of trade mark law, which is necessary above all for SMEs and consumers;
 - to examine whether clarification of trade mark law in respect of non-commercial imports of goods purchased by consumers via the Internet is needed;
 - to submit to Parliament, by 31 December 2002, a report on these points containing detailed proposals;
2. Instructs its President to forward this resolution to the Commission, the Council and the Member States.