Possibilities and opportunities of creating a pan-European trustmark for e-commerce

by Civic Consulting
(research conducted March - May 2012);

for the European Parliament, DG Internal Policies of the Union, Directorate A (Economic and Scientific Policy);

presentation for the EP
Committee for Internal Market and Consumers
(held on 28 June 2012)
Trust and trustmarks in e-commerce
Background

- *Lack of trust* is one of the key impediments to e-commerce
- *Main concerns* include delivery, returns, product replacement/repair, personal data, etc.
- In a 2011 consumer market study, only 12% of consumers reported no concerns about shopping online from another EU country
Building trust in e-commerce

- Different possibilities for trust-building, including advertising, trustmarks, objective-source ratings, and partnerships
- Differences between small traders and those with strong brand recognition
  - The latter have less or no need to support their trustworthiness with additional cues such as trustmarks
What is a trustmark?

- Intended to be displayed as e-labels, to signal adherence to a set of rules (code of conduct) and increase confidence in the online trader.
- A defining characteristic is the involvement of a third party, including certification (even though this is currently not a prerequisite for the legal operation of a trustmark).
Trustmarks in the EU (I)

- Currently not available in all Member States
- Available trustmarks provide different levels of guarantees / protection to consumers
- Findings on their effects are inconclusive
- Awareness is a critical success factor but is currently rather low (this may be improving)
Trustmarks in the EU (II)

• Diversity among trustmarks on the following:
  – formal accreditation (not available in all MS)
  – nature of administering organisation(s)
  – funding
  – stakeholder involvement
  – scope of coverage
  – enforcement (monitoring and sanctions), etc.
(see Annex / Additional info.)
<table>
<thead>
<tr>
<th>Main features</th>
<th>Main variations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Formal approval</td>
<td>Yes</td>
</tr>
<tr>
<td>Organisation(s) administering</td>
<td>Private – not-for-profit</td>
</tr>
<tr>
<td>Formal stakeholder involvement</td>
<td>Supervisory board</td>
</tr>
<tr>
<td>Geographical scope of coverage</td>
<td>One national market</td>
</tr>
<tr>
<td>Substantive scope of coverage</td>
<td>Broad</td>
</tr>
<tr>
<td>Funding</td>
<td>Private</td>
</tr>
<tr>
<td>Money-back guarantee</td>
<td>Yes</td>
</tr>
<tr>
<td>Internal ADR/ODR procedures</td>
<td>Yes</td>
</tr>
<tr>
<td>Traders must adhere to external ADR</td>
<td>Yes</td>
</tr>
<tr>
<td>Monitoring traders’ compliance</td>
<td>Regular re-certification</td>
</tr>
</tbody>
</table>
| Sanctions for non-compliance          | Warning                                      | Short-term withdrawal                       | Long-term withdrawal                        | Financial penalties
Growth in the use of examined trustmarks

Figure shows the total number of traders using Confianza Online (ES; operational in 2003), e-maerket (DK), Thuiswinkel Waarborg (NL), or Trusted Shops (DE+)

Source: Civic Consulting (based on trustmark-reported information)
Advantages and disadvantages
Main potential advantages

• Potential advantages of an EU trustmark are dependent upon its design; they could include:
  – Support for SMEs
  – Enhanced cross-border coordination of trustmarks and exchange of best practices
  – Overcoming language barriers
  – Increased legal certainty
  – Increased credibility of accredited trustmarks
  – Broad cross-border recognition among consumers
  – Increases in online shopping trust / cross-border trade
Main potential disadvantages

- Potential disadvantages of an EU trustmark are also dependent upon its design and could include:
  - The cost of administering the trustmark
  - Administrative burden for businesses
  - Potential confusion among consumers
  - Interference with existing trustmarks
  - Difficulty ensuring consistency across the EU
  - Gaps in coverage in case of an accreditation scheme for existing trustmarks
Legal framework and considerations
Existing legal framework

• Trustmarks and their models can be freely started and determined
• No EU legislation directly regulating trustmarks, but there is a comprehensive set of rules protecting consumers in e-commerce
• Primary relevant instrument for the use of trustmarks is that regarding commercial communication directed at consumers (especially the 2005 UCPD)
Requirements for the trustmark and its code of conduct

• A trustmark is likely to be perceived as a guarantee by a consumer and therefore must guarantee something that is not prescribed by law
  – UCPD Annex I, item 10: it is a misleading commercial practice to present rights given to consumers by law as a distinctive feature of the trader’s offer

• Certification, monitoring, enforcement, etc. by a third party intrinsically entail beyond-the-law consumer benefits, as would any in-case-of-problems guarantee
Liability issues

- The trustmark may establish expectations, such as guarantees for which the issuer may be liable.
- The trustmark operator is not likely to be liable for all breaches by a trader – unless the trustmark includes a guarantee that specifically covers this.
- Whether the trustmark operator is liable will depend on the interpretation of national law.
- Interpretation would involve consideration of whether the trustmark operator has failed to carry out controls that the consumer could reasonably expect.
Substantive and procedural scope

- Introducing a trustmark at EU level would be akin to establishing a privately operated trustmark in the sense that the desired scope can be freely chosen.
- Minimum harmonisation entails that the code of conduct must be in compliance with the law in all MS (highest common denominator).
- It is advisable for an EU trustmark to provide procedures for both initial and recurrent assessment as well as sanctions in case a violation of the code of conduct is identified (i.e. enforcement).
Voluntary or mandatory?

- All interviewees were against a mandatory trustmark.
- If policy makers decided to introduce a mandatory EU trustmark, it would be necessary to introduce EU legislation imposing the requirement on traders.
- If those wishing to conduct trade online were obliged to obtain a trustmark and pay for it, this could be regarded as an extra tax on e-commerce, and mandatory certification could be interpreted as an authorisation scheme in the sense prohibited by Article 4(1) of E-commerce Directive.
Need for legal changes? (I)

- In order to establish an EU-wide trustmark for e-commerce, the trustmark provider must consider differences in substantive law
  - Trend in the EU towards full harmonisation of consumer protection but there are still differences in national law (from the tradition of regulating consumer protection in ‘minimum directives’)
- Differences in national legislation can be overcome by adopting a code of conduct that satisfies requirements in all MS (highest common denominator)
Need for legal changes? (II)

- In general terms, the choice of legal instrument follows the extent to which MS are to carry out the scheme:
  - If an EU institution should award the trustmark, a regulation would be more fit for the purpose
  - If the approach was for the Members States to set up national institutions and ensure accreditation at national level, a directive would be suitable
- One necessary preliminary consideration is to what extent the legal instrument lays out procedural aspects
Policy options
1. No intervention

- Free market for provision of trustmarks
- Over time, market may offer effective structures
- Note that a commitment has been made within the framework of Digital Agenda (Action 17) for the launch of a stakeholder platform, so this option has been surpassed (but it is a fall-back option)
2. Encouraging/facilitating self-reg.

- Possibly co-fund stakeholder collaboration (e.g. stakeholder forum with the view of developing common standards for trustmarks in e-commerce)
- Focus could be on procedural aspects of trustmarks and substantive aspects of codes of conduct
- Feasibility depends on financial commitment by business community; participation of non-industry stakeholders would likely have to be ensured by public funding (see examples: ETR and the Ecolabel)

- Recommendations would provide a set of voluntary requirements for trustmarks in e-commerce, comparable to the EC Recommendation on ADR
- Preferable to build upon best practice and the ETR
- Work to be done would be similar to that envisaged under the ‘encouraging self-regulation’ option, while the degree of EC involvement would increase
4. Accreditation scheme

- Accreditation in essence means certifying the certifier.
- The purpose of an EU accreditation scheme would be to provide supervision and ensure the quality of trustmark providers.
  - This aspect was described by most interviewees when asked about an EU trustmark.
- Indication of an accreditation by an EU trustmark accreditation scheme could take the form of a label added to the national trustmark (could be accompanied with publication on the respective EC website).
5. Certification scheme

- The most far-reaching solution from EU perspective
- The trustmark would be awarded following an audit based on the scope of coverage of the trustmark and a respective set of requirements (code of conduct)
- Would require an organisation equipped and competent to run the certification process
- A mechanism for stakeholder participation would be an important element
- A considerable financial challenge entailing investment to launch the trustmark and ensure its sustainability
Outlook

- Encouraging self-regulation might produce results in the short run; co-regulation in a mid-term perspective (would be feasible with reasonable administrative and financial implications for the EU)
- Establishing an EU trustmark accreditation scheme or a pan-EU trustmark would require a comprehensive cost-benefit-analysis, to be followed by considerable long-term planning and investment if adopted
  - Will take several years from the preparation of the respective legislation until dissemination/take-up