



Dr Margot Fröhlinger
Director, Knowledge-Based Economy
DG Internal Market
European Commission
Brussels

30 March 2010

Dear Ms Fröhlinger

BUSINESSEUROPE has been following closely the debate on the use of a Community Trade Mark (CTM) prompted by the Benelux Office for Intellectual Property's decision in the ONEL/OMEL case that the use of a Community Trade Mark (CTM) in one country (here: Netherlands) was not deemed sufficient to constitute genuine use of such a trade mark in the European Community within the meaning of Article 15 of the Community Trade Mark Regulation. We have also followed subsequent decisions and statements by other national intellectual property offices on the issue of use.

We are concerned that this judgment undermines the unitary nature of the CTM as a fundamental requirement to support the proper functioning of the EU single market. It contradicts the position expressed in the Joint Statement by the Council and the Commission of 20 December 1993 concerning the territorial requirement for a CTM to be genuinely used "in the Community" (Article 15 CTMR) and as applied by the OHIM and confirmed by the case law of the European Court of Justice.

We believe that the question of whether or not use of a CTM is genuine use within the Community must be assessed on a case-by-case basis without introducing territorial elements but taking all the circumstances of a specific case into account. Making the assessment of use conditional on the number of Member States affected by the use of the CTM can only lead to fragmentation and repudiation of the single market.

Such a change would put SMEs in a more disadvantageous position because it takes them longer to develop their businesses due to the lack of resources to expand their market simultaneously across a number of countries. It would also negatively affect predictability of decisions and create an environment of uncertainty for users.

We will also convey our views on this issue to the Max Planck Institute currently conducting the study on the evaluation of trade mark systems in Europe.

Yours sincerely,

(original signed by)

Jérôme P. Chauvin
Director
Legal Affairs Department
Internal Market Department