

The Directive also defines the proprietary exclusive rights which include preventing third parties from using the same or similar mark without consent. This Directive is to be implemented by 1 January 1992.

In addition to the harmonization of national systems, the Commission has put forward a proposal, originally proposed in 1980, for a regulation that would establish a Community Trade Mark (CTM). This regulation would allow persons to file one trademark application which would be valid throughout the Community, based on a single set of procedures and legislation. As is the case with the Directive, under the CTM, proprietors are granted the right to prevent third parties from using marks similar to their own, including signs, names, letters, figures or the shape of packaging. The CTM will be open to non-nationals resident or operating a place of business within the EC; third party nationals from any state party to the Paris Convention for the Protection of Industrial Property; and/or on the basis of reciprocal treatment. The CTM would only cover trademark rights acquired through registration and not those that may be acquired through use, as is possible in some member states. Litigation will take place in national courts, subject to preliminary rulings of the ECJ on the interpretation of trademark regulations.

The CTM would be administered by a Community Trademark Office, possessing the legal, financial and administrative autonomy to conduct searches and register marks. Spain is lobbying hard for the new office to be located in Madrid.² A Board of Appeals would also be established with decisions open to review by the ECJ. Progress in adopting the regulation has been hampered largely by technical problems. The prospects for the regulation passing, however, were improved with a proposal that would allow registrations, unlike patents, to be filed in the choice of two EC languages rather than all.

In an effort to combat the growth of counterfeit goods, and the subsequent economic losses, the Council adopted a regulation implementing border measures against the importation of counterfeit goods (Reg. 3842/86/EEC). The Regulation provides for the prevention of imports from third countries that allow the illicit use of trademarks registered in Community member states. The Commission intends to expand

² Spain has indicated that its ratification of the Community Patent Convention and possible support for the pharmaceutical SPC are both linked to the decision to locate the trademark office in Madrid.