



Zeus has thrown his lightning bolt

1st Session: Status of implementation of the Trade Mark Directive (EU) No. 2015/2436 - The most significant changes in national laws

The view of a practitioner

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Abstract

Introduction

The implementation of Trade Mark Directive (EU) No. 2015/2436 into national law is a challenge not only for the people involved in the legislative procedure, but also for the practitioners. Thanks to Thomas Eichenberg and Mara Mondolfo, we are now well informed about the EUIPO's appraisal and the status of the implementation process in the several member states. I now should like to add some remarks from the practitioner's view. In the end, the practitioners are the ones that have to fill the new national provisions with life and align advice and strategies with the new law.

As being a German lawyer, I kindly ask for your understanding that I will mainly focus on the German perspective.

Status of Implementation Process in Germany

In Germany, the Ministry of Justice and Consumer Protection prepared and published a first draft of an Act for Implementation of Directive (EU) No. 2015/2436 on 11 January 2017. According to the end of the last legislative period in October 2017 and the long-lasting negotiations for finding a new government, the new German Federal Government only recently, namely on 27 April 2018, consigned the draft to the Federal Council, the Bundesrat, which is the constitutional body through which the federal states participate in the legislation. Finally, the draft must then be adopted by the Parliament. In other words, it may still take some time until the German Act for Implementation of the Directive, called Markenrechtsmodernisierungsgesetz, will come to life and rule practitioners' daily work. But as always, it is good to be prepared.

Relevant Changes for Practitioners

In this part of the presentation, I intend to focus on the changes that are most relevant for practitioners and the changes in strategy caused by them. I intend to pick up some of the issues from Mara Mondolfo's foregoing presentation, in particular the implementation of guarantee and certification marks and the implementation of new

administrative procedures for revocation or declaration of invalidity. In summary, I plan to discuss the following aspects in a two-step systematic (1. Short summary of the changes in law according to the draft act, 2. Expected changes in practice):

- Implementation of revocation and invalidity proceedings in front of the German PTMO;
- Extension of the rights of a trade mark owner concerning custom related situations;
- Single-class system and new fee structure;
- End of the „second“ plea of non-use;
- National guarantee or certification marks.

Conclusions

In this part, I intend to briefly summarize the changes to be expected in practice following the implementation of the Directive into national (German) law. Furthermore, I plan to refer to the subtitle of the session, „Zeus has thrown his lightning bolt“, and give a comment if, from the practitioner’s view, the changes are an enlightenment or not.