



European Union - A missed opportunity to address the lookalikes problem?

By Trevor Little

January 12 2012

In a presentation at the European Parliament, Nunzia Varricchio, chair of **MARQUES**, has lamented the fact that the European Commission's review of the trademark system has not taken the opportunity to tackle inconsistencies in the treatment of lookalikes, leaving brand owners to navigate a complex maze of legislation.

Speaking at a public hearing on the European trademark system, organised by the **European People's Party**, Nunzia Varricchio, chair of MARQUES and senior trademark council for **DSM**, stated: "The review does not take the problem of lookalikes and market realities sufficiently into consideration. The issue of lookalikes is a serious problem in many member states where there are no laws in place that appropriately deal with unfair practices. There is a significant rise in market power of mass or bulk retailers, supermarkets in particular. That market power is being abused by lookalikes and me-too products. This is a regular practice and is hindering free competition rather than enhancing it. If a company, particularly an SME, is in danger of losing a key customer and does not have sufficient legal recourse to push back, how can it possibly compete? How can it survive?"

To illustrate the power of mass retailers, she explained: "I have witnessed an example of a mass retailer obliging a supplier/manufacturer of a branded product to produce a virtually identical private label product. The products are placed on retail shelves side by side. I can assure you that not only has the private label product negatively affected the branded product, in all aspects, the shelf space allocated to the branded product will continually be reduced until such time as it disappears completely."

The impact on SMEs was similarly highlighted by **Anti-Copying in Design's submission** to the Hargreaves review last year, which noted that "the UK has no dedicated law of unfair competition, which currently provides little confidence (especially for micro firms and SMEs) against copying and the deliberate sale of lookalikes".

The variations in how national regimes treat lookalikes pose challenges for trademark owners (a useful guide to the regulations concerning the protection and infringement of lookalikes throughout

Europe has been **published by MARQUES here**). However, it is far from an SME-only challenge and the call for consistency in approach is one that many brand owners will agree with.

Elsewhere in the speech, Varricchio argued that the unitary character of the Community trademark should be preserved, adding: “National, regional and international trademark systems should continue to coexist. This landscape serves all companies well, local, regional and global. It provides strategic and cost-effective benefits in that trademark filing strategies can be aligned with business strategies.”

She also urged legislators to strengthen measures to protect brand owners against infringement, counterfeiting and piracy is necessary, with the review of Directive 2004/48/EC on the enforcement of intellectual property rights and the regulation concerning customs enforcement of intellectual property viewed as opportunities to do so. She explained: “The challenges are: to ensure a simplified, fully effective - including cost-effective - procedure; to minimise any inconsistencies and disparities in member states; and to correct any deficiencies in other member states. [In addition], [r]aising public awareness on the economic and social implications of counterfeiting will expand the positive value of IP rights.”

Channels

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