

Choose your forum

Over the following pages, private practice trademark counsel from 20 jurisdictions outline the benefits of their countries' Community trademark courts

Austria



Drawing on specialism

The Community trademark (CTM) court in Austria is the Vienna Commercial Court, which has judges specialised in IP matters with substantial experience.

Austrian law permits a rather wide formulation of injunctions. The defendant will be enjoined not only from using the plaintiff's trademark, but also from using any confusingly similar trademark. Whether a trademark infringes the preliminary injunction is decided by the enforcement court, so a quick decision can be expected.

The CTM court will almost never issue a preliminary injunction without first hearing the defendant; this allows the case to be fully argued in a quick procedure.

Preliminary injunctions are formulated in the same way as judgments and include the precise grounds of the decision. A preliminary injunction can usually be obtained within four to eight weeks.

In Austria, the similarity of trademarks is considered to be a question of law and not a question of fact. This means that the issues of whether trademarks are confusingly similar and whether a danger of confusion exists can be definitively decided in the preliminary procedure. In many cases this avoids the need for full proceedings.

Appeals to the Supreme Court of appeal decisions are allowed only in special circumstances (eg, on an important question of law). However, if the Supreme Court takes a case, it can decide it on the merits, which may shorten the appellate procedure.

If an infringement action must be combined with criminal prosecution, the law

provides that only one criminal court in Austria has jurisdiction to enforce CTMs: the Vienna District Court for Criminal Matters. This allows the prosecution to be centralised.

In Austria, criminal trademark prosecutions are not carried out by the public prosecutor; rather, the plaintiff's lawyer acts as public prosecutor. This means that a rights holder does not have to convince the public prosecutor whether to start a criminal trademark prosecution, and may decide at its own discretion whether to pursue an infringement before the criminal court.

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Belgium



An expedited approach

Expertise in IP matters is consolidated in five commercial courts (Brussels, Antwerp, Ghent, Liege and Mons). As a result, court decisions have become more predictable and more consistent with the case law of the Court of Justice of the European Union (ECJ). Claims based on infringement of a CTM or a Community design are exclusively brought before the Brussels Commercial Court.

Belgium has increasingly become an ideal forum in which to combat IP infringements. It has become renowned for its quick and relatively inexpensive cease and desist proceedings, which can be initiated before one of the five central IP courts. These expedited proceedings on the merits allow rights holders to obtain a cease and desist order accompanied by penalties against infringers within approximately

three months. Moreover, judgments are immediately enforceable, notwithstanding appeals.

Before initiating infringement proceedings, the rights holder may opt to start *ex parte* pre-trial discovery proceedings. In such cases, the president of the commercial court will appoint an expert with the power to carry out a surprise raid on the defendant's premises. The expert can gather evidence, including copies of the documents related to production, purchase, sales and inventory, as well as information as to the origin and distribution channels of the infringing goods. Further, the expert's report will allow the rights holder to see the profits made by the infringer and to claim damages in regular proceedings on the merits.

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Czech Republic



A concentration of power

Since the accession of the Czech Republic to the European Union, the Prague Municipal Court has been designated as the only Czech CTM court at first instance. Consequently, the single appellate CTM court is the Prague High Court. Four years later, the legislature decided that the Prague Municipal Court would have exclusive jurisdiction for all industrial property matters from January 1 2008.

The Prague Municipal Court rules on industrial property matters in three-member senates. At present, two such senates specialise in industrial property matters. Regarding the scope of exclusive jurisdiction, the Prague High Court has interpreted the term 'industrial property matters' to include company name disputes. The jurisdiction of the Prague Municipal Court also applies to cases involving both trademark (or patent or design) infringement and unfair competition. However, copyright cases continue to be heard by the locally competent regional

courts, including the Prague Municipal Court with respect to the Prague region.

Having all industrial property infringement cases heard by specialised judges within a single court has had several positive effects. First, it has improved the consistency and quality of court decisions, including better availability of preliminary injunctions. Second, this change has accelerated proceedings, particularly for lawsuits to determine whether goods seized by Customs are counterfeit – in such cases a final decision can be obtained in three to six months.

Certain proceedings are specific to the CTM courts of the new EU member states – namely, proceedings to prohibit the CTM owner from using an automatically extended pre-accession CTM to a new EU member state based on a conflict with an earlier national right acquired in the new member state in good faith. In practice, fewer proceedings have been initiated than was expected in 2004. A substantial number of the cases actually initiated have been resolved amicably, so there have been few final decisions in these proceedings.

Overall, the legislative decision to designate the Prague Municipal Court as the CTM court, as well as to bring all other industrial property cases to this court, has made trademark and general IP enforcement in the Czech Republic faster, more effective and more predictable.

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Denmark



A number of options

The Maritime and Commercial Court is the CTM court for Denmark, which specialises in IP rights. The court handles a limited variety of cases, but in large numbers, implying that the court has significant expertise with this type of litigation.

The court's judgments are at High Court level and the appeal court is the Supreme Court. In 2011 the average processing time in Denmark was 21 months; the court must issue its decision within four weeks of the main hearing.

In addition to regular court proceedings, the Maritime and Commercial Court offers a fast-track procedure, which enables the parties to litigate the case more quickly and

thus obtain a prompt decision. Such proceedings may be concluded within three to four months of the writ of summons being issued. The case must meet some specific requirements – that is, the last pleading should preferably be the rejoinder and the main hearing should not last for more than one court day. Consequently, the case should not be too complex. If the case meets these requirements, the parties may request or the court may suggest fast-track proceedings.

In addition to court proceedings, the court offers the disputing parties the option to settle cases amicably through either court mediation or court settlement. If the parties choose mediation, an authorised mediator will head the mediation process

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Estonia



Benefiting from judicial expertise

Estonia has a single CTM court – the Harju County Court in Tallinn. Two courthouses deal with IP disputes, with three specialised IP judges who decide on all IP matters. In addition to functioning as a CTM court, the court reviews all IP registration and revocation actions, which means that it deals with more than 90% of all IP disputes in Estonia. The judges are experienced in IP matters and process matters quickly.

Preliminary injunctions are usually heard on the next working day and it is reasonably easy to obtain an injunction. Injunctions are mostly granted *ex parte*; in more complicated disputes, *inter parte* proceedings are held and the plaintiff is sometimes required to pay a deposit as security against the injunction.

In simple cases a first instance decision on the merits can be expected within six months, and in standard matters within one year.

Estonian courts are willing to accept the guidelines of the ECJ and also consider the practice of other countries' courts. The judges further attend international training sessions at the Office for Harmonisation in the Internal Market (OHIM) and other IP training institutions.

In case of settlement, the parties may ask the court to approve the settlement agreement so that its terms have the same legal effect as a court decision. This means

that court-approved settlements are easily enforceable in case of breach.

The losing party must bear the costs of the other party, including legal fees. Legal fees are capped at a reasonable level to cover most of the legal fees incurred in trademark disputes.

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Finland



Looking to the future

The Helsinki District Court is the sole designated CTM court in Finland and offers a high degree of IP specialisation among its judges (it also has exclusive jurisdiction for all patent and trademark disputes in Finland). The level of specialisation will increase in the near future when a fully separate and specialised IP court is established in Helsinki. The plans for the court are not yet fully finalised and are thus liable to change in some respects, but at present the new court is expected to be operational towards the end of 2013.

The IP court will take over the Helsinki District Court's exclusive jurisdiction in trademark litigation and will also handle some of the issues that are currently dealt with in administrative proceedings.

The new court is expected to provide faster, cheaper and higher-quality proceedings as a result of the increased centralisation of IP disputes. The general consensus is that trademark and other IP disputes make up a specialised field of law that requires a particularly high level of specialisation among judges. Since the new court's judges will deal exclusively with IP issues, this will facilitate an even higher degree of knowledge regarding the specific field of law, which in turn will have a positive impact on the quality of the court's decisions.

From a more general perspective, the new court is also expected to have a further positive impact on general knowledge and awareness of the increasing importance of trademarks and other IP rights in Finland. All in all, the development represents a welcome recognition of how important IP rights are to businesses and makes Finland an even more appealing venue for IP litigation.

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France



A range of benefits

The specialised IP Court located in Paris has exclusive jurisdiction for CTM and Community design matters.

The principal advantages of litigating a CTM matter before the French court include its specialisation in the field regarding the infringement seizure procedure, quick preliminary injunction procedures and an action on the merits that grants a decision on infringement and damages. There are no court fees and the procedure is relatively inexpensive and efficient.

The court operates as follows:

- Infringement seizure requests are presented in an *ex parte* procedure before one judge, who immediately grants authorisation to proceed with the seizure. The bailiff conducts the seizure with the assistance of a patent or trademark attorney, a photographer and

any other person authorised in the order. The bailiff will seize any products and documents related to the infringement, including samples and accounting documents. This procedure is extremely efficient as it enables the rights holder to obtain easily evidence of the infringement, the number of infringing goods and their origin.

- If the infringement is obvious, the brand owner may request a preliminary injunction order prohibiting use of the offending mark. When the use is so detrimental that it will cause irreparable harm, such measures may be ordered *ex parte*. In other cases, the procedure is *inter partes*. The order is granted within one day to three months.
- A regular civil action on the merits takes between 12 and 18 months. If there is urgency, the court may grant a fixed date for the hearing. In such cases, the decision on the infringement and damages will be granted within approximately three to six months.



If the court decides that there is infringement, it will prohibit use of the offending mark across the whole European Union and order damages across the European Union, publication of the decision and partial reimbursement of lawyers' fees.

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Germany



Getting tactical

Provided that the procedural context allows, there are several good reasons to consider the German CTM courts in case of an infringement action based on a CTM, including the following:

- Significant experience – the 18 CTM courts in Germany (by far the largest number of national CTM courts compared to other EU member states) are highly specialised chambers with competent trademark judges who also hear ordinary trademark infringement cases involving German trademarks and German designations of international registrations. The renowned Federal Supreme Court often refers legal questions on EU trademark legislation to the ECJ for a preliminary ruling and thus actively participates in establishing case law. In general, the case law of the German trademark courts is varied, due to the large number of infringement cases.
- Speed – specifically in interlocutory injunction proceedings, *ex parte* decisions are granted within a few days, if not a few hours. In addition, where procedurally possible, EU-wide cease and desist orders are automatically granted.
- Tactical consideration – some of the German CTM courts are known not only for their experience in CTM matters, but also for their tendency to be rights-holder friendly.
- Costs – court fees and fixable adverse attorneys' fees are relatively modest (much lower than those in, for example, the United Kingdom or the United

States), resulting in costs of no more than around €20,000 for an ordinary first instance trademark infringement action. Moreover, the losing party must bear the court fees as well as the fixable adverse attorneys' fees.

- Quality of decisions – due to the considerable experience of the highly specialised German CTM courts and the well-established case law, which often varies between the competent courts of appeal, decisions are relatively predictable (even though exceptions confirm the general rule).

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Hungary



An accelerating pace

The Metropolitan Court and the Metropolitan Court of Appeal serve as the first and second instance CTM courts in Hungary, with exclusive jurisdiction. It is possible to file a legal review claim against the second instance decision to the *Curia* (Supreme Court) based on points of law only.

The Metropolitan Court has two specialist councils for trademark infringement cases and the Metropolitan Court of Appeal and the *Curia* have one each. Thus, partly because the judges are specialised trademark experts and partly due to the identical judicial divisions ruling in these cases, judgments are consistent and of a high professional level. Furthermore, Hungarian CTM courts are friendly towards rights holders in their practice.

First instance proceedings in CTM cases have been accelerated over the past two years. A first instance judgment is usually issued within three to seven months – a significant decrease from the general timeframe of nine to 18 months a few years ago.

In CTM infringement cases a preliminary injunction may be granted. The Hungarian CTM court is generally inclined to grant injunctions, especially if the trademark infringement commenced no more than six months before the petitioner files the injunction claim and if no more than 60 days have passed since the petitioner became aware of the infringement and the identity of the infringer. In such cases, a decision is usually issued within six to eight weeks. In urgent cases, a decision may be passed *ex parte* within two weeks.

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Ireland



On the fast track

In Ireland, the High Court and the Supreme Court are the designated CTM courts. In practice, this means that almost all trademark infringement proceedings are brought in the Commercial Court division of the High Court, which is a fast-track, case-managed court. The particular advantages of this jurisdiction for plaintiffs are its speed and efficiency – 75% of matters are concluded within 22 weeks of being entered on the Commercial Court list. It is also possible to seek an expedited hearing in appropriate circumstances, which can result in a trial date within three months.

The consequence of such speed is that the usual common law pre-trial litigation procedures are also expedited, with a timetable set at the directions hearing for delivery and a reply in each phase of the litigation through to trial. Compliance is closely monitored, both by the parties themselves and by the court, so the defendant is forced to respond proactively. One of the rationales behind the case-managed approach and a major benefit of the system is to encourage the parties to focus on the key issues between them in an effort to take a more streamlined and efficient approach to procedures such as discovery, and to the hearing itself.

Commercial Court judges are familiar with IP and trademark matters as almost all

substantive matters in the IP area are heard by this division of the court. As a result, the five permanent High Court judges allocated to this division have a solid understanding of trademark and IP law principles, and their decisions are both considered and well respected. Commercial Court decisions may be appealed to the Supreme Court, which has sitting judges who were formerly experienced commercial law practitioners and have a strong track record in hearing appeals of IP cases.

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Italy



Stressing efficiency

Contrary to common belief, the legislative instruments available in Italy against IP infringement are quite efficient, in

particular since 2003, when specialised IP divisions were set up within 12 existing courts (in September 2012 another nine courts will have specialised IP divisions).

These divisions have exclusive competence to decide civil actions relating to trademarks, patents, copyright and unfair competition linked to these rights. Urgent measures are typically examined and granted quickly – normally within a few days where trademarks and designs are concerned (such measures are often granted *ex parte*) and within a few months for patents (and patent applications), where a court expert is usually appointed. An injunction is usually backed by a fine for each violation, which is paid to the rights holder. Violation of an injunction order is subject to criminal penalties.

The accounts of the alleged infringer are often seized (usually under an *ex parte* order), which facilitates the calculation of any compensation to be paid.

Under Article 125 of the Code of Intellectual Property, the holder of an infringed right may receive a sum which

corresponds to either the infringer's profits or the rights holder's lost profits, whichever is greater. Compensation for any further damage, such as expenses incurred for responding to the infringement or damage to image, may also be added to the amount.

Compensation for damage caused to the rights holder's image is often calculated as a fraction of the advertising expenses incurred by the rights holder or the cost of an advertising campaign to mitigate the negative impact of the infringement on the public.

As a result, extra-judicial agreements based on the results of preliminary proceedings are often reached based on the acceptance by the infringer of the court order and payment by the infringer of a sum agreed by the parties.

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Netherlands



A case of experience

In the Netherlands, the District Court of The Hague has been appointed as the sole CTM and Community designs court. The choice was logical, since that court was already, and still is, the exclusive forum for several other specific subjects in the field of IP law (eg, patent cases). This exclusivity for so many IP matters has provided the District Court of The Hague with extensive knowledge of trademark law and an in-depth understanding of the needs of rights holders in general. The experienced team of judges guarantees swift proceedings – standard court proceedings may result in a judgment within one year, while summary injunctions or protective measures may be obtained within one day – and high-quality decisions. The court has always embraced CTM rights and has applied them without hesitation. It always understood their unitary character and has never shied away from granting EU-wide injunctions.

It also continues to come up with progressive, creative ideas to ensure that proceedings are effective, such as the recently introduced civil process innovation project. The District Court of The Hague is also one of the few district courts in the Netherlands where protective briefs can be filed in order to request the court to hear a case in advance when *ex parte* measures are being sought by a rights holder. Unlike other courts that still tend to communicate in old-fashioned ways (eg, by fax), the District Court of the Hague has entered the digital world by requiring certain forms to be submitted exclusively by email, while its own email distribution system keeps trademark attorneys up to date on all decisions in IP cases rendered by the court.

A further benefit of litigating CTM rights in the Netherlands is that since the implementation of the EU IP Enforcement Directive, Dutch procedural law provides for full compensation of legal costs. This means that rights holders which are confronted with injunctions not only can claim and obtain an EU-wide injunction, but will also be compensated for their costs. Overall, the Dutch system provides for a swift, efficient and rights holder-friendly system that has proven its worth to many CTM holders..

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Poland



Tracking the latest trends

Following its accession to the European Union, Poland established its own CTM and Community design court. The Warsaw CTM court (officially, the XXII Department of the Warsaw Circuit Court) is the exclusive venue in Poland for litigating infringements of CTMs and community designs. The Warsaw CTM court has a good reputation for its experience in IP matters, the speed of proceedings and its understanding of efficient protection of intellectual property in the modern economy.

The main advantage of the Warsaw CTM court over other civil courts in Poland is its experience in litigation involving IP rights. The court is presided over by Judge Beata Piwowska, whose personal experience, professionalism and commitment to staying on top of the latest trends in IP law have given much weight to the development and current position of this court. The Warsaw CTM court is unquestionably one of the most experienced in IP matters among the Polish civil courts. This experience is of particular importance in a country that does not have specialised courts dealing with national IP rights, and where IP-related litigation is still relatively rare.

In addition, proceedings in the Warsaw CTM court are relatively fast. On average, a case takes between six and 12 months at first instance, whereas an IP case in a circuit court takes on average between 12 and 24 months (or even longer in the busiest courts). The CTM court is also efficient regarding interim measures – the decision is taken within a week, whereas in many Polish courts the plaintiff waits far longer to obtain a preliminary injunction.

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Portugal



A CTM-friendly jurisdiction

In recent years Portugal has made concerted efforts to increase and strengthen the judicial enforcement of IP rights and, in particular, the judicial enforcement of CTM and Community design rights. A major step forward in this

context was the creation of the specialised IP Court, based in Lisbon, with exclusive nationwide jurisdiction over invalidity and infringement actions involving IP rights. This court also has jurisdiction in connection with appeals contesting decisions of the Portuguese Industrial Property Office.

The IP Court, which became operative on March 30 2012, has replaced the Lisbon Commercial Court in the functions that the CTM Regulation entrusts to the CTM courts. It became the only (first instance) Portuguese CTM court with exclusive nationwide jurisdiction over CTM infringement and validity matters.

In the first four months of its existence, about 200 judicial actions were filed with the court, which clearly shows how much it is needed.

The recently created IP Court is expected to perform all of its CTM-related functions and meet the challenges set – that is, contributing to improving the quality and consistency of CTM case law, enabling quicker judicial activity and reducing the cost of enforcing CTMs in Portugal.

CTM owners and stakeholders have good reason to believe that Portugal, having made remarkable efforts and strengthened the CTM system over the past few years, is now definitely a CTM user-friendly country

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Romania



Taking a wider view

The Romanian-designated CTM courts with jurisdiction over non-interim CTM infringement procedures are:

- the Bucharest High Court, as the first level of jurisdiction;
- the Bucharest Court of Appeal, as the second level court; and
- the Supreme Court, as the final court.

The procedural rules with respect to interim injunctions provide for only two levels of jurisdiction: the Bucharest High Court as the first level and the Bucharest Court of Appeal as the final level.

Romania has had specialised IP courts since 2005; therefore, judges were accustomed to dealing with IP issues before Romania joined the European Union. This made it easier for judges to adapt and learn in more depth about the CTM Regulation.

Moreover, there is an advantage to consolidated expertise as:

- only a few judges rule on IP matters, which makes them more knowledgeable as each judge deals with a high number of IP cases; and
- the courts rule on all trademark-related matters, including national and international trademark infringement cases, trademark rejections, registration and annulment based on similarity issues.

Most Romanian judges follow Community case law and are even sensitive to OHIM decisions or other EU national judgments if such jurisprudence is brought to their attention by the parties during proceedings.

The Romanian civil procedural rules may be amended in future and there have been talks about limiting the levels of jurisdiction to just two. It remains to be seen whether and when such procedural rules will enter into force, as they have already been postponed and modified several times. It is also debatable whether such changes also apply to intellectual property, taking into account that this area has specialised legislation. Certainly, such legislative amendments would be beneficial from the point of view of speeding up cases, but they might also lower the quality of decisions, as the most experienced judges sit at the Supreme Court and the change could mean that IP cases are dealt with only by the lower courts.

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Slovakia



Catching up on experience

Although Slovakia has been a member of the European Union for eight years, the experiences of the trademark courts with CTMs are still quite limited. The courts have more experience with national and international trademarks; nevertheless, considering the harmonisation of national law with EU law and the fact that the same courts decide CTM and national trademark cases, there is little difference in the way in which the courts apply the trademark law.

In Slovakia, there are three CTM courts of first instance and three appellate courts – one set of courts for western Slovakia, one for

central Slovakia and one for eastern Slovakia. The judges handling CTM cases also deal with cases of unfair competition and other IP rights, as the judicial system attempts to encourage some sort of specialisation of judges in the IP field. The courts for central Slovakia – the Banska Bystrica District Court and the Banska Bystrica Regional Court – tend to be the most effective, considering the duration of proceedings and the quality of the decision making.

Preliminary rulings in Slovakia must be issued by the court of first instance within 30 days and similar rules apply to appellate proceedings, although the deadline starts from the date on which the appellate court receives the file. These relatively recent changes have helped to speed up proceedings and the final decision on a preliminary injunction is usually obtained within three to four months of filing the motion. The duration of the actual court proceedings is, to a large extent, dependent on the court handling the matter – it tends to be significantly longer at the Bratislava I District Court, which has the heaviest caseload in Slovakia.

The costs of court action in Slovakia are relatively low; the court fee in case of trademark infringement is a lump sum, unless monetary damages are requested.

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Slovenia



Getting discretionary

In Slovenia, the Ljubljana Circuit Court at first instance and the Ljubljana Higher Court at second instance have exclusive jurisdiction over all disputes concerning intellectual property, including CTM cases pursuant to the EU CTM Regulation. Although there is no official specialised IP court or department, all IP cases are distributed between seven to eight judges in the Commercial Law Department of the Ljubljana Circuit Court. The concentration of IP cases among a relatively small number of judges allows them to specialise in trademark law and follow EU trademark case law. Thus, the judges handling trademark matters are well informed and experienced.

Before the Slovenian courts, it usually takes more than one year and sometimes up to three years to obtain a judgment at first instance. However, recently the proceedings

for temporary measures (eg, preliminary injunctions or temporary seizure and storage of suspect goods) become quite efficient, so rights holders can now prevent infringement quite quickly (within two to six months) by filing a request for temporary measures alongside or before filing an action.

Recently, it has become easier to obtain damages in infringement cases before the Slovenian courts. Even when rights holders cannot prove the extent of the infringement in order to apply the licence analogy for damages (eg, because the defendant did not provide the court with information and documents requested by the plaintiff), the courts are now more willing to award damages by exercising their discretionary right to determine the extent of the infringement by themselves.

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Spain



Consider the numbers

The figures speak for themselves. Eight years on, the Spanish CTM courts have heard 400 CTM and Community design-related cases, adjudicating around 100 first instance interim injunctions within around two months. Judgment in ordinary infringement proceedings is handed down in approximately 11 months, reduced to three months at second instance.

The select, highly specialised and experienced team of judges sitting in the Spanish CTM courts boast a track record that is difficult to match.

In operation since 2004, the Alicante Commercial Court and Provincial Court, designated as CTM courts of first and second instance for the purposes of Article 95(1) of the EU Community Trademark Regulation, are a good example of how an EU member state can set up structures that efficiently and cost-effectively grant judicial protection to rights holders directly afforded by EU institutions, ensuring the proper implementation and enforcement of EU legislation in its territory.

The impressive performance of the Spanish CTM courts and the equally impressive levels of user satisfaction over the past eight years have proven that entrusting the enforcement of European IP rights to national courts was no mistake – contrary to

certain criticisms within IP circles. The success story of the Spanish CTM courts mainly results from the concentration of exclusive jurisdiction for CTM infringement and invalidity actions in a single court located in Alicante. The court's physical proximity to the OHIM headquarters and participation in its networking programmes, the specialised training of its judges and the judicial selection process have been key factors behind the success of the Spanish CTM courts.

Undoubtedly, the Spanish CTM courts have empowered rights holders by providing access to a speedy, cost-effective dispute resolution system, with consistent and predictable decisions. In short, the courts have positioned themselves at the forefront of IP enforcement in Europe. Thanks to the performance of such courts, Alicante – arguably one of the European IP capitals – is an excellent forum in which to resolve CTM disputes.

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Sweden



A question of complexity

In Sweden, disputes regarding CTMs are handled exclusively by the Stockholm District Court. Provided that leave to appeal is granted, the second instance is the Svea Court of Appeal and the third instance is the Supreme Court. IP cases are often granted leave to appeal in the second instance. The Stockholm District Court and the Svea Court of Appeal, being specialised courts, have experienced judges with knowledge of IP and trademark law. Consequently, decisions and judgments are well reasoned and of a high standard. Judgments are publicly available and copies can be obtained through the courts.

Depending on the complexity of the case, it takes 12 to 18 months from when the application for summons is filed until a judgment is given. Interim and *ex parte* measures such as provisional injunctions and infringement investigations are available. The court normally declares an order for such measures within a few weeks of the request, provided that the court is presented with all relevant information.

As in other EU member states, the remedies available in Sweden include compensation, damages, fines and

destruction of the infringing goods. Furthermore, the court can issue a civil search order and require the defendant to provide detailed information of, for example, the number of products sold and information about distributors. Moreover, trademark infringement is punishable as a crime in Sweden.

The infringing party must pay reasonable compensation for exploitation of the trademark, which normally corresponds to a hypothetical licence fee, as well as compensation for the additional loss resulting from the infringement. When determining the compensation for additional loss, particular consideration shall be given to lost profits, profits gained by the infringing party, damage to the reputation of the trademark, non-pecuniary loss and the interests of the rights holder in preventing infringements. Moreover, the winning party is normally awarded compensation for its legal costs.

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UK



A wealth of options

A number of factors make the English courts an attractive forum for litigation concerning CTMs.

First, there is the specialised IP bar. This select group practises almost exclusively in intellectual property, thereby gaining a wealth of experience both in their home jurisdiction (ie, before the Trademarks Registry and the English courts) and in Europe, frequently being called on to provide advocacy services before the General Court and the ECJ. The IP bar is therefore well versed in all aspects of trademark jurisprudence.

Second, having decided to litigate in the United Kingdom, parties have the choice of bringing their claim in either the High Court or the Patents County Court (PCC). In the High Court, litigants will undergo a rigorous pre-trial procedure, which includes disclosure of documents and the preparation of factual and, where appropriate, expert evidence to enable them to develop their case fully and to appreciate the scope of, and therefore how to best defend against, their opponent's case. Any



issues of trademark validity will be dealt with in the same hearing as the issue of infringement.

At trial, litigants will have the opportunity to test their opponent's case in cross-examination, which is mainly heard by an experienced, specialist IP judge, who will have a good grasp of the issues and will deliver a reasoned judgment. Such judgments are highly respected. Finally, the winning party is typically entitled to recover a substantial proportion of its legal costs (usually in the region of 70%).

Alternatively, litigants can elect to take advantage of the streamlined new procedure in the PCC, which is intended to be quicker (since disclosure, evidence, the length of trial and the ability to cross-examine witnesses are kept to the bare minimum) and cheaper (since damages and costs recovery caps are in place).

Nevertheless, with Judge Birss – a specialised IP judge – at its helm, the PCC sacrifices nothing in terms of the quality of its judgments.

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