

## Chapter 7: A Model Trade Mark Regime for the East African Community

### A. Introduction

The task in this chapter is to depict a regional trade mark system that may contribute to the proper functioning of the EAC common market. To realise this goal, the ideal EAC trade mark regime should not only be capable of facilitating the free movement of goods and serve as a legal means of integrating branded goods into the system of intra-EAC competition, but should also be capable of affording manufacturers and marketers an opportunity to expand economic activities throughout the EAC without undue interference by third parties on the basis of trade mark rules of the individual Partner States. These objectives are articulated in EAC law<sup>891</sup> and they reflect similar goals which actuated the EU to introduce the CTM system.<sup>892</sup> This objective similarity provides a strategic ground for scrutinising the principles governing the EU's CTM system with a view to determining the extent to which the principles may be employed to establish the EAC trade mark system. In this regard, the chapter questions whether the key trade mark principles such as the unitary principle and the principle of trade mark coexistence underlying the EU's CTM system may be based upon to develop the envisaged EAC trade mark system. In a concrete approach, the chapter scrutinises the merits and demerits of these principles in relation to the regulation of regional trade mark rights. In a bid to redress the deficiencies (if any) inherent in the trade mark coexistence and unitary principles, the chapter resorts to the rules underlying the trade mark protection regime under the Benelux Uniform Trade Mark Law<sup>893</sup> and the trade mark rules

891 In relation to the free movement objective *cf.* Articles 2(4) and 4(2) of the CMP, as well as the sixth recital to the CMP. With regard to the system of fair and free competition objective *cf.* Articles 33 and 36 of the CMP. In relation to general objectives of the EAC including extension of economic activities to the EAC scale *cf.* Article 5 of the EAC Treaty.

892 *Cf.* Commission of the European Communities, "The need for a European trade mark system. Competence of the European Community to create one", Commission working paper No. III/D/1294/79-EN of October 1979, at p. 17.

893 The principles underlying the EU's CTM system "lean heavily for their derivation on the Benelux law of trade marks", hence the latter may be helpful in interpreting the former (*cf.* TATHAM, D. & RICHARDS, W., "ECTA Guide to E.U. Trade Mark Registration" 22 (Sweet & Maxwell, London 1998).

that were devised to govern trade mark rights after the reunification of the Federal Republic of Germany. The hybrid of these principles<sup>894</sup> will form a framework for the proposal regarding rules and principles that should govern the creation, maintenance and cession of EAC trade mark rights insofar as the contemplated EAC trade mark regime is concerned.

## ***B. Key Principles governing Community trade mark system***

CTMR enshrines the tenets of trade mark coexistence<sup>895</sup> and the unitary character<sup>896</sup> as the centrepiece of the EU's CTM system. The question may be posed as to whether CTMR's principles mentioned in the immediately preceding sentence could be adapted for devising the EAC regional trade mark system. A negative response to this question would mean that the principles under discussion should necessarily be modified to make them suit the ideal EAC trade mark system. A deliberation on these issues follows below.

### *1. The principle of unitary character*

The principle of unitary character is a legal technique that embellishes a particular regional trade mark system with more attractive features than those enjoyable under the national systems of trade mark protection. These features are reflected in the fact that when applied in relation to the Community trade mark system, the principle of unitary character, suggests avoidance of segmentation of the common market based on a system of protection of trade mark rights.<sup>897</sup> The principle requires that Community trade marks be registered for, and the exclusive rights stemming thereof be protected to the scale of, the entire Community.<sup>898</sup> In this sense, the Community trade mark registration must be

894 i.e. the principles underlying the EU's CTM system, the Benelux trade mark regime and Germany's trade mark system which was designed to concretise reunification of the East and West Germany after the cold war.

895 Cf. section B (I) of chapter 5.

896 Cf. Article 1(2) of the CTMR.

897 From a semantic point of view, the term "unitary" in the phrase "principle of unitary character" has been expounded as follows: "having the character of a single thing that is a constituent of a whole". <<http://dictionary.reference.com/browse/unitary>> (status: 30 July 2012).

898 Cf. MÜHLEND AHL, A., "Koexistenz und Einheitlichkeit im Europäischen Markenrecht - Überlegungen zur Berücksichtigung älterer Rechte im künftigen europäischen Markenrecht für den Gemeinsamen Markt", 25(1) GRUR Int. 27, 28 (1976).