

I. Introduction

In the modern marketplace characterised by a profusion of signs and labels, Community collective marks seem rather absent. Although provided for in the European trade mark legislation, they are underutilised in practice and quite neglected in legal theory, which, in its vast majority, is restricted in mere repetitions and reformulations of the legislative text. In those cases of commentaries where the section dedicated to Community collective marks exceeds simple statements, the impression given is one of vagueness, uncertainty and conflicting opinions as to the nature of this type of marks, their functions and their content. At the same time, the ambiguity of the respective provisions and the lack of sufficient jurisprudence offer few tools to solve the conundrum, which goes as far as suggesting that Community collective marks incorporate certification marks.

A. The topic, structure and methodology of the paper

The present thesis is devoted to the analysis of the characteristics of Community collective marks with a view to elucidate their complex nature and to draw the line regarding “expansionist” arguments. Specifically the question of whether certification marks are covered by collective marks is dealt with by separating it into two parts: the sub-question of what was the legislator’s true intention and the sub-question of doctrinal soundness, reading “what should be the correct solution?”. To that end, the legislative history, the opinions of the OHIM as well as the views in the academic literature are presented, compared and contrasted.

As certification marks are not recognised in the European trade mark regime, the difficulty of juxtaposition is highlighted as well as the need for definitional clarity. Certification marks are examined through the compilation of the basic common characteristics found for them in the major jurisdictions they are encountered in, whereas mention is made to the way forward by looking into the proposal of the European Commission for a new European Trade Mark Regulation, made public in March 2013.

Since the basic rule of descriptiveness of geographical terms does not apply in the case of Community collective marks, there has been a notion

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that the latter can provide sufficient housing for geographical indications (hereinafter GIs). This type of sign is considered as the main rival of collective marks not only at the European Union level, but also internationally. The fourth chapter is, therefore, occupied with the anatomy of GIs, as established in the European sui generis regime. Light is particularly shed to their requirements, their ambit as well as the policy considerations that underlie their existence and justify the strong protection they grant. While the similarities and connections to trade mark law are admitted, it is maintained that GIs should continue constituting a separate body of law, distinct from trade marks.

The position ultimately taken is no hymn to GIs, but rather yet another acknowledgement of the different objectives they target. The role of Community collective marks is, consequently, not disregarded. On the contrary, the sixth chapter explores their benefits and weaknesses, emphasising the need to clarify and promote them instead of concentrating on abolishing GIs. Although the latter cannot be easily accommodated in the collective or certification mark system, it is, finally, shown that there are advantages from their protection in the trade mark regime, without denying their systematic autonomy.

B. Delimitations

This analysis should begin with the delimitation that the paper focuses, on the one hand, on “collective” trade marks, and, on the other, on “Community” trade marks. This means that individual trade marks are only briefly explained and in so far as they help distinguishing the role of collective marks, whereas national rights are touched upon solely to the extent necessary in order to demonstrate the scope of the Community ones. Further, with regard to the criteria of choice between systems, the analysis is mostly held on the axis of effective protection of the sign, rather than the effects on competition.