

European Union: the trade mark basics

When first entering any overseas market, whether to sell goods or services or as a place of manufacture, one of the most important things to remember is that trade mark rights are geographical in nature. Hence, rights which you might have in one territory (such as the UK) do not necessarily provide corresponding protection in an overseas market. In view of this, we have put together some advice and top tips for those entering the European Union market for the first time.

The 'heads up'

1. Not ensuring that your brand translates well for the varied cultures and languages of the European Union can be seriously detrimental to your success.

A direct translation of your existing mark might sound ridiculous or even offensive in another language or culture. You may therefore need to consider an alternative or adapted brand for use and protection in the European Market or in specific territories.

2. The individual EU Member states are incredibly diverse, not just in terms of the languages spoken but, importantly, the types of products and services that consumers want to buy and the methods and habits involved in how they buy them. Do not assume that just because your product sells well in one member state that it will automatically sell elsewhere.

Research the market on a country by country basis to avoid falling foul of different consumer habits and tastes.

3. Not considering crucial differences between member states.

While the European Union provides a uniform legal framework for trade, there remain differences between the laws in different member states. For example, EU law gives consumers the right to a minimum 2 year guarantee on products, but in some countries, national law may require you to provide longer guarantees. Likewise, once a product (even one manufactured outside of the EU) has entered the EU, it can be transported freely throughout the EU.

However, restrictions may still be imposed on exports, imports or products in transit if the products in question are deemed to be against the public interest.

4. Not taking care when choosing to appoint either a Sales Agent or a Distributor. The two are not the same.

A distributor is entirely independent of you, whereas an Agent can have legal rights similar to those of an employee. If you plan on engaging a Sales Agent, remember that the employment laws (including those relating to third party sales agents) are different across the European Member States and need careful consideration.

Despite moves to unify agency law within the EU, the law protecting sales agents in Germany, for example, is weighted far more favourably towards the rights of the agent when compared to English law. Professional legal advice should always be taken when entering into an agreement with an Agent.

5. Not considering foreign exchange.

Although widely used in most of the major Economies of Europe, of the 28 EU member states, only 17 currently have the Euro as their national currency. Although the UK is part of the European community, Sterling is an independent currency and as such exchange rates can fluctuate considerably between £ Sterling and the Euro. This could mean you losing out if the Pound gains against the Euro after you have set your price.

Trade mark tips

1. Consider filing a European Community Trade Mark Application to protect your brand, which is extremely cost-effective.

Once you have that registration, your rights apply across all 28 Member States and so it provides quite the commercial asset, and tool.

2. Do not assume that a registration of your trade mark alone will prevent others protecting other similar marks. The UK/EU do not operate in line with other markets, whereby earlier marks automatically stop an application progressing; **it is up to the owner to actively object** if it wishes to stop an application which it feels is a copy of, or could be detrimental to its own rights.

A watching service is always worth considering once a brand is registered; this will ensure that you are notified if anyone else attempts to register a mark similar to your own so that you can take the necessary action

3. Involved in the sale of goods? **Register your trade mark with European Customs to protect against the distribution** of counterfeit goods. In the UK criminal cases can be brought against counterfeiters under the Trade Marks Act. Trading Standards can also be utilised to assist with the identification and seizure of counterfeit goods before they reach the market.

4. Do not assume that all legal practices are the same across Europe; places such as the UK offer a degree of protection for **unregistered rights** based on the use of a mark, not all Member States do. The only way to be sure of adequate protection is to register your trade mark.

5. Because the European Community Trade Mark system gives the owner rights in all member states, you cannot assume that a business using a mark in only one Member State will not have the right to restrict your ability to use a similar mark for the same goods or services in another Member state. If a business holds a valid European Community Trade Mark Registration, its rights extend across the whole European Union, not just where it currently trades. Please note that both Norway and Switzerland are not protected by a Community Trade Mark Registration – protection must be secured nationally in those countries.