

Preparation for seventeenth session of SCT

Contribution from OHIM

II. Opposition proceedings

The CTM system provides for a pre-registration opposition procedure. Opposition is possible within a non-extendible period of three months following the publication of the application. Publication takes place after *ex officio* examination for formal deficiencies and consideration of any absolute grounds for refusal. There is no *ex officio* examination of any relative grounds.

Opposition is filed in respect of less than 20% of the applications published.

Opposition may be based only on a limited number of earlier rights. Absolute grounds cannot be the basis of a opposition. Essentially opposition is limited to earlier identical or confusingly similar trade marks, or trade mark like rights, having their effect in the European Communities. Principally these are CTMs, national marks and international marks designating the EC or any of its member states.

The procedure involves exchanges of evidence and argument between the parties within a regulated system of time limits. Decisions are taken by OHIM where the process does not result in agreement between the parties. About 80% of oppositions are settled without the need for an OHIM decision.

III. Post registration proceedings

Cancellation is not undertaken *ex officio*. It must be initiated by an interested party. In addition to the relative grounds available in opposition proceedings absolute grounds and additional relative grounds may form the basis for cancellation proceedings. A CTM may be declared invalid where where the use of such trade mark may be prohibited pursuant to an earlier right and in particular:

- a right to a name,
- a right to a personal portrayal,
- a copyright, or
- an industrial property right.