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(IGE Consumer)

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Contribution by

European Communities Trade Mark Association

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European Communities Trade Mark Association

21 June 2018

COMMENTS FOR CONSIDERATION OF THE INTERGOVERNMENTAL GROUP OF EXPERTS ON CONSUMER PROTECTION LAW AND POLICY, UNCTAD

I. INTRODUCTION

The European Communities Trade Mark Association (ECTA) is grateful for the possibility to submit written comments for consideration of the Intergovernmental Group of Experts on Consumer Protection Law and Policy.

ECTA is recognized as a peer by the European Commission, EUIPO and WIPO, and has more than 35 years' experience in promoting its members' knowledge and professionalism. ECTA was the primary non-governmental professional association involved in the introduction of the Community Trade Mark system in 1996 and has remained actively involved in the refinement and improvement of this very successful unitary trade mark system. This has been highly beneficial to ECTA members, many of whom have been actively involved in promoting, positively influencing and bringing about important changes in the fields of IP in Europe.

Our approach is pragmatic and we are confident that we can vastly contribute to the debate around consumer protection law and policy.

This paper sets forth the topics that we believe are of particular importance and can set the tone for discussions around the issue of consumer protection.

We have taken good note of the United Nations Guidelines for Consumer Protection (Guidelines), and will naturally treat them a basis for our comments.

II. COMMENTS

1. Unintended consequences of counterfeiting and piracy

Consumers are often unaware that if they buy illegal products they contribute to funding grey economy and organized crime, sometimes even terrorism. Therefore, we believe it is very important to raise awareness of what it truly means to buy copied goods. To that extent information campaigns are of paramount importance. We are confident that brand owners who suffer from illegal trade, regardless if it involves genuine diverted products, or counterfeits, would be willing and open to collaborate with authorities and share their vast expertise.

ECTA would like to make the following proposals in this regard:



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- **Issue a call for action to brand owners to join forces and roll-out global awareness campaigns, under UNCTAD's auspices.**
- **Launch a public awareness campaign to inform international travelers of the legal, economic and public health and safety impacts of counterfeit goods purchases. This could be accomplished by electronic bulletin boards in airports and online ads on travel websites.**
- **Foster public/private partnerships to enlist support to protect consumers through industry outreach targeting intellectual property owners; manufacturers; importers; customs brokers; freight forwarders and carriers; delivery services such as Federal Express; UPS and DHL and postal authorities.**
- **Encourage enhanced training of national customs services; police departments; border enforcement agents; judicial officials and legislators to promote anti-counterfeiting efforts in the public interest.**

Similar consumer protection efforts have taken place in the EU and the US, recently.

We believe that such an approach is in support, among others, of sections 14, 27, and 81 of the Guidelines.

2. Consumers' right of information

Distinct from the awareness raising on the consequences of purchasing non-compliant products is the consumers' ability to recognize such products. Sometimes consumers do understand and willingly purchase counterfeit products, such as from the notorious street vendors selling copies of products bearing well-known brands, ranging from sunglasses, to iconic handbags. These acts should clearly be penalized.

But often consumers simply do not know which products infringe intellectual property rights, and which do not. This should not and does not have to be the case, as technologies exist today that would help consumers make an informed decision on what kind of products they are buying, including even information on such product's supply chain. For example, consumers may be willing to support legal products if they knew the environmental or health impact they have, e.g. CO² emission at manufacturing, and even supply chain levels, fair sourcing of raw materials, including, for example, agriculture practices that do not accept child labor.¹ Such information system could even suggest alternatives to the products, contributing to constant product development, and a positive pressure to build sustainable economy.

ECTA suggests that UNCTAD establishes a group of experts, including public and private organizations, with the goal of establishing a common framework on how consumers can be empowered to collect more information on the products they

¹ Similar information obligations have been launched to some degree, and in some countries in food industry, informing consumers on, for example, calorie count of the products they purchase. This has had a tremendous effect on consumer awareness, and should be expanded to include even more information that would be made available, e.g. through smartphone that are widely used these days.



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purchase, potentially exchange and flag non-compliant products for a more efficient law enforcement. Such a framework should preferably mean developing standards that would be common to all the consumer goods industries, with industry or manufacturer specific adjustments.

We believe that such an approach is in support, among others, of sections 5(e) and H of the Guidelines.

3. Innovation

Private industries lead innovation, contributing to the overall well-being of society as a whole, and consumers in particular. Incentives to innovate are key to ensure that consumers receive better, including safer, products. Such incentives mean the agility in the approach of governments to encourage manufacturers to develop products that are still little, or not known but have a potential to improve consumer protection. One example is self-driving cars which according to the revised 1968 Vienna Convention on Road Traffic are now explicitly allowed in traffic, provided that these technologies are in conformity with the United Nations vehicle regulations or can be overridden or switched off by the driver. A good example, benefiting both the authorities and consumers, is the blockchain technology which shows a tremendous potential that is yet to be fully tapped into.

All these innovations come at a significant cost. Therefore, the innovators rely on the authorities in mainly two areas. The first one is the intellectual property rights protection and enforcement, and the second one is the creation of an environment conducive to continued product evolution, or even product revolution, as is often the case in relation to new product categories. Both factors enable innovation to thrive, benefiting the consumers, society, and the innovators.

ECTA believes that the Intergovernmental Group of Experts on Consumer Protection Law and Policy has received a mandate from the civil society to spearhead the drafting of guidelines on how governments should nurture innovation for the benefit of consumers. We also strongly believe that such initiative should be carried out in the spirit of public-private partnership, as only this way can this important task be achieved in a meaningful way.

We believe that such an approach is in support, among others, of section 91 of the Guidelines.

III. FINAL REMARKS

We sincerely hope that these suggestions will help the Intergovernmental Group of Experts on Consumer Protection Law and Policy to guide discussions during the meeting on July 9 and 10. We cannot emphasize enough the importance of intellectual property protection as a key enabler of innovative solutions that benefit consumers globally.

We will be happy to discuss any of the above points prior to the meeting. Should you need any further explanations, please contact ECTA Secretariat at ecta@ecta.org or +32 2 513 5285.

ECTA

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ECTA, which was formed in 1980, is an organisation concerned primarily with trade marks and designs. ECTA has approximately 1,500 members, coming from all the Member States of the EU, with associate Members from more than 50 other countries throughout the world. ECTA brings together those practicing in the field of IP, in particular, trade marks, designs, geographical indications, copyright and related matters. These professionals are lawyers, trade mark and patent attorneys, in-house lawyers concerned with IP matters, and other specialists in these fields. ECTA does not have any direct or indirect links to, and is not funded by, any section of the tobacco industry.

The extensive work carried out by the Association, following the above guidelines, combined with the high degree of professionalism and recognised technical capabilities of its members, has established ECTA at the highest level and has allowed the Association to achieve the status of a recognised expert spokesman on all questions related to the protection and use of trade marks, designs and domain names in and throughout the European Union, and for example, in the following areas:

- Harmonization of the national laws of the EU member countries;
- European Union Trade Mark Regulation and Directive;
- Community Design Regulation and Directive;
- Organisation and practice of the EUIPO.

In addition to having close links with the European Commission and the European Union Intellectual Property Office (EUIPO), ECTA is recognised by WIPO as a non-Government Organisation (NGO).

ECTA does also take into consideration all questions arising from the new framework affecting trade marks, including the globalization of markets, the explosion of the Internet and the changes in the world economy.