



12th December 2013

Ref: Striking the Right Balance on the Trademark Package

Dear Member of European Parliament,

Our two associations have actively followed the discussions in the European Parliament on the trademark review package. From the very beginning we stressed the importance of a properly balanced trademark framework which aims to protect consumers and citizens alike, foster competition, facilitate trade and promote the development of a strong digital economy in Europe.

As the deliberations in Parliament enter a crucial phase, we would like to express our support for proposed compromise solutions and especially with regard to two issues:

First, it is our strong conviction that individual consumers should be able to buy and import genuine products that have been legitimately placed on markets outside of the EU. The Internet in particular allows European consumers to acquire such genuine goods online and across borders and they should be able to fully benefit from the greater choice brought by it.

Accordingly, we strongly support compromise amendments that seek to limit the Commission's initial proposals in Article 9(4) CTMR and Article 10(4) TMD to counterfeits. A trademark should not encompass a blanket right to prevent the importation of genuine goods shipped in small consignments to individual consumers or entities by a commercial consignor.

Second, we stress the importance to clearly set out limitations to the effects of a trademark. The Commission's proposal expressly includes referential use in Articles 12 CTMR and 14 TMD and provides a solid basis to build upon. For the purpose of increasing legal certainty, further examples of permitted uses of a trademark should be added to Articles 12(1)(c) CTMR and 14(1)(c) TMD.

These examples should include uses of a trademark for the following purposes:

- Comparative advertising satisfying all requirements set forth in Directive 2006/114/EC;
- Bringing to the attention of consumers the resale of genuine goods that have originally been sold by or with the consent of the trademark owner;
- Offering an alternative to the goods or services of the trademark proprietor;
- Uses for purposes of parody, criticism or comment.

We would like to highlight that these examples of permitted uses constitute rights and activities that citizens, consumers and large and small businesses increasingly exercise online. Trademark law should reflect the increasing importance of the

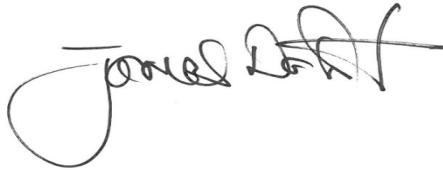
Internet in the life of citizens and hence, strike the right balance between a trademark's exclusive rights and their limitations.

In addition, we would like to restate **our opposition to proposed amendments which seek to extend trademark protection to domain names**. Domain names used for commercial purposes fall under trade mark or trade name protection and are therefore already covered by the Commission's proposal. As domain names and the Internet are global, and trademarks are territorial, a nuanced approach is necessary.

Adding domain names specifically as an extra category would particularly target domain names that are used for commentary, debate and criticism. This could have implications for citizens' freedom of speech online which should not unnecessarily stand in conflict with overbroad trademark protection.

We would like to thank you for your consideration and look forward to engaging further with you on this topic.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'James Waterworth', with a large, stylized initial 'J'.

James Waterworth
Vice-President,
Computer & Communications Industry Assn.

A handwritten signature in black ink, appearing to read 'Siada El Ramly', with a stylized initial 'S' and a horizontal line at the end.

Siada El Ramly
Director General,
European Digital Media Assn.