
Kluwer Trademark Blog

Update: (No) draft of a new Trademark Act (Markenrechtsmodernisierungsgesetz)

Ulrich Hildebrandt (Hildebrandt.) · Thursday, May 11th, 2017

Two months ago I reported about the Draft of a new Trademark Act (Markenrechtsmodernisierungsgesetz) which was supposed to enter into force before the election for the next German Bundestag. Some of the relevant German associations commented in detail on the draft and proposed some well-grounded changes – i.e. the Markenverband, the GRUR, and the Bundesverband Deutscher Patentanwälte. Only a few days later a new (unpublished) draft leaked from the German Federal Ministry of Justice and Consumer Protection. Obviously, the ministry tried hard to get the act through legislation in order to meet the deadline of January 15, 2019 for implementation in Directive (EU) 2015/2436 of the European Parliament and of the Council to approximate the laws of the Member States relating to trade marks (for CJEU decisions concerning this Directive see my book: Hildebrandt, Trademark Law in Europe, Kluwer Law International, 3rd edition).

One of the major changes was of procedural nature. Whilst the first draft replaced the actual German invalidity court proceeding by an office proceeding the new draft gave the applicant the opportunity to choose whether he would start the proceeding at the court or at the office. This change took into account the fact that injunctive relief has to be requested at a court. If the invalidation of a trademark was only possible in an office proceeding a trademark owner would have to start two parallel proceedings where the infringer had also applied for a trademark – one for injunctive relief at the court and one against the younger mark at the office. With the right to choose between office or court only one proceeding is necessary.

Now the bad news: The German Bundestag is too busy to revise and implement the draft. At the end of the legislature session a lot of legislative projects are in the pipeline. However, even if the new parliament will start its work soon in autumn and if it is not taken over by Russia and wants and can revert to the existing draft it is not sure whether Germany will be able to meet the implementation deadline of January 15, 2019. New proceedings have to be implemented at the German Patent and Trademark Office (DPMA). And new proceedings need new software – a time consuming process. We can only wait and see.

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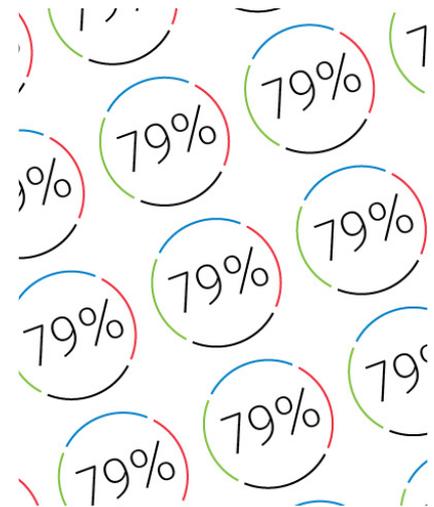
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