Community trade mark

2002/0308(CNS) - 27/12/2002 - Legislative proposal

PURPOSE : to amend certain provisions in Regulation 94/40/EC on the Community trade mark. CONTENT : The latter regulation instituted a unitary system of protection of the mark throughout the Member States via Community registration. This system has generally been satisfactory in fulfilling users' expectations. The functioning of the system has made it possible to identify other aspects which could clarify and further supplement it. The following changes are proposed: - Proprietors (Article 5): Under current provisions, proprietorship of a mark is allowed to certain persons under certain conditions. This is now changed so that the definition of proprietor is now open to any natural or legal person or authority established under public law. However, the rules on the priority of an earlier trade mark will continue to apply so as not to damage the rights of proprietors who are nationals of the Member States. - Search: The purpose of the searching system is to identify conflicts with other prior rights which might be invoked via the opposition procedure and might prevent the registration of the Community trade mark applied for. Having identified several drawbacks of the system, the proposal is to abolish the searching system. - Representation: The wording of Article 89(2)(c) has been adapted so that it suffices to be resident in any EU Member State to be able to deal with the Office. Changing one's place of residence or employment within the territory of the various Member States would no longer have any implications for one's representation at the Office. - Boards of Appeal: The following amendments are proposed: -the members of the Boards of Appeal, including the Chairmen, will be appointed by the Administrative Board and not the Council. This will make the appointment procedure more efficient. On the other hand, the removal of members will continue to be the responsibility of the Court of Justice; -a chairman of the Boards of Appeal can also take on the position of chairman of the appeals department; -a single member may take decisions where circumstances so merit; -the board of Appeal may take decisions, in certain cases, in an enlarged Board. - Points of procedure: The following amendments are proposed: -a provision has been added to the list of absolute grounds of refusal to make explicit that Regulation 2081/92 is not affected; -relative grounds for refusal concerning the proprietors of signs; -a technical amendment on insolvency proceedings; -filing of applications where the document is submitted late; -division of the application and the registration; -revision of ex parte and inter parte decisions; -revocation of decisions within six months; -the alignment of the text with regard to powers with the new Community design system; -apportionment of cost, which is set automatically; -continuation of proceedings where a party to proceedings before the Office has failed to observe a time limit; -request for conversion to be entrusted to the Office and not tothe national offices; - provisions on counterclaims, checks on legality and decisions on opposition or cancellation. Finally, certain fees have been abolished, such as those which do not provide the Office with real revenue but make the procedure considerably more cumbersome.