Intellectual property: exhaustion of trade mark rights

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PURPOSE : to present a Commission staff working paper on the exhaustion of trade mark rights.
CONTENT : this document constitutes the Commission services' working document on exhaustion of trade mark rights that the Commission undertook to prepare at the Internal Market Council of 21 June 1999. The working document should serve as a basis for a further and detailed discussion in a Council expert group in order to prepare the EC position on a possible change to the current trade mark exhaustion regime in the EC. The discussion should focus in particular on four key issues which were raised at the Internal Market Council in June. These are: a) possible consequences of different regimes for national trade marks compared to Community trade marks; b) differentiation of exhaustion regimes for different intellectual property rights; c) differentiation of exhaustion regimes for different sectors of industry; d) international exhaustion through international agreements. Furthermore, the working document explores different options available if it is decided that a change of exhaustion is necessary. Each option has its own advantages and disadvantages and will require careful examination before any conclusion can be drawn. The document does not elaborate on other issues which are also relevant in the larger context of parallel trade, like competition issues and questions on vertical restraints. In addition, developments in the information society including e-commerce are also of relevance when discussing the merits and problems of the Community exhaustion regime, in so far as they open up new possibilities for consumers to obtain branded goods which have initially been marketed on foreign markets. The discussion on exhaustion regimes has important economic implications, for example, in industries such as musical recordings, pharmaceuticals, cosmetics and perfumes, confectionary, footwear, leather goods, and alcoholic drinks and finally, the motor vehicle industry.