



EUROPEAN COMMISSION

MEMORANDUM OF UNDERSTANDING

on technical cooperation and support provided by the Office for Harmonisation in the Internal Market (OHIM) to the European Commission to deliver the tasks of the European Observatory on Counterfeiting and Piracy in relation to the protection of trademark and design rights

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THE EUROPEAN COMMISSION, hereinafter referred to as "the Commission",

and THE OFFICE FOR HARMONISATION IN THE INTERNAL MARKET, hereinafter referred to as "OHIM"

hereinafter referred to jointly as "the two sides",

DETERMINED to

- Lay foundations for cooperation in relation to IPR (Intellectual Property Rights) enforcement related activities carried out by the European Observatory on Counterfeiting and Piracy (hereinafter referred to as "the Observatory").

CONSIDERING that

- The alarming rise of infringements of trademark and design rights constitutes a genuine threat not only to the European economy, but also to the health and safety of the European consumers. Therefore, effective, immediate and coordinated actions at European and global levels are needed to effectively combat this phenomenon.
- In the context of the overall IPR strategy foreseen by the Council Resolution of September 2008, on a comprehensive European anti-counterfeiting and anti-piracy plan¹, the Council called on the Commission to launch the European Observatory on Counterfeiting and Piracy. The creation of the Observatory was announced by the Commission in April 2009 and its tasks were described in the Commission Communication of September 2009².
- The Observatory became operational in September 2009 and is a platform for coordinating IP enforcement related strategies, bringing together experts from the public and the private sector, which is hosted and managed by the services of the Commission, namely DG Internal Market and Services. The Observatory has no legal personality.
- In the context of growing expectations in relation to the fight against counterfeiting and piracy, a long term solution is needed to ensure the development of the Observatory.
- Pending the adoption of such a solution, and considering the urgent need for the EU to step up its actions in this area, temporary arrangements should be set up to enable the Commission to carry out the tasks of the Observatory in an adequate manner.

¹ Council Resolution of 25 September 2008.

² COM(2009) 467 of 14.09.2009.

- In its Conclusions of May 2010 on the future revision of the Trade Mark system in the EU³, the Council invited the Commission to establish a legal basis for the involvement of the OHIM in enforcement related activities, including the fight against counterfeiting, in particular through fostering its cooperation with the national IP offices and the Observatory.
- The European Parliament called in its Resolution of 22 September 2010⁴ on the Member States and the Commission to extend cooperation between the OHIM and national IP offices, to cover the fight against infringements of intellectual property rights.
- In September 2008, the Administrative Board and the Budget Committee of the OHIM agreed⁵ to create a Cooperation Fund to finance projects closely related to harmonization and the protection, promotion and/or enforcement of trademark and design rights. The OHIM is currently about to launch two projects aimed at facilitating the work of enforcement authorities.
- The OHIM already possesses the necessary experience and expertise in order to support the Observatory in some of its tasks. Moreover, it carries out activities in the framework of its mission on trademarks and designs, which correspond to the main priorities of the Observatory. In order to avoid duplication of efforts, the OHIM agrees to collaborate with the Commission and the Observatory and give the necessary support to deliver the necessary results.
- The Commission and the OHIM can mutually benefit from their respective knowledge and experience in the field of protecting IP rights.
- In these circumstances, the Commission welcomes the agreement of the OHIM to provide logistical and technical support for the work of the Observatory in relation to trademarks and designs, on a temporary basis, pending the adoption of a long term solution for the development of the Observatory.
- To the extent that its mission allows, the OHIM should therefore cooperate with the Commission by providing technical, financial and organisational support to the Observatory, in order to contribute to the delivery of the Observatory's activities in relation to trademark and design rights.
- The measures agreed in this Memorandum of Understanding do not affect the current activities related to the protection of trademarks and designs, or any additional actions that the OHIM is already undertaking or will undertake in the context of its mission.

RECOGNISING

The respective roles of the two cooperating sides in this process, their respective experiences and the mutual benefits of cooperation,

³ Council conclusions of 25 May 2010 on the future revision of the Trade Mark system in the European Union, OJ C 140, p. 23.

⁴ European Parliament Resolution of 22 September 2010, 2009/2178(INI).

⁵ http://oami.europa.eu/ows/rw/resource/documents/OHIM/institutional/ABBC/summary_joint-meeting-18-09-2008_en.pdf.

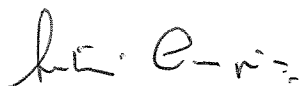
HAVE DECIDED AS FOLLOWS:

1. The two sides will cooperate closely with the objective of strengthening the protection of trademark and design rights in the EU and ensuring the European Observatory on Counterfeiting and Piracy has the means to deliver on its aims, in the area of trademark and design rights.
2. The OHIM will use and combine its existing work, projects and experiences, in areas related to the protection of trademarks and designs, including, training and research, to support and assist the Commission in the delivery of the tasks of the Observatory.
3. The OHIM will cooperate with and provide operational and technical support to the Commission to ensure the delivery of the Observatory's priorities, by reinforcing and extending activities which are already being run by the Office in the framework of its mission, such as the development of: public awareness strategies, including the organisation of particular events; training programs, in particular for customs, police and judiciary; on-line data basis relating to infringements of trademark and design rights and relevant jurisprudence and systems of exchange of information .
4. The two sides acknowledge that the cooperation is limited to the OHIM providing technical and operational assistance and support in relation to trademark and design rights.
5. The two sides acknowledge that the cooperation will have no impact on current institutional settings, i.e. the Commission hosting and being solely liable for the management of the Observatory and the delivery of its tasks.
6. The cooperation will have no impact on the Commission managing and delivering the tasks of the Observatory in the area of on-line copyright infringements.
7. The cooperation will be of a temporary character pending the adoption of a long term solution to secure its long standing development.
8. The cooperation shall have no impact on the EU budget.
9. Contact points inside DG Internal Market and Services (DG MARKT) and the OHIM will be established and mechanisms to ensure an effective communication and cooperation between the two sides.
10. This Memorandum will come into effect on the date of its signature.

Done in duplicate at

Alicante 18.04.2011

Brussels



*For the Office for Harmonization
in the Internal Market (OHIM)*
António CAMPINOS
President



For the European Commission
Michel BARNIER
Member of the Commission

ANNEX

OPERATIONAL AND TECHNICAL ASSISTANCE, BY THE OHIM, IN RELATION TO THE OBSERVATORY'S TASKS

On the basis of this MoU, the OHIM will, within its mandate, provide operational and technical assistance to the Commission in relation to the following tasks of the Observatory, as from the beginning of 2011:

1. Public awareness

- (a) OHIM will support and cooperate with the Commission and the Observatory to provide a plan to define an overall communication strategy on enforcement-related activities such as infringements of trademark and design rights, including the use of new communication channels such as social networks and the design and development of an exclusive enforcement related website.
- (b) OHIM will support and cooperate with the Commission and the Observatory on the organisation of a competition for design schools based on agreed enforcement related topics. The competition will be organised using existing OHIM IT tools, such as the 'Hands off My Design' e-learning website. The competition will be concluded by an awards (prize-giving) ceremony and an accompanying enforcement media event, in September/October 2011.

2. Training

- (a) OHIM will support and cooperate with the Commission and the Observatory on providing an on-line inventory of available, relevant training programmes and initiatives offered and organised at EU and international levels.
- (b) OHIM will support and cooperate with the Commission and the Observatory on providing seminars for enforcement authorities such as police, prosecutors and customs. Such seminars would involve specialist IP enforcement representatives from the World Customs Organisation, Interpol, Europol, UNICRI (United Nations Inter-regional Crime and Justice Institute), DG TAXUD and private sector bodies and would be aimed at 'training trainers', to ensure a more sustainable flow of knowledge and learning throughout enforcement.
- (c) OHIM will expand the current work of its e-learning plan by creating and defining specific enforcement modules, on crucial topics such as the identification of counterfeits, investigation, tracking and tracing techniques and other recognised tools and make such modules available to the Commission to develop secure platforms of existing e-learning centres that are aimed at national enforcement authorities.
- (d) The operational and technical support of the OHIM in relation to the tasks of the Observatory, in the area of external education and training activities, will be carried out by the *'Academy of OHIM'*.

3. Data collection and assessment of trends

OHIM will work with DG MARKT on the completion of and the follow-up to the external study launched by DG MARKT on a methodology to assess the scope and scale and impact of counterfeiting and piracy on the internal market.

4. Meetings

OHIM will work with the Commission and the Observatory providing operational and technical support for the organisation of meetings, including the following primary Observatory meetings, to be held in 2011:

- (a) Meeting with Member States' representatives of the Observatory – at the end of the Hungarian Presidency, May/June 2011.
- (b) Meeting with private sector stakeholders of the Observatory, in Brussels, in September/October 2011.
- (c) Joint plenary meeting at the end of the Polish Presidency, towards the end of 2011.