

Cyprus

The evolution of the Cypriot IP regime

Over the years Cyprus has developed as a world-renowned international business centre. Its economic stability, solid legal infrastructure and efficient administration have proved fundamental to its steady advancement.

The Cypriot IP regime has been amended and expanded during the past two decades in response to the growing need for concrete means to protect IP rights at both domestic and international level. Accession to the European Union on May 1 2004 resulted in numerous legal reforms which were necessary for adherence to the *Acquis Communautaire*, including revisions to the IP regime. Legislation relating to various types of intellectual property was harmonised to meet the demands of EU law and Cyprus officially became a member of the Office of Harmonisation for the Internal Market. As a result, a single successful application via a Cypriot legal representative for the registration of a Community trademark or design means that the mark or design will be protected in all EU member states automatically. Cyprus has also become a member of the World Intellectual Property Organisation and of numerous related conventions.

This chapter presents a brief overview of intellectual property in Cyprus and considers the relevant amendments which established compliance with EU law and the Community trademark system.

Types of intellectual property

Intellectual property includes any product of human intellect that is of a unique and novel nature and has some market value. IP laws cover ideas, inventions, literary creations, unique names, business models, industrial processes, computer programs and more.

IP protection in Cyprus is essentially divided into two categories:

- industrial property, which includes trademarks, industrial designs and patents; and
- copyright, which includes literary and artistic works.

Trademarks

Trademarks are used to distinguish one trader's goods or services from those of another. The unique and distinct character of goods or services is thus identified. The Trademark Law (CAP 268) and its amendments govern trademarks and their registration. By passing the Trademarks (Amendment) Law (176/2000), the government implemented the EU Trademarks Directive (89/10/EEC) and thus brought Cypriot trademark legislation into line with EU law.

The relevant procedure to apply for registration of a national Cypriot trademark must be followed. A successful trademark is protected from the date of filing rather than the date of registration. A trademark is initially registered for seven years and thereafter can be renewed every 14 years.

Designs

In order to be eligible for registration, a design must be aesthetically appealing to the eye. Registration does not protect the technical features of the product. Previously, no independent statutory instrument existed for the registration of designs in Cyprus, as the UK Designs (Protection) Law applied. Subsequently, however, the Law on the Protection of Designs and Models (4(I)/2002), adopting the provisions of the EU Design Right Directive (98/71/EC), was passed.

Designs may be protected for an initial period of five years, which is renewable for further five-year periods up to a maximum duration of 25 years.

As with Community trademarks, from May 1 2004 applications for the registration of Community designs may be filed directly with the registrar of industrial designs in Cyprus, while all Community designs registered, protected or applied for before the date of accession will be automatically extended to Cyprus (Council Regulation 6/2002 on Community Designs, Commission Regulation 2245/2002 implementing Council Regulation 6/2002 and Commission Regulation 2246/2002 on the fees payable to the Office of

Harmonisation for the Internal Market (Trademarks and Industrial Designs) in respect of Community Designs).

Patents

A patent may be a product or a process. It confers on the inventor the exclusive right to use, distribute or sell a new invention. In addition, registration of a patent stops third parties from using, distributing or selling a new invention without the inventor's permission.

Until 1998, the registration of a patent in Cyprus required registration in the United Kingdom. Subsequently, however, the Patents Law 1998, as supplemented by Regulation 46/1999, came into effect. This law was further amended by Laws 21(I)/1999, 153(I)/2000 and 163(I)/2002. In particular, Law 153 (I)/2000 introduced supplementary protection certificates in respect of plant protection products and Law 163 (I)/2002 harmonised the Cyprus Basic Law with the EU Biotech Directive (98/44/EC).

Patent protection is conferred for 20 years from the date of filing and is subject to payment of an annual maintenance fee.

Once a patent has been registered and a certificate of registration has been granted and published, persons other than the applicant are expressly prohibited from manufacturing, selling, importing or otherwise commercially exploiting either the patented product or a product obtained by the patented process. In the event of infringement, the patentee may bring a court action seeking an injunction and/or damages.

Copyright

Copyright protects creations such as works of art, literature, music, broadcasts and computer software against copying and certain other uses.

Copyright is protected by the IP Law (18(I)/1993), as amended by Law 128(I)/2002. The amending law has implemented various EU directives to bring the Cypriot regime into line with EU copyright law.

The duration of copyright protection varies depending on the work in question. It may extend for several years beyond the creator's own death, thus benefiting the creators' descendants through the collection of royalties.

The 2004 amendment establishes a new type of copyright within the framework of the information society. It expands the legal protection afforded in relation to reproductions and contains new provisions on interactive, on-demand broadcasting and rights management information. In an effort to combat copyright infringement, a further development is a substantial increase in the amount of fines and the length of terms of imprisonment imposed on infringers.

The Community trademark system and Cyprus

The Community trademark system leaves the Cyprus trademark system unaffected, as it runs in parallel with the national trademark registration system and does not revoke international protection. Community trademark registration secures automatic extension and protection of the trademark in all EU member states.

Risk of objection

However, in light of EU enlargement a significantly high risk of objection on absolute grounds or prior rights must be taken into account where a single European application is submitted in respect of the European registration of a Cyprus trademark.

A valid objection from even one country based on prior rights has the effect of invalidating the entire application. This situation is exacerbated by the fact that automatically extended Community trademarks constitute, from the date of accession, prior rights in all member states, pursuant to Article 4.2 of the EU Trademarks Directive, against any trademark registration or application with a filing date or priority on or after the effective date of accession.

Where an opposition is successfully brought based on prior rights, registration of the trademark in Cyprus shall be retained and national applications of the trademark may be pursued in those countries where prior rights were not successfully raised in opposition. The Community trademark may thus be converted into national applications, since Cyprus has adopted provisions in its national legislation to accommodate conversion claims.

A trademark registered in Cyprus can be maintained in all EU member states via a Community trademark registration, even if it is effectively and genuinely used in Cyprus only. Therefore, trademark holders in Cyprus that wish to expand the protection of their trademarks in Europe, but that genuinely use those marks only in Cyprus, need not be concerned about the risk of revocation proceedings on the grounds of non-use.

In addition to trademarks registered in Cyprus, Community trademarks registered in EU member states are automatically protected in Cyprus. They are enforceable from the date of accession and have equal effect in all new member states pursuant to Article 142a(1) of the EU Community Trademark Regulation. In particular, all existing Community trademark registrations and pending applications with a filing date prior to enlargement were automatically extended to Cyprus. These had equal effect without any associated costs or fees being payable or any other formalities.

However, although in theory Community trademarks apply to all of Cyprus, in practice, because of the political

situation, they are effective only in the internationally recognised part of Cyprus, south of the ceasefire line.

Prior rights

The owner of the prior right in Cyprus may under Articles 106 or 107 of the EU Community Trademark Regulation, use its right under Cyprus law to prohibit the local use of the extended Community trademark in Cyprus in the event that a prior trademark was registered or acquired in Cyprus before the date of accession and in good faith pursuant to Article 142(a)(5) of the EU Community Trademark Regulation.

However, where the prior rights are challenged or were acquired in bad faith, the owner of the prior right in Cyprus may not use its right under Cyprus law to challenge the local use of the extended Community trademark

National trademark applications in Cyprus increased dramatically in 2003, as European trademark owners were advised to file national trademark applications in Cyprus at least six months before the likely accession date to avoid oppositions by trademark holders in Cyprus, given that it is difficult to prove bad faith and prior recognition.

Conclusion

As IP assets have grown more important and valuable in the last two decades, this has increased the risk of infringement by competing businesses, which can cause damage to IP owners. From the above analysis, it is clear not only that IP rights in Cyprus are comprehensively safeguarded, but also that, as a result of EU accession, the regime is being continually reviewed and updated in order to keep abreast of developments in this area.

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