

### **DKPTO statement on the ONEL case**

When assessing the functioning of the present European trademark system, one should look at the reasons why this system was created, and the considerations behind its establishment. The Council regulation on the Community trademark mentions that one of the purposes of the CTM is to promote throughout the Community a harmonious development of economic activities and a continuous and balanced expansion by completing an internal market which functions properly and offers conditions which are similar to those obtaining in a national market. This also shows that the EU Council has made a distinctly political decision that we should uphold two parallel trademark systems in Europe; one national and one regional access to trademark registration.

One could question of course to what extent a European trademark should be used and in how many countries such a use should be required. This is not an easy question to answer. However, it is the DKPTO's point of view that use in a very limited part of the Community seems not to fulfill the purpose and the intentions of the European trademark regulation. On the other hand, it seems too restrictive to demand that the European trademark is used in all 27 member states. The answer must lie somewhere in the middle.

Furthermore, we should be aware that the rules and regulations must not create unfavorable market conditions, and they should certainly not lead to a distortion of competition. It is essential that a fine line is drawn between the grant of exclusive rights and the importance of having markets open to competition – on this point the DPKTO shares the view of the Benelux and Hungary.

Another aspect which could be mentioned in this context is that we see a tendency towards an increase in the number of registered trademarks, and it should of course be examined whether and if this poses a problem for the continued functioning of the European trademark system.

The DKPTO is therefore pleased that an extensive study conducted by the Max Planck Institute is in progress, and at this point we believe new initiatives should await the results of this scrutiny.