

Press Release Onel trademarks February 11, 2010

The decision of the Benelux Office for Intellectual Property ("BOIP") in the opposition case ONEL against OMEL gave a huge commotion in the world of the Intellectual Property. This led to an official announcement of Marques and also the Ohim commented on this decision.

The main question in this case is whether or not genuine use in one EU-country automatically means genuine use in the Community. In other words, in order to maintain a Community trademark, should the holder cross borders and use its mark in more than one country?

The BOIP is of the opinion that use of a Community trademark in one single European country does not by definition result- in genuine use in the Community. In the ONEL-case this meant that use in only the Netherlands could not be classified as normal use of the invoked right.

Today, ms. Kriek Wille of Van Doorne, attorney of Leno Merken in this case, filed an appeal against the decision of the BOIP with the Appeal Court of The Hague.

The position of Leno Merken is that this decision of the BOIP is contrary to what the European Court of Justice has said in landmark cases such as Ansul ./ Ajax where the Court gives a definition of what genuine use is without mentioning any territorial requirement. Furthermore, this decision is contrary to the goal of the Community trademarks, namely a development of business without any barriers.

The defendant now has several weeks to reply.