Sozos-Christos Theodoulou appointed new ECTA president

Sozos-Christos Theodoulou will be the new president of the European Communities Trade Mark Association (ECTA).

On Thursday 15 June at ECTA’s 37th Annual Conference in Athens, past president Ruta Olmane announced Sozos would take on the role at the end of her two-year term.

Sozos-Christos was previously second vice-president of ECTA and has worked within the management of the association for a number of years.

Mladen Vukmir will take on the role of second-vice president of ECTA.

A practicing lawyer in Cyprus, Sozos-Christos has a range of experience, including work in trademark filing and prosecution, domain name disputes, anti-counterfeiting activities and various other intellectual property related matters.

Sozos-Christos is also an associate lecturer at the law school of the University of Central Lancashire, Cyprus and an honorary consul of France in Larnaca, Cyprus.

Great opportunities

As new ECTA president, Sozos-Christos Theodoulou will have a lot on his plate, but with responsibility and challenge comes great opportunity

Congratulations on your new position as president of ECTA. What are your plans for the association going forward?

Thank you for your kind words. It is, indeed, both an honour and a challenge for me to take over the helm of such a prestigious association as ECTA. This is especially true for someone coming from a small EU member state like Cyprus!

After four years of being one of the two vice-presidents of the association, the time has come for me to become president. Coming to your question on my plans going forward, allow me first to explain how things work at ECTA: for some years now, ECTA has established a rolling six-year strategic plan, which is regularly reviewed and adapted every two years by each incoming president. This means that, after a process of evaluation, the president-to-be must introduce his/her additions to the outgoing president's strategic plan to the ECTA Council for approval. This is what I am preparing for, right now.

At this point, I wish to congratulate and to thank my colleague, Ruta Olmane, for her good presidency over the past two years.

With regard to my plans, I will continue to support the progress of the five pillars (develop membership benefits, broaden ECTA’s expertise, reinforce external partnerships, strengthen the internal organisation and broaden the financial basis). During the next two years, ECTA is expected to materialise quite a few projects. First of all, we need to bring into life our system of better internal and external communication (known as Organica), so that all tasks, correspondence and news may be managed in an easier and more structured way. Then, I would like to approach the University world, academics and students alike, in an effort to...
Bad faith – do you have a case?

The concept of bad faith is anchored in the law of contract and the other party, factors indicating authority that your trademark was widely known about the other party knew about your trademark. The Directive does not define ‘bad faith’. In other cases, in order to convince the competent authority that your trademark was famous or that it has a high reputation, it is in any event advisable to offer evidence of mark’s recognisability, such as market surveys and opinion polls. Even if your trademark is expired and you failed to renew the registration (for whatever reason) you can oppose the registration of the same or similar trademark by the other party. If you can prove its intention to free ride. You should be able to show that your trademark still enjoys a surviving reputation. Secondly, you must prove that the other party wishes to free ride on your mark’s reputation. As the General Court put it in the Simca Europe case in 2014, “registration of the sign in issue was deliberately sought in order to create an association with the earlier marks and to take advantage of their reputation on the motor vehicle market, even to compete with those earlier marks.”

Another argument you may wish to use is that the other party did not use the sign in the period before applying for its registration as a trademark. Even though this could not and in itself prove bad faith, the lack of prior use narrows the scope of potential arguments that the other party could invoke to argue that it acted in good faith. The likelihood of confusion between the marks is a helpful argument to prove the intention to harm you, as the general court reiterated in several cases, such as Payot 2012, SA.PAR in 2013 and pelicantravel.com case in 2012.

This factor was explicitly singled out by the ECJ in the Lindt trademark case in 2009. In the court’s opinion, the degree of protection should be proportionate to the reputation of a mark. However, it is not necessary to prove that your mark is famous or that it has a high reputation. It is in any event advisable to offer evidence of mark’s recognisability, such as market surveys and opinion polls. Even if your trademark is expired and you failed to renew the registration (for whatever reason) you can oppose the registration of the same or similar trademark by the other party. If you can prove its intention to free ride. You should be able to show that your trademark still enjoys a surviving reputation. Secondly, you must prove that the other party wishes to free ride on your mark’s reputation. As the General Court put it in the Simca Europe case in 2014, “registration of the sign in issue was deliberately sought in order to create an association with the earlier marks and to take advantage of their reputation on the motor vehicle market, even to compete with those earlier marks.”

If your current business partner applies for a trademark you are using in which you have intended to use or apply for, it could be considered a strong indication of bad faith. This is also applicable to the situation in which a company’s representative is a member of the board of directors applies for such a trademark. This was confirmed by the General Court in the Simca Europe case. A typical case of such breach of trust is when a distributor applies for a trademark similar to or identical to his supplier’s, without the supplier’s authorisation. It is always useful to do a research on the other party and check whether he owns or has applied for other trademarks. If yes, take a look at these trademarks and try to find out whether they have something in common (for example similar graphic solutions or similar goods). If not, you may have an encounter with a serial trademark applicant or trademark troll: a person who is registering trademarks, which they do not intend to use in order to threaten others with filing a lawsuit for trademark infringement and to extort money from them. This is typically the case with application for trademark to which are evocative of the goods or services for which they are sought to be used. If by any chance you have received an offer from the other party to transfer the trademark to you against certain consideration, it’s higher than the cost of registration. There is a strong indication that he acted in bad faith. The General Court brought a decision in the Lucas v Xerox LED bad faith case in 2016 based solely on this argument.

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