

general and abstract manner, all the conceivable shapes” of such a transparent bin or collection chamber.

II. Formal requirement – the graphical representation

The requirement that a registrable sign must be capable of being represented graphically, as stipulated under Article 4 of the CTMR, is reinforced under Article 26 of the CTMR, which requires an applicant for CTM registration to furnish OHIM with a representation of the trademark.²⁵¹ The legal significance of the requirement for such a representation is mirrored by the fact that an application for trade mark registration may “claim special graphic features or colours, the use of small and capital letters and three dimensional marks” only through graphical representation.²⁵²

Graphical representation required under Article 4 of the CTMR does not mean actual reproduction of a sign in the register. Nevertheless, this is one methodology. The second method is to provide some contours representing the sign and some description enough to make the trademark examiner and other interested parties know what is claimed and the extent of the consequential monopoly.²⁵³

III. Essence of the formal requirement

A trademark protection regime must, as a matter of principle, encourage and foster the principle of legal certainty.²⁵⁴ A registered trade or service mark affords to its proprietor a monopoly over the exclusive use of the signs constituting such a trade or service mark.²⁵⁵ The use of a registered trade or service mark by third parties having no authorisation from the owner infringes the exclusive right(s) bestowed upon the right holder. The legal certainty, in

251 Article 26(1) (d) of the CTMR.

252 KOOIJ, P.A.C.E. van der, “The Community Trade Mark Regulation: An Article by Article Guide” 60 (Sweet & Maxwell, London 2000). *See also* Rule 3(1) of the CTMIR.

253 DUMFARTH, P., “Prozessuale und materiellrechtliche Aspekte des Widerspruchsverfahrens der Gemeinschaftsmarkenverordnung” 39 (Trauner, Linz 2008). Cf. also FEZER, K.-H., “Die Grafische Darstellbarkeit eines Markenformats” 44, in: BOMHARD, V. von, PAGENBERG, J. & SCHENNEN, D., (eds.), “Harmonisierung des Markenrechts: Festschrift für Alexander von Mühlendahl zum 65. Geburtstag am 20. Oktober 2005” (C. H. Verlag, München 2005).

254 See the opinion of Advocate-General Ruiz-Jarabo Colomer in case C-273/00, *Ralph Sieckman* [2002] ECR I-11737.

255 Cf. Articles 9 and 8 of the CTMR.