

II. Preservation of earlier rights under national law

Pursuant to Article 165(5) of the CTMR, a proprietor of an earlier national trademark whose registration was secured in good faith and prior to the accession date may prohibit the use of a CTM in the territory of the acceding state. The right to prohibit the use of a CTM on the basis of an earlier national right confirms what is already contained in Articles 110 and 111 of the CTMR. Article 110 reiterates that by acceding to the CTMR, a new Member State does not jeopardise the right existing under its laws pursuant to which claims for infringement of earlier rights recognised under the CTMR⁷⁰⁸ may be enforced against the use of a later CTM. For its part, Article 111 envisages a scenario in which a national registration affirms validity of earlier rights even where such rights apply only to a particular locality. Where this is a case, the owner of national earlier rights has a right to oppose the use of a CTM in the territory of the acceding state in which his rights enjoy protection. Even where the owner of earlier rights confined to a particular locality can no longer oppose the use of a later CTM because five years within which, pursuant to Article 111(2), he is entitled so to oppose have elapsed,⁷⁰⁹ the CTM proprietor will be allowed to use his CTM in the territory concerned without affecting the rights of the proprietor of the earlier national rights. The territory where the earlier national rights are protected will become a no-man's land, since the CTM proprietor will be able to use his CTM in the territory without prohibiting the use, by the owner, of the earlier national rights identical or similar to a CTM.

D. Enforcement of Community trade mark rights

The interrelationship between the CTM system and the national trademark systems of the Member States may, as well, be explained in light of the CTM enforcement regime provided for under the CTMR. The CTMR establishes a legal system devoted solely to the enforcement of CTM rights.⁷¹⁰ The system, however, depends so much on the various legal systems of the Member States for its effectiveness. It identifies among national institutions of the Member States courts, which are competent to deal with the CTM enforcement issues. Since various laws such as the national law of the Member States or the Brussels

708 Cf. Articles 8 and 52(3) of the CTMR.

709 Cf. Article 111(2) of the CTMR.

710 Cf. Title X of the CTMR.