

refused on the basis of prior rights existing in only one Partner State.⁸⁹⁹ The corollary of this is that a registered Community trade mark is vulnerable for revocation or cancellation even where the prior rights forming the basis for the invalidity proceedings are only protected in a single Member State of the regional organisation. Moreover, application of the principle of unitary character means that the Community trade mark rights can only be alienated or assigned for the whole territory of the regional organisation.⁹⁰⁰

II. The principle of Coexistence of trade mark rights

When applied in relation to national and regional trade mark protection regimes, the principle of coexistence⁹⁰¹ connotes that introduction of a regional trade mark system does not become a replacement of, but a supplement to, the existing national trade mark protection schemes of the Member States of a given regional organization.⁹⁰² In this sense, the principle of trade mark coexistence allows existing national trade mark systems to operate alongside the regional trade mark scheme.⁹⁰³ Thus, the principle provides trade mark proprietors with a freedom to pursue their own business interests. A choice between the national and the regional trade mark systems should naturally be dictated by one's own business plans. In this regard, a trade mark proprietor wishing to trade to the scale of a regional bloc would find registration of his trade mark as a Community trade mark a suitable option, whereas a national trade mark registration would suit a person who has resolved to confine his business in a single Member State. Moreover, a person owning several registrations of the same mark in different Member States may decide to consolidate those national registrations into a Community trade mark registration while being assured by the principle of coexistence that should the consolidation process fail, or the consolidated

899 In relation to grounds for trade mark refusal, *cf.* section D of chapter 4 *supra*.

900 Under certain circumstances, exceptions that avoid the rigidity of the unitary principle are applicable. For instance, registration of a sign as a Community trade mark may be granted even where identical or confusingly similar prior rights of mere local significance are protected in one of the Member States (*cf.* by implication Article 8(4) of the CTMR).

901 The World English Dictionary defines the term "coexistence" to mean "to exist together at the same time or in the same place" (*cf.* <<http://dictionary.reference.com/browse/coexistence>> (status: 30 July 2012)).

902 *Cf.* MÜHLEND AHL, A., "Koexistenz und Einheitlichkeit im Europäischen Markenrecht - Überlegungen zur Berücksichtigung älterer Rechte im künftigen europäischen Markenrecht für den Gemeinsamen Markt", 25(1) GRUR Int. 27, 28 (1976).

903 *Cf.* section B (I) of chapter 5.

Community trade mark be cancelled, the national trade mark regime will avail him with protection of his trade mark based on the principle of trade mark conversion.⁹⁰⁴

It is noteworthy that the principle of trade mark coexistence has a direct connection with the principle of free movement of trade-marked goods underlying the EAC's common market. If, supposedly, the envisaged EAC regional trade mark system is designed to coexist with the national trade mark regimes, the chances that trade marks protected under the coexisting systems may conflict with one another are very high. This would in turn lead to several consequences such as restrictions on the free movement of goods,⁹⁰⁵ and distortion of competition in the EAC common market.

III. Interaction between trade mark coexistence and unitary principles

On the one hand, the principle of coexistence allows national trade mark systems to be maintained along with a regional trade mark regime irrespective of whether the national and regional trade mark rights may conflict with one another. But, on the other hand, the danger of trade mark conflict within the coexisting trade mark systems is minimised by the unitary principle, which allows registration of a trade mark only if there is no registration of similar mark in the national or in the Community trade mark register.⁹⁰⁶ Thus, the main role played by the unitary principle is to ensure that the coexisting trade mark regimes coexist in harmony without frictions resulting from conflicts between trade marks. Similarly, the principle applies only with respect to registrability of a Community trade mark, since failure of a trade sign to meet the requirement of the unitary principle and hence failure to meet registrability requirements does not mean that the trade sign cannot be registered as a national trade mark. In this sense, the solution to trade mark confusion provided by the principle of unitary character only addresses this problem⁹⁰⁷ in limited context of the relationship between national and regional trade mark systems. Thus, the principle does not solve the likelihood of confusion of national trade marks *inter se*. It instead exacerbates the danger of national trade mark confusion. In this regard, suppose that an

904 Cf. MÜHLEND AHL, A., "Unitary Character and Problems of Coexistence in the future European Trade Mark System", 7(2) IIC 173, 177 (1976).

905 Cf. BEIER, F.-K., "Industrial Property and the Free Movement of Goods in the Internal European Market" 21(2) IIC 131, 141 (1990).

906 But see the exception regarding prior rights of mere local significance implied in Article 8(4) of the CTMR.

907 i.e. Trade mark confusion.