

Modifications in Trademark Law.

Trademark Protection *FORTE*.



On 28 May 2009, the German Trademark Act has been amended, improving the position of the owners of legally protected designations. The amendment of the German Trademark Act will become effective in late summer.

Currently, oppositions against the registration of trademarks filed with the German Patent and Trademark Office can be based on registered trademarks only. In the future, company names, work titles and non-registered trademarks may also serve as a basis of an opposition. Additionally, an opposition does no longer have to be based on a likelihood of confusion of the newly registered and the earlier trademark. Instead, the owner of a trademark, company name or work title may also claim that the new trademark takes unfair advantage of or is detrimental to the reputation of the earlier designation.

The implementation of these changes by the German PTO is expected with interest. In the past, oral hearings with respect to facts and evidence did not take place. In future opposition proceedings based on non-registered rights, the proof of their use and reputation will be required.

In addition to filing an opposition, owners may still claim their earlier rights in a designation by filing a lawsuit or seeking preliminary relief to enforce their rights in an effective and prompt manner.

Already in September 2008, the rights of trademark owners had been strengthened introducing the possibility to recall or remove trademark infringing products from the trade. The trademark owner can now request the infringer to publish the recall in a nationwide newspaper which might be cost-intensive and have a negative impact on the infringer's reputation.

If you have any questions or if you require more detailed information, please do not hesitate to contact us.

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