

Legal Alert

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ECJ: Austria is a substantial part of the European Community

6 October 2009

Today, the European Court of Justice (“**ECJ**”) rendered its judgment in the case PAGO/Tirol Milch¹.

In this case the Austrian Supreme Court asked the ECJ to clarify the meaning of the criterion “has a reputation in the Community” in the sense of Article 9(1)(c) Community Trademark Regulation (“**CTMR**”). More specifically, the question was whether it would suffice if a trademark has a reputation in only one Member State. The figurative trademark PAGO at issue only enjoyed a reputation in Austria.



Referring to the Chevy-ruling, the ECJ considers that in order to fulfil the criterion “a reputation in the Community” there must be a reputation in a

substantial part of the European Community. Subsequently, the ECJ rules that under “the circumstances of the main proceedings, the territorial requirement imposed by Article 9(1) (c) of the regulation is satisfied.”

In other words: according to the ECJ Austria can be considered a substantial part of the European Community. This is rather striking since Austria only covers 1,9% of the territory of the European Community and only has 8,2 million inhabitants which is 1,7% of the total Community population².

As a consequence, the threshold to fulfil the criterion “has a reputation in the Community” is low, which is good news for trademark holders.

The second question that was presented to the ECJ in this case, namely whether a trademark with a reputation in one Member State is only protected in that Member State meaning that a prohibition should be limited to that Member State, was not answered by the ECJ. According to the ECJ there was no need to answer this question in view of the answer to the first question and of the circumstances of the main proceedings.

The ECJ did not follow the opinion of Advocate General Sharpston in this case. For more

¹ [Link to judgment](#)

² [Link to website europa-nu.nl](#)

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information about this opinion see our IP&ICT Newsletter of July 2009³.

Obviously, we will be more than happy to discuss the practical consequences this decision may have.

³ [Link to IP/ICT Newsletter of July 2009](#)

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