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1 Attachment



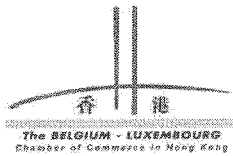
Paper on non-applicability of the Madrid Protocol to the HKSAR.docx

Please note our information.

JP Cuvelier

Chairman

Belgium and Luxembourg Chamber of Commerce



Non-applicability of the Madrid Protocol to the HKSAR

Paper prepared by The Belgium-Luxembourg Chamber of Commerce (BLCC) in Hong Kong
on 21st February 2013 updated on 20 December 2014.

Purpose:

The aim of the paper is to update members of the InterCham on the matters arise from the non-applicability of the Madrid Protocol to the HKSAR and its negative effect on business doing in Hong Kong.

Madrid Protocol:

The Madrid system offers a trademark owner the possibility to have his trademark protected in several countries by simply filing one application directly with his own national or regional trademark office. If the trademark office of a designated country does not refuse protection within a specified period, the protection of the mark is the same as if it had been registered by that Office. The Madrid system also simplifies greatly the subsequent management of the mark, since it is possible to record subsequent changes or to renew the registration through a single procedural step. Further countries may be designated subsequently.

The current members of the Madrid Union total 89 countries and include most of the European countries, the US and China. For the full list, please refer to the attachment "Madrid Union Members".

Problems of the non-applicability of the Madrid Protocol to the HKSAR and its negative effect on business doing in Hong Kong:

Since Hong Kong is not recognized under the Madrid Protocol scheme, a Hong Kong company who wishes to register a brand name worldwide will have to register country by country. As a consequence, the applicant will have to spend at least USD 200,000 in order to get its brand name registered in each Madrid Protocol country. In addition, the whole registration procedure will take approximately two years.

Practical case:

If a Hong Kong company wants to charge royalties for their brand name used in one of the Madrid Protocol countries, the royalties will be subject to withholding taxes, defined by each nation. For instance, France raises 33% withholding taxes for all royalty payments. In the contrary, if Hong Kong is part of the Madrid Protocol union, the withholding tax on royalties will be reduced to a strict minimum, which is close to zero percent.

Given the obstacles for registering the brand name from Hong Kong, many of the corporations would not choose Hong Kong but Madrid Protocol countries for company formation and brand name registration. For instance, Luxembourg has successfully attracted various multinationals such as Google, Amway, Ebay, Paypal to set their base in Luxembourg. The applicability of HKSAR to Luxembourg together with its Anti-Double Taxation agreement with an extensive network has made Luxembourg the preferred destination.

Response from Hong Kong Government

On request of Mr. Jean-Paul Cuvelier, Chairman of the BLCC, the Commerce and Economic Development has sent their reply by email on 27 April 2011 and hereunder is the citation:

"Since membership of the Madrid Protocol is confined to sovereign States, the HKSAR could not become a contracting member on its own.

Articles 139 and 140 of the Basic Law provide that the HKSAR should on its own formulate policies and provide legal protection for intellectual property rights/ The Mainland and Hong Kong have their own and separate trademark systems.

As a Contracting State of the Madrid Protocol, China gave notice to the World Intellectual Property Organisation ("WIPO") on 6 June 1997 that, pending a study and until further notice, application of the Protocol, including requests for territorial extension of the international registration of marks to China under the System, would be deferred to be applied to the HKSAR.

We are in discussion with the Central People's Government on the feasibility of having a system which deals with the above issues in a manner consistent with WIPO's rules without at the same time causing any added hassle to users of the system."

Latest update:

Following Commerce and Economic Development's email dated in 2011, there is no further update from the HKSAR government. Given the importance of Madrid Protocol to business doing in Hong Kong, we hope that the HKSAR government could continue its discussion on the feasibility of territorial extension with the Central People's Government.

Encl.

Attachment 1: Madrid Union Members

Attachment 2: Reply of the Commerce and Economic Development dated on 27 April 2011