2 The European Trademark System

The European trademark system refers to the unitary trademark right which exists for the entire territory comprising the member states of the European Union (EU) (European Council, 1993, Art. 1). The pan-EU trademark right is named ‘Community Trade Mark’ (CTM). It has existed since 1996, coexisting with the national trademark regimes of the member states of the EU. Since very few studies in economics and the business literature have dealt with CTMs and the European trademark system (Mendonça et al., 2004), the aim of this chapter is to describe the CTM system and to provide some descriptive statistics to corroborate the role of CTMs in the course of trade.

First, Section 2.1 presents the role of trademarks for companies. Next, Section 2.2 portrays the institutional structure of Europe’s trademark system while Section 2.3 describes the process from trademark application to trademark registration. In Section 2.4, I explain the requirements of trademark registration. Trademarks can be challenged by competitors before and after they have been granted. I describe these legal mechanisms in Section 2.5. The database obtained from the OHIM which basically is a copy of the CTM register is described in Section 2.6.

2.1 The Role of Trademarks for Companies

The role of trademarks for companies can be divided in two functions. First, trademarks can be viewed as commercial links between companies and consumers that allow companies to transmit information. Second, trademarks allow consumers to distinguish between products that carry different trademarks thereby facilitating product identification. Both functions of trademarks are described below.

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5 From 2007 on, the territory of the 27 EU member states is covered by this unitary trademark right.
6 The empirical studies in Chapter 3 through Chapter 5 draw upon these data.
Chapter 2

2.1.1 The Function of Information Transmission

Companies use trademarks as commercial links which connect the companies that own them with their present and prospective consumers. By using a trademark, a company aims to establish a direct commercial connection by which messages can be transmitted to consumers. Consumers perceive the trademarks attached to products and use them for product identification. Trademarks facilitate or ease consumers’ product choices by transferring information and acting as a vehicle for reducing perceived risk (Economides, 1988; Montgomery and Wernerfelt, 1992; Wernerfelt, 1988). In turn, these ‘direct links’ to customers allow a company to build its reputation and benefit from customer loyalty. These explanations also apply to brands which are highly related to trademarks (Mendonça et al., 2004). Trademarks are rooted in law while brands are a business concept. Brands may combine a set of values employing signs or symbols in order to convey them. These signs or symbols and their commercial use are typically encompassed by trademarks. By registering trademarks and ‘marking’ its products or services, companies aim at making a name, a slogan, a figure, or a shape visible in the market place. Nevertheless, if products are sold under a brand, rather often a bundle of multiple trademark rights is used (Mendonça et al., 2004). Thus, trademarks represent the legal building blocks upon which a brand may be built. Put differently, a brand needs legally protected signs to carry its values. The trademarks owned by a company can therefore be viewed as its visible front-end.

As Economides (1988) points out, trademark protection allows companies to offer products whose qualities may not be assessed by consumers before purchasing or using them. Products with such characteristics are also known as experience goods and are best explained when comparing them to search goods. The difference between search and experience goods is based on the point in time at which the consumer is able to determine the quality of the purchased product (Cabral, 2000a; Nelson, 1970; Tirole, 2003). With search goods, consumers are able to evaluate the product’s quality before actually purchasing it. The features of a personal computer, for example, may be assessed before it is bought. Experience goods require the consumer to first buy the product before its quality can be determined because only consumption of the product will enable the consumer to assess its quality. Here, a consumer can use the experience from repeated purchases for future decisions. Examples include the quality of a restaurant or the taste of wine. In addition to search and experience goods, Darby and Karni

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7 A good example is *IBM* which filed several CTMs with the OHIM. Some of these CTMs protect the abbreviation *IBM* as a word mark while others protect the logo.