

## Client Advisory | June 2010

## Implementation of Opposition Procedure in Austrian Trade Mark Law as of 1 July 2010



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**What You Need to Know**

Austria is unusual in that it has not had an opposition procedure for trade mark applications. Brand owners who objected to a new trade mark application were required to wait until the application was registered before issuing cancellation proceedings. This procedure was slow and frustrating for brand owners more accustomed to the opposition procedures available elsewhere.

In November 2009, the Austrian Parliament adopted the latest amendment to the Austrian Trade Mark Protection Act (*§§ 29a-29c Markenschutzgesetz*), an opposition procedure. Beginning 1 July 2010, Austria will implement this opposition procedure. This is good news for all brand owners who operate in Austria.

**Aim of the New Procedure**

This new opposition procedure is intended to provide enhanced legal protection for proprietors of earlier trade marks. In particular, faster resolution of trade mark disputes.

**Previous Law**

Until 1 July 2010, there has been no opposition procedure in Austria. The owner of a

prior trade mark who objected to a new Austrian application could only file a cancellation action *after* registration of the newer mark. In practice, cancellation proceedings are slow and determined by a panel of three representatives of the Austrian Patent and Trade mark Office following an oral hearing.

**New Opposition Procedure**

For new Austrian applications published after 1 July 2010, the proprietor of an earlier trade mark can challenge the application by filing a Notice of Opposition within **three months** following the publication of the application. The official fee associated with filing a Notice of Opposition is EUR 200 (approximately £166 or \$241). The decision in the opposition proceedings is taken by an Appointed Person of the Austrian PTO. Oral hearings are not mandatory, but can be requested in exceptional cases. It is therefore anticipated that the new opposition procedure will be considerably less expensive and quicker than the existing cancellation procedure.

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