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**Question Q234**

**National Group:** [please insert name of Group]

**Title: Relevant public for determining the degree of recognition of famous marks, well-known marks and marks with reputation**

**Contributors:** [please insert names of contributors – **last name** in **CAPITAL** **letters** please. Firm’s name is not required]

**Reporter within**

**Working Committee:** [please insert name]

**Date:** [please insert date]]

**Questions**

The Groups are invited to answer the following questions under their national laws.

Analysis of current law and case law

1. How is the relevant public for purposes of determining the degree of recognition of famous, well-known and reputed marks defined in your jurisdiction? Is it the general public at large or a relevant sector of the public that is considered to be the relevant public in determining the knowledge, recognition or fame of a mark?
2. Please clarify whether your jurisdiction uses several of the terms discussed in sections 22-26. If so, is the “relevant public” construed differently when determining the recognition of famous marks, well-known marks and marks with reputation respectively (and, if applicable, marks subject to another term)? Is the assessment made based on the same criteria?
3. If the relevant public can be a limited sector of the public please respond (if applicable with reference to statutory provisions and/or case law) to the following questions.
4. Please briefly describe the criteria for determining the relevant public. Is consideration taken e.g. to age, gender, geography, culture, groups with special interests, sophistication/skill of the consumer? Is consideration taken to the way the goods or services with the trademark in question are marketed?
5. Would the relevant public be populated by actual/potential consumers/buyers of the products/services in question only or a larger public? Please explain how the delimitation is made.
6. Could the relevant public be composed of business /professional end consumers?
7. Could the relevant public be composed of people in the trade of the goods or services in question, such as distributors, licensees and retailers?
8. Could the relevant public be "mixed" in a sense that it is composed of persons involved in trade, professional/business end customers and private end customers?
9. How limited in terms of quantification can the relevant sector of the public be to constitute the relevant public? Is there a clear established “lowest level”?
10. Is it possible to see any differences for different products/ industry sectors in respect of the delimitation of the relevant public?
11. Are there any differences between the "relevant public" concept when assessing the recognition of trademarks in respect of e.g. dilution, free riding, or when determining likelihood of confusion in infringement proceedings?
12. When does the assessment of the relevant public come into play e.g. in registration matters, proceedings in respect of wrongful use such as free riding, dilution, infringement proceedings, and opposition proceedings?
13. Is the relevant public determined by a test, a specific procedure or in some similar manner, or rather on a case-by-case basis? Please give a brief description of how the test or analysis is made.

Proposals for harmonisation

Is harmonisation desired? If yes, please respond to the following questions.

1. Is it the general public at large or a particular sector of the public that should be considered as the relevant public in determining the knowledge, recognition or fame of a mark?
2. Please briefly set out the criteria to be used when establishing the relevant public for determining the degree of recognition of famous marks, well-known marks and marks with reputation.
3. Should the relevant public be construed differently for famous marks, well-known marks or marks with a reputation? If so, please define the terms used and describe what criteria is to be used for the different types of marks.
4. Would it be possible or desired to establish a test or a specific method of establishing the relevant public or should this be done on a case-by-case assessment? How should the test or analysis be made?

National Groups are invited to comment on any additional issues concerning the relevant public for determining the degree of recognition of famous marks, well-known marks and marks with reputation that they deem relevant.

**NOTE**

It will be helpful and appreciated if the following points could be taken into consideration when editing the Group Report:

- kindly follow the order of the questions and use the questions and

numbers for each answer

- if possible type your answers in a different colour

- please send in a word document

- in case images need to be included high resolution is required for

good quality printing.