

22nd Annual Intellectual Property Law & Policy Conference
Fordham University School of Law, 24-25 April 2014

Trademark Session 4B: Trademark Law and the CJEU

Thursday, 24 April 3.45 – 4.45 p.m.

Judge Allan Rosas, CJEU – Outline

- **The EU judicial system in the area of the Union trade mark (Regulation 207/2009):** appeals before the Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM); actions against decisions of the Boards of Appeal before the General Court (GC); appeals against decisions of the GC before the Court of Justice (CJEU); national courts as Union trade mark courts with jurisdiction over infringement and validity – preliminary rulings before the CJEU
- **Directive 2008/95 to approximate the laws of the Member States relating to trade marks – requests for preliminary rulings by national courts before the CJEU**
- **Some statistics:** in 2013, almost 300 cases concerning the Union trade mark were brought before the GC; during the same year, the CJEU gave 31 judgments or orders on appeal (Union trade mark) and dealt with five references for preliminary rulings (overall 16 references in the area of intellectual property out of a total of 450 references in 2013)
- **Some of the cases dealt with by the CJEU have been considered important enough to attribute to the Grand Chamber (15 judges) of the Court; some examples:** Case C-29/05 P *OHIM v Kaul*, judgment of 13 March 2007 (Union trade mark, submission of new facts and evidence in support of an appeal brought before the Board of Appeal of OHIM); Joined Cases C-236/08 to C-238/08 *Google France and Google*, judgment of 23 March 2010 (national trade mark, liability of a search engine operator for the display, on the basis of keywords corresponding to trade marks, of links to sites of competitors or the proprietors of those marks or to sites offering imitation goods); Case C-96/09 P *Anheuser-Busch v Budejovický Budvar*, judgment of 29 March 2011 (non-registration of Union trade mark upon opposition by the proprietor of a sign used in the course of trade of more than mere local significance); Case C-235/09 *DHL Express France*, judgment of 12 April 2011 (effects of a prohibition against infringement, issued by a national Union trade mark court)
- **What should be the future role of the CJEU in the area of trade marks? Prohibition or restriction of appeals brought against decisions of the GC (Union trade mark)? Establishment of a specialized Union trade mark court? References for preliminary rulings to the GC?**