



Recommendation of the Council
concerning Action against
Restrictive Business Practices
relating to the Use of
Trademarks and Trademark
Licences

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Background Information

The Recommendation concerning Action against Restrictive Business Practices relating to the Use of Trademarks and Trademark Licences was adopted by the OECD Council on 26 April 1978 on the proposal of the Committee of Experts on Restrictive Business Practices (now called Competition Committee). This Recommendation recognizes that trademarks and trademark licenses can stimulate competition, but may also be used for restrictive business practices that harm competition as well as international trade, and are not essential to “the legitimate protection of the trademark owner’s exclusive right.” The Recommendation was abrogated on 8 June 2023.

THE COUNCIL,

HAVING REGARD to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

HAVING REGARD to the Report of the Committee of Experts on Restrictive Business Practices of 10 November 1977 on restrictive business practices relating to trademarks [RBP(77)2(1st Revision) and Corrigendum];

CONSIDERING that the normal use of trademarks and trademark licences may help appreciably to expand trade and stimulate competition at national and international level;

NOTING however that the use of trademarks and trademark licences may be the basis of significant restrictions affecting the distribution of trademarked products on national markets or international trade in these products;

CONSIDERING that it is necessary to remedy the harmful effects of certain restrictive business practices related to the use of trademarks, to the extent that such practices are not essential to the legitimate protection of the trademark owner's exclusive right;

I. RECOMMENDS to the Governments of Member countries that they should consider the following actions, if not already considered or provided for in their legislation:

a) Elimination of restrictions on the importation of a product legitimately marked abroad with a trademark of the same origin, identical or similar to the trademark protected in the importing country, where the purpose of such restrictions is to maintain artificially high prices or is otherwise anticompetitive;

b) Action in the legislative, administrative or judicial fields prohibiting or, by means of an abuse or rule of reason principle, controlling the following restrictive practices involving the use of trademarks in national or international trade:

- i) **With regard to horizontal market division agreements among competitors:** agreements allocating exclusive territories for the sale of trademarked products, where such agreements involve effective or potential competitors;
- ii) **With regard to trademark-related restraints as to sales or resales by licensees:** agreements between a trademark owner and his licensees restricting the sale or resale of trademarked products to specified territories or customers;
- iii) **With regard to tying arrangements:** arrangements tying the granting or continuance of a trademark licence to the purchase of products or services by the licensee from the licensor or his designated sources, unless such tied products or services are essential to maintaining the identity and quality of the trademarked products or services and are not susceptible to specification due to technical reasons or to considerations of trade secrecy;
- iv) **With regard to price maintenance involving licensees or distributors:** agreements between trademark owners and their licensees or distributors under which sale or resale prices among competing sellers of trademarked products are fixed.

II. INSTRUCTS the Committee of Experts on Restrictive Business Practices to keep under review the application of this Recommendation and to report to the Council when appropriate.

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