*Submission to the American Society of Comparative Law - Younger Comparativists Committee 8th Global Conference*

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**Title of the paper**: *Mapping the origins of reputation as a requirement for dilution protection in the European legislation – a pre-harmonisation comparative law exercise*

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**Keywords** *harmonisation; dilution; reputation; trade mark law*.

**Abstract**:

The goals of comparative law may be narrowed down to three broad categories: eliciting a deep understanding of existing legal systems, using the results of the comparison to elevate existing law and contributing to the unification of specific legal aspects on a larger or smaller scale.1 With respect to the legislation of the European Union, and in particular European private law, comparative law has played a decisive role in structuring it.2 Admittedly, the benefits obtained from comparing different legal systems exceed the theoretical boundaries limited to fathoming legal systems. 3 For instance, placing the results of the comparative study of law in its context, if the said context is a regional legislative process, might be relevant for the coherent interpretation of inchoate legal autonomous notions.

An illustration of such an autonomous European legal concept is ‘reputation’4 as an element of the trade mark anti-dilution provisions in the European legislation. Reputation was introduced by the First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (‘First Trade Mark Directive’) and the Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (‘Community Regulation’).5 According to von Mühlendahl, the selection of a new concept, that is ‘trade marks having a reputation’ was not arbitrary. On the contrary, it was justified by the need to differentiate it from various similar terms such as ‘famous’ or ‘well-known’ trade marks which were endowed with historical burdens arising from the established case law of the Member States.6

In spite of its novelty, neither the First Trade Mark Directive nor the Community Regulation defined reputation. As a result, this task was assigned to the Court of Justice of the European Union who defined reputation as ‘a certain degree of knowledge of the earlier trade mark among the public’7 and laid down the main assessment criteria for reputation. Even so, the ambit and content of reputation as envisaged by the CJEU still generates salient debates.8

Seeking to reconcile the controversies surrounding reputation with what may be referred to as consistent rationales of the European dilution, the paper will examine how trade marks enjoying a degree of public knowledge were protected internationally and in the European Economic Community, prior to the adoption of the First Trade Mark Directive. The analysis shall consider the local contexts where these provisions emerged, looking at the rationales considered by those jurisdictions which were committed to offering a different kind of protection to trade marks enjoying a particular degree of knowledge.

In terms of the comparison method employed, I will perform this micro comparison using the functional method according to which similar social problems are regulated differently in various legal system however similar outcomes are reached.9 Given the legal provisions which will be compared (i.e. those found in the UK, French, Benelux and German systems), the cultural comparison critiques to the functional method should be less relevant, taking into account the common European legal culture of these jurisdictions.10

The results of the comparison will be placed in the context of the negotiations of the First Trade Mark Directive in an attempt to understand how the reputation criterion was considered different from the other available standards. Ultimately, the micro comparison should contribute to a better understating of how domestic regulations and their underpinnings have influenced and shaped the drafting of the First Trade Mark Directive. Additionally, the analysis determines whether the way reputation was assessed by the CJEU took into consideration the negative consequences that trade mark law presupposes in relation to trade marks having a reputation.

1 Konrad Zweigert and Hein Kotz, *Introduction to Comparative Law* (3rd rev. ed., Clarendon Press 1998) 16. 2 Reinhard Zimmermann, ‘Comparative Law and the Europeanization of Private Law’ in Mathias Reimann and Reinhard Zimmermann (eds.), *The Oxford Handbook of Comparative Law* (Oxford University Press 2006). 3 Zweigert and Kotz, *Introduction to Comparative Law* (n 1) 18. 4 Alexander von Mühlendahl in the proceedings of the ECTA Conference of 27 May 1988 in Rome - *5. The Community Trade Mark - a Conference and Consultation between Legislators and Practitioners Rome* 84. 5 Wolfgang von Meibon and Felix Rodiger, ‘Reputed Trade Marks’ in Mario Franzosi*, European Community Trade Mark – Commentary to the European Community Regulation* (Kluwer Law International, 1997) 212. 6 von Mühlendahl (n 4) 83. 7 Case C-375/97 - *General Motors Corporation v Yplon SA* [1999] I-05421.

8 Robert Burrell and Michael Handler, ‘Reputation in European trade mark law: a re-examination’ (2016) 17 ERA Forum 86. 9 Zweigert and Kotz (n 1) 34. 10 Franz Wieacker and Edgar Bodenheimer, ‘Foundations of European Legal Culture’ 1990) 38 AJCL 1, 25.