



Response

IPO Transformation programme: second consultation

Response

Page

[2](#)

Annex - Membership list **Confidential**

[5](#)

John Noble
31 October 2023

Response from the British Brands Group

1. Introduction

The British Brands Group (the Group) is a not-for-profit member organisation of companies of all sizes producing branded consumer goods. A confidential list of members accompanies this response which we ask is not published.

Branded companies are catalysts for innovation as they compete on the basis of quality, range and reputation as well as on price. They thrive in markets where there is vigorous competition to spur innovation and where consumers seek to make informed, accurate buying choices often at great speed, sometimes in less than a couple of seconds, in a supermarket for example.

The IP framework is crucial to the brand business model for many reasons, with two significant ones being:

- (1) The ability to invest in initiatives that build reputation, such as innovation, quality, range and distribution, with the knowledge that returns can be captured, fuelling further investments, rather than being seized unfairly by competitors; and
- (2) The ability to develop and protect those marketing signals that consumers recognise instantly and inform, accurately and at speed, their buying decisions.

This consultation is therefore directly relevant to the UK environment for brands, hence our response.

Introductory questions

Question

| | |
|---|---|
| 1 | <p><i>What is your name?</i></p> <p>British Brands Group, with the response prepared and submitted by John Noble. Members have been consulted on the consultation, with input obtained from a meeting of the organisation's Legal Group and via email input.</p> |
| 2 | <p><i>In what capacity are you responding to this consultation?</i></p> <p>We are responding as a not-for-profit membership organisation comprising branded suppliers serving fast-moving consumer goods markets in particular. Members vary in size with around 50% being SMEs. The Group's mission is to build in Britain the optimum climate for brands to deliver choice and value to consumers, through constant innovation and fair competition. This consultation is relevant to this mission.</p> |

Online document inspection service for trade marks and designs

| | |
|---|---|
| 3 | <p><i>What would be the impact of having an online inspection service for trade marks and design documents?</i></p> <p>Only a positive impact was identified for providing an online inspection service for these documents. No particular risks or downsides have been identified, provided that commercially sensitive information that is reasonably identified as such at the outset remains confidential.</p> <p>For example, if a brand owner were seeking to register a mark and had to submit evidence of use to achieve registration, that evidence might contain details of customers, volumes, advertising and similar such sensitive information.</p> |
|---|---|

Proposed changes to the Designs Rules

| | |
|-----|--------------|
| 4-7 | No response. |
|-----|--------------|

Series trade mark

| | |
|----|--|
| 8 | <p><i>Do you find series marks to be useful?</i></p> <p>Yes, we consider series marks to be useful. For example....</p> <ul style="list-style-type: none"> - when a logo is used in two or more colour versions, brand owners are able to apply for a series of the logos in one application. Without this option, costs would increase; - SMEs need to apply early for a trade mark registration to be sure their mark is free for use but they may be undecided on whether to use their brand name in upper case or lower case or in which colour. The series option gives them the chance to include simple variations, even if they subsequently want to drop one or more versions; - If the applicant intends to apply later for registration in other countries where series marks are not permitted, it can be very useful to UK businesses to have had time to finalise their branding before applying for their chosen version claiming priority from one mark from the series in the UK. <p>We note that the 10% of applications that apply for series marks is evidence that this is a reasonably popular option so abolishing it would have a noticeable impact.</p> |
| 9 | <p><i>What are the main drivers for you or your clients when deciding to apply for a series of marks?</i></p> <p>The main drivers are increased reassurance and lower costs.</p> |
| 10 | <p><i>What are the legal and practical benefits of series marks?</i></p> <p>These are as stated above.</p> |
| 11 | <p><i>What is your view on the proposal to reduce the number of marks which may constitute a series?</i></p> <p>We do not believe there to be a convincing case to reduce the number of marks which may constitute a series. While we understand there are concerns with series marks, we do not believe that either abandoning them or reducing the number of marks that constitute a series are appropriate, proportionate solutions.</p> <p>Those who are using the current system appropriately should not be penalised by having their options withdrawn or reduced and the UK trade mark system should not be diluted and weakened while more proportionate solutions are available.</p> <p>For those who are applying for series marks inappropriately in error and incurring additional costs, advice and processes should be reviewed as a means to inform. For those believed to be gaming the system, those applications should be identified as they arise and a rejection of the series sent before the full examination is undertaken. There may also be a role for AI to help identify suspect applications.</p> <p>We consider these to be appropriate solutions to problem areas rather than the abandonment of series marks altogether or any reduction in their number.</p> |
| 12 | <p><i>Do you have any views on which, a maximum of four or two marks, would be more appropriate?</i></p> <p>We consider neither to be appropriate, strongly proposing that the current regime is sustained. Applicants already pay an extra official fee of £50 for each additional</p> |

| | |
|----|---|
| | mark over two along with additional attorneys' fees when applicable so those applicants must consider it worthwhile to pay extra for this option. |
| 13 | <p><i>What are the potential impacts of the UK ceasing to offer series marks?</i></p> <p>Were series marks to cease being available, some trade mark rights holders would face greater uncertainty. They would also face increased costs were they to feel it necessary to file more applications to compensate.</p> <p>The IP regime would become less positive for those seeking trade mark rights and there is the risk that the register may become more cluttered.</p> |
| 14 | <p><i>Which of the options presented do you think the government should take forward to balance the needs of rightsholders whilst addressing the current issues faced by series marks? Please explain why.</i></p> <p>We propose and recommend that the status quo be maintained. We would wish to see the IPO making further efforts to explain the parameters of series marks, particularly to those self-filing, to reduce inappropriate applications that result in wasted money. We would also like to see processes put in place to identify and address any attempts to game the system.</p> <p>If current application prices relating to series marks do not reflect the IPO's costs, we would support the review of these.</p> |
| 15 | <p><i>Are there any options not identified which you think should be considered regarding the future of series marks?</i></p> <p>We urge the IPO, in addition to maintaining the ability to apply for series marks, to return to the scope of protection afforded to black and white marks pre-2014 (i.e. before the EUIPO issued CP4) so that they cover all colour versions.</p> <p>While this would be warmly welcomed by current and future trade mark owners as strengthening protection, it also may go some way to address concerns over series marks as one application in black and white would cover the same mark in different colours, obviating the need for a series or multiple applications.</p> <p>Such an approach would be a sensible and positive divergence from the EU. As series marks and black and white marks covering all colour combinations existed pre-2014 without concerns or unintended consequences, there is the evidence that a return to this policy approach would be positive.</p> |

SPC fee payment periods / Inventors' addresses / Mediation

| | |
|-------|--------------|
| 17-25 | No response. |
|-------|--------------|

Annex – Membership list

