Questions

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

I. 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?

The national law recognizes well-known and reputed marks. The national legislative acts do not define the relevant public for the purpose of determining the degree of recognition of well-known or reputed marks.

In respect to well-known marks the national law provides that:

“In determining whether a trade mark is well-known, the knowledge of this trade mark in the relevant group of consumers, including such knowledge in Latvia that has been obtained as a result of the advertising of this mark or any other circumstances that have contributed to its fame shall be taken into account” (Art. 8(3) of the Law On Trade Marks and Geographical Indications of Origin).

In respect to reputed marks there is no guidance about the relevant public.

The term “relevant public” is interpreted on case-by-case basis by the patent office that reviews trade mark opposition matters and by the courts (in infringement and trade mark opposition proceedings).
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?

In the case law the patent office and the courts do not examine in detail the relevant public in determining the knowledge, recognition or fame of a mark. However, from the general grounds of the decisions of both institutions it is possible to conclude that they use a very broad understanding of the relevant public. This understanding corresponds to the case law of the Court of Justice of the European Union (CJEU), i.e., the relevant public is the public that is “concerned by that trademark, that is to say, depending on the product or service marketed, either the public at large or a more specialised public” (see, for example, General Motors v. Yplon, C-375/97).

If the goods or services for which the trade mark is used are for mass consumption, the relevant public will be the public at large. If the goods or services are very specific or targeted to specific end-users, the relevant public will be limited to specific end-users of the goods or services.

2) Please clarify whether your jurisdiction uses several of the terms discussed in sections 22-26.

In Latvia the terms “well-known trade mark” and “trade mark with reputation” are used. These terms are provided by law (see, for example, Art. 8(3) and Art. 4(9), 39.3 (1) of the Law On Trade Marks and Geographical Indications of Origin and Art. 8(5), 9(1)(c) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark). The law does not provide for the term “famous trade mark”.

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)?

According to the case law of the patent office and the court the term “relevant public” is considered identical for well-known trade mark and a trade mark with reputation.

Is the assessment made based on the same criteria?

The assessment is based on the same criteria – the degree of recognition of the mark in public.

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.

a) 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?

When determining the relevant public all the possible criteria can be used (e.g., age, gender, geography, culture, groups with special interests, sophistication/skill of the consumer, the way the goods or services with the trademark in question are marketed, etc.). The patent
office or court rarely describes these criteria in detail. Usually only the most decisive criteria are mentioned in the decisions.

b) 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.

The relevant public is populated by actual and potential consumers and buyers and a larger public.

c) Could the relevant public be composed of business/professional end consumers?

The relevant public can be composed of business and professional end consumers.

d) Could the relevant public be composed of people in the trade of the goods or services in question, such as distributors, licensees and retailers?

The people in the trade of the goods or services in question, such as distributors, licensees and retailers can be a part of the relevant public.

e) 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?

The relevant public can be "mixed" and be composed of persons involved in trade, professional/business end customers and private end customers.

f) 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"?

There are no clear established limitations in respect to the relevant public. However, from the law and case-law it is clear that in order to obtain the protection for a "trade mark with reputation" the level of recognition in the relevant public can be lower than for "well-known trade marks".

g) Is it possible to see any differences for different products/industry sectors in respect of the delimitation of the relevant public?

There are differences for different products and industry sectors. If the products or industry sector is specific, the relevant public will be more specific and vice versa.

4) 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?

There are no differences between the "relevant public" concepts when assessing the recognition of trademarks in respect to dilution, free riding and determining likelihood of confusion.

For determining likelihood of confusion the degree of knowledge of the relevant public is assessed in respect to particular goods or services. However, the general knowledge about
the mark of the public at large can be taken into account to determine enhanced distinctiveness of an earlier trade mark.

When determining dilution and free riding in respect to a well-known trade mark and trade mark with reputation the high recognition of a trade mark on the market is taken not only in respect to particular goods or services, but also public at large.

5) **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?**

The assessment of the relevant public is important when it is necessary to determine recognition of the trade mark in respect to particular goods or services. This assessment can be made in registration matters (e.g. acquired distinctiveness), proceedings in respect of wrongful use such as free riding, dilution, infringement proceedings, and opposition proceedings.

6) **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.**

The relevant public is determined on a case-by-case basis depending on the goods or services at issue. However, previous case law in respect to particular goods and services is taken into account and mostly influences determining of the relevant public.

The method for determining of the relevant public is identification of: firstly, the potential end customers of particular goods or services, secondly, those directly concerned with the trade mark in question and, thirdly, the rest of the public.

II. **Proposals for harmonisation**

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

Currently harmonisation is not desired.

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.

**Summary**

The national law recognizes well-known and reputed marks. The term “relevant public” is interpreted on case-by-case basis. From the case-law it is possible to conclude that the patent office and the courts use a very broad understanding of the relevant public. The term “relevant public” is considered as the public that is concerned by that trademark, depending on the product or service marketed, either the public at large or a more specialized public. The relevant public can be mixed and be composed of persons involved in trade, professional/business end customers and private end customers. The method for determining of the relevant public is identification of: firstly, the potential end customers of particular goods or services, secondly, those directly concerned with the trade mark in question and, thirdly, the rest of the public. There are no clear established limitations in respect to the relevant public.