

HOW TRADEMARK PRACTITIONERS PERCEIVE THE AVAILABILITY OF PROVISIONAL REMEDIES FOR INFRINGEMENT: A WORLD-WIDE SURVEY

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I. INTRODUCTION

This article presents the results of a world-wide survey of one aspect of trademark litigation--provisional relief for trademark infringement. This survey was made from the perspective of a United States trademark practitioner. The first objective of the study was to provide information on how trademark practitioners view the current status of provisional remedies for trademark infringement in their respective jurisdictions. A second objective was to provide world-wide information on the availability of provisional remedies in trademark infringement cases immediately prior to the adoption of "minimum standards" for enforcement of trademark rights as set forth in the Trade Related Aspects Of Intellectual Property (TRIPs) agreement that was finalized in December 1994 [n.1] as part of the General Agreement On Tariffs And Trade (GATT).

*68 A. Countries Returning Survey Responses

The countries covered in this survey are:

Africa Eritrea and Zimbabwe

Asia China (PRC), Japan, Korea, Pakistan, Philippines, Thailand,
and Taiwan (ROC)

Europe Bulgaria, Croatia, and Hungary
(Eastern)

Europe Finland, France, Germany, Iceland, Ireland, Italy,
(Western) Netherlands, Norway, Portugal, Spain, Switzerland, Sweden,
and United Kingdom (England and Wales)

Latin America Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, El
Salvador, Guatemala, Mexico, Nicaragua, Panama, Peru,
Uruguay, and Venezuela

North America & Canada, Dominican Republic, Guyana, Haiti, and Trinidad
Caribbean

Australia & Australia and New Zealand
Oceania

Surveys were also sent to Antigua, Austria, Bahamas, Bermuda, Cyprus, Czech Republic, Denmark, Estonia, Greece, Honduras, Hong Kong, India, Indonesia, Israel, Jamaica, Jordan, Malta, Monaco, Mongolia, Paraguay, Sierra Leone, Singapore, Slovenia, Turkey, and Zambia. Unfortunately, no responses were received from these countries. Overall, responses were obtained from 46 (64.8%) of the 71 surveyed countries. All regions of the world are represented by at least two surveyed countries. The aggregate results of the survey provide a world-wide overview of how local practitioners perceive provisional remedies for trademark infringement in their respective countries.

*69 B. The Survey Method

Identical questionnaires were sent to trademark practitioners in the above- mentioned countries. [n.2] The questionnaire consisted of 12 questions--some questions having one or more sub-question. Our objectives included: determining what local practitioners think about how well-established their local court's practice is with respect to trademark infringement cases; whether such practice is harmonized among the various courts within the same country; which provisional remedies are available for the infringement of marks of different status; whether such remedies are granted frequently; what public policy

attitudes exist, if any, toward provisional remedies for trademark infringement; and whether such policy attitudes affect the likelihood of success in obtaining provisional relief. The respondents were asked to mark the appropriate answer. In sum, the responses included many interesting comments, many of which are incorporated in this article. Moreover, to encourage candid comments, the respondents were promised complete anonymity; disclosure of respondents identities could have a chilling effect on their willingness to provide uninhibited answers to the more subjective questions. The respondents were also promised a copy of the report upon completion of the study.

In drafting the questionnaire, it was assumed that most, if not all of the answers relating to provisional remedies for trademark infringement, were not available from a textual study of the substantive and procedural laws of each country. One problem with a textual approach is the inability to determine which laws are relevant, since the legal system of almost every country in the world is organized differently. Respective trademark laws are always relevant, but in most countries, including the United States, relevant issues are governed by the general provisions of civil and commercial codes or rules of judicial procedure. Accordingly, the logistics of a complete world-wide textual survey would be much more complicated than the present study. [n.3] At the end of the questionnaire, the respondents were asked to list all of the relevant laws that are related to *70 the issue of provisional remedies for trademark infringement. [n.4] The responses clearly show the diversity of the relevant laws, even in countries with supposedly similar legal systems.

Practitioners were polled in order to survey the relevant positive law, and also (notwithstanding the laws as they appear on the books) the actual practice with respect to provisional remedies. It was thought that answers could only be obtained by polling those who actually practice trademark law and litigate trademark infringement actions.

The questions have, as their point of departure, the standard showings that are generally required if one were to seek provisional relief for trademark infringement in the United States. This research strategy, however, is not without significant drawbacks. Remedies were found to differ significantly among countries, depending on the legal system and culture. Also, it was thought that it would be unlikely to find remedies identical to U.S. laws. Nonetheless, it was stated at the beginning of the questionnaire that information was sought on remedies identical or similar in scope and content to remedies available in U.S. law. [n.5] A brief explanation of legal terms was provided to foreign respondents, since many would not be that familiar with U.S. trademark law and practice [n.6] or with the legal terminology constructed from the English language. Further, because the author intended to publish the study in a publication read by U.S. practitioners and others familiar with U.S. practice, the questions were posed from the standpoint of U.S. practice.

C. Countries Responding to the Survey

Questionnaires were sent to selected international alumni of the intellectual property program at Franklin Pierce Law Center. [n.7] Another major group of respondents

consisted of lawyers who previously had contributed to Arrigucci's 1992 study. [n.8] Questionnaires were also sent to *71 practitioners who were referred to the study. Most contributors were trademark lawyers in private practice. Some contributors were officials in administrative agencies with jurisdiction over trademarks. A few contributors were law school professors who taught intellectual property law. In countries where the respondents were government officials or law professors, an attempt was also made to obtain an answer from a practicing trademark attorney.

Overall, 129 persons were provided a copy of the questionnaire and 59 persons (47.2%) responded. In some countries, answers were obtained from more than one person. Generally, there were no major differences between answers. Where the responses conflicted, an attempt was made to contact each respondent to discuss the differences and obtain a consensus. [n.9]

Many of the questions (e.g., Are the provisional remedies for trademark infringement favored by public policy? Are such remedies granted frequently? Does the availability of provisional remedies for trademark infringement differ from one court to another?, etc.) required subjective responses that could not be verified. It was assumed that different persons in the same country would give different answers. [n.10]

II. CONCLUSIONS [n.11]

After analyzing data by regions of the world, [n.12] it appears that the best prospects for those seeking preliminary relief, based upon the perception of local practitioners, are in Western Europe and Latin America. The Asian reports show mixed results. For instance, in three Asian countries (China, Korea, and Pakistan), practitioners thought that provisional remedies are granted frequently, whereas in two countries (Taiwan and Thailand) it was thought that such remedies are not granted frequently. None of the practitioners in three Eastern European *72 countries (Bulgaria, Croatia, and Hungary) thought that provisional remedies for trademark infringement are granted frequently.

It appears that the perceived public policy toward provisional relief in trademark infringement cases is not a critical factor as far as the availability of provisional remedies is concerned. In 41.3% of all surveyed countries, practitioners perceived public policy attitudes towards provisional remedies for trademark infringement as neutral. Moreover, practicing attorneys may have found the question extremely difficult to answer. There are some countries with great policy differences between the legislative and judicial branches. Some countries have one branch favoring and the other branch disfavoring such remedies. Even though the survey results may not be empirically verifiable, it is encouraging for trademark owners that the practitioners polled here perceive such remedies to be explicitly disfavored in only 5 countries where provisional remedies for trademark infringement are available.

A majority of practitioners perceive their court's practice with respect to trademark infringement cases to be well-established in their respective country. There are only five

countries where practitioners described the courts as lacking well-established court practice with respect to trademark infringement. All of the five countries are Spanish-speaking countries. In all of the surveyed common law countries, practitioners described court practices with respect to trademark infringement cases as well-established.

In 64.5% of the surveyed countries where different courts have jurisdiction over trademark infringement cases, trademark practitioners perceive court practice with respect to provisional remedies for trademark infringement to be harmonized. In 10 countries (21.8% of all countries surveyed), only one court or administrative agency had jurisdiction over trademark infringement cases.

Although provisional remedies are available for the alleged infringement of unregistered marks in 55.8% of the surveyed countries, trademark registration is still essential to provisional remedies. In most of the 24 countries where provisional remedies can be granted for the alleged infringement of unregistered marks, provisional remedies would not be granted as readily as for the alleged infringement of registered marks. Also, not all of the provisional remedies which are available for the alleged infringement of registered marks are available for the alleged infringement of unregistered marks. In many cases, equivalents of exclusion orders are not available for unregistered marks. In many countries, the alleged infringement of unregistered marks is not within the scope of trademark laws. It is often considered either unfair competition, or in common law countries, as the tort of passing off. In most of these 73 countries, unfair competition or passing off are much harder to prove than infringement of a registered trademark.

The situation with regard to infringement of marks registered in different classes is not as critical as it is with infringement of unregistered marks. In a majority of countries, provisional remedies are available for the alleged infringement of marks registered in different classes. This majority, however, may be misleading. In many countries, provisional remedies are available only if the mark is well-known, locally or internationally. In some countries, protection against dilution is possible only for famous marks. It is assumed that it is difficult to prove that a mark is well-known or famous at the application stage for provisional remedies. Even where the mark is not shown to be famous or well-known, provisional remedies may still be available for the alleged infringement of marks registered in different classes, contingent upon the similarity of goods or services. Moreover, the laws in these countries do not protect against dilution. Nor do they strictly follow the prescribed classification, but instead they focus on market conditions when determining similarity of goods or the likelihood of confusion (as in the U.S. federal trademark law) as to the standard for infringement.

Because trademark prosecution often requires considerable time, it was important to determine whether protection in the form of provisional remedies is available during the pendency of application for registration. The responses show that in most countries, provisional remedies are not available based upon the mere application for registration. However, provisional remedies are available for the alleged infringement of marks where an application for registration is pending in more than 50% of the surveyed countries. In

most countries, such marks are treated as unregistered marks, and protection is contingent upon the notoriety or use of the mark.

Also, equivalents of ex parte seizure orders are widely available. Any unavailability of this remedy is more of an exception than a rule. The wide availability of ex parte seizure orders is encouraging for trademark owners because they are an important tool used against counterfeiters.

In contrast, search/inspections are not as widely available as are ex parte seizure orders. Search/inspections are available, however, in about 75% of the surveyed countries where provisional remedies for trademark infringement are available. In some civil law countries, search/inspections are the only available provisional remedy for the alleged infringement of an unregistered mark. In Croatia, the remedy is regulated by laws that govern civil procedure. Trademark law, however, protects only against the infringement of registered marks in Croatia--an attorney from Uruguay provided similar comments.

*74 Preliminary injunctions are the most common provisional remedy for trademark infringement. They are available in all surveyed countries, except three Latin American countries. Although Eritrea and Hungary allow preliminary injunctions, they do not provide any other provisional remedies for trademark infringement. And although Argentina and Uruguay do not allow equivalents of preliminary injunctions, equivalents of both ex parte seizure orders and search/inspections are available.

In spite of their efficacy, exclusion orders are, in the opinion of local practitioners, the least common provisional remedy for trademark infringement. In most of the surveyed countries, exclusion orders are granted by courts rather than by the customs service. Exclusion orders are not available in two member countries of the European Union (Ireland and the Netherlands). Indeed, Ireland is the only surveyed country with a common law legal system where an exclusion order is not available. The number of countries where exclusion orders are available should increase due to Article 50 of the TRIPs agreement. [n.13]

Practitioners in many countries do not consider delays in institution of infringement actions as prejudicial. In many surveyed countries, provisional remedies can be granted notwithstanding the passage of time between the trademark owner's discovery of infringing activities and the commencement of an infringement action. Unfortunately, time is not of the essence in Asian and Latin American countries.

Additionally, the likelihood of confusion is a threshold issue in trademark infringement. Accordingly, a showing of it is necessary for provisional remedies in most countries. In some countries, however, the likelihood of confusion may be presumed if the allegedly infringed mark is registered in the same class as the allegedly infringing goods.

Also, it appears that a balance of hardships is not an essential factor in order to obtain provisional remedies for trademark infringement. In fact, about 50% of the surveyed countries require that a balance of hardships be found on the trademark owner's side to

obtain provisional remedies for a trademark infringement. In addition, there is no particular region where a balance of hardships is most important. Overall, practitioners in all of the surveyed common law countries designated balance of hardships as necessary to obtain provisional remedies.

Practitioners perceive posting of a bond by the trademark owner as necessary in most countries. In some countries, posting of a bond is not always required, while in others, posting of a bond is required if the applicant is a foreigner. In some common law countries, "an undertaking *75 of the plaintiff as to the damages" [n.14] is an alternative to posting a bond. But posting of a bond or some other form of security by the trademark owner is not necessary in about 25% of the surveyed countries. Thus, the results were distributed equally in all regions of the world.

The requirement of a showing of irreparable harm to the trademark owner was also distributed equally in all regions of the world. Five of the eleven countries where a showing of irreparable harm to the trademark owner is not required are in Europe. Overall, irreparable harm should be shown in all common law countries.

In addition, practitioners do not perceive a showing of likelihood of success on the merits to be as important. A showing of likelihood of success on the merits is not required in about 33% of the surveyed countries. One reason that a showing of likelihood of success on the merits may not be widespread is that trademark registration and proof of likelihood of confusion provide per se likelihood of success on the merits. Therefore, a separate showing may not be necessary.

The number of countries where a showing of the likelihood that goods or the alleged infringer will disappear or otherwise be unavailable at trial is required, and where such a showing is not required, are about equal. Overall, these countries can be found in every region of the world. This response was surprising because provisional remedies are often used against counterfeit goods, and in many counterfeiting cases, the likelihood that the alleged infringer will not be available at trial is great. In some countries, the likelihood that the goods or alleged infringer will disappear or otherwise be unavailable at trial is required only when equivalents of ex parte seizure orders are applied for by a trademark owner.

*76 APPENDIX I

LAWS DESIGNATED BY LOCAL PRACTITIONERS AS RELEVANT WITH
RESPECT TO PROVISIONAL
REMEDIES FOR TRADEMARK INFRINGEMENT

COUNTRY RELEVANT LAWS

Argentina Articles 38, 39, and 40 of The Law No. 22-362

Australia The Trade Mark Act of 1955; Court Rules; Common Law; Federal Trade Practices Act of 1974; Various Fair Trading Acts of Australian States

Brazil The Code of Civil Procedure; The Law of Crimes Against Registered Trademarks; The Law of Unfair Competition

Bulgaria Law on Trademarks and Industrial Designs

Canada Sections 53, 53.1, 53.2, and 53.3 of the Trade Marks Act; Common Law

Chile No information

China (PRC) The Law No. 19.039 of September 30, 1991

Colombia The Commercial Code (Decreto 410 de 19710; The Decision 313 of the Cartagena Agreement (Andean Pact)

Costa Rica No information

Croatia The Industrial Property Act; The Obligations Code; The Internal Commerce Act; The Civil Procedure Code; The Executionary Procedure Act

Dominican The Law on Registration and Protection of trademarks and

Republic Commercial Names, No. 1450 of 1937, with subsequent
modifications; The Commercial Code

Ecuador Art. 46 and 48 of the Trademarks Act of October 18, 1976

El Salvador The Central American Convention for the Protection of Industrial
Property; The Code of Commerce; The Civil Procedure Code; The
Consumer Protection Law; The Criminal Code

Eritrea Provisions of the Transitional Eritrean codes

Finland The Trademark Law of January 10, 1964, with subsequent
amendments

France The Trademark Law of July 1992; European Union Regulations; the
Counterfeiting Trademark Law of February 5, 1994

Germany Sections 24, 25, 25a, 25b, and 28 of the Trademark Act; Sections
1, 3, and 16 of the Act Against Unfair Competition

Guatemala Articles 26 and 68 of the Central American Agreement for the
Protection of Industrial Property; Articles 527-537 of the
Code of Civil Procedure

Guyana Common Law, based upon the Common Law of England

Haiti Articles 24 and 25 of the Trademark Act

Hungary The Trademark Act of 1969; The Code of Civil Procedure

Iceland The Trade Marks Act No. 47 of 1968; The Attachment and
Injunctions Act No. 31 of 1990

Ireland Common Law predicated on the statutory trademark rights granted
under Sec. 12-13 of the 1963 Trademark Act

Italy The Trademark Law; The Unfair Competition Law

Japan The Civil Code; The Trademark Law; The Criminal Procedure Act;
The Unfair Competition Law

Korea Art. 65 of the Trademark Law; Art. 2-4 of the Unfair Competition
Prevention Law; Art. 696-723 of the Civil Procedure Law

Mexico The Law on Development and Protection of the Industrial
Property; The Federal Civil Procedure Code

Netherlands The Benelux Trademark Act

New Zealand The Trademarks Act; The Copyright Act; The Judicature Act; The
Fair Trading Act; Customs Regulations; Common Law

Nicaragua The Central American Convention for the Protection of Industrial
Property

Norway No information

Pakistan Sec. 21 of the Trade Marks Act 1940

Peru Law No. 26017, General Industrial Property Law, Title XIII "On Infringement Actions," Article 182; Law No. 26122, Law on Unfair Competition

Philippines The Philippines Republic Act 166, as amended; The Rules of Court of the Philippines; The Rules of Practice in Trademark Cases

Portugal The Industrial Property Code; The Civil Procedure Code; The Criminal Procedure Code; The European Community Regulation No. 3842/86

Spain The Civil Procedure Act; The Trademark Act; The Unfair Competition Law; The Penal Code; The Criminal Procedure Act

Sweden The Trademark Act (1960:644); The Code of Judicial Procedure

Switzerland The Federal Law on the Protection of Trade Marks and Indications of Origin (MSchG) of August 28, 1992; The Federal Law Against Unfair Competition (UWG) of December 19, 1986; Procedural laws of each of 25 Swiss cantons

Taiwan (ROC) No information

Thailand The Trademark Act of 1991; The Civil Procedure Act; Regulations

of the Customs Department

Trinidad No information

United Kingdom The Trademarks Act of 1938 (new Trademark Act is scheduled to be enacted in 1994); Common Law of passing off (England and Wales)

Uruguay The Trademarks Act, No. 9.956 of October 1, 1940

Venezuela The Industrial Property Code; The Code of Civil Procedure

Zimbabwe The Trademark Act; The Custom and Excise Act

*80 APPENDIX II

PLEASE ANSWER THIS QUESTIONNAIRE, AND RETURN IT IN THE ENCLOSED ENVELOPE

Country:

Questions are based on the content and scope of remedies as they exist in trademark and other laws of the United States. Content and scope of remedies are briefly explained in the footnotes. If remedy available in your country is identical or substantially similar in its scope or content to the U.S. remedy, as explained in the footnotes, you may consider that this remedy is available.

1a. Are any provisional remedies [n.15] for trademark infringement [n.16] available in your country? (put "X" next to one answer).

Yes

No - (If No, "X" this line; you need not complete Questions 2-9; please

return the questionnaire-we still need it)

1b. Is the court's practice with respect to trademark infringement cases established in your country?

- Yes - (If Yes, you need not answer Question 1c)
- No - (If No, please answer Question 1c)

1c. If there is no established court's practice in your country with respect to trademark infringement cases, is there established practice in cases which are similar to trademark infringement cases (e.g. trade names, or company names infringement cases), and results of which would, under your opinion, be applied to future trademark infringement cases?

- Yes
- No

*81 2. Which of the following are available for registered marks in the same class as the alleged infringing goods? ("X" all that are available)

- ex parte seizure order [n.17]
- preliminary injunction [n.18]
- exclusion order [n.19]
- search/ inspection
- I don't know
- None of the above

3. Which of the following are available for registered marks in different class from the alleged infringing goods ("X" all that are available)

- ex parte Seizure Order

- Preliminary Injunction
- Exclusion Order
- Search/Inspection
- I don't know
- None of the above

4a. Which of the following are available for marks in use but unregistered ("X" all that are available)

- ex parte seizure order
- preliminary injunction
- exclusion order
- search/inspection
- I don't know
- None of the above

4b. Are remedies granted as readily for unregistered as for registered marks ("X" one answer)

- Yes
- No
- I don't know

*82 4c. If "No," why not? _____

5. If ex parte seizure orders are available at all - X'd in Question 2 or Question 3 or Question 4 - "X" below the elements, if any, which would be shown or provided by the trademark owner to obtain one? ("X" all that must be shown)

- Likelihood of confusion [n.20]
- Balance of Hardship to the party seeking relief
- Posting of a bond by the trademark owner [n.21]
- Irreparable harm to trademark owner
- Likelihood of success on the merits
- Allow defendant to request to modify
- Likelihood that goods or the alleged infringer will disappear or be otherwise unavailable at trial
- What else? _____
- I don't know
- None of the above

6. If preliminary injunctions are available at all - X'd in Question 2 or Question 3 or Question 4 - "X" below the elements, if any, which would be shown or provided by the trademark owner to obtain one? ("X" all that must be shown)

- Likelihood of confusion
- Balance of Hardship to the party seeking relief
- Posting of a bond by the trademark owner
- Irreparable harm to trademark owner
- Likelihood of success on the merits
- Allow defendant to request to modify
- Likelihood that goods or the alleged infringer will disappear or be otherwise unavailable at trial
- What else? _____

I don't know

None of the above

*83 7. If exclusion orders are available at all - X'd in Question 2 or Question 3 or Question 4 - "X" below the elements, if any, which would be shown or provided by the trademark owner to obtain one? ("X" all that must be shown)

Likelihood of confusion

Balance of Hardship to the party seeking relief

Posting of a bond by the trademark owner

Irreparable harm to trademark owner

Likelihood of success on the merits [n.22]

Allow defendant to request to modify

Likelihood that goods or the alleged infringer will disappear or be otherwise unavailable at trial

What else? _____

I don't know

None of the above

8. Which of the following elements, if any, is necessary for provisional relief, are decided by a court or an administrative tribunal? ("X" the appropriate answer)

ELEMENT	COURT	ADMIN	NOT	I DON'T
	TRIBUNAL	NEEDED	KNOW	

Likelihood of confusion	()	()	()	()
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Likelihood of success on the merits	()	()	()	()
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Balance of hardship to the parties

Irreparable harm to the trademark owner

Posting of a bond by the trademark

owner

Ownership of the mark

Other _____

9a. Are provisional remedies for trademark infringement frequently granted in your country? ("X" one answer)

Yes

No

I don't know

*84 9b. Are such remedies generally favored by "public policy" in your country? ("X" one answer)

Yes

No

I don't know

9c. Do the remedies available vary from one court to another in your country? ("X" one answer. If trademark infringements are in within the exclusive jurisdictions of administrative tribunals, or if only one court has jurisdiction over trademark infringements, "X" N/A)

Yes

No

I don't know

N/A

10. How much time can elapse between infringement or knowledge of the trademark owner about the infringement and request for a preliminary remedy?

15 days or less

15 - 30 days

1 month - 3 months

more than 3 months

I don't know

not needed, provisional remedy can be applied for notwithstanding passage of time between infringement and request

Please write your name and business address:

Thank you very much.

*85 APPENDIX III-TABLES

STABLE I

PUBLIC POLICY ATTITUDE AND FREQUENCY OF GRANT RELATIONSHIP

FAVORED BY PUBLIC NOT NEITHER FAVORED NOR
POLICY FAVORED DISFAVORED BY PUBLIC POLICY
BY
PUBLIC

POLICY

GRANTED China (PRC), Colombia, Argentina, Australia, Canada, Chile,
FREQUENTLY France, Ireland, a, Peru Finland, Germany,
Mexico, Netherlands, Guatemala, Italy, New
Pakistan, Portugal, Zealand, Switzerland,
Uruguay, Venezuela United Kingdom (England and
Wales)

NOT GRANTED Bulgaria, Dominican Croatia, Brazil, Guyana, Hungary,
FREQUENTLY Republic, Eritrea, Ecuado- Iceland, Spain, Thailand
Trinidad, Zimbabwe r,
Japan

NO Philippines El Salvador, Nicaragua,
INFORMATION Norway
AS TO THE
FREQUENCY
OF GRANT

*86 TABLE II

AVAILABILITY OF EQUIVALENTS OF EX PARTE SEIZURE ORDERS FOR
MARKS IN DIFFERENT
STATUS

COUNTRY MARKS MARKS REGISTERED UNREGISTERED APPLICATION

REGISTERED IN DIFFERENT MARKS IN USE FOR
 IN THE CLASS REGISTRATION
 SAME CLASS PENDING

Argentina Yes Yes No No

[n.f1]

Australia Yes, if the Yes, in a Yes, in a Yes, in a
 [n.f1] goods are passing off passing off passing off

same action. action. action.
 Evidence in Evidence in Evidence in
 support of support of support of
 reputation of reputation reputation
 the mark is of the mark of the mark
 required is required is required

Brazil [n.] Yes Yes, if the mark Only if it Only if it

is notorious constitutes constitutes
 criminal criminal
 activity activity

Bulgaria [n.a1] Yes Yes, if the mark No Yes

[n.f1] is internatio-
 nally

well-known

Canada [n.f1]	Yes	Yes	No	No information
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Chile [n.f1]	Yes	Yes	No	No
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China (PRC) [n.a1] [n.f1]	Yes, if the goods are similar	Yes, if the goods are similar	Only if the mark is famous under the Paris Convention	Only if the mark is famous under the Paris Convention
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Colombia [n.a1] [n.f1]	Yes	Yes (possible under the law, but still restricted by the courts)	No	No
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Croatia [n.]	Yes	Yes, but harder to obtain	No	Yes
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Dominican Republic [n.a1] [n.]	Yes	No	No	No
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Ecuador [n..]	No	No	No	No
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[n.]

El Salvador	Yes	Yes	Yes, if the mark is notorious	Yes, if the opposition term has elapsed without any opposition pending
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Eritrea [n.a1]	No	No	No information	No information
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[n.f1]

Finland [n.f1]	Yes	No	No	No
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France [n.a1]	Yes	Yes	No	Yes
---------------	-----	-----	----	-----

[n.f1]

Germany [n.f1]	Yes	Yes, contingent upon similarities between goods, and notoriety of the mark	No	No
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Guatemala [n.]	Yes	No	No	No
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Guyana [n.]	Yes	Yes	Yes, in a passing off action when the mark is in use	Yes, in a passing off action when the mark is in use
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Hungary [n.]	No	No	No	No
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Iceland [n.]	No	No	No	No
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Ireland [n.a1]	Yes	Yes	Yes	Yes
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[n.f1]

Italy [n.f1]	Yes	Yes, if goods are similar	Yes, but difficult to obtain	Yes
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Japan [n.]	Yes (if goods are similar)	Yes, but likelihood of confusion is	Only if the mark is famous	Only if the mark is famous
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much harder to
prove

Korea [n.f1]	Yes	Only for marks which are well-known in	Only for marks which are well-known	Only for marks which are well-known
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Korean market in Korean in Korean
 market market

Mexico [n.a1] Yes Yes, if goods No No
 [n.f1] are similar

Netherlands Yes Yes No Yes
 [n.a1] [n.f1]

New Zealand Yes Only in a Only in a Only in a
 [n.f1] passing off passing off passing off
 action action action

Nicaragua No No No No

Norway Yes Yes Yes, but the Yes, if the
 "extensive mark is in
 use" must be use
 shown

Pakistan [n.a1] Yes Yes, in a Yes, in a No
 [n.f1] passing off passing off
 action, when action, when
 the mark is the mark is
 well-known well-known

Peru [n..+] Yes Only if the mark No Yes

[n.f1] is well-known,
or goods are
related

Philippines Yes Yes Yes, but Yes, if a mark

[n.a1] burden of is in use or
proof is is
heavier well-known
internation-
ally

Portugal [n.a1] Yes Yes, if products No No

[n.f1] are considered
as having
similar
purposes

Spain [n..] No No No No

[n.]

Switzerland Yes Yes Yes Yes

[n.f1]

Taiwan (ROC) Yes No No No

[n.]

Thailand [n.a1] No No No No

[n.]

Trinidad [n.a1] Yes No Yes No

[n.]

United Kingdom Yes No Yes No

(England and
Wales) [n.f1]

Uruguay [n.a1] Yes No No No

[n.f1]

Venezuela Yes Yes No No

[n.a1] [n.f1]

Zimbabwe [n.a1] Yes Yes No No

[n.]

FNf1. Provisional remedies for trademark infringement are generally granted frequently.

FN Provisional remedies for trademark infringement are generally not granted frequently.

FNa1. Provisional remedies for trademark infringement are generally favored by public policy.

FN.Provisional remedies for trademark infringement are generally disfavored by public policy.

*90 TABLE III

AVAILABILITY OF SEARCH/INSPECTIONS FOR MARKS IN DIFFERENT STATUS

COUNTRY	MARKS REGISTERED IN THE SAME CLASS	MARKS REGISTERED IN DIFFERENT CLASS	UNREGISTERED MARKS IN USE PENDING	APPLICATION FOR REGISTRATION
Argentina [n.f1]	Yes	Yes	Yes, but hard to obtain	Yes, but hard to obtain
Australia [n.f1]	Yes, if the goods are same	Yes, in a passing off action.	Yes, in a passing off action.	Yes, in a passing off action.
	Evidence in support of reputation of the mark is required	Evidence in support of reputation of the mark is required	Evidence in support of reputation of the mark is required	Evidence in support of reputation of the mark is required
Brazil [n.]	Yes	Yes, if the mark is notorious	No	No

Bulgaria [n.a1] Yes Yes, if the No Yes

[n.f1] mark is inte-
rnationally
well-known

Canada [n.f1] Yes Yes Yes, but No information

harder to
prove

Chile [n.f1] Yes Yes No No

China (PRC) No No No No

[n.a1] [n.f1]

Colombia [n.a1] No No No No

[n.f1]

Croatia [n.] Yes Yes, but harder Yes, but very Yes

[n.] to obtain hard to
obtain

Dominican Yes No No No

Republic

[n.a1] [n.]

Ecuador [n.] No No No No

[n.]

El Salvador	Yes	Yes	Yes, if the mark is notorious	Yes, if the opposition term has elapsed without any opposition pending
-------------	-----	-----	-------------------------------------	--

Eritrea [n.a1]	No	No	No information	No information
----------------	----	----	----------------	----------------

[n.f1]

Finland [n.f1]	Yes	No	No	No
----------------	-----	----	----	----

France [n.a1]	No	No	No	No
---------------	----	----	----	----

[n.f1]

Germany [n.f1]	Yes	Yes, contingent upon similarities between goods, and notoriety of the mark	No	No
----------------	-----	--	----	----

Guatemala [n.] No No No No

Guyana [n.] Yes Yes Yes, in a Only in a
passing off passing off
action when action when
the mark is the mark is
in use in use

Hungary [n.] No No No No

Iceland [n.] Yes Yes, if No Yes
likelihood of
confusion is
proved

Ireland [n.a1] No No No No
[n.f1]

Italy [n.f1] Yes Yes, if the Yes, but Yes
goods are difficult to
similar obtain

Japan [n.] Yes (if the Yes, but much No No
goods are harder to
similar) prove
likelihood of

confusion

Korea [n.f1]	No	No	No	No
--------------	----	----	----	----

Mexico [n.a1]	Yes	Yes, if the	No	No
---------------	-----	-------------	----	----

[n.f1] goods are
similar

Netherlands	No	No	No	No
-------------	----	----	----	----

[n.a1] [n.f1]

New Zealand	Yes	Only in a	Only in a	Only in a
-------------	-----	-----------	-----------	-----------

[n.f1] passing off passing off passing off
action action action

Nicaragua	Yes	No	No	No
-----------	-----	----	----	----

Norway	Yes	Yes	Yes, but the	Yes, if the
--------	-----	-----	--------------	-------------

"extensive mark is in
use" must be use
shown

Pakistan [n.a1]	Yes	Yes, in a	Yes, in a	No
-----------------	-----	-----------	-----------	----

[n.f1] passing off passing off
action when action when
the mark is the mark is
well-known well-known

Peru [n..+]	Yes	Yes	No	Yes
-------------	-----	-----	----	-----

[n.f1]

Philippines	Yes	Yes	Yes, but	Yes, if a mark
-------------	-----	-----	----------	----------------

[n.a1]

burden of is in use or
proof is is
heavier well-known
internation-
ally

Portugal [n.a1]	Yes	Yes, if	No	No
-----------------	-----	---------	----	----

[n.f1]

products are
considered as
having
similar
purposes

Spain [n..] [n.]	Yes	No	No	No
------------------	-----	----	----	----

Sweden [n.]	No	No	No	No
-------------	----	----	----	----

Switzerland	Yes	Yes	Yes	Yes
-------------	-----	-----	-----	-----

[n.f1]

Taiwan (ROC)	Yes	No	No	No
--------------	-----	----	----	----

[n.]

Thailand [n.a1]	Yes	Yes	No	No
-----------------	-----	-----	----	----

[n.]

Trinidad [n.a1]	No	No	No	No
-----------------	----	----	----	----

[n.]

United Kingdom	Yes	No	Yes	No
----------------	-----	----	-----	----

(England and

Wales) [n.f1]

Uruguay [n.a1]	Yes	Yes	Yes	Yes
----------------	-----	-----	-----	-----

[n.f1]

Venezuela [n.a1]	Yes	Yes	No	No
------------------	-----	-----	----	----

[n.f1]

Zimbabwe [n.a1]	Yes	Yes	No	No
-----------------	-----	-----	----	----

[n.]

FNf1. Provisional remedies for trademark infringement are generally granted frequently.

FN Provisional remedies for trademark infringement are generally not granted frequently.

FNa1. Provisional remedies for trademark infringement are generally favored by public policy.

FN. Provisional remedies for trademark infringement are generally disfavored by public policy.

*94 TABLE IV

AVAILABILITY OF EQUIVALENTS OF PRELIMINARY INJUNCTIONS FOR MARKS IN DIFFERENT STATUS

COUNTRY	MARKS REGISTERED IN THE SAME CLASS	MARKS IN DIFFERENT CLASS	MARKS REGISTERED IN DIFFERENT CLASS	UNREGISTERED MARKS IN USE FOR REGISTRATION PENDING
Argentina	No	No	No	No
[n.] [n.f1]				
Australia	Yes, if the goods are same	Yes, in a passing off action. Evidence in support of reputation of the mark is required	Yes, in a passing off action. Evidence in support of reputation of the mark is required	Yes, in a passing off action. Evidence in support of reputation of the mark is required
[n.f1]				
Brazil	Yes	Only if the mark is notorious	No	No
[n.]				

Bulgaria	Yes	Yes, if the mark	No	Yes
[n.a1]		is well-known		
[n.f1]		internationally		

Canada [n.f1]	Yes	Yes	Yes, but	No information
		harder to		
		prove		

Chile [n.f1]	Yes	Yes	No	No
--------------	-----	-----	----	----

China (PRC)	Yes, if the	Yes, if the goods	Only if the	Only if the
[n.a1]	goods are	are similar	mark is	mark is
[n.f1]	similar	famous under	famous under	
		the Paris	the Paris	
		Convention	Convention	

Colombia	Yes	Yes (possible	No	No
[n.a1]		under the law,		
[n.f1]		but still		
		restricted by		
		the courts)		

Croatia [n..]	Yes	Yes, but harder	No	Yes
[n.]		to obtain		

Dominican Republic

Yes	No	No	No
-----	----	----	----

[n.a1] [n.]

Ecuador [n..]

No	No	No	No
----	----	----	----

[n.]

El Salvador

Yes	Yes	Yes, if the mark is notorious	Yes, if the opposition term has elapsed without any opposition pending
-----	-----	-------------------------------	--

Eritrea [n.a1]

Yes	Yes	No information	No information
-----	-----	----------------	----------------

[n.f1]

Finland [n.f1]

Yes	No	No	No
-----	----	----	----

France [n.a1]

Yes	Yes	No	Yes
-----	-----	----	-----

[n.f1]

Germany [n.f1]

Yes	Yes, contingent upon similarities	Yes, but unlikely to obtain	Yes, but unlikely to obtain
-----	-----------------------------------	-----------------------------	-----------------------------

between goods,
and notoriety
of the mark

Guatemala [n.] Yes No No No

Guyana [n.] Yes Yes Only in a Only in a
passing off passing off
action when action when
the mark is the mark is
in use in use

Hungary [n.] Yes Yes No No

Iceland [n.] Yes Yes Yes, but Yes
burden of
proof is on
the
trademark
owner

Ireland [n.a1] Yes Yes Yes, but not Yes
[n.f1] granted as
readily

Italy [n.f1] Yes Yes, if goods are Yes, but Yes

similar difficult to
obtain

Japan [n..] Yes (if Yes, but much Only if the Only if the
[n.] goods are harder to prove mark is mark is
similar) likelihood of famous famous
confusion

Korea [n.f1] Yes Only for marks Only for marks Only for marks
which are which are which are
well-known in well-known well-known
Korean market in Korean in Korean
market market

Mexico [n.a1] Yes Yes, if goods are No No
[n.f1] similar

Netherlands Yes Yes No Yes
[n.a1]
[n.f1]

New Zealand Yes Yes, in a passing Yes, in a Yes, in a
[n.f1] off action passing off passing off
action action

Nicaragua Yes No No No

Norway	Yes	Yes	Yes, but the	Yes, if the
			"extensive	mark is in
			use" must be	use
			shown	

Pakistan	Yes	Yes, in a passing	Yes, in a	No
[n.a1]		off action when	passing off	
[n.f1]		the mark is	action when	
		well-known	the mark is	
			well-known	

Peru [n..+]	Yes	Yes	Yes	No
[n.f1]				

Philippines	Yes	Yes	Yes, but	Yes, if a mark
[n.a1]			burden of	is in use or
			proof is	is
			heavier	well-known
				internation-
				ally

Portugal	Yes	Yes, if products	No	No
[n.a1]		are considered		
[n.f1]		as having		
		similar		

purposes

Spain [n..] Yes Yes No Yes

[n.]

Sweden [n.] Yes Yes Yes, if the No information

mark is
established
on the
market

Switzerland Yes Yes Yes Yes

[n.f1]

Taiwan (ROC) Yes No No No

[n.]

Thailand Yes No No No

[n.a1] [n.]

Trinidad Yes No Yes, in a

[n.a1] [n.] passing off
action, and
hard to
obtain

United Kingdom Yes No Yes No

(England and

Wales)

[n.f1]

Uruguay [n.a1] No No No No

[n.f1]

Venezuela Yes Yes No No

[n.a1]

[n.f1]

Zimbabwe Yes Yes No Yes

[n.a1] [n.]

FN* Provisional remedies for trademark infringement are generally disfavored by public policy.

FNf1. Provisional remedies for trademark infringement are generally granted frequently.

FN Provisional remedies for trademark infringement are generally not granted frequently.

FNa1. Provisional remedies for trademark infringement are generally favored by public policy.

*98 TABLE V

AVAILABILITY OF EQUIVALENTS OF EXCLUSION ORDERS FOR MARKS IN DIFFERENT STATUS

[Note: The following TABLE/FORM is too wide to be displayed on one screen. You must print it for a meaningful review of its contents. The table has been divided into multiple pieces with each piece containing information to help you assemble a printout of the table. The information for each piece includes: (1) a three line message preceding the tabular data showing by line # and character # the position of the upper left-hand corner of the piece and the position of the piece within the entire table; and (2) a numeric scale following the tabular data displaying the character positions.]

 ***** This is piece 1. -- It begins at character 1 of table line 1. *****

 COUNTRY MARKS MARKS REGISTERED UNREGISTERED
 REGISTERED IN DIFFERENT MARKS IN USE
 IN THE SAME CLASS
 CLASS

 Argentina [n.f1] No No No

 Australia [n.f1] Yes, provided No No

(Courts) that goods
 are same as
 those
 covered in
 registration

Brazil [n.] Yes For notorious Only if it is
(Courts) marks only criminal
activity

Bulgaria [n.a1] Yes Yes, if the mark No
[n.f1] is well-known
internationally

Canada [n.f1] Yes Yes No
(Courts)

Chile [n.f1] Yes Yes No
(Courts)

China (PRC) No No No
[n.a1] [n.f1]

Colombia [n.a1] Yes Yes, under the No
[n.f1] (Courts) law, but still
restricted by
the courts

Croatia [n.] No No No

Dominican No No No
Republic [n.a1]
[n.]

Guatemala [n.] Yes No No

(Courts or
Administrative
Agency)

Guyana [n.] No No No

Hungary [n.] No No No

Iceland [n.] No No No

Ireland [n.a1] No No No

[n.f1]

Italy [n.f1] Yes, but Yes, if goods are Yes, but

(Customs) difficult to similar, but difficult to
 obtain difficult to obtain
 obtain

Japan [n.] Yes (if goods Yes, but much No

(Customs) are similar) harder to prove
 likelihood of
 confusion

Korea [n.f1] Yes No No

(Customs)

Mexico [n.a1] Yes Yes, if goods are No

[n.f1] similar

(Administrative
Agency)

Netherlands No No No

[n.a1] [n.f1]

New Zealand Customs can be Customs can be Customs can be

[n.f1] convinced to convinced to convinced to

(Customs) seize goods seize goods seize goods

Nicaragua Yes No No

(Courts)

Norway (Courts, Yes Yes Yes, but

Customs, "extensive

Police) use" must be

shown

Pakistan [n.a1] No information No information No information

[n.f1]

Peru [n..+] No No No

[n.f1]

Philippines Yes Yes No

[n.a1]

(Customs)

Portugal [n.a1] Yes Yes, if products No

[n.f1] are identical

(Customs)

Spain [n..+] [n.] Yes No No

Sweden [n.] No No No

Switzerland Yes Yes Yes

[n.f1]

Taiwan (ROC) [n.] Yes No No

Thailand [n.a1] No No No

[n.]

Trinidad [n.a1] Yes No Yes, but hard

[n.] (Courts) to obtain

United Kingdom Yes No No

(England and

Wales) [n.f1]

(Courts)

Uruguay [n.a1] No No No

[n.f1]

Venezuela [n.a1] Yes Yes No

[n.f1] (Courts)

Zimbabwe [n.a1] Yes Yes No

[n.]

FNf1. Provisional remedies for trademark infringement are generally frequently.

1...+...10...+...20...+...30...+...40...+...50...+...60...+...7

***** This is piece 2. -- It begins at character 70 of table line 1. *****

APPLICATION

FOR

REGISTRATION

PENDING

No

No

Only if it is
criminal
activity

Yes

No information

No

No

No

No

No

No

Yes, if the
term has
elapsed
without any
opposition
pending

No information

Yes

Yes

No

No

No

No

No

No

Yes, but
difficult to
obtain

No

No

No

No

Customs can be
convinced to
seize goods

No

Yes, if the

mark is in

use

No information

No

No

No

No

No

Yes

No

No

No

No

No

No

No

granted

70..+...80....+

***** This is piece 3. -- It begins at character 1 of table line 163. *****

FN Provisional remedies for trademark infringement are generally not granted frequently.

FNa1. Provisional remedies for trademark infringement are generally favored by public policy.

FN. Provisional remedies for trademark infringement are generally disfavored by public policy.

1...+...10....+...20....+...30....+...40....+...50....+...60....+...70....+....

*102 TABLE VI

HOW LONG IT TAKES TO OBTAIN A PROVISIONAL REMEDY FOR
TRADEMARK INFRINGEMENT

COUNTRY	TIME
Argentina [n.] [n.f1]	A few days
Australia [n.f1]	Between 1 hour and three to four weeks
Brazil [n.]	Between 48 hours and three months
Bulgaria [n.a1] [n.f1]	Between two weeks and two months
Canada [n.f1]	If ex parte-can be granted at once; otherwise two to three months or more
Chile [n.f1]	One week; in exceptional cases, within 24 hours
China (PRC) [n.a1] [n.f1]	No information
Colombia [n.a1] [n.f1]	Does not take a lot of time
Croatia [n.] [n.]	Within a few days
Dominican Republic [n.a1]	Usually within the same week
[n.]	

Ecuador [n..] [n.] No information

El Salvador Between ten days and one month after posting a bond

Eritrea [n.a1] [n.f1] Two to three months

Finland [n.f1] About 1 year

France [n.a1] [n.f1] Between one day and one week

Germany [n.f1] Between 1 and 21 days

Guatemala [n.] Judicial proceedings-between one and two weeks;
administrative proceedings-three to four months

Guyana [n.] Within one day

Hungary [n.] Some months

Iceland [n.] Less than a month

Ireland [n.a1] [n.f1] No information

Italy [n.f1] Seizure orders (both ex parte and inter partes) and
search/inspections are granted by a trial judge,
and could be obtained within a few days, although
it usually take between one and two weeks;
preliminary injunctions could be granted only by

tribunals consisting of a judge and two justices;

such procedures can take more than a year [n.23]

Japan [n..] [n.] May last a long time

Korea [n.f1] Between 3 months and two years

Mexico [n.a1] [n.f1] From three days to fifteen or more days

Netherlands [n.a1] [n.f1] Between one and four weeks

New Zealand [n.f1] About four weeks; if situation warrants urgency-two
days

Nicaragua Between one week and one month

Norway From few hours to one week

Pakistan [n.a1] [n.f1] Between 7 and 30 days

Peru [n..+] [n.f1] Two to four months

Philippines [n.a1] Temporary restraining orders are issued immediately
upon application; ex parte seizure orders within a
week; other provisional remedies between one and
six months

Portugal [n.a1] [n.f1] Between a few weeks and more than a month

Spain [n..] [n.] About 2 months

COUNTRY	TIME
---------	------

Argentina [n..+]	No deadlines
------------------	--------------

[n.f1]

Australia [n.f1]	Depending on reasons, delay can prejudice remedy; delay of six weeks or more precludes provisional remedies
------------------	---

Brazil [n.]	Certain deadlines have to be met
-------------	----------------------------------

Bulgaria [n.a1] [n.f1]	Three to six months
------------------------	---------------------

Canada [n.f1]	Six months; however, it is advisable to do it within three months
---------------	---

Chile [n.f1]	Provisional remedies can be awarded notwithstanding the passage of time
--------------	---

China (PRC) [n.a1]	No information
--------------------	----------------

[n.f1]

Colombia [n.a1] [n.f1]	Provisional remedies can be awarded notwithstanding the passage of time
------------------------	---

Croatia [n.] [n.]	An action should be instituted as soon as possible
-------------------	--

Dominican Republic	Provisional remedies can be awarded notwithstanding the
--------------------	---

[n.a1] [n.] passage of time

Ecuador [n..] [n.] No provisions

El Salvador Depends on how quick can the trademark owner obtains
necessary evidence

Eritrea [n.a1] [n.f1] Depends on the circumstances of a particular case

Finland [n.f1] An action should be instituted within three years

France [n.a1] [n.f1] An action should be instituted within 15 days

Germany [n.f1] An action should be instituted within four weeks

Guatemala [n.] Three years

Guyana [n.] No fixed deadlines, but if a delay is unreasonable the
court will refuse to grant a provisional remedy

Hungary [n.] Within weeks

Iceland [n.] At least a year

Ireland [n.a1] [n.f1] No specific deadline is established; however, delay in
applying for provisional remedies can be prejudicial

Italy [n.f1] No information

Japan [n..] [n.] Passage of time does not preclude the trademark owner
from obtaining provisional remedies

Korea [n.f1] Notwithstanding the passage of time, provided that
infringing activities are continued

Mexico [n.a1] [n.f1] More than three months

Netherlands [n.a1] Not too long
[n.f1]

New Zealand [n.f1] Usually a few weeks; however; delay can shift balance
of convenience

Nicaragua An action should be instituted as soon as the trademark
owner finds out about infringing activities

Norway An infringement action should be instituted within "due
haste"; what should be interpreted as reasonable
haste

Pakistan [n.a1] [n.f1] Provisional remedies should be applied for as soon as
the trademark owner finds out about infringing
activities

Peru [n..+] [n.f1] No time limits

Philippines [n.a1] Provisional remedies should be applied for as soon as

practicable; as soon as evidence sufficient to
establish an infringement by the preponderance of
evidence is gathered; otherwise defenses of laches
or estoppel can be successfully invoked by the
defendant

Portugal [n.a1] [n.f1] No time limits

Spain [n..+] [n.] No information

Sweden [n.] An action should be instituted within "reasonable time"

Switzerland [n.f1] Advisable to apply as soon as possible; the longer the
trademark owner waits, the less likely it is that
they would be able to show irreparable harm

Taiwan (ROC) [n.] No information

Thailand [n.a1] [n.] Provisional remedies can be granted notwithstanding the
passage of time, provided that infringement is still
going on

Trinidad [n.a1] [n.] Within approximately two months

United Kingdom As soon as possible because urgency must be shown when
(England and Wales) provisional remedies are applied for
[n.f1]

Uruguay [n.a1] [n.f1] Within one year

Venezuela [n.a1] No time limits

[n.f1]

Zimbabwe [n.a1] [n.] No time limits

FN. Provisional remedies for trademark infringement are generally disfavored by public policy.

FNf1. Provisional remedies for trademark infringement are generally granted frequently.

FNProvisional remedies for trademark infringement are generally not granted frequently.

FNa1. Provisional remedies for trademark infringement are generally favored by public policy.

*106 TABLE VIII

IS A SHOWING OF LIKELIHOOD OF CONFUSION NECESSARY FOR GRANT OF RELIEF?

COUNTRY	EX PARTE SEIZURE ORDERS	PRELIMINARY INJUNCTIONS	EXCLUSION ORDERS
----- Argentina	Yes	N/A	N/A
----- Australia	Only for registered marks	Only for registered marks	No

Brazil	Yes	Yes	Yes
Bulgaria	Yes	Yes	Yes
Canada	Yes	Yes	Yes
Chile	Yes	Yes	Yes
China (PRC)	Yes	Yes	N/A
Colombia	Yes	Yes	Yes
Croatia	Yes (as an element of a proof of a likelihood of success on the merits)	Yes (as an element of a proof of a likelihood of success on the merits)	N/A
Dominican Republic	Yes	Yes	N/A
Ecuador	N/A	N/A	No information
El Salvador	Yes	Yes	Yes
Eritrea	N/A	Yes	N/A
Finland	No	No	No

France	Yes	Yes	Yes
Germany	Yes	Yes	Yes
Guatemala	Yes	Yes	Yes
Guyana	Yes	Yes	N/A
Hungary	N/A	Yes	N/A
Iceland	N/A	Yes	N/A
Ireland	No information	No	N/A
Italy	Yes (as an element of a proof of a likelihood of success on the merits)	Yes (as an element of a proof of a likelihood of success on the merits)	No information
Japan	Yes (may be presumed if goods are in the same class)	Yes (may be presumed if goods are in the same class)	Yes (may be presumed if goods are in the same class)
Korea	Yes	Yes	Yes

Mexico	Yes	Yes	Yes
--------	-----	-----	-----

Netherlands	Yes	Yes	N/A
-------------	-----	-----	-----

New Zealand	Yes	Yes	Yes
-------------	-----	-----	-----

Nicaragua	N/A	Yes	Yes
-----------	-----	-----	-----

Norway	Yes	Yes	Yes
--------	-----	-----	-----

Pakistan	Yes	Yes	No information
----------	-----	-----	-------------------

Peru	Yes	Yes	N/A
------	-----	-----	-----

Philippines	Yes	Yes	Yes
-------------	-----	-----	-----

Portugal	Yes	Yes	Yes
----------	-----	-----	-----

Spain	Yes	Yes	Yes
-------	-----	-----	-----

Sweden	Yes	Yes	N/A
--------	-----	-----	-----

Switzerland	Yes	Yes	Yes
-------------	-----	-----	-----

Taiwan (ROC)	Yes	Yes	Yes
--------------	-----	-----	-----

Thailand	N/A	Yes	Yes
----------	-----	-----	-----

Trinidad	Yes	Yes	Yes
----------	-----	-----	-----

advantageous

but

advantageous

Chile	No	No	No
-------	----	----	----

China (PRC)	No	No	N/A
-------------	----	----	-----

Colombia	No	No	No
----------	----	----	----

Croatia	Yes	Yes	N/A
---------	-----	-----	-----

Dominican Republic	Yes	Yes	N/A
--------------------	-----	-----	-----

Ecuador	N/A	N/A	No information
---------	-----	-----	----------------

El Salvador	No	No	No
-------------	----	----	----

Eritrea	N/A	No	N/A
---------	-----	----	-----

Finland	No	No	No
---------	----	----	----

France	No	No	No
--------	----	----	----

Germany	No	No	No
---------	----	----	----

Guatemala	Yes	Yes	Yes
-----------	-----	-----	-----

Guyana	Yes	Yes	N/A
--------	-----	-----	-----

Hungary	N/A	No	N/A
---------	-----	----	-----

Iceland	N/A	Yes	N/A
Ireland	No information	Yes	N/A
Italy	No	No	No information
Japan	Yes	Yes	No
Korea	No	No	No
Mexico	No	No	No
Netherlands	No	No	N/A
New Zealand	Yes, "balance of convenience"	Yes, "balance of convenience"	No
Nicaragua	N/A	No	No
Norway	Yes	Yes	Yes
Pakistan	Yes	Yes	N/A
Peru	No	No	N/A
Philippines	Yes, but may be satisfied by	Yes, but may be satisfied by	No

posting of a posting of a
bond bond

Portugal	Yes	Yes	No
Spain	No	Yes	Yes
Sweden	No	No	N/A
Switzerland	Yes	Yes	Yes
Taiwan (ROC)	No	No	No
Thailand	N/A	No	No
Trinidad	Yes	Yes	Yes
United Kingdom (England and Wales)	Yes	Yes	Yes
Uruguay	No	N/A	N/A
Venezuela	No	No	No
Zimbabwe	Yes	Yes	Yes

N/A - remedy not available

*110 TABLE X

IS A POSTING OF A BOND BY THE TRADEMARK OWNER NECESSARY?

 COUNTRY EX PARTE SEIZURE ORDERS PRELIMINARY
 EXCLUSION

INJUNCTIONS ORDERS

 Argentina May be required N/A N/A

 Australia Not necessary, but Sometimes required Yes
 undertaking must be
 given

 Brazil Yes Yes Yes

 Bulgaria Yes Yes Yes

 Canada May be required Undertaking of May be
 plaintiff is required
 usually enough

 Chile No No No

 China No No N/A

 Colombia Yes Yes Yes

 Croatia May be required May be required N/A

 Dominican Republic Yes Yes N/A

Ecuador	N/A	N/A	No information
El Salvador	Yes	Yes	Yes
Eritrea	N/A	No	N/A
Finland	Yes	Yes	Yes
France	Yes	Yes	Yes
Germany	Yes	No	Yes
Guatemala	Yes	Yes	Yes
Guyana	Undertaking as to the damages	Undertaking as to the damages	N/A
Hungary	N/A	No	N/A
Iceland	N/A	Yes	N/A
Ireland	No information	No	N/A
Italy	No	No	No information
Japan	May be required	May be required	May be

required

Korea	Yes	Yes	No
Mexico	Yes	Yes	Yes
Netherlands	Yes	No	N/A
New Zealand	Only if ordered by the court; usually ordered when applicant is based overseas	Only if ordered by the court; usually ordered when applicant is based overseas	No
Nicaragua	N/A	Yes	Yes
Norway	If required by the other party	If required by the other party	No
Pakistan	No	No	No information
Peru	No	No	N/A
Philippines	Yes	Yes	No
Portugal	Yes	Yes	Yes
Spain	No	Yes	Yes

Sweden	Yes	Yes	N/A
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Switzerland	Always required when plaintiff is a foreigner; otherwise may be helpful regarding hardships	Always required when plaintiff is a foreigner; otherwise may be helpful regarding balance of hardships	No
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Taiwan (ROC)	Yes	Yes	No
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Thailand	N/A	No	No
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Trinidad	No	No	No
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United Kingdom	Yes	Yes	Yes
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(England and Wales)

Uruguay	Yes	N/A	N/A
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Venezuela	Yes	Yes	Yes
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Zimbabwe	No	No	No
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N/A - remedy not available

*112 TABLE XI

IS IRREPARABLE HARM TO THE TRADEMARK OWNER NECESSARY?

COUNTRY ORDERS	EX PARTE SEIZURE PRELIMINARY EXCLUSION		
	ORDERS	INJUNCTIONS	
Argentina	No	N/A	N/A
Australia	Yes	Yes	No
Brazil	Yes	Yes	Yes
Bulgaria	Yes	Yes	Yes
Canada	Not essential, but advantageous	Yes	Not essential, but advantageous
Chile	Yes	Yes	Yes
China	Yes	Yes	N/A
Colombia	No	No	No
Croatia	Yes	Yes	N/A

Dominican Republic	Yes	Yes	N/A
Ecuador	N/A	N/A	No information
El Salvador	No	No	No
Eritrea	N/A	No	N/A
Finland	Yes	Yes	Yes
France	Yes	Yes	Yes
Germany	No	No	No
Guatemala	Yes	Yes	Yes
Guyana	Yes	Yes	N/A
Hungary	N/A	No	N/A
Iceland	N/A	Yes	N/A
Ireland	No information	Yes	N/A
Italy	No	No	No information
Japan	Yes	Yes	Yes
Korea	Yes	Yes	No
Mexico	No	No	No

Netherlands	No	No	N/A
New Zealand	Yes	Yes	No
Nicaragua	N/A	Yes	Yes
Norway	Yes	Yes	Yes
Pakistan	Yes	Yes	No information
Peru	Yes	Yes	Yes
Philippines	Yes	Yes	No
Portugal	Yes	Yes	No
Spain	No	Yes	No
Sweden	No	No	N/A
Switzerland	Yes	Yes	Yes
Taiwan (ROC)	Yes	Yes	No
Thailand	N/A	No	No
Trinidad	Yes	Yes	Yes
United Kingdom (England and	Yes	Yes	Yes

Wales)

Uruguay	Yes	N/A	N/A
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Venezuela	Yes	Yes	Yes
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Zimbabwe	Yes	Yes	Yes
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N/A - remedy not available

*114 TABLE XII

IS THE LIKELIHOOD OF THE TRADEMARK OWNER'S SUCCESS ON THE MERITS A NECESSARY FINDING?

COUNTRY	EX PARTE SEIZURE ORDERS	PRELIMINARY INJUNCTIONS	EXCLUSION ORDERS
Argentina	No	N/A	N/A
Australia	Yes	Yes	No
Brazil	Yes	Yes	Yes
Bulgaria	Yes	Yes	Yes
Canada	Yes	Yes	Yes
Chile	No	No	No

China (PRC)	No	No	N/A
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Colombia	No	No	No
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Croatia	Yes	Yes	N/A
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Dominican Republic	Yes	Yes	N/A
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Ecuador	N/A	N/A	No information
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El Salvador	No	No	No
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Eritrea	N/A	No	N/A
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Finland	Yes	Yes	Yes
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France	No	No	No
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Germany	No	Yes	No
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Guatemala	No	No	No
-----------	----	----	----

Guyana	Yes	Yes	N/A
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Hungary	N/A	Yes	N/A
---------	-----	-----	-----

Iceland	N/A	Yes	N/A
---------	-----	-----	-----

Ireland	No information	No	N/A
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Italy Yes Yes No

information

Japan Yes Yes Yes

Korea No No No

Mexico Yes Yes Yes

Netherlands No Yes N/A

New Zealand Not in the sense Not in the sense No
 of probability of probability
 of success, but of success,
 claim should be but claim
 more than should be more
 frivolous than frivolous

Nicaragua N/A No No

Norway Yes Yes No

Pakistan Yes Yes No

information

Peru Yes Yes N/A

Philippines	Yes	Yes	No
Portugal	Yes	Yes	Yes
Spain	No	No	No
Sweden	Yes	Yes	N/A
Switzerland	Yes	Yes	Yes
Taiwan (ROC)	Yes	Yes	No
Thailand	N/A	Yes	Yes
Trinidad	Yes	Yes	Yes
United Kingdom (England and Wales)	Yes	No	No
Uruguay	Yes	N/A	N/A
Venezuela	Yes	Yes	Yes
Zimbabwe	No	No	No

N/A - remedy not available

*116 TABLE XIII

IS A FINDING THAT THE GOODS OR THE ALLEGED INFRINGER WILL LIKELY
DISAPPEAR OR

OTHERWISE BE UNAVAILABLE AT TRIAL NECESSARY?

COUNTRY	EX PARTE SEIZURE ORDERS	PRELIMINARY INJUNCTIONS	EXCLUSION ORDERS
---------	-------------------------------	----------------------------	---------------------

Argentina	Yes	N/A	N/A
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Australia	Yes	No	No
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Brazil	Yes	Yes	Yes
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Bulgaria	Yes	Yes	Yes
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Canada	No	No	No
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Chile	No	No	No
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China (PRC)	No	No	N/A
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Colombia	No	No	No
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Croatia	No	No	N/A
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Dominican Republic	Yes	Yes	N/A
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Ecuador	N/A	N/A	No information
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El Salvador	Yes	Yes	No
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Eritrea	N/A	No	N/A
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Finland	No	No	No
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France	Yes	Yes	Yes
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Germany	No	No	No
---------	----	----	----

Guatemala	No	No	No
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Guyana	No	No	N/A
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Hungary	N/A	No	N/A
---------	-----	----	-----

Iceland	N/A	No	N/A
---------	-----	----	-----

Ireland	No information	No	N/A
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Italy	Yes	No	No information
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Japan	Yes	Yes	Yes
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Korea	Yes	Yes	No
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Mexico	No	No	No
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Netherlands	No	No	N/A
-------------	----	----	-----

New Zealand	Yes	No	No
-------------	-----	----	----

Nicaragua	N/A	Yes	No
Norway	Yes	Yes	No
Pakistan	No	No	No information
Peru	No	No	N/A
Philippines	Yes	Yes	No
Portugal	No	No	No
Spain	No	No	No
Sweden	Yes	Yes	N/A
Switzerland	Yes	No	No
Taiwan (ROC)	Yes	Yes	No
Thailand	N/A	No	Yes
Trinidad	Yes	No	Yes
United Kingdom (England and Wales)	Yes	No	No
Uruguay	No	N/A	N/A
Venezuela	Yes	Yes	Yes

Zimbabwe	No	No	No
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N/A - remedy not available

*118 TABLE XIV

OTHER NECESSARY OR BENEFICIAL REQUIREMENTS FOR OBTAINING
PROVISIONAL REMEDIES
FOR TRADEMARK INFRINGEMENT

COUNTRY	REMEDY	REQUIREMENT
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Australia	Forfeiture (equivalent of exclusion orders)	Mark should be registered not only in the same class as allegedly infringing goods, but also for the same goods. Regular infringement proceedings must commence after the notice of forfeiture.
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Brazil	All remedies	Proof of "unquestionable right" (registration)
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China (PRC)	Equivalent of ex parte seizure orders	Proof of detriment to consumer's health may be helpful in cases of allegedly infringed mark being for pharmaceuticals
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Colombia All available remedies Ownership of the registration, and
elements of the prohibited conduct

El Salvador Equivalents of ex Difference between original and
parte seizure orders counterfeited goods

Korea Equivalents of Registering mark with the customs service
exclusion orders

Mexico All available remedies Valid trademark registration

New Zealand Equivalents of ex All material facts, as well as relevant
parte seizure orders law should be disclosed to the court

New Zealand Equivalents of Customs service should be convinced of
exclusion orders proprietorship and that the goods are
counterfeited

Pakistan Equivalents of ex Public interest in granting a provisional
parte seizure remedy
orders, and
Preliminary
Injunctions

Philippines Equivalents of ex Verified complaint and other evidence of
parte seizure infringement (testimonial, documentary,
orders, and etc.)

preliminary

injunctions

Philippines Equivalents of Certificate of registration must be
exclusion orders presented to the customs service

Taiwan (ROC) Equivalents of Ownership of the mark
exclusion orders

Other requirements for provisional remedies exist in a relatively small number of countries. In most cases these other requirements merely supplement requirements mentioned in previous sections. Pakistan is the only country where a showing of public interest in granting of provisional remedies for trademark infringement is required. In China (PRC) proof of detriment to the public health may be beneficial if the allegedly infringed mark is for pharmaceuticals.

*120 APPENDIX IV

STATISTICAL ANALYSIS AND RESULTS OF THE SURVEY: AVAILABILITY OF PROVISIONAL REMEDIES FOR TRADEMARK INFRINGEMENT

At the time of the survey, provisional remedies for trademark infringement were available in the following countries: Argentina, Australia, Brazil, Bulgaria, Canada, Chile, China (PRC), Colombia, Croatia, Dominican Republic, Ecuador, El Salvador, Eritrea, Finland, France, Germany, Guatemala, Guyana, Hungary, Iceland, Ireland, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Peru, Philippines, Portugal, Spain, Sweden, Switzerland, Taiwan (ROC), Thailand, Trinidad, United Kingdom, Uruguay, Venezuela, and Zimbabwe (43 countries; 93.5% of all countries surveyed).

Provisional remedies for trademark infringement were not available in the following countries: Costa Rica, Haiti, and Panama (3 countries; 6.5% of all countries surveyed). The reasons for unavailability of provisional remedies were not solicited.

Respondents in most of the surveyed countries thought that provisional remedies for trademark infringement could be obtained in their respective countries.

A. Local Perceptions as to the Frequency of Grant of Provisional Relief

Provisional remedies for trademark infringement are perceived to be granted frequently in the following countries: Argentina, Australia, Canada, Chile, China (PRC), Colombia, Finland, France, Germany, Ireland, Italy, Korea, Mexico, Netherlands, New Zealand, Pakistan, Peru, Portugal, Switzerland, [n.24] United Kingdom (England and Wales), Uruguay, and Venezuela (22 countries; 51.2% of the countries where provisional remedies for trademark infringement are available; 47.8% of all surveyed countries).

Provisional remedies for trademark infringement are not perceived to be granted frequently in the following countries: Brazil, Bulgaria, Croatia, Dominican Republic, Ecuador, [n.25] Eritrea, Guatemala, *121 Guyana, Hungary, Iceland, Japan, Spain, Sweden, [n.26] Taiwan (ROC), Thailand, Trinidad, and Zimbabwe (17 countries; 39.5% of the countries where provisional remedies for trademark infringement are available; 37% of all surveyed countries).

No information was available as to the frequency of granting provisional remedies for trademark infringement for the following countries: El Salvador, Nicaragua, Norway, [n.27] and Philippines [n.28] (4 countries; 9.3% of the countries where provisional remedies are available).

Provisional remedies for trademark infringement are unavailable or not granted frequently in 20 countries; 45.7% of surveyed countries. [n.29]

Except for respondents in Latin America, it appears that trademark practitioners generally did not believe that provisional remedies for trademark infringement are granted very frequently. Overall, practitioners in 51.2% of the countries where provisional remedies for trademark infringement are available considered them to be granted frequently. Practitioners in countries with common law legal systems generally gauge the frequency of grant of provisional remedies for trademark infringement as higher than their colleagues in countries with civil law systems. Guyana was the only country with a common law system where a local practitioner thought that provisional remedies for trademark infringement are not granted frequently.

*122 B. What are the Public Policy Attitudes Towards Provisional Remedies for Trademark Infringement?

Provisional remedies for trademark infringement are reported to be favored by public policy in the following countries: Bulgaria, China (PRC), Colombia, Dominican Republic, Eritrea, France, Ireland, Mexico, Netherlands, Pakistan, Philippines, Portugal, Trinidad, Uruguay, Venezuela, and Zimbabwe (16 countries; 37.2% of the countries where provisional remedies for trademark infringement are available; 34.7% of the countries surveyed).

Provisional remedies are not reported to be favored by public policy in the following countries: Argentina, Croatia, Ecuador, Japan, and Peru [n.30] (5 countries; 11.6% of the countries where provisional remedies for trademark infringement are available; 10.9% of the countries surveyed).

Provisional remedies for trademark infringement are reported to be neither favored nor disfavored by public policy in the following countries: Australia, Brazil, Canada, Chile, El Salvador, Finland, Germany, Guatemala, Guyana, Hungary, Iceland, Italy, New Zealand, Nicaragua, Norway, Spain, [n.31] Switzerland, Thailand, and United Kingdom (19 countries; 44.2% of the countries where provisional remedies for trademark infringement are available; 41.3% of all countries surveyed).

No information was available from the following countries: Costa Rica, Haiti, Panama, [n.32] Korea, Sweden, and Taiwan (6 countries).

*123 C. Relationship Between Public Policy Attitude Towards Provisional Remedies for Trademark Infringement and Frequency of their Grant

This survey emphasizes that public policy attitudes do not determine whether provisional remedies for trademark infringement are granted frequently. For example, practitioners from Argentina and Peru believe that provisional remedies for trademark infringement are granted frequently even though they are not favored by public policy. In almost 33% of the countries where provisional remedies for trademark infringement are perceived as favored by public policy, such remedies are not granted frequently. In more than 50% of the countries where provisional remedies for trademark infringement are perceived as neither being favored nor disfavored by public policy, such remedies are considered to be granted frequently. Provisional remedies for trademark infringement are favored by public policy and granted frequently in the following countries: China (PRC), Colombia, France, Ireland, Mexico, Netherlands, Pakistan, Portugal, Uruguay, and Venezuela (10 countries; 62.5% of the countries where provisional remedies for trademark infringement are favored by public policy; 45.5% of the countries where provisional remedies are granted frequently).

Provisional remedies for trademark infringement are favored by public policy, but are not granted frequently in the following countries: Bulgaria, Dominican Republic, Eritrea, Trinidad, and Zimbabwe (5 countries; 31.5% of the countries where provisional remedies for trademark infringement are favored by public policy; 29.41% of the countries where provisional remedies for trademark infringement are not granted frequently).

Provisional remedies for trademark infringement are favored by public policy, but there is no information with respect to frequency of their grant in the following countries: Philippines [n.33] (1 country; 6.3% of the countries where provisional remedies for trademark infringement are favored by public policy; 25% of the countries where there is no information with respect to frequency).

Provisional remedies for trademark infringement are not favored by public policy, but are granted frequently in the following countries: Argentina and Peru (2 countries; 40% of the countries where provisional remedies for trademark infringement are disfavored by public policy; 9.1% of the countries where provisional remedies for trademark infringement are granted frequently).

*124 Provisional remedies for trademark infringement are not favored by public policy, and are not granted frequently in the following countries: Croatia, Ecuador, and Japan (3 countries; 60% of the countries where provisional remedies for trademark infringement are disfavored by public policy; 17.6% of the countries where provisional remedies for trademark infringement are not granted frequently).

Provisional remedies for trademark infringement are neither favored nor disfavored by public policy, but are granted frequently in the following countries: Australia, Canada, Chile, Finland, Germany, Guatemala, Italy, New Zealand, Switzerland, and United Kingdom (England and Wales) (10 countries; 52.6% of the countries where provisional remedies for trademark infringement are neither favored nor disfavored by the public policy; 45.5% of the countries where provisional remedies for trademark infringement are granted frequently).

Provisional remedies for trademark infringement are neither favored nor disfavored by public policy, and are not granted frequently in the following countries: Brazil, Guyana, Hungary, Iceland, Spain, and Thailand (6 countries; 31.6% of the countries where provisional remedies for trademark infringement are neither favored nor disfavored by public policy; 35.3% of the countries where provisional remedies for trademark infringement are not granted frequently).

No information about public policy attitude [n.34] was available in Korea, Panama, Panama, Sweden, [n.35] and Taiwan (ROC) (5 countries).

Public policy attitude and frequency of grant information is illustrated in Appendix III, Table I.

D. Is the Court's [n.36] Practice with Respect to Trademark Infringement Cases Well-Established?

The court's practice with respect to trademark infringement cases is perceived to be well-established in the following countries: Argentina, Australia, Brazil, Bulgaria, Canada, Chile, China (PRC), Colombia, Costa Rica, El Salvador, Eritrea, Finland, France, Germany, Guyana, Hungary, Ireland, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, *125 Pakistan, Peru, Philippines, Portugal, Sweden, Switzerland, [n.37] Taiwan (ROC), Thailand, Trinidad, United Kingdom (England and Wales), Uruguay, and Zimbabwe (36 countries; 78.3% of all the countries surveyed).

The court's practice with respect to trademark infringement cases is not perceived to be well-established in the following countries: Croatia, Dominican Republic, Ecuador, Guatemala, Iceland, Nicaragua, Spain, and Venezuela (8 countries; 17.4% of all the countries surveyed).

No information: Haiti and Panama (2 countries; 4.3% of all the countries surveyed).
[n.38]

Well-established court practice in cases [n.39] similar to trademark cases exist in the following countries: Croatia, Iceland, and Venezuela (3 countries; 37.5% of all the countries where the court's practice with respect to trademark infringement cases is per se not well-established).

Well-established court practice in similar cases does not exist in the following countries: Dominican Republic, Ecuador, Guatemala, Nicaragua, and Spain (5 countries; 62.5% of all the countries where the court's practice with respect to trademark infringement cases is not well-established).

E. Are the Various Courts' Practices with Respect to Trademark Infringement Cases Harmonized and does the Availability of Provisional Remedies for Trademark Infringement Vary from One Court to Another in the Same Country?

The availability of provisional remedies does vary from one court to another in the following countries: Chile, Colombia, Croatia, France, Guatemala, Italy, Japan, Peru, Spain, Thailand, and Venezuela (11 countries; 25.6% of the countries where provisional remedies for trademark infringement are available; 35.5% of the countries where *126 different courts have jurisdiction over provisional remedies for trademark infringement).

The availability of provisional remedies does not vary from one court to another in the following countries: Argentina, Australia, Brazil, Bulgaria, Canada, Ecuador, Germany, Hungary, Ireland, Iceland, Korea, the Netherlands, Nicaragua, Norway, Philippines, Portugal, Switzerland, Taiwan, Trinidad, and Uruguay (20 countries; 46.5% of the countries where provisional remedies for trademark infringement are available; 64.5% of the countries where different courts have jurisdiction over provisional remedies for trademark infringement).

Provisional remedies for trademark infringement are granted by administrative tribunals, or only one court has a jurisdiction over provisional remedies for trademark infringement in the following countries: China, [n.40] Dominican Republic, El Salvador, Finland, Guyana, Mexico, [n.41] New Zealand, Pakistan, United Kingdom (England and Wales), and Zimbabwe [n.42] (10 countries; 23.3% of the countries where provisional remedies for trademark infringement are available).

No information: Eritrea, Panama, Sweden (3 countries).

F. Relationship Between the Availability of Provisional Remedies for Trademark Infringement and Trademark Registration [n.43]

Provisional remedies for trademark registration are available only for the alleged infringement of registered marks in the following countries: Bulgaria, Chile, Colombia, Dominican Republic, Ecuador, France, Guatemala, Hungary, Mexico, Netherlands, Nicaragua, Peru, Portugal, Spain, Taiwan (ROC), Thailand, Venezuela, and Zimbabwe (18 countries; 41.9% of the countries where provisional remedies for trademark infringement are available).

*127 Provisional remedies are also available for the alleged infringement of unregistered marks in use in the following countries: Argentina, [n.44] Australia, Brazil, [n.45] Canada, [n.46] China (PRC), [n.47] Croatia, [n.48] El Salvador, [n.49] Finland, [n.50] Germany, [n.51] Guyana, Iceland, [n.52] Ireland, [n.53] Italy, [n.54] Japan, [n.55] Korea, [n.56] New Zealand, [n.57] Norway, [n.58] Pakistan, [n.59] Philippines, [n.60] Sweden, [n.61] Switzerland, [n.62] Trinidad, [n.63] United Kingdom (England and Wales), [n.64] and Uruguay [n.65] (24 *128 countries; 55.8% of the countries where provisional remedies for trademark infringement are available).

No information about availability of provisional remedies for the alleged infringement of unregistered marks was available in the following country: Eritrea (1 country).

G. Availability of Provisional Remedies for the Alleged Infringement of Marks Registered in a Different Class than that of the Allegedly Infringing Goods [n.66]

Provisional remedies for trademark infringement are available only for the alleged infringement of marks registered in the same class as the allegedly infringing goods, in the following countries: Dominican Republic, Ecuador, Eritrea, Guatemala, Nicaragua, Taiwan (ROC), Trinidad, [n.67] and United Kingdom (England and Wales) [n.68] (8 countries; 18.6% of countries where provisional remedies for trademark infringement are available).

Provisional remedies are also available for the alleged infringement of marks, registered in a different class than the allegedly infringing goods, in the following countries: Argentina, [n.69] Australia, [n.70] Brazil, [n.71] Bulgaria, [n.72] Canada, Chile, China (PRC), [n.73] Colombia, [n.74] Croatia, [n.75] El *129 Salvador, Finland, [n.76] France, Germany, [n.77] Guyana, Hungary, Iceland, [n.78] Ireland, Italy, [n.79] Japan, [n.80] Korea, [n.81] Mexico, [n.82] Netherlands, New Zealand, [n.83] Norway, Pakistan, [n.84] Philippines, Portugal, [n.85] Spain, Sweden, Switzerland, Thailand, [n.86] Uruguay, Venezuela, and Zimbabwe (35 countries; 81.4% of the countries where provisional remedies for trademark infringement are available).

H. Availability of Provisional Remedies for the Alleged Infringement of Marks Where Applications for Registrations are Pending [n.87]

Provisional remedies are available for the alleged infringement of marks where applications for registration are pending in the following countries: Argentina, [n.88] Australia, [n.89] Brazil, [n.90] Bulgaria, China (PRC), [n.91] *130 Croatia, El Salvador, [n.92] Finland, [n.93] France, Germany, [n.94] Guatemala, [n.95] Iceland, Ireland, Italy, Japan, [n.96] Korea, [n.97] Netherlands, New Zealand, [n.98] Norway, [n.99] Peru, Philippines, [n.100] Spain, Switzerland, Uruguay, [n.101] and Zimbabwe [n.102] (25 countries; 58.1% of the countries where provisional remedies are available).

Provisional remedies are not available for the alleged infringement of marks where applications for registrations are pending in the following countries: Chile, Colombia, Dominican Republic, Ecuador, Guatemala, Hungary, Mexico, Nicaragua, Pakistan, Portugal, Taiwan (ROC), Thailand, Trinidad, [n.103] United Kingdom (England and Wales), [n.104] and Venezuela (15 countries; 34.9% of the countries where provisional remedies for trademark infringement are available).

*131 No information: Canada, Eritrea, and Sweden (3 countries).

I. Which Provisional Remedies are Available?

The respondents were asked to make comparisons with the remedies available under U.S. laws. Respondents were asked whether equivalents of ex parte seizure orders, search/inspections, preliminary injunctions, exclusion orders, or some other provisional remedy for trademark infringement were available for the alleged infringement of marks registered in the same class as allegedly infringing goods; marks registered in different class than allegedly infringing goods; unregistered marks in use; and for marks which applications for registration are pending.

1. Equivalents of ex parte seizure orders [n.105]

Equivalents of ex parte seizure orders are available in the following countries: Argentina, Australia, Brazil, Bulgaria, Canada, Chile, China (PRC), Colombia, Croatia, Dominican Republic, El Salvador, Finland, France, [n.106] Germany, Guatemala, Guyana, Ireland, [n.107] Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, [n.108] Pakistan, Peru, Philippines, Portugal, [n.109] Sweden, Switzerland, Taiwan (ROC), United Kingdom (England and Wales), Uruguay, Venezuela, and Zimbabwe (35 countries; 81.4% of the countries where provisional remedies are available).

Equivalents of ex parte seizure orders are not available in the following countries: Ecuador, Eritrea, Hungary, Iceland, Nicaragua, Spain, *132 Thailand, and Trinidad (8

countries; 18.6% of the countries where provisional remedies for trademark infringement are available).

The availability of equivalents of ex parte seizure orders for marks in different status is illustrated in Appendix III, Table II.

2. Equivalents of search/inspections

Equivalents of search/inspections are available in the following countries: Argentina, Australia, Brazil, Bulgaria, Canada, Chile, Croatia, Dominican Republic, El Salvador, Finland, Germany, Guyana, Iceland, Italy, Japan, Mexico, New Zealand, Nicaragua, Norway, Pakistan, Peru, Philippines, Portugal, Spain, Switzerland, Taiwan (ROC), Thailand, United Kingdom (England and Wales), Uruguay, Venezuela, and Zimbabwe (31 countries; 72.1% of the countries where provisional remedies for trademark infringement are available).

Equivalents of search/inspections are not available in the following countries: China (PRC), Colombia, Ecuador, Eritrea, France, Guatemala, Hungary, Ireland, Korea, Netherlands, Sweden, and Trinidad (12 countries; 27.9% of the countries where provisional remedies are available).

The availability of search/inspections for marks in different status is illustrated in Appendix III, Table III.

3. Equivalents of preliminary injunctions [n.110]

Equivalents of preliminary injunctions are available in the following countries: Australia, Brazil, Bulgaria, Canada, Chile, China (PRC), Colombia, Croatia, Dominican Republic, El Salvador, Eritrea, Finland, France, Germany, Guatemala, Guyana, Hungary, Iceland, Ireland, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Nicaragua, Norway, [n.111] Pakistan, Peru, Philippines, Portugal, Spain, Sweden, Switzerland, Taiwan (ROC), Thailand, Trinidad, United Kingdom, Venezuela, and Zimbabwe (40 countries; 93% of countries where provisional remedies for trademark infringement are available).

Equivalents of preliminary injunctions are not available in the following countries: Argentina, Ecuador, and Uruguay (3 countries; 7% of *133 countries where provisional remedies for trademark infringement are available).

The availability of equivalents of preliminary injunctions for marks in different status is illustrated in Appendix III, Table IV.

4. Equivalents of exclusion orders [n.112]

Equivalents of exclusion orders are available in the following countries: Australia, [n.113] Brazil, Bulgaria, Canada, Chile, Colombia, Ecuador, El Salvador, Finland, France, Germany, Guatemala, Italy, [n.114] Japan, Korea, Mexico, New Zealand, [n.115] Nicaragua, Norway, [n.116] Pakistan, Philippines, Portugal, Spain, Switzerland, Taiwan (ROC), Trinidad, United Kingdom (England and Wales), Venezuela, and Zimbabwe (29 countries; 67.4% of the countries where provisional remedies for trademark infringement are available).

Equivalents of exclusion orders are granted by courts in the following countries: Australia, Brazil, Canada, Chile, Colombia, El Salvador, Finland, Guatemala, [n.117] Nicaragua, Norway, [n.118] Pakistan, Philippines, Trinidad, United Kingdom (England and Wales), and Venezuela (15 countries).

Equivalents of exclusion orders are granted by the customs service in the following countries: Ecuador, France, Germany, Italy, Japan, Korea, [n.119] New Zealand, Norway, [n.120] and Portugal [n.121] (9 countries).

*134 Equivalents of exclusion order are granted by some other agency in the following countries: Guatemala, [n.122] Mexico, [n.123] and Norway [n.124] (3 countries).

No information is available as to who grants exclusion orders for the following countries: Bulgaria, Spain, Switzerland, Taiwan (ROC), and Zimbabwe (5 countries).

Equivalents of exclusion orders are not available in the following countries: Argentina, China (PRC), Croatia, Dominican Republic, Eritrea, Guyana, Hungary, Iceland, Ireland, Netherlands, Sweden, Thailand, and Uruguay (13 countries; 30.2% of the countries where provisional remedies for trademark infringement are available).

No information was available as to the availability of equivalents of exclusion orders in the following country: Pakistan (1 country).

The availability of equivalents of exclusion orders for marks in different status is illustrated in Appendix III, Table V.

5. Availability of other provisional remedies

Other provisional remedies are available in following countries: Brazil (temporary restraining orders), Ecuador (seizure in criminal procedure), Ireland (Anton Piller orders), [n.125] Italy (seizure orders granted inter partes), New Zealand (Metallica orders), [n.126] and Philippines (temporary restraining orders) (6 countries).

J. How Long it Takes to Obtain a Provisional Remedy for Trademark Infringement?

Due to the nature of this question, the responses are very different. While the responses can be categorized, the variety of answers is remarkable. The responses for how long it takes to obtain provisional remedies ranged from immediate to two years. In most countries, the duration of proceedings differs from case to case. Definitive responses to this question were rare. Generally, the results show that provisional *135 remedies for trademark infringement can be obtained quickly in many countries.

How long it takes to obtain a provisional remedy for trademark infringement is illustrated in Appendix III, Table VI.

K. How Long can a Trademark Owner Wait After Finding Out About Infringing Activities Until Instituting an Infringement Action and Obtain Provisional Remedies?

Initially, it was thought that time was of the essence when provisional remedies were applied for, and that any delay in instituting an infringement action could be prejudicial. The results of this survey are surprising. Practitioners in many countries do not consider delays in instituting infringement actions as prejudicial, and in a number of countries, provisional remedies can be granted notwithstanding the passage of time between the trademark owner's discovery of infringing activities and the institution of an infringement action. It appears that time is not of the essence in Asian and Latin American countries. Overall, the surveyed countries could not be put in groups.

How long can a trademark owner wait after finding out about infringing activities until instituting an infringement action and obtain provisional remedies is illustrated in Appendix III, Table VII.

L. What Should be Shown in Order to Obtain Provisional Remedies for Trademark Infringement?

Respondents were asked which requirements must be shown or fulfilled in order to obtain equivalents of ex parte seizure orders, preliminary injunctions, and exclusion orders. Respondents were asked to choose from: likelihood of confusion, balance of hardship to the party seeking relief, posting of a bond by the trademark owner, irreparable harm to the trademark owner, likelihood of success on the merits, allowance of the defendant to request to modify, likelihood that goods or the alleged infringer will disappear or be otherwise unavailable at trial, or anything else.

*136 1. Likelihood of confusion [n.127]

In order to obtain provisional remedies for trademark infringement, likelihood of confusion needs to be shown in the following countries: Argentina, Australia, [n.128] Brazil, Bulgaria, Canada, Chile, China (PRC), Colombia, Croatia, [n.129] Dominican Republic, El Salvador, Eritrea, [n.130] France, Germany, Guatemala, Guyana, Hungary,

Iceland, Italy, [n.131] Japan, [n.132] Korea, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Peru, Philippines, Portugal, Spain, Sweden, Switzerland, Taiwan (ROC), Thailand, Trinidad, United Kingdom (England and Wales), Uruguay, Venezuela, and Zimbabwe (40 countries; 93% of countries where provisional remedies for trademark infringement are available).

Likelihood of confusion needs to be shown in the following countries: Finland and Ireland (2 countries; 4.7% of countries where provisional remedies are available).

No information: Ecuador (1 country).

Appendix III, Table VIII illustrates if a showing of a likelihood of confusion is necessary for obtaining equivalents of ex parte seizure orders, preliminary injunctions, and exclusion orders.

2. Balance of hardships

Balance of hardship was found to weigh on the trademark owner's side to obtain provisional remedies for trademark infringement in the following countries: Australia, Brazil, Bulgaria, Canada, [n.133] Croatia, Dominican Republic, Guatemala, Guyana, Iceland, Ireland, Japan, New Zealand, [n.134] Norway, Pakistan, Philippines, [n.135] Portugal, Spain, Switzerland, *137 Trinidad, United Kingdom (England and Wales), and Zimbabwe (21 countries; 48.8% of the countries where provisional remedies for trademark infringement are available).

Balance of hardships does not need to be found to weigh on the trademark owner's side to obtain provisional remedies for trademark infringement in the following countries: Argentina, Chile, China (PRC), Colombia, El Salvador, Eritrea, Finland, France, Germany, Hungary, Italy, Korea, Mexico, Netherlands, Nicaragua, Peru, Sweden, Taiwan (ROC) Thailand, Uruguay, and Venezuela (21 countries; 48.8% of the countries where provisional remedies for trademark infringement are available).

No information: Ecuador (1 country).

Appendix III, Table IX illustrates if a showing that the balance of hardships favors the trademark owner's is necessary for obtaining equivalents of ex parte seizure orders, preliminary injunctions, and exclusion orders.

3. Posting of a bond by the trademark owner [n.136]

The trademark owner should post a bond in order to obtain provisional remedies for trademark infringement in the following countries: Argentina, [n.137] Australia, [n.138] Brazil, Bulgaria, Canada, [n.139] Colombia, Croatia, [n.140] Dominican Republic, El Salvador, Finland, France, Germany, Guatemala, Guyana, [n.141] Iceland, Japan, [n.142] Korea, Mexico, Netherlands, [n.143] *138 New Zealand, [n.144] Nicaragua, Norway, [n.145] Philippines, Portugal, Spain, Sweden, Switzerland, [n.146] Taiwan (ROC),

United Kingdom (England and Wales), Uruguay, and Venezuela (31 countries; 72.1% of the countries where provisional remedies for trademark infringement are available).

The trademark owner need not post a bond in order to obtain provisional remedies for trademark infringement in the following countries: Chile, China (PRC), Eritrea, Hungary, Ireland, Italy, Pakistan, Peru, Thailand, Trinidad, and Zimbabwe (11 countries; 25.6% of the countries where provisional remedies for trademark infringement are available).

No information: Ecuador (1 country).

Appendix III, Table X illustrates if a posting of a bond by the trademark owner is necessary for obtaining equivalents of ex parte seizure orders, preliminary injunctions, and exclusion orders.

4. Irreparable harm to the trademark owner

Irreparable harm to the trademark owner should be shown in order to obtain provisional remedies for trademark infringement in the following countries: Australia, Brazil, Bulgaria, Canada, [n.147] Chile, China, Croatia, Dominican Republic, Finland, France, Guatemala, Guyana, Iceland, Ireland, Japan, Korea, New Zealand, Nicaragua, Norway, Pakistan, Peru, Philippines, Portugal, Spain, Switzerland, Taiwan (ROC), Trinidad, United Kingdom (England and Wales), Uruguay, Venezuela, and Zimbabwe (31 countries; 72.1% of the countries where provisional remedies for trademark infringement are available).

Irreparable harm need not be shown in order to obtain provisional remedies for trademark infringement in the following countries: Argentina, Colombia, El Salvador, Eritrea, Germany, Hungary, Italy, Mexico, *139 Netherlands, Sweden, and Thailand (11 countries; 25.6% of the countries where provisional remedies for trademark infringement are available).

No information: Ecuador (1 country).

Appendix III, Table XI illustrates if irreparable harm to the trademark owner is necessary for obtaining equivalents of ex parte seizure orders, preliminary injunctions, and exclusion orders.

5. Likelihood of success on the merits [n.148]

Likelihood of success on the merits needs to be shown to obtain provisional remedies for trademark infringement in the following countries: Australia, Brazil, Bulgaria, Canada, Croatia, Finland, Germany, [n.149] Guyana, Hungary, Iceland, Italy, Japan, Mexico, Netherlands, [n.150] New Zealand, [n.151] Norway, Pakistan, Peru, Philippines, Portugal, Sweden, Switzerland, Taiwan (ROC), Thailand, Trinidad, United

Kingdom (England and Wales), [n.152] Uruguay, and Venezuela (28 countries; 65.1% of the countries where provisional remedies for trademark infringement are available).

Likelihood of success on the merits does not need to be shown in order to obtain provisional remedies for trademark infringement in the following countries: Argentina, Chile, China (PRC), Colombia, Dominican Republic, El Salvador, Eritrea, France, Guatemala, Ireland, Korea, Nicaragua, Spain, and Zimbabwe (14 countries; 32.6% of the countries where provisional remedies for trademark infringement are available).

No information: Ecuador (1 country).

Appendix III, Table XII illustrates if the likelihood of the trademark owner's success on the merits is necessary for obtaining equivalents of ex parte seizure orders, preliminary injunctions, and exclusion orders.

*140 6. Allow defendant to request to modify

In order to obtain provisional remedies for trademark infringement, plaintiff has to allow defendant to request to modify in the following countries: [n.153] Australia (ex parte seizure orders and preliminary injunctions), France (preliminary injunctions), Netherlands (ex parte seizure orders), Peru (ex parte seizure orders and preliminary injunctions), Spain (preliminary injunctions, search/inspections and exclusion orders), and Switzerland (preliminary injunctions) (6 countries; 14% of the countries where provisional remedies for trademark infringement are available).

Apparently, practitioners in most of the surveyed countries do not perceive this as necessary or important. Except for Australia, all surveyed countries which allow a defendant to request to modify are countries with civil law legal systems. A majority of the countries are in Europe.

7. Likelihood that goods or the alleged infringer will disappear or otherwise be unavailable at trial

A showing of likelihood that goods or the alleged infringer will disappear or otherwise be unavailable at trial to obtain provisional remedies is required in the following countries: Argentina, Australia, [n.154] Brazil, Bulgaria, Dominican Republic, El Salvador, France, Italy, [n.155] Japan, Korea, New Zealand, [n.156] Nicaragua, Norway, Philippines, Sweden, Switzerland, [n.157] Taiwan (ROC), Thailand, [n.158] Trinidad, [n.159] United Kingdom (England and Wales), [n.160] and Venezuela (21 countries; 48.3% of the countries where provisional remedies for trademark infringement are available).

*141 A showing of likelihood that goods or the alleged infringer will disappear or otherwise be unavailable at trial to obtain provisional remedies is not required in the

following countries: Canada, Chile, China (PRC), Colombia, Croatia, Eritrea, Finland, Germany, Guatemala, Guyana, Hungary, Iceland, Ireland, Mexico, Netherlands, Pakistan, Peru, Portugal, Spain, Uruguay, and Zimbabwe (21 countries; 48.3% of the countries where provisional remedies for trademark infringement are available).

No information: Ecuador (1 country).

Appendix III, Table XIII illustrates if a finding that the goods or the alleged infringer will likely disappear or otherwise be unavailable at trial is necessary for obtaining equivalents of ex parte seizure orders, preliminary injunctions, and exclusion orders.

Appendix III, Table XIV illustrates other necessary or beneficial requirements for obtaining provisional remedies for trademark infringement.

*142 APPENDIX V [n.161]

TRIPs AGREEMENT

Article 50

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:

(a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;

(b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that his right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

*143 5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4 above, provisional measures taken on the basis of paragraphs 1 and 2 above shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where national law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

[n.a1]. Mladen Singer received his LL.B. from the University of Zagreb, Croatia in 1990 and his Master of Intellectual Property (MIP) degree from Franklin Pierce Law Center in 1993. Mr. Singer conducted this study during the 1993-1994 academic year, while a Research Fellow in the Graduate Programs of Franklin Pierce Law Center. The author gratefully acknowledges the assistance of Dr. Davide Marchi of Marchi & Mittler, Milan, Italy, a graduate of Franklin Pierce Law Center (MIP 1988), who first proposed the study and drafted the initial questionnaire. The author also wishes to thank those who responded to the survey; Professors Thomas G. Field, Jr. and William O. Hennessey of Franklin Pierce Law Center; members of the Education Committee of the International Trademark Association (INTA); and an anonymous reader who commented on the draft.

[n.1]. General Agreement On Tariffs And Trade-Multilateral Trade Negotiations (The Uruguay Round): Final Act Embodying The Results Of The Uruguay Round Of Trade Negotiations, Dec. 15, 1993, 33 I.L.M. 1 (1994); Agreement On Trade-Related Aspects Of Intellectual Property Rights (TRIPs), Including Trade In Counterfeit Goods, 33 I.L.M. 1, 83 (1994); and Provisional Measures; Article 50, 33 I.L.M. 1197, 1216 (1994). *Infra* Appendix V.

[n.2]. The questionnaire is reproduced in Appendix II. A primary concern was to keep the length of the questionnaire short and to focus on the question of availability of provisional remedies in trademark infringement cases. The comments of a number of

members of the Education Committee of the International Trademark Association (INTA) in drafting the questionnaire are gratefully acknowledged.

[n.3]. An additional problem in the comparative study of procedural and other relevant laws is finding reliable translations. However, the trademark laws of most countries are regularly translated and published, either in *Industrial Property* by the World Intellectual Property Organization (WIPO), or in various private editions (e.g., BNA's *World Intellectual Property Report*).

[n.4]. This list is reproduced in Appendix I.

[n.5]. See generally, 15 U.S.C. §§ 1116-1121; 18 U.S.C. § 2320; 19 U.S.C. § 1337; and Fed. R. Civ. P. 65(b).

[n.6]. However, a substantial number of respondents are lawyers in their respective countries and were exposed to the U.S. laws by studying intellectual property law at Franklin Pierce Law Center.

[n.7]. Responses were solicited from international alumni of three intellectual property programs at Franklin Pierce: the one-year Master of Intellectual Property program; the six-month Diploma in Intellectual Property program; and the Intellectual Property Summer Institute which lasts for seven weeks. All of the international respondents were familiar with U.S. trademark law and practice.

[n.8]. See MARIO ARRIGUCCI, *TRADEMARKS: A COMPARATIVE GUIDE FOR 215 COUNTRIES* (Morgana ed. 1992).

[n.9]. Answers to some of the questions are purely subjective. No attempt was made to challenge or corroborate responses to subjective questions.

[n.10]. Indeed, in the case of one Asian country, three respondents provided three very different answers to the question of whether provisional remedies for trademark infringement are favored by public policy.

[n.11]. The results are based upon responses over a 6-month period in late 1993 and early 1994, and should not be construed to provide authoritative answers to the question of the availability of such remedies at the time of publication of this article. The purpose of the

survey was to provide an empirical overview of the practice across a wide range of jurisdictions immediately prior to compliance with the TRIPs agreement.

[n.12]. Tables and statistical analysis appear in Appendices III and IV, *infra*.

[n.13]. *Supra* note 1 and *infra* Appendix V.

[n.14]. The plaintiff agrees to pay any damage that results from the order.

[n.15]. Remedy-relief granted for a wrong. Provisional remedy-remedy of a relatively short duration granted before the usual court or administrative procedure was performed.

[n.16]. Trademark infringement-invasion of the rights secured by trademark.

[n.17]. *Ex parte* seizure order-an order of a court or an administrative agency, issued without a notice to the opposing party, ordering a taking of possession of the allegedly infringing goods.

[n.18]. Preliminary injunction-an order requiring defendant to refrain from using allegedly infringing mark pending a full trial on the merits of a lawsuit.

[n.19]. Exclusion order-an order excluding the allegedly infringing goods from entering the country.

[n.20]. Likelihood of confusion-probability that significant number of prospective customers will be confused by similar marks.

[n.21]. Posting a bond by the trademark owner-depositing a certain amount of money, negotiable papers, or something else of appreciable value as a security for damages that may occur to the alleged infringer as a result of the provisional remedy granted.

[n.22]. Likelihood of success on the merits-probability that the plaintiff will prevail in a subsequent litigation.

[n.23]. According to an Italian attorney, if a trial judge grants a provisional remedy which is within his/her authority, there is a great likelihood that a tribunal would grant a preliminary injunction.

[n.24]. According to one Swiss attorney this perception is "in spite of relative reluctance of many Swiss courts towards granting of such remedies."

[n.25]. According to an attorney from Ecuador, there are only two available provisional remedies for trademark infringement: seizure in criminal procedure and the equivalent of an exclusion order. Thus, such remedies cannot be granted in civil trademark infringement proceedings. However, an agreement for the protection of intellectual property has recently been signed between Ecuador and the U.S. which envisages granting of provisional remedies in civil trademark infringement proceedings.

[n.26]. The opinion of a Swedish attorney was that provisional remedies for trademark infringement are not granted frequently, but that the Swedish government had proposed to the Parliament changes in the trademark law that would introduce stricter measures against trademark infringement.

[n.27]. The opinion of a Norwegian attorney was that provisional remedies for trademark infringement are seldom sought in Norway. However, if such remedies are sought, the action is usually based on clear infringement, and provisional remedies are readily granted.

[n.28]. A Philippine practicing attorney stated that there are no actual statistics as to the frequency of granting of provisional remedies. However, the opinion of an official of the Philippine Industrial Property Office was that provisional remedies for trademark infringement are not granted frequently in the Philippines.

[n.29]. Data concerning countries where provisional remedies for trademark infringement are available but not granted frequently may not be statistically significant. In some countries, there are very few trademark infringement cases, suggesting one reason why provisional remedies are not reported to be granted frequently. Practitioners from such countries may have elected to "x" answer that provisional remedies are not granted frequently, rather than to enter into explanations as to why provisional remedies are not granted frequently (as a Norwegian attorney did).

[n.30]. One Peruvian attorney answered that provisional remedies for trademark infringement are not available in Peru; another Peruvian attorney answered that they are available, disfavored by public policy, but are nevertheless granted frequently.

[n.31]. A Spanish practitioner's answer was that provisional remedies for trademark infringement are neither favored nor disfavored by public policy. On the other hand, a Spanish law professor said that the public policy attitude towards provisional remedies for trademark infringement has changed in recent years and that such remedies are increasingly favored by public policy. For statistical purposes of our survey, we adopted the practitioner's view.

[n.32]. Provisional remedies for trademark infringement are not perceived to be available in Costa Rica, Haiti, or Panama. One can probably assume that such remedies are not favored by public policy. A respondent from Panama, where provisional remedies were not generally perceived as available, noted that in a criminal action for infringement, the plaintiff can request the seizure of all merchandise bearing the infringed mark under a proceeding called "Diligencia de Inventario, Deposito y Avaluu."

[n.33]. No information is available with respect to frequency because of a lack of data.

[n.34]. Countries where provisional remedies for trademark infringement are not available (Costa Rica, Haiti, and Panama) are not taken into account in this section.

[n.35]. Provisional remedies are not granted frequently, but the amendment to the trademark law which will introduce stricter measures against infringement is pending before the parliament. *Supra* note 26.

[n.36]. It is understood that in some countries trademark infringement cases are handled by administrative tribunals rather than courts. Practice of such tribunals is considered court practice for the purposes of this survey.

[n.37]. A Swiss attorney's remark was that Swiss trademark law has recently changed and that the practice with respect to the new law is not yet well- established. However, practice in application of the old trademark law is well- established.

[n.38]. Provisional remedies for trademark infringement are not available in these two countries.

[n.39]. The questionnaire asked: "If there is no well-established courts' practice in your country with respect to trademark infringement cases, is there a well-established practice in cases which are similar to trademark infringement cases (e.g., trade names or company names infringement cases), and results of which would, under your opinion, be applied to future trademark infringement cases." Supra Appendix II.

[n.40]. Provisional remedies for trademark infringement can be applied for in courts in China. However, according to a Chinese trademark practitioner, about 90% of trademark infringement cases are handled by the State Administration of Industry and Commerce (SAIC) which has established practice in such cases through its network of local activities throughout China.

[n.41]. Provisional remedies for trademark infringement in Mexico are granted by the General Directorate for Technological Development, which is a part of the Secretariat of Trade and Industrial Development.

[n.42]. An administrative tribunal has jurisdiction over trademark infringement matters in Zimbabwe.

[n.43]. Tables II, III, IV, and V of Appendix III show availability of each of the provisional remedies for registered marks.

[n.44]. Only equivalents of search/inspections are available for the alleged infringement of unregistered marks in Argentina.

[n.45]. Provisional remedies are available only if the alleged infringement also constitutes criminal activity.

[n.46]. Ex parte seizure orders are not available for the alleged infringement of unregistered marks in Canada, but other provisional remedies are available.

[n.47]. Provisional remedies are available only if the mark is famous under the Paris Convention.

[n.48]. Only search/inspections are available; very hard to obtain.

[n.49]. Provisional remedies are available only if the mark is notorious.

[n.50]. Only equivalents of exclusion orders are available for the alleged infringement of unregistered mark.

[n.51]. Only preliminary injunctions are available (under the Act Against Unfair Competition); unlikely to be obtained.

[n.52]. Only preliminary injunctions are available; the burden of proof is on the trademark owner.

[n.53]. Provisional remedies are not granted as readily as for the alleged infringement of registered marks.

[n.54]. Provisional remedies are difficult to obtain if the allegedly infringed mark is not registered.

[n.55]. Provisional remedies are only available if the allegedly infringed mark is famous.

[n.56]. Provisional remedies are only available for the alleged infringement of marks which are well-known in the Korean market.

[n.57]. Provisional remedies are only available in a passing off action.

[n.58]. Extensive use of the mark must be shown.

[n.59]. Provisional remedies are only available in a passing off action when the allegedly infringed mark is well-known.

[n.60]. The burden of proof is heavier.

[n.61]. Provisional remedies are only available if the mark is established on the market.

[n.62]. This is one of the rare countries where according to a Swiss attorney, provisional remedies are granted as readily for the alleged infringement of unregistered marks as for the alleged infringement of registered marks.

[n.63]. Provisional remedies are only available in a passing off action; requires proof of intent and actual damages.

[n.64]. According to an English attorney, courts grant provisional remedies as readily for the alleged infringement of unregistered marks as for the alleged infringement of registered marks.

[n.65]. Provisional remedies are for search/inspections only.

[n.66]. The availability of each provisional remedy for marks registered in the different class is shown in Appendix III; Tables II, III, IV, and V.

[n.67]. Provisional remedies are available in a passing off action for the alleged infringement of unregistered marks in use. However, such remedies are not available for the alleged infringement of marks registered in a different class.

[n.68]. Provisional remedies for trademark infringement are available in a passing off action for the alleged infringement of unregistered marks in use. However, such remedies are not available for the alleged infringement of marks registered for different goods. However, British trademark laws are in the process of being amended.

[n.69]. Such provisional remedies are hard to obtain.

[n.70]. Such provisional remedies are available in a passing off action; evidence in support of reputation of the mark is required.

[n.71]. Such provisional remedies are available for notorious marks only.

[n.72]. Such provisional remedies are available only if the mark is internationally well-known.

[n.73]. Such provisional remedies are available if the allegedly infringing goods are similar to the goods covered by registration.

[n.74]. This is possible under the law, but courts still tend to restrict protection only to the infringement occurring in the same class.

[n.75]. Such provisional remedies are harder to obtain.

[n.76]. Exclusion orders are the only provisional remedies available.

[n.77]. Provisional remedies are contingent upon similarities between goods, and notoriety of the mark.

[n.78]. Provisional remedies are only available if likelihood of confusion is proven.

[n.79]. Provisional remedies are only available if goods are similar.

[n.80]. It is very difficult to prove likelihood of confusion in Japan.

[n.81]. Provisional remedies are only available if the mark is well-known in the Korean market.

[n.82]. Provisional remedies are only available if goods are similar.

[n.83]. Provisional remedies are only available in the passing off action.

[n.84]. Provisional remedies are only available in the passing off action when the mark is well-known.

[n.85]. Provisional remedies are only available if products are identical.

[n.86]. Provisional remedies are available for search/inspections only.

[n.87]. Availability of each provisional remedy for marks where applications for registration are pending is shown in Appendix III; Tables II, III, IV, and V.

[n.88]. Provisional remedies are available for search/inspections only, and they are hard to obtain (same as for unregistered marks).

[n.89]. Provisional remedies are available in a passing off action. Evidence in support of reputation of the mark is required (same as for unregistered marks, and for marks registered in the different class).

[n.90]. Provisional remedies are available only if there is criminal activity (same as for unregistered marks).

[n.91]. Provisional remedies are available only if the mark is famous [sic] under the Paris Convention (same as for unregistered marks).

[n.92]. Provisional remedies are available if the opposition term has elapsed without any opposition pending.

[n.93]. Only exclusion orders are available (same as for unregistered marks and marks registered in the different class).

[n.94]. Only preliminary injunctions are available based on the Act Against Unfair Competition. However, such remedies are granted exceptionally only (same as for unregistered marks).

[n.95]. Provisional remedies are available only in a passing off action, if the mark is in use (same as for unregistered marks, and marks registered in the different class).

[n.96]. Provisional remedies are available only if the mark is famous (same as for unregistered marks).

[n.97]. Provisional remedies are available only for marks which are well- known in the Korean market (same as for unregistered marks, and marks registered in the different class).

[n.98]. Provisional remedies are available only in a passing off action (same as for unregistered marks, and for marks where registration is in a different class).

[n.99]. Provisional remedies are available only if the mark is in use.

[n.100]. Provisional remedies are available if a mark is in use, or is internationally well-known.

[n.101]. Provisional remedies are available for search/inspections only (same as for marks registered in the different class, and unregistered marks in use).

[n.102]. Only preliminary injunctions are available.

[n.103]. Provisional remedies are available in a passing off action for the alleged infringement of unregistered marks in use. However, such remedies are not available for the alleged infringement of marks registered in the different class, and for marks where applications for registrations are pending.

[n.104]. Provisional remedies are available in a passing off action for the alleged infringement of unregistered marks in use. However, such remedies are not available for the alleged infringement of marks registered in the different class, and marks where applications for registration are pending.

[n.105]. Ex parte seizure order was defined as "an order of a court or an administrative agency, issued without a notice to the opposing party, ordering taking the possession of allegedly infringing goods." Supra Appendix II.

[n.106]. For an overview of provisional remedies for patent infringement in France, see Bruno Boval, Bailiff's Report, Seizure And Injunctions In Patent Infringement Proceedings In France, 24 I.I.C. 744 (1993).

[n.107]. An Irish attorney said that ex parte seizure orders were not available in Ireland, but pointed to the existence of "Anton Piller" orders (entry and inspection) of defendant's premises, granted ex parte, and executed by plaintiff's solicitor. In other countries where such orders are available (e.g., United Kingdom, Australia, New Zealand) surveyed attorneys designated "Anton Piller" orders as equivalents of ex parte seizure orders. Accordingly, we decided to do the same in Ireland.

[n.108]. The surveyed attorney from Norway mentioned that the Norwegian equivalent of ex parte seizure orders is arrest.

[n.109]. Equivalents of ex parte seizure orders in Portugal are called "repressive seizures." Interestingly, this remedy can be obtained only in trademark infringement cases.

[n.110]. Preliminary injunction was defined as "an order requiring defendant to refrain from using allegedly infringing mark pending a full trial on the merits of a lawsuit." Supra Appendix II.

[n.111]. The Norwegian equivalent of the preliminary injunction is called "Midlertidig Forføyning."

[n.112]. Exclusion order was defined as "an order excluding the allegedly infringing goods from entering the country."

[n.113]. The remedy and procedure equivalent to exclusion orders is called "forfeiture" in Australia.

[n.114]. The comment of an Italian attorney was that exclusion orders are very seldom granted and that lack of customs control over goods imported from other European Union countries make implementation of this remedy especially difficult.

[n.115]. The comment of the New Zealand attorney was: "Not an order per se-- merely a matter of convincing customs to seize goods."

[n.116]. The Norwegian equivalent of the exclusion orders is called "Beslag/Tollbeslag." According to a Norwegian attorney, a court order or police order is required for the customs service to act.

[n.117]. Exclusion orders are granted either by courts or by the Ministry of Economy.

[n.118]. Supra note 116.

[n.119]. The customs service has the authority to grant exclusion orders in Korea under the new law that entered into force in 1994.

[n.120]. Supra note 116.

[n.121]. Equivalents of exclusion orders in Portugal always subsequently lead to criminal or civil judicial procedures.

[n.122]. Exclusion orders are granted either by courts or by the Ministry of Economy.

[n.123]. Exclusion orders are granted by the General Directorate of Technological Development which is a part of the Secretariat of Trade and Industrial Development.

[n.124]. Supra note 116.

[n.125]. Supra note 107.

[n.126]. Unfortunately, no details about this remedy were obtained.

[n.127]. Likelihood of confusion was defined as "probability that significant number of prospective customers will believe that one party's goods come from another party."

[n.128]. Likelihood of confusion only needs to be shown for infringement of unregistered marks.

[n.129]. Likelihood of confusion is a part of the proof of a likelihood of success on the merits.

[n.130]. Interestingly, the Eritrean attorney mentioned likelihood of confusion as the only necessary requirement for obtaining preliminary injunctions.

[n.131]. Likelihood of confusion is an element of proof of a likelihood of success on the merits.

[n.132]. Likelihood of confusion may be presumed if goods are in the same class.

[n.133]. Balance of hardships is necessary when preliminary injunctions are applied for. However, when ex parte seizure orders, search/inspections, and exclusion orders are applied for balance of hardship weighing in favor of the trademark owner is not necessary, but it is advantageous.

[n.134]. The factor considered in New Zealand is balance of convenience, rather than balance of hardship.

[n.135]. Balance of hardship in favor of the trademark owner may be satisfied by posting of a bond.

[n.136]. Posting of a bond by the trademark owner was defined as: "depositing an amount of money, or something else of appreciable value as a security for damages that may occur to the alleged infringer as a result of the provisional remedy granted."

[n.137]. Posting of a bond may be required.

[n.138]. Posting of a bond is necessary when forfeitures (equivalents of exclusion orders) are applied for. Sometimes, a bond is required when preliminary injunctions are applied for. Undertaking as to the damages must be given when ex parte seizure orders and search/inspections are applied for.

[n.139]. Posting of a bond may be required when ex parte seizure orders, exclusion orders, and search/inspections are applied for. Undertaking of plaintiff is usually enough when preliminary injunctions are applied for.

[n.140]. Posting of a bond may be required.

[n.141]. Undertaking as to the damages is required.

[n.142]. Posting of a bond may be required.

[n.143]. Posting of a bond is required for ex parte seizure orders, but is not required for preliminary injunctions.

[n.144]. As far as ex parte seizure orders, preliminary injunctions, and search/inspections are concerned, a posting of a bond may be ordered by the court and is usually ordered when applicant is based overseas. If equivalents of exclusion orders are applied for, posting of a bond is not required.

[n.145]. Posting of a bond would be ordered if required by the other party when equivalents of ex parte seizure orders, preliminary injunctions, and search/inspections are applied for. It is not required when exclusion orders are applied for.

[n.146]. Posting of a bond is always required when plaintiff is foreigner. It may be useful otherwise, and it may put more weight on the balance of hardships.

[n.147]. Posting of a bond is required when preliminary injunctions are applied for. It is not essential, but advantageous when other provisional remedies are applied for.

[n.148]. Likelihood of success on the merits was defined as "probability that the plaintiff will prevail in a subsequent litigation."

[n.149]. Likelihood of success on the merits only needs to be shown for equivalents of preliminary injunctions.

[n.150]. Likelihood of success on the merits only needs to be shown for equivalents of preliminary injunctions.

[n.151]. Showing of likelihood of success on the merits is not required when equivalents of exclusion orders are applied for. It is required for other provisional remedies, but not

in the sense of probability of success; more in the sense that the claim should be more than just frivolous.

[n.152]. Showing of likelihood of success on the merits is only required for equivalents of ex parte seizure orders.

[n.153]. Because an exceptionally small number of jurisdictions require allowing defendant to request to modify, it is not presented in the tables.

[n.154]. Such a showing is only required for equivalents of ex parte seizure orders.

[n.155]. Such a showing is only required for equivalents of ex parte seizure orders.

[n.156]. Such a showing is only required for equivalents of ex parte seizure orders.

[n.157]. Such a showing is only required for equivalents of ex parte seizure orders.

[n.158]. Such a showing is only required for equivalents of exclusion orders.

[n.159]. Such a showing is not required for equivalents of preliminary injunctions; required for equivalents of ex parte seizure orders, and exclusion orders.

[n.160]. Such a showing is only required for equivalents of ex parte seizure orders.

[n.161]. 33 I.L.M. 1197, 1216 (1994).