From: [redacted]
Sent:
To: AI Call For Views
Subject: Artificial intelligence call for views - response on trade mark questions

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In response to the call for views on Artificial Intelligence and trade marks, I comment as follows:

1. If AI technology becomes a primary purchaser of products, what impact could this have on trade mark law?

   It is not anticipated that AI technology, without any human direction, will become the primary purchaser of products for many years - if at all. We therefore consider this question to be a moot point.

2. Are there, or could there be, any difficulties with applying the existing legal concepts in trade mark law to AI technology?

   In theory yes but for the foreseeable future it is anticipated that the existing law will continue to be applied and judged by human standards of imperfect recollection, confusion, enhanced distinctiveness, reputation etc and from the perspective of a human purchaser.

3. Does AI affect the concept of the "average consumer" in measuring likelihood of confusion?

   Only at the point that AI, without any human direction, becomes a primary purchaser will it represent the average consumer. It is not expected that this will be an issue for the foreseeable future, if at all.

4. What is the impact of AI on the drafting of section 10 of the TMA? Can AI "use in the course of business" a sign which may be confusingly similar or identical to a trade mark?

   A trade mark can be used in the course of trade via AI and already is. I do not think this affects the drafting of section 10 and the TMA as AI is the medium for the infringement and not the infringer.

5. Can the actions of AI infringe a trade mark?

   Potentially but ultimate liability will rest with a legal person.

6. If AI can cause trade mark infringement, does this change who could be liable? Should it be the owner, the operator, the programmer, the trainer, the provider of training data, or some other party?

   See above. This will very much depend on the context of the infringement. If, for example, there is a trade mark infringement resulting from the actions of a voice enabled personal shopping assistant, the platform operator would become liable only after being put on notice and failing to take action c.f Google France.

Best regards

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