

Understanding the Legal Landscape for eCommerce Businesses Selling in Europe



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The E-Commerce Seller EU Legal Strategy

Last year, I spent a lot of time in Europe, building my connections with EU business and IP attorneys and accountancies

Obviously, major eCommerce sellers are paying attention to Europe (the trading block of most of Europe is the "EU"), where eCommerce sales are expected to grow by 100 trillion dollars in the next ten years. Why Europe? The average GDP is large. Maybe you are not Gucci, Mercedes Benz, or Louis Vuitton, which are all huge EU brands. Maybe you just have a Shopify site or sell only on Amazon but get an order from an EU address.

Ultimately, regardless of whether you intentionally sell in the EU or an EU consumer finds you, it is important to understand and comply with EU laws. Maybe it will not be a government body enforcing, but when your nest egg is being acquired, do you want to take the risk that you don't have an EU legal strategy that you can articulate (which will most likely drive the price of the acquisition)? So, what do you need to do if you only have a limited legal budget?

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Obtain EU Trademark Protection

The EU has a "first to file" system, meaning that if someone sees your brand and finds out it is not secured, they can file an EU trademark application before you and subsequently block you from applying for that trademark and even from using that trademark in Europe.

If you already have a USPTO (US) registered trademark, there are two ways to get a trademark for the entire EU (or part of the EU). The first way is to file through the Madrid System, which is a clearinghouse in Geneva, Switzerland, which organizes the process with the various signatory countries (I am way oversimplifying as this article is for non-attorneys). The second way is to file through EU counsel.

What is the right way? Generally, I like to work with EU counsel (we have affiliations with attorneys in every member nation through our membership in IR Global). That way, if something goes wrong, you have local counsel. Regardless, protecting a trademark, in general, requires a detailed specialized search, categorization, and description. It is not overly expensive to secure either way, but the process is not amateur hour; it is important to work with experienced US international trademark counsel (like me) who understands your mark and brand play and can find and communicate with EU counsel.

Secure US Copyright

I know this may seem like a typo as the article is about the EU. In certain countries in the EU, you can sue someone outside of the EU without a registered copyright. In the US, if someone claimed you stole their product design, your attorney would start by demanding that they prove it by sending the registered copyright certificate. But in some EU countries, there is no copyright registration. Instead, using a treaty called the Berne Convention, the purported copyright owner can drag a US seller into court in Europe to answer claims of copyright infringement.

Well, the same Berne Convention goes both ways: protect your copyrighted work in the United States, and it can establish protectability in the EU through protections afforded by the Berne Convention. In other words, you generally can protect the copyright in the US to enforce or protect against claims in the EU.

Be Aware & Comply With GDPR

Google any European seller (VEEPEE.fr in France or otto. gr in Germany are two of the biggest), and you will see (in French in this instance)

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In summary, if you sell in the EU, you need to comply with the General Data Protection Regulation (GDPR). GDPR basically puts the user (as opposed to the website holder) in the driver's seat when it comes to their data (whether you are collecting it knowingly or not). So, if you use Shopify's payment platform (including their privacy policy), are you protected? How about Amazon? The answer is that you probably need to, at a minimum, know and analyze your use of data of EU citizens regardless of whether you use a third party to collect it or not.

No Reason To Be Overwhelmed

Selling internationally is appealing because it broadens your audience for goods and makes you more attractive to acquisition. We developed a process called an IP Protection Plan, which helps you get on top of your EU (and US and anywhere else) strategy quickly and cost-effectively.

About the Author

After years of corporate counsel experience with a Fortune 100 company, Steven Weigler built and managed a startup where he was able to create and institute a protective intellectual property strategy, commercialize the resulting products and protect the intellectual property, build and manage a sales, marketing and operations team under a “lean startup” budget, and secure both angel and A round financing, and finally negotiated an exit.

Steven’s combination of legal, entrepreneurial, governmental and corporate experience gives him a unique, focused perspective on what entrepreneurs who are starting up or emerging their businesses need but rarely have: a) someone who zealously protects their interest and b) someone who has the empathy to understand each entrepreneur’s vision and motivation as well as their business plan. Steven has a passion of ecommerce and advises many clients on all aspects of the industry.

About EmergeCounsel

EmergeCounsel strategizes with worldwide clientele in the focus areas of protection of intellectual property and business assets for eCommerce business. Our TotalTM® provides trademark guidance, search, appeals of office actions and denials, and trademark monitoring for flat and affordable rates. In addition, EmergeCounsel has a network of professionals who provide co-counsel and services to assist businesses of all sizes