

## IPReg Consultation – Draft Guidance – Improving Information for Consumers and Small Businesses

The Chartered Institute of Trade Mark Attorneys (CITMA) is responding to the consultation by IPReg in its capacity as an Approved Regulator, as defined in the Legal Services Act 2007 (the Act) and as the representative body for Registered Trade Mark Attorneys and the wider trade mark and design profession. We are grateful to IPReg for the opportunity to comment.

As indicated in our response to the previous consultation, we welcome the recognition that the consumer of legal services in relation to intellectual property is primarily business and that more limited action is acceptable for IPReg to take compared to other legal regulators. We therefore welcome the use of guidance rather than prescriptive mandatory rules.

In response to the specific questions posed by IPReg in the consultation we would make the following comments.

### Question 1

We support the proposed outcomes contained in paragraph 2 of the draft guidance. On a point of detail, we question the need, in the first outcome, to include “websites and in their client-facing communications” which is overly prescriptive.

### Question 2

Whilst the principles behind the information and guidance on pricing and service are laudable, in reality we do not believe that firms will be able to provide all the information outlined in the guidance.

The pricing models that firms use are varied and there is no uniform approach to setting fees. Whilst it might be possible to publish ‘typical’ prices, fees are also dependent on a range of different factors, sometimes factors not at the control of the firm. For example, if an opposition to a trade mark application is received, even if it is a straightforward ‘typical’ case, if the parties engage in aggressive tactics, the fees can escalate.

There is therefore a risk that an individual or small business might be more confused or misled by the myriad of different approaches to prices by firms and the different way in which price information could be displayed on websites (if firms choose to do so).

Any price information provided by firms would have to be presented with numerous caveats, therefore whilst it might work towards greater transparency, a true comparison will be difficult to achieve.

It is likely that more information and detail will be provided in any proposed engagement / client care letter than upfront on websites and client-facing communications.

We do however support the principle that some information on pricing and service would be useful and the use of straightforward non legalistic language would be beneficial.

### Question 3

We are pleased to see that information about complaints has not been included within the guidance, as highlighted in our previous consultation response.

We suggest the guidance could be improved with more information about signposting to IPReg and the Legal Ombudsman. For example, recommending signposting to the Register of Trade Mark Attorneys and/or to the Disciplinary Findings page on the IPReg website, with hyperlinks provided in the guidance for ease of reference, could be useful for firms and for their potential clients.

### Question 4

We would welcome clarification on who the guidance is for. Is it only for entities regulated by IPReg, or is it also applicable to individuals regulated by IPReg?

There may be a situation where an individual is regulated by IPReg but the firm is not, the firm being regulated by another Approved Regulator / regulated body. What would happen in this scenario?

We observe that the guidance is aimed at firms who advise individual consumers and small businesses (up to 10 employees). In reality, the vast majority of firms regulated by IPReg will have a wide range of clients and highly likely to have individual or small business clients, therefore we expect the guidance to be applicable to nearly all firms.

We support that firms and attorneys should analyse their client base (and their targeted future client base) and decide whether this guidance applies to them.

We would be interested to understand the plans IPReg have to monitor and evaluate the effectiveness of this guidance? We would be interested to know in the future:

- If the guidance has been used by firms/individuals?
- What elements of the guidance have been adopted?

- What elements of the guidance have not been adopted and why they have not been adopted?
- If the guidance has delivered the outcomes expected?

We would be happy to discuss any of these points further with representatives from IPReg if it would be of assistance.

For and on behalf of the Chartered Institute of Trade Mark Attorneys

A handwritten signature in black ink, appearing to read 'K. Bader', with a long horizontal flourish extending to the right.

Keven Bader  
Chief Executive

15<sup>th</sup> January 2019