

## Doing Business The European Way

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Parlez-vous français? Spracken zie deutsch? Do you speak French or German? In today's global marketplace, US companies are fortunate that English is the language of trade. However, if a company wishes to do business in Europe, there are many other concerns apart from the language of negotiation, including trademark clearance and registration (the subject of a

June/July 1999 *Tableware Today* article), export versus local manufacture, licensing and, most recently, data collection, storage and dissemination.

### The European Marketplace

The European Union ("EU") is comprised of 350 million potential consumers from fifteen member nations, namely Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. There are advantages offered by doing business with the member nations: a uniform trademark law, a common currency called the EURO, and the European Court of Justice. Barriers to shipments within the EU have crumbled, and export/import restrictions with the USA are dissolving quickly. Thus, the EU presents a very attractive market for expansion.

### Trademark Clearance and Registration

As in any nation, in the planning stages and well before shipment, a trademark clearance search should be conducted to ensure that the trademark placed on the product does not infringe upon anyone else's intellectual property

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rights. With the advent of the EU, only one search, not fifteen, needs to be performed. If the mark is cleared, then only one application need be filed, and even if a problem arises in one country, the applicant may file in the other fourteen countries.

In addition, US applicants do not need to wait until their trademark is actually in use to file an EU application; an *intent to use* application can be filed during the initial stages of a company's European business development plan, enabling that company to know within several months if the trademark application will be accepted for registration. Literally thousands of companies have taken advantage of this procedure and have received European Community trademark registrations for their trademarks.

### Export or Manufacture Locally ?

Once a company has made the decision to explore the EU market, several questions arise, including whether the item should be exported directly to customers in Europe, or to a distribution center or manufactured in Europe. Also to be considered is whether a company should enter into partnership or a joint venture with a local company or establish subsidiaries or work through a licensee. The answers to these questions will depend upon existing tariffs, including knowledge about when the tariffs will expire, the location of the company's present manufacturing facility and its proximity to the European nations of initial interest, the availability of suitable licensees, and the company's ability to manage a business located in another nation.

One important point to note if a company is considering license agreements: Since there are no longer barriers to trade from one member nation to another, even if the company intends to execute an exclusive license with a French licensee for sales only within France, the licensee will have the right to sell the licensed product in all of the EU member nations, unless certain conditions exist and special notifications are made. The special notifications are particular to each situation, and if territorial restrictions are essential to the company's business plan, then more research is in order before the company embarks on its trip into the European Union. Of course, there is no problem if the licensee is granted the rights to sell in all of the EU member nations, except that one must specifically identify all territories outside the EU as an open market to ensure that the license is restricted to the EU.

The various embassies and consulates of the member nations each present a good starting point for research.

Another useful tool is the website [www.europe-usa.com](http://www.europe-usa.com), which is a compilation of information regarding the structure and function of the European Union.

### **Privacy of Consumer Information**

In 1998, the EU issued a directive which regulates the collection, processing, storage and dissemination by private companies of data gathered regarding their customers. This directive applies to any company which gathers personal information about citizens of the EU, including companies located in the US. It does not apply to data collected about other companies. All types of information are included, with basic protection for name, address, financial data, and replies to marketing questionnaires, and increased protection for data regarding racial or ethnic origin, political opinions, health, gender, religious or philosophical beliefs (i.e., explicit consent is required).

If there are plans to set up an Internet site (or any other method where tableware will be sold directly to individual consumers) and data is to be collected regarding payment, or buying preferences, this policy must be carefully scrutinized. Before analyzing the directive itself, the most important point to note is that it forbids the transfer of information collected in the EU to countries that do not possess adequate privacy policies—and the US is among those countries deemed by the EU to have inadequate privacy laws.

On a more positive note, don't decide to shelve plans to do business in Europe or panic if your company is already established in the EU; exceptions were built into the directive which may apply. The first exception is straightforward: there is no violation if a company receives the unambiguous consent of the individual whose data is being collected. Consent is unambiguous if it is "freely given, specific and informed." The consequences of the individual's choice must be set forth as well as the fact that the information may be sent to a country which has inadequate privacy policies. The individual must sign the consent. A failure to object form is not acceptable. However, if the data must be collected to complete the transaction (such as credit card information) the data collected is exempt from the EU privacy directive. If a company is already doing business in Europe, then its policies should be evaluated immediately to ensure compliance.

The EU directive also indicates that if an industry association adopts a self-regulatory code which follows specific guidelines, that code could provide a legitimate basis for data transfers from the EU to corporate members of the industry association who are located in countries with inadequate privacy policies (which would apply to the U.S.).

The requirements for acceptable codes are stringent, including the following: (1) the code must include the basics of the EU privacy policy regarding the collection, processing, dissemination and storage of personal data in easy to understand language; (2) all members of the industry association must be bound by the code; (3) the code should provide for mandatory, independent monitoring of compliance (such as by an independent organization or the Federal Trade Commission); and (4) complaints should be resolved quickly and at low cost, preferably by an organization independent from the industry association, or by a neutral panel of arbitrators drawn equally from the industry and consumers, both bodies having the power to assess monetary damages.

Lastly, the Privacy Directive also contemplates the use of contracts between the company gathering the privacy information and the individual. Acceptable contracts would contain provisions in which the company collecting the data agrees to be legally responsible for damages resulting to the individual from the misuse of the information by the recipient company.

### **Conducting Business through the Internet**

Before any website is designed and implemented, it is essential that a clearance search be undertaken to ensure that the domain name does not infringe upon any trademarks registered in any of the member nations of the EU. If such a search reveals a problem, and the company already possesses a "dot com" and an active website which cannot be changed without effecting existing business, it may be best to consider adopting one of the top level domains which has been assigned to each of the member nations (for example, .fr for France, .es for Spain). Presently, there is no .eu domain extension assigned, although the Internet Corporation for Assigned Names and Numbers ("ICANN") is considering mandating the same.

Although there are many issues facing a company wishing to do business in Europe, the lure of 350 million potential customers is too inviting to ignore. With the proper research and guidance, Europe could be a very rewarding and significant new frontier for exploration by US companies.

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