

ADR at the EUIPO Boards of Appeal: A View from the Driver's Seat

Sophia Bonne
Head of Service ADRS
Voorjaarsvergadering BMM, Den Haag
11 April 2019

MEDIATION AND CONCILIATION AT THE EUIPO'S BOARDS OF APPEAL



MEDIATION

1. Definition
2. Characteristics
3. Where?
4. Who?

DEFINITION

A structured, confidential and voluntary procedure in which a third party, a neutral and impartial mediator assists the parties in a dispute to produce constructive and comprehensive solutions that serve their respective commercial interests.



CHARACTERISTICS : CONFIDENTIAL

- ✓ What happens in the mediation must be kept confidential.
- ✓ All persons involved (mediator, parties, representatives, advisors, experts and any other person present during the meetings) sign a confidentiality agreement.
- ✓ Separate mediator e-mail accounts.
- ✓ No recording of any kind shall be made of any meeting with the mediator.
- ✓ Participants may not use or disclose any information concerning, or obtained in the course of mediation.
- ✓ Mediator destroys all notes and documents at the close of the mediation.

TOP SECRET!

EFFECTIVE, FLEXIBLE, SUSTAINABLE

- ✓ Cost and time-effective.
- ✓ Quick extrajudicial resolution of trade mark and design disputes.
- ✓ Process tailored to the needs of the parties.
- ✓ Promotes voluntary compliance by preserving amicable and sustainable relationships.

WHERE?



WHO?

- ✓ 18 Mediators
- ✓ EUIPO staff
- ✓ Chartered Institute of Arbitrators (CIArb) or Centre for Effective Dispute Resolution (CEDR) accreditation
- ✓ European Code of Conduct for Mediators
- ✓ Co-Mediation

Further Information:

<https://euipo.europa.eu/ohimportal/en/mediation>



CASES

1. Mediation in the financial sector :
case of two financial institutions active in different EU countries and non-EU countries under quasi identical names. Parties signed an agreement.
2. Mediation in the field of NGOs :
case of 2 NGOs active in neighbouring European countries under the same name but with a different logo. Parties signed an agreement.

CONCILIATION

1. Definition
2. Characteristics

DEFINITION

A dispute settlement process by which two or more parties may explore and reach a negotiated solution to their conflict with the help of a third neutral and disinterested party, the conciliator, who can make non-binding recommendations.

CHARACTERISTICS

- ✓ Rapporteur encourages parties to put an end to the dispute.
 - ✓ Submits proposals for a friendly settlement of the case.
 - ✓ Calls parties individually or via a conference call and/or e-mail.
 - ✓ Rapporteur must remain impartial and give equal treatment.
 - ✓ Rapporteur refrains from expressing any opinion on the outcome of the case
-
- ✓ BoA Presidium Decision N° 2014-2, 31/01/2014



CASES

1. Conciliation in the automotive sector :
case where two non-EU companies are in a TM dispute whereby company A has applied for a figurative mark that is composed of the same 3 letters as the earlier mark but presented in a particular way. The goods are partially overlapping to the extent that one party produces heavy automotive machinery and the other party produces spare parts that could be used for that machinery. In reality, both trade marks co-exist, but they have started attacking each other over the world. The conciliation has been refused by one of the parties.

CASES

2. Conciliation in the beverage sector :
case where two EU companies that are active in 2 different segments of the alcoholic beverage sector (wine and whiskey) use almost the same signs for their products and where OD decided LOC. The proposal for conciliation has been accepted by the parties and a limitation of the list of goods has been proposed by the rapporteur to grape related alcoholic beverages.

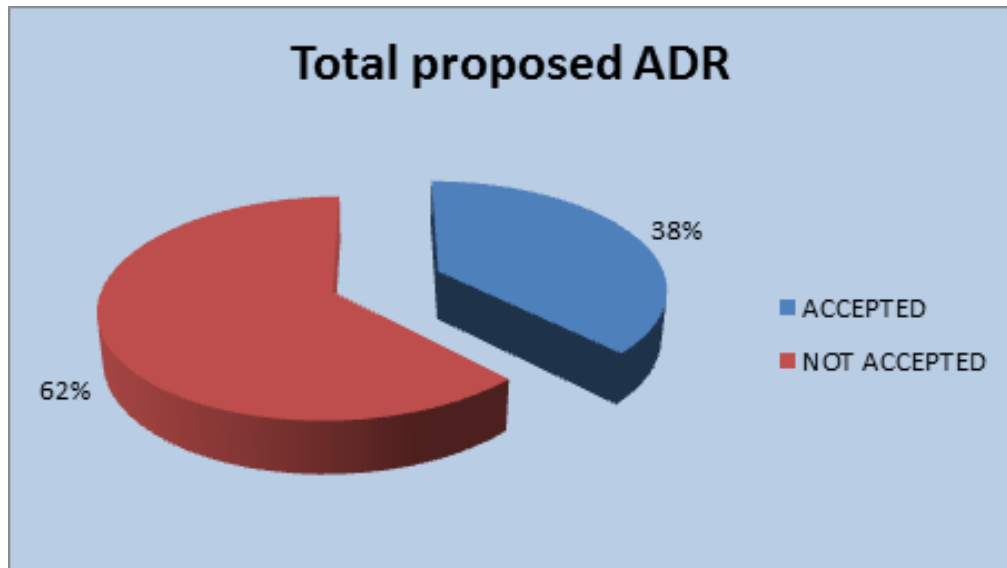
SOME FIGURES- ADR

ADR (MEDIATION + CONCILIATION)

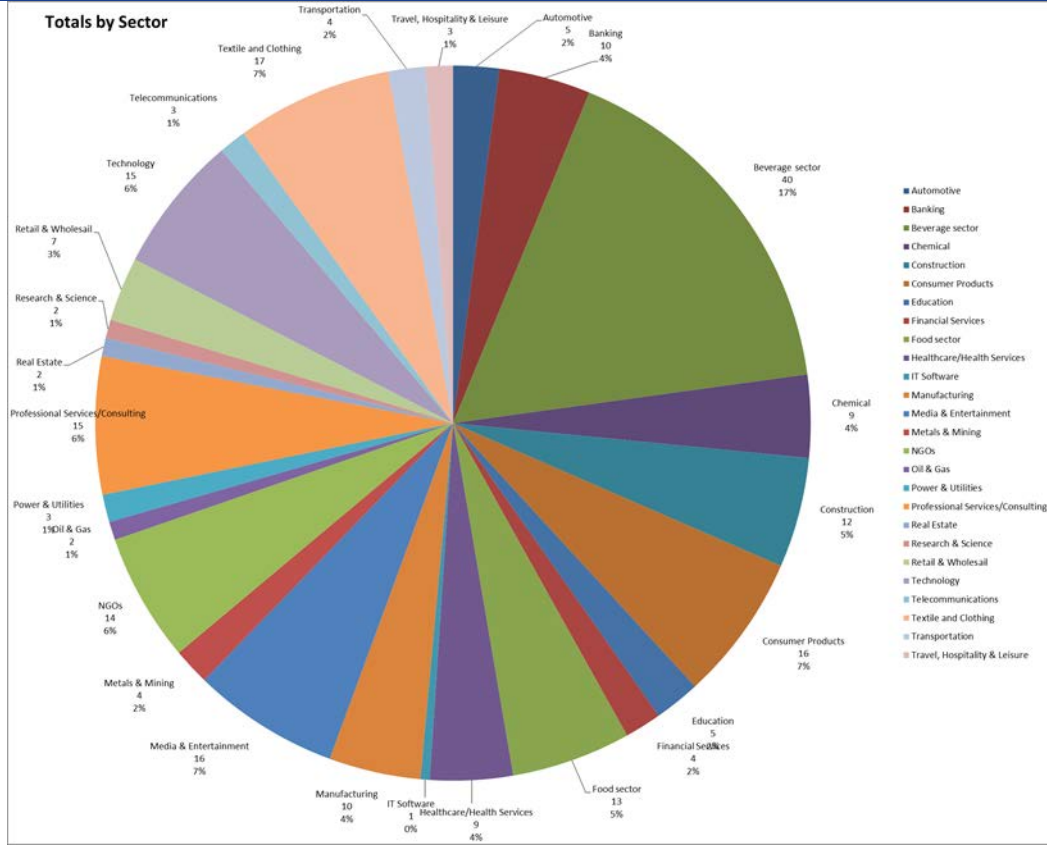
	2013	2014	2015	2016	2017	2018	2019	Total
PROPOSED	12	16	84	36	31	74	27	252
WAITING FOR ANSWER	0	0	1	0	0	7	15	23
ACCEPTED	4	1	41	6	10	21	8	86
ACCEPTED (%)	33%	6%	49%	17%	32%	31%	67%	38%
NOT ACCEPTED	8	15	42	30	21	46	4	143
NOT ACCEPTED (%)	67%	94%	51%	83%	68%	69%	33%	62%

ACCEPTED		4	1	41	6	10	21	8	86
PENDING		0	0	1	0	1	6	5	13
CONCLUDED	a) With settlement	3	1	32	6	4	13	3	58
	b) Without settlement	1	0	8	0	5	2	0	15

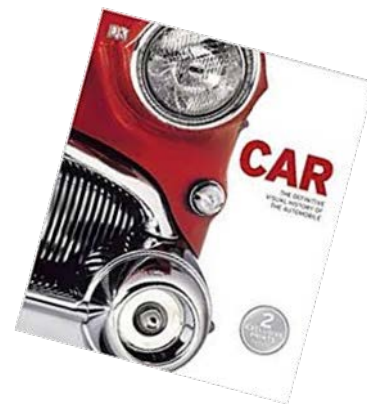
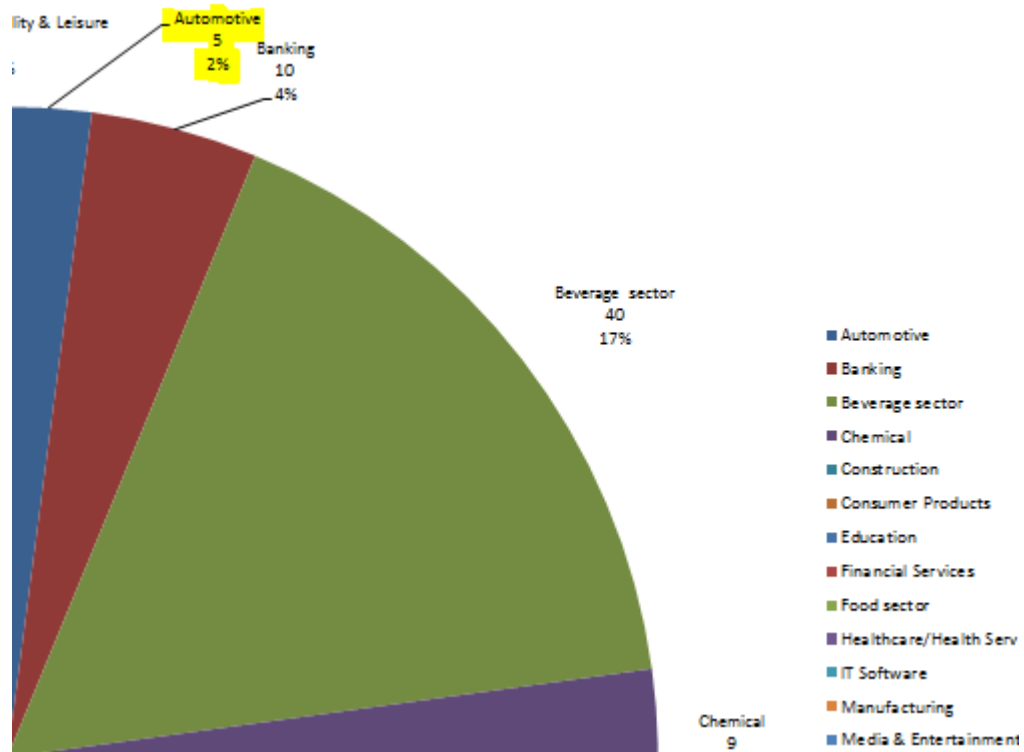
TOTAL PROPOSED ADR



SECTORS WITHIN ADR

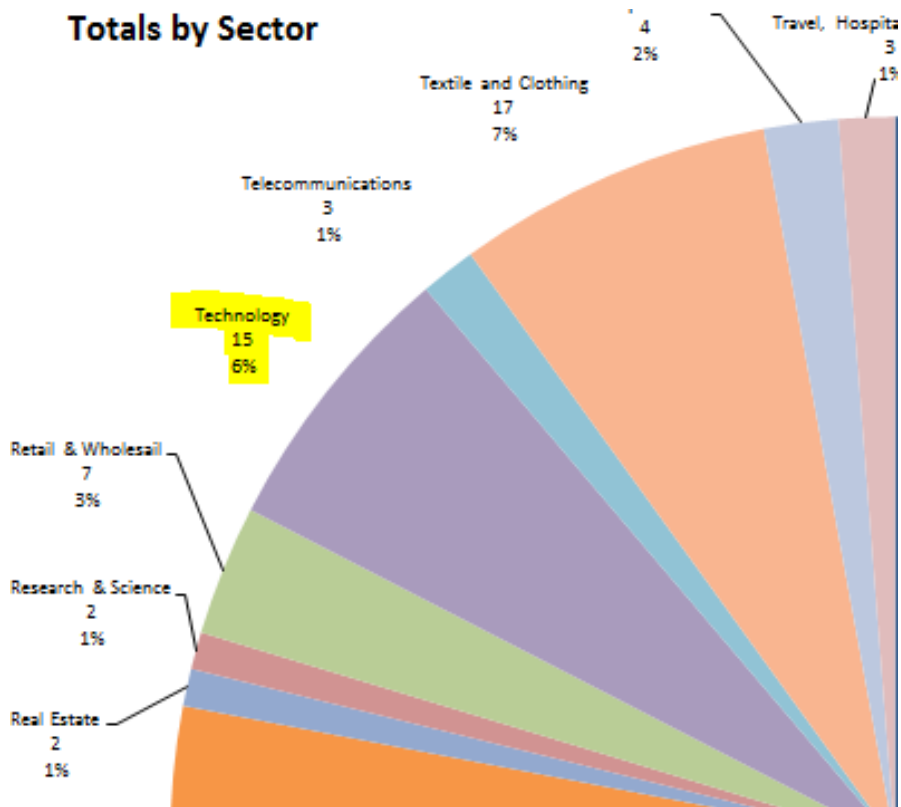


AUTOMOTIVE SECTOR WITHIN ADR



TECHNOLOGY SECTOR WITHIN ADR

Totals by Sector



Technology amounts to 6% of the accepted cases.





www.euipo.europa.eu



@EU_IPO



EUIPO

Thank you