

ExCo Buenos Aires 2009
Adopted Resolution
October 14, 2009

Resolution

Question Q210

The protection of major sports events and associated commercial activities through Trade Marks and other IPR

AIPPI

Noting that:

- 1) At the AIPPI Forum held in Berlin, 23-25 September 2005, AIPPI considered the protection that intellectual property and unfair competition law provide for Major Sports Events in the Workshop Program.
- 2) This question concerns the protection of Major Sports Events and associated commercial activities through trade marks and Unfair Competition law. “*Major Sports Events*” is defined for the purposes of Q210 as “Sports Events to which a high level of both spectator interests and interests by all forms of media to cover the event are attached and the realisation of which is dependent on substantial contributions of official sponsors”.
- 3) The value of the sponsorship of Major Sports Events will partially depend on the nature of the exclusive rights which can be licensed or awarded to official sponsors. One of the important issues with Major Sports Events is therefore the value which sponsors place on the exclusive rights available to them.

The value of the exclusive right available to official sponsors will depend, *inter alia*, on its scope and enforceability.

- 4) Major Sports Events are controlled by international sports governing bodies which award the right to hold a Major Sports Event to a country or city after a tender process which requires the bidding country or city to give certain commitments. These typically include commitments to create exclusive rights which can be licensed or awarded to official sponsors.
- 5) Such commitments may lead to an increasing divergence of intellectual property law at a regional or even global level.

- 6) Trade Mark and Unfair Competition law provide protection for Major Sports Events and the creation of exclusive rights which can be licensed or awarded to official sponsors. However, specific *sui generis* rights are sometimes created by successful bidders for their Major Sports Event such as Olympic and Paralympic Games. These *sui generis* rights supplement Trade Mark and Unfair Competition law with a view to creating a more valuable exclusive right for sponsors, and thereby a reduced demand on public expenditure.
- 7) It is necessary to balance the interests of sponsors and international sports governing bodies with the interests of the public, non-sponsor businesses, governments and any other parties affected by the creation and award of exclusive rights. Trade Mark and Unfair Competition law have developed general and well-established principles which aim to protect the interests of all relevant parties in the marketplace.

Considering that:

- 1) In its resolution Q168 (“Use of a mark ‘as a mark’ as a legal requirement in respect of infringement and maintenance of rights”) AIPPI took the position that use other than traditional use “as a mark” may be an infringement.
- 2) Further, in relation to Q168 AIPPI stated that use of trade marks by fan clubs and supporters as well as use of trade marks in parody should be subject to the same analysis as other trade mark use. However, non-commercial use, for example as a mark of allegiance, may be distinguished from commercial use.
- 3) In its resolution Q188 (“Conflicts between trade mark protection and freedom of expression”) AIPPI took the position that it should be possible in principle to invoke freedom of expression as a defence in trade mark cases.
- 4) Further, in relation to Q188 AIPPI stated that a balancing of interests between trade mark rights on the one hand and the right to freedom of expression on the other hand requires that neither right should prevail in every situation but that an analysis of all relevant factors must in each instance be undertaken by the court and the competent authority.
- 5) In its resolution Q195 (“Limitations of Trade Mark Rights”) AIPPI furthermore took the position that certain limitations of the exclusive rights granted by trade mark protection should be allowed, and that those limitations should permit, under certain conditions, the use of another’s mark in order to indicate the kind, quality, intended purpose, value, geographical origin, time of production/rendering or other characteristics of the goods or the services of a third party.

Resolves that:

- 1) Trade Mark and Unfair Competition law should not be amended just for Major Sports Events.
- 2) *Sui generis* rights for Major Sports Events extending beyond the generally applicable rules of Trade Mark and Unfair Competition law should be avoided.

- 3) However, where *sui generis* rights are created, they should provide a balance between the interests of all relevant parties, including sports governing bodies, organising entities, official event sponsors, other businesses and the public. In particular, such *sui generis* rights should:
- a) be limited in time and start a reasonable time before and expire a reasonable time after the Major Sports Event has taken place;
 - b) only be infringed where an unfair advantage results from an association with the Major Sports Event;
 - c) only be infringed by commercial activities;
 - d) be subject to a balancing of interests with the right to freedom of expression; and
 - e) recognise pre-existing intellectual property rights.