

## **QUESTION 41**

### **Protection of the commercial name**

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Yearbook 1966/II a, 69th Year, pages 45 - 46  
26th Congress of Tokyo, April 11 - 16, 1966

Q41

#### **Question Q41**

#### **Protection of the trade name**

#### **Resolution**

The Congress,

bearing in mind the importance of protecting the trade name,

decides to carry out a more detailed study of this question in order to achieve strengthening and harmonisation of the law on this subject and to continue this study on the basis of the Summary Report presented to the Tokyo Congress.

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## **QUESTION 41**

### **Protection of the commercial name**

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Yearbook 1967/III, pages 114 - 115  
Executive Committee of Helsinki, August 28 - September 1, 1967

Q41

#### **Question Q41**

##### **Protection of the trade name**

##### **Resolution**

I. The Executive Committee recommends that the laws of all countries in relation to trade names should conform to the following principles:

1. Any designation under which an industrial or commercial business is exercised or known to the public shall be protected as a trade name provided that this designation has a distinctive character in respect of that business in the country in which protection is sought.

2. The right to protection shall be acquired by use, registration not being a condition for protection.

3. The trade name shall be protected in particular against the use by another of the same or a similar designation in such a way as to be liable to cause confusion.

II. The Executive Committee further recommends that a clearer enumeration of these principles be incorporated in Article 8 of the Paris Convention.

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## **QUESTION 41**

### **Protection of the commercial name**

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Yearbook 1969/II, pages 225 - 226  
27th Congress of Venice, June 9 - 14, 1969

Q41

#### **Question Q41**

#### **Protection of the trade name**

#### **Resolution**

I. The Congress,

for the purpose of establishing minimum common requirements for the protection of trade names,

adopts the following principles;

1. The trade name is a designation which distinguishes any enterprise engaged in the manufacture or sale of products or in providing services.

The trade name may consist specifically of a surname, a fanciful denomination, a combination of generic words, a combination of letters, an identifying sign, etc.

2. The trade name is the object of an exclusive right entitled to protection. This right is acquired by use or by registration.

3. a) The trade name is protected against the use by a third party of the same designation or of a similar designation which could give rise to a risk of confusion between the enterprise or which could cause confusion of the public;

b) the well-known trade name is protected against use to designate enterprise that have different objects if damage is caused to the owner of the name.

II. The Congress

decides to continue the consideration of the question, particularly as regards the extension of the protection of the trade name that may be known or have a reputation in the country concerned apart from any use or registration, and as regards a possible amendment of Art. 8 of the Convention.

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## **QUESTION 41**

### **Protection of the commercial name**

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Yearbook 1971/I, pages 127 - 128  
Executive Committee of Madrid, October 18 - 23, 1970

Q41

#### **Question Q41**

#### **Protection of the trade name**

#### **Resolution**

The Executive Committee,

completing and modifying the resolution of the Congress of Venice of 1969,

adopts the following resolution:

I. The International Association for the Protection of Industrial Property,

in the knowledge that the interests of international commerce require the improvement of international protection of trade names and the establishment of uniform principles therefor,

recommends that Article 8 of the Paris Convention be amended as follows:

(1) A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trade or service mark.

(2) Notwithstanding a more extensive national protection, the following principles are applicable to the protection of trade names:

1. The trade name is a designation which distinguishes any enterprise engaged in the manufacture or sale of products or in providing services.

As a trade name may be protected for example a surname, a fanciful denomination, a designation of the business activity of an enterprise, a characteristic component or an abbreviation of the trade name, a symbol or any other identifying sign of the enterprise.

The distinctiveness of a trade name is based on the nature of the designation or on its use.

2. The trade name is the object of an exclusive right entitled to protection. This right is acquired by use, by registration of the trade name or by making it sufficiently known. Anyone of these bases will suffice to afford trade name protection.

If the trade name is neither used nor registered in the country for which protection is sought, nor sufficiently known there, protection shall be accorded if the trade name is sufficiently known internationally and if definite indications exist that the respective enterprise is extending its business activity to that country.

3. a) The trade name is protected against any use or any registration by another party of the same or of a similar designation which is likely to give rise to a risk of confusion or which is likely to mislead the public.

b) If a trade name is well known, then it is also protected against use or registration for the purpose of designating enterprises that are active in other fields, to the extent that such use or registration is likely to mislead the public or to cause a prejudice to the owner of the trade name.

## II. The International Association for the Protection of Industrial Property

further requests that the aforementioned principles, independent of their inclusion in the Paris Convention, be considered by national legislature and the courts in the countries of the Union as minimum requirements to protect trade names.

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