

## **QUESTION 107**

### **House marks**

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Q107

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#### **House marks**

#### **Resolution**

### **1. Background**

- 1.1 AIPPI recognizes that entities have an increasing tendency to diversify their activities or to form economic associations with other entities carrying on different activities. A so-called house mark is used to identify the unity of these activities. A house mark (symbol of corporate image, group sign) constitutes a sign (word, graphic symbol or combination thereof) which is used in anyway either by an entity or by a group or network of entities.
- 1.2 House marks are used to identify the entity or group and/or the products or services offered.

### **2. Existing protection**

- 2.1 AIPPI considers that adequate protection for house marks is accorded in most jurisdictions and in most circumstances by national trade mark law, trade name law, copyright law, unfair competition law or any combination thereof.
- 2.2 AIPPI recognizes, however, that in some jurisdictions, adequate protection is not accorded to house marks by the foregoing laws. In particular, protection may be unavailable:
  - under trade mark law where the house mark is not physically applied to any product or used in close association with any service.
  - under either trade mark or trade name law where a plurality of entities within a group or association is using the same house mark.

- under trade name law where the national trade name laws do not provide for protection of devices, logos or designs.

### 3. Recommendations

- 3.1 AIPPI recommends that house marks should be effectively protected.
- 3.2 At the Munich Congress in 1978 (Yearbook 1978/II) in relation to Question 70 AIPPI has already affirmed that the use requirements in trade mark law is not only fulfilled by the application of a mark to a product or service, but also to any other form of use which in the mind of the public gives rise to a link between the mark used, and a product or service. This particularly applies to house marks.
- 3.3 AIPPI recommends that national trade mark and trade name laws be amended as may be necessary to permit protection of house marks for a plurality of entities within a group or association.
- 3.4 AIPPI reaffirms the resolution adopted in Madrid in 1970 as to Question 41B and recommends that legal protection be granted to graphic devices as or as part of trade names.
- 3.5 AIPPI reaffirms the resolution adopted in Madrid in 1970 as to Question 41B and recommends an improvement of national and international systems for the protection of trade names, including revision of the Paris Convention Article 8. AIPPI also reaffirms the resolution adopted in Barcelona in 1990 (Annuaire 1991/I page 271, 295 and 320) as to Question 100 as it applies to trade names.
- 3.6 AIPPI recommends that a house mark should not be submitted to any special restrictions or limitations such as for example, set out in the second part of Article 20 of the December 1991 wording of the present draft GATT Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

Article 20 reads as follows:

"The use of a trademark in commerce shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark

identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking."

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