Summary Report

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2026 – Study Question

Parody as a defence to trade mark infringement

Introduction

This Study Question concerns parody and freedom of expression as a defence to trade mark infringement.

The Study Guidelines explain that trade marks have evolved from purely commercial indicators into social and cultural symbols appearing in art, politics, humour and digital communication. The Study Question will therefore examine how parody and freedom of expression should be addressed and balanced in trade mark infringement disputes, including in relation to parodic use, political or artistic expression, commercial exploitation and applications for parody marks.

The Reporter General has received Reports from the following Groups and Independent Members in alphabetical order: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, China, Chinese Taipei (Independent Members), Colombia, Croatia, Denmark, Ecuador, Egypt, Finland, France, Germany, Hungary, India, Indonesia, Israel, Italy, Japan, Latvia, Mexico, Netherlands, Norway, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Singapore, South

Korea, Spain, Sweden, Switzerland, Thailand, Turkey, UAE, United Kingdom, and United States. 45 Reports were received in total.

The Reporter General Team thanks the Groups and Independent Members for their helpful and informative Reports.

The Reports provide a comprehensive overview of national and regional laws, practices and policies relating to parody and freedom of expression as a defence to trade mark infringement, set out in three parts:

- Part I – Current law and practice
- Part II – Policy considerations and proposals for improvements of current law; and
- Part III – Proposals for harmonisation

This Summary Report has been prepared on the basis of a detailed review of all Reports received within the required deadline, including the supplemental long-answer documents, and focuses in particular on Parts II and III, given AIPPI's objective of proposing improvements to, and promoting the harmonisation of, existing laws. As it is a summary, if any question arises as to the exact position of a particular Group, the relevant Group Report should be consulted directly.

In this Summary Report:

- References to Reports of or responses by one or more "Groups" may include references to Independent Members.
- Where percentages of responses are given, they are to the nearest 5%; and
- In Part IV below, some conclusions have been drawn in order to provide guidance to the Study Committee for this Study Question.

I. Current law and practice

For Questions 1 to 7, the Reports show substantial divergence in current law and practice. Some Groups reported that parody or freedom of expression is recognised, at least indirectly, through constitutional principles, judicial balancing, due cause, honest practices or lack of use as a trade mark. Many other Groups reported that there is no express defence, while still explaining that ordinary infringement criteria - such as likelihood of confusion, use in the course of trade, use as an indication of origin, dilution, tarnishment, bad faith or unfair advantage - may leave room for parody to be considered in the assessment.

1) Recognition of parody or freedom of expression as a defence

Question 1 asked whether national law or case law recognises parody or freedom of expression as a defence to trade mark infringement, and whether any such defence is statutory, judicially developed, or based on general principles such as honest practices or constitutional rights. The answer categories are not fully mutually exclusive, because some Groups selected both an overall YES/NO answer and one or more bases for recognition. 11 out of 42 Groups answered YES (25%). 28 out of 42 Groups answered NO (65%). 1 Group answered "statutory". 8 out of 42 Groups answered "judicially developed" (20%). 11 out of 42 Groups (25%) answered "based on general principles such as honest practices or constitutional rights".

The comments show that the word "recognise" was understood differently across the Groups. The United States Group was one of the clearest examples of a statutory approach in relation to dilution, while also explaining that parody is not a categorical defence to ordinary infringement and that a parodic message may figure in the likelihood of confusion analysis. The Brazil Group reported no express statutory trade mark parody defence, but identified a constitutional and judicial

route by which freedom of expression may limit trade mark rights. Belgium and the Netherlands relied on the Benelux and EU concepts of "due cause" and honest practices, together with freedom of expression. The German Group described a fundamental-rights balancing exercise, particularly in relation to reputed marks and due cause. India and Chinese Taipei (Independent Members) reported judicial or practice-based recognition rather than statutory codification. Colombia reported no statutory or judicially developed defence but identified constitutional freedom of expression, honest practices and non-commercial use as possible bases; Romania reported no recognised defence in trade mark law, but noted that a defence may be based on constitutional and human-rights principles. By contrast, Groups such as Australia, Canada, Japan, Latvia, Mexico, Philippines, Poland, Singapore, Spain, Sweden, Thailand, UAE and United Kingdom reported that their law does not recognise an express or autonomous parody defence, even though several of them discussed indirect relevance under ordinary trade mark tests.

2) Definition or characterisation of parody

Question 2 asked whether national law or case law defines or characterises "parody" in the framework of trade mark infringement.

6 out of 42 Groups (15%) answered YES. 36 out of 42 Groups (85%) answered NO.

Only a small minority reported a definition or characterisation. The US Group referred to case law defining parody as conveying the simultaneous messages that it is the original and that it is not the original, together with satire, ridicule, joking or amusement. Germany, Belgium and France drew on concepts similar to the EU copyright-law understanding of parody as evoking an existing work or sign while being noticeably different and expressing humour or mockery, though they did not

all treat this as a statutory trade mark definition. The Brazil Group reported a case-law understanding of parody as jocose, ironic or satirical imitation involving transformation or critique. Chinese Taipei (Independent Members) identified conditions developed through scholarship and judicial practice, including humour, satire or criticism, recognisable connection to the original well-known mark, sufficient differentiation, public interest in expression and no improper exploitation or dilution. Colombia and Romania reported no trade mark-specific definition; Romania nevertheless referred to the ordinary dictionary understanding of parody as a creation taking over the theme, motifs and artistic means of another work to achieve a satirical or comical effect. Most other Groups also reported no trade mark-specific definition, although many acknowledged that parody may be understood doctrinally or by reference to copyright, comparative law or ordinary language.

3) Aspects impacting whether a parody may constitute trade mark infringement

Question 3 asked whether specified aspects impact whether a parody of a trade mark may or may not be considered trade mark infringement. The answers received are divided up as follows:

(a) The parody constitutes an expression of humour or mockery: 29 out of 42 Groups (70%).

(b) The parody has a critical intent: 29 out of 42 Groups (70%).

(c) The parody is noticeably different from the original trade mark: 33 out of 42 Groups (80%).

(d) The parody is not directed at the original mark: 30 out of 42 Groups (70%).

(e) The parody is non-commercial and purely artistic: 28 out of 42 Groups (65%).

(f) The parody is non-commercial and used to draw attention to a political or social message: 30 out of 42 Groups (70%).

(g) The parody is directed at the original mark and used to criticise, disparage or discredit it or otherwise affect its reputation: 31 out of 42 Groups (75%).

(h) The parody is used in the course of trade for competing, similar and/or related goods or services: 32 out of 42 Groups (75%).

(i) The parody is used in the course of trade for non-competing and unrelated goods or services: 31 out of 42 Groups (75%).

(j) The parody involves monetisation: 31 out of 42 Groups (75%).

(k) The trade mark being parodied is well-known or famous: 31 out of 42 Groups (75%).

(l) Other: 12 out of 42 Groups (30%).

The highest level of support related to noticeable difference from the original trade mark, use in the course of trade, monetisation and the reputation of the parodied mark. Groups including Brazil, Croatia, Denmark, Finland, Germany, India, Netherlands, Poland, Portugal, Romania, Turkey and United States emphasised that humour or critical intent is relevant, but not conclusive. Commercial use was repeatedly treated as a strong indicator of infringement risk, especially where the parody is used for competing, similar or related goods. Colombia and Romania both treated a broad range of factors as relevant, including humour, critical purpose, differentiation, commercial use, monetisation and reputation. Several Groups stressed that non-commercial artistic, political or social expression is more likely to fall outside trade mark infringement or to receive stronger protection, while parody used as a badge of origin or to exploit goodwill is more likely to infringe.

Groups such as Australia and Spain did not select the listed factors; Australia considered that parodic marks are assessed under ordinary trade mark principles, and Spain reported no legal or case-law recognition of the listed factors as such.

4) Function in which the trade mark is used

Question 4 asked whether the function in which the trade mark is used has an impact on liability, in particular whether liability depends on whether the use constitutes use in the function of indicating the origin of goods or services.

40 out of 42 Groups (95%) answered YES. 2 out of 42 Groups (5%) answered NO.

The answers reveal one of the strongest areas of convergence. A very large majority considered the trade mark function central. Australia stated that liability depends on whether the mark is used as a badge of origin. Canada referred to whether the use is "use" in the sense of indicating the origin of goods or services. China, Croatia, Denmark, Finland, Germany, Hungary, India, Japan, Netherlands, Poland, Portugal, Romania, Sweden, Switzerland, Turkey, United Kingdom and United States all identified the origin function, use as a trade mark or the impairment of trade mark functions as central to liability. Colombia similarly stated that if the use is use as a trade mark, it directly impacts liability. Argentina and Spain were the only Groups recorded as answering NO. Argentina focused instead on damage caused or presumed to be caused by the parody and whether it conveys a political or social message; Spain considered the question through its existing statutory infringement framework rather than an autonomous function-based parody defence.

5) Parodic nature and likelihood of confusion

Question 5 asked whether the parodic nature of the use, including the specific type of parody, is taken into account as a relevant factor in the assessment of likelihood of confusion.

31 out of 42 Groups (75%) answered YES. 10 out of 42 Groups (25%) answered NO.

Most Groups considered the parodic nature of the use relevant to confusion, usually as part of a global or contextual assessment rather than as an independent defence. Brazil, Canada, China, Colombia, Croatia, Denmark, Finland, France, Germany, India, Netherlands, Poland, Portugal, Romania, Sweden, Switzerland, Turkey, United Kingdom and United States all treated parody, commercial or non-commercial context, political or artistic expression, or the consumer's perception of parody as relevant to whether consumers are likely to be confused. Australia, Egypt, Hungary, Japan, Latvia, Singapore, Spain and UAE answered NO or treated parodic nature as not independently relevant. Egypt, for example, stated that parody is not an independent legal factor, although noticeable differences may reduce confusion in practice. Japan stated that courts do not particularly consider whether a mark is parodied but decide under ordinary infringement criteria. Belgium's position focused on due cause and reputation-based analysis rather than making parody a separate likelihood-of-confusion factor.

6) Well-known, reputed or famous trade marks

Question 6 asked whether national law addresses conflicts between parody and the protection of well-known, reputed or famous trade marks, including whether it recognises a statutory fair-use exemption, applies a due cause balancing test, or affords stricter protection to reputation.

24 out of 42 Groups (60%) answered YES. 17 out of 42 Groups (40%) answered NO.

The responses show significant divergence. Groups such as Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands and Portugal addressed the issue through the protection of reputed marks, often with reference to due cause, detriment to reputation, dilution or unfair advantage. Brazil, China, Chinese Taipei (Independent Members), Colombia, Ecuador, Egypt, India, Indonesia, Japan, South Korea, Thailand and Turkey emphasised the increased risk where the parodied mark is well-known or famous. Colombia stated that well-known trade marks receive strengthened protection under Andean rules, without a statutory fair-use exemption or express due-cause test. Romania answered NO, while noting that due cause may be raised in relation to infringement of a reputed mark depending on the circumstances. Several Groups that answered NO, including Australia, Canada, Chile, Israel, Latvia, Mexico, Poland, Singapore, Spain, Switzerland, UAE and United States, either reported no dedicated parody-specific rule or addressed the issue under ordinary trade mark, dilution, reputation or goodwill principles rather than a distinct conflict rule.

7) Registration of a trade mark parody

Question 7 asked whether national law or case law allows a trade mark parody to be registered as a trade mark.

24 out of 42 Groups (60%) answered YES. 18 out of 42 Groups (40%) answered NO.

The Reports reveal a close division. Groups answering YES generally did not propose a special positive right to register parody marks; rather, they stated that the ordinary registrability framework applies. Australia, Austria, Belgium, Canada, Colombia, Croatia, Denmark, Finland, France, Hungary, Japan, Netherlands, Portugal, Romania, Singapore, Switzerland, Thailand, Turkey, United States and others explained that registration may be possible where the sign is distinctive, not

confusing, not misleading, not contrary to public policy or morality, and not in conflict with earlier rights. Groups answering NO, including Argentina, Chile, China, Ecuador, Egypt, Germany, India, Indonesia, Italy, Latvia, Mexico, Paraguay, Poland, Russian Federation, Spain, Sweden, UAE and United Kingdom, tended to stress that a parody mark often depends on proximity to the original mark and is therefore likely to conflict with prior rights, create association, exploit reputation or fail the requirements of trade mark registration.

II. Policy considerations and proposals for improvements of current law

Questions 8 to 10 concerned the adequacy of current law, the policy objectives of a parody defence and other policy considerations. In contrast to Part I, where many Groups reported the absence of a formal defence, Part II shows a strong appetite among many Groups for greater clarity, although not always for statutory codification.

8) Improvement of current law or practice

Question 8 asked whether the Group's current law or practice relating to parody defences to trade mark infringement could be improved.

28 out of 42 Groups (65%) answered YES. 14 out of 42 Groups (35%) answered NO.

Groups answering YES commonly identified legal uncertainty. China stated that current law deals with parody through ordinary confusion and dilution analysis without rules tailored to expressive use, which may produce inconsistent outcomes. Chinese Taipei reported that the absence of specific provisions leaves definitions and criteria to case-by-case examination, with unclear boundaries. Colombia and Ecuador identified structural gaps, including absence of an explicit parody defence and insufficient integration of constitutional balancing. Egypt called for clearer

statutory guidance and a balancing approach for digital, artistic and non-commercial contexts. Turkey, Thailand, Paraguay, Poland and Russia similarly supported clearer criteria or guidance. Germany and France did not necessarily call for a broad statutory parody exception, but emphasised the need to clarify how requirements associated with trade mark law - such as use as a trade mark, use in the course of trade, due cause and freedom of expression - should operate in parody cases.

Groups answering NO generally considered existing principles adequate. Australia stated that the ordinary requirements of use as a badge of origin and deceptive similarity are sufficient. Argentina considered that its case law, albeit limited, had fairly balanced trade mark rights and freedom of expression. Hungary considered existing legislation and general trade mark-function analysis sufficient. Romania considered that parody can be analysed as an exercise of the fundamental right to freedom of expression, balanced against trade mark rights. Sweden considered that the limits of use in the course of trade and use in relation to goods or services effectively exclude many expressive uses from trade mark infringement. The United States considered that its existing statutory and case-law framework works well. The Netherlands considered the open norm of due cause in Benelux law sufficiently flexible.

9) Policy objectives promoted by a parody defence

Question 9 asked what policy objective a parody defence would promote and whether that policy objective should drive the types of expression allowed under such a defence.

33 out of 42 Groups (80%) answered YES. 5 out of 42 Groups (10%) answered NO.

The dominant policy objective identified by Groups was freedom of expression, often together with artistic freedom, criticism, democratic debate, cultural creativity and consumer or public-interest discourse. Argentina referred to freedom of speech and expression in artistic works and political or social messages, while stressing the need to balance those rights against trade mark rights. Brazil identified freedom of expression, artistic creation and criticism, subject to limits where use is commercial, confusing or exploits reputation. China referred to diversity of expression, public interest, consumer welfare and cultural creativity. Ecuador emphasised freedom of expression, democratic values and cultural development. India described parody as a tool not only of humour but also of criticism, commentary and creativity. The United States emphasised free speech and a free press, especially where the parody is not used as a trade mark for commercial goods or services. Colombia did not provide an express YES/NO answer, but identified clarity and uniformity as the objective of recognising parody in trade mark law. Romania likewise did not provide an express YES/NO selection, but stated that parody may be invoked under freedom of expression without limitation to particular categories of expression.

The Groups answering NO did not necessarily reject freedom of expression as an objective. Australia stated that a specific parody defence is not required, although if introduced it would promote free speech; consumer confusion should not be permitted. Japan considered that policy objectives such as free speech can be achieved under conventional criteria such as likelihood of confusion and use as a trade mark. France and the United Kingdom were cautious about a freestanding defence, focusing instead on existing trade mark conditions and balancing within the infringement framework. Indonesia considered that freedom of expression has

limited practical application in trade mark disputes and that commercial uses remain high risk.

10) Other policy considerations and proposals for improvement

Question 10 asked whether there are any other policy considerations or proposals for improvement to current law within the scope of the Study Question.

17 out of 42 Groups (40%) answered YES. 24 out of 42 Groups (60%) answered NO.

The Groups answering YES raised recurring themes. China and Ecuador emphasised the digital environment, including short videos, memes, social media, user-generated content and AI-generated content, and the difficulty of distinguishing expressive use from commercial exploitation. Paraguay and Russia highlighted the interaction between trade mark law and unfair competition law. Croatia and Chinese Taipei emphasised the need to distinguish between use as a trade mark and use that conveys an expressive message. Brazil and Canada referred to the need to balance parody with confusion, dilution, goodwill and commercial context. Poland, Egypt, Israel and Turkey identified the need for guidance or clarification rather than leaving courts and offices without structured criteria. Colombia answered NO in the formal YES/NO sense, but its comments nevertheless identified legal uncertainty caused by the absence of a trade mark parody exception, the asymmetry with copyright parody, incidental appearance of trade marks in audiovisual works, and unfair competition issues. Romania answered NO and did not provide further proposals. Among Groups answering NO, several considered that their existing trade mark law framework is sufficient or that no additional policy considerations were identified; examples include Australia, Finland, France, Hungary, Italy, Netherlands, Portugal, Sweden, Switzerland, United Kingdom and United States.

III. Proposals for harmonisation

Questions 11 to 21 concerned possible harmonisation. The Reports show broad support for harmonisation in principle, but no complete consensus on the form it should take. The strongest convergence concerned the relevance of trade mark function, absence of confusion, unfair advantage or detriment, and honest practices. The most divided issue concerned whether well-known, reputed or famous marks should receive additional protection against parody.

11) Need for harmonisation

Question 11 asked whether there should be harmonisation in relation to exceptions and defences to trade mark infringement based on parody.

34 out of 42 Groups (80%) answered YES. 8 out of 42 Groups (20%) answered NO.

The Groups supporting harmonisation cited legal certainty, predictability, consistent balancing of freedom of expression and trade mark rights, and the cross-border nature of digital parodies. Colombia supported harmonisation, referring to the need to harmonise legislation and fundamental freedoms. Groups answering NO - Argentina, Chinese Taipei (Independent Members), Latvia, Portugal, Romania, South Korea, Switzerland and United Kingdom - generally preferred existing national or ordinary trade mark frameworks, or expressed caution about creating a specific harmonised parody exception. Romania considered that the parody defence should be assessed in view of all relevant circumstances of each case, including bona fide use and whether trade mark functions are jeopardised. Although answering NO, Switzerland conceded that general guidelines regarding

interests and considerations associated with parodies could be helpful, while Latvia mentioned that harmonization could provide greater certainty.

12) Different standards depending on the nature of the parody

Question 12 asked whether different standards should apply depending on the nature of the parody, such as commercial use, artistic expression, brand criticism or political parody.

34 out of 42 Groups (80%) answered YES. 7 out of 42 Groups (15%) answered NO.

The majority favoured a differentiated assessment. These Groups generally considered that non-commercial artistic, political or critical uses should not be treated in the same way as commercial parody used to market goods or services. Brazil, China, Colombia, Croatia, Denmark, Finland, Germany, India, Italy, Poland, Russia, Sweden, Turkey and the United States all identified the commercial/non-commercial divide, the presence of criticism or commentary, and the role of the trade mark as a source indicator as important. Colombia stated that non-commercial or cultural parodies should preferably be allowed, while parodies whose main purpose is economic profit should be restricted. Groups answering NO - Australia, France, Japan, Mexico, Netherlands, Singapore and United Kingdom - were not necessarily opposed to considering context, but tended to stress that the same underlying trade mark principles should apply and that parody should not create an entirely separate infringement standard. Romania did not provide an express answer to this question.

13) Exceptions or limitations for parody or freedom of expression

Question 13 asked whether there should be exceptions or limitations to trade mark protection for the purpose of parody or freedom of expression.

33 out of 42 Groups (80%) answered YES. 7 out of 42 Groups (15%) answered NO.

Groups answering YES generally supported some form of limitation, but often with safeguards against confusion, unfair advantage, dilution, tarnishment and commercial free-riding. Belgium, Finland, France, Germany, Netherlands and other European Groups tended to frame the limitation through due cause, honest practices, freedom of expression and trade mark function rather than an unlimited parody exception. Brazil, China, Colombia, India, Paraguay, Russia, Thailand, Turkey and United States supported protection for genuine expressive uses, subject to the trade mark holder's legitimate interests. Colombia expressly supported strict exceptions within the bounds of freedom of expression, provided that the use is in good faith, non-commercial, not contrary to honest commercial practices, does not create unjustified confusion and does not unnecessarily damage the trade mark's reputation. Groups answering NO - Australia, Canada, Israel, Japan, South Korea, Spain and United Kingdom - generally considered that ordinary trade mark law, fair use, confusion analysis or existing limitations are sufficient, or that a special parody exception could create uncertainty or permit consumer confusion. Philippines and Romania did not provide express answers.

14) Aspects affecting whether a parody defence should be available

Question 14 asked which aspects should impact whether a parody defence for trade mark infringement should be available. The answers received are divided up as follows:

(a) The parody constitutes an expression of humour or mockery: 29 out of 42 Groups (70%).

(b) The parody has a critical intent: 29 out of 42 Groups (70%).

(c) The parody is noticeably different from the original trade mark: 33 out of 42 Groups (80%).

(d) The parody is not directed at the original mark: 30 out of 42 Groups (70%).

(e) The parody is non-commercial and purely artistic: 32 out of 42 Groups (75%).

(f) The parody is non-commercial and used to draw attention to a political or social message: 31 out of 42 Groups (75%).

(g) The parody is directed at the original mark and used to criticise, disparage or discredit it or otherwise affect its reputation: 28 out of 42 Groups (66.7%).

(h) The parody is used in the course of trade for competing, similar and/or related goods or services: 32 out of 42 Groups (75%).

(i) The parody is used in the course of trade for non-competing and unrelated goods or services: 30 out of 42 Groups (70%).

(j) The parody involves monetisation: 31 out of 42 Groups (75%).

(k) The trade mark being parodied is well-known or famous: 29 out of 42 Groups (70%).

(l) Other: 17 out of 42 Groups (40%).

The pattern of answers broadly mirrors Question 3, but in the harmonisation context. The most frequently supported factors included noticeable difference from the original mark, non-commercial artistic use, use in the course of trade, monetisation, and absence or presence of reputational harm. Groups supporting these factors generally treated them as part of a structured balancing test rather than as rigid rules. Colombia considered humour, critical intent, differentiation, non-commercial artistic or political use, commercial use, monetisation and well-

known mark status relevant, with good faith and freedom of expression as central considerations. Germany, India, Denmark, Sweden and Turkey emphasised that commercial use should be scrutinised more strictly, while non-commercial criticism or political expression should receive more room. United States focused on whether the use is source-identifying and whether confusion or dilution concerns arise. Romania did not provide an express answer in Part III.

When commenting on other possible factors, the United States and the Netherlands mentioned that these should not be viewed as a closed-ended list of factors, as other circumstances may impact overall assessment of the case. Ecuador and China also added the transformative character of the parody, and Japan cited use in objective comparative advertisement. Furthermore, China explicitly mentioned good faith, while the Netherlands added that use liable to have an adverse effect on the functions of the trade mark (e.g. turning it into a generic term) should be relevant as well.

15) Function of the trade mark in harmonised rules

Question 15 asked whether the function in which the trade mark is used should have an impact on liability in a harmonised approach.

39 out of 42 Groups (90%) answered YES. 2 out of 42 Groups (5%) answered NO.

This question produced one of the clearest areas of convergence. Groups generally considered that liability should depend on whether the sign is used as an indication of origin, as opposed to purely expressive, referential, artistic, political or critical use. Colombia stated that if the use is as a trade mark, it directly impacts liability. Australia, Canada, China, Croatia, Denmark, Finland, Germany, India, Netherlands, Poland, Portugal, Sweden, Switzerland, Turkey, United Kingdom and United States

similarly emphasised source indication, trade mark function or impairment of trade mark functions. Argentina and Japan were the only Groups recorded as answering NO. Argentina underscored that the controlling factor should be whether the parody causes damage to the function of the original mark, creates confusion or takes unfair advantage of its distinctive character or reputation.

16) Conditions for availability of a parody defence

Question 16 asked whether the availability of a parody defence should be subject to demonstration of specified conditions. The answers received are divided up as follows:

(a) Absence of likelihood of confusion or association as to source, affiliation or sponsorship: 32 out of 42 Groups (75%).

(b) The parody does not take unfair advantage of, or cause undue detriment to, the reputation or distinctiveness of the mark: 34 out of 42 Groups (80%).

(c) Use of the parody is consistent with honest commercial practices: 32 out of 42 Groups (75%).

The replies reveal strong convergence around limiting conditions. Most Groups supported absence of confusion or association, absence of unfair advantage or undue detriment, and consistency with honest commercial practices. Colombia expressly supported all three conditions, linking them to good faith and honest commercial practices. Brazil, China, Denmark, Finland, Germany, India, Netherlands, Poland, Portugal, Russia, Sweden, Switzerland, Turkey and United States similarly identified these safeguards as central. Groups that did not give an express selection, such as Australia, Austria, Canada, Egypt, Philippines, Romania and

United Kingdom, often nevertheless discussed similar concepts elsewhere in their Reports under ordinary trade mark principles.

17) Additional protection for well-known, reputed or famous marks

Question 17 asked whether well-known, reputed or famous trade marks should benefit from additional protection against trade mark parody.

22 out of 42 Groups (50%) answered YES. 19 out of 42 Groups (45%) answered NO.

This question revealed a divided position. Groups answering YES emphasised dilution, tarnishment, unfair advantage and the special vulnerability or value of famous marks. Colombia answered YES in substance, noting that enhanced protection for well-known trade marks already exists under Andean rules and should be clearer for easier enforcement. Argentina, Brazil, Ecuador, Egypt, Germany, Indonesia, Japan, Mexico, Paraguay, Russia, South Korea, Thailand, Turkey and UAE were also concerned with reputational harm or exploitation. Groups answering NO did not necessarily deny protection for reputed marks; rather, many considered that existing reputation-based infringement rules, due cause, fair use or proportionality already provide the relevant protection. Belgium, China, Denmark, Finland, France, India, Netherlands, Poland, Portugal, Spain, Sweden, Switzerland and United States were among those that did not support a separate additional layer in the harmonised parody context.

18) Best approach for balancing parody and famous marks

Question 18 asked which approach best balances parody and freedom of expression with protection of well-known, reputed or famous trade marks.

7 out of 42 Groups (15%) answered "statutory fair-use exemption". 25 out of 42 Groups (60%) answered "due cause" balancing test. 1 Group supported a "stricter protection of trade mark reputation".

The "due cause" balancing test was the most supported option. Groups selecting that approach generally considered it flexible enough to accommodate both trade mark protection and freedom of expression on a case-by-case basis. Belgium, Brazil, China, Chinese Taipei (Independent Members), Croatia, Ecuador, France, Hungary, India, Indonesia, Israel, Italy, Japan, Netherlands, Paraguay, Portugal, Russia, South Korea, Spain, Sweden, Switzerland and UAE were among those favouring due cause. Colombia selected a statutory fair-use exemption, provided that the legal conditions are clear and the use does not cause unjust economic or commercial harm, dilution or unfair advantage. Denmark, Latvia, Poland, Thailand, Turkey and United States also selected a statutory fair-use model. Austria selected stricter protection of trade mark reputation. Canada, Egypt, Finland, Germany, Mexico, Philippines, Romania, Singapore and United Kingdom did not provide an express selection.

19) Registration of signs parodying third-party trade marks

Question 19 asked whether a sign parodying a third party's trade mark should be allowed to be registered as a trade mark.

17 out of 42 Groups (40%) answered YES. 21 out of 42 Groups (50%) answered NO.

Groups answering YES generally favoured applying ordinary registration criteria rather than creating an absolute bar. Australia stated that the Trade Marks Office should assess each application case by case under ordinary principles. Austria supported no ex officio refusal but allowing the earlier trade mark holder to

challenge the application through opposition or cancellation on the basis of likelihood of confusion, famous marks protection or bad faith. Croatia supported registration in principle where the parody sign has distinctive character, does not merely reproduce the earlier mark and does not create confusion or unfair advantage. France supported registration provided that prior rights are respected. Turkey supported registration only in limited and clearly defined circumstances.

Groups answering NO generally considered that registration is different from expressive use. India stated that parody is ordinarily justified as expression and critique, whereas trade mark registration confers exclusive commercial rights and designates source. Colombia similarly considered that registration implies use in commerce, which should not be the purpose of parody. China considered that parody should not be an independent basis supporting registration and that ordinary standards of similarity, prior rights, distinctiveness, absolute grounds and good faith should apply. Japan considered that registration should not be granted except in limited circumstances where there is no likelihood of confusion and no dilution or tarnishment of a famous mark. Portugal stated that no special prohibition is needed, but registration will typically be refused because a parodic sign must usually be close enough to the earlier mark for the public to recognise the reference. Sweden considered that a sign conflicting with an earlier reputed mark should not be registrable. Hungary, Israel, Romania and Singapore did not provide an express answer.

20) Additional issues concerning exceptions and limitations

Groups answering this question identified several additional issues. Paraguay and Russia emphasised that trade mark parody should also be analysed through unfair competition law, especially where use does not fit neatly within a classic likelihood

of confusion scenario but may involve tarnishment, misleading comparison, free-riding or unfair exploitation. China and Ecuador highlighted the digital environment, including social media, memes, short videos, user-generated content and AI-generated content, where the boundary between expression and commercial exploitation may be unclear. Colombia identified the intersection of trade mark law and copyright law, incidental appearance of trade marks in audiovisual works, unfair competition issues and constitutional proportionality. South Korea noted that parody has traditionally been discussed in copyright and that trade mark parody should be examined separately, with attention to the different functions of trade mark law. Japan mentioned trade mark parody in comparative advertising. Thailand referred to dilution, moral rights and defamation issues. Australia reiterated that a specific parody defence is not required because ordinary trade mark principles should suffice.

21) Industry-sector views from in-house counsel

Question 21 invited industry-sector views from in-house counsel. The industry-sector information received was mixed. Paraguay reported input from consumer goods, beverages, fashion and entertainment. China incorporated views from in-house counsel of global food and beverage enterprises, emphasising concerns about well-known mark protection and reputational harm. Colombia listed alcohol producers, media, luxury brands, pharmaceuticals, food and drinks manufacturers. India stated that the responses reflected experience across pharmaceuticals and healthcare, fashion and apparel, food and beverages, technology, media, entertainment and digital platforms. Japan listed fashion, pharmaceutical, electricity, printer, information and communication, and food/confectionery sectors. Thailand referred to garment and food industries. Sweden referred to the

fashion industry. Ecuador referred to media. Several Groups, including Australia, France, Germany, Hungary, Latvia, Portugal, Switzerland, Turkey and United States, reported no specific in-house input or indicated that no in-house counsel was included.

IV. Conclusions / Guidance for the Study Committee

The Reports suggest that parody and freedom of expression in national and regional trade mark law remain highly fragmented. However, a strong majority of Groups support harmonisation (over 80%), at least to a certain extent. Groups appear to support harmonisation aimed at a structured and limited framework for assessing possible defences based on parody and freedom of expression in trade mark disputes, rather than a broad and unconditional parody exception.

The majority of Groups (around 80%) also indicated that there should be exceptions or limitations to trade mark protection for the purpose of parody or freedom of expression. However, Groups seem to support the view that such exceptions should not be automatic and should not exclude the application of ordinary principles governing the assessment of trade mark infringement.

Groups almost unanimously (above 90%) appear to consider that the function in which the trade mark is used should be a central element of the assessment. In particular, it should be relevant whether the sign is used as a trade mark, as an indication of commercial origin, or instead as expressive, referential, artistic, critical, political, humorous or satirical speech.

Furthermore, Groups consider that the following factors should play a significant role in assessing whether a parody should qualify for a valid defence against trade mark infringement claims, although such factors should not be exhaustive:

(a) The parody is noticeably different from the original trade mark or has a transformative aspect (80%);

(b) The parody is non-commercial and purely artistic (75%).

(c) The parody is non-commercial and used to draw attention to a political or social message (75%).

(d) The parody is not directed at the original mark (70%).

(e) The parody constitutes an expression of mockery (70%).

(f) The parody has a critical intent (70%).

On the other hand, Groups have also indicated the need to take other factors carefully into account when assessing a defence based on parody or freedom of expression, in particular whether:

i. The parody is used in the course of trade for competing, similar, and/or related goods or services (75%)

ii. The parody involves monetization (75%)

iii. The parody targets a well-known or famous mark (70%).

iv. The parody is directed at the original mark and used to criticise, disparage or discredit it or otherwise affect its reputation (65%)

In addition, a significant majority of the Groups (80%) have consistently supported the view that, in any case, the parody should not take unfair advantage of, or cause undue detriment to, the reputation or distinctiveness of the mark.

Moreover, 75% of Groups agreed that a valid defence based on parody or freedom of expression would depend on the absence of likelihood of confusion or

association as to source, affiliation or sponsorship, as well as on the use of the parody being consistent with honest commercial practices.

With regard to famous trade marks, while Groups have not been able to reach a clear majority on whether or not additional protection should be afforded to well-known, reputed or famous trade marks, Groups seem to indicate that an assessment on the dispute should also preserve such marks against dilution, tarnishment and unfair advantage, while balancing rights associated with freedom of expression and fair use.

On the topic of eligibility for registration, Groups seem to indicate that the admissibility of a parody in use should not necessarily entitle that sign to registration, except in limited circumstances. Ordinary examination requirements should apply, and registration should be refused in cases of likelihood of confusion, association or dilution.