

2021 AIPPI World Congress – Online
Adopted Resolution
October 22, 2021



Resolution

2021 – Study Question – Trade Marks

Registrability of trade marks against public order or morality

Background:

- 1) This Resolution concerns the registrability of trade marks contrary to public order or morality, and explores the implementation and application of these grounds for refusal and invalidity.
- 2) The judgment or evaluation of what cultural, political, religious and moral values as such entail, are out of the scope of this Resolution, as is the question whether a trade mark is deceptive or misleading.
- 3) 40 Reports were received from AIPPI's National and Regional Groups and Independent Members providing detailed information and analysis regarding national and regional laws relating to this Resolution. These Reports were reviewed by the Reporter General Team of AIPPI and distilled into a Summary Report (see links below).
- 4) At the online AIPPI World Congress in October 2021, the subject matter of this Resolution was further discussed within a dedicated Study Committee, and again in a full Plenary Session, following which the present Resolution was adopted by the Executive Committee of AIPPI.

AIPPI resolves that:

Registrability of Trade Marks against Public Order or Morality

- 1) Trade marks contrary to public order should be subject to refusal or invalidation.
- 2) Trade marks contrary to morality should be subject to refusal or invalidation.

- 3) The grounds of refusal or invalidation apply to the trade mark *per se*, and are not an assessment of whether the goods and services themselves, or the applicant's behavior, are contrary to public order or morality.
- 4) In order for a trade mark to be considered contrary to public order or morality, the same should be judged from the perspective of a reasonable person with average thresholds of sensitivity and tolerance taking into account the context in which the trade mark could be encountered.
- 5) In order to determine if a trade mark is contrary to public order or morality, the factors that could be considered include the following:
 - a. the meaning of the words or other elements contained in the trade mark;
 - b. the background or origin of the words or other elements contained in the trade mark;
 - c. the designated goods and/or services;
 - d. fundamental rights (e.g. freedom of speech / expression).
- 6) The public order or morality grounds may be invoked in the following types of proceedings:
 - a. examination of the trade mark application;
 - b. opposition proceedings or similar proceedings;
 - c. invalidation / cancellation proceedings before the trade mark office; and
 - d. invalidation / cancellation proceedings before a court.
- 7) The relevant date for applying the public order or morality grounds should be either:
 - a. the date of the application of the trade mark; or
 - b. the date of examination or assessment by the trade mark office or the court.
- 8) Since views regarding public order and morality can be dynamic and change over time, only after a change in circumstances, it should be permitted to:
 - a. refile a trade mark that has been refused or declared invalid for being contrary to these grounds; and
 - b. file a new action against a trade mark that previously survived a challenge on these grounds.
- 9) The grounds regarding public order and morality should be assessed by reference to the views of the people in all parts of the territory. Trade marks which are contrary to public order or to accepted principles of morality of a substantial group of people or a substantial geographic area within the entire territory should be refused or declared invalid.

Links:

- [Study Guidelines](#)
- [Summary Report](#)
- [Group Reports](#)