

LIDC Congress 2009, Vienna

Adopted resolution for Question B: *“What are the criteria that determine the unfairness of so-called “look-alikes”; what are the prohibitions and the appropriate sanctions?”*

There is a common understanding about the basic principle of free trade, including a certain freedom of imitation, unless the product concerned is protected by exclusive intellectual property rights.

A balance must be secured between the protection of the interests of traders and the protection of the public interest, in particular as regards further development and advancement in competition.

To achieve this balance on an international basis, the establishment of common criteria of unfairness is desirable, criteria which do not disregard the individual case. The principal criteria should be the extent of the original's distinctiveness, the degree of similarity between the products, likelihood of confusion and exploitation of reputation. Additional factors could include cost savings, poorer quality and lower price of the “look-alike”.

The protection against unfair imitation should not extend to similarity arising from the use of functional elements.

Fast and efficient legal measures in accordance with Articles 10^{bis} and 10^{ter} of the Paris Convention should be made available to affected traders and their associations. Particular remedies that should be available are injunctions, including interim injunctions, and damages. Other remedies should include withdrawal from market, rendering of accounts and publication of decisions.

Finally, to assist with oversight, an international database could be created. A collection of national decisions and guidelines concerning “look-alikes” could give an overview of country-specific peculiarities by means of a selective search request. Also a keyword search (e.g. “minor quality”) could facilitate centralized international proceedings against product imitations. The LIDC could be the appropriate host for such a database.