



2018 AIPPI World Congress - Cancún
Adopted Resolution
September 26, 2018

Resolution

2018 – Study Question

Registrability of 3D trademarks

Background:

- 1) This Resolution concerns the registrability of three-dimensional (**3D**) trademarks and certain refusal / invalidity grounds that have specific relevance for 3D trademarks.
- 2) This Resolution establishes whether, and if so under what substantive conditions, registered trademark protection for signs consisting of 3D shapes comprising solely the three-dimensional shape of goods or packaging without any addition (**3D Shapes**) should be available.
- 3) AIPPI's previous work in this area does not address some of the issues that have become increasingly important since that earlier work. For example, the legal tests that have evolved in certain jurisdictions have made it extremely difficult to register 3D Shapes as trademarks in those jurisdictions.
- 4) This Resolution specifically addresses protection of 3D Shapes as registered trademarks (**3D Trademarks**). It also addresses which grounds for refusal specific to 3D Shapes should apply, and which invalidity grounds specific to 3D Trademarks should be available to third parties. Unregistered trademarks are outside the scope of this Resolution. This Resolution also does not address protection that may be afforded by other intellectual property or other rights, nor does it address the scope of protection of 3D Shapes once registered as a trademark.

- 5) 48 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).
- 6) At the AIPPI World Congress in Cancun in September 2018, 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:

- 1) 3D Shapes should be eligible for registration as trademarks.
- 2) It should be possible for 3D Shapes to be registered as trademarks on the basis of inherent distinctiveness.
- 3) It should also be possible for 3D Shapes to be registered as trademarks on the basis of acquired distinctiveness.
- 4) 3D Shapes should be refused registration as trademarks, and 3D Trademarks should be declared invalid, if they consist exclusively of shapes that result from the nature of the goods stated in the application or registration.
- 5) It should not be possible to overcome, on the basis of acquired distinctiveness, a refusal or finding of invalidity based on the ground that the 3D Shapes or 3D Trademarks consist exclusively of shapes that result from the nature of the goods stated in the application or registration.
- 6) 3D Shapes should be refused registration as trademarks, and 3D Trademarks should be declared invalid, if they consist exclusively of shapes that are necessary to obtain a technical result.
- 7) It should not be possible to overcome, on the basis of acquired distinctiveness, a refusal or finding of invalidity based on the ground that the 3D Shapes or 3D Trademarks consist exclusively of shapes that are necessary to obtain a technical result.
- 8) 3D Shapes should not be refused registration as trademarks, and 3D Trademarks should not be declared invalid, on the ground that they consist exclusively of shapes that give substantial value to the goods.

- 9) In the event that the law provides that 3D Shapes should be refused registration as trademarks, and 3D Trademarks should be declared invalid, on the ground that they consist exclusively of shapes that give substantial value to the goods it should be possible to overcome, on the basis of acquired distinctiveness, a refusal or finding of invalidity based on that ground.
- 10) Each ground for refusal or invalidity resolved above should be applied independently. A 3D Shape should be refused registration as a trademark, and a 3D Trademark should be declared invalid, only if at least one of the refusal or invalidity grounds applies to the entirety of the 3D Shape or 3D Trademark.
- 11) There should not be any other grounds for refusal or invalidity specific to 3D Shapes or 3D Trademarks.

Links:

- [Study Guidelines](#)
- [Summary Report](#)
- [Reports of National and Regional Groups and Independent Members](#)