

2019 AIPPI World Congress - London
Final Draft Resolution
September 18, 2019

Resolution

2019 – Study Question

Consumer Survey Evidence

Background:

- 1) This Resolution concerns consumer survey evidence only in the context of trademark proceedings.
- 2) This Resolution seeks to establish whether consumer survey evidence should in principle be admissible in trademark proceedings, and if so, in what types of proceedings. It furthermore explores what subject matter the consumer survey evidence should encompass and whether there should be specific requirements or guidelines. It also addresses whether courts or administrative authorities (i.e. triers of fact) should be involved in the survey's set-up and what weight or value should be attributed to consumer survey evidence.
- 3) 41 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 AIPPI World Congress in London in September 2019, 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) Consumer survey evidence should be admissible but not mandatory in trademark proceedings.

- 2) Consumer survey evidence should be admissible in any type of trademark proceedings, including administrative and court proceedings.
- 3) Consumer survey evidence should be admissible to prove or help prove any facts or circumstances relevant in trademark proceedings, in particular reputation, distinctiveness and confusion.
- 4) There should be non-binding guidelines for the set-up of consumer surveys which should address items such as aim of the survey, methodology, number and selection of respondents and form and order of the questions.
- 5) There should be no predetermined percentage of responses required to have a fact or circumstance deemed as sufficiently proved by a consumer survey.
- 6) Courts or administrative authorities (i.e., the triers of fact) should not be involved in the set-up of a consumer survey.
- 7) The weight or value of consumer survey evidence should be assessed on a case by case basis and taking into consideration, at least, the following factors:
 - a. relevance of the survey to the issues to be decided,
 - b. reliability of the consumer survey, in particular the neutrality, representativeness and formulation of the questions;
 - c. all other evidence submitted by the parties;
 - d. all relevant circumstances of the case.

Links:

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