Q298-RES-TM-2026

2026 AIPPI World Congress – Hamburg
Adopted Resolution
10 October 2026

Resolution

2026 – Study Question - TM

Parody as a defence to trade mark infringement

Background:

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

2) This Resolution intentionally does not define parody and may apply to related genres, such as satire, caricature and pastiche.

3) For purposes of this Resolution, the term "trade mark infringement" means any claims associated with the violation of a right based on a registered or unregistered trade mark, including trade mark dilution.

4) 45 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 (which can be found at www.aippi.org).

5) At the AIPPI World Congress in Hamburg in 2026, 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) Under the conditions set out in this Resolution, in claims for trade mark infringement, there should be a defence based on parody and freedom of expression, jointly referred to as the "parody defence".

2) The parody defence should be available if the parodic expression includes, but is not limited to, an element or elements of humor, art, criticism, mockery, debate, cultural creativity, social commentary, consumer or public interest discourse.

3) The parody defence should balance the rights and the legitimate interests of trade mark owners with the promotion and the protection of artistic freedom and freedom of expression.

4) The parody defence should be applied in a structured, limited, framework, rather than as a broad and unconditional parody exception to all trade mark claims.

5) The parody defence may be enacted by statute, or by judicial decision, also taking into account constitutional rights.

6) In claims for trade mark infringement, the parody defence should be available in relation to all types of trade marks, including well-known trade marks.

7) The parody defence should apply if the parodic expression is not used commercially, or in the course of trade, and is not used as a trade mark or an indication of origin save for the provision of paragraph 10.

8) Notwithstanding paragraph 7 above, the parody defence should not be precluded per se by commercial exploitation of a parodic expression, such as artists selling their parodic artistic creations for money, or parodic expression being published or broadcast in commercial media, save for the provision of paragraph 10.

9)Whether or not use of a parodic expression constitutes an infringement of a trade mark right must be assessed taking all relevant aspects of the situation into consideration, including but not limited to:

a) The parodic expression constitutes an expression of humour, criticism or mockery;

b) The parodic expression is noticeably different from the original trade mark or has a transformative aspect;
c) The parodic expression is used to sell goods or services that are non-competing and unrelated to those of the original trade mark;
d) The parodic expression is non-commercial and purely artistic;
e) The parodic expression is non-commercial and used to draw attention to a social message or otherwise to engage in consumer or public-interest discourse.

10) The use of a parodic expression should not be permitted to cause likelihood of confusion with the original trade mark or its owner, or take unfair advantage of, or be detrimental to the distinctive character or repute of the original trade mark.

11) Parody should be assessed objectively, and the intent of the creator shall not be decisive in determining whether the parody defence should apply to a claim of trade mark infringement.

12) There should be no special rule permitting or prohibiting the registration of parodic expressions as trade marks. Such applications for registration should be governed by the normal registration rules and procedures applicable to all marks, including but not limited to rules governing conflicts with prior marks.