

2019 AIPPI World Congress - London

1st Draft Resolution

September 15, 2019

**Resolution**

**2019 – Study Question**

**Consumer Survey Evidence**

**Background:**

1) This Resolution concerns consumer survey evidence 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 a court or IP office should be involved in the survey’s set-up and what weight or value should be attributed to consumer survey evidence.

3) This Resolution addresses consumer survey evidence only in relation to trademarks.

4)38 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).

5) 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 in trademark proceedings.
2. Consumer survey evidence should be admissible in any type of trademark proceedings, including administrative and Court proceedings and inter partes and ex parte proceedings.
3. Consumer survey evidence should be admissible to prove or help prove any facts or circumstances relevant in trademark proceedings, in particular recognition, reputation, distinctiveness and confusion.
4. The party producing consumer survey evidence should be required to provide full disclosure of the methodology used, including the formulation and selection of the opinion poll, the questions and the order in which they were presented, the conditions under which the survey was carried out, and the person or organization that conducted it.
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:
   1. relevance of the consumer survey to the issues to be decided,
   2. reliability of the consumer survey, in particular the neutrality, representativeness and formulation of the questions;
   3. all other evidence submitted by the parties;
   4. all other relevant circumstances of the case.

**Links:**

* [Study Guidelines](https://aippi.org/wp-content/uploads/2019/07/Study-Guidelines_Trademarks_Consumer-survey-evidence_22January20192.pdf)
* [Summary Report](https://aippi.org/wp-content/uploads/2019/07/SummaryReport_TRADEMARKS_London2019_final_160719.pdf)
* [Group](https://aippi.org/library/?submit=Search&publication_categories%5B0%5D=7) Reports page