

2025 AIPPI World Congress – Yokohama
Adopted Resolution
16 September 2025

Resolution

2025 – Study Question – TM

Exhaustion of trade mark rights

Background:

- 1) This Resolution concerns several key aspects related to the exhaustion of trade mark rights understood in some jurisdictions as “putting goods on the relevant market” and in other jurisdictions as the *“first sale doctrine”*. The exhaustion of trade mark rights under both foregoing concepts will be jointly referred to as “exhaustion of trade mark rights” in this Resolution.
- 2) According to the exhaustion of trade mark rights, a trade mark shall in principle not entitle the trade mark holder to prohibit its use in relation to goods which have been put on the relevant market, including first sale, under that trade mark by the trade mark holder or with their consent.
- 3) This Resolution does not address specific issues related to the parallel import of regulated products, issues related to unregistered marks and trade mark exhaustion in the Metaverse, freedom of expression, which are outside the scope of the Resolution.
- 4) 43 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 Yokohama in 2025, 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) There should be harmonisation in relation to issues regarding exhaustion of trade mark rights, as set out in this Resolution.
- 2) The legal regulation and legal practice on exhaustion of trade mark rights shall ensure a balance between the legitimate interests of trade mark holders and the principles of market integration and consumer protection.
- 3) The transfer of ownership of the goods shall cause exhaustion of trade mark rights in the relevant territory in the event that goods are put into the market, including first sale, in that territory with the consent of the trade mark holder. Thus, exhaustion of trade mark rights shall be caused by any transaction that results in the transfer of ownership of the goods concerned.
- 4) Exhaustion shall occur where the trade mark holder authorized the putting of the goods on the market, including first sale, subject to the following:
 - a. the goods must be put into the market in the territory concerned either by the trade mark holder or with their consent, whether expressed or implied;
 - b. while consent may be implied, it cannot be presumed e.g. silence shall not be regarded as sufficient to establish consent;
 - c. the consent may also be expressed *a posteriori*, i.e. after the goods have been put on the market in the territory concerned.
- 5) Contractual agreements or practises seeking to exclude or limit trade mark exhaustion should not override the principle of exhaustion.
- 6) The following reasons shall each be deemed a legitimate reason for prohibiting the use of a trade mark in relation to goods that would otherwise be subject to exhaustion of trade mark rights:
 - a) alteration or impairment of goods;
 - b) harm to brand reputation;
 - c) risk of consumer confusion;

- d) deceptive marketing practises;
- e) repackaging without notice;
- f) defects in goods.

In case of any of the reasons listed above, and provided that a trade mark function is being impaired, a trade mark holder may in particular have the right to oppose the refurbishment, disassembly, refilling, debranding, rebranding, cobranding and subsequent resale of trade marked goods that would otherwise be subject to exhaustion of trade mark right.

- 7) The party invoking trade mark exhaustion should bear the burden of proof. However, the burden of proof may shift in specific circumstances, such as when the evidence lies primarily within the control of the trade mark holder or where the risk of market partitioning is substantial.
- 8) Sustainability considerations should not in principle override trade mark rights.
- 9) Once the ownership of a trade marked product has been transferred and the trade mark rights have been exhausted, customers should remain free to request from a third party the alteration of their own property based on green and sustainability considerations, provided there is no further commercial exploitation.
- 10) In principle, business models that involve commercialization of altered trade marked products, should not be allowed. However, under certain exceptional circumstances, alterations — including practices such as recycling or upcycling — may be allowed, when carried out for sustainability reasons provided that the following (non-exhaustive) conditions are met:
 - a) there is no risk of misleading consumers (including post-sale) as to the origin of the altered product, including any risk of misrepresentation suggesting that the altered product is associated with or endorsed by the trademark owner;
 - b) the alteration does not involve any exploitation of or harm to the trade mark's image or its reputation.

Q294-RES-TM-2025

- c) any commercial act involving an altered product must clearly inform the consumer of the alteration, in order to ensure transparency and protect consumer interests.