

**RESOLUTION
PRAGUE OCTOBER 2012****Could or should a company be able to obtain protection in the event that its trademark, distinctive marks, or other components of its image or identity, are used by companies that are not its competitors?**

The brand image of an undertaking can comprise a variety of visual and/or verbal elements that may or may not be protected by specific intellectual property rights, such as trademarks, copyrights, industrial designs, identifying the company in the mind of the public, and representing a substantial economic value, known in some jurisdictions as “goodwill”.

LIDC considers that such brand image generally deserves protection against misappropriation by a non-competitor.

A brand image may also be protected by other laws, such as laws against unfair competition (as provided for by the Paris Convention), passing off or other torts, but specific regulation is neither necessary nor desirable.

The use of intellectual property rights may constitute a legal basis for this protection and the current conditions for their implementation appear to be satisfactory both in terms of the right that may be invoked (for instance: well-known trademark, or mark with a reputation) and evidence that must be produced to establish the nature and importance of the impairment and harm endured. Consequently it does not appear necessary nor desirable to extend the scope of the protection of the trademark.

The protection of brand image against its use by a non-competitor undertaking should more generally be ensured when it becomes apparent that this use contravenes the principles of fair trade.

The undertaking complaining of such use should provide sufficient evidence of the existence of its brand image in the mind of consumers, and the nature of the harm it suffers (for example likelihood of confusion or of association, debasement, dilution) even if this is not quantifiable financially.

Remedies available should include injunctions and financial compensation which may, in the absence of direct prejudice, take into account any undue gains made by the non-competitor undertaking.