



EXCO/CL06/RES/3

Fair Use of Trademarks

FICPI, the International Federation of Intellectual Property Attorneys, broadly representative of the free profession throughout the world, assembled at its Executive Committee from 4 to 7 December 2006 in Santiago, Chile, passed the following Resolution:

Noting that trademark rights afford an owner the exclusive use of a particular mark and that therefore any unauthorized use by a third party is inherently inconsistent with this fundamental principle of trademark law;

Recognizing that in some jurisdictions it is permissible or even regulatorily mandated that a particular generic pharmaceutical product be identified through reference to the original brand name;

Noting that in many jurisdictions some form of comparative advertising is permitted, including in the pharmaceutical field;

Stressing that any misleading reference by third parties to trademarks should be discouraged;

Noting that there are a variety of ways in which to make fair use of a mark while preserving the rights of the trademark owner;

Recognizing that any reference to another party's trademark has the potential to weaken or destroy that party's trademark rights

Urges:

- 1. that** fair use provisions and comparative advertising, in jurisdictions wherein these exist, should always preserve the rights of trademark owners through the use of wording or other means to distinguish the identity of the products in question;
- 2. that** in jurisdictions where it is permissible in advertising, or mandatory elsewhere, for a third party to reference a trademark this should be done in a way which ensures that the distinctive character of the trademark is not diluted and is maintained as an accurate indicator of source.