

**Question Q210**

**National Group:** Finland  
Finlande  
Finnland

**Title:** The Protection of Major Sports Events and associated commercial activities through Trademarks and other IPR

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**Questions**

**I) Analysis of the current legislation and case law**

*The Groups are invited to answer the following questions under their national laws:*

- 1) *Does your national law provide specific protection for trademarks or other designations relating to Major Sports Events?*

No. The Finnish legislation does not contain any specific provisions on the protection of trademarks or other designations relating to Major Sports Events nor has Finland ever enacted such legislation on ad hoc basis.

- 2) *If so, please explain whether - and in the affirmative in what way - the following trademark law requirements differentiate from the corresponding requirements in general rules of trademark law:*

- a) *Requirement of distinctiveness*  
b) *Use requirement*

Not applicable.

- 3) *Also, please explain whether – and in the affirmative in what way - the following differentiate from the general rules of trademark law:*

- a) *Is the scope of protection of trademarks which relate to Major Sports Events narrowed or extended compared to the scope of protection of other trademarks?*  
b) *Does use as a mark constitute a precondition for infringement of trademarks which relate to Major Sports Events or is the requirement of use as a mark not applied in relation to infringement of those trademarks?*  
c) *Is the protection period for trademarks which relate to Major Sports Events the same as the protection period for other trademarks?*  
d) *Is the determination of third party traders' legitimate interest in fair use different for trademarks which relate to a Major Sports Event than for other trademarks?*

Not applicable.

- 4) *Does your national law provide for a specific registration procedure for trademarks relating to Major Sports Events?*

No. The same rules regarding registration procedure apply to all trademarks.

- 5) *What are the possible remedies in respect of infringements of trademarks relating to Major Sports Events? Do they differ from the remedies applicable to other trademark infringements?*

Subject to the answer to question I.1. the same rules regarding infringements of trademarks apply to all trademarks. There are no specific rules.

- 6) *What are the possibilities under your national law of reacting against non-official sponsors' use or registration of trademarks which take place before a Major Sports Event and which relate to the Major Sports Event?*

Registration:

When a registration of a mark has been published, anyone may file with the registration authority an opposition against the validity of the registration. Opposition may be based on absolute and relative grounds for refusal. With respect to marks relating to Major Sports Events, the grounds for refusal do not differ from those applicable to all marks generally.

Moreover, if a mark has been registered in breach of the provisions of the Finnish Trademark Act or if the mark has become generic or misleading, the registration may be declared invalid. Such a request may be lodged by a person or entity who has suffered prejudice due to the registration.

It can also be noted that the registration of descriptive terms may be refused *ex officio* by the registration authority on the grounds of lack of distinctiveness.

With regard to the current situation in Finland, we refer to the following examples regarding trademarks relating to the Olympic Games:

1. As regards the Olympic symbol, Finland is not a Contracting Party to the Nairobi Treaty, i.e. the Treaty is not applied in Finland. The Olympic symbol, however, has been registered in Finland as a trademark by the Finnish Olympic Association.

2. The Finnish Olympic Committee applied for registration of the word mark OLYMPIALAISET (meaning in English "Olympic Games") in Finland on September 14, 2006. The application was refused by the National Board of Patents and Registration of Finland (later the NBPR) on the grounds that the mark is a generic term used in the common language and is therefore not capable of distinguishing the goods and services covered by the application from those of other traders. The decision is not final; the case is currently pending in the Board of Appeal of the NBPR.

3. On September 16, 2002, the Finnish Olympic Association and Comité International Olympique filed an opposition against a third party trademark registration of the word mark RUNO-OLYMPIALAISET (meaning in English "Olympic games of poetry"), in classes 16, 35, 36 and 41. The NBPR cancelled the registration on the basis of likelihood of confusion with the opponents' national and CTM registrations OLYMPIC, OLYMPIC GAMES (fig) and OLYMPIA. The decision was upheld by the Supreme Administrative Court and the decision (given June 27, 2007/Docket No. 1527/3/06) is final.

Use:

Should the right holder have a trademark in Finland, he may apply for an injunction or a preliminary injunction against a non-official sponsor not to continue or repeat the infringing or allegedly infringing acts. Should the infringement be established it is possible to claim damages.

Furthermore, also the provisions concerning unfair business practices may provide protection for the right holder regardless of whether the right holder has a trademark right in Finland. According to Unfair Business Practices Act:

-Good business practice may not be violated nor may practices that are otherwise unfair to other entrepreneurs be used in business (Section 1(1))

-A false or misleading expression concerning one's own business or the business of another may not be used in business if the said expression is likely to affect the demand for or supply of a product or harm the business of another (Section 2 (1))

- 7) *Does your national law provide for protection against Ambush Marketing? In the affirmative, is such protection set out in the law protecting trademark rights, in the laws against unfair competition, or both?*

According to the Working Guidelines Ambush Marketing comprises all activities not authorised by the right holders in the fields of marketing, promotion and advertising in any form in connection with Major Sports Events which somehow seeks to benefit from the goodwill or general interest in the Major Sports Event.

Neither Trademark Act nor any other national legislation in Finland provides for specific protection against Ambush Marketing as such.

However, in the circumstances in which Ambush Marketing can be considered to be in breach of good business practices or otherwise unfair, the right holder could intervene in such marketing by relying on the aforementioned Unfair Business Practices Act (please see I 6).

- 8) *Does your national law provide for specific trademark protection or protection against unfair competition relating to other major events, such as film, art or music festivals, World Expos and other similar events?*

No.

## **II) Proposals for substantive harmonisation**

*The Groups are invited to put forward their proposals for adoption of uniform rules, and in particular consider the following questions:*

- 1) *Are particular rules on trademark protection desirable for trademarks or signs which relate to Major Sports Events? In the affirmative, why is that the case?*

The Finnish AIPPI Group is of the opinion that from a Finnish national perspective the general provisions on trademark protection and unfair competition are sufficient. In principle, legislation enacted for a specific field and purpose only, i.e. Major Sports Events, is not desirable.

In the circumstances where a specific and temporary ad hoc legislation providing enhanced level of protection for Major Sports Events is a precondition for the selection of the host country, the potential hosts of Major Sports Events are encouraged to enact

far reaching ad hoc legislation in order to be selected as a host. This leads to the risk that, in this kind of legislation, the interests of the organizers and official sponsors are emphasized more strongly than the fair and reasonable interests of the public and other traders. Therefore, due to the international nature of Major Sports Events and their financial significance, there may be a need for international recommendations or guidelines in order to avoid too far reaching national ad hoc legislations in this regard.

2) *What would be desirable for trademarks and signs which relate to Major Sports Events in respect of the registration of such trademarks?*

a. *Would it be reasonable to adopt a registration procedure which is shorter than the general registration procedure?*

No. The Finnish AIPPI Group is of the opinion that there is no justification for adopting a set of rules for registration of signs relating to Major Sports Events that are different from those applicable for signs in general.

b. *Would it be reasonable to change the classification system in respect of registration of trademarks which relate to Major Sports Events?*

No, please see II 2 a. In order to obtain protection beyond class 41, e.g. in respect of merchandising products, the right holder has the possibility to register its mark in all relevant classes.

c. *Would it be reasonable to adopt a narrowed requirement of distinctiveness for trademarks which relate to Major Sports Events or alternatively not to require distinctiveness at all?*

No, please see II 2 a. The Finnish AIPPI Group is of the opinion that it is difficult to find a justification why Major Sports Events should have such a special position in the trademark legislation. In principle the same criteria regarding distinctiveness should apply to all trademarks.

3) *What would be desirable for trademarks and signs which relate to Major Sports Events in respect of the use requirement?*

a. *Would it be reasonable to adopt a use period of e.g. 8 or 10 years for trademarks which relate to Major Sports Events?*

No, please see II 2 a.

b. *Would it be reasonable to apply a use period of e.g. 8 or 10 years if the period from registration of the trademark to the actual event is shorter than 8 or 10 years?*

No, please see II 2 a.

4) *What would be desirable for trademarks and signs which relate to Major Sports Events in respect of the scope of protection? Would it be reasonable to give trademarks which relate to Major Sports Events a broader scope of protection than the scope of protection given to other trademarks, and in particular in relation to other trademarks which have a low degree of distinctiveness?*

No, please see II 2 a. The protection of the trademarks should be the same regardless of the field of business. There is no need to give a broader scope of protection for trademarks which relate to Major Sports Events.

5) *What would be desirable for trademarks and signs which relate to Major Sports Events in respect of infringements of those trademarks?*

a. *Should the requirement of use as a mark as a precondition for trademark infringement apply to alleged infringements of trademarks which relate to Major Sports Events or should it be possible to infringe such trademarks even when the use in question can not be characterised as use as a mark? Why is that the case?*

Use as a mark (i.e. use of a sign affects or is liable to affect the functions of the trademark) should be precondition for trademark infringement because the public and e.g. the press should be able to refer to the Major Sports Events without a risk of infringement.

b. *Should the remedies available against infringements of such trademarks be different from the remedies available against infringements of other trademarks? In the affirmative: Why is that the case?*

No.

6) *Are specific measures protecting against Ambush Marketing relating to Major Sports Events necessary or justified? In the affirmative, why is that the case and what should the contents of such measures be?*

The Finnish AIPPI Group is of the opinion that specific measures protecting against Ambush Marketing relating to Major Sports Events are not necessary. From a Finnish national perspective, the general rules on unfair competition and marketing are sufficient also in respect of Major Sports Events (please see I 7).

7) *Are other measures protecting against unfair competition relating to Major Sports Events necessary? In the affirmative, why is that the case?*

No.

8) *Does your group have any other views or proposals for harmonisation in the area?*

The Finnish AIPPI Group has no further views on the subject.

### **Summary**

The Finnish IPR legislation does not contain any specific provisions on the protection of trademarks or other designations relating to Major Sports Events nor has Finland enacted specific legislation on this field on ad hoc basis. Therefore, in Finland the right holder must rely on general trademark legislation and rules on unfair business practices in order to obtain protection against trademark infringements or ambush marketing in respect of Major Sports Events. The Finnish AIPPI Group finds general provisions on trademark protection and unfair competition sufficient in respect of Major Sports Events and does not find desirable legislation that has been enacted for a specific field and purpose only.

The Finnish AIPPI Group does not find desirable harmonization of national trademark legislations for the sole purpose of providing additional protection for marks relating to Major Sports Events. However, the Finnish AIPPI Group does find that there may be a

need for international recommendations or guidelines regarding temporary legislation enacted for specific Major Sports Events only in order to avoid too far reaching temporary ad hoc legislations that emphasize the interests of the official sponsors and event organizers at the expense of the fair and reasonable interests of the public and other traders.

### **Zusammenfassung**

Die Finnische IPR-Gesetzgebung enthält keine besondere Vorschriften über den Schutz von Marken oder sonstigen Bezeichnungen betreffend größere Sport Veranstaltungen, und Finnland hat auch keine besondere ad-hoc-Gesetze auf diesem Gebiet gegeben. Somit stehen dem Rechtsinhaber lediglich die allgemeine Bestimmungen zum Markenschutz und den unlauteren Geschäftsmethoden zur Verfügung, wenn der Rechtsinhaber Schutz gegen eine Markenverletzung oder unlauteren Wettbewerb betreffs größerer Sport Veranstaltungen verlangt. Die Finnische AIPPI Gruppe findet die allgemeine Vorschriften über den Markenschutz und den unlauteren Wettbewerb genügend hinsichtlich größerer Sport Veranstaltungen, und sieht solche Gesetzgebung nicht entgegen, die nur auf einem bestimmten, begrenzten Gebiet gilt.

Die Finnische AIPPI Gruppe würde es nicht empfehlenswert finden, dass die nationale Markengesetze nur deswegen harmonisiert würden, damit die Marken betreffend größere Sport Veranstaltungen zusätzlichen Schutz genießen könnten. Dagegen ist die Finnische AIPPI Gruppe der Meinung, dass internationale Empfehlungen oder Leitlinien zur kurzfristigen ad-hoc-Gesetzgebung auf dem Gebiet der größeren Sport Veranstaltungen doch in dem Sinne nötig sein könnten, dass sie zu weitgehende ad-hoc-Gesetzgebung auf diesem Gebiet verhindern könnten; in dieser Weise könnte solche Gesetzgebung möglicherweise vermieden werden, die die Interessen der offiziellen Sponsoren auf Kosten der rechtmässigen und vernünftigen Interessen der Publik und der anderen Händler unterstreicht.

### **Sommaire**

La législation finlandaise sur les droits de propriété intellectuelle ne contient pas de dispositions spécifiques sur la protection des marques de fabrique ou autres désignations liées avec les grands événements sportifs. La Finlande n'a pas voté une ad hoc législation spécifique sur ce secteur non plus. Donc, en Finlande le détenteur doit faire confiance à la législation générale sur les marques de fabrique et les pratiques commerciales déloyales pour obtenir la protection contre les infractions de marque de fabrique ou l'ambush marketing, c'est à dire marketing en embuscade, quand il s'agit des grands événements sportifs. Selon le groupe finlandais d'AIPPI les dispositions générales sur la protection des marques de fabrique et sur les pratiques commerciales déloyales sont suffisants pour les grands événements sportifs. Le groupe finlandais d'AIPPI ne désire pas d'avoir législation qui serait votée pour un seul secteur et emploi.

Le groupe finlandais d'AIPPI ne trouve pas souhaitable l'harmonisation des législations nationales sur les marques de fabrique pour acquérir protection supplémentaire seulement pour les marques se rapportant aux grands événements sportifs. Pourtant, le groupe finlandais d'AIPPI considère qu'il y aura peut-être un besoin pour recommandations internationales ou règles de conduite concernant la législation temporaire. Les recommandations en question seraient votées seulement pour les grands événements sportifs afin d'éviter les législations temporaires d'une trop grande

portée appuyant sur les intérêts des bailleurs de fonds officiels et les organisateurs d'événements à frais des intérêts du public et des autres commerçants.