

GHENT 2005**CAN THE LAW ON UNFAIR COMPETITION COMPLETE OR REPLACE THE SPECIFIC PROTECTION CONFERRED ON INTELLECTUAL PROPERTY AND, IF SO, TO WHAT EXTENT?****THE LEAGUE HEREBY ADOPTS THE FOLLOWING RESOLUTION:**

I. When national unfair competition law accepts accumulation of action for unfair competition and counterfeiting, in the hypothesis of the existence of perfectly valid intellectual property rights in force and a breach of these rights sanctioned by the special law which establishes the rights, it is not desirable that legal provisions prevent such accumulation.

II. The LIDC recognises the importance of unfair competition law as supplementary protection for intellectual property, whilst stating that, in a general fashion, the former cannot offer substitution protection to the person who has failed to carry out the formalities imposed to produce an intellectual property right in which the creation or the sign do not meet the conditions of content allowing such a right to be produced: application of the law of unfair competition cannot then confer in similar cases protection similar to that arranged by the laws governing intellectual property.

III. Action taken against unfair competition may offer supplementary protection outside the sphere of protection from special intellectual property laws, and allow rulings against unfair acts by accompaniment of an act of counterfeiting or licit copies.

Variant : add *in fine* « and materially distinct from these ».

IV. The LIDC recommends action be taken towards genuine specialisation of the courts in the fields of intellectual property and unfair competition, regrouping within a single jurisdiction of authorities in all these fields, and harmonisation of procedures and sanctions. It should also be possible to submit a single effective action to the same judge to put an end simultaneously to acts of counterfeiting and acts of unfair competition circumstantial to counterfeiting. The damages obtained from both charges, however, based on the same damages sustained, cannot be accumulated.

V. Every three years, the LIDC intends to take stock of the progress in the various national legal systems of the matter of the relationship between unfair competition law and intellectual property law.