

Analysis of the Advantages of Trademark Registration Offer Compared with Relying on Unfair Competition or Passing-off to Enforce Rights over Trademarks

Yiteng Feng^{1,a,*}

¹*Law School, Ocean University of China, Laoshan District, Qingdao, Shandong Province, 266101
a. fengyiteng@stu.ouc.edu.cn*

**corresponding author*

Abstract: Compared with relying solely on unfair competition or trademark infringement to maintain brand rights, trademark registration has obvious advantages. It provides statutory protection, ensuring that the rights of trademark owners are guaranteed by law. This registration also grants the exclusive right to use the mark, preventing others from using similar marks that may cause confusion. One of its most important benefits is the presumption of validity in court, thereby putting the onus on the challenger to prove otherwise. Once a trademark is registered, it is protected nationwide, regardless of where it is first used. In the event of infringement, a registered trademark can secure greater damages, potentially deterring illegal use. The enforcement procedure for registered trademarks is more streamlined, which facilitates faster resolution of issues. Registration can be a springboard for international expansion, allowing businesses to register trademarks in other countries more seamlessly. Essentially, for businesses keen to maintain their brand reputation and image, trademark registration is a better choice due to its comprehensive advantages.

Keywords: Trademark Registration, statutory protection, Trademark, brand reputation

1. Introduction

A trademark is an indispensable asset in the business world, serving as a distinctive symbol or indicator that helps consumers identify and associate them with a particular brand or company. They play a key role in differentiating a company's products from those of competitors, ensuring consumers can make informed choices based on brand preferences [1]. Therefore, protecting these trademarks has become critical for businesses aiming to maintain their brand image, preserve their reputation and foster consumer trust. Although companies can protect their trademark rights through unfair competition and trademark infringement claims, these methods have their limitations. On the other hand, trademark registration offers a number of advantages that can significantly enhance the protections available to a business. Registering a trademark not only strengthens the legal position of the trademark owner, but also provides a strong framework within which to address any violation or misappropriation. It provides businesses with pre-emptive protection against potential infringers, ensuring that their brand image is not compromised [2].

By registering a trademark, a company can take advantage of a range of enforcement options that may not be readily available or effective through other means. This comprehensive protection

mechanism ensures that businesses have the necessary tools and legal support to protect their brands from any wrongful infringement, maintain the integrity of their brands and enhance consumer trust. Essentially, for companies that view trademarks as invaluable assets, the road to trademark registration is the best strategy to ensure long-term protection and enforcement of brand rights.

2. Advantage

2.1. Statutory Protection and Exclusivity

Trademarks are more than symbols or logos; they encapsulate the essence of a brand and represent its values, reputation and promise to consumers. One of the most effective ways to protect these symbols is through trademark registration. By choosing to register, trademark owners can provide themselves with statutory protection, a powerful legal shield that defends their brand's unique identity.

The main advantage of this type of registration is the exclusive rights it confers on the trademark owner. This exclusivity means more than ownership; it means ownership [3]. It provides a legal basis to enable owners to enforce their rights and prevent others from using identical or deceptively similar marks on related goods or services. This is invaluable in a competitive market where similar trademarks can create confusion among consumers and dilute brand equity.

The statutory protection that comes with trademark registration establishes clear ownership and provides a presumption of validity. This essentially means that in legal proceedings, it is no longer the trademark owner's responsibility to determine the authenticity of their mark. This presumption relieves a significant burden, ensuring that owners do not always have to prove the legality and validity of their marks when defending against potential infringement [4].

On the other hand, if businesses choose to forego registration and rely solely on avenues such as unfair competition or trademark infringement claims, they may find themselves in trouble. In this case, the trademark owner must establish the reputation and goodwill of their brand, demonstrating the value and recognition of their trademark in the market. This can be a daunting, complex and time-consuming process that requires significant resources and can strain business operations.

Trademark registration provides an additional layer of defense by preventing competitors and other businesses from registering similar trademarks in related areas. This proactive approach ensures that there is no confusion in the market and the unique identity of the brand is maintained. It increases a brand's control over its image, ensures consumers are clear-headed and increases their trust in the brand [5].

While there are various ways to protect your brand image, trademark registration is the most comprehensive and effective way. It not only empowers the trademark owner with legal rights, but also ensures that the interests of the trademark owner are strictly protected, making it an indispensable tool in a brand protection strategy.

2.2. Presumption of Validity and Non-disputability

In the field of brand protection, trademark registration offers unparalleled benefits, with the presumption of validity being one of its most significant advantages. This presumption means that a registered trademark is automatically considered valid and legally enforceable. In a complex web of legal battles, where every point and opposing point can be argued endlessly, this presumption provides refreshing certainty: the legality of a registered trademark is taken as a given.

This presumption of validity gives trademark owners considerable advantages in litigation. Instead of having to bear the initial burden of proving the validity of their mark, they get an evidentiary head start [6]. If the other party objects to a registered trademark, it will bear the heavy burden of proving that it is invalid. This effectively means that a registered trademark is strong and unchallenged unless

one is able to gather convincing evidence to the contrary. This is a clear departure from the norm where the claimant usually bears the primary burden of proof.

Contrast this with a situation where a business relies solely on unfair competition or trademark infringement claims. In this situation, trademark owners, especially those who have not registered their trademarks, find themselves in a challenging situation. They must undertake the difficult task of proving the reputation and goodwill of their mark in the market. This is not only time consuming but also fraught with uncertainty [7]. Building reputation and goodwill requires a wealth of evidence, from sales figures and advertising spend to customer testimonials and market research. This becomes even more daunting with unregistered trademarks, as they lack the inherent legal recognition that comes with registration.

The presumption of validity therefore simplifies the enforcement process and enables trademark owners to navigate the legal environment more easily and with greater confidence. They can devote their efforts to the more strategic aspects of litigation rather than getting bogged down in the initial stages of proving the legality of their trademark. They can focus on building a strong defense, developing strategies and ensuring their rights are actively protected.

In essence, trademark registration provides a brand with an efficient and strong shield with its presumption of validity. It ensures that trademark owners are not only players in the legal field, but also in a favorable position, enabling them to safeguard the integrity of their brands and market position with greater vigor and effectiveness [8].

2.3. Nationwide Protection and Public Notice

In essence, trademarks are more than symbols or signs; they are expressions of a brand's identity, values and promises to consumers. When a trademark is registered, it elevates its identity to a legally recognized status, offering numerous advantages to the trademark owner. One of the most compelling benefits is the nationwide protection granted.

With trademark registration, the owner acquires the exclusive right to use his trademark within the jurisdiction in which the trademark is registered. This exclusivity isn't just a form; it's a form. It provides a strong shield to ensure that other businesses or individuals cannot use the same or confusingly similar trademarks for related goods or services. Such arrangements are crucial in a dynamic and highly competitive market. It ensures that a brand's image and reputation remain untarnished nationally, minimizing the chances of consumer confusion or diminishing brand uniqueness [9].

The act of trademark registration is not silent. It makes a loud and clear announcement to the public of the existence and legal sanctity of a registered trademark. The announcement has a dual effect. First, it acts as a deterrent, reducing the likelihood of inadvertent infringement. As businesses embark on their branding journey, a registered trademark acts as a beacon, warning them against adopting similar marks and potentially guiding them to avoid costly legal disputes.

The announcement enhances the brand's market position. When consumers see a registered trademark symbol, it tends to create a sense of trust and credibility. They recognize that the brand has taken the necessary steps to protect its identity, demonstrating a commitment to quality and authenticity. Over time, this can translate into increased consumer loyalty and brand preference [10].

As markets become increasingly saturated, differentiation becomes critical. Registered trademarks are protected and advertised nationwide, providing this differentiation. It establishes the brand's unique space, ensuring its voice, values and product are differentiated from its competitors.

Trademark registration is more than just a legal procedure; it's a strategic move. It provides businesses with the tools to protect the integrity of their brands, enhance their market presence and cultivate consumer trust, making them an indispensable asset in today's competitive business environment.

2.4. Enhanced Compensation Measures and Remedies

Trademarks are important assets to a business, representing its brand identity, goodwill and reputation. One of the key benefits of registering a trademark is that it enhances your legal position, especially when seeking remedies in the event of infringement.

Successful registration of a trademark is not only recognition of its uniqueness, but also proof of the owner's rights. With this legal recognition, trademark owners find themselves in a better position to enforce their rights and protect their interests. One of the main remedies they can seek is an injunction [11]. An injunction is a powerful legal tool that can order the infringing party to immediately stop using the infringing trademark. This immediate cessation ensures that the original trademark owner's brand image is not affected and consumers are not misled by deceptive similarities.

But the advantages of trademark registration do not stop there. One of its most important benefits is the potential for increased compensation. Once infringement occurs, the owner of a registered trademark has the right to claim compensation for the economic losses suffered due to the unauthorized use of his trademark. This may include lost sales, damage to reputation or costs incurred in trying to mitigate the effects of the infringement.

In some jurisdictions, the legal framework provides for a more effective remedy: statutory damages. Unlike compensatory damages, which are tailored to the specific harm suffered, statutory damages are a predetermined amount set by law. This means that trademark owners do not necessarily need to delve into the often complex and exhaustive process of quantifying damages [12]. Instead, they can ask for a fixed amount to ensure justice is swift and effective.

These enhanced compensatory measures serve a dual purpose. First, they ensure that trademark owners are fully compensated for the harm they have suffered. Second, and perhaps more importantly, they act as a powerful deterrent. Potential infringers are aware of the severe financial consequences of unauthorized use of a trademark and are therefore more likely to think twice before infringing upon a registered trademark.

At its core, trademark registration is more than a sign of form or authenticity; it is a shield. It provides businesses with the legal power to protect their brands, ensuring that their intellectual property rights are not only recognized but vigorously defended. In a world where brand image is of paramount importance, the enhanced compensation and legal remedies afforded by trademark registration become an invaluable asset in a business's arsenal [13].

2.5. Streamlined Enforcement and Global Protection

A trademark is the cornerstone of a brand's identity, embodying the essence of the brand and the promise it offers to consumers. Recognizing the importance of these symbols, the trademark registration process is designed to enhance their protection. One of the significant benefits of such registration is the simplified execution process. Once a trademark is successfully registered, its ownership and the protection that comes with it are clearly established. Trademark owners no longer have to wade through extensive evidence to prove the legality and validity of their marks. Instead, they can confidently use the trademark registration certificate, which is strong evidence to support their claims. This streamlined approach not only makes legal proceedings more straightforward, but also speeds up the process of protecting trademark rights from potential infringement.

But the scope of trademark registration goes beyond national borders. It opens the door to global trademark protection and is an important tool for businesses seeking to expand internationally. Through systems such as the Madrid Protocol and other international registration mechanisms, trademark owners can seek protection in multiple countries with a single application. It's not just a procedural benefit. It signals a brand's ambition to gain global recognition, ensuring that its brand image is protected from potential infringement when entering new markets [14].

Having such global protection is equivalent to laying the foundation for a company's international journey. It instills confidence and ensures that brand image and reputation are maintained consistently across different markets. Additionally, it increases the brand's value on the global stage, positioning it as a recognizable and trustworthy entity. In essence, trademark registration is more than protection; it is a constant push, providing a platform for businesses to seize wider opportunities, sail international waters with ease, and elevate their brands to global prominence.

2.6. Prevention of Unfair Competition and Trademark Infringement Disputes

Trademarks are more than just symbols or names; they encapsulate a brand's essence, values and promises. In today's complex business environment, with fierce competition and saturated markets, the protection of these trademarks has become critical. Trademark registration becomes a powerful weapon in a brand's arsenal, providing owners with a comprehensive set of tools to combat unfair competition and trademark infringement.

Unfair competition is a form of deceptive behavior in which businesses use false advertising, misrepresentation or other unethical means to gain a competitive advantage. Not only does this harm the market position of the original trademark owner, but it can also mislead consumers and leave them vulnerable to inferior products or services. By registering a trademark, owners can create a legal fortress around their brand. This registration ensures that they have a clear, legally recognized claim to their brand identity, making it extremely challenging for competitors to use similar or misleadingly close marks. The clear boundaries provided by registration act as a deterrent, signaling to competitors that any attempts to deceive or imitate will not be tolerated.

Brand image challenges are not limited to unfair competition. Trademark infringement is another significant threat, where unauthorized entities use marks that are identical or closely similar to a registered trademark. Such actions can have dire consequences. They can sow confusion among consumers, leaving them unsure of the origin of the products or services they purchase. Over time, uncontrolled infringement can weaken a brand's image, making it difficult to distinguish it among competitors and eroding the hard-won trust of its consumer base [15].

Thankfully, trademark registration provides strong protection against such infringements. With a registered trademark, the owner can not only protect his brand passively; They are actively maintaining their uniqueness. They have the legal power to not only identify and challenge infringers but also seek remedies, including cease-and-desist orders and damages.

Trademark registration is more than a procedural step; it is a strategic investment. It ensures that brands can thrive in a competitive market, maintain their unique identity, and develop consumer trust and loyalty. By providing a clear legal framework and strong enforcement mechanisms, registration enables businesses to focus on growth and innovation, and ensures that the integrity and reputation of their brands are properly protected.

3. Conclusion

Trademark registration goes far beyond simply relying on unfair competition or trademark infringement claims to protect a brand. It offers a range of benefits: from statutory protection and exclusive access to presumption of validity and nationwide coverage. Importantly, registered trademarks open the door to global markets. Through the international registration route, companies can expand their brand umbrella across borders, open up new markets and strengthen their global influence. Strengthening compensation measures and simplifying enforcement procedures are further tilted in a direction that is conducive to registration. In a competitive world, registering a trademark is not just a legal formality, but a strategic move. It consolidates the brand's image, lays a solid foundation for its operations, and ensures that its trademark rights are not only recognized but

effectively enforced, laying the foundation for the business to succeed both locally and on the international stage.

References

- [1] Economides, N. S. (1988). *The economics of trademarks*. *Trademark Rep.*, 78, 523.
- [2] Dornis, T. W. (2017). *Trademark and unfair competition conflicts: Historical-comparative, doctrinal, and economic perspectives (Vol. 34)*. Cambridge University Press..
- [3] Cervino, J., & Cubillo, J. M. (2004). *A resource-based perspective on global branding: An analysis of trademark registration data*. *International journal of management*, 21(4), 451.
- [4] Kent, W. C. (1968). *Trademarks: Validity of Assignment of Registered Trademark: Requirement of Distinctiveness*. *Trademark Rep.*, 58, 378.
- [5] Belson, J. (2019). *Reflections on branding and trade marks: then and now*. *Journal of Intellectual Property Law & Practice*, 14(8), 601-606.
- [6] Leaffer, M. A. (1998). *The new world of international trademark law*. *Marq. Intell. Prop. L. Rev.*, 2, 1.
- [7] Bone, R. G. (2019). *Rights and Remedies in Trademark Law: The Curious Distinction Between Trademark Infringement and Unfair Competition*. *Tex. L. Rev.*, 98, 1187.
- [8] Wunsch-Vincent, S. (2008). *Trade rules for the digital age. GATS and the Regulation of International Trade in Services*, 497-529.
- [9] Bone, R. G. (2004). *Enforcement costs and trademark puzzles*. *Virginia Law Review*, 2099-2185.
- [10] Cao, Y., Ren, S., & Du, M. (2022). *Strategic trademark management: a systematic literature review and prospects for future research*. *Journal of Brand Management*, 29(5), 435-453.
- [11] Bernstein, D. A. (2005). *A case for mediating trademark disputes in the age of expanding brands*. *Cardozo J. Conflict Resol.*, 7, 139.
- [12] Lee, T. R., DeRosia, E. D., & Christensen, G. L. (2009). *An Empirical and Consumer Psychology Analysis of Trademark Distinctiveness*. *Ariz. St. LJ*, 41, 1033.
- [13] Long, D. E. (2013). *Resolving Trademark Duality in the Twenty-first Century: Making Trademarks Internet-Ready*.
- [14] Gaba, J. (2020). *International Trademark Registration*. *Supremo Amicus*, 21, 456.
- [15] Feng, X. (2008). *A brief discussion on the international registration of corporate trademarks and international trademark management strategies*. *Commercial Research*, (1), 8-11.