

Research on the Differences Between the Laws Designed to Protect Brands and Traditional Trademark Laws

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Abstract: Brand protection is an important and challenging issue in the contemporary market, as brands are valuable and influential intangible assets that create and sustain competitive advantage. However, there is a lack of a clear and comprehensive legal category that can adequately address the diverse and complex aspects of brand protection. This paper aims to explore how a law designed to protect brands might differ from traditional trademark law, which mainly focuses on the registration and protection of distinctive signs that identify the source and quality of goods or services. The paper adopts a qualitative and comparative approach, using online sources, such as web articles, research papers, and guides, as well as examples of famous brands and cases, to illustrate and analyze the possible ways, characteristics, challenges, and benefits of brand protection. The paper concludes that brand protection is a useful or viable legal category that recognizes and respects the value and importance of brands as intangible assets that create and sustain competitive advantage in the market, adapts and innovates to changing market trends, consumer preferences, and competitive forces, and harmonizes and cooperates with the existing trademark laws and standards across different countries and regions.

Keywords: brand protection, trademark law, intellectual property, legal category, market trends

1. Introduction

Brands are valuable and influential intangible assets that create and sustain competitive advantage in the market. However, brands are also vulnerable to various forms of infringement and abuse, such as counterfeiting, piracy, unfair competition, or cybersquatting [1]. Therefore, brand protection is an important and challenging issue for brand owners and users, as well as for society and the economy. Brand protection is the process and set of actions that a right holder undertakes to prevent third parties from using its intellectual property without permission, as this may cause loss of revenue and, usually more importantly, destroys brand equity, reputation, and trust. However, there is a lack of a clear and comprehensive legal category that can adequately address the diverse and complex aspects of brand protection. Traditionally, trademark law has been the main legal instrument for protecting brands, as it mainly focuses on the registration and protection of distinctive signs that identify the source and quality of goods or services [2]. However, trademark law may not be sufficient or effective to deal with the changing market trends, consumer preferences, and competitive forces that affect brands.

Therefore, this paper adopts a qualitative and comparative approach, using online sources, such as web articles, research papers, and guides, as well as examples of famous brands and cases, to illustrate and analyze the possible ways, characteristics, challenges, and benefits of brand protection. This paper contributes to the existing literature on brand protection and trademark law by providing a novel perspective on how a law designed to protect brands might differ from traditional trademark law. The paper also offers some practical insights for brand owners and users on how to protect their brands effectively in the contemporary market. The paper also raises some questions and challenges for future research on brand protection.

2. Brand and Trademark

A brand is not just a company's name, logo, product, or price tag. It is the overall impression that a product or business creates in the minds of those who interact with it, such as customers, investors, employees, the media, and others. Branding is the process of creating and managing this impression. A brand may consist of various elements, such as brand identity, brand value proposition, brand personality, brand positioning, brand promise, and brand experience [1].

According to the concept of United States Patent and Trademark Office (USPTO) publicity, a trademark is a word, phrase, design, or combination that identifies goods or services, distinguishes them from those of others, and indicates the source of goods or services [2].

3. Traditional trademark law

Traditional trademark law mainly covers three aspects, the registration and management of trademarks (e.g., the requirements, procedures, fees, and duration of trademark rights), the protection and enforcement of trademarks, (e.g., the scope, limitations, and exceptions of trademark rights, and the remedies and procedures for trademark infringement), the international aspects of trademarks (e.g., the treaties, conventions, and agreements that facilitate the recognition and protection of trademarks across different countries and regions) [3].

Moreover, the main features of traditional trademark law have always been the same. The first is based on the principle of territoriality, which means that trademark rights are granted and enforced by each country or region according to its own laws and regulations. Secondly, it is based on the principle of distinctiveness, which means that trademarks must be capable of distinguishing the goods or services of one undertaking from those of others. As well, it is based on the principle of use, which means that trademarks must be used in commerce to acquire and maintain their validity and enforceability.

4. Brand law

4.1. Definition

Brand law mainly protects the creation and development of brands (e.g., the innovation, design, functionality, or appearance of products or services that create value and appeal for consumers), the reputation and goodwill of brands (e.g., the image, emotion, and association that consumers have with a product or service based on its quality, performance, or social impact), and the prevention and combat of counterfeiting and piracy (e.g., the unauthorized or inferior imitation or reproduction of products or services that harm the interests and rights of brand owners and consumers) [4]. And the main characteristics of the brand law are universal and regional: It is based on the principle of universality, which means that brand rights are recognized and protected globally regardless of the differences in laws and regulations among countries and regions. It is based on the principle of originality, which means that brands must be new, unique, and creative to qualify for protection. It is

based on the principle of cooperation, which means that brand protection requires the involvement and assistance of various stakeholders who have an interest or responsibility in preventing or combating infringement [5]. Regionally, some brands may have a regional focus or appeal, such as local products, services, or cultures. For example, Champagne is a sparkling wine that can only be produced in the Champagne region of France. To protect such brands, regional agreements or organizations may be established to ensure the quality, authenticity, and reputation of the products or services. For example, the European Union has a system of geographical indications that protects regional products from imitation or misuse.

4.2. Ways to protect brand rights at different levels

4.2.1. Domestically

Some brands may have a national or domestic presence or influence, such as popular products, services, or celebrities. For example, Coca-Cola is a well-known soft drink brand that originated in the United States. To protect such brands, national laws or regulations can be enacted to prevent trademark infringement, counterfeiting, piracy, or unfair competition. The United States has a federal trademark law that grants exclusive rights to registered trademark owners to use and protect their marks [6].

4.2.2. Internationally

In order to protect brands with a global or international reach or impact, such as multinational products, services, or organizations, international treaties or conventions may be signed to harmonize and enforce trademark laws and standards across different countries and regions. For example, the Paris Convention for the Protection of Industrial Property is an international agreement that provides protection for trademarks and other industrial property rights.

However, there may be challenges or conflicts in implementing and enforcing these measures, such as differences in legal systems, cultural values, consumer preferences, or market conditions. Therefore, brand owners need to be aware of these factors and adopt appropriate strategies to safeguard their brands [7].

5. Comparison

5.1. Relationship

The relationship between these trademark laws and brand laws is complementary, which means that they both aim to protect the intellectual property rights of brand owners and the interests of consumers in the marketplace. They are overlapping, which means that they both cover some common aspects of brand protection, such as trademarks, patents, copyrights, or trade dress. Meanwhile, they are also conflicting, which means that they may have some divergent or incompatible aspects of brand protection, such as the scope, duration, or enforcement of rights. Therefore, brand law and trademark law are complementary and interrelated. Brand law can be seen as a broader and more holistic concept that encompasses trademark law, as well as other types of intellectual property rights, such as patents, copyrights, industrial design rights, or trade dress. Brand law can also be seen as a more dynamic and flexible concept that adapts to changing market trends, consumer preferences, and competitive forces [8].

On the other hand, trademark law can be seen as a more specific and focused concept that deals with the registration and protection of distinctive signs that identify the source and quality of goods or services. Trademark law can also be seen as a more stable and consistent concept that follows

established legal principles and standards. Therefore, brand law can become a useful legal category to achieve the purpose of not only avoiding conflicts with trademark law, but also functioning separately or together by doing the following [9]:

Recognizing and respecting the existing trademark rights and obligations of brand owners and users, while also providing additional or alternative rights and remedies for brand protection.

Expanding and diversifying the scope and types of intellectual property rights that can be claimed and enforced by brand owners while also ensuring balance and fairness among different stakeholders.

Adapting and innovating the legal frameworks and mechanisms for brand protection while also harmonizing and cooperating with international norms and standards.

These are some possible ways that brand law can become a useful legal category to achieve the purpose of not only avoiding conflicts with trademark law, but also functioning separately or together .

5.2. Differences

5.2.1.Expanding the scope of intellectual property protection

One way that a law designed to protect brands might differ from traditional trademark law is by expanding the scope of intellectual property protection. Trademark law mainly covers the signs that distinguish the goods or services of one provider from another. However, a brand may have more elements that create value and appeal for consumers, such as the appearance, design, functionality, or innovation of a product or service. Therefore, a law designed to protect brands might also grant rights to brand owners for these elements, such as patents, copyrights, industrial design rights, or trade dress rights. For instance, Apple has secured several design patents for its iPhone and iPad products, which safeguard the shape and appearance of the devices. It also has trade dress rights for its retail stores, which preserve the unique look and feel of the stores [10].

Brand protection is a useful or viable legal category because it recognizes and respects the value and importance of brands as intangible assets that create and sustain competitive advantage in the market. Brands are not only distinctive signs that identify the source and quality of goods or services, but also complex and dynamic entities that embody the innovation, design, functionality, appearance, reputation, image, emotion, positioning, promise, and experience of products or services. Therefore, brand protection requires a broader and more holistic approach that covers more types of intellectual property rights than just trademarks, such as patents, copyrights, industrial design rights, or trade dress rights.

5.2.2.Emphasizing the reputation, image, and emotion associated with a brand

Another way that a law designed to protect brands might differ from traditional trademark law is by emphasizing the reputation, image, and emotion associated with a brand rather than just the identification and source of goods or services. Trademark law mainly aims to protect consumers' interests by avoiding confusion and deception in the marketplace. However, a brand may also trigger certain feelings and associations in consumers' minds. For example, Nike's slogan "Just Do It" may motivate people to pursue their goals and dreams. Therefore, a law designed to protect brands might also safeguard the goodwill and reputation of a brand from being damaged or weakened by unauthorized or inferior uses. For example, Louis Vuitton sued a dog toy company for selling chew toys that imitated its famous handbags, alleging that it hurt its image and prestige [11].

5.2.3.Offering remedies

A law designed to protect brands might differ from traditional trademark law by offering more remedies for brand owners against infringers, such as damages, injunctions, or criminal sanctions.

Trademark law mainly gives civil remedies for trademark infringement, such as injunctions (orders to stop using the infringing mark), damages (compensation for losses), or account of profits (giving up the profits made from using the infringing mark). However, these remedies may not be enough or effective to discourage or stop infringers who operate on a large scale or in different jurisdictions. Therefore, a law designed to protect brands might also give criminal sanctions for serious cases of counterfeiting or piracy, such as fines, imprisonment, or seizure and destruction of infringing goods. For instance, in China, there is a special criminal law that penalizes trademark counterfeiting with up to seven years of imprisonment and fines [10].

5.2.4. Cooperation and coordination

A law designed to protect brands requires more cooperation and coordination among different stakeholders, such as customs, law enforcement agencies, governments, industry partners, retailers, and online platforms. Trademark law mainly depends on the brand owners to enforce their rights against infringers. However, this may be expensive and time-consuming for the brand owners, who have to monitor the market and initiate legal action. Therefore, a law designed to protect brands might also require more participation and assistance from other parties who have an interest or responsibility in preventing or combating infringement. Examples include customs authorities inspecting and detaining suspected counterfeit goods at the border, law enforcement agencies investigating and prosecuting criminal cases of counterfeiting or piracy, governments enacting and implementing laws and policies that support brand protection, industry partners sharing information and resources to combat common threats, and retailers and online platforms adopting measures to verify the authenticity of goods or services they sell or host [11].

5.2.5. Public interest

There is an additional public interest in protecting the brand because brands have a significant impact on society and the economy. Brands can influence consumer choices, preferences, and behaviors, as well as create value, innovation, and competition in the market. Brands can also express and communicate cultural and social values, beliefs, identities, and lifestyles, as well as contribute to the development and well-being of communities and the environment. Therefore, protecting the brand is not only beneficial for the brand owners and users, but also for the public at large [12].

6. Suggested protective measures

To move from protecting the brand to calling for increased national enforcement, the following steps are involved:

- Identifying and assessing the threats and challenges to brand protection, such as trademark infringement, counterfeiting, piracy, unfair competition, or lack of awareness or compliance.

- Developing and implementing effective strategies and measures to prevent and combat these threats and challenges, such as education, awareness, monitoring, reporting, investigation, prosecution, or cooperation.

- Evaluating and improving the legal frameworks and mechanisms for brand protection, such as laws, regulations, policies, standards, or institutions.

- Advocating and lobbying for more resources and support for brand protection from the government and other stakeholders, such as funding, personnel, equipment, or training.

- Demonstrating and communicating the benefits and outcomes of brand protection for the society and the economy, such as increased consumer satisfaction, trust, and loyalty; enhanced innovation, quality, and competitiveness; improved social responsibility and environmental sustainability; or reduced crime and corruption.

These are some possible steps involved in moving from protecting the brand to calling for increased national enforcement. However, this is not a simple or easy process. It requires careful planning and coordination among various parties who have an interest or responsibility in brand protection.

7. Conclusion

Brand protection is a useful or viable legal category because it adapts and innovates to the changing market trends, consumer preferences, and competitive forces. Brands are not static or fixed entities that remain unchanged over time. They evolve and change according to the needs and expectations of consumers, the opportunities and threats of competitors, and the challenges and opportunities of the environment. Therefore, brand protection requires a more dynamic and flexible approach that responds to the new developments and demands in the market. This paper argues that brand protection is a broader and more holistic concept that encompasses trademark law, as well as other types of intellectual property rights, such as patents, copyrights, industrial design rights, or trade dress. The paper also argues that brand protection is a more dynamic and flexible concept that adapts to the changing market trends, consumer preferences, and competitive forces that affect brands.

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