Consumer Communication and Trademark Law

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Abstract

This article considers the role played by trademark protection in facilitating communication among consumers. In the model, marks are signs, i.e., coupled pairs of signifiers (visible indicia such as words or graphics) and signifieds (messages or brand content). Consumers wish to use signs to signal something about themselves to an audience. Audience members wish to learn about the consumer and, in so doing, make better, more targeting decisions as to whether they should, for example, be closer friends with that consumer or spend time with them or avoid them altogether. Audience members learn by observing the consumers display of the purchased mark: what the consumer wears, what they own, etc. Under some conditions, we find

that trademark protection improves the communication that a mark enables from consumers to audience members, that is, it enhances the expressive function of consumer purchases. It does so for two reasons. First, in a dynamic effect, strong trademark protection can bring monopoly rents when the good that the consumer desires is the mark or sign itself. Seeking these rents, brand-owners have an incentive to come up with new signs. These new signs allow consumers to express themselves more precisely by expanding the vocabulary they use to communicate with one another. Second, in a static effect, trademark protection enables the manufacturer to restrict—by charging a high price—the type of consumers who buy a product. This restriction enables the audience members to make better inferences about who the consumer actually is from the product they observe the consumer buying or not buying (and, more directly, displaying or not displaying). In short, by having to pay for trademarked goods, consumers are able to send a clearer signal about themselves.

These goals mean that trademark law has, at its core, been a

[1]See *Qualitex Co. v. Jacobson Prod. Co.*, 514 U.S. 159, 163–64 (1995) ("[Trademark] law helps assure a producer that it (and not an imitating competitor) will reap the financial, reputation-related rewards associated with a desirable product. The law thereby 'encourage[s] the production of quality products,' and simultaneously discourages those who hope to sell inferior products by capitalizing on a consumer's inability quickly to evaluate the quality of an item offered for sale.")(internal citations omitted).