

# Kluwer Trademark Blog

## The Interplay Between Protecting Reputed Trademarks and Promoting Public Interest

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The protection of trademarks has long been associated with social progress and collective interest. However, a widely accepted scientific consensus remains elusive regarding the interaction between these beneficial outcomes and more specifically the extended protection of reputed trademarks, principally against dissimilar goods. As noted in the literature, “science has yet to offer convincing and widely accepted arguments”.



In our view this special protection acts to remove disincentives related to reservations the companies may have in pursuing activities that are not only beneficial for their reputation, but also for the common good. Let's examine this closely.

### Blocking Disincentives Function

Firms aim to build strong brands to operate beyond usual competitive constraints. To this end, they aim to associate their brands with positive attributes (brand positioning). These attributes will resonate with consumers if consistently reinforced. For example, a brand like 'CITIBANK' associates itself with qualities like trustworthiness and creditworthiness (GCEU, T-181/05), often through repeated actions that are beneficial to the community. This is a positive outcome.

But what if trademark owners believed that third parties could disrupt these associations without consequences? Would they still invest in such efforts?

It is likely they would not. The concern that the results of these efforts may be nullified— hence yielding no benefits to them—would compromise the ease of making decisions that serve society. Importantly, goods marketed by a third party can be different yet still harm the reputation of the brand. This very concern is the quintessence of the protection offered to reputed trademarks.

### In the Realm of Innovation

This link is also evident in the realm of innovation.

A brand's association with innovation enhances its standing and fosters loyalty among its consumers. This serves as an additional rationale why brands maintain an open stance towards relevant investments.

Moreover, once established, reputation for innovation also generates ‘innovation credit,’ which in turn mitigates the risks associated with launching innovative products or services—risks particularly tied to the inherent uncertainties of consumer adoption.

The factors mentioned above serve as an extra push for firms to innovate, which is a positive outcome in itself. However, if these benefits are at risk, firms may scale back their innovation efforts. Therefore, protecting brand reputation becomes crucial.

### **Bonus Part: What About Parasitism?**

Free riding by third parties does not – or at least not directly – harm the reputed trademark. One could therefore assume that the absence of legal protection against free riding would not create any disincentive for innovation and investment. Consequently, companies would continue to invest in actions benefiting society, in order to achieve the above mentioned connections.

However, prohibiting free-riding still invokes societal contributions; albeit, ‘from the other side of the equation’. How is this so?

From a consumer behavior standpoint, gaining unearned positive associations is pivotal. Neuroscience experiments suggest that our brains begin processing information, laying the foundation for our ultimate decisions, even before we consciously recognize our own contemplations. It is by exploiting the reputation of established names that newer brands might skip the effort they would otherwise have to make to create their own positive associations, thereby feeling less compelled to give back to society. This shortfall is also a societal loss.

### **Conclusion**

All this being said, the question remains: do the societal losses stemming from the absence of the reputed trademarks extended protection, as those previously discussed, altogether outweigh the potential benefits that such an absence could bring? For the latter do exist.

For instance, one benefit of not extending protection is the elimination of the – arguably as extended as the protection itself – unpredictability surrounding how far third parties should distance themselves from other trademarks. Due to the extended protection granted to reputed trademarks, even an obvious dissimilarity in goods or services fails to provide a safe harbor. Such ambiguity frequently gives rise to expensive legal battles, particularly detrimental for new market entrants.

This topic requires further exploration.

*(This article is a condensed version of a piece previously published on the author’s LinkedIn profile. Special thanks to Ms. Verena von Bomhard for her invaluable insights and enriching discussions).*

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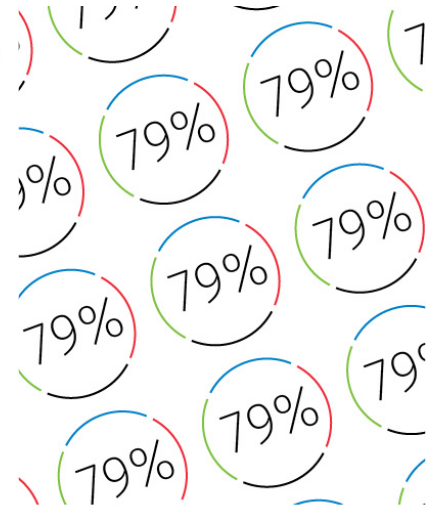
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