

# *Pseudo-Certification Marks*

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Scholars continue to debate the expanding uses of trademarks that has taken place over the last 50 years, and the desirability of this expansion. Today, the recognized functions of trademarks and their uses in the market are far ranging. Trademarks are integral aspects of brands. They can be vehicles of sponsorship or communicate the values and political leanings of the brand. The expansion of both the use of trademarks and the rights that accrue to trademark owners is well established, albeit often contentious. However, the literature has yet to address a new way in which trademarks have begun to be used as, what I term, as pseudo-certification marks.

Pseudo-certification marks are individual trademarks that are promoted as, and in fact are, performing a type of certifying function. These marks are ordinary trademarks that are licensed by their owners to traders who meet a given set of criteria. The use of trademarks in this way is not intended to distinguish between different sources or brands but describe the nature of the product. The value of these marks is in performing a certifying function. The FAIRTRADE mark, what the Fairtrade Foundation calls a “certification label,” is an apt example of a pseudo-certification mark. The FAIRTRADE mark is used on a variety of products and denotes that the product is made in accordance with what the Fairtrade Foundation considers as fair-trade practices or standards. Nestlé’s COCOA PLAN and COCOA LIFE are other examples. While the literature has considered how certifying functions are performed by certification marks and Geographical Indications, this paper explores how this function is being performed by individual trademarks.

The primary contribution of this work-in-progress paper is to bring to light this undiscussed way in which trademarks are being used. I outline the potential tension that arises when these marks are, outwardly facing, behaving as certification marks but are registered as trademarks. For instance, pseudo certification-mark owners may benefit from increased control over their marks but are side-stepping regulatory safeguards. I explore the significance of this and conclude by suggesting more critical work needs to be done on the distinction between certification marks and trademarks.