

A New Normative Account Of Trade Mark Law In The Age Of Artificial Intelligence?

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This paper seeks to assess and critique the increasingly popular academic view that AI is challenging the traditional normative account of trade mark law which is based on brands being information economicising devices that guide consumer choices and decision. This academic view is based on the argument that modern consumers are increasingly relegated purchasing decisions to machine learning algorithms which are capable of obtaining more accurate and objective product information. Given that it is a machine rather than a human consumer making these choices, an growing number of scholars have argued that trade marks no longer serve their positive role of consumers, at least not directly. This paper take stock of these arguments and goes on to assess their strengths and weaknesses, suggesting a more nuanced view of how AI is in fact serving as a tool for consumer decision making.