

## *Trademarks as Club Goods*

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The most commonly accepted justification for trademarks is that they lower consumer search costs. Here, we offer a different justification for trademarks, namely, that they enable producers to create and police the boundaries of membership in a “club.” These boundaries in turn provide incentives for producers to create “clubs” in the first instance. Club membership can be valuable in many contexts that are unrelated to the quality or nature of the underlying good. The membership value of marks indicates a more complex use trademarks that relates to the ability of markets to provide public goods, specifically “club goods.”

Our conception of the membership function of trademark protection sweeps in several uses that were once thought exceptional (such as so-called Veblen or snob goods) as well as more general theories of the expressive value trademarks, but it goes well beyond them. Relatedly, we show that a club good approach provides a richer explanation of certain extant features of trademark law—such as post-sale confusion and dilution—than competing theoretical models, especially in economic terms. Thus, our theory offers a counterweight to a large body of scholarship that maintains that these trademark doctrines are irredeemably overprotective and, thus, reduce overall economic welfare.