

Brands, Expressive Speech and Social Justice

Dr. Cesar Ramirez-Montes

It is relatively uncommon to associate social justice with trade mark law. Most scholarship has explored the relationship between IP and social justice from the perspective of copyright and patents, but a lot less attention has been devoted to brands. This paper maps the interface between social justice, expressive speech and source-identifying brands. It argues that the relentless commodification of brands as valuable economic assets in themselves and the normative description of trade marks as property rights in gross throws up profound implications for speech and social justice. The paper explores the role that brand protection can play in advancing social justice goals promoting inclusion, cultural participation, self-expression and tolerance that better serve the public good in the modern world. It will examine the limits of trade mark's internal devices in serving the expressive interests of individuals and marginalised groups, and the reasons why their interests do matter from a social justice perspective. It also will consider the role played by the First Amendment in promoting speech interests but will go beyond the existing literature and evaluate wider social justice concerns that hardly ever feature in the discussions. Parodies are perhaps the best of illustration of trade mark law's encroachment into free speech values. The paper will discuss potential incentives for brand owners in the use of their brands in public discourse, perhaps by demonstrating the positive effects of brand awareness and brand recognition after post-parody uses. It will conclude by offering potential ways in which modern trade mark law can perhaps be re-imagined and re-purposed bearing in mind wider societal values beyond private economic interests such as pluralism and inclusion.