

# A Review on Importance of Trademark

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**ABSTRACT:** While many studies have focused on innovation and patents, trademarks have received less attention, despite the fact that these intellectual property assets are more extensively utilized by businesses of all kinds throughout the economy. Various international treaties have been created in order to standardize trademark registration processes between nations and to make the application process easier for applicants who want to register their trademarks in numerous countries. The purpose of this article is to provide an overview of some of the empirical research on trademarks that have been conducted by academics. What are the motivations for businesses to register a trademark? What is the relationship between trademarks, innovation, and the size of a company? The report ends with several important lessons about trademarks and their usage by businesses. Trademarks or trade names assist businesses in gaining consumer awareness, reputation, and trust. In most instances, customers depend on trademarks since inspecting a product or service rapidly to establish its quality is difficult. 21-22 A certain section of consumers is extremely concerned about the brand and will pay a premium for the brand's prestige, even if the quality is equal, in order to stand out from the crowd.

**KEYWORDS:** Trademarks, Innovation, Empirical Studies, Patents, Intellectual Property.

## 1. INTRODUCTION

Trademarks[1] have received much less attention, despite the fact that these intellectual property assets [2]are more frequently utilized by businesses of all kinds throughout the economy. A developing empirical economic literature examines the growing usage of trademarks and attempts to assess the economic function and effect of this kind of intellectual property (Millot, 2009). Trademarks become a strategic asset for companies competing on the basis of product distinction and customer loyalty because they provide visibility and reputation. When trademarks are effective, they become linked with perceived value among users, resulting in greater margins for the companies that fill them. Trademarks, one of the most common types of intellectual property rights[3], are used by both creative and non-innovative businesses. The main economic purpose of trademarks is to communicate quality and good will, to improve efficiency by lowering customer search costs, and to assist company branding efforts, rather than to provide companies incentives to engage in research and development, as patents do (Davies & Davies, 2011). The following is a breakdown of the paper's structure: The first section discusses the significance of trademarks and their usage, followed by a discussion of the major causes of trademark registration growth. What are the international trademark agreements and treaties, the number of applications submitted, and the growth rates of filed applications? Many studies have been conducted throughout the globe, from industrialized to developing nations, to assess the relationship between innovation, economic success, and company size. The second section attempts to provide an overview of empirical research on trademarks conducted by academics.

The empirical study of intellectual property has flourished over the past few decades, but the

emphasis has almost entirely been on patents and their effect on technological development. Simultaneously, recent changes in the economic structure have prompted scholars and policymakers to review their existing toolkit of indicators and seek for new metrics that would enable them to detect, monitor, and assess previously overlooked processes and practices. The increasing significance of services in the contemporary production system, and therefore the necessity for a more accurate account of innovative activities taking place there, is an excellent illustration in this respect (see Gallouj and Weinstein, 1997; Hipp and Grupp, 2005). Because service industries are often linked with a lower flow of R&D investment and patent applications, if they exist at all, traditional approaches have limited explanatory power and are likely to underestimate their innovativeness. Because of their broad usage across numerous sectors, importance to various organizational types, and tight connection with new product development, trademarks were chosen as the best option among the available options.

## 2. DISCUSSION

### *Defining Trademarks*

“Any sign, or any combination of signs, capable of distinguishing the products or services of one enterprise from those of other undertakings, must be capable of forming a trade mark,” according to Article 15 of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)[4]. This term encompasses a number of aspects.

To begin with, a trade mark is defined as a symbol. It may be a mix of denominations, letters, numbers, color combinations, or any other combination of these components. Second, the purpose of a trademark is determined by the sign's distinctiveness. The trademark law was created with the goal of protecting consumers as a public policy goal. It protects the public from being deceived about product origins or quality.

Finally, a trademark is legally defined as a kind of industrial property. The owner of a trademark has the exclusive right to use the signs to identify the products or services produced, or to allow another person to use them for a fee. In practice, the owner may be any living or dead individual (the majority of trademarks are owned by firms). The definition of a trademark is a mix of these various aspects. Millot (Millot, 2012)

### *Trademark*

In the ancient world, trademarks were already in use. Around 3000 years ago, Indian craftsmen used to carve their mark on their jewelry or creative creations. The trademark has become a significant element in the contemporary world of international commerce as a result of industrialization. A trade mark is a distinctive sign or logo that indicates that a specific item is manufactured or provided by a specific person, industry, or business. Service marks, like trademarks, help to differentiate service providers from their rivals. A company may have various types of trademarks for its various products, but trade names are used to distinguish themselves from other companies or enterprises.

Trademarks or trade names[5] assist businesses in gaining consumer awareness, reputation, and trust. In most instances, customers depend on trademarks since inspecting a product or service rapidly to establish its quality is difficult. A certain section of consumers is extremely concerned about the brand and will pay a premium for the brand's prestige, even if the quality

is equal, in order to stand out from the crowd.

To identify one company or service from another, a trademark/service mark consists of words (name, surname, geographical name, slogan, etc.), letters and numbers, drawing, logo, symbol, phrase, picture, design, or a combination of these components. Aside from these, there are a few other 'non-traditional' trademarks:

- The fragrance of fresh cut grass for tennis balls, the odor of beer for dart flights, and the scent of flowers for tyres have all been registered in the United Kingdom.
- In the United States, a fresh floral scent reminiscent of Plumeria blossoms was registered for sewing thread and embroidery yarn.
- Sound Marks or Audible Signs: Sound Marks are distinct sound marks in the form of a musical note that can be registered. In 1950, the musical notes were successfully registered as a trademark for NBC's radio broadcasting services. MGM has a registered sound trademark for the lion's roar.

#### *Important Criteria of Trademark Registration*

According to the UK Trademarks Act of 1994[6], there are three basic criteria for registering a trademark:

- The trademark should be a sign or anything else that may communicate information.
- The sign should be able to identify one company's goods or services from those of another. This is unmistakably a criterion of trademark uniqueness.
- The trademark may be represented graphically in the trademark register, allowing for exact identification.

#### *Broadly Followed Rules of Trademark Registration*

- The word "apple" or an apple device cannot be registered for apple as in this case it is not distinguishable. But it is registered being highly distinctive in case of computers.
- Similarly Camel trademark is registered for cigarettes. The generic term like "furniture" cannot be registered as trademark for chair, table, or similar type of items.
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- In case of use of letters or numerals, in certain countries registration is allowed only when at least few numbers of letters and/or numerals are combined or in case of letters the combination of word is pronounceable.
- Similarly, common surnames are not registered in some countries as they are not distinctive in nature.
- Beside these, deceptive sign or trademark which is misleading or violates the public

order or morality is not qualified for registration.

- The signs which are reserved for state, public institution, organization or international body cannot be registered as trademark.

### *Indian Trademarks Act*

The Indian trademarks act[7] specifies that any mark which is distinctive i.e. capable of distinguishing goods and services of one undertaking from another and capable of being represented graphically can be trademarks. Since trademarks do not grant exclusive right that could be exploited, there is no need to limit their validity. But without time limit, trademark validity would lead to unnecessary number of registered trademarks without any applicability. In India, the initial term of trademark registration is for 10 years and thereafter it has to be renewed from time to time. The applicant can apply for trademark registration at Trade Mark Registry Office, Mumbai (head office), Delhi, Kolkata, Ahmadabad and Chennai

### *International Agreements on Trademarks*

Various international treaties have been created in attempt to unify the various TM registration processes across nations and to make the application process easier for applicants who want to register in many countries. Aside from the Paris Convention and TRIPS, which standardize trademark procedures across nations, the Madrid Protocol, which enables trademark owners to seek protection in several countries by submitting a single application, is the most significant international agreement for trademarks. However, there is no way to register a single trade mark that would immediately apply all over the globe. Since 1994, trademark owners in the European Community have been able to register a trademark that is valid across the European Community via the Community Trademark (CTM)[8] system.

### *Treaties governing registration systems for obtaining protection*

The trademark systems are largely standardized across the globe thanks to numerous international accords. Furthermore, trademark databases containing information on the owner, geographical origin, and application and registration dates are accessible due to registration systems.

- *The Madrid System for international registration of marks - 1891-1989*

The Madrid method[9] is the most widely used worldwide procedure for registering trademarks in several countries. It was founded in 1891 and is regulated by two international treaties. The Madrid Agreement (1891) and the Madrid Protocol (1989) were signed in Madrid, Spain. It is managed by the World Intellectual Property Organization's International Bureau (World Intellectual Property Organization)[10]. It allows a trademark owner to protect his trademark in several Madrid Union nations by submitting a single application in one jurisdiction with a single set of costs. Contracting Parties are the states and organizations that are members of the Madrid system.

- *The Community Trade Mark (CTM) System - 1994*

The CTM system, which was created in 1994, aims to provide trademark owners with the

ability to register a trademark that is valid across the European Union. The filing of a trademark with the Office for Harmonization in the Internal Market (OHIM, European TM office)[11] results in the creation of a right that is valid across the European Community. The registration of a CTM is valid in all European Community member states. A member state's objection to a CTM application may invalidate the whole application; if there are none, the CTM registration is valid in all member states. Nonetheless, the CTM system does not replace national TM registration systems; rather, they work in tandem (Millot, 2009).

### *Madrid International applications*

In order to file a Madrid international application, applicants must have first applied for a trademark registration with their respective home IP office that represents a Madrid member country or region. On the basis of this original application or registration issued therefore, the trademark applicant or holder benefits from the option to seek protection for this trademark internationally in other Madrid member countries by submitting an international application with their respective domestic IP office.

In year 2013, 46,829 Madrid international applications were filed, thus reaching their highest level ever recorded. In fact, over the 18- year period presented their numbers have increased for all but three years that coincided with economic downturns in the early 2000s and 2009. This prevailing growth is partly due to factors such as increased usage of the Madrid system and its expanded membership, coupled with a general upward trend in trademark application volumes worldwide. In 1996, the number of Madrid system member countries totaled just 50. By 2004, membership had increased to 77, following the addition of several larger members, including the Republic of Korea, the United States of America (US) and the European Union (EU). This in turn led to a spike in the number of international applications filed. By 2008, the Madrid System counted 84 members before reaching its current 92 in 2013. (WIPO, 2014)

### *Benefits of Trademarks*

What effect do trademarks have on social welfare? This question has caused economists to have opposing viewpoints. In their founding article of the "Law and Economics Approach," Landes and Posner (1987) claim that trademark law may be explained by the premise that the law is attempting to promote economic efficiency. The fundamental idea is that trademarks are economically advantageous because they aid in the resolution of information problems.

Akerlof brings up the problem of asymmetry<sup>4</sup> between vendors and purchasers (1970). Trademarks are used by businesses to indicate to customers that a product is of a particular quality. Landes and Posner provide a formal model based on the integration of a consumer's search costs while selecting products: the complete price of an item includes both the money price and the search costs. Firms that invest in trademarks lower their search costs, allowing them to charge a higher money price and improve their profits.

When differentiated quality is added, the model predicts that increased trademark investment corresponds to increased product quality. As a result, trademarks achieve a societal optimum. Social costs and benefits are often regarded as global notions in the wide discussion on the merits of IP tools. A region may acquire a competitive edge over other areas if the companies situated there get a competitive advantage as well, and if the value added that results is maintained in the region in a proportional manner. If the business is situated inside the area, a

worldwide social cost resulting from monopolistic distortion is compatible with a regional gain. The goal of regional organizations promoting trade marking among local businesses is apparently to make it easier to create and maintain monopoly rents within the area. Mainwaring, Moore, and Murphy.

#### *Empirical studies on trademarks*

Trademarks, patents, and other kinds of intellectual property has been the subject of numerous empirical investigations. There has recently been a surge in interest in the usage of trademarks. The primary topics are

- Trademark use patterns in connection to firm innovation and new product development,
- Trademarks and firm economic success, and
- Trademarks and company size.

#### *Trademarks and innovation*

Davies and Davies (2011) created the matrix below to understand how trademarks may influence innovation when seen as both exclusive rights and indications of quality and purpose. As shown in Figure 4, trademarks as exclusive rights may serve as the legal foundation for both weak (or non-existent) and substantial entry barriers. Both novel and non-novel products may be protected by trademarks. There are four possibilities:

- A trademark protects a new innovation as well as a product that is inefficient as an entrance barrier;
- A trademarked invention protects a novel product that is ineffective as an entry barrier.
- A trademark protects a non-novel product that is useful as an entrance barrier;
- The trademark protects a non-novel product while also being useless as an entrance barrier.

### **3. CONCLUSION**

Various brand rankings, as well as recent studies conducted in the United States and the European Union, as well as by the World Intellectual Property Organization (WIPO) and many other scholars interested in intellectual property in general and trademarks in particular, have demonstrated the value of trademarks. They cover a wide range of issues, and the factors they examine include company size, financial success, trademark usage as an indication of innovation, and a combination of these. They demonstrate a positive relationship between trademarks and business size, financial success, and, in many instances, act as a barometer of how creative a company is.

#### **REFERENCES:**



- [1] B. Sharma, "Trademark," in *Pharmaceutical Medicine and Translational Clinical Research*, 2017.
- [2] S. K. Pal, S. Prakash, A. Madhukar, and S. P. Mehrotra, "Evaluation of Intellectual Property Asset value," *Int. J. Intellect. Prop. Manag.*, 2007.
- [3] A. Alimov and M. S. Officer, "Intellectual property rights and cross-border mergers and acquisitions," *J. Corp. Financ.*, 2017.
- [4] T. A. Faunce and P. Drahos, "Trade related aspects of intellectual property rights (TRIPS) and the threat to patients: A plea for doctors to respond internationally," *Med. Law*, 1998.
- [5] S. Thomas, "Trade name," *New Sci.*, 1999.
- [6] P. Gangwar, "Comparative Advertisement and Infringement of Trademark," *SSRN Electron. J.*, 2013.
- [7] N. Mishra, "Registration of non-traditional trademarks," *J. Intellect. Prop. Rights*, 2008.
- [8] A. A. Machnicka, "Territorial Aspects of Community Trademarks – The Single Market's Splendid Sovereignty," *IIC Int. Rev. Intellect. Prop. Compet. Law*, 2014.
- [9] S. Jelisavac, "International regulation of intellectual property rights," *Medjunarodni Probl.*, 2004.
- [10] "WIPO – World Intellectual Property Organization," in *A Concise Encyclopedia of the United Nations*, 2010.
- [11] C. Grigorut and C. Marinescu, "The Community Trademark and the Office for Harmonization on the Internal Market (OHIM)," *EIRP Proc.*, 2012.