ONE TRADEMARK PER SOURCE

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ABSTRACT

Trademark law is unjustifiably permissive because it protects more than one mark for each supplier of goods and services. Suppliers need some exclusive symbol to indicate that they are the only source of goods and services carrying that mark. Trademarks are, however, more than source-indicators. They are marketing devices. Suppliers use trademarks to attract consumers’ attention to their products by suggesting unique characteristics and qualities, by surrounding the products with an aura of superiority or desirability, or simply by being clever or appealing. No one supposes that marketing devices, as distinguished from source indicators, should receive any intellectual property law protection whatsoever.

Multiple marks are not necessary to indicate source. They may help suppliers create market niches for their products by giving their products names that make them appear to be (accurately or not) unique types of products. Everyone familiar with trademark law understands that intellectual property protection does not extend to generic or merely descriptive terms – those labeling types of goods or describing goods. It is not as obvious that even fanciful and arbitrary trademarks are simultaneously both source indicators and indicators of types and characteristics of products that have acquired descriptiveness.

This article proposes and justifies a radical restructuring of trademark law limiting trademark protection to one mark per source, a “single signal” rule. It argues that the proper scope of trademark law requires emphasizing source-indicating function of trademarks and liberating the product-describing function. It suggests a program for minimizing the dislocation costs to consumers and suppliers that result from removing trademark protection from many famous marks.

Protection of marketing devices makes it more difficult for competitors to attract consumers and for consumers to learn about alternative suppliers. Limiting suppliers to a single mark is sufficient for source-indicating purposes, enables consumers to know what products compete to satisfy their needs, and makes it easier for smaller competitors to supply them, facilitating competition. The “single signal” rule creates a superior balance between exclusive trademark rights and public access to means of expression.