Topic: The Case For Trademark Merchandising?

Abstract: This Article examines the increasingly important phenomenon of trademark merchandising. Somewhat an anomaly within the "traditional" approach of trademark rights, (the recognition of) trademark merchandising clearly protects the interests of trademark owners. Accordingly, trademark scholars have often criticized this practice as dangerous for competitors and consumers, while practitioners have often reinforced its importance (and protectability). Still, while arguing against or for it, nobody has provided a comprehensive analysis of this practice. This Article fills this void and stresses the consequences of the lack of a clear position on the issue. Specifically, this Article advocates for a pragmatic approach that reconciles the recognition of merchandising with the protection of consumer and market competition. In particular, this Article highlights how the current academic debate is out of touch with business reality, and supports a limited protection of trademark merchandising. Contrary to common criticism, such protection will not harm consumers by limiting product availability and increasing product prices. Instead, it will foster competition and benefit consumers by increasing the number of alternative goods and services that could be available in the marketplace.