

Naming, Identity, and Trademark Law

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Abstract

Although trademark and unfair competition law, in its modern incarnation, encompasses anything that might serve to indicate source — sounds, product designs, colors, logos, and slogans — it is, at its core, about naming, identity, and association. For both a trademark plaintiff and a trademark defendant, the law accords value (or denies permission) to certain naming choices. The name of a product, service, or company can be viewed as strong or weak, as suggestive or descriptive, as unique or confusing.

But, of course, the choice of a name and the identity and associational issues that choice implicates are not concerns limited to the corporate world. As individuals, we each can have multiple moments in our lives when naming is of particular concern: the birth of a child, the decision to marry, compliance with certain religious requirements, immigrating to a new country, and instances of creative expression, just to name a few. Here, too, the law has something to say about the perception accorded to these naming choices and the freedom one is afforded to make these decisions in the first place.

Both with respect to individuals and with respect to corporations, the law is particularly concerned with fraud or deception: the idea that one's choice of name might lead others to engage in transactions or form relationships that they would not engage in otherwise. But this interest is not vindicated uniformly: A corporation can change its name after being involved in unsavory activities, and a writer can choose one name for her scholarly endeavors and another name for her mystery novels, and the law has virtually nothing to say about these (perhaps) equally deceptive choices.

This paper will explore the various ways in which the law reacts to naming decisions both for individuals and as a matter of trademark law and consider whether there are any useful lessons one realm might learn from the other.