

The Use and Abuse of Certification Marks

Jeanne Fromer Professor, New York University School of Law
New York, NY

Scholarship and litigation in trademark law tend to focus on trademarks, marks used to denote a particular source's goods or services. Less studied is another sort of mark in trademark law: the certification mark. Certification marks are conferred by a certifier on goods or services provided by varied sources to connote that they satisfy the certifier's particular standards. Trademark law's general goal is to promote competition by providing businesses with a way to communicate about the qualities of their goods and services succinctly with a mark, so as to help consumers. While certification marks share some of those features, they have some critically distinct characteristics. In particular, certain certification marks might possess a form of "market power" that can harm trademark law's goals of promoting competition in a way that is less worrisome for trademarks. I suggest how trademark or antitrust law might address these concerns to bolster trademark law's goals of competition and consumer protection for certification marks. In addition and relatedly, unlike trademarks, which markholders can employ to convey specific characteristics in a way that evolves over time, there is a greater pull with certification marks to keep stable the characteristics and standards these marks represent. Yet the certifying organization might also possess a strong interest (as trademark holders generally do) in retaining the flexibility to redefine the certification standard. Drawing on examples across the range of certification marks - geographic, product standards, religious, ethical, and so forth - I propose the extent and contours of protection for certification marks.

Email: jeanne.fromer@nyu.edu

Fromer