

Branding Democracy: Using Trade-marks to Voice Dissent

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The 21st century promises an era of globalization like never seen before. The legal community responds with initiatives ranging from the establishment of a world judiciary to the harmonization of intellectual property. This paper focuses on the role of branding and trade-mark law with respect to the social and political unrests brought on by globalization. Discussions on whether to limit or expand trade-mark protection assume it is solely a private conflict by focusing on the rights of trade-mark owners vis-à-vis competitors and consumers. What has been neglected in these discussions are the rights of citizens - members of the public who are neither competitors nor consumers necessarily but need to use intellectual property as means through which dissent can be expressed and heard. Should owners (e.g., celebrities, corporations, governments) be rewarded for the investment they made to build brand loyalty by having a monopoly on the use of their trade-marks? Should citizens be allowed to use trade-marks to protest transnational corporations that violate human rights and environmental laws overseas, or to protest a political parties with respect to foreign policy and global security issues? This paper argues that the protection to own words, phrases, slogans, images, designs and all sorts of symbols as vehicles for branding should not become a prohibition for citizens to use the same. It argues that if the marketplace of speech for owners comes at the expense of the marketplace for speech for citizens, then trade-mark law ends up subsidizing particular types of expression over others.

Biography: U. Shen Goh practiced IP law with Carters Professional Corporation from 2003 to 2011 as a lawyer and registered trade-mark agent. Her current Ph.D. research focuses on whether Canadian law is adequately protecting foreign language marks.

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