

Protection of unregistered trademarks at European Union level

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Propositions:

1. The accelerated globalisation of economic relations from the past century, as well as the growth, in time, of the economic value of trademarks have led to a prevalence of the attributive trademark protection system over the declarative trademark protection system.
2. Due to this evolution, the functions of trademarks which have their intrinsic economic value as a foundation, such as their advertising function, began to gain importance over the core function of a trademark to identify a good of service as originating from a specific entity. For this reason, the importance of protecting trademark owners and their investments became, in time, at least as important as protecting consumers from confusion.
3. For this reason, the protection of registered trademarks was encouraged, as opposed to protecting trademarks through use. For this reason, the most important international treaties, as well as European Union legislation, focused on the protection of registered trademarks, while protection of unregistered trademarks was not harmonised. Nevertheless, trademark use remained an important pillar of trademark protection, regardless of the trademark protection systems.
4. Several Member States of the European Union provide a significant level of protection to unregistered trademarks, and their experience shows that, despite the clear advantages of seeking protection through registration, protection of unregistered trademarks has maintained its relevance. In order for unregistered trademarks to represent an effective means of protection, building a consistent practice or providing more detailed legal provisions to this end is necessary.
5. The main purpose of the law is to maintain order, establish standards, resolve disputes and to protect liberty and rights. To achieve these purposes, the law should be conceived in a manner that reduces uncertainty in connection with levels of protection or the extent of rights.
6. In general, legal harmonisation is beneficial as it creates common rules that are applied to businesses that operate in different jurisdictions, and reduces the risks and burdens posed by the need to comply with different legal standards in the case of cross-border operations.
7. An efficient protection of intellectual property rights facilitates the free movement of information, ideas, goods and services.
8. The potential contribution of this research to scholarly debate consists of its findings regarding the experience of jurisdictions where unregistered trademarks enjoy a higher level of protection, and the possibility to use this experience in shaping a potential harmonisation of the protection of unregistered trademarks at European Union level.