Trademark Infringement, Dilution, and the Decline in Sharing of Famous Brand Names

Robert Brauneis
Professor of Law and Co-Director, Intellectual Property Law Program
George Washington University Law School
Washington, D.C.

Thursday, November 17, 2011
The Houston Club
811 Rusk Avenue, Houston, Texas

Reception 5:30 p.m. - Lecture 6:15 p.m.

One Hour of CLE Credit
Kindly RSVP to ipil@uh.edu or 713.743.2180
The Fall Lecture
Sponsored by the Ronald A. Katz Foundation
Celebrating 18 Years of Serving
Houston’s Intellectual Property
& Information Law Bar

PAST PRESENTERS

2010  JANE K. WINN, Charles I. Stone Professor of Law, University of Washington School of Law, Seattle

2009  GREGORY N. MANDEL, Temple University Beasley School of Law, Philadelphia

2008  MARGO A. BAGLEY, University of Virginia School of Law, Charlottesville

2007  CLARISA LONG, Max Mendel Shaye Professor of Intellectual Property Law, Columbia University School of Law, New York

2006  JOHN F. DUFFY, Oswald Symister Colclough Research Professor of Law, George Washington University Law School, Washington, D.C.

2005  DAN L. BURK, University of Minnesota Law School, Minneapolis

2004  DAVID J. FRANKLYN, University of San Francisco School of Law, San Francisco

2003  WILLIAM F. LEE, Wilmer Cutler Pickering Hale & Dorr LLP, Boston


2001  YSOLDE GENDREAU, Université de Montréal, Québec

2000  JERRE B. SWANN, Kilpatrick Stockton LLP, Atlanta

1999  JOSEPH STRAUS, Max Planck Institute for Foreign and International Patent, Copyright and
Competition Law, Munich

1998  JOHN R. THOMAS, Georgetown University Law Center, Washington, D.C.


1996  HON. GLENN ARCHER, HON. PAULINE NEWMAN, AND HON. EDWARD SMITH,
U.S. Court of Appeals for the Federal Circuit, Washington, D.C.

1995  DONALD S. CHISUM, Author, CHISUM ON PATENTS

1994  JOHN PEGRAM, Fish & Richardson, P.C., New York

IPIL/HOUSTON
The sharing of brand names is as American as apple pie. Well-known examples such as Delta Faucets and Delta Airlines reveal only the tip of the iceberg, as many famous brand names have been shared by dozens or even hundreds of companies. Yet although traditional trademark infringement doctrine accommodated such sharing by limiting protection to closely related goods and actual trading areas, more modern infringement doctrine seems less hospitable to sharing, and trademark dilution legislation seems downright hostile to it. In the face of these developments, has the sharing of famous brand names actually decreased, and can any changes in sharing rates be traced to particular legal, economic, or cultural shifts?

This work represents a first attempt at answering that question. It presents results from an empirical study of sharing rates among 131 famous brand names from 1940 through 2010, conducted through an examination of business names in the White Pages telephone directories of Chicago, Philadelphia, and Manhattan. Perhaps the most dramatic finding of the study is that independent uses of the 131 brand names – that is, uses of those names by businesses other than those that made the names famous – have declined from 3000 to 1380 between 1960 and 2010, a 54% drop. The paper then assesses potential causes for that decline. It evaluates five potential nonlegal factors, including economic changes, family migration impacting surname brand-name uses, decreased attractiveness of particular famous brands, changes in the popularity of business name types, and changes in cultural naming patterns. It then considers evidence that changes in trademark infringement and dilution law underlie some part of the decline. The conclusion is that both legal and non-legal factors have likely played a role.


Professor Brauneis received his undergraduate degree from the University of California, Santa Cruz, and his J.D. from Harvard University. He is a member of the Managing Board of the Munich Intellectual Property Law Center. His teaching interests include Property; Copyright; Trademark; and Intellectual Property Theory.
The Fall Lecture is Made Possible by a Generous Gift from Ronald and Madelyn Katz

Ronald A. Katz