

Trademark Dilution and Trademark Law Theory- Is There A Logical Connection?

Katja Weckstrom

By the turn of the millennium trademark owners had acquired extended protection for not just globally well known marks, but also less known, 'merely' nationally famous marks. Famous marks were considered deserving of protection even absent a likelihood of confusion among consumers and when competing marks were used on dissimilar goods. Despite sharp criticism dilution protection has defended its place on the books. Nevertheless, its practical use and value remains unclear and highly controversial worldwide. Similarly the scope of dilution protection against blurring, as well as the availability of dilution protection to non-distinctive marks remain contested. This article attempts to find the theoretical framework that ties dilution protection to contemporary trademark law theory and uses this larger lens to assess its scope and limits. A comparative analysis of recent decisions from the European Court of Justice, the United States' and Canadian Supreme Courts and legislative developments in the respective regions serve as a practical sounding board for the analysis. When comparing different approaches to dilution protection -focusing on its inherent limits- a similar pattern emerges. This article argues that these similarities define the road of a functioning form of protection for famous marks.