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**Critically appreciate the global development of Intellectual Property law. Are trade marks given too much protection?**

Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.

IP is protected in law by, for example, [patents](http://www.wipo.int/patents/en/), [copyright](http://www.wipo.int/copyright/en/) and [trademarks](http://www.wipo.int/trademarks/en/), which enable people to earn recognition or financial benefit from what they invent or create.

Until the middle of the 20th century, [copyright](http://www.britannica.com/topic/copyright), [patent](http://www.britannica.com/topic/patent), [trademark](http://www.britannica.com/topic/trademark), and trade-secret law commonly were understood to be comparable to certain aspects but distinct. In most countries they were governed by different statutes and administered by disparate institutions, and few controversies involved more than one of these fields. It also was believed that each field advanced different social and economic goals. During the second half of the 20th century, however, the lines between these fields became blurred. Increasingly they were considered to be closely related, and eventually they became known collectively as “intellectual-property law.” Perceptions changed partly as a result of the fields’ seemingly inexorable growth, which frequently caused them to overlap in practice.

In the 1970s, for example, copyright law was extended to provide protection to computer [software](http://www.britannica.com/technology/software). Later, during the 1980s and 1990s, courts in many countries ruled that software could also be protected through patent law. The result was that the developers of software programs could rely upon either or both fields of law to prevent consumers from copying programs and rivals from selling identical or closely similar programs.

Copyright, patent, trademark, and trade-secret law also have overlapped dramatically in the area of so-called “[industrial design](http://www.britannica.com/topic/industrial-design),” which involves the creation of objects that are intended to be both useful and aesthetically pleasing. Contemporary culture is replete with examples of such objects-e.g. eyeglass frames, lamps, doorknobs, telephones, kitchen appliances, and automobile bodies. In many countries the work of the creators of these objects is protected by at least three systems of rules: copyright protection for **useful objects** (a variant of ordinary copyright law), design-patent law (a variant of ordinary patent law), and “trade-dress” doctrine (a variant of trademark law). These rules stop short of protecting “functional” features, which are understood to include the shapes of objects when those shapes are determined by the objects’ practical uses. Nevertheless, the rules combine to create strong impediments to the imitation of nonfunctional design features.

The integration of copyright, patent, trademark, and trade-secret law into an increasingly consolidated body of intellectual-property law was reinforced by the emergence in many jurisdictions of additional types of legal protection for ideas and information. One such protection is the “[right of publicity](http://www.britannica.com/topic/right-of-publicity)” which was invented by courts in the United States to enable celebrities to prevent others from making commercial use of their images and identities. Similarly, the [European Union](http://www.britannica.com/topic/European-Union) has extended extensive protections to the creators of electronic databases. Computer chips, the shapes of boat hulls, and folklore also have been covered by intellectual-property protections.

Increasing levels of infringement have made intellectual property rights issues highly visible in recent years, not only does the level of infringement appear to be rising, but there has also been a change in the industries affected. Whereas, in the past, manufacturing of fashion types of consumer goods was primarily affected, today producers of a broad range of industrial goods, including products and processes in such high-technology areas as computer hardware and software, biotechnology, and pharmaceuticals are suffering significant economic losses due to infringement. The losses threaten the incentive of firms in the involved industries to develop and introduce technological innovations.

The rise and spread of infringement of intellectual property rights have a number of causes. First, there is significant profit to be obtained from counterfeiting. Second, in many cases there are only limited risks because of weak intellectual property laws, weak enforcement, or both, and it is difficult to detect infringement. Third, infringement is also becoming significantly easier and cheaper in many instances, often because of technological changes that place the means for copying and producing in the hands of many. This has happened in the case of audio- and videotapes, for example, and in software for personal computers. Finally, the governments of some developing countries apparently allow infringement to flourish within their borders because such activities contribute to their national economic development.

The definition of infringement varies from nation to nation, depending on a nation's intellectual property laws. Thus, what constitutes infringement in the United States may not be infringement under another country's laws. Often, what U.S. companies find objectionable is not really infringement, but rather the low level of protection afforded by some countries' intellectual property laws and enforcement, compared with those of the United States and other industrialized countries.

Reliable estimates of the losses due to infringement are necessary to evaluate the severity of the problem and to determine what policy actions are warranted. It is quite difficult to develop such estimates, however, because definitions of infringement vary among nations, and it is difficult to detect infringing activities or products. Infringement problems are specific to certain industries or products, countries, and particular forms of intellectual property rights. To study the problem rigorously, it is necessary to focus on selected products in selected countries. Such analysis does not, of course, provide a basis for extrapolating to worldwide infringement losses.

Article I, Section 8 of the U.S. Constitution gives Congress express authority to grant authors and inventors exclusive rights to their creations. Section 8 also gives Congress the power to regulate interstate and foreign commerce, providing further support for its right to legislate in this area. Intellectual property laws passed by Congress are administered by two government agencies, the U.S. Patent and Trademark Office, and the U.S. Copyright Office.

The Mauritian Intellectual property follows the following Acts of parliaments and regulation:

* The patent Act (R\L4\135 – 22 May 1875)
* The TradeMark Act (R\L5\476–1 November 1868)
* The copyright Act 1997 (as amended)

Law amendements made in year 2002

* The patents, industrial design and trademark Act 2002
* The layout design of integrated circuits Act 2002
* The geographical Indication Act 2002
* The protection against Unfair practices (Industrial Property Act) 2002

A trademark identifies the [brand](https://en.wikipedia.org/wiki/Brand) owner of a particular product or service. Trademarks can be licensed to others. The owner of a trademark may pursue [legal action](https://en.wikipedia.org/wiki/Lawsuit) against [trademark infringement](https://en.wikipedia.org/wiki/Trademark_infringement). Most countries require formal registration of a trademark as a precondition for pursuing this type of action. The United States, Canada and other countries also recognize common law trademark rights, which means action can be taken to protect an unregistered trademark if it is in use. Still, common law trademarks offer the holder in general less legal protection than registered trademarks.

Trademark is subject to various defenses, such as abandonment, [limitations on geographic scope](https://en.wikipedia.org/wiki/Tea_Rose-Rectanus_doctrine), and fair use. In the United States, the [fair use](https://en.wikipedia.org/wiki/Fair_use_(U.S._trademark_law)) defence protects many of the interests in free expression related to those protected by the [First Amendment](https://en.wikipedia.org/wiki/First_Amendment_to_the_United_States_Constitution).

Fair use may be asserted on two grounds, either that the alleged infringer is using the mark to describe accurately an aspect of its products, or that the alleged infringer is using the mark to identify the mark owner. One of the most visible proofs that trademarks provide a limited right in the U.S. comes from the comparative advertising that is seen throughout U.S. media.

Trademark law is designed to fulfill the [public policy](https://en.wikipedia.org/wiki/Public_policy) objective of [consumer protection](https://en.wikipedia.org/wiki/Consumer_protection), by preventing the public from being misled as to the origin or quality of a product or service. By identifying the commercial source of products and services, trademarks facilitate identification of products and services which meet the expectations of consumers as to quality and other characteristics.

**How companies try to see that their Trademark is not infringed**

Monitor Competitors

They actively monitor the market for signs of brand infringement. If their tagline is a registered trademark, for example, occasionally search for the phrase on popular search engines, including Bing or Google. They visit competitor websites to make sure that their rival isn't copying their colors, images or visual design. The longer that a competitor infringes, the harder it is to put a stop to it. Routine monitoring helps stop problems before they become big enough to help pay off their attorney's law school debt.

Fight Infringement

They aggressively fight any appearance of brand infringement. They begin by sending a courteous letter to the offending company, outlining their concerns and potential resolution. If the company's leaders fail to respond, they send a formal cease-and-desist letter and refer the matter to their attorney for further review and recommendation. In extreme cases, infringement claims must be resolved through the court system by means of a civil suit.

Protect Brand

A well-defined, recognized and respected business brand is a substantial asset for any company. Business leaders should spare no expense or energy in aggressively defending their brand from infringement. This protection includes setting clear standards for how the brand is used and communicated from within, as well as from encroachment by others. It also means that business leaders should actively watch for negative stories and comments about the company and find a way to make it right. For example, NASCAR has started fining drivers who speak negatively about the sport to protect the NASCAR image. Several companies offer Internet monitoring of brand identity. There is scant evidence that these companies are truly effective at assessing and protecting a brand against all aspects of online infringement.

To prevail on a claim of trademark infringement, a plaintiff must establish that it has a valid mark entitled to protection; and that the defendant used the same or a similar mark in commerce in connection with the sale or advertising of goods or services without the plaintiff's consent.  The plaintiff must also show that defendant's use of the mark is likely to cause confusion as to the affiliation, connection or association of defendant with plaintiff, or as to the origin, sponsorship, or approval of defendant's goods, services or commercial activities by plaintiff.

In Mauritius

If a trademark is not used, what happens?

• Any interested person may request the Controller to remove from the register a mark. The requirement is that the mark should not have been used for a continous period of 3 years.

• The mark should not have been used and the mark will not be removed if the Controller is satisfied that there are reasonable circumstances that prevented the use of the mark and there was no intention not to use or abandon the same in respect to those goods or services.

Duration of a Trademark

• The registration of a trademark is valid for 10 years from the date of filing of the application.

• This period is renewable for consecutive periods of 10 years, at a fee and there may be other conditions to the renewal.

• For collective marks, same formalities as for registration of a mark exist except that the application must be accompanied by a copy of the terms of the agreement governing the use of a collective mark.

**Examples of a trademark infringement case**

The Gucci company had sued the Guess company for trademark infringement. In 2012, New York court found that Guess had copied four of the five trademarked logos namely

1) the green-red-green Stripe mark  
2) the repeating GG pattern  
3) the diamond motif trade dress, which is the repeating GG pattern with a pair of inverted Gs in each corner rendered in a brown/beige color combination,  
4) the stylized G design mark  
5) the script Gucci design mark

Guess paid $4.7 million instead of $124 million. Two weaknesses in Gucci’s case was that they waited for a long time to put a case against the Guess. They should have put a case against them as soon as the Guess started the infringement which is why companies are very vigilant as to not let anyone infringe their Trademark for too long(methods listed above).Secondly it was found that Guess had diluted Gucci's logos, not counterfeiting them, saying, "courts have uniformly restricted trademark counterfeiting claims to those situations where entire products have been copied stitch-for-stitch.".This is the reason why French court ruled in Guess's favor, finding no trademark infringement, no counterfeiting and no unfair competition between the luxury Italian label and American mall brand. Gucci's request for €55 million (about $62 million USD) in damages was denied and instead the company was ordered to pay Guess €30,000 about ($34,000 USD). The court also nullified Gucci's trademark of three of its "G" logos.

# Trade mark infringement case in Malaysia

# A British manufacturer of biscuits has been selling cookies in Malaysia for more than 20 years, and has had a registered trade mark 'ChipsMore' for these goods during that time.

A Malaysian company started manufacturing and selling cookies under the brand 'ChipsPlus' since 2 years.

The British company was advised that they could sue the Malaysian company for trade mark infringement and also 'passing off', which can be used to enforce unregistered trade mark rights and exists in Malaysia as it is a Common Law country.

For trade mark infringement, the British company had to prove that the Malaysian company's brand so nearly resembled their own that it was likely to deceive or cause confusion in the course of trade in relation to their own products.

For 'passing off' the British company had to prove that the Malaysian company was misrepresenting their goods as being connected with the British company. They also had to prove that their own brand had acquired 'goodwill' and reputation in the marketplace, and that they would suffer damage as a result.

**Outcome**  
The Malaysian court held that 'ChipsPlus' was an infringement of 'ChipsMore' as they were similar marks for identical goods and likely to deceive or cause confusion. In particular, the 'Chips' part was phonetically identical, the suffixes 'More' and 'Plus' have a similar meaning, and the formatting of the words was similar.

In addition, the claim for 'passing off' was successful. The British manufacturer had been selling cookies in Malaysia for over 20 years and therefore had no difficulty in demonstrating substantial goodwill and reputation in the brand. The appearance of the 'ChipsPlus' product was held to be strikingly similar to the 'ChipsMore' product, including similar colours, fonts and other aspects of the composition, which was indicative of misrepresentation. The court determined that the British manufacturer would therefore suffer damage (loss of business) if the Malaysian company was allowed to continue.

Conclusion – Trademark is of utmost importance to companies, It has everything to do with their goodwill and reputation thus it is very important to protect it. No matter how much protection is given to it is not more than enough. It is the Trademark owner’s right to have complete security if their Trademark is original and has value.

References

<https://en.wikipedia.org/wiki/Trademark_infringement>

<http://www.mrc.org.mu/Documents/GuidelinesIPR.pdf>

<https://cyber.law.harvard.edu/property00/domain/CaseLinks.html>

<http://fashionista.com/2015/02/french-court-rejects-gucci-trademark-claims-against-guess-paris-france>

<http://www.southeastasia-iprhelpdesk.eu/en/node/311>

<http://www.uspto.gov/page/about-trademark-infringement>

<https://indiankanoon.org/search/?formInput=trademark%20infringement%20cases>

<http://www.wipo.int/about-ip/en/>

<http://www.mrc.org.mu/Projects/IPRBooklet.pdf>

<https://www.hg.org/intell.html>