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TRADEMARK AS A BRANDING TOOL FOR THIRD GENERATION UNIVERSITY

ABSTRACT

Purpose: An overview of how trademarks are used to brand universities and an analysis of global trends in this area.

Methodology: The methodology of the article is based on the core method used in legal sciences, which is the legal-dogmatic method. In addition, an analysis of the literature on the subject was carried out. Furthermore, within the framework of the article, data on registered trademarks in the databases of intellectual property offices were used.

Findings: The use of trademarks as part of a university's branding and identity is becoming a global trend. An increasing number of universities are choosing to protect their trademarks also within regional and international systems. The use of trademarks is part of the third-generation university model as one focused on communication and cooperation with the socio-economic environment.

Originality/value: The article refers to the realisation by trademarks their functions in the activities of entities that are not directly aimed at generating profit. It attempts to show the relationship between the change in the operating model of universities and the use of distinctive signs in communication with the socio-economic environment.

Keywords: trademark, branding, third generation university

1. INTRODUCTION

Over the years, the role of the university in society and market turnover has been changing. Universities today develop their educational offer and research activities, seek contact with industry, business and society in general, and are open to implementing solutions developed by researchers. Thus, they have become third-generation universities. In order to fulfil these goals, they use a number of different possibilities to make their offer as attractive as possible

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and to reach their potential audience with it. Amongst the forms of such communication are trademarks, which are carriers of the information encoded in them and which allow their owners to define their market identity. (Pietrzyk-Tobiasz, 2022).

The purpose of this article is to discuss the relationship between the change in operating model of universities and the use of distinctive marks in communication with the socio-economic environment. It also aims to identify trends in this area.

2. LITERATURE REVIEW

2.1. TRADEMARK REGULATIONS

A trademark is one of the objects of industrial property. Currently, the institution of trademarks is characterised by a multiplicity of protection systems. These include national systems, regional systems (in particular the EU system of trademark protection) and the international system. These systems attach certain rights to the fact of registration. However, this does not exclude the protection of unregistered signs, e.g. under unfair competition law or common law (in US) (Kozak, 2016, Blakenship, 2001).

The principal international legal act in the field of trademarks is the Paris Convention for the Protection of Industrial Property (Błęszyński, 2007). The other important regulation in this sphere is the Madrid Agreement signed in 1891, which is a special agreement within the terms of the Convention (Ladas, 1966). This agreement, along with its protocol of 27 June 1989, form the basis of the so-called Madrid system. Currently, 114 countries are members of the Madrid Union. The fundamental acts regulating trademarks also include Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). These normative acts set global standards for trademark protection.

In relation to European regulations, the legal acts in force in the European Union play an important role. These acts refer, on the one hand, to the internal systems of protection of trademarks of the Member States, ensuring harmonisation of these regulations and introducing uniform standards of protection. On the other hand, there are also the acts that establish the registration system of European Union trademark, which is a system with territorial scope covering all the EU countries. The system is maintained on the basis of Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark. It is autonomous and separate from the national protection regime of trademarks registered by the intellectual property offices of the Member States. European Union trademarks are registered by European Union Intellectual Property Office (EUIPO).

2.2. LEGAL DEFINITIONS OF A TRADEMARK AND ITS CONSEQUENCES

The legal definitions of a trademark in force in the various legal orders make it clear that the key attribute of a trade mark is its ability to distinguish. It determines the possibility of granting legal protection to the mark. (Article 15 p. 1 of TRIPS, Article 4 of Regulation 2017/1001, Article 3 of Directive (EU) 2015/2436, the federal Lanham Act in force in the United States).

Consequently, the primary function of a trademark is indicating origin, also known as the distinctive function (Promińska, 1994, Wojcieszko-Głuszko, 2017). The main purpose

of using trademarks is to identify and individualise goods or services. Therefore, the distinctive function is said to be primary, and the other functions are derived from it (Calboli & Ginsburg, 2020). Other traditionally mentioned functions of trademarks include advertising function, qualitative function, guarantee function and customer attraction function (Koczanowski, 2008). However, it must not be forgotten that the realisation of these functions takes place within the framework of socio-economic turnover. After all, apart from the fact that a trademark is a legal institution, it also constitutes an economic and social phenomenon. It is as well a communication tool (Dreshacer, 1992). Anyway, the registration of a sign as a trademark does not condition its existence, but only results in the granting of legal protection. The most accurate description of trademark meaning is provided by R. Skubisz, who points out that it lies in the uniform relationship between the sign and the product, reflected in the human consciousness, which includes all the associations of a given product, distinguished on the basis of the criterion of its origin (Skubisz, 2017). A trade mark involves a complex reality in which associations, perceptions, evaluations relating to a good or service are concentrated. Therefore, the trademark does not only convey information about the goods and services, but it is also capable of conveying very compound messages to consumers, often with an emotional basis. In this way, the 'product' purchased ceases to be merely an element of everyday life and becomes part of our identity (Homeyer, 1870).

It should be noted that the definitions given above do not restrict the circle of entities that can register a trademark to entrepreneurs only. Some can be observed under the provisions of Lanham Act. Article 15 U.S.C. § 1127 of the aforementioned Act exposes the obligation to use the sign, which must be combined with the applicant remaining in bona fide and with an intention directed at using the sign in commerce.

It may therefore be pointed out that trademarks can be (and are) registered by various entities, including universities, and serve as a tool of their identification in socio-economic turnover, as well as becoming part of the university brand.

2.3. THE BRANDING APPROACH AND THE ROLE OF THE UNIVERSITY

2.3.1. THE TRADE MARK AS A COMPONENT OF THE UNIVERSITY BRAND

Branding as an economic concept that covers a set of activities and objects used to create a market image, including individualising signs led by trademarks. (Dębski, 2009, Hoang Tien et al., 2019, American Marketing Association Dictionary). It is sometimes called the "DNA of the company" (Anisimova, 2014).

Branding, including the use of trademarks, is also a form of management strategy (Konopka, 2021). M. Lindström, describing the impact of branding as an economic phenomenon, notes that marketers, through various strategies, aim to create a certain 'loyalty' of customers to the brand (Lindström, 2009). The loyalty mentioned by Lindström is the result of proper management of potential and brand management, which is defined as the process of creating a relationship or a connection between a company's products and a sensory awareness of its customers about the goal of making a difference in compete and build customer loyalty (Hislop, 2001). Nowadays, a huge emphasis has been placed precisely on branding, which is becoming increasingly difficult in a material goods-saturated consumer society.

2.3.2. CHANGING ROLE OF THE UNIVERSITY

The literature on the subject distinguishes three generations – models of how universities function. The first of these is the medieval model (1st generation), the second is the Humboldtian model (Wissema, 2009). In contrast, today we speak of an entrepreneurial university whose task – beyond the traditional pursuit of truth – is to generate added value for the economy and society (Makiela, 2017). This concept was formed in the 1990s (Poznański, 2020). The servitude of science to society and its impact on the socio-economic environment is therefore emphasised. The change on an ideological level is followed by a change in the real functioning of universities and other research units, which is becoming oriented towards cooperation with business and industry.

2.4 TRADE MARK PROTECTION BY UNIVERSITIES IN PRACTICE

2.4.1. UNITED STATES

The forerunner in the protection of the university's visual identity, including trademarks, is the United States. This practice has been evident in principle since the 1970s. It is said that the first trademark registration applied for by a university was in 1971 in favour of the University of Houston (Rooksby, 2014).

One of the most active universities in the world in terms of image protection is Harvard University. Harvard University, for example, has adopted a special Trademark Program. The program aims to protect and license Harvard's trademarks throughout the world. What is more Harvard University has over 100 registered trademarks under the Lanham Act in the United States Patent and Trademark Office (USPTO). These include word marks, figurative marks, as well as word and figurative marks. They contain not only the name and logo of the university, but also the names of journals, a hotel, and other signs referring to ongoing projects (Trademark Notice, <https://trademark.harvard.edu/pages/trademark-notice>). Moreover, Harvard does not limit protection of its marks only to the United States under the national system. It also protects its trademarks in the European Union by registering its marks as EU trademarks (e.g. Harvard word mark – EUTM-000360099). It also registers internationally.

Apart from Harvard, universities in the United States protect their marks not only under the national system, but also under the EU system. This is practised, among others, by: University of Washington, University of North Carolina, Louisiana State University, University of Georgia, University of Oklahoma, University of Miami, New York University, University of the Sciences in Philadelphia, University of Phoenix, Texas A & M University, University of Florida, Webster University, The University of Cincinnati, University of Alaska, The University of Mississippi, University of Illinois.

International registrations are also not uncommon – made, for example, by The Rockefeller University, University of Chicago, State University of New York, The University of New Mexico, Arizona State University, Regent University, Concordia University, Michigan State University (data from EUIPO database – eSearch plus).

2.4.2. POLAND

Also in Poland, the number of higher education institutions that formally regulate the use and protection of their visual identity, including registered trademarks, is increasing (Rutkowska-Sowa, 2018). Trademarks have been registered at the Polish Patent Office by, among others, the Jagiellonian University, Maria Curie-Skłodowska University, University of Warsaw, Medical University of Warsaw, Nicolaus Copernicus University in Toruń, Gdańsk University of Technology, Lodz University of Technology, Kielce University of Technology, Lublin University of Technology, Warsaw University of Technology, Rzeszow University of Technology (Wyszukiwarka znaków towarowych Urzędu Patentowego RP, <https://ewyszukiwarka.pue.uprp.gov.pl/search/simple-search>).

Polish universities also benefit from the EU system. Trademarks registered with the EU-IPO include: Lazarski University (EUTM-011363918), University of Warsaw (e.g. EUTM-011615226), Medical University of Gdansk (e.g. EUTM-014644645), Wrocław University of Science and Technology 015657158, Poznań University of Economics and Business (EUTM-018074545), Jagiellonian University (EUTM-008421901), University of Lodz (EUTM-017220195), Rzeszow University of Technology (EUTM-013614458).

In some higher education institutions, in addition to visual identity books, which regulate the technical manner of using university-owned signs, regulations are adopted for providing access to trademarks. Such a solution was adopted, for example, at the Jagiellonian University (Zarządzenie nr 37 Rektora Uniwersytetu Jagiellońskiego z 2 czerwca 2016 roku w sprawie wprowadzenia Regulaminu udostępniania podmiotom zewnętrznym znaków towarowych Uniwersytetu Jagiellońskiego oraz zgłaszania nowych znaków towarowych Uniwersytetu Jagiellońskiego przez jednostkę organizacyjną UJ).

2.4.3. OTHER COUNTRIES

Universities in other countries also protect their trademarks. Trade marks have been registered at the EUIPO, for example, by universities in: the United Kingdom (e.g. The University of Birmingham, University of Cambridge, University of Gloucestershire); Spain (e.g. University of Navarra, University of Cantabria); Denmark (e.g. University of Copenhagen); Austria (Medical University of Vienna); Saudi Arabia (King Abdullah University of Science and Technology); Italy (e.g. Bocconi University, University of Brescia, Rome University of Fine Arts Italy); Sweden (e.g. Lund University, Malmö University); Germany (e.g. Folkwang University of the Arts, Frankfurt University of Applied Sciences); Czech Republic (e.g. Czech Republic Metropolitan University Prague); China (Hong Kong – e.g. City University of Hong Kong); Luxembourg (University of Luxembourg); Malta (University of Malta); Finland (e.g. University of Turku); Belgium (e.g. Hasselt University); Croatia (University of Zagreb); United Arab Emirates (e.g. Khalifa University of Science and Technology); Bulgaria (e.g. Trakia University Stara Zagora); Greece (e.g. University of Thessaly); Israel (The Hebrew University of Jerusalem); Hungary (University of Tokaj, University of Miskolc) (data from EUIPO database – eSearch plus).

International registrations have also been made, for example, by: University of Oxford (UK), University of Cambridge (UK), University of York (UK), University of Limerick (Ireland), Tsinghua University (China), Nanjing University (China), The University of Melbourne (Australia), Monash University (Australia), Federation University Australia

(Australia), The University of Sydney (Australia), University of Zurich (Switzerland), Nazarbayev University (Republic of Kazakhstan), Catholic University of Leuven (Belgium), Heidelberg University (Germany), Tampere University (Finland) (data from TMview database).

3. METHODOLOGY

The primary method used in the article is the legal-dogmatic method, which has been used to analyse legal provisions. The study is supplemented by a comparative analysis of solutions in force in the European Union and the United States. In addition, the article contains an overview of the literature on the subject. Furthermore, information on registered trademarks found in databases such as eSearch plus, TM view or the trademark registers of individual countries was used. Particular reference is made to registration practice in the United States because of the significant number of entities protecting marks and the scale of that protection. Specific reference is also made to the EU system for registering trademarks, given that it is the most developed regional system.

4. RESULTS AND DISCUSSION

4.1. THE TRADE MARK AS A TOOL FOR REALISING THE IDEA OF THE ENTREPRENEURIAL UNIVERSITY

Trademarks are primarily associated with private entrepreneurs offering their goods or services on the market. Currently, however, the circle of entities using trademarks in their activities is much broader. It also extends to entities whose main purpose is not exclusively profit-making, including universities. The fact that trademarks are used corresponds to the assumptions of a third-generation university, which is oriented towards interaction with society and market participants, including other universities, entrepreneurs, corporations, local government organisations. The addressee of the communication of trademarks registered in favour of the university is at the same time society as such, including members of the academic community of the given institution, as well as business entities and other organisations operating in the market. By registering trademarks, universities and other academic units become firstly participants in the market game and secondly active participants in society. As a result, they function as a potential partner for private sector entities in the marketplace. By protecting and building its brand (including trademarks), a higher education institution does not only want to differentiate its activities from those of other higher education institutions (realising a distinctive function), but also to convey information about prestige and encourage customers to its offer (realising an advertising function, attracting clientele, etc.). In this way, the university's offer becomes a kind of "product for sale", and the university itself begins to compete with other universities, thus becoming similar to companies competing on the market (Konopka & Goszczyński, 2017). It is crucial to note that, in the case of a university, a trademark essentially impacts in two spheres. The first sphere is the core mission of the university – educational and research activities. The second one is purely commercial – the goods and services offered which are different from those falling within the first sphere.

Such a change in the perception and functioning of the university brings with it an appropriate implementation of marketing strategies, including brand management strategies. The implementation of these strategies allows a skilful use of the available potential of the entity. These strategies are not just about registering trademarks, but about the whole process of deciding which trademarks to register and what scope of protection (national, EU or international) will allow the goals to be achieved. The broader the scope of protection, the greater the university's emphasis on protecting its brand. Using the example of the previously indicated registered marks, it can be seen that the world's leading universities are seeking the broadest possible protection. It can be presumed that the purpose of protection with a wider territorial scope than the country in question is the desire to make a strong presence in the international scientific community and thus expand their activities.

The way to implement the chosen strategy can be comprehensive trademark protection programmes belonging to universities (Bell & Martin, 1983–1984). These programmes guarantee universities the protection of their signs. They define how the marks are used by third parties – counterparties, as well as students, doctoral students and university employees. The solutions adopted at Harvard can serve as a model here. Clear rules for the sharing of trademarks and use by others promote uniformity and consistency in the use of trademarks belonging to a university in the marketplace.

4.2. BUILDING A UNIVERSITY'S IDENTITY THROUGH TRADEMARKS

Beyond mere communication with the public, universities establish their identity in the market through trademarks. Thus, they perform another function of a trademark, which is identity creation. Building identity takes place, on the one hand, at the owner of the trademark – in this case the university. University “encodes” a series of information about the type of activity conducted, its nature, etc. in the trademark.

On the other hand, identity building takes place at the recipients of the activity or goods. As A. Kozłowska points out, we choose a given product in order to build, maintain or change our own identity. (Kozłowska, 2012). We repeatedly observe students using merchandise signed with the logo of the university they are studying at in their everyday life. The marks that accompany their day-to-day activities frequently bring together numerous positive experiences associated with the university. In this way, they mark their belonging to the particular community that the university creates. Skilful brand management, including the implementation of the practice of registering trademarks, therefore increases the recognition of the university nationally and sometimes internationally. This approach engages members of the university community in the process of branding the university. This shows that a university is not just a building or an institution, but the people who create it.

CONCLUSIONS

The number of registered trademarks makes it possible to conclude that their protection is becoming an international standard among universities. This practice is most established in the United States, but other countries are also following in the footsteps of US universities. Gradually, universities are beginning to take an interest not only in registration under national systems but are also seeking to secure protection for marks with wider territorial coverage.

The practice of registering trademarks also allows us to conclude that trademarks in the current reality function as an element of building the identity of the university, as well as a means of communication with the socio-economic environment. Investing in and using trademarks in the university's activities is valuable because trademarks currently refer to very complex realities. They do not only serve to distinguish the activities of one university from another. On one hand, they inform the environment about the university's activities and offerings. On the other hand, they are able to create positive associations and evoke pleasant experiences in the minds of the addressees, thus fulfilling, among other things, the function of advertising and attracting customers. They also perform an identity-building function among a wide range of addressees, in particular members of the academic community of a given institution. Through this measure, therefore, the identity of the university in today's world is also changing.

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