

MARKETING COLLOQUIA

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MEASURING THE HARM OF BRAND THREATS: A MARKETING AND PUBLIC POLICY PERSPECTIVE

ABSTRACT: The process of building and managing a brand is an important and critical aspect of marketing. However, brands can be threatened in various ways, and public policy seeks to protect brands from these threats. I discuss two of these threats in this presentation and how the legal system responds to them.

First, the law provides a cause of action for brands to sue companies who copy some aspect of their trademark which in turn causes reputational harm, even when consumers are not confused as to the source of the mark. Previous work has been unable to find evidence of this so called 'trademark tarnishment' phenomenon and current law does not require companies to introduce any evidence. Across several studies, I find evidence that brands can be diluted via trademark tarnishment, but the evidence is mixed. When a junior tarnishing brand is introduced to consumers across multiple banner ad exposures, perceptions of the senior brand seem to be harmed. This happens even though consumers know the two marks come from different sources. My results are important for not only legal policy, but also marketing managers and ultimately consumer welfare.

Second, the law also provides a cause of action for brands to sue companies who copy attributes of their products, so called patent infringement. Here conjoint analysis has been used to measure the harm associated with this threat: mainly, what is a consumer willing to pay for the attribute at issue. Often, these attributes are minor in nature. To estimate the willingness to pay for minor attributes, most conjoint analysis seeks to omit some major attributes and attempt to hold them constant throughout the choice task. I show using simulations and two CBCs that when omitting major attributes, the willingness to pay estimations of included attributes are biased upwards. This effect is particularly pronounced for minor attributes. Hence, damage awards in patent infringement cases and most recently in false advertising cases have been grossly exaggerated.