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Abuse of Dominance through Trademark Enforcement: How Dominant Firms Use Trademark Rights to Stifle Competition

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ABSTRACT

Intellectual property (IP) rights and competition law serve intertwined but sometimes conflicting goals. Trademarks grant an exclusionary right—often indefinitely, so long as the mark is used—to the owner. This lawful monopoly is intended to promote consumer welfare by identifying product origin and incentivizing investment in quality and goodwill. Yet, "assertion of intellectual property rights is neither particularly suspect nor immune from scrutiny" under antitrust law. Trademark protection is justified by the need to assure consumers that mark bearing products come from the same source and meet expected quality standards. Representative examples of over enforcement include: sending overly broad cease-and-desist letters, filing lawsuits against weak targets, and pursuing claims far beyond the mark's valid scope.

Keywords: *Monopoly, Anti-trust, Exclusionary, Claims and Consumer Welfare.*

I. INTRODUCTION

Trademark enforcement can violate competition rules if it goes beyond what is necessary to protect consumers. Economists note that while trademarks reduce search costs and signal quality, if used excessively they can raise barriers to entry and preserve supra-competitive rents.[2] Competition law in many jurisdictions' addresses "abuse of dominance" (or "monopolization") regardless of the legal basis of a firm's power.

For example, the U.S. Sherman Act and Clayton Act[3], the EU's Treaty on the Functioning of the European Union (TFEU)[4] Article 102, and India's Competition Act Section 4[5] prohibit dominant firms from imposing unfair or exclusionary conditions to exclude rivals. These prohibitions apply to IP rights just as they do to tangible property. U.S. authorities explicitly state that courts "apply the same antitrust rules to matters involving IP rights as they apply to

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[2] University of Michigan Law Repository, Mich. J.L. Reform, https://repository.law.umich.edu (last visited May 24, 2025)
[3] Clayton Act, 15 U.S.C. §§ 12–27 (1914)
[4] Treaty on the Functioning of the European Union (TFEU) art. 102, Oct. 26, 2012, 2012 O.J. (C 326) 47
[5] Competition Act, No. 12 of 2003, Section 3(5), 4 (India).

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matters involving tangible property". Thus, while owning a trademark confers the right to exclude infringing use, using that right in a way that violates antitrust norms (e.g. to exclude competition rather than protect consumers) can be unlawful. Indeed, the U.S. Lanham Act, 1946 itself provides that a mark's owner cannot enforce rights if the mark is "being used to violate the antitrust laws".[6]

In the EU, exhaustion doctrines limit trademark power so as not to impede the free movement of goods: under EU law an owner of an EU trademark "shall not entitle" itself to prohibit goods legitimately put on the market in the EU under that mark. This embodies an anti-foreclosure principle. In India, Section 4 of the Competition Act prohibits imposition of "unfair or discriminatory conditions" or refusal to deal by a dominant enterprise, concepts broad enough to catch abusive IP enforcement. In short, while trademarks create a lawful "monopoly" in a mark, exercise of that monopoly can run afoul of competition law when it is used as a means of exclusion. This tension is well-recognized in policy circles as a need to balance IP protection with market health.[7]

Key economic concepts help clarify the issue. When enforced reasonably, this promotes innovation and competition on merits. But enforcement "overreach" can transfer focus from product quality to preserving rents. A dominant firm may use trademarks to raise "rivals' costs" or deny competitor's scale. For example, enforcing a trademark to prevent others from using a descriptive or generic term can effectively raise consumers' search cost or prevent entry. Courts have hinted at such concerns: U.S. and EU case law often requires that IP rights not be used contrary to "honest practices" or to stifle competition (e.g. the EU Trademark Directive's honesty requirement). In extreme cases, courts recognize doctrines like *trademark misuse* or *abuse of rights* to police bad faith enforcement (although trademark misuse is not as developed or widely accepted as patent misuse). Overall, the competition remedy lies in refusing to allow the trademark monopoly to be extended beyond its legitimate scope.

This analysis proceeds by identifying typical strategies of abuse, illustrating them with case examples from technology, fashion, and pharmaceuticals, and then discussing how different legal regimes address (or fail to address) such conduct. It also explores economic implications for market competition and innovation.

II. Patterns of abuse: strategies of dominant firms

Dominant firms have adopted several common tactics to weaponize trademark rights against

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[6] Crowell & Moring LLP, IP and Antitrust Interface, Crowell & Moring, https://www.crowell.com (last visited May 24, 2025)

[7] IBID

competition. These include aggressive enforcement against similarly named rivals, expansive claims to generic or descriptive terms, tying or bundling of trademarks with other products or terms, and leveraging trademark policy in vertical agreements. Some of these tactics are often labeled **"trademark bullying,"** a term denoting large companies using legal threats to intimidate smaller competitors or even unrelated parties.[8] By definition, trademark bullying "involves the aggressive assertion of trademark rights to intimidate smaller competitors" or stifle other lawful activity. It exploits the power imbalance: small firms often lack the resources to litigate and may settle or cease business even if the infringement claim is doubtful.

For instance, courts have criticized cases where a trademark owner uses threats not to protect genuine consumer confusion but to impose a "financial hardship" on an adversary or compel unrelated settlements.[9] A trademark holder might threaten litigation to block a new entrant's use of common or descriptive branding (e.g. opposing descriptive terms or geographic names that are arguably generic). It may also harass third parties (such as vendors or resellers) who use the mark or even simply mention it. The mere threat of an expensive lawsuit can chill competition.

Dominant firms may also *extend* trademark rights creatively. One tactic is to claim trademark protection for elements that verge on non-trademarkable material – for example, generic product descriptors or commonplace packaging colours – in order to restrict competition. If successful, this can lock up market space that otherwise would not be considered a valid brand. A classic illustration is a luxury brand registering a colour or shape. For example, Christian Louboutin's trademark on the bright red sole of high-heel shoes has been enforced against other designers, arguably beyond the mark's function of indicating origin. While such enforcement is contested (Louboutin lost in EU law where the court found the red sole mark was valid only when contrasted with a non-red shoe)[10], it shows the potential for broad trademark use. Similarly, some pharmaceutical companies have sought exclusive rights in packaging or color schemes associated with a drug, thereby making it harder for generics to use similar-looking packaging.

Another abusive strategy is **tying a trademark license to anti-competitive conditions**. For example, a dominant brand owner might license its trademark to distributors only on the condition that they not carry any rival products (exclusive dealing) or not advertise below a

[8] Trademark Bullying in Practice, Lexology (2022), https://www.lexology.com (last visited May 24, 2025)
[9] IBID
[10] University of Michigan Law Repository, Mich. J.L. Reform, https://repository.law.umich.edu (last visited May 24, 2025)

certain price (minimum advertised pricing). In some jurisdictions, tying resale prices to trademark use has raised antitrust scrutiny. Even without formal contracts, dominant firms can exert control through trademark registrations. For instance, an owner could refuse to license its trademark for use on other marketplaces or online platforms to exclude competing sellers. Or it may trigger takedown requests: a dominant electronics brand might use trademark takedowns to pressure online marketplaces to delist independent sellers of competing products. While these tactics are typically contractual, they rest on the threat of losing trademark benefits.

Relatedly, firms may use **refusal to license or supply** as leverage. A dominant trademark owner might decline to allow others (including licensees or sister companies) to use the mark in particular ways. While refusal to deal is not per se unlawful, if a refusal is based on a competitive motive rather than quality control, it can raise antitrust issues. For example, automobile companies have in some cases withheld spare parts or service training tied to their trademarked brand, arguing safety or quality – but critics claim the real aim is to force customers to use authorized (often higher-priced) channels.

In sum, the strategy is to use the *scope* and *enforcement* of trademark rights to extend market power. Commonly observed patterns include:

- **Aggressive litigation and demands:** Filing broad infringement suits (even on tenuous grounds), sending threatening cease-and-desist letters, or demanding exorbitant licensing fees under threat of suit. Small firms are especially vulnerable to such “shakedown” tactics.
- **Brand-related exclusivity:** Tying a trademark license to exclusivity agreements or restrictive supply/distribution arrangements, effectively insuring monopoly power in adjacent markets.
- **Expansion of trademark coverage:** Attempting to monopolize marks that are descriptive or generic (e.g. brand names that have become common terms), or registering numerous marks defensively to block others.
- **Controlling words and advertising:** Using trademark rules to block competitors’ truthful use of terms or comparative advertising. For example, issuing takedowns of comparative ads or listings that use the trademark in a nominative or descriptive way.
- **Domain and online enforcement:** Registering or seizing domain names that match competitor names, or using website content removal via trademark claims, to impede rivals’ online presence.

These tactics may individually or collectively serve to "drive away competitors or restrict new players" in the market – conduct that competition law deems abusive.[11]

III. TECHNOLOGY INDUSTRY CASE STUDIES

The technology sector provides vivid examples of trademark enforcement being leveraged by incumbents. One landmark case is *Microsoft v. Lindows.com*[12]. In 2001 Microsoft, the dominant PC operating system provider, sued Lindows.com, a small Linux distributor, for trademark infringement, claiming that "Lindows" was confusingly similar to "Windows." Microsoft's strategy was essentially to use its trademark to prevent a competitor from using any similar mark that might benefit from its brand awareness. The Seattle Times reported that Microsoft eventually settled, paying Lindows $20 million and abandoning its claims.[13] Notably, a federal judge had signalled that Lindows might show "Windows" was a generic term (because in the 1980s "windows" referred simply to operating systems and predated Microsoft's Windows launch). Thus, Microsoft's attempt to use trademark law as a barrier failed on both legal and practical grounds. However, the case illustrates the pattern: a dominant tech firm aggressively enforced its mark against a potential competitor, likely with the aim of deterring the competitor's market presence.

Another example involves platform gatekeepers. Apple's[14] enforcement of the "App Store" trademark against competing app marketplaces is illustrative. When Amazon launched the "Amazon Appstore" for Android devices, Apple sued in 2011 for trademark infringement and false advertising. Amazon countered by arguing "app store" had become a generic term for any online software marketplace. By 2013, Apple dropped the suit after arranging a covenant with Amazon, effectively conceding that Amazon could use the term.[15] Apple's initial tactic was to harness its valuable trademark and market dominance to block a competitor's use of a similar name. The reaction from Amazon underscores the anti-competitive risk: Apple portrayed itself as defending its mark, but Amazon contended that preventing use of "app store" would mislead consumers and suppress competition. Ultimately, Apple relented – a tacit admission that its expansive claim over "app store" would harm competition. This episode shows how a dominant platform may seek to extend its brand into generic usage, and

[11] India: Abuse of Dominance via IP Enforcement, Mondaq (2023), https://www.mondaq.com (last visited May 24, 2025)
[12] *Microsoft Corp. v. Lindows.com*, No. C01-2115C (W.D. Wash. 2001)
[13] Microsoft Pays $20 Million to Lindows, Seattle Times Archives (Mar. 2004), https://archive.seattletimes.com (last visited May 24, 2025)
[14] *Apple Inc. v. Amazon.com, Inc.*, No. C11-01327 PJH (N.D. Cal. 2011).
[15] Apple Drops 'App Store' Trademark Suit Against Amazon, Reuters (July 9, 2013), https://www.reuters.com (last visited May 24, 2025).

how competition concerns can push back.

While not strictly "technology" in the consumer electronics sense, e-commerce platforms also exhibit such conduct. For instance, dominant online retailers have been accused of using brand registry and trademark policies to disadvantage third-party sellers of identical products. Amazon's Brand Registry, for example, allows brand owners to monitor and restrict the sale of branded goods. If overly zealous, this can amount to excluding legitimate sellers and entrenching the brand's own retail business. Similarly, Apple vigorously protects the "Apple" mark and related imagery, sometimes issuing takedowns against accessories or apps that mention "Apple" even in descriptive ways. These practices raise the specter of a technology behemoth using its trademark muscle to shape the competitive landscape on its platform.

IV. Fashion and Consumer Goods: Luxury Branding

The fashion industry is notorious for aggressive trademark enforcement, often targeting even minor competitors or unrelated businesses. This has raised concerns of "trade mark bullying" in the luxury segment. For example, in 2018 the German fashion house Hugo Boss initiated legal action against Boss Brewing, a small independent brewery in Wales, over the brewery's use of the word "Boss" in its brand.[16] Although the brewery held its own trademark registration, Hugo Boss opposed it, triggering a costly and stressful legal battle for the small company. The brewing founders reported that the dispute threatened to bankrupt them despite the brewery's earlier trademark filings. This case typifies the imbalance: a well-funded fashion giant aggressively asserts its mark (in this case, even one that it did not itself register first), creating a chilling effect on the brewing startup.

Similarly, in early 2024 the BBC reported on the case of L V Bespoke, a Norfolk-based home-and-garden retailer, against luxury conglomerate LVMH (Louis Vuitton).[17] LVMH objected to L V Bespoke's attempt to register "L V Bespoke" as a trademark, claiming consumers would draw an unfair "mental link" to Louis Vuitton. The UK tribunal rejected the challenge, finding the businesses operated in "separable" markets. Importantly, the media coverage underscored the David-vs-Goliath nature: the tribunal awarded the small family business modest compensation after two years of legal fight. In essence, LVMH had tried to use trademark enforcement to suppress the modest growing business; the public narrative was that "common sense has prevailed" because of the disparity in market presence.[18] Such

[16] Trademark Bullying in Practice, Lexology (2022), https://www.lexology.com (last visited May 24, 2025)

[17] Louis Vuitton Trademark Case Against L V Bespoke Rejected, BBC News (Jan. 2024), https://www.bbc.com (last visited May 24, 2025)

[18] IBID

episodes – *Hugo Boss vs. Boss Brewing*[19], *Louis Vuitton vs. L V Bespoke*[20] – illustrate a clear strategy pattern: luxury brands often stretch trademark claims as far as possible, even into generic words or unrelated sectors, hoping smaller entities will back down.

The economic effect in this sector is straightforward: when smaller brands or designers cannot risk legal attack, market entry is deterred. New fashion labels or accessory lines may avoid certain words or designs out of fear of litigation, thereby limiting creative and commercial competition. Moreover, such trademark overreach can harm consumer welfare by reducing choices. Consumers who might have enjoyed Boss Brewing's or L V Bespoke's products were instead left with less variety, illustrating an inefficiency created by the trademark enforcement.

The fashion industry example also highlights the **intimidation factor** of trademark litigation. In many cases, the mere receipt of a cease-and-desist letter from a major house prompts compliance, even if the claim is weak. As one legal commentator observed, larger firms exploit the "imbalance of power" to coerce smaller players with limited resources. Trademark law intended to prevent consumer confusion can thus become a sword that, when misused, stifles competition and innovation in retail and design markets.

V. PHARMACEUTICALS AND TRADE DRESS ENFORCEMENT

The pharmaceutical sector raises another troubling aspect of trademark enforcement: the use of trade dress and product branding to delay or diminish generic competition. Economically, this is a critical area because it directly impacts drug prices and public health. Studies have shown that when branded and generic drugs share packaging and name elements, patients can more easily substitute generics, reducing costs. Accordingly, drug regulators require generics to use different color schemes or shapes to avoid direct copying of brand packaging. This difference, however, is facilitated by the brand's trademark and trade dress rights. When generics attempt to mimic brand appearance, brand companies often sue for trade dress or trademark infringement, arguing consumer confusion.

Recent scholarship highlights how this dynamic can **prolong monopoly** and harm consumers. Professor Sam Halabi's empirical study notes[21] that after patents expire, generic drugs are often 95% cheaper, but legal rules force them to look different from brand products.[22] This

[19] *Hugo Boss Trade Mark Opposition*, UKIPO O/312/18 (2018).
[20] *Louis Vuitton Malletier v. L V Bespoke*, UKIPO O/136/24 (2024).
[21] Sam F. Halabi, Trademark and Trade Dress in Pharmaceuticals: Market Effects and Regulatory Conflict, 9 N.Y.U. J. Intell. Prop. & Ent. L. 183 (2020), https://jipel.law.nyu.edu (last visited May 24, 2025).
[22] NYU Journal of Intellectual Property & Entertainment Law, JIPEL, https://jipel.law.nyu.edu (last visited May 24, 2025)

prevents pharmacies from simply swapping bottles – generics are often sold under their generic name with distinct packaging.

The result is patient confusion and lower generic uptake. Halabi observes that this is "another factor that explains high prices: the law of trademark and trade dress".[23] Similarly, Hannah Brennan's law review article[24] argues that pharmaceutical trademarks are "at odds with the theoretical foundations of trademark law." Instead of reducing confusion, branded drug trademarks often *increase* confusion: patients mistakenly believe branded and generic drugs are *different medications*, leading to wasteful spending and even health risks. Brennan concludes that pharmacy consumers suffer reduced welfare because marks that should signal genuine quality now signal difference where none exists.

A concrete legal example is found in Indian law. In *Sun Pharmaceutical v. Hetero Healthcare* (2022),[25] Sun Pharma, a dominant generics manufacturer, sued a smaller competitor Hetero for using the trademark "LETERO", which differed only slightly from Sun's mark "LETROZ" for a cancer drug. The Delhi High Court dismissed Sun Pharma's claim, holding that both names were derived from the generic chemical name "letrozole" and that no exclusive monopoly in such a term was permissible. In other words, the court refused to allow a pharma firm to use trademark law to obtain a perpetual monopoly on a drug name once its patent had expired. This decision protects competition by ensuring generics can use names close to their chemical names without infringing brand marks.

Without safeguards like these, dominant drug makers could indefinitely extend exclusivity by trademark tactics. For example, if a drug's brand name becomes popularly identified with a therapeutic effect, generics might avoid similar names for fear of suit. Regulatory policies that require generics to have different names are intended to prevent "counterfeiting," but can ironically allow brand companies to argue that any similarity causes confusion. The economic end result is higher drug prices and lower access. In the United States and EU, some regulators and courts have recognized this risk. The EU has allowed generics to use INN-derived names, and U.S. practice encourages use of generic name prominently on labels. Nonetheless, the core issue remains: brand firms in pharmaceuticals have strong incentives to litigate to protect whatever intangible monopoly they can claim on a drug, even beyond patents.

[23] NYU Journal of Intellectual Property & Entertainment Law, JIPEL, https://jipel.law.nyu.edu (last visited May 24, 2025)
[24] Hannah Brennan, Confusion by Design: How Brand Name Drugs Use Trademark Law to Extend Monopolies and Drive Up Prices, 50 U. Mich. J.L. Reform 53 (2016), https://repository.law.umich.edu/mjlr/vol50/iss1/2 (last visited May 24, 2025)
[25] *Sun Pharmaceutical Indus. Ltd. v. Hetero Healthcare Ltd.*, 2022 SCC OnLine Del 3340 (Del. High Ct.).

Thus, in pharmaceuticals, trademark enforcement as anti-competitive device takes the form of **trade dress blocking** (e.g. suing to force generics into clearly distinct packaging) and **name confusion claims**. Both raise serious competition concerns given the social importance of affordable medicine. As Halabi and Brennan warn, what should be purely a quality-control tool in trademark law instead "creates distortions in pharmaceutical markets" by prolonging brand dominance after patent expiry.[26]

VI. CONCLUSION

This article has shown that dominant firms, in various industries and jurisdictions, have at times used trademark enforcement in ways that go beyond legitimate protection and encroach upon competition. From tech platforms to luxury brands to pharmaceutical companies, the common theme is an attempt to leverage legal rights to exclude or raise costs for rivals. Such tactics undermine the competitive process, leading to higher prices, reduced innovation, and harm to consumers.

Ultimately, trademark rights are intended to benefit consumers by ensuring quality and provenance. When dominant firms use those rights to stifle competition, they violate that spirit. A robust legal framework, informed by cases and scholarship as surveyed here, must therefore limit abuse and keep markets competitive.

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[26] NYU Journal of Intellectual Property & Entertainment Law, JIPEL, https://jipel.law.nyu.edu (last visited May 24, 2025)

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