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# Brand Protection and Efficient Strategies

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## ABSTRACT

*In recent years, the business and company world has faced and continues to face the great challenge of copying, falsifying brand or branding. Economic globalization and the digitalisation era we are living in has had this negative effect on business. Many large brands are met with copies of their brand that have taken extensive work, human resources, time and money to create their own unique original brand. Massive copies of fake products are sold everywhere at low cost and with huge profits, and more and more companies through law firms have tried to shape their startups and work on brand protection.*

*Trademark protection refers to the strategy, tools and rules a business has to prevent bad actors from abusing its brand. Implementing a brand protection strategy allows you to maintain your reputation and income. It also protects anyone who comes into contact with your brand — including your customers.*

*The purpose of this paper is to present an overview of the risk a brand has today, the protection methods and strategies a company needs to operate to protect its brand.*

**Keywords:** brand, defense, copy, trademarks, frauds.

## I. INTRODUCTION

In modern business management theory and practice, the role of brand management is emphasized. Many authors (Grębosz, 2012; Kotler, 2004<sup>3</sup>; Liczmańska, 2008<sup>4</sup>)<sup>5</sup> believe that branding is a key element around which all activities related to marketing management in an enterprise focus. Building a brand is a process that consumes time and capital. Creating a strong and distinct brand requires the owner to make a lot of spending and dishonest imitators want to tap into the potential of the brand. A range of economic, psychological, political, social, technological and within the organization have an impact on the decision to initiate illegal trademark infringement according to researcher Sałamacha<sup>6</sup>, who states that the degree of brand

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<sup>3</sup> Kotler, Ph. (2004). Marketing od A do Z. Warszawa: Polskie Wydawnictwo Ekonomiczne

<sup>4</sup> Liczmańska, K. (2008). Silna marka jako źródło przewagi konkurencyjnej w momencie zakupu. Roczniki ekonomiczne Kujawsko-Pomorskiej Szkoły Wyższej w Bydgoszczy. Bydgoszcz: Wydawnictwo Kujawsko-Pomorskiej Szkoły Wyższej, 1, 87-99.

<sup>5</sup> Grębosz, M. (2012). Wpływ strategii co-brandingu na kapitał marki. Marketing i Rynek, 19(3), 7-14

<sup>6</sup> Sałamacha, A. (2015). Zachowania konsumentów na rynku nieuczciwej konkurencji. In L. Karczewski, & H. Krettek (Eds.), Etyczne i społeczne uwarunkowania biznesu, gospodarki i zarządzania (pp. 133-141). Opole: Politechnika Opolska

counterfeiting, as well as the tendency of consumers to make decisions about purchasing counterfeit products give reason to believe that entrepreneurs should incorporate protection into the brand management process. Unfortunately, research on micro-enterprises in Poland shows that the level of brand protection does not appear to be high.<sup>7</sup> Taking into account all of the above, it seems appropriate to devise a model procedure for trademark protection involving trademark protection tools.

The proposed model of trademark protection procedure aims to support the undertaking of preventive and corrective actions in relation to the protection of the mark from:

- (a) presenting methods of establishing and selecting the trademark protection strategy in the process of protection,
- (b) identifying the applicable strategies for the protection of the mark,
- (c) indications of the types and rules for the selection of protective equipment,
- (d) presenting the rules of conduct in the process of implementing the strategy for the protection of the mark.

These include:

- The story of relevant brand elements from the standpoint of protection.
- Identify the protection status of the trademark.
- Examination of the existing and potential status of trademark infringement.
- Creating a brand protection strategy.

1. Brand protection.

Brand impersonation has been a growing threat for more than a decade. In recent years, however, brand mimicry has become a massive issue and information security (InfoSec) sits at the centre of it all. To put it simply, if your brand has an online presence, you need a brand protection program — and that program should be part of your overall cybersecurity strategy.

Traditionally, trademark protection has been the domain of the legal department. Brand analysts, paralegals and lawyers have worked together to investigate and assess the true potential of violations<sup>8</sup>. At a time when approximately 18,000 fraudulent websites are created every day, this access is more than simply impossible — it's outdated. Modern brand protection requires us to treat violations and mimicry as new attack vectors, subject to the same principles

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<sup>7</sup> ibis

<sup>8</sup> <https://www.helpnetsecurity.com/2020/11/25/fraudulent-sites>

and processes as any other cyber threat. Of course, this reality presents an entirely new set of challenges. Organizations are already struggling to cope with highly complex ecosystems and growing security skills shortages. Security teams already lack the time, resources and personnel.

### **Why is it important to protect the brand?**

The tactics of deception have evolved. Mimicking and breaching the internet now occurs at easy speed. The longer it takes you to respond to these threats, the greater the potential for reputational damage and revenue loss as threat actors victimize customers, prospects and partners through your brand.

In 2021, fraud and counterfeit sites reached 10.5 million worldwide<sup>9</sup>. Every day, scammers send out approximately three billion phishing emails. A single brand can be the target of hundreds, perhaps even thousands, of incidents overnight. People-focused brand protection solutions simply cannot work at this scale and the criminals know it. Some even deliberately flood targets with deceptive activities, aiming to overload them. To keep pace, your organization needs a new approach to brand protection – one that addresses the issue through new technology instead of new hires.<sup>10</sup>

This is where brand protection and cyber security intersect. Security teams have started using technologies such as computer vision, artificial intelligence (AI), machine learning and natural language processing. The same tools and solutions have the potential to revolutionize brand protection, improving your organization's security position during the process. Yet even the best tools can be insufficient in unqualified hands. That's why putting in place a trademark protection solution is only the first step.

It is now easier than ever for threat actors to engage in fraudulent activities targeting certain brands and brand customers, creating an increase both in volume and the extent of trademark infringement attacks. To survive this wave, companies must fight step by step using expertise and technology.

## **II. BRAND IMPORTANCE AND VALUE**

Branding - that is, the use of a name, term, design, symbol or other feature that identifies one's goods and distinguishes them from others - is critical for firms looking to differentiate their products and communicate their value. In a survey of corporate executives and board members,

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<sup>9</sup> <https://bolster.ai/resources-center/download/report/2022-phishing-online-fraud>

<sup>10</sup> <https://www.zdnet.com/article/three-billion-phishing-emails-are-sent-every-day-but-one-change-couldmake-life-much-harder-for-scammers/>

78% identified brand power as essential to business success.<sup>11</sup> Intangibles, including brand value, can exceed 75 percent of a typical firm's value.<sup>12</sup>

Brand values are also associated with share prices on accounting value and profit information for consumer firms. The importance of brand value to the value of the firm makes managing brand risks essential for a firm's long-term visibility and success.<sup>13</sup> Corporate brand managers who traditionally supervised marketing decisions now have to assess and manage reputational risks as well. Pressures to reduce such risks can come from many sides. For example, federal law requires military contractors to have a procedure for assessing the risk of counterfeit products and that all publicly traded companies identify and disclose any risks associated with finances, including those such as product skyeing, to the value of the brand. Similarly, financial institutions like stock exchanges and debt-rating services may require that firms have processes in for evaluating and managing risks.<sup>14</sup>

This is especially true for protection against counterfeit products, that is, goods or packaging bearing a trademark that is almost the same as that registered with an authorised owner.<sup>15</sup> Brand management strategies that target counterfeiting risks are typically reactive and arise only when a firm suspects loss of sales, detects significant quality issues from customer returns or complaints or receives a tip from a third party. This presents a major problem for brands because reputation-damaging events, such as counterfeiting, can hinder future purchases of a specific branded product, other products of the same brand, and even intact branded products.<sup>16</sup>

### **III. PRINCIPLES OF A TOTAL BUSINESS SOLUTION**

- Identify the offender as an unprecedented competitor.
- Highlight prevention, proactivity and strategy.
- Creating and relying on performance measurements and using data and analysis to assess and mitigate risk.

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<sup>11</sup> American Marketing Association (2020). Definitions of marketing. <https://www.ama.org/the-definition-of-marketing-what-is-marketing/>.

<sup>12</sup> Kirk, C. P., Ray, I., & Wilson, B. (2013, June). The impact of brand value on firm valuation: the moderating influence of firm type. *Journal of Brand Management*, 20(6), 488-500. <https://doi.org/10.1057/bm.2012.55>

<sup>13</sup> Kotler, P., & Pfoertsch, W. (2006). *B2B brand management*. Springer Science & Business Media. 5 Kotler, P., & Pfoertsch, W. (2006). *B2B brand management*. Springer Science & Business Media

<sup>14</sup> Wilson, J. M., Grammich, C., & Chan, F. (2016, May). Organizing for brand protection and responding to product counterfeit risk: an analysis of global firms. *Journal of Brand Management*, 23(3), 345-361. <https://doi.org/10.1057/bm.2016.12>

<sup>15</sup> Wilson, J. M., & Kinghorn, R. (2014). Brand protection as a total business solution. Michigan State University Center for Anti-Counterfeiting and Product Protection. <https://a-capp.msu.edu/wp-content/uploads/2018/05/PAPER-SERIES-Brand-Protection-as-a-Total-Business-Solution.pdf>

<sup>16</sup> Toledo, C., & Villas-Boas, S. B. (2019). Safe or not: consumer responses to recalls with traceability. *Applied Economic Perspectives and Policy*, 41(3), 519-541. <https://doi.org/10.1093/aep/ppy015>

- Creating a culture of improvement and continuous embrace of learning.
- Promote a holistic approach that integrates and coordinates all parts of the firm for trademark protection.

#### **IV. RECOGNITION OF THE CHALLENGES AND THE CHALLENGES TO THEM**

Brand infringing involves a diverse range of attacks and tactics, many of which are instantly recognisable to anyone with a cybersecurity background. It's one more reason why brand protection is a security problem. Some of the following use cases overlap with work already occur in security operations centres (SOCs).<sup>17</sup>

- Counterfeit products

Counterfeiting has always been a problem, and not just for luxury brands. The rise of online marketplaces, the popularity of e-commerce, and the spread of digital goods together have created a perfect storm for criminals looking to sell cheap prices.

- Fake websites

Fraudulent websites have existed for as long as the internet, though not every fake site has been created with the same objective in mind. Some sites may be used to sell counterfeit goods, while others may use your brand in an attempt to mislead visitors. Others may simply be part of a larger phishing campaign.

- Copyright infringement

To say that copyright infringement is rampant online, it would be easy. Many people have their products through plagiarization, as they steal everything and everything — videos, product images, logos, artworks and even text — for trademark imitation or personal gain.

- Phishing attacks

Incidentally, the number one threat vector for cyber security is also one of the most common brand infringement attacks. Phishing can take many different forms, from fake web pages created to steal credentials to targeted scam emails.

The most common trademark infringement attacks<sup>18</sup>

- Business email compromise

A business email compromise attack (BEC) occurs when a criminal tries to defraud a company

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<sup>17</sup> <https://bolster.ai/wp-content/uploads/2023/11/Best-Practices-for-Modern-Brand-Protection-1.pdf>

<sup>18</sup> <https://bolster.ai/wp-content/uploads/2023/11/Best-Practices-for-Modern-Brand-Protection-1.pdf>

by directly targeting its employees. Threat actors typically use a counterfeit email address to extort money or send a shipment of malicious intent to their target. They can also use stolen credentials or similar domains.

- Fraudulent campaigns

A trademark infringement attack can be part of a concerted and ongoing effort to defraud a company or its customers. Many violation programs tend to overlook this fact, defining the offense too narrowly and missing out on deceptive activity and greater patterns of attacker behavior.

- "Errors" press

When customers mistakenly enter your business URL, they expect to be redirected to your website. Writing errors abuses this expectation, exploiting high-level domains and extensions to create fake sites that seem almost indistinguishable from the real website. Even a simple six-letter domain can create over 100,000 forgeries.

- Social media fraud

Recent events have cast a harsh light on the dangers of unregulated social media use, as misleading activity and counterfeit information are commonplace. In our experience, this problem extends to trademark infringement, which tends to be four times worse on social media than anywhere on the internet.

- Accounting

Account takeover is often the second stage of an email phishing or website - the end result of a criminal's efforts in which they use stolen credentials for further fraudulent activity. This often takes the form of identity theft. A criminal can also abuse the trusted access of a compromised account to escalate their attacks against a brand by leaking data or installing malicious software.

- Malicious apps

Our smartphones are all about our lives, both personal and professional. Their ubiquitousness makes them a treasure for cyber criminals, who have flooded app stores with malicious software that steals information, push stunt ads or promote illegal products.

Companies should develop some brand protection tactics of their own, and some of the most trademark protection practices are as follows:

- Automation

The scope and scale of modern brand infringement attacks is impossible to handle by hand. By

combining automation with properly trained AI, you can identify and classify cheating in a much more efficient and effective way than any human actor.

- Accuracy

False positives are the death of any security solution, making it increasingly difficult to identify and respond to threats.

To make matters even worse, overstretched security teams could face the flood of unnecessary alerts simply by ignoring them, potentially bypassing a major incident. What is needed is finding a brand protection tool that exploits machine learning to reject false positives and intelligently filter notifications.

- Proactive repair

Relying on blacklists is like trying to find broken glass wandering barefoot in the dark. Threat actors know these lists exist and know how to bypass them by creating new scam sites and exploring new tactics. They are counting on targets to wait, which is exactly why you need to detect and act on threats as quickly as possible - this is best achieved through automation and artificial intelligence.

- Real-time responses

The more time you spend researching, analysis and decision-making, the longer fraudsters will have to profit from your brand. Be prepared to act as soon as you identify a new threat. Increase your response skills with automation and machine learning.

- 24/7 Monitoring

Criminals and fraudsters will not have the courtesy to attack only during regular business hours. Your business can be threatened anytime and from any place. Look for a tool that actively protects your brand 24 hours a day, 7 days a week, 52 weeks a year, with or without direct human intervention — ideally one with intelligent alarm and a centralized dashboard.

- Trusted partnerships

Working with experienced service providers is almost always the right call. Look for companies that are trusted and knowledgeable in brand protection and cybersecurity. Avoid working with retailers who are not experienced, if possible – they may not have the necessary understanding of your challenges and landscape.



## **V. LEGAL AID THAT STATES OFFER TO COMPANIES FOR THE RIGHTS OF THEIR BRANDS**

Various states have committed themselves to legal assistance and adequate measures to be taken in the framework of developing programs, adopting relevant legislation to protect brands from fraud, copying, etc. Below we are presenting the protections offered by the world's leading powers.

- **United Kingdom**

In the UK, authorities like police and trading standards have the power to take action against counterfeiting, but their power and resources are limited to the biggest and most serious cases of fraud, or when the products being sold are obviously dangerous to consumers. For this reason, the on-duty responsibility falls on individual advertisers to take action against offenders and removing an offender on a channel or website can be somewhat of a "kicking mole" game because they quickly appear again under a new domain. There have been developments in the UK with blocking orders against ISPs, and this is certainly an area to monitor in the coming months.<sup>19</sup>

- **USA**

Over the past year, there has been much debate in Congress and federal courts about the extent to which liability should or could be decided on online marketplaces. Historically, online marketplaces have not been responsible because they are not regarded as sellers of a specific product, but merely as facilitators. However, the idea of placing responsibility on online marketplaces for selling counterfeit goods by third parties is one that has taken traction in the last year. In addition to the aforesitely mentioned difficulties in relation to enforcement, brands trying to tackle counterfeiters know that taking an obligation on third-party sellers in online marketplaces is difficult. This not only because counterfeiters are so good at avoiding detection, but also more fundamentally because they are protected from legal liability in U.S. jurisdictions where they do not reside in the U.S.

Recently, we have seen several courts in the U.S. recognize that the online marketplace plays a pivotal role in bringing products to consumers, which is beginning to develop a narrow pathway for other courts to begin to consider third-party liability.

It's a spectrum, with some courts looking at the level of activity in a particular online

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<sup>19</sup> <https://www.squirepattonboggs.com/-/media/files/insights/events/2022/01/anti-counterfeiting-brand-protection-trends-and-the-top-advertising-media-and-brand-hot-topics/anticounterfeiting-brand-protection-summary.pdf>

marketplace and how the market is managed. The more activity and involvement there is, the more likely there is a case and the market will face liability. We reiterate that this legal path is just beginning to emerge, so we wait to see what 2024 brings in terms of court decisions on this issue.<sup>20</sup>

- **European Union**

Similar to the US, undertaking legal action against online marketplaces has its own challenges in Europe. France is ahead of the majority in terms of legislation, where there is an existing process for dealing with counterfeit goods online. The process is as follows:

1. Identify exactly where counterfeit goods are sold
2. Send a cease and stop letter
3. If the platform does not act promptly, it is liable and the brands can file a lawsuit before the court to obtain an injunction and obtain damages.

While seemingly simple, in practice, this becomes a game of kicking the mole, because the counterfeiter can sell the same counterfeit goods elsewhere online and the brand will have to repeat the process again.<sup>21</sup>

#### Trademarks and proposed changes in Albania

So far, there is only one law<sup>22</sup> in Albania which provides for protection for commercial market. Due to the great role played by this object of industrial property in the commercial activities of domestic and foreign entities in the internal market, a broader and stronger protection of the trade mark was needed, with a view to approximation and the provisions of the legislation of the European Union<sup>23</sup>. Existing Law 9947 regulates not only matters related to trademarks, but also other issues related to other objects of industrial property, such as patents, models of use, designs, geographical indications and designations of origin. The inclusion of all these objects, as well as their arrangement only by and in a single law has created problems of technical and logistical character, in the sense of its difficulty in everyday use.

What is being discussed with the new legislative changes is the addition and regulation of the details of elements such as the absolute and relative causes for rejection of signs that cannot be

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<sup>20</sup> Ibis

<sup>21</sup> <https://www.squirepattonboggs.com/-/media/files/insights/events/2022/01/anti-counterfeiting-brand-protection-trends-and-the-top-advertising-media-and-brand-hot-topics/anticounterfeiting-brand-protection-summary.pdf>

<sup>22</sup> Law no. 9947, date 7.7.2008, "For industrial property"

<sup>23</sup> Regulation (EU) 2017/1001 of EU Parliament and Council date 14 June 2017, "For trademarks in EU" Celex nr. 32017R1001;

registered, as well as of signs and marks that intrude the rights of previously registered trademark owners, providing greater protection. In this context, the draft law prohibits agents or representatives of a brand owner from registering on their behalf a trademark belonging to the real owner of the brand, a phenomenon that has been encountered not infrequently in the country's market and which is related to the essence of the concept of mis-trust in the field of trademarks.

Currently, the market in Albania is facing more and more conflicts between previously registered trademarks and have a good reputation and name in the market and attempts by different persons to use identical or similar trademarks to previously registered trademarks, in order to benefit at the expense of recognition that previous trademarks have in public and in the market, because of the quality, advertising and constant promotion that their owners do for them.

These negative efforts in addition to harming the economic interests of reputable brand owners in the market, they also undermine and distort the market and consumers' interests. In this respect, this bill also guarantees protection of consumers from the consequences that may arise in the market from the infringement of trademark rights and the circulation of infringing goods. The draft law attaches special importance to measures for protection of trademarks and the rights of brand owners from the intrusions done to them by market speculators and manipulators. In this respect, the draft law provides for the right of owners of marks affected by infringing acts to file a lawsuit, present evidence and secure them, to request provisional measures to prevent an infringement, to take out of circulation, confiscation and control of goods suspected of infringing the rights of previously registered marks and so on.

In this respect, the draft law elaborates in more detail measures taken in the event of violations of rights arising from marks, such as the prohibition of goods or services infringing the rights of the trademark, the removal or blocking from civil circulation of infringing goods or services, to the materials, equipment and tools used for the creation or production of such infringing goods or services.

## **VI. CONCLUSIONS AND RECOMMENDATIONS**

A society develops as a result of the activity of its members. Political, economic and social development are effective when members of society make good calculations about how to organize legal norms. The right of industrial property represents one of the newest and most attractive sub-sectors of the law. Over the past few years, this has become increasingly important in the framework of judicial doctrine and practice. Nowadays, industrial property

rights are increasingly given special attention and interest. The protection of these rights constitutes one of the main priorities and objectives of the European Union and any other state that intends to become part of it. In this context, one of the concrete steps that our state has taken in the framework of its commitment to integrate into the European community consists in ensuring and guaranteeing a level of protection of industrial property rights equivalent to that provided by the Member States of the European Union. Thus, in order to fully fulfil this fundamental objective, the Albanian state has taken concrete legal steps and measures, such as approximating albanian legislation with the ACquis of the European Union and adopting the new Intellectual Property Strategy.

Undertaking such policies and legal initiatives aims and enables an increase in the awareness of public opinion, universities, businesses and law-enforcing institutions in the field of industrial property. In this context, courts play a fundamental role in guaranteeing rights arising from the ownership of industrial property objects.

What should be considered is the importance of intellectual property for factors such as:

- Protecting business and fighting the informal economy - because of the counterfeiting of products and elements of intellectual property, businesses lose a great deal of their full profit potential.<sup>24</sup>
- Open innovation - the perfection of research/development fields is attributed to intellectual property protection, broadly the possibility of registration of marks and patents. Open innovation refers to the collaboration of companies and enterprises in developing innovative ideas;
- Companies and businesses of different natures of products always take into account the health and well-being of the consumer.
- Employment protection – As a result of innovation and creativity, business activities always increase the prospect of creating new jobs.<sup>25</sup>

In conclusion, the industrial ownership system helps to strike a balance between the interests of innovators and the public interest, providing an environment in which creativity and invention can flourish, for the benefit of all. Industrial ownership should not be seen as an end in itself, but as an instrument for achieving certain political policies, stimulating and distributing

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<sup>24</sup> According to the European Union's stats, the clothing industry's only businesses lose \$43.4 billion as a result of counterfeiting

<sup>25</sup> The loss of work places is a number of counterfeiting goods, estimated to be more than 786,000 different jobs in 9 different sectors of the EU lost as a result of violations and counterfeiting.

creativity. Its protection no longer constitutes a country's cause, but is an integral and undivided part of regional and international developments.

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