

THE TRADEMARK IMAGE OF THE SOCIALLY RESPONSIBLE COMMERCIAL COMPANY

Murzea Cristinel

*Transilvania University of Braşov Faculty of Law and Sociology 25, Eroilor Blvd., Braşov
cristinel.murzea@unitbv.ro*

Mureşan Laura

*Transilvania University of Braşov Faculty of Law and Sociology 25, Eroilor Blvd., Braşov
laura.muresan@unitbv.ro, lauramureshan@yahoo.com*

The social responsibility, correctly applied to the development strategies by a commercial company, can grant that much needed element of novelty to a successful trademark. All the advantages of the corporate social responsibility can add value to the trademark of the products of the socially responsible commercial companies. Thus, the functions of the trademark of certain products can be doubled by a socially responsible attitude, correctly and consistently promoted by certain commercial companies.

Keywords: trademark, commercial company, social responsibility, stakeholders, trademark image.

JEL Code of the work: K (Law and Economics)

1. The socially responsible commercial company

Many traders instinctively know that “to do what you have to” – to serve the clients, to take care of the staff’s morale, to be attentive to the providers, to be good neighbours and to protect the environment – means a good commercial sense. The socially responsible activity concerns the provision of the economic success of a commercial company by including certain social and ecological reasons into its activities.⁴²³

The social responsibility of the commercial companies must be considered from a complex perspective. We believe that the social responsibility of the commercial companies is what the community expects from a commercial company from an ecological, economic, legal, ethical and philanthropic point of view. Thus, the social responsibility includes all these types of activities (ecological responsibility, economic responsibility, legal responsibility, ethical responsibility and philanthropic responsibility).

The social responsibility of the commercial companies is a moral, voluntary responsibility of the respective commercial companies regarding the interaction of their own company with the: environment, clients/consumers, own employees.⁴²⁴

2. The trademark and its functions

The law⁴²⁵ defines the trademark as a susceptible sign of graphical representation serving to the distinction of the products or services of a natural or legal person from those belonging to another person. Thus, trademarks can be distinctive signs such as: words, including person names, drawings, letters, figures, figurative elements, tridimensional forms, and especially the form of the product or its package, combinations of colours, as well as any combination of these signs.

In ancient times, the signs identified the products produced by a certain workshop, by a certain craftsman, having the significance of a “signature”. They played, for the objects in great demand, a role of the source guarantee, and thus a guarantee of the quality of the product on which they were applied.

From the initial manufacturer identification function, the trademark has evolved in the modern economy to that of the identification of the products with a tendency, at present, to evolve to a symbol, to a myth. The trademark has more and more, as a function, the conscious or unconscious connection to symbols, to genuine recognition signs, rather than the function of asserting the source and quality of the product, or services.

The trademark right is acquired by registering the sign chosen by the applicant. Registering the trademark grants the holder an exclusive right over it. The holder acquires, by registering the sign, an exclusive right to use or “occupy” it, which is restricted to the usage of this sign in relation to the designated product or service. The trademark right is a simple “occupation” right in the profile of the person who first made the registration, and that is why the validity of a trademark does not spell novelty, but originality. The occupation right granted by the registration is a particular type because the object and function of the trademark right is not to grant monopoly over a distinctive name but to favour the commerce, to provide the consumer’s protection. The right does not protect the sign itself, the trademark, but the commerce is protected.

In the case of the distinctive signs, the rights of each competitor over the distinctive signs of his activity, including over the trademark, in relation to his competitors, are observed. The object of the protection is preventing the direct

423 Comisia Europeană, Direcția Generală pentru Întreprinderi: Introducere în CSR pentru întreprinderile mici și mijlocii. http://ec.europa.eu/enterprise/csr/campaign/documentation/download/introduction_ro.pdf, pp. 2-3.

424 Mureşan Laura, Poţincu Cristian-Romeo: Cadrul juridic al responsabilităţii sociale corporatiste. în volumul Conferinţei Responsabilitatea socială corporativă şi dezvoltarea durabilă, 10 aprilie 2009, Bucureşti, Editura Comunicare.ro, Bucureşti. 2009 (în curs de apariţie).

425 Art. 3 lit. a, Legea nr. 84 din 1998 privind mărcile şi indicaţiile geografice.

competitors of the sign holder from using it as well, thus preventing confusion among consumers. This way, the sign holder is acknowledged the right to use it for his products or services, and to thus preserve his clientele.

The trademark is a distinctive sign used to differentiate the products and services of a trader. The differentiation can be objective to the extent to which it corresponds to the characteristics of the product (the trademark reflects the qualities of the product), or subjective, when the distinctive sign, without suggesting the qualities of the product, intends to “attract” the buyers. Sometimes, the attraction is so strong that the trademark becomes a myth and is included in the consumers’ current vocabulary, turning into a generic name for a product or category of products.

The trademark proved its importance by its capacity to attract and preserve its clientele, becoming an essential element of increasing the trader’s clientele. In time, the economic importance of the trademark has increased in direct relation to the development of the world commerce and international exchanges. Several products and services are sold worldwide under the same trademark, and this “commercial notoriety” has become a valuable asset of the modern enterprises. A trader can have the best products or services in the world. The clients must be able to distinguish and choose them from the products and services of the competition; the trademark has become a part of any commercial strategy.

Here are the functions of the trademark:

A. The product differentiation function has its origin in the belief according to which the trademark is a sign, a signature, which once applied on a product allows the public to identify it, distinguishing it from other identical or similar products. Thus, the trademark becomes a reference point of the searched product, for a public which no longer links the trademark to its source. In this context, the trademark acquires a clientele determination function, the manufacturer’s differentiation function becoming a product differentiation or identification function. This phenomenon is called trademark objectification⁴²⁶.

B. The trademark competition function starts from its quality to be a means of individualizing the product belonging to a certain manufacturer. Thus, being an external sign of the products value, the trademark allows the consumers to easily and rapidly find the checked products belonging to the producers who have gained a good reputation. In some cases of new products, of special type, the trademark starts to identify itself with the product to such an extent that it is designated through the trademark. For instance, the example in which, in a shoe store, the buyer asks for a pair of “*adidași*” (sneakers) (sports footwear having the “Adidas” trademark), or makes Xerox copies, identifying the trademark of the copying machine (“Xerox”) with the achieved action.

On this clientele attraction mechanism relies the trademark competition function, which has increased to misrepresentation as advertising has developed. By means of “violent and invading” advertising, the objective differentiation through the trademark has been replaced by a subjective differentiation, and the trademark competition function has been replaced by the monopoly function.⁴²⁷

C. The trademark quality guarantee function is indissolubly connected to competition. By means of the trademark, the consumer can identify a certain product which he prefers thanks to its quality or presentation manner. In certain fields, especially fashion and cosmetics, certain trademarks become a quality symbol to such an extent that they extend their effects beyond their origin field, to most various objects, to which they lend the prestige of the origin product. It can be noticed that the importance of the quality or quality guarantee function has increased. The regular consumer does not possess the elements required in order to check and evaluate himself the real quality of the variety of products sold on the market. He is informed in this respect through the advertising of the products, which means asserting the quality of the trademark products. This way, the objective differentiation based on quality turns into a differentiation based on presentation, in order to then become a subjective differentiation based on the “buyer’s trust in a qualitative difference of the marked products” which makes him prefer a certain trademark, convinced that it corresponds to a top quality product.

D. The market organization function derives from the interaction between production and consumption; the trademark is a market organization instrument, a means of correlating the demand with the supply. The increase of the economic importance of the trademark has led to the fact that “the trademark sells itself”.

E. The monopoly function of the trademark appears by the transformation (alteration), under certain conditions (with the implication of the commercial function), of the competition function and market organization function of the trademark.

F. The commercial function is based on the attraction power of the trademark. By means of adequate advertising, the trademark can cause a real “conditioned reflex” to the consumer. Good advertising grants the trademark a selling potential, irrespective of the quality and price of the product to which it is associated. By seducing the

426 Eminescu Yolanda: *Tratat de proprietate industrială. Volumul II: Semne distinctive*. Editura Academiei R.S.R., București. 1983, pp. 19-25.

427 Murzea Cristinel, Drilea Marian, Cletea Gheorghe, Miron Adriana: *Noțiuni de proprietate intelectuală*. Editura Romprint, Brașov. 2004, pp. 184-188.

consumers, the trademark becomes an autonomous element of the commercial success. Thus, from an accessory of the product, the trademark has become an independent asset with its own value.⁴²⁸

G. As for the consumers' protection function, the consumer has the right to be correctly informed on the quality of the products he buys, and the information must be complete in order to help his choice. The consumers' protection is achieved not only by means of correct information; the issue is much more complex, and makes the object of specific regulations, related to the consumption law. In the strict sense of law no. 84/1998 related to trademarks and geographical indications, the consumer is defined as any natural person acting with other purposes than those of his commercial or professional activities. The consumer's protection function derives from the quality guarantee function and from the source guarantee function because the source implies a constant quality of the marked product.

So the trademark is an important identification attribute of a trader in relation to his clients. The trademark of a trader applied on a product is for the consumer a proof of the individuality of that product. The trademark is thus a "guarantee" of the authenticity of that product for the client of that trader.⁴²⁹

3. The trademark image of the socially responsible commercial company

The social responsibility plays an essential role in creating the reputation of the commercial company, a reputation which it enjoys among its different publics. The fundamental idea on which an identity program is based is that everything that a commercial company does/supports by means of the social responsibility actions must project a clear idea of the values in which the respective commercial company believes, a clear idea of who it is and what matters to it, of its objectives. In this respect, all developed actions must have continuity and must be consistent with the mission and vision of the commercial company, explained to the broad public through the communication action mixture.

A complex system of connections is woven around a brand, which contributes to the communication of the values which a company creates. A brand is built starting from a logo and slogan but its power consists in all the formats it is communicated and promoted: directly, through audio-video films, ad prints, online banners, posters, catalogues, direct mail.⁴³⁰

In this context, we must differentiate the trademark from the brand. If we look at each product or set of products as a person, the trademark is its image: hair, clothes, shoes, and even perfume. But the brand is a person, with a soul, vision, life principles. The image of the brand, the way it is presented in the communication with the clients, is not only the creation of advertising or branding agencies but it is a result of the "DNA" its creators have defined.⁴³¹

The image of the commercial company implies that its identity must be enriched by references and valuable attributes which will offer an advantageous psychological status and will influence the social image.

The trademark image of the commercial company has appeared as a result of the need to give coherence, foundation, credibility and durability to the main forms of communication within it: financial communication, social and internal communication, commercial communication and institutional communication. The trademark communication is thus achieved among the four types of communication. This need of unity and integration appears due to the fact that the public – including the ensemble of stakeholders of the respective commercial company – establishes with this commercial company a bidimensional relation. The bidimensional relation implies an indirect relation, where a general idea of the commercial company is formed based on the information obtained from mass media, based on the contacts established with the persons within it, based on the contact with its products; and a direct relation which directly affects the interest of the public – shares if he is a shareholder, social offer if he is an employee, position within the commercial company if he is a leader, etc.

The image plays the mediator role between the legal and natural persons, between institutions and individuals.

In those previously presented, the public to which the respective socially responsible commercial company relates, is represented by stakeholders. The stakeholder notion derives from the following terms: "*stake*" meaning interest, and "*holder*" meaning owner, both English terms. Thus, the stakeholders are those categories of persons who have an interest in the development of the activity of the respective commercial company. The stakeholders are divided into two main categories: external stakeholders – including business partners, suppliers, consumers, local communities, natural environment, future generations –, and internal stakeholders – including employees, shareholders, and managers/owners.⁴³²

428 Roș, Viorel: Dreptul proprietății intelectuale. Editura Global Lex, București. 2001, pp. 549-574.

429 Murzea Cristinel, Mureșan Laura: Dreptul la marcă și protecția consumatorului în comerțul electronic prin licitație publică. în volumul sesiunii de Comunicări Științifice a Universității „George Barițiu” din Brașov, Facultatea de Drept, 22 noiembrie 2008 pp. 119-124.

430 Oprea Luminița: Responsabilitate socială corporatistă. Editura Tritonic, București, 2005, pp. 34-44.

431 Sasu Vlad Dinu: Diferențieri și similitudini între marcă și brand. În Analele Universității din Oradea, 2004, p. 334.

432 Racolța-Paina, N. D., Mateescu, V. M.: Responsabilitatea socială internă și producția de tip lohn. Studiu de caz: o întreprindere mică, cu capital străin, din industria confecțiilor. în Management & Marketing nr. 3/2006, Editura Economică, București. pp. 99-100.

4. Conclusions

The great trademarks are not born overnight. They constantly need a mixture of strategy, finances, legal counseling, and marketing-communication in order to maximize their values. At the same time, they need a certain understanding from the owners who must be updated on the new trends which are the object of the respective trademark, and maintain certain freshness.

The trademark plays three fundamental roles in the buying decision: helps to process the information, provides security with buying, and offers satisfaction in using the product, or service, respectively.

The trademark manages, by means of complex mechanisms, to reach several communication levels. Thus, the functional benefits (concrete, palpable), as well as the emotional ones (intangible) such as the satisfaction related to what one has obtained, status, the reason to be, the feeling that one makes the right choice grant the trademark that power of persuasion, of great deepness and complexity.

The trademark has become part of the way the commercial companies and also the consumers define themselves. It has become a socially accepted language. A means of communication.

The trademarks of the future will have to make a difference not only through the quality of the products and a desirable image, but also by symbolizing the commercial company behind the brand. According to Wally Ollins, consultant in the corporate identity field: "the following major stage in the evolution of brands is the social responsibility. It will be a smart choice to be able to say: there is no difference between our products and prices and those of the competition, but we behave nicely (to the environment and society)".⁴³³

We notice a change in the behavior of the consumers. They no longer want to buy products recklessly. They have the possibility to choose. They choose those trademarks with solid values such as: trust, safety, authenticity, quality. The consumers want to bring meaning to their life, and trademarks can contribute to this desire by promising and offering the increase of the quality of the consumer's life.

For the commercial companies it is known that it is a long way from attracting the consumer and keeping him because the consistency is maintained by trust, and trust is the essence of the powerful successful trademarks, especially in the context of the global tendency to make clients loyal.

Almost anything can become a new successful trademark. Any product offers one opportunities to create an image in one's mind, which is unique. Almost any product can exceed the narrow, tight limits of its category. In the end, products have classical life cycles. The well-managed trademarks could live forever.

Any commercial company that wants to build a successful trademark must start from the best and real starting point, i.e. being among the consumers and finding out what they like or dislike related to that trademark. In order to keep a trademark alive during its course, in order to keep it vital, one must do something new, something unexpected. To surprise the consumer, to add a new dimension to the trademark, to reenergize it. A successful trademark invents and reinvents an entire category. A successful trademark is an unfinished story to tell. One always has something to say.

However, the wrongly conceived ecological and/or social marketing actions tend to have effects contrary to those intended. The preoccupations of the consumers related to environmental or social issues can no longer merely be exploited by ads saying that superficial changes have been made to a product, or the manufacturer complies with the applicable rules. The importance of the values of a commercial company has the tendency to equal and even exceed the importance of the characteristics of the products which they manufacture.

Thus, the social responsibility, of course correctly applied to the strategies developed by a commercial company, can give that much needed element of novelty to a successful trademark. All the advantages of the corporate social responsibility can give value to the trademark of the products of the socially responsible commercial companies. Thus, the functions of the trademark of certain products can be doubled by a socially responsible attitude, correctly and consistently promoted by certain commercial companies.

Bibliography:

1. Murzea Cristinel, Drilea Marian, Cletea Gheorghe, Miron Adriana: *Noțiuni de proprietate intelectuală*. Editura Romprint, Brașov. 2004, pp. 184-188.
2. Oprea Luminița: *Responsabilitate socială corporatistă*. Editura Tritonic, București, 2005, pp. 34-44.
3. Roș, Viorel: *Dreptul proprietății intelectuale*. Editura Global Lex, București. 2001, pp. 549-574.
4. Mureșan Laura, Poțincu Cristian-Romeo: *Cadrul juridic al responsabilității sociale corporatiste*. în volumul Conferinței Responsabilitatea socială corporativă și dezvoltarea durabilă, 10 aprilie 2009, București, Editura Comunicare.ro, București. 2009 (în curs de apariție).
5. Murzea Cristinel, Mureșan Laura: *Dreptul la marcă și protecția consumatorului în comerțul electronic prin licitație publică*. în volumul sesiunii de Comunicări Științifice a Universității „George Barițiu” din Brașov, Facultatea de Drept, 22 noiembrie 2008 pp. 119-124.

433 Oprea Luminița: *Responsabilitate socială corporatistă*. Editura Tritonic, București, 2005, pp. 34-44.

6. Racolța-Paina, N. D., Mateescu, V. M.: *Responsabilitatea socială internă și producția de tip lohn. Studiu de caz: o întreprindere mică, cu capital străin, din industria confecțiilor.* în Management & Marketing nr. 3/2006, Editura Economică, București. pp. 99-100.
7. Sasu Vlad Dinu: *Diferențieri și similitudini între marcă și brand.* În Analele Universității din Oradea, 2004, pp. 332-335.
8. Comisia Europeană, Direcția Generală pentru Întreprinderi: *Introducere în CSR pentru întreprinderile mici și mijlocii.*
http://ec.europa.eu/enterprise/csr/campaign/documentation/download/introduction_ro.pdf
9. Legea nr. 84 din 1998 privind mărcile și indicațiile geografice publicată în Monitorul Oficial nr. 161 din 23.04.1998.