The Role of Trademarks in Economic Development and Competitiveness

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Introduction

What is the value of a trademark? And to whom? Why do we have laws, including criminal laws, to protect trademarks from use by persons other than the “trademark owner?” What benefits do trademarks contribute to a society, such that it should prohibit anyone but the “trademark owner” from using the mark on goods or services, and how, if ever, and under what conditions, do the prohibitions of trademark law become burdensome or even injurious to the societies which protect them?

Trademarks in Market and Non-Market Economies

Trademark protection functions most powerfully in growth-oriented societies in which autonomous consumers have the capacity to make conscious (or subconscious) choices over how they conduct their daily lives. A society which chooses to favors a “steady state” or “no growth” economy (perhaps in the name of furthering environmental protection and reducing consumption instead of promoting economic growth), or a society which, in encouraging pure spirituality among its citizens, discourages them from seeking to increase their personal material wealth and comfort (such as a monastery or other religious community), may still need to protect its signs and symbols – but not to the extent a society which encourages firms to expand markets to create employment and promote new products for needy consumers does. The social value of a trademark is intimately connected to its economic value. Other kinds of social symbols, such as religious icons, heraldry, or political symbols, may also be pregnant with economic significance; however, as “commercial icons”, trademarks or “brands” are purely economic in value.

The Importance of Accurate Market Information in the Market Economy

Consider the situation in the non-market economy. In a subsistence economy of farmers, peasants, or hunter-gatherers with no division of labor, the people must find or grow their own food and collect their own fuel in order to survive. To the extent that they are unable to rely upon their own skills to produce their needs for these basic requirements, they must rely upon the “goodwill” of others for their needs. As children rely upon their parents for nurture, the people rely upon their leaders (the village chieftain or the representative of the state) to provide for their welfare. A relationship of trust must be nurtured between the people and those who are responsible for their welfare. In modern non-market economies, the relationship of trust between the people and the state is both political and economic. The people place their trust in the state, which enjoys full power of decision-making over all economic decisions affecting the people. The burden upon the state is heavy; for the state is assumed in its wisdom to have all the information it needs to make economically efficient decisions which allow for all the needs of the people to be met to the fullest extent. However, history has demonstrated that because the information of government decision-makers is often flawed and inaccurate, and these government decision-makers themselves are imperfect and self-interested human beings; as a consequence, goods in a “command economy” may be produced by the manufacturing and agricultural sectors which ordinary people do not want or need, and the goods which the people want or need may not be produced. History has demonstrated in the late 20th century that the non-market economy has not been successful, if it ever was.

Goodwill of a product

Envision now for a moment a less-developed market society where all the goods in the economy emanate from anonymous sources and flow to a common marketplace. In the shops or the marketplace in this society, the shelves in the stores (if such a society has stores) are lined with piles of food or undistinguished boxes and cases containing "toothpaste", or "bread" or "glassware." This is in fact the situation in simple market economies. To what information does the purchaser have access and how does the purchaser acquire such information? In the first instance, the person relies upon his or her own personal skill and knowledge to decide whether to purchase or not. When the purchasers go to the marketplace, they carefully examine the goods before they choose to buy or not. The old Roman adage "caveat emptor" holds full sway: "Let the buyer beware!" Prices are negotiable. Once the buyer examines the goods and deems them desirable, a bargain-seeking negotiation between the buyer and seller ensues. In the case of foodstuffs or simple utensils such as glassware, the buyer may sample the goods by tasting the bread or inspecting the glassware. The buyers may be so sure that information about the goods is correct that they may buy with confidence, even without the praise of the seller to persuade them. The "original position" between the buyer and seller is one of wariness. But if the buyer is a shrewd inspector and it is clear to the buyer that the goods are of good quality, there is no need to rely upon what the seller says. The "goodwill" is in the product -- not in the producer or the seller.

The Goodwill of the Seller

But what about the purchase of a tube of toothpaste? How can the seller examine the product without brushing his teeth in the marketplace?! Suppose the seller says "You cannot open the package but must buy or not buy without trying out the goods; however, I guarantee you that the toothpaste is of the highest quality." Am I going to be cheated? Is the information provided by the seller accurate? How does the seller know that the toothpaste is safe? How does he or she know that it is effective? Does it taste like medicine? Like candy? The "goodwill" has been transferred from the goods themselves to the seller, upon whom the buyer must rely. After the purchase is completed, if the buyer is dissatisfied or has been cheated, he or she may never return to the seller. In most daily transactions, if a seller provides the buyer with inaccurate or deceptive information, the buyer is unlikely to ever return. After the purchase transaction is completed, if the buyer is satisfied with the product, he or she will return to the seller again and again until a better bargain is found elsewhere or until the product is found to be unsatisfactorysatisfactory. In most daily transactions, if a seller provides the buyer with inaccurate or deceptive information, the buyer is unlikely to ever return. (In markets where the sellers are locals and the buyers are tourists from far away, this is hardly ever a problem!)

Loyalty to the shopkeeper is called "custom," because the purchaser becomes "accustomed" to shopping at a reliable shop, and hence becomes a "customer." The *goodwill of the seller* is the bedrock of the traditional consumer economy, where market information was unpredictable and the shopper came to rely upon the good name (or "goodwill") of the retailer for reliable market information. However, with the development of centralized, efficient industrial production and modern, mass-market, nationwide distribution systems in the 20th century, the situation of reliance upon the goodwill of the seller has been transformed. Now the consumer relies upon the goodwill of the manufacturing firm or the service provider.

The Goodwill of the Producer

Now let us consider the modern market economy, in which the division of labor is extremely fine. Consumer products are grown or manufactured by large corporations which employ thousands (or perhaps hundreds of thousands) of employees. These firms have vast distribution systems built for economic efficiency which deliver a myriad of products and services to a myriad of outlets for consumption by a myriad of consumers. The "breadwinners" in the market-economy family -- husband and wife -- work long hours in a factory or in an office. At lunchtime or after leaving work for the day, they rush to the marketplace to purchase the family's daily needs. Upon whom do these busy purchasers rely for accurate information about the products they buy?

It has long been held that the legally relevant function of a trademark is to impart information which reduces consumer search costs as to the source or sponsorship of a product or service. The purpose of trademark law, at least in the United States, is primarily to protect the consuming public -- not trademark owners. In the modern market economy, consumer purchase transactions are extremely numerous. Each time the consumer enters a retail outlet, she must rely upon information presented by others about the products and services she purchases. Returning to our example of the tube of toothpaste, what information is available to the purchaser? And where does it emanate from? The purchaser is pressed for time. She has left her place of employment and is hurrying home for the evening to make dinner for her family. She does not have the ability to test the product at the point of sale. The retailer -- perhaps a "supermarket", does not have sales personnel to describe the product to the customer.

Time-saving is the essence of the modern efficient consumer economy. Whereas in the non-market economy the purchaser (or the state) was presumed to have the best information about products and services, and in the early market economy the retailer was best-informed, in the modern efficient market economy it is the consumers themselves who have control over market information. The vehicle for the conveyance of market information is the "brand." Consumers protect themselves by relying upon known brands of merchandise or services. Let us project the economic efficiency of such a system. Assume that a shopper enters the supermarket to make purchases at the end of the work day. Choosing a shopping cart, the shopper begins to choose purchases for the evening's meal or the weekend's activities. If the shopper recognizes a known and reliable brand, she may make her selection of bread, glassware, or toothpaste in a matter of seconds, and with confidence. If she must mull over different products because she has no confidence in brands, because she is unsure of quality, reliability, safety, or taste, the selection process may instead take many minutes. Multiply the number of minutes of hesitation by the individual shopper by the number of shoppers making such market decisions every day, and it becomes clear that accurate market information in the form of reliable brands saves the individual consumer time in making market decisions. And when the aggregate of such efficient market decisions is considered, there is a saving to society of millions of hours of productive consumer activity every day by the availability of reliable market information in the form of trademarked "brands."

Goodwill of the product or goodwill of the producer?

A trademark is not the name of a product. The trademark is an adjective -- a word which describes the product. The 'trademark function" means that the word describing the product functions to inform the purchaser of the source of the goods, not the nature of the goods. A trademark is always an adjective modifying the noun, which is the generic name of the product. Thus, "Apple®"-brand computers (but not "apple"-brand apples) or "Windows®"-brand computer software (but not "windows"-brand windows!) The goodwill of the Apple® computer belongs to the firm which manufactured the computer. By contrast, the "goodwill" of the apple we eat belongs to the product itself. This becomes clear when we look at how trademarks for new products sometimes become generic names for those products and must lose trademark protection. Thus, the former trademark "Aspirin" which was owned by the Bayer company became the generic name of the pain-reliever known as "aspirin." The goodwill of the Bayer company which it had invested in the manufacture of the pain-reliever was transferred to the product itself, so that now any manufacture can manufacture the pain-reliever called "aspirin." The trademark "Aspirin" has lost its trademark function and become a generic term.

Firms which own trademarks on popular products must guard their trademarks from such "genericide." A good example is the trademark "XEROX®" for the photocopy machine invented by Chester Carlson. The trademark XEROX® is the intellectual property of the Xerox Corporation which Carlson founded -- not a word which means "to photocopy." That is why the Xerox Company encourages people to use the word "photocopy" and not the word "Xerox", as in "Please make a <u>photocopy</u> of this document" instead of "Please make a <u>xerox</u> of this document." The proper use of a trademark becomes very important because under the law of most countries, a trademark owner can lose his trademark if it becomes generic by evolving into the actual name of the product rather than a particular brand of product. Trademark law never can prevent a company from making a product, as patent law does. Trademark law merely prevents a copier of the product from confusing the purchaser as to the source of the product. Thus, trademark law is the weakest form of intellectual property protection, which prevents not all competition, but merely *deceptive* competition.

Brand Differentiation and Product Differentiation - Are Trademarks of Any Benefit to Society?

If all products of a certain type are denoted by the same word, the consumer has no way of telling the products apart. Thus, when a consumer buys a product and likes it, and goes back to the store to buy another one, if all similar products are sold under the same name, the purchaser cannot tell which were the products she liked and is unable to get a product with the qualities she desires. Trademark law promotes brand competition, which leads to higher quality goods in the marketplace.

Without trademark protection for the products of a particular producer, consumers could not identify a better product, the better product would not enjoy greater sales, and there would be no incentives for the manufacturer to make a better product. The greatest advantage of a trademark to the consumer is that market information about the product is accurate, so that the purchaser can buy the desired product and avoid products of lower or different quality.

With regard to lower quality, if a company makes a refrigerator that a consumer buys and likes, the consumer may very well buy a stove or a washing machine with the same brand mark. In China for example, the brand HAIER® has become a famous brand for high-quality appliances over the past 10 years. A consumer who is happy with one product produced by the brand-owner will return to that company to buy another appliance. Both the consumer who purchases the high-quality product and the manufacturer which produces the product benefit. This is commercial behavior which all market economies should encourage. Also, if the product produced under the brand turns out to be defective, the consumer has accurate information about the source of the product and can return it to the manufacturer for a refund or repair. An important reason why branded products are more expensive than generic ones is because of this ability of the consumer to be able to return defective products for refund or replacement. Another interesting example is the mark QINGDAO® for beer produced in China, which has become a famous brand of beer in the United States. American consumers have become very "brand-conscious," and are willing to pay a higher price for premium goods such as QINGDAO® beer. This benefits American consumers and also provides a lucrative export market for the Chinese producer.

But suppose other manufacturers are allowed to copy the HAIER® or QINGDAO® marks? If an unidentifiable manufacturer uses a famous mark on a similar product, the purchaser will have inaccurate (and even deceptive) information. The information is merely inaccurate (although misleading) if the product which the consumer purchases may be of equal quality to the product of the original manufacturer. There is no direct injury to the individual consumer if the goods are identical; however, the brand owner has lost a sale, and the unidentified company is "free-riding" on the fine reputation which the brand owner has struggled to establish. Thus the brand owner has lost the incentive to maintain quality if that expense does not lead to increased market for the goods it manufactures. A brand manufacturer cannot justify the higher cost of quality production if a competitor can use the brand without paying for the cost of marketing which created demand for the product. And so the mass of future consumers is injured even if the individual consumer who purchased the product is not.

But what if the quality of the product sold by the unidentified manufacturer is lower than the quality of the product manufactured by the brand owner? In this situation, the market information of the purchaser is not merely inaccurate or misleading but deceptive, because the purchaser probably bought the product <u>relying</u> on the accuracy of the market information. In the case of ordinary apparel and shoes, for example, if inferior products carry the brand name of a reliable manufacturer but are actually produced by an unidentified party, the purchaser has merely been cheated and will revert to the former wariness in the marketplace, wasting time in making market choices, bargaining with the seller over the price, and creating economic inefficiencies for society at large. But more seriously, if the appliance from the unidentified manufacturer is defective, it may be dangerous. Or the beer produced by the unauthorized brewery may be adulterated or even poisonous! Not only is the direct consumer cheated, but he may be injured. A society which fails to uphold the integrity of high-quality brands by allowing the enforcement of trademark law against unauthorized producers is not merely removing the incentives for an efficient market economy, but may be endangering the health and safety of its citizens.

In some countries, a trademark registration may be revoked if a product is of poor quality or defective. This demonstrates a faulty understanding of intellectual property law. If a product is defective or of poor quality, then the value of the trademark on that product will be low or non-existent. As long as the information is correct, the trademark should be valid, even if it is virtually worthless. In most governments, there are other agencies separate from the trademark office which control the safety and effectiveness of products distributed in the marketplace. A product which has a valid (but valueless) trademark may be banned by the government authorities; but if the trademark truly indicates the source of the goods such that the market information is accurate, it makes no sense in terms of intellectual property principles for the trademark registration to be revoked. The "trademark function" is purely an information function and has nothing to do with whether a manufacturer is permitted to or prohibited from marketing a product, or whether the product is of high quality.

Goodwill of the Brand

Products of equal quality may also be different in attributes. Trademark law encourages a proliferation of brands in the marketplace by allowing for "product differentiation." A good example is COCA-COLA® and PEPSI-COLA®. Which soft drink is better? Empirical studies have shown that when consumers have a choice between high quality products, they consume more of both products than they would have without the choice. The source of this phenomenon is the old adage "de gustibus non disputandum est" ("Different people have different tastes.") The phenomenon of product differentiation is pervasive in sophisticated and advanced market economies, such as the European Union, Japan and Korea, North America (U.S., Canada, and Mexico), and now in many other countries, including China. Consumers have the ability and the freedom to choose between different brands for purely personal reasons which have nothing to to with the objective advantages of the products. The consequence of this is phenomenon is that the specialty shops and department stores of the marketplace becomes filled with a multitude of different brands of similar products. Consumers may become loyal to particular brands for purely subjective reasons. This reinforces the autonomy of the individual consumer, who is not told by the state what it should or must buy. "Consumer protection" laws are necessary to protect consumers from deception in the marketplace; however, in creating a true market economy, state officials should not presume that they have to protect consumers from bad choices. If the autonomous consumer wishes to buy expensive branded goods which he or she is not able to afford, consumer protection laws cannot protect consumers from themselves, nor should they. Freedom of the market economy is freedom to make decisions without being deceived; there is no guarantee that the consumer will make wise choices, nor should there be.

In addition to consumer autonomy, the proliferation of brands through product differentiation allows for many high-quality producers of similar products, creating the economic conditions for many different companies to employ a larger number of workers. This phenomenon also increases the competition between products in the forms of "price competition" as well as "brand competition." "Price competition" means that the producers of high quality products will lower their prices to gain market share. COKE® and PEPSI® are good examples. The products are similar but not identical. Fierce price competition means that the prices of both products are much lower than they would be with only a single brand. Airline tickets, deregulated telecommunications, and automobile sales are other examples of markets driven by fierce price competition, thereby increasing economic efficiency and lowering prices to consumers.

"Brand competition" works in a different way. Rather than lowering prices to meet the price of the competitor, manufacturers will often add new features, improve the product's effectiveness or attractiveness, increase warranty services, offer coupons or prizes, or otherwise use non-price mechanisms to increase market share. Again, due to the harsh conditions of competition in the marketplace, consumers benefit and economic efficiency improves.

A third advantage of competition between high-quality products emerges in the form of mass advertising on television, billboards, and in magazines and newspapers, to shape consumer demand. Consumers make subconscious as well as conscious decisions to purchase brand-name goods and services. Is such advertising a benefit to society or a threat? Should a society encourage brand owners to advertise their products? This phenomenon has at least two positive aspects which are deserving of mention. The first is the extrinsic benefit of having an advertising industry.

The advertising industry supports an enormous number of other economic activities in the advanced consumer economy. Among them are the vibrant print media and commercial television industries in developed countries, which could not exist without advertising dollars. Thousands of different magazines are published in millions of copies every month at low prices because of the economic resources poured into advertising by brand owners. This advertising also increases the cost of the goods advertised, but it lowers the cost of print and broadcast media. The second benefit of a vigorous advertising industry is that when advertisers are required to tell the truth by government regulation, consumers have access to the best market information of all. In the United States, deceptive and misleading advertising is prohibited both by direct government regulation in the form of consumer protection laws and also by unfair competition laws enforced by competitors. Advertisers who have been found to deceive may be forced to pay harsh civil or criminal penalties. If an advertiser misrepresents the quality or origin of its own product (by so-called "passing off"), or if an advertiser misrepresents the qualities of a competitor's product (by so-called "product libel"), they may be required to pay civil damages to the injured competitor. However, as long as an advertisement is truthful and not misleading, even comparative information about competitor's products is freely allowed by U.S. law. Trademark laws do not prevent the use of a competitor's trademark in a comparative advertisement, as long as the information in the advertisement is not deceptive or misleading. Because competitors in the marketplace have access to the *best* market information (much better information than government officials have), a legal system which allows liberal comparative advertising provides consumers with direct access to the most accurate information about goods and services.

But does sophisticated advertising, while not deceiving consumers, delude them into buying goods which they neither need nor think they want? Is such economic allocation rational, or does brand advertising merely turn yesterday's luxuries into tomorrow's necessities? And if so, is that a bad thing?

In the past, courts refused to extend trademark protection to the consumer goodwill (demand) which was <u>created</u> through extensive, skillful, and costly advertising rather than merely <u>provided</u> by the consistency and quality of a product or service. Put in another way, the law protected trademark owners to the extent that their marks functioned to provide accurate information guiding consumers to rational choices as to products and services; but the courts were unwilling to recognize persuasive advertising as an independent measure of what motivates the choices consumers actually make. Does this attitude make sense in a modern consumer economy?

Times, consumer attitudes, and, ultimately, laws are changing. Mass media, telecommunications, and the growth of international transportation of goods and tourists have created conditions for the rise of the modern phenomenon of the “famous trademark.” The policy behind creating special protection in the developed and emerging economies for “famous marks” is that commercial goodwill in the form of advertising value brings tangible benefits to consumers (not to mention its benefits to trademark owners!) by supporting a vigorous manufacturing and service economy. Corporate trademark owners do not just provide products and services, but also give jobs to workers, pay corporate taxes and tariffs, fund pension plans, and sponsor popular television shows, a vigorous entertainment production industry, and global sports spectacles such as the Olympics, World Cup Football, Formula One races, etc.

Advertising plays a major role in consumer-oriented societies such as the United States. Yesterday’s consumer luxuries become tomorrow’s consumer necessities through advertising. Consumers identify themselves by their loyalties to their favorite brands. An otherwise undistinguished person with enough spending money can become a MARLBORO® cowboy, a ROLEX® deep-sea diver, a CHANEL® model, a FERRARI® race car driver or a HARD ROCK CAFE® habitué. The advertising phenomenon and the consumer phenomenon support one another. The worldwide quest for economic growth through increased consumer consumption fuels the engine of mass advertising and the activities advertising supports. Owners of famous marks seek protection for “brand equity” beyond “goodwill.”

A most important related development is the liberalization of consumer expectations as to the meaning of the terms “source, affiliation, or sponsorship” of a product or service. The definition of “market information” protected by trademark law is changing in the modern world. Mergers and acquisitions among trademark owners around the world are proliferating, and the merchandising and collateral licensing of trademark “properties” on apparel, toys, and a host of other consumer goods have become commonplace events. “Star Wars” is not just a motion picture; it is also a toy industry. China is the world’s largest toy manufacturing country. Millions of such toys are produced in China for export to markets such as the United States. Consumers are aware that merchandised goods have “official sponsors.”

Brand loyalty has come to be recognized as belonging to the brand owner, which has created it through advertising. The “trademark dilution doctrine” has began to be accepted for “famous marks”. Over the past 40 years or so, state legislatures in the United States adopted a patchwork of different statutes protecting trademarks against “dilution” -- the tarnishment or whittling away of the drawing power of a strong trademark. At present one-half the states (25 U.S. states) have a statutory provision protecting a distinctive mark from use on non-competing goods and one-half do not.

The trademark dilution doctrine holds that there is injury to the trademark owner from the "blurring" of the distinctiveness of a mark, divorced completely from any finding of confusion as to source, sponsorship, quality, or association in the marketplace. (For example, if a manufacturer in China began to sell clothing under the trademark "HAIER®", the consumer might not think that the source of the goods was the same as HAIER® air conditioners, and yet there is injury to the original manufacturer of air conditioners, because the consumer no longer associates the brand "Haier" with the Haier company. The modern trends mentioned above validate trademark dilution as a theory of protection for famous trademarks, allowing courts to consider different kinds of evidence from what was traditionally used to determine trademark infringement, and to make a finding of dilution regardless of the presence or absence of confusion. Under this more modern reasoning, "trademark dilution" is merely another name for "infringement of a famous mark." The famous mark KODAK® which is associated with photography, may be diluted by another party's use of the mark on bicycles, even if the consumer is not confused as to the source of the goods, because the unique association of the mark KODAK® with photography has become "blurred" by its use on bicycles.

Another challenge of protecting "famous marks" is the fact that all trademark rights are territorial. How does "fame" in one territorial jurisdiction affect a determination of "fame" in another? A problem sometimes encountered with famous marks is that another party will attempt to register the mark before the original brand owner can register it. Such predatory trademark registration is either as an attempt to deceive the public by using the mark on competing goods, or else as an attempt to extort money from the trademark owner in the markets where the mark is famous. Both intentions indicate "bad faith" or consumer fraud by the unauthorized party registering the mark.

A final, potentially negative aspect of the "famous mark" phenomenon is equally if not more important. Is a global commercial culture replacing the functions of religion, family, patriotism, and education in interconnected societies from Los Angeles to Shanghai to Johannesburg? Does material comfort and affluence of the modern consumer economy displace spiritual values? Or does it support them? This is not a question which the theory of trademark law can answer. However, in developing countries, there are ongoing discussions of the role of not just "economic imperialism" but "cultural imperialism" among thoughtful social critics. It may be granted that the benefits of a market economy allow ordinary consumers to achieve a level of material comfort which permits them to pursue higher values. A hungry person cannot think about art or literature, and may turn to religion only to soothe his or her suffering. But conversely, to what extent should emerging societies allow their economies and even their cultures to be overwhelmed by a global, materialistic production system driven purely by principles of economic efficiency?

It is here that a paradox emerges. In countries which do not enforce trademark laws, the "famous brands" from the developed economies flood the marketplaces of the developing countries in the form of cheap counterfeit goods. Handbags, watches, CDs and digital video disks, leather goods, fashion articles such as neckties and silk scarves, computer software and cameras flood the marketplaces of the great cities of the developing world. All of these goods are sold at prices as cheap or cheaper than local goods because there is no trademark protection. Who exactly benefits and who is hurt when governments allow this to happen?

First of all (which goes without saying), the companies which heavily advertise their "famous brands" in developing countries are injured by the free and easy marketing of counterfeit goods. But local direct consumers are not injured because they know full well that the product which they are purchasing is counterfeit and they do not expect the quality of the original in a cheap knock-off. Moreover, local "small entrepreneurs" who would otherwise be unemployed are able to set up shop in street markets or university districts selling cheap counterfeit goods. Isn't this the best of all possible worlds for a developing country? Isn't this the essence of freedom to copy from the developed countries?

Perhaps not. The first and most important casualty of a legal system in a developing country which allows cheap counterfeits of foreign goods is not the foreign trademark owner but the *system of accurate market information* which underpins a market economy. In a society where some market information is obviously inaccurate or deceptive, all market information is suspect. The economic efficiencies which arise from fast decision-making by individual purchasers is lost.

The second casualty of the "counterfeit economy" is in government revenues. Because counterfeiters work in the "informal" economy, neither do they register trademarks nor do they pay taxes as legitimate businesses do. The tax losses from the sale of counterfeit goods in the informal economy may be huge.

The third casualty is in the waste of resources when the purchaser of the counterfeit goods does not get the benefit of even a cheap bargain. This is true in the case of the two-dollar "ROLEX" watch which stops running after a week or two. It is even more poignant a casualty in the case where a consumer who has consumed a bottle of adulterated "QINGDAO" beer must spend a week in the hospital and away from productive employment recovering from the illness which results. Or in the case of the truck-driver killed when the defective counterfeit brakes installed in his truck fail and his truck is unable to stop before an accident.

And who is the fourth group of casualties? It is the local honest entrepreneurs who are attempting to develop and manufacture quality products and develop markets for them locally under their own trademarks, but who must compete with cheap counterfeits of foreign goods with foreign trademarks which consumers erroneously assume are more desirable. The smartest developing countries are those who will ensure that foreign luxury goods are as expensive as possible to create a competitive climate favorable to local manufactures. Because liberalized trade laws under the World Trade Organization agreements no longer allow states to raise tariffs on imported goods, the most effective way to keep local products competitive is to enforce trademark laws against counterfeit goods, so that the local consumer must either pay more for the genuine foreign product or buy the high quality domestic product at a lower price. Protecting market information through strong trademark laws may benefit foreign trademark owners; but the primary reason for a state to choose to protect trademarks is to foster consumer confidence and the development of high quality local industries. Trademark law principles are a combination of fairness and common sense, and nothing else.