

VII. Conclusion

Socialistic brands are a unique group of signs that have gained substantial 'selling power' through use in peculiar historical circumstances. Numerous instances of use of socialistic brands and their successful registrations as trademarks, show that there is a strong interest in them. As the omnipresence of emotional branding accelerates the process of blurring the line between the cultural meaning and commercial meaning of signs, driving changes to the nature of trademarks, undertakings show a strong preference towards brands that are characterised by unique magnetism. Socialistic brands, due to their historical pedigree and unique cultural connotations, possess strong and unique magnetism, which gives them substantial advantage over other signs. This magnetism spurs from the collective use of the signs rather than from the efforts of past or current proprietors. This unique magnetism translates to the value of these brands and thus to the value of the commodities affixed with them. An undertaking unjustifiably appropriating such signs would unfairly gain a substantial advantage over competitors. This advantage would not be gained through actions that could be attributed to efforts of the registrant other than a savvy business decision made to appropriate a socialistic brand. Allowing for such unjustifiable registration lowers the overall incentives for investment in the quality of products, as the magnetism of the socialistic brands spurs not from the efforts of an owner who has unjustifiably appropriated it but rather from their historical pedigree. Due to strong cultural meaning of these brands, an undertaking which unfairly appropriates a socialistic brand would be in a uniquely advantageous position to benefit from various social phenomenon. Because of a potentially perpetual term of protection as trademarks, socialistic brands could be re-launched numerous times, benefiting from such phenomenon as the minority effect.

Although the currently applicable law offers many provisions that could be evoked against cases of unfair appropriation of the socialistic brands, it does not constitute a satisfying mean of addressing the issue in a comprehensive way. This situation could be improved if governments of post-socialist countries, their courts and the relevant national agencies would recognise the public policy interest in keeping these cultural signs outside of the scope of trademark exclusivity.

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An unjustifiable appropriation of a socialistic brand could perhaps be best visualised by evoking the following example. Let us imagine a socialistic brand as a type of inherently open and communal park. Due to the very nature of this park (sign within a culture) it cannot be sustained only by actions of its creators. Its existence and growth relies on its use by others. These others take some plants with them while leaving new behind, threading on some flowers whilst caring for others. The location of the park within the topography of a culture is as much determined by where it was originally created, as it is by the changes in its neighbouring plots and its neighbourhood in general. Due to its unique collectively shaped properties (use in unique historical circumstances), even if this particular park was abandoned by its creators, others won't cease visiting, caring for and changing it. This park can be used for many purposes and due to its unique location and content, it is likely to attract visitors for many years to come. However, it may be appealing for trademark proprietors, trademark law was not created in order to facilitate 'remonopolisation' of something that re-proprietors cannot logically be entitled to. Namely, a meaning conveying unique magnetism, created by a given community within a given culture and not one single proprietor. Allowing for such unjustifiable appropriation of socialistic brands constitutes use of trademark law in a manner contrary to its very purpose and its competitive-neutral nature.