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Marking your trade: Cultural factors in the prolongation of trademarks

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ABSTRACT

Trademarks protecting the brand name and associations are crucial in a brand's strategy, but little is known about the factors that determine a trademark's prolongation. To explain the prolongation of trademarks, the research estimated a multilevel hazard model accounting for trademark characteristics, firm's characteristics, and firm's country of origin national culture. The dataset comprises a census of 2911 trademarks in the US software security industry across an eight-year period, belonging to firms originating from 11 countries. The results indicate that a firm's culture of origin has a systematic effect on the types of trademark the firm is more likely to prolong and on the length of the prolongation. The age of the trademark, the number of categories where a particular trademark is present, and the age of the firm increase the likelihood of a trademark's prolongation. Larger and more innovative firms tend to terminate their trademarks earlier.

1. Introduction

Firms invest a lot of resources in the visual design of their brands, such as logos, slogans, and the appearance of the brand name. The *Wall Street Journal* reports that the investment a firm must make to develop a brand's visual design typically ranges from $100,000 to $1 million, plus millions more on promotion (Beatty, 1998). The investment in the visual design of brands helps to communicate the brand's identity, convey meaning, create positive emotions, and enhance brand recognition and recall (Henderson, Cote, Leong, & Schmitt, 2003). Importantly, visual design helps to differentiate a brand from competitors (Warlop & Alba, 2004).

Copycat practices mimicking brands' visual designs represent serious challenges for many firms. For example, Sayman, Hoch, and Raju (2002) observe explicit imitation of the visual elements of national brands in more than 30% of 75 supermarket categories. To protect their visual designs from copycatting practices, firms register and enforce a range of trademarks. Trademark laws limit the ability of a brand to imitate a visual design of a competitor, ensuring that the uniqueness of a firm's visual assets is protected by law. A salient example is the Apple lawsuit's claims that the look and feel of Samsung's products infringe upon Apple's trademarks.

Trademarks are important for global firms, because global firms face both local and global competitors' temptations to benefit from quality associations through copycatting (Planet Retail, 2007; Steenkamp, Batra, & Alden, 2003). A recent example is the launch of the drug *Nulexin* by a global generic firm, Generix Laboratories, which copies the original drug *Hylexin* produced by global brand Klein-Becker. The product names, ingredients, packaging, and even websites are strikingly similar; the key difference is that *Nulexin* is nearly half the price of *Hylexin*. Increasingly, global firms are under pressure to ensure that their trademark protection is active and that their competitors cannot erode the protection.

The decision to terminate a particular trademark has serious consequences for the firm, particularly from a competitor's point of view. That is, a competitor may use an abandoned trademark and capitalize on the trademark's associations with the original firm. Added to this, recent market developments show also that consumers may resist a firm's effort to replace a trademark. For example, clothing retailer Gap abandoned its new logo in October 2010 after customers initiated a concerted online protest. Similarly, Britain's Royal Mail (renamed Consignia) had to return to its original name (The Economist, 2011). JC Penney's introduced a new logo in early 2011 and then redesigned the logo in 2012. Finally, Starbuck's new logo (launched in March 2011) was heavily debated in the news media. Yet, firms do terminate their trademarks despite competitive threats, and factors leading to such a decision are not well understood.

Research emphasizes the importance of trademarks in protecting firms' brand equity against dilution (Krasnikov, Saurabh, & Orozco, 2009; Morrin, Lee, & Allenby, 2006). Academic research on trademarks is represented by two streams. The first stream analyzes the consequences of investing in trademarks (Krasnikov et al., 2009; Mizik & Jacobson, 2008, 2009; Srinivasan, Lilien, & Rangaswamy, 2008). The second stream studies the effects of different types of

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trademark elements on consumer perceptions (Henderson & Cote, 1998; Henderson, Giese, & Cote, 2004; Henderson et al., 2003; Klink, 2003; van der Lans et al., 2009). With the exception of Morrin et al. (2006) who consider the contextual factors influencing trademark dilution, little is known about the factors that influence a firm's decision to prolong, or terminate, a particular trademark. The gap is surprising given that protecting visual design elements with trademarks is linked to a firm's performance (Krasnikov et al., 2009). Lack of protection leads to copycatting, which not only creates brand confusion but also stimulates brand switching when consumers interpret similarity as substitutability (Peterson, Smith, & Zerrillo, 1999). Given the large investment that firms put into designing and marketing their visual brand elements, understanding factors driving the prolongation of trademarks is vital.

The goal of the paper is to understand the factors driving a firm's decision to prolong or terminate trademarks. The study addresses recent calls to evaluate branding performance based on objective measures such as trademarks (Keller & Lehmann, 2006; Krasnikov et al., 2009), and to improve the understanding of how company and country culture drive accepted practices for branding strategies. As trademarks are a way to protect a firm's assets, a firm's culture drives the perceived need for this type of security, which in turn will be systematically influenced by national cultural values (Kanagaretnam, Lim, & Lobo, 2011; Li, Griffin, Yue, & Zhao, 2011). Therefore, understanding how the firm's country of origin's cultural values drive trademark prolongation decisions is crucial.

The study is based on a unique dataset tracking the prolongation (versus termination) of 2911 trademarks across an eight-year period. The brands belong to firms originating from 11 countries, all of which sell in the target country (US) and operate in the software security industry where firms commonly have a diverse set of trademarks. The research empirically tests a comprehensive hazard model for trademark prolongation accounting for 1) trademark characteristics, 2) the national culture of the country of origin, and 3) observed and unobserved firm characteristics. Research findings have direct managerial implications with respect to the 5th "P" of marketing – brand *protection*.

2. Theoretical background

2.1. Trademark prolongation

A trademark is "any word, name, symbol or device, or combination thereof, adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others" (Krasnikov et al., 2009, p. 155). The aim of a trademark is to ensure that the associative links between elements of the brand design and the brand are unique for consumers. Trademark prolongation entails both direct monetary and indirect administrative costs for the firm. The firm must file a trademark application for each class of goods/services as well as pay application and renewal fees. Importantly, firms must submit proof of sufficient use in commerce in each of the classes of goods/services in which the trademark is filed. A firm cannot maintain a live trademark without sufficient use in the market (which also requires substantial expense) even if willing to pay to secure a particular trademark.

Under the current US legislation (the Lanham Act), there are only two possible reasons for a trademark not to be renewed: either the firm decides to terminate payment for the trademark or the trademark was not in actual use in a specified time period. Both cases indicate that the costs of maintaining the trademark exceed the perceived benefits of the trademark for the firm. A firm prolongs a trademark if the perceived benefits are higher than the renewal costs. This research investigates the prolongation of trademarks accounting for the characteristics of the trademarks, a firm's culture, and the culture of the country of origin.

2.2. Cultural characteristics

The characteristics of the country of origin's culture (more generally referred to as national culture) systematically influence a firm's culture (Kanagaretnam et al., 2011; Li et al., 2011; Sarala & Vaara, 2010). National culture is defined as "collectively held beliefs that are generally shared among people living in the same country about abstract goals and modes of conduct that transcend specific situations and behavioral domains" (Steenkamp & de Jong, 2010, p. 21). The best-known frameworks that describe national-cultural differences are the dimensions proposed by 1) Hofstede, 2) Inglehart, 3) Schwartz, 4) Triandis and 5) GLOBE (Tung & Verbeke, 2010). For this research, the Inglehart framework (Inglehart & Baker, 2000; Inglehart & Welzel, 2005) is chosen over the other cultural frameworks because of the two bipolar dimensions of *traditional* versus *secular-rational* values (reflecting tradition) and *survival* versus *self-expression* values (reflecting security). These two bipolar dimensions have direct implications for firms' behavior regarding trademark decisions; namely, which types of trademarks are prolonged (tradition) and for how long (security). Moreover, because the dimensions are measured regularly, the framework accounts for cultural dynamics (Tung & Verbeke, 2010). Researchers also used the Inglehart framework in branding (Steenkamp & de Jong, 2010) and marketing contexts (Steenkamp & Geyskens, 2012).

The *traditional* versus *secular-rational* dimension reflects the contrast between traditional societies in which religion is very important and secular-rational societies in which religion is not. The dimension is linked to other consequences of traditional values. For example, societies near the traditional pole emphasize the importance of parent–child ties and deference to authority, along with absolute standards, traditional family values, and the rejection of divorce, abortion, and euthanasia. These societies have higher levels of national pride and protectionism and a more nationalistic outlook. Societies with secular-rational values have opposite views on these aspects.

The *survival* versus *self-expression* dimension is linked to the transition from industrial societies to post-industrial societies, which brings a polarization between materialist and post-materialist values. The polarization results in a corresponding shift from survival values to self-expression values. Survival values emphasize hard work, economic and physical security, and familiar norms to maximize predictability. In contrast, self-expression values emphasize variety, imagination, tolerance, subjective well-being, self-expression, and quality of life.

National-cultural values systematically influence a firm's attitudes toward risk-taking, change, and the firm's global strategy with respect to branding issues (Chui, Lloyd, & Kwok, 2002; Franke & Nadler, 2008; Kanagaretnam et al., 2011; Melnyk, Klein, & Völckner, 2012). Even when firms enter the same foreign market and face identical formal host-country-level institutional constraints, their behavior with respect to those constraints may differ depending on their country of origin background (Li et al., 2011). Systematic differences in a firm's actions regarding the trademarks are likely to arise for two reasons. First, culture can influence the perceived value and necessity of a particular type of trademark. For example, firms from China tend to put more emphasis on elaborate trademarks with numerous colors and visual elements as compared to firms from the US (van der Lans et al., 2009). Second, national culture is likely to affect a firm's assertiveness (Chui et al., 2002; Inglehart & Welzel, 2005), influencing the speed and extent to which a firm reacts to trademark violation. The difference is prominent even across global brands: while some firms choose to aggressively pursue any trademark infringement, other firms focus on prevention measures (Kumar & Steenkamp, 2007). Culture is likely to affect the firm's emphasis on a particular *type* of trademark and their response to trademark violation.