BRANDING AND PRODUCTION:
THE CONTRIBUTION OF TRADE MARKS TO
BUSINESS ORGANISATION

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ABSTRACT

The legal institution of the trade mark provides a mechanism for developing the kind of reputation-based appeal associated with terms such as “goodwill” and “brand equity” and for deploying this appeal as a marketing resource to drive the sales of a firm’s goods or services (or “products”). Trade mark law gives the owner of a resource of this kind, which roughly equates to the marketing institution of a brand, exclusive control over its use and protective rights over its reputation and other associations. A brand provides a focal point for attracting and securing demand and a mechanism for adding intangible content to products through associating them with a good reputation, an attractive image and other sources of emotional appeal to consumers.

Through enabling firms to attract and secure demand in these ways and to treat this capacity as a distinct asset, branding provides a platform for establishing and developing a marketing presence. Branding also provides a platform for organising the supply to meet the demand that it attracts. Trade mark law is an important part of the law governing the co-ordination of supply and demand. Moreover, the legal characteristics of trade marks have enabled a marketing presence to be a strategic asset in the organisation of production and this in turn has influenced the development of the firm and trends relating to production such as outsourcing and reliance on flexible supply networks.

This paper examines the organisational role of trade mark law and considers those characteristics of the trade mark that determine its organisational role and have
influenced the evolution of firms and trends in the structuring and organisation of production. The paper argues that trade marks have enabled the marketing of products and the organisation of their production to evolve separately according to their own economic logic. It also suggests that this perspective on trade marks is useful for analysing the development of trade mark law and for evaluating the scope of the exclusive property rights that their owners enjoy under this law.

**KEYWORDS**

Trade marks; brands; marketing; production; the firm; business organisation.

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