

Trademarks embedding sustainable claims: catalysing a paradigm shift or providing misleading information?

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Structured Abstract

Background scientific research: Recently, everything has become eco, sustainable or responsible. As the unprecedented crisis we are facing has sparked awareness of the need of comprehensive transformative actions, the fashion industry is catching the “green” wave as well, with an upsurge of brands calling for greater environmental and social responsibility (Arici and Lehmann, 2020).

Although companies have been emboldened to take environmental issues into consideration since the late 1980s, with the emergence of “green marketing” (Tseng and Hung, 2013), lately the apparel sector is witnessing a proliferation of socio- and nature-inspired trademarks, conveying subtle and nuanced messages related to intangible and (possibly) sustainable business practices.

In such a context, trademarks are moving from mere signs of the source of goods and services, to become one of the many instruments of a larger system of consumer information generation (Grynberg, 2014). These IP assets embed values related to the so-called “credence attributes”, thus empowering consumers to select products reflecting not only their instrumental preferences, but also their values (Chon, 2009). As such, trademarks are leading the shift from official regulatory regimes to the “private environmental governance”, namely information-based forms of private governance that merge elements of IP and environment law (Adelman and Austin, 2017).

Given the absence of uniform, effective, and shared definitions of “green products” (Sdrolia and Zarotiadis, 2019), as well as of “sustainable fashion” (Mukendi et al, 2019), companies are expressing a variety of claims through their trademarks. Consequently, we are now confronted with the duty of distinguishing between truthful and disingenuous corporate strategies, albeit

the legal instruments available may be considered as inadequate within the private governance context.

Against this backdrop, the first part of this work addresses the conceptual issues that arise when considering trademarks among consumer information laws. The second section discusses the emergence of private environmental governance and argue that, more broadly, private regulation has become mainstream in the sustainable fashion domain. This is followed by an empirical analysis of the use of privately-owned trademarks as sustainability indicators. The last section will assess the trends emerged and relate them to the different strategies adopted by Trademark Offices, based on the common ground that trademarks should not be descriptive or deceptive.

Research issue to be addressed: The influence of environment-related terms and colors in trademarks and visual branding has been widely explored in marketing studies, which have highlighted that the exposure to an eco-friendly shade or wording impacts on consumers' judgment about retailers' actions (Sundar and Kellaris, 2017). On the contrary, such issues have not received much academic scrutiny to-date, especially in connection with the new role of trademarks as consumer information tools, and with a focus on the fashion industry.

As sustainability becomes an ever more central issue for the development of companies and world economies, so the need for improved assessments of social and environmental performance grows more urgent. This paper suggests that trademark analysis can contribute in capturing relevant aspects of the sustainability phenomenon and of the process of regulatory change in the fashion and textile industry.

Research methodology: While the first part of the work is based on desk review, the subsequent empirical exploration drives from a quantitative analysis on the EUIPO, WIPO and USPTO databases. Based on the data provided by CompuMark (Clarivate), the author scrutinized 12.335 filed or registered trademarks which incorporate one of the following words, defined in the *Sustainable Fashion Glossary* (Condé Nast and CSF, 2020):

1. "bio",
2. "change"
3. "circular"
4. "conscious"
5. "diversity"
6. "earth"
7. "eco"
8. "equal"
9. "ethic"
10. "air"
11. "green"
12. "inclusive"
13. "natural"
14. "organic"
15. "recycle"
16. "respect"
17. "responsible"
18. "revolution"
19. "share"
20. "slow"
21. "sustainable"
22. "transparent"

The research focuses on on Nice classes 23 (yarns and threads for textile use), 24 (textiles and substitutes for textiles) and 25 (clothing and footwear).

In light of this backdrop, the first step is to provide a **reliable measurement the increase of sustainability-related trademarks**, against the benchmark of the general filing trends. Considering that trademark filing activity has increased significantly in the past 10-20 years, the analysis is based on a comparison of 5-year periods (2000-2004, 2005-2009, 2010-2014, 2015-2019).

Secondly, the author identified **90 trademark owners** which operate in the fashion industry and which received a rating on the *Good on You* database, to establish whether their sustainable trademarks actually relate to sustainable business practices. The results highlight that fashion companies are hardly pairing their branding efforts with achievable goals and transparent messaging.

The limitations of this analysis will be also taken into account: indeed, many of the trademark owners retrieved in the IP registries had not been assessed by Good on You and some of the ratings are now outdated. In addition, small brands tend to be under-represented, and so are yarn and fabric manufacturers. Finally, registration is not required to use a trademark, and the use of sustainability-related colors in visual branding and advertising is not interrelated to trademark filings.

Results achieved (conclusions) or expected as well as their relevance for theory and practice:

The overall contribution of this exploratory paper is to shed light on the use of sustainability-related trademarks. Although this issue is widely unaddressed, these intangible IP assets are becoming one of the main instrument companies rely on to convey information to consumers.

Stressing the need to address misleading trademark as one of the varieties of greenwashing, the goal of this work is to stimulate academic debate and increase pressure on regulators, encompassing the wide range of vocabulary used to describe sustainable practices in the fashion industry.

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