

Module: LAWS70261 Trade Mark Law and Policy

Department: Law

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Aim of this project

This project focused on the practice of using tangible and intangible cultural heritage as trade marks, especially in the context of placemaking. This activity was for LAWS70261 Trade Mark Law and Policy, which is a module offered to postgraduate students on the LLM programme.

Trade mark protection grants an indefinite monopoly over words, logos, shapes and slogans, which makes it an attractive tool for controlling their meaning. These symbols could be registered by local authorities or non-profit organisations with the purpose of creating a place identity or promoting tourism. But it is also possible for individuals and companies to register cultural heritage in public domain as trade marks. Depending on how they are used, this could have a negative impact on the public's engagement with their own local heritage, and how the externals view the source community.

There are safeguards in law regarding what can be registered. Some of these can be overcome by "acquired distinctiveness", meaning that previously unregistrable symbols can be registered if there is enough investment in making them sufficiently distinctive, therefore allowing more powerful parties can bypass the rationale behind the laws. Public policy and morality rule can be an alternative to prevent their registration as trade marks, but then who determines what is within public policy and what is moral?

The aim of this project is to provide the students a more critical and diverse understanding of the uneasy relationship between law, heritage and place, and get them to consider what is left in the public domain, and who has the power to decide what elements of shared cultural heritage can be used, and whether it benefits the diverse interests of the members of the society equally.

How was it delivered?

There were two activities: (1) workshop on relevant trade marks provisions and cases, (2) a guest lecture.

In the workshop, after providing an overview of placemaking terminology, we had a quick revision of relevant registration criteria (especially distinctiveness and public policy/morality) and trade mark defences (using a descriptive term, including place names, in line with honest practices). Afterwards a few examples were covered:

- **Manchester Bee Symbol:** A very well-known example is the Manchester bee symbol, which requires [fulfilling the conditions](#) and paying a license fee set by the Council. Under the guidelines, the symbol cannot be used on certain categories such as faith, adult products, alcohol, tobacco, weapons, political or lobby groups, and finally "any categories that do not support the values and principles of the Manchester worker bee trade mark". Furthermore,

the commodification of the symbol [can be upsetting](#), especially due to its connection to 2017 Arena Attacks.

- Another example was the attempted registration of the word “Kia Ora” by [Air New Zealand](#), insulting the Māori community. Non-IP options under Human Rights and Indigenous Rights instruments, and UNESCO 2003 Convention on Intangible Heritage were also briefly covered.
- We also considered the attempted registration of Gustav Vigeland’s statues as shape trade marks by the Municipality of Oslo. These works, previously protected by copyright, have previously entered the public domain. The attempted trade mark registration was found to be against public policy, and “regarded as a genuine and serious threat to certain fundamental values or where the need to safeguard the public domain, itself, is considered a fundamental interest of society” by EFTA court. We also went through the inconsistencies in the success of trade mark applications for “Neuschwanstein” (registered), “Versailles” (registered), “Kölner Dom” (not registered).

We concluded with a class discussion on who owns such signs and whether they should be registered, and how to take into account the diverse interest in the use of these symbols.

The second part was a guest lecture by an external speaker, [Dr Jenny Kanellopoulou](#), Reader in Socio-Legal Studies at the Manchester Metropolitan University. Her presentation was titled “Geography and Trade Mark Law: A Feminist Perspective”, which provided an interdisciplinary approach combining feminist geography, legal geography and socio-legal critique, as she discussed relevant trade mark examples and landmark cases.

Reactions and next steps

The workshop and guest lecture were met with positive reactions, with some students addressing similar examples from their jurisdictions. Students who are not locals to Manchester were especially interested in the example of the bee symbol. The project also fit well with our previous class discussions on IP ownership and the need to balance the opposing interests of different stakeholders.

As for future steps, it is possible to replicate this project by focusing on different themes and sectors. For example, commodification of symbols as trade marks and underlying tensions between different stakeholders can be addressed through case law from other sectors such as fashion, food and film in the upcoming years.