

**YEREVAN STATE UNIVERSITY**

**FACULTY OF LAW**

**MATERIALS OF THE  
CONFERENCE DEVOTED TO  
THE 85<sup>TH</sup> ANNIVERSARY OF  
THE FACULTY OF LAW OF  
THE YEREVAN STATE  
UNIVERSITY**

**Yerevan  
YSU Press  
2018**

**UDC 378:340:06**

**Editorial board**

**Gagik Ghazinyan** Editor in Chief, Dean of the Faculty of Law, Yerevan State University, Member of the RA National Academy of Sciences, Doctor of Legal Sciences, Professor

**Armen Haykants** Doctor of Legal Sciences, Professor at the Chair of Civil Law of the Yerevan State University

**Yeghishe Kirakosyan** Candidate of Legal Sciences (Ph.D.), Associate Professor at the Chair of European and International Law of the Yerevan State University, Advisor to the Prime-Minister of the RA

The present publication includes reports presented during the Conference devoted to the 85<sup>th</sup> Anniversary of the Faculty of Law of the Yerevan State University. Articles relate to different fields of jurisprudence and represent the main line of legal thought in Armenia. Authors of the articles are the members of the Faculty of Law of the Yerevan State University. The present volume can be useful for legal scholars, legal professionals, Ph.D. students, as well as others who are interested in different legal issues relating to the legal system of Armenia.

**This publication can be accessed online by the following address:**  
**[http://ysu.am/files/Law\\_faculty\\_English\\_book\\_85.pdf](http://ysu.am/files/Law_faculty_English_book_85.pdf)**

ISBN 978-5-8084-2326-8

© YSU Press, 2018

## Contents

Artur Vagharshyan	
DEFENSIBILITY AS THE PRINCIPLE OF STATE CONSTRUCTION: CONCEPT AND NORMTIVE CONTENT .....	9
Taron Simonyan	
CONTROLLED REALITY AND THE FICTION OF FREEDOM: SYNERGY ALGORITHMS .....	25
Viktorya Ohanyan	
INTERSECTORAL AND INTEGRAL APPROACHES AS A RESPONSE OF THE THEORY OF LAW TO THE CONTEMPORARY ISSUES OF THE IMPLEMENTATION OF LAW .....	36
Karen Amiryan	
NATURE OF RELATIONS BETWEEN THE CONSTITUTIONAL COURT AND LEGISLATIVE AUTHORITY IN THE REPUBLIC OF ARMENIA .....	47
Vardan Ayvazyan	
SYSTEMATIZATION OF CONSTITUTIONALITY .....	57
Gevorg Danielyan	
EVOLUTION OF TERMINOLOGY IN THE CONTEXT OF ARMENIAN JURISPRUDENCE.....	72
Anahit Manasyan	
CONSTITUTIONAL DEVELOPMENTS REGARDING THE INSTITUTE OF CONSTITUTIONAL JUSTICE IN THE REPUBLIC OF ARMENIA.....	88
Rustam Makhmudyan	
KEY QUESTIONS (ISSUES) OF REALIZATION OF CONSTITUTIONAL-LEGAL STATUS OF LEGISLATION OF SUPREME JUDICIAL COUNCIL.....	95

Vahram Avetisyan	
	CORPORATE GOVERNANCE AND RESOLUTION OF CORPORATE DISPUTES IN THE REPUBLIC OF ARMENIA .. 110
Davit Serobyán	
	THE PROBLEM OF INTERPLAY OF THE CONCEPTS OF ECONOMIC ACTIVITY AND ENTREPRENEURIAL ACTIVITY IN THE LIGHT OF CONSTITUTIONAL AMENDMENTS..... 127
Arpine Hovhannisyan, Narine Avagyan	
	TRADEMARKS AND BRANDS: WHAT ARE THE DIFFERENCES? ..... 138
Grikor Bekmezyan	
	ON SOME ISSUES PERTAINING TO COMPENSATION OF NON PECUNIARY DAMAGE IN CIVIL LAW OF THE REPUBLIC OF ARMENIA ..... 153
Arsen Tavadyan	
	REGULATION OF INVALID CONTRACTS UNDER ARMENIAN LEGISLATION..... 166
Tatevik Davtyan	
	PROMOTING A PRO BONO CULTURE IN ARMENIA’S LEGAL PROFESSION ..... 173
Harutyun Khachikyan	
	THE RESOCIALIZATION OF THE CONVICT AND THE NEW CRIMINAL AND PENITENTIARY LEGISLATIONS OF ARMENIA..... 190
Ara Gabuzyan	
	SOME ISSUES PERTAINING TO LEGISLATIVE DEFINITION OF “CRIMINAL OFFENSE” ..... 203
Gagik Ghazinyan	
	THE CONSTITUTIONAL FOUNDATIONS OF THE INDEPENDENCE OF THE JUDICIAL POWER IN THE REPUBLIC OF ARMENIA ..... 210

Vahe Yengibaryan	
THE KEY ISSUES OF THE CRIMINAL PROCEDURE GROUNDS FOR THE FORENSIC EXPERTISE.....	232
Tatevik Sujyan	
PECULIARITIES OF JUDICIAL ACTS APPEAL AND CASSATION REVISION IN CRIMINAL PROCEDURES .....	242
Armen Hovhannisyan	
JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS AS A BASIS FOR EXCEPTIONAL REVIEW IN CRIMINAL PROCEDURE IN A FORM OF NEW CIRCUMSTANCE .....	258
Nelli Aghababyan	
PECULIARITIES OF JUVENILE PROCEEDINGS IN THE CRIMINAL PROCEDURES OF THE REPUBLIC OF ARMENIA.....	270
Vahe Hovhannisyan	
THE CHALLENGES OF RIGHT TO EXAMINE THE CASE AT CIVIL COURT WITHIN A REASONABLE TIMEFRAME .....	278
Sergey Meghryan, Hayk Hovhannisyan	
APPORTION OF BURDEN OF PROOF IN WORKS AND/OR SERVICES CONTRACTS: ARMENIAN PERSPECTIVE: THEORY AND PRACTICE.....	291
Aida Iskoyan, Heghine Grigoryan	
THE ANTHOLOGY AND THE SYSTEM OF ENVIRONMENTAL LAW OF THE REPUBLIC OF ARMENIA .....	309
Tirayr Vardazaryan	
GENERIC DESCRIPTION OF EMPLOYMENT PROTECTION IN TRANSFERS OF UNDERTAKINGS (TUPE) UNDER THE ENGLISH LAW: DEFINITION AND CLASSIFICATION .....	332
Tigran Markosyan, Lilit Petrosyan	
GENERAL LEGAL CHARACTERISTICS AND FEATURES OF OBLIGATORY ACTION.....	350

Tigran Grigoryan, Mher Mkrtchyan	
SOME CRITICAL REMARKS ON THE JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS CONCERNING THE CASE AYVAZYAN v. ARMENIA .....	358
Ani Simonyan	
RIGHT TO DEVELOPMENT: KEY CONCEPTS AND OUTLOOK.....	373

# TRADEMARKS AND BRANDS: WHAT ARE THE DIFFERENCES?

Arpine Hovhannisyan<sup>1</sup>

Narine Avagyan<sup>2</sup>

## Introduction

Nowadays one can assume that we live in a “branded” world.<sup>3</sup> All entrepreneurs develop strategies to brand their products. It is the key to success in every day developing and competing market. The initial capital of many businesses is their brands.<sup>4</sup> Brands today are the most demonstrably influential and sustainable wealth creators in the world.<sup>5</sup>

Brand owners should be granted protection from counterfeiting. Otherwise, there will be no incentives to invest in brands. A key justification for this protection, according to brand owners, is to avoid free-riding on their investments (which is harmful to competition, erodes the strength of the brand and damages brand equity).<sup>6</sup>

It has become more and more common for the less successful companies to use a well-known brand in order to benefit from

---

<sup>1</sup> Candidate of Legal Sciences, Associate Professor of the Chair of Civil Law of the Yerevan State University. Vice President of the National Assembly of the Republic of Armenia. E-mail: arpinehov@gmail.com.

<sup>2</sup> PhD student of the Chair of Civil Law of the Yerevan State University. Head of the Service of Legal Expertise at Civil Court of Appeal of the Republic of Armenia. E-mail: narine.avagian@gmail.com

<sup>3</sup> Lionel Bently, Jennifer Davis and Jane C.Ginsburg, *Trade marks and Brands*, Cambridge, 2008, p. 177.

<sup>4</sup> <http://www.emeraldinsight.com/journals.htm?articleid=857666&show=html>, last visited Dec 1, 2017.

<sup>5</sup> Rita Clifton and Esther Maughan, *The Future of Brands*, New York, 2000, p. 13.

<sup>6</sup> <http://www.oft.gov.uk/news-and-updates/events/brand-protection>, last visited Nov 10, 2010.

consumer interest in that brand, so-called ‘free-riding.’ As a result, one of the most critical features in the brand—the brand image is denigrated. The question arises whether we have protection for the brand and how it is realized. Are the mechanisms that exist in trademark law enough?

To answer these questions, it is essential to understand the differences between the brands and the trademarks. The article will discuss the concept of brand and the differentiation from the trademark. The importance of brand image and branding will be discussed accordingly. Finally, the protection of the brand will be discussed.

## **2. BRANDS AND TRADEMARKS**

### **2.1. *What is a brand?***

In present terms such as ‘brand’ and ‘trademark’ are used as synonyms. There is neither universally accepted definition of a brand<sup>1</sup> nor the differentiation from the trademark. However, these are different concepts, and in this article, differences will be outlined and the definition of the brand will be given.

A word brand probably derives from an Old Norse word *brandr*, which meant ‘to burn.’<sup>2</sup> Initially, the word ‘brand’ was used as an identifying mark burned on livestock or criminals or slaves with a branding iron.<sup>3</sup> A farmer with a particularly good reputation for the quality of his animals would find his brand much sought after, while the brands of farmers with a lesser reputation were to be avoided or treated with caution. Thus the utility of brands as a guide to choice

---

<sup>1</sup> Isaac, Belinda, *Brand protection matters*, Sweet&Maxwell, 2000, pg. 3.

<sup>2</sup> Flemming Hansen & Lars Bech Christensen, *Branding and Advertising*, Copenhagen, 2003, pg. 12.

<sup>3</sup> [http://oxforddictionaries.com/view/entry/m\\_en\\_gb0099010#m\\_en\\_gb0099010](http://oxforddictionaries.com/view/entry/m_en_gb0099010#m_en_gb0099010), last visited Dec 1, 2017.

was established, a role that has remained unchanged up to now.<sup>1</sup>

In Ancient Rome principles of commercial law developed that recognized the origin and title of potters' marks, but this did not prevent makers of inferior pots from imitating the marks of well-known makers in order to delude the public. With the Fall of the Roman Empire, the elaborate and highly sophisticated system of trade that had bound together in mutual interdependence the Mediterranean and west European peoples gradually collapsed. Brands continued to be used but mainly on a local scale. The exceptions were the distinguishing marks used by kings, emperor, and governments.

In the 17<sup>th</sup> and 18<sup>th</sup> centuries, when the volume manufacture of fine porcelain, furniture, and tapestries began in France and Belgium, mainly because of royal patronage, factories increasingly used brands to indicate *quality and origin*. At the same time, laws relating to the hallmarking of gold and silver objects were enforced more rigidly to give the purchaser confidence in the product. However, the spread use of brands is primarily a phenomenon of the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. The industrial revolution, with its improvements in manufacturing and communications, opened up the western world and allowed the mass-marketing of consumer products.<sup>2</sup>

So how can be brand defined?

The American Marketing Association describes a brand as 'name, term, sign, symbol, or design, or a combination of them intended to identify the goods and services of one seller or group of sellers and differentiate them from those of the competitors.'<sup>3</sup> This definition is quite similar to trademarks. Particularly, article 2 of the

---

<sup>1</sup>Rita Clifton, John Simmons, Sameena Ahmad, *Brands and Branding*, 2<sup>nd</sup> edition, Canada, 2009, pg. 14.

<sup>2</sup> Rita Clifton, John Simmons, Sameena Ahmad, *supra note 8*, pg. 15.

<sup>3</sup> Flemming Hansen & Lars Bech Christensen, *supra note 6*, pg. 12.

Trademark Directive<sup>1</sup> constitutes ‘a trade mark may consist of any sign capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings.’<sup>2</sup> Even the definition of trademarks is also tough to specify as the term ‘any sign’ has an expansive interpretation.

Researchers have criticized the above as too preoccupied with the product and too mechanical. It is limiting because it focuses only on the firm's input activity of differentiating using a name and a visual identity. As Meadows (1983) observed, consumers are not passive recipients of brand marketing activity, and thus branding is not something done to consumers, but instead something they do things with. No reference is made either to the managers formulating any strategic thinking or vision for the brand or to it acquiring connotations in consumers' minds.<sup>3</sup>

David Aaker defines a brand in the following way:

*‘A brand... signals to the consumer the source of the product, and protects the customer and the producer from competitors who would attempt to provide products that appear to be identical.’*<sup>4</sup>

Thus, it influences consumers’ purchasing decisions.

Overall brand is a marketing category, while trademark is a legal concept. Many legally protected trademarks have only little economic value, while brands do have significant value.<sup>5</sup>

The brand is broader than trademark and is more associated with luxury and is intended to attract the consumers by lifestyle messages.

---

<sup>1</sup> First Directive 89/104/EEC of the Council, of 21 December 1988, to Approximate the Laws of the Member States Relating to Trade Marks

<sup>2</sup> Ibid, Article 2.

<sup>3</sup> Leslie de Charnatony and Francesca Dall’Omo Riley, *Journal of marketing management*, Vol.14, 1998, pg. 417-443.

<sup>4</sup> Isaac, Belinda, *supra note 5*, pg.5.

<sup>5</sup> Ariel Ezrachi and Ulf Bernitz, *Private labels, Brands, and Competition Policy, The Changing Landscape of Retail Competition*, Oxford, 2009, pg. 217-234.

The word “luxury” mostly refers to the *reputation and image* of the brand rather than the price.<sup>1</sup> For the consumers, brands play an enormous role in a world of increasingly plentiful choice giving the consumer an opportunity to shop with confidence.<sup>2</sup> In other words, brand is an image of the product, the first thing that comes in the mind of the consumer while shopping. It is interesting to mention that when advertising the products images rather than words are used to convey messages, as images do not actually “lie”<sup>3</sup> and they stick to the minds of consumers easily.

The brand image can be created in different ways: personal experience, packaging, and mainly advertising. The value of the brand is brand awareness, association, and loyalty.<sup>4</sup> However, it is more than, the image that surrounds the brand.<sup>5</sup>

A marketing academic, Ambler describes a brand as ‘*a product plus added values... A brand is a set of quality, price, and image*’.<sup>6</sup> In other words, brands encompass the personality, style, aura associated with a particular product. The brand is an image of a product, a way of life that is designed through the presentation, marketing, advertising and packaging of the product.<sup>7</sup>

However, the brand is more than a product.<sup>8</sup> If a product includes characteristics such as scope, attributes, quality, and uses, the brand includes much more such as brand users, country of origin, organizational associations, brand personality, symbols, brand-

---

<sup>1</sup> Jonathan E.Schroeder and Miriam Salzer-Morling, *Brand culture*, London , 2006, pg. 67-75.

<sup>2</sup> Jeremy Phillips and Ilanah Simon, *Trade mark use*, Oxford, 2005, pg. 165.

<sup>3</sup> Lionel Bently, Jennifer Davis, Jane C.Ginsburg, *supra note 1*, pg. 186.

<sup>4</sup> C-544/06, *O2 Holdings Ltd v Hutchison 3G Ltd* [2006] EWHC.

<sup>5</sup> Schroeder, *supra note 15*.

<sup>6</sup> Isaac, Belinda, *supra note 5*, pg. 6.

<sup>7</sup> Lionel Bently & Brad Sherman, *Intellectual property law*, 3<sup>rd</sup> edition, Oxford, 2009, pg. 713.

<sup>8</sup> David A. Aaker, *Building strong brands*, New York, 1996, pg. 72-73.

customer relationships, emotional benefits, self-expressive benefits.<sup>1</sup> For example what feelings arise when we say L’Oreal or Chanel. Of course, it differs a lot to whom you refer this question: to a male or a female. For us-females we associate it with France, imagine the models or stars that take part in their advertising, letters of “L’Oreal” or the symbol of “Chanel,” the products they offer, the quality (even though we have not used them), luxury lifestyle. In other words, the word L’Oreal or any other famous brand in fashion or perfume industry already gives value to the product.

The brand is a relationship, a reputation, a set of expectations, a promise.<sup>2</sup>

In Plummer’s view, the brand’s personality is primarily the result of the firm’s communication while the image is the way consumers perceive the brand’s personality. Also, Aaker describes brand personality as a metaphor which can help brand strategists by enriching their understanding of people’s perceptions of and attitude toward the brand, contributing to differentiating brand identity, guiding the communication effort and creating brand equity.<sup>3</sup>

Gardner and Levy give another definition stating that:

*A brand name is more than the label employed to differentiate among the manufacturers of a product. It is a complex symbol that represents a variety of ideas and attributes. It tells the consumers many things, not only by the way it sounds (and its literal meaning if it has one) but more critical via the body of associations it has built up and acquired as a public object over a period.*<sup>4</sup>

The image of a product associated with the brand may be clear-cut or relatively vague; it may be varied or simple; it may be intense or innocuous. Sometimes the ideas people have about a brand do not even seem very sensible or relevant to those who know what the

---

<sup>1</sup> Ibid.

<sup>2</sup> Rita Clifton and Esther Maughan, *supra note 3*, pg. 9.

<sup>3</sup> Leslie de Charnatony and Francesca Dall’Olmo Riley, *supra note 12*, pg. 423.

<sup>4</sup> Sidney J Levy, *Brands, consumers, symbols, and research*, US, 1999, pg. 134.

product is ‘really’ like. However, they all contribute to the customer’s deciding whether or not the brand is the one ‘for me.’ These set of ideas, feelings, and attitudes that consumers have about brands are vital to them in picking and sticking to ones that seem appropriate.<sup>1</sup>

When we say brand it already gives some value to the product. A brand name represents everything a person knows about a particular product and what it means to them. In other words, it rises all the feelings, knowledge and experience they associate with the particular brand.<sup>2</sup> Brands create reputation and trust. Once a consumer trusts the brand, he stays loyal to it. Having a brand is the key to success in every day developing business. This is the reason that companies spend a lot of effort and money on the branding of the products. We live now in a ‘branding’ era where almost everything is branded.

Brands are built on the product itself, the accompanying marketing activity, and the use (or non-use) by customers as well as others. Brands thus reflect the complete experience that customers have with products. Brands also play an important role in determining the effectiveness of marketing efforts such as advertising and channel placement. Finally, brands are an asset in the financial sense. It can be stated that brands play an important role in three spheres-customer markets, product market, and the financial market.<sup>3</sup>

Talking about “image” it is worth mentioning that “brand image” initially was associated with expressions like “soft sell” and the “weak theory of advertising,” which gave it, for many, the air of a whimsical luxury that a business-like advertiser could hardly afford.<sup>4</sup>

---

<sup>1</sup> Ibid.

<sup>2</sup> Flemming Hansen & Lars Bech Christensen, *supra note 6*, pg. 13.

<sup>3</sup> <http://bear.warrington.ufl.edu/shugan/7666/BrandsBranding.pdf>, last visited Nov 11, 2010.

<sup>4</sup> Ibid.

The modern term of brand image is brand equity. Aaker describes brand equity as a set of assets as well as liabilities linked to brand's name and symbol that adds to the value provided by a product or service to a firm and that firm's customers.<sup>1</sup>

The European Brands Association gives rather a broad definition of a brand:

A manufacturer's brand is developed to meet identified consumer needs, carries an individual name and has a distinctive packaging design. The brand and the product it embodies is unique. Consumers recognize the attributes of a successful brand and identify it by its distinctive packaging. A brand is essentially a label; but it is not just any label. It is the means to recognize a differentiated product, whose differentiation is valued by consumers. The brand identifies one particular product out of a population of competing products. The brand performs two communication functions for the consumer. First, it communicates the goodwill that has built up from past performance of all products that have carried that brand name. This is the reputation function. Second, it enables the consumer to choose, on the strength of both experience and the brand's reputation. This is the recognition function. Brand names are individual; they permit the distinction between types of the same product such as chocolate or carbonated beverages.<sup>2</sup>

The brand is a special intangible that in many businesses is considered to be the most important asset. This is a great economic impact the brands have. They influence the choices of customers, employees, investors and government authorities. Some brands have also demonstrated surprising durability. The world's most valuable brand, Coca-Cola, is more than 120 years old; and the majority of the world's most valuable brands have been around for more than 60

---

<sup>1</sup> David A. Aaker, *supra* note 22, pg. 7.

<sup>2</sup> Ariel Ezrachi and Ulf Bernitz, *supra* note 14, (cited from *The Benefits of Brands: A reference manual* published by AIM.)

years.<sup>1</sup>

From a legal standpoint, the brand is a sign, immediately recognizable by the unique configuration of its attributes (name, package, design, logo, colors, shape). From a psychological standpoint, a brand is a contract: with time, the sign has acquired the status of guarantee of a high level of quality and a certain type of performance. Hence, the brand commands a strong power of prescription, especially when it is a well-known brand.<sup>2</sup>

To be a brand means to be perceived or known to be a brand or to have been forged into a brand.<sup>3</sup>

A brand is a set of quality, the image of the product, the identification of the product. Brands have many virtues in consumers' eyes, which helps explain their continued popularity. Most immediately, consumers benefit from the role brands play in conveying information, providing quality assurance, (which is necessary for maintaining brand image), and allowing for quick and efficient comparisons across easily identifiable and trustworthy products.<sup>4</sup>

A brand name is more than the label attached to differentiate among the manufacturers of a product. It is a complex symbol that represents a variety of ideas and attributes. The core result is, without doubt, a public image, a character for the overall status of the brand than many technical facts about the product.<sup>5</sup>

From the academic and trade literature, nine main themes of brand definitions can be identified, i.e., as a legal instrument, a differentiating device, a company, an identity system, an image in consumers' minds, a personality, a relationship, adding value and an

---

<sup>1</sup> Rita Clifton, John Simmons, Sameena Ahmad, *supra note 8*.

<sup>2</sup> Leslie de Chernatony, *Brand management*, 1998, pg. 96.

<sup>3</sup> Grassl, Wolfgang, *The Reality of Brands: Towards an Ontology of Marketing*, American Journal of Economics and Sociology, 1999, pg. 317.

<sup>4</sup> Ariel Ezrachi and Ulf Bernitz, *supra note 14*, pg. 104.

<sup>5</sup> Leslie de Chernatony, *supra note 34* pg. 5.

evolving entity. From the brand managers' perspective, the brand appears to be regarded as a name to be exploited to satisfy short-term sales and profits goals.<sup>1</sup>

From the real perspective brand was described as “a set of visual features, animated by advertising and promotion, which symbolize a product or service and which are used in various ways to identify it”. A far more intangible perspective was adopted by another brand consultant as a cluster of values “with a vision that binds those values together”.<sup>2</sup> Linking tangible component to the intangible some brand experts defined brand as “trademark that has acquired a personality trait”.<sup>3</sup>

A brand is a link between firms' marketing activities and consumers' perceptions of functional and emotional elements in their experience with the product and in the way it is presented.<sup>4</sup>

## **1.2 The importance of branding**

Initially, branding was regarded as a type of marketing communication strategy where values were added to the product through advertising means. Nowadays, branding is understood as a strategically produced and disseminated commercial sign that is referring to the value universe of a commodity.<sup>5</sup>

According to Fortune magazine: “In the twenty-first century, branding ultimately will be the unique differentiator between companies. Brand equity is now a key asset.”<sup>6</sup>

Branding consists of imposing one's will on the consumer. The brand offers a unique set of values and attributes which are appealing

---

<sup>1</sup> Ibid, pg. 65-68.

<sup>2</sup> Leslie de Chernatony, *supra note 34*.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Jonathan E. Schroeder and Miriam Salzer-Morling, *Brand Culture*, 2006, pg. 91.

<sup>6</sup> Rita Clifton, John Simmons, Sameena Ahmad, *Brands and Branding*, 2003, pg. 18.

and which people are ready to purchase.<sup>1</sup>

The importance of branding a product is that branding means recognition and identity.<sup>2</sup>

Branding is important for both the consumers and the traders especially in the era of e-commerce and global competition. It is mostly realized by advertising.

Advertising helps the consumers to make a choice. It is a common truth that through advertising consumers often prefer goods of a well-known trademark to similar products which are objects of approximately the same standard and quality. Advertising and other marketing activities are aimed to enhance trademark preferences amongst consumers. This is a key to the establishment of successful brands.

Communication alone does not create or sustain the brand, but it does provide a space for it in consumers' lives. Brand recognition goes beyond brand usage. These brands are powerfully evocative for millions of people who have never consumed and in many cases never even seen the product. The point of successful brands is that they have a cultural meaning that extends beyond purchase and usage.<sup>3</sup>

Advertising communication is an essential component of brand marketing. The competitive advantage that organizations cannot sustain by other means can be sustained by branding. A successful brand constitutes a kind of quasi-monopoly, ensuring what economists call super-normal profits. A brand lives on through consumer perceptions which are formed in involving in advertising communication. For consumers the brand image or personality, the values and associations linked with the brand, the way the brand is talked about by friends and others, the way the brand is presented in

---

<sup>1</sup> Susannah Hart and John Murphy, *Brands The new wealth creators*, 1998, pg. 2.

<sup>2</sup> <http://www.buzzle.com/articles/importance-of-branding.html>, last visited Dec 1, 2017.

<sup>3</sup> Chris Hackley, *Advertising and promotion*, SAGE publications, 2005, pg. 59.

press and TV, and the memory of personal experience of consuming the brand are all aspects of an holistic engagement with this entity, the brand. <sup>1</sup> Such well-known brand might and should enjoy the secured market position.

Consumer research has shown that powerful brands create meaningful images in the minds of customers.<sup>2</sup> Consumers perceive brands as functional, emotional, and self-expressive brands.<sup>3</sup> In Aaker 's opinion marketers' value three critical aspects in branding: the popularity of the brand, the reputation of the brand, and purchase loyalty.<sup>4</sup>

Known brands have the emotional benefit of reducing perceived risk and uncertainty, both of which have identifiable costs to the individual buyer and the firm. In other words, branding can create purchase confidence in customers; it can increase customer satisfaction. Consumers are more inclined to buy the goods of a known brand than an unfamiliar one.

Branding increases a company's assets and competitive position. Branding stresses the importance of the buyer's perspective. To a buyer, a brand can signal expected brand performance.

Branding is mainly concerned with how the products are illustrated to public and consists of 'the development of sets of product attributes and values which are coherent, appropriate, distinctive, protectable and appealing to consumers'.<sup>5</sup> It consists of thinking ahead of the consumers or anticipating and sharing their needs and wants.<sup>6</sup>

Effective branding requires identifying, using, and then

---

<sup>1</sup> Ibid, pg. 61-62.

<sup>2</sup> KL Keller, *Conceptualizing, measuring, and managing customer-based brand equity*. *J Mark* **57** (1993), pg. 1-22

<sup>3</sup> D Aaker, *Managing brand equity*, Free Press, New York , 1991.

<sup>4</sup> D Aaker, *supra note 22*.

<sup>5</sup> C.D.G. Pickering, *Trade marks in theory and practice*, Oxford, 1998, pg. 50

<sup>6</sup> J.Murphy *Branding*, Interbrand Group PLC, London.

marketing key points of distinction or differentiation from other goods serving similar purposes.<sup>1</sup>

Branding is a creative process. It uses research techniques and the skills of some specialists in order to create distinctiveness.<sup>2</sup> All in all, it is the distinctiveness that matters and which can be highly rewarded.

As one can see with an unarmed eye “branding” in fact is a huge process. The goodwill gained by branding and other marketing means has a significant economic value. The proprietor of the brands will suffer a lot if another undertaking benefits from its brand, in other words, free-riding. That will specifically cause a decrease in the value of the goodwill of the brand by reducing its image or prestige.<sup>3</sup>

This is the reason that brand image should enjoy a high level of protection.

### **3. Conclusions**

In literature still, there is no universally accepted definition for brands and their differentiation from trademarks. As it was already said above, there are different approaches to the definition of the brand.

Brands and trademarks in most of the cases are used as synonyms and this is mostly because the protection of brand image is realized by trademark law. To put it differently, trademark is a legal category, while the brand is a marketing concept. However, they are not the same. Brand is broader than trademark and it can be also protected by copyright and design law in general. For this reason, it is important to understand what a brand is, what is the difference between trademarks and what can be protected by trade mark law.

According to the law on Trademarks of the Republic of Armenia

---

<sup>1</sup> Ariel Ezrachi and Ulf Bernitz, *supra note 14*, pg. 104.

<sup>2</sup> Susannah Hart and John Murphy, *supra note 44*, pg. 11.

<sup>3</sup> Ariel Ezrachi and Ulf Bernitz, *supra note 14*, pg. 221.

trademarks are defined as any sign capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from the other. The primary and essential function is the guarantee function, that is to differentiate the goods or services from the others. However, some other functions of trademark were also established such as advertising and communication. These are the functions that brands fulfil. With advertising function brands create brand awareness in consumers' minds and with communication they reduce consumers' search costs. So in this way brands and trademarks are alike. Brands also fulfil other functions such as reputation function and recognition function.<sup>1</sup>

In some of the definition of the brand it was described as “trademark that has acquired a personality trait.”

The law on Trademarks gives enhanced protection for the trademarks with “reputation” where there is no need to establish a likelihood of confusion.<sup>2</sup> In other words, the established “reputation” of the trademark is enough to enjoy the protection under this article. The protection of brand image falls within this article. As it was already mentioned, to become a brand a product should pass through all the marketing and branding activities which require time and effort. If we can claim that any brand is a trademark, we cannot state that all trademarks are brands.

The brand is always presented with the product, while in the case of trademarks we deal with the sign, that is registrable and protectable. When we say “Gucci” as trademark lawyers understand the registered name “Gucci,” green-red striped logo and the shape of ‘G.’ Word “Gucci” as a brand arises other feelings. It is the products

---

<sup>1</sup> Ariel Ezrachi and Ulf Bernitz, *supra note 14*, ( cited from *The Benefits of Brands: A reference manual* published by AIM.)

that the name is attached, the quality, luxury lifestyle, reputation, money that was spent on advertising and the famous person in it. In other words, brands have a strong emotional function which is quite dominant. That is the reason it is difficult to have one meaning for the brand which will present all the characteristics that encompass all the aspects of a brand.

In our opinion when we refer to some product as a brand, it means that it is already with some reputation. All in all, to become a brand it requires to go through all the steps of marketing. One can not just register a trademark and then it is a brand. It is also connected how people will perceive the particular sign (with the product) which is also an essential element in becoming a brand. To put it differently, brands can be deemed as *trademarks with a reputation*.

Summarizing all the definitions for the brand, we would dare to introduce the following definition:

*The brand is a sign attached to a product which comprises such attributes as image, value, quality, reputation which is designed through marketing and advertising over a period of time.*