



# INTELLECTUAL PROPERTY CHALLENGES FOR DEVELOPING COUNTRIES: AN ECONOMIC PERSPECTIVE

- IP HELPS PRODUCERS OBTAIN A FAIR RETURN ON THEIR INVESTMENT AND EFFORT
- BUILDING THE REPUTATION OF TRADITIONAL ORIGIN-BASED PRODUCTS
- SPILL-OVER EFFECTS SUCH AS THE CREATION OF NEW EMPLOYMENT OPPORTUNITIES (E.G. LOCAL TOURISM)
- PROMOTION OF LOCAL CULTURE AND LOCAL PRODUCTIONS

## **Trademark:**

- **any word, name, symbol or device (or any combination thereof)**
- **identifies and distinguishes the source of the goods of one party from those of others - source indicator**

## **Initial trademark functions:**

- 1) to assign goods to the trademark owner**
- 2) to demonstrate the goods' origin**

## **NOW:**

- **trademarks are often among the most important and valuable assets of a business**
  - **a distinctive trademark allows a business to build public goodwill and brand reputation in the goods or services it sells**
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- **Some marks are so well known that they deserve protection beyond the standard likelihood-of-confusion analysis for determining trademark infringement**

# WHY ARE TRADEMARKS IMPORTANT?

- ESSENTIAL ROLE IN PROTECTING CONSUMERS AND IN PROMOTING GLOBAL ECONOMIC GROWTH
- ENABLE CONSUMERS TO MAKE QUICK, CONFIDENT AND SAFE PURCHASING DECISIONS
- PROMOTE FREEDOM OF CHOICE
- ENCOURAGE VIBRANT COMPETITION FOR THE BENEFIT OF CONSUMERS, WORKERS, BRAND OWNERS AND SOCIETY AT LARGE

# TRADEMARKS IN DEVELOPING COUNTRIES

THE STRENGTHENED TRADEMARK PROTECTION IN DEVELOPING COUNTRIES:

- MAY INDUCE DOMESTIC FIRMS TO BECOME EXPORTERS AND RAISE THE QUALITY OF PRODUCTS ON THE EXPORT MARKET
- BENEFITS CUSTOMERS AND FIRMS PRODUCING HIGH-QUALITY PRODUCTS, BUT HARMS FIRMS PRODUCING COUNTERFEITS AND UNINFORMED CUSTOMERS

# WHAT MAKES A TRADEMARK “DISTINCTIVE”?

## WHY DOES THAT MATTER?

- Arbitrary: “Apple”, “Subway”
- Fanciful: “Nikon”, “Zappos”
- Suggestive: “Mustang”, “Groyhound”
- Descriptive: “Bank o America”, “Best Buy”
- Generic - commonly used term to describe something

Trademarks which are arbitrary (random) or fanciful (made up words) are considered to be the most distinctive.

**DISTINGUISHING AS  
A FIRST STEP TO  
GAIN REPUTATION**



a mark is reputable/ famous if it is widely recognized by the general consuming public as a designation of source of the goods or services of the mark's owner

to determine the requisite degree of recognition, the court may consider all relevant factors:

- The duration, extent, and geographic reach of advertising and publicity of the mark, whether advertised or publicized by the owner or third parties
- The amount, volume, and geographic extent of sales of goods or services offered under the mark
- The extent of actual recognition of the mark
- **Whether the mark was registered**

# CONCLUSION

- BETTER ECONOMIC OPPORTUNITIES THAT MAY ARISE FOR DEVELOPING COUNTRY PRODUCERS WHEN USING DISTINCTIVE SIGNS WHICH ARE MORE PRONE TO OBTAIN THE REPUTATION
- THE TRADEMARK ARE AND IMPORTANT WAY TO GAIN REPUTATION IN THE PROCESS OF CONQUERING NEW MARKETS
- AN EFFECTIVE SYSTEM FOR THE INTERNATIONAL PROTECTION OF IP HELPS PRODUCERS OBTAIN A FAIR RETURN ON THEIR CONTINUOUS INVESTMENT AND EFFORT, OFTEN OVER SEVERAL GENERATIONS, IN BUILDING THE REPUTATION OF TRADITIONAL ORIGIN-BASED PRODUCTS
- AN EFFICIENT TRADEMARK PROTECTION MODEL UNDOUBTEDLY RANKS AMONG THE MOST IMPORTANT ASPECT OF EFFECTIVE OPERATIONS ON THE MARKET AND AT THE END OF THE DAY - ENCOURAGES CREATIVITY AND INNOVATION THROUGHOUT THE ECONOMY

