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## **‘Brand’ as a personal interest. Legal and economic insights\***

### **Dream society**

The idea of an “information society” has been much discussed as to a data-driven society and data-driven businesses. A good deal of scholarly work has covered the concepts of “information-”, “knowledge-” and “wisdom-based economy”. But to do justice to the real-life phenomena, it should be noted that society and the economy, respectively, are driven not only by data but also by fashion and dreams. Lonergan et al., in their 2018 study, rekindle Jensen’s idea of the “dream society” as the fashion sector responds to the “new logic of the economy”, in which participants act as “traffickers of value and taste”<sup>1</sup>. Consumers actively seek out affect-heavy moments that make them feel alive in the deflated, boring material world<sup>2</sup>. This new period of consuming was

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<sup>1</sup> P.P. Lonergan, M. Patterson, M. Lichrou, *More than clothes hangers: cultural intermediaries in the field of fashion*, „European Journal of Marketing” 2018, Vol. 52, No. 9/10, pp. 2052–2053; cf. A. Cronin, *Regimes of mediation: advertising practitioners as cultural intermediaries?*, „Consumption, Markets and Culture” 2004, Vol. 7, No. 4, pp. 349–369; P. Bourdieu, *Pascalian meditations*, Stanford, CA 2000, p. 3110; R. Jensen, *Heartstorm: the dream society 2*, Copenhagen 2002.

<sup>2</sup> P.P. Lonergan, M. Patterson, M. Lichrou, op. cit., pp. 2052–2053; C. Lanier, C. Rader, *Consumption experience: An expanded view*, „Marketing Theory” 2015, Vol. 15, No. 4, pp. 1–22.

observed and defined a while back in 1987 by C. Campbell as “imaginative hedonism”<sup>3</sup>, where value comes from the emotionally enjoyable sensations evoked by fiction. The final consumer is envisioned in this instance as a “dream artist” who bargains for sensory delusions as if they were real<sup>4</sup>.

Surely, a big part of this ecosystem are brands<sup>5</sup> that pose more issues than one would instinctively presume. As noted by K.L. Keller and V. Swaminathan, “[t]echnically speaking (...), whenever a marketer creates a new name, logo, or symbol for a new product, he or she has created a brand. However, many practising managers refer to a brand as more than that – as something that has created a certain amount of awareness, reputation, prominence, and so on, in the marketplace. It is the difference between a commodity and a distinctive offering that constitutes a brand”<sup>6</sup>.

The aim of this article is to shed light on the concept of a brand from two angles: legal and economic. The authors of this study employed legal research techniques that enabled them to compile the information and facts required for a thorough legal analysis. They analysed the Polish legal literature and jurisprudence using analytical-critical and legal-dogmatic methodologies for this effect. Economic database searches made it possible to find a wealth of the international, branding-related marketing literature.

This paper is a sneak preview of a study whose goal is to determine how the legal and economic conceptions of a brand relate to one another. Additionally, it aims to determine if under the Polish law<sup>7</sup> a brand can legitimately be considered a distinct personal benefit (in other words ‘personal interest’) that is separate from goods protected by intellectual property (IP) regime. This is a piloting paper resulting from a preliminary analysis undertaken to kick-start the research funded by a grant.

## Branding. Value making

It is a fundamental tenet of branding theory that a branded entity has equity<sup>8</sup>. In simple terms brand equity is “a value premium that a company

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<sup>3</sup> C. Campbell, *The romantic ethic and the spirit of modern consumerism*, Oxford 1987.

<sup>4</sup> P.P. Lonergan, M. Patterson, M. Lichrou, op. cit., pp. 2052–2053.

<sup>5</sup> American Marketing Association defines it as a “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 to differentiate them from those of competition” – American Marketing Association, *Report of the definitions committee*, „Journal of Marketing” 1948, Vol. 13, pp. 202–217.

<sup>6</sup> K.L. Keller, V. Swaminathhan, *Strategic brand management. Building, measuring, and managing brand equity*, London 2020, p. 32.

<sup>7</sup> In Poland, the concept of a brand is *marka*, but also a *brand*.

<sup>8</sup> J.-N. Kapferer, *The new strategic brand management: advanced insights and strategic thinking*, London–Philadelphia–New Delhi 2012.

generates from a product with a recognizable name when compared to a generic equivalent”<sup>9</sup>, or in other words “the value of a brand, determined by the consumer’s perception of its quality and desirability”<sup>10</sup>. This framing assumption is in line with the claim that an entity’s branding generates value for both the company and the consumer<sup>11</sup>. According to Feldwick, there are three distinct and contradictory views on brand equity: (1) the entire worth of a brand as a separable asset; (2) the degree of consumer attachment; and (3) a description of consumer brand associations and beliefs<sup>12</sup>. This approach will be juxtaposed with the brand definition later in this paper.

The present value of anticipated future cash flows attributable to a firm’s brand investments are captured in a brand valuation. Businesses establish valuable brands through their R&D and new product development initiatives, communications campaigns, and other marketing mix components. By boosting the brand’s equity (i.e. value) in the eyes of their customers, these investments ultimately aim foremost and above all to improve shareholder wealth<sup>13</sup>. Over the past 15 years, the number of published studies examining the relationship between brand value and shareholder wealth has increased. These studies show that businesses understand valuable brands as intangible assets that have enormous advantages, such as encouraging repeat purchases, increasing customer loyalty (often referred to as “love” or “addiction”), enabling the introduction of new products and recouping investments, erecting higher barriers to competitive market entry, and securing a more steady stream of future cash flow<sup>14</sup>. It should come as no surprise that Haigh pointed out that a high-value brand results in “greater turnover, profit, and surplus consumer utility”<sup>15</sup>.

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<sup>9</sup> A. Hayes, *Brand equity: definition, importance*, <https://www.investopedia.com/terms/b/brandequity.asp> (accessed: 13.02.2023).

<sup>10</sup> Shopify, *What is brand equity? Definition and guide*, <https://www.shopify.com/au/blog/what-is-brand-equity> (accessed: 13.02.2023).

<sup>11</sup> G. Round, S. Roper, *When and why does the name of the brand still matter? Developing the temporal dimension of brand name equity theory*, „European Journal of Marketing” 2017, Vol. 51, No. 11/12, pp. 2118–2137.

<sup>12</sup> P. Feldwick, *What is brand equity anyway, and how do you measure it?*, „Journal of the Market Research Society” 1996, Vol. 38, No. 2, pp. 85–105.

<sup>13</sup> K. Voss, M. Mohan, *Good times, bad times: the stock market performance of firms that own high value brands*, „European Journal of Marketing” 2016, Vol. 50, No. 5/6, pp. 670–694.

<sup>14</sup> *Ibidem*, p. 671.

<sup>15</sup> *Ibidem*; cf. D. Haigh, *An introduction to brand equity – how to understand and appreciate brand value and the economic impact of brand investment*, „Interactive Marketing” 2003, Vol. 5, No. 1, pp. 21–32.

## Brand as a barrier to copying?

In the international economic literature, it is generally acknowledged that creating a great brand enables a business to produce higher earnings and create barriers against copying and rivalry. Therefore, in order to achieve excellent brand performance, existing research identifies two crucial yet distinct paths: brand orientation and innovation orientation<sup>16</sup>. The authors of this paper, coming from a legal background, would turn this acknowledgement rather into a mere belief, as legally speaking, the above-mentioned flow of reasoning might turn out to be legally unsubstantiated. To start with, is it beyond discussion that the first-moving company loses all gains when a product that has been in development for years can be duplicated in a matter of months<sup>17</sup>.

Table 1

Average time-to-market by technology by B.N. Roin<sup>18</sup>

Technology	Average time-to-market
Financial products	weeks to months
Insurance products	3 to 12 months
Consumer products	3 to 13 months
Food and beverages	9 to 13 months
Software	5 to 14 months
Semiconductors	11 to 26 months
<i>In vitro</i> diagnostics (incremental improvements)	1 to 2 years
Medical devices (incremental improvements)	3 to 5 years
Complicated manufacturing equipment	3 to 5 years
Automobiles	3 to 5 years
Gene-based biomedical research tools	5 years
Solar panels	8 years
Radiopharmaceutical diagnostics	7 to 9 years
<i>In vitro</i> diagnostics (new diagnostic correlation)	7 to 9 years
Agricultural chemicals	9 years
Medical devices (first-in-class)	5 to 10 years
Biotechnology crops	6 to 13 years
Oil and gas drilling	16 years
Pharmaceuticals	12 to 16 years
Fuel cells	7 to 25 years

<sup>16</sup> W.J.(T). Lee, A. O’Cass, P. Sok, *Why doesn’t our branding pay off: optimising the effects of branding through innovation*, „European Journal of Marketing” 2016, Vol. 50, No. 3/4, pp. 509–529.

<sup>17</sup> O. Shenkar, *Just imitate it! A copycat path to strategic agility*, „Ivey Business Journal” 2012, Vol. 76, No. 3, pp. 1–9.

<sup>18</sup> B.N. Roin, *The case for tailoring patent awards based on time-to-market*, „UCLA Law Review” 2014, Vol. 61, No. 3, p. 719.

Hence, the intellectual property regime is the one that should offer the creative leaders a monopoly over the product for a set period of time. The only issue is that the IP system is not a monolith (ranging from copyright, through patents, utility models, industrial designs, trademarks, geographical indications, plant variety rights). And this is only the tip of the iceberg, as each of the IP above separate regimes come with their own specific legal definition and prerequisites of protection. In other words, there is no direct overlay of economic and legal terms, which leads all the aforementioned economic beliefs into a blind alley. If one adds an extra layer of another legal regime, that is, the civil law protection resulting from the intrinsically European concept of personal interests, even a big league lawyer may find themselves running down dead-ends. Quite recently, Polish courts have noted that a brand is a new personal interest. The ground-breaking finding of Polish courts, as it seems, may leave the practice empty-handed, given that a vast majority of lawyers have got no real idea what a brand is.

Another issue, besides the hodgepodge of theoretical concepts and definitions indicated above, is a variety of hypothetical infringements upon a brand that can take place in a real-life scenario: from inspiring, to copying, and then to counterfeiting with regard to both a product and a brand. The concept of a copycat brand, broadly defined in the marketing literature, proves this point. A copycat brand is any brand that copies a brand name, logo, or trademark (referred to in the US literature as trade dress) or product attributes of a dominant brand. Accordingly, copycats can range from weaker competitors that mimic specific product attributes of the top brands to knockoffs and counterfeits that concentrate on copying trademarks, brand names, and logos<sup>19</sup>.

To sum up, it should be noted that, in contrast to other areas of the creative economy, imitation is remarkably widespread, the enforcement of counterfeits is peculiarly lax, and the distinction between original work and imitation is exceedingly fine<sup>20</sup>. So much so that it can be difficult to distinguish between true inspiration or a grassroots trend or style taking over the streets and copying, which refers to slavish “cloning”<sup>21</sup>.

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<sup>19</sup> H. Nguyen, K. Gunasti, *Original brands in competition against high quality copycats*, „European Journal of Marketing” 2018, Vol. 52, No. 7/8, pp. 1574–1597.

<sup>20</sup> A. Janssens, M. Lavanga, *An expensive, confusing, and ineffective suit of armor: investigating risks of design piracy and perceptions of the design rights available and perceptions of the design rights available to emerging fashion designers in the digital age*, „The Journal of Dress, Body and Culture” 2020, Vol. 24, Issue 2, p. 233.

<sup>21</sup> I. Loschek, *When clothes become fashion: design and innovation systems*, Oxford–New York 2009, pp. 8, 13, 21, 127.

## Brand as personal interest. Legal approach

It comes as a surprise that lawyers, that love so much to define every aspect of the surrounding material and immaterial world, have not come anywhere near the concept of a brand<sup>22</sup>. IP lawyers give a wide berth to this construct, as it simply does not appear in any relevant body of law or definition. The idea of a brand came to the foreground along with the new Polish civil law court's observations that a brand constitutes a separate personal interest that triggers protection from the Article 23 of the Polish Civil Code<sup>23</sup>. At this point, it is crucial to take a closer look at the concept of personal interests to find out how the concept of a brand can fit this theorem<sup>24</sup>.

The construct of personal interests (also referred to as personal goods or personal rights – it is, however, disputable whether personal rights are synonyms with personal interests or goods, as the rights should be perceived as the mechanism through which interests/goods are secured) is rooted in Roman law and well-established in European systems. As simple as it may look personality theories have given rise to many strains of theoretical and practical approaches to this institution (cf. Articles 1384 Section 1 and Article 9 of the French Civil Code or § 823 of the German Civil Code)<sup>25</sup>. As in any other foreign

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<sup>22</sup> There is scarcity of legal regulations that use this term as a legal one: rozporządzenie Ministra Finansów z dnia 27 grudnia 2010 r. w sprawie informacji o liczbie papierosów poszczególnych marek i ilości tytoniu do palenia oznaczonych maksymalną ceną detaliczną (Dz.U. z 2018 r., poz. 476); rozporządzenie Ministra Cyfryzacji z dnia 7 kwietnia 2016 r. w sprawie prowadzenia katalogu marek i typów pojazdów homologowanych oraz dopuszczonych do ruchu na terytorium Rzeczypospolitej Polskiej (Dz.U. z 2016 r., poz. 483) [Regulation of the Minister of Finance of 27 December 2010 on information on the number of cigarettes of individual brands and the amount of smoking tobacco marked with the maximum retail price (Journal of Laws of 2018 item 476); Regulation of the Minister of Digitization of April 7, 2016 on keeping a catalog of brands and types of vehicles approved and admitted to traffic in the territory of the Republic of Poland (Journal of Laws of 2016, item 483)]; zarządzenie nr 2 Prezesa Rady Ministrów z dnia 3 stycznia 2020 r. w sprawie ustanowienia Pełnomocnika Prezesa Rady Ministrów do spraw promocji polskiej marki (M.P. z 2020 r., poz. 3) [Ordinance No. 2 of the Prime Minister of January 3, 2020 on the appointment of the Plenipotentiary of the Prime Minister for the promotion of the Polish brand (M.P. of 2020, item 3)].

<sup>23</sup> Article 23 of the Polish Civil Code: „Personal goods of a human being, such as in particular health, freedom, dignity, freedom of conscience, surname or pseudonym, image, confidentiality of correspondence, inviolability of home as well as scientific, artistic, inventive and rationalizing creativity shall be protected by the civil law regardless of the protection provided for by other provisions” (Polish Civil Code of April 23, 1964, JoL. 2022 pos. 1360).

<sup>24</sup> P. Sut, *Problem twórczej wykładni przepisów o ochronie dóbr osobistych*, „Państwo i Prawo” 1997, No. 9, p. 30.

<sup>25</sup> M. Kuryłowicz, *Prawo i obyczaje w starożytnym Rzymie*, Lublin 1994, pp. 157–158; K. Kolańczyk, *Prawo rzymskie*, Warszawa 1997, pp. 432–433; M. Lijowska, *Koncepcja ogólnego prawa osobistości w niemieckim i polskim prawie cywilnym*, „Kwartalnik Prawa Prywatnego” 2001, No. 4, pp. 717–720; S. Grzybowki, *Ochrona dóbr osobistych*, Warszawa 1957, p. 30; J. Chaciński, *Prawa podmiotowe a ochrona dóbr osobistych*, Lublin 2004, p. 92; A. Szpunar, *Zadośćuczynienie za szkodę niemajątkową*, Bydgoszcz 1999, p. 45; J. Koczanowki, *Ochrona dóbr osobistych*

regulation, there is no legal definition of personal goods in Polish law; however, there is a fine record of ones in the doctrine of law for both physical and legal persons. Stefan Grzybowski wrote in 1985 that personal goods for physical persons are “individual values of the world of feelings and mental condition of a person”, which is the concept that is most frequently used today<sup>26</sup>. Polish legal literature has generally endorsed this idea with the caveat that these values should be an expression of an individual’s physical or mental separateness, that they cannot depend on an individual’s personal beliefs, but rather that they should be widely acknowledged and accepted by a particular legal system and society. The major body of scholarship in this regard was shaped by J.S. Piątowski<sup>27</sup>, A. Szpunar<sup>28</sup>, A. Kopff, A. Cisek<sup>29</sup>, M. Pazdan<sup>30</sup>, and S. Kalus<sup>31</sup>. As mentioned, the personal interests concept can be perfectly well applicable to legal entities as well. The Polish Supreme Court, in its decision from November 14, 1986, offered the following framing assumption, which became a cut-to-size definition for legal persons: “non-property values, allowing a legal person to function in accordance with its scope of activities”<sup>32</sup>.

## Polish jurisprudence re: brand

A review of the Polish case law allows us to put a brand in different perspectives, which draws a bigger picture of the legal approach to this term. To start with, one shall look at one of the recent judgments of the District Court in Warszawa on sponsoring, which noted: “(...) the rule is that title sponsorship provides profits to both parties of the contract. Thanks to the title sponsorship, the company not only **creates a positive image**, but its activities have become more media-friendly and popular. **Increasing brand recognition also translates into financial benefits**. Title sponsorship is not a deed of donation,

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*osób prawnych*, Kraków 1999, p. 32; K. Rataj, *Ukształtowanie dóbr osobistych i ich historyczny rozwój*, [in:] I. Lewandowska-Malec (ed.), *Dobra osobiste*, Warszawa 2017, p. 3.

<sup>26</sup> S. Grzybowski, [in:] S. Grzybowski (ed.), *System prawa cywilnego*, vol. 1: *Część ogólna*, Wrocław–Warszawa 1985, p. 297; cf. A. Wolter, J. Ignatowicz, K. Stefaniuk, *Prawo cywilne. Zarys części ogólnej*, Warszawa 2001, p. 182; A. Brzozowski, W. Kocot, E. Skowrońska-Bocian, *Prawo cywilne. Część ogólna*, Warszawa 2015, p. 118.

<sup>27</sup> J.S. Piątowski, *Glosa do wyrok SN z 16.01.1976 r., II CR 692/75*, „Nowe Prawo” 1977, No. 7–8, p. 144.

<sup>28</sup> A. Szpunar, *Ochrona dóbr osobistych*, Warszawa 1979, p. 106.

<sup>29</sup> A. Cisek, *Dobra osobiste i ich niemajątkowa ochrona w kodeksie cywilnym*, „Acta Universitatis Wratislaviensis. Prawo” 1989, No. 167, p. 39.

<sup>30</sup> M. Pazdan, [in:] M. Safjan (ed.), *Prawo cywilne – część ogólna*, series: System Prawa Prywatnego, vol. 1, Warszawa 2007, p. 1118.

<sup>31</sup> S. Kalus, [in:] M. Fras, M. Habdas (eds.), *Kodeks cywilny. Komentarz*, vol. 1: *Część ogólna (art. 1–125)*, 2018, Lex, art. 23.

<sup>32</sup> Article 43 in connection with Article 23 of the Polish Civil Code; cf. Supreme Court judgment of November 14, 1986, II CR 295/86, OSNC 1988, No. 23, item 40.



but a kind of market investment that brings specific financial benefits”<sup>33</sup> [emphasis ours]. In 2021 there was an interesting case in the District Court of Rzeszów decided on February 10, 2022, as a plaintiff claimed damages resulting from an unsubstantiated entering of his entity into the National Register of Debtors (pl. Narodowy Rejestr Dłużników). The plaintiff argued that this action had done damage to his “good name, **brand**, reputation and contractual credibility”. The court dismissed the case based on the defendant’s proof of the lawfulness of his actions. The court, however, made a point that: “(...) the personal good of a legal person is its **image**, understood as a good name, commercial reliability, in other words, economic credibility”<sup>34</sup> [emphasis ours]. In one of the recent District Courts in Katowice, there was a case adjudicated on, in which the plaintiff claimed that the defendant had used photographs and descriptions of goods owned by the plaintiff, by reason of which he infringed the plaintiff’s personal interests, that is a good name, reputation, commercial opinion, brand and authority”. The court dismissed the case on the ground that: “the dissemination of these photographs and descriptions by the defendant could threaten to infringe the plaintiff’s good name only if the participants of the market linked these photographs and descriptions directly to the plaintiff and thus could falsely consider that the defendant, using them, is, in reality, the plaintiff, while the plaintiff would have no control over the goods sold by the defendant or over the quality of customer service”<sup>35</sup>.

The concept of brand as a personal good was brought to attention by the Court of Appeals in Warszawa (2019 onwards)<sup>36</sup>, but a deeper dive into the jurisprudence proves that this take is not at all new. As asserted by the Court of Appeals in Warszawa in 2021, “[f]or example, as for physical persons the protection will be enjoyed by human life, health, freedom, freedom of conscience, name, image or inviolability of the home, and it is obvious that not all of these apply to a legal person (e.g., life or health). The catalogue of personal goods of legal persons is open; therefore, when establishing it, their specificity should be taken into account. For their characteristics, the emphasis is put on the objective criterion (good reputation, good name) as opposed to the subjective criterion (personal dignity, self-esteem), attributed only to a human being. The most often infringed personal interest of a legal person is its good name (that

<sup>33</sup> Ruling of the District Court in Warszawa of March 29, 2021, I C 1521/21, Lex No. 3160305.

<sup>34</sup> Ruling of the District Court in Rzeszów of February 10, 2022, VI GC 377/21, Lex No. 3348587.

<sup>35</sup> Ruling of the District Court in Katowice of April 13, 2022, XXIV GW 278/21, Lex No. 3430098.

<sup>36</sup> Ruling of the Court of Appeal in Warszawa of September 3, 2020, V ACa 29/20, Lex No. 3069836; see ruling of the Court of Appeal in Warszawa of April 10, 2019, I ACa 17/18, Lex No. 2689776; cf. ruling of the Court of Appeal in Warszawa of April 13, 2021, I ACa 93/21, Lex No. 3189041.



is, reputation), renown, public opinion, commercial opinion, **brand**, authority”<sup>37</sup> [emphasis ours].

The decision of April 25, 2013, in the Court of Appeals in Białystok noted that “the [personal] good of a legal person is, e.g. its good name, understood as a brand, and an established position. Infringement of the good name of a legal person may consist, for example, in the dissemination of allegations of a specific kind, or in a negative assessment of the entity’s activities. The good name of a legal person is linked with the opinion that other people have about it due to the scope of its activities. Therefore, there is no doubt that the good name of a legal person is infringed by statements which, objectively assessed, attribute to the legal person improper conduct that may result in the loss of trust in it necessary for its proper functioning within the scope of its tasks”<sup>38</sup>. In this particular case, the court ordered the defendant to remove from the internet website [www.forum.oszukany.pl](http://www.forum.oszukany.pl) (which can be translated to: [www.forum.cheated.pl](http://www.forum.cheated.pl)) the following posts:

– of May 24, 2010, “The salesman has a huge advantage over us because he knows he is selling shit, and the buyer is yet to find out”;

– of December 19, 2009, “All the crap for the mass market is produced in China, every child knows it, but it should be reflected in the price of the device, so how come the Powermed from China does not cost PLN 500, but PLN 5,000?”;

– of December 21, 2009, “Powermed gentlemen master the art of manipulation to perfection and try to make us aware that everything is manufactured in China and plants in Japan, Germany, USA, UK, France, etc. are useless, they give us ‘Tesco’ or ‘real’ labels as proof where almost everything is from China. If Powermed is Chinese, then its place is in the market with a price adequate to the place of production. Currently, Powermed has a price as if it was at least made in Japan and had a lifespan typical of Japanese electronics. Unfortunately, as former Powermed salesmen say it, the quality is typically Chinese, i.e. very low and typical for products sold in the ‘door-to-door’ system”.

In the plaintiff’s opinion, the posts on the website administered by the defendant infringed upon his good name (reputation), as they accused the company of fraudulent and deceitful activities of the sale of devices with features and quality that did not correspond to the seller’s assurances. The court also made an observation that the resolution of the dispute, in this case, consists in balancing and removing the collision between two rights – the right to freedom of expression (including the right to express oneself in an internet forum), including, among others, freedom of expression, and the right to protection of personal goods also vested in a legal person, which consists primarily of the reputation of the enterprise run by the entrepreneur. Both rights are

<sup>37</sup> Ruling of the Court of Appeal in Warszawa of April 13, 2021, I ACa 93/21, Lex No. 3189041.

<sup>38</sup> Ruling of the Court of Appeals in Białystok of April 25, 2013, I Aca 102/13, Lex No. 1315629.

protected, and neither, taken in the abstract, is superior to the other or absolute. The harmonious coexistence of rights requires defining their boundaries according to the principle that the rights and freedoms of a given subject are limited by the rights and freedoms of another. The limit of freedom of speech is crossed when it results in a violation of personal rights. The assessment of whether this has happened in a particular case depends on the circumstances of the case<sup>39</sup>.

The string of judgments revoking a brand goes back to the ruling of October 22, 2009, of the Court of Appeals in Poznań, which made a point that “according to well-established and indisputable views, the catalogue of personal rights contained in Article 23 of the Polish Civil Code is open and exemplary, and there is no doubt that the good of a legal person is, among others, its **good name, understood as a brand, and an established position**. Violation of the good name of a legal person may consist, for example, of the dissemination of allegations of specific content, or in a negative assessment of the entity’s activities. In principle, one cannot infringe the personal rights of a legal person by infringing the personal rights of its employees, partners or members of its bodies because they do not make the legal entity’s substrata (cf. the judgment of the Supreme Court of January 11, 2007, in the case II CSK 392/06, OSP, issue 5 of 2009, item 55). However, situations are not excluded when the allegation directed against individual natural persons (e.g. members of the management board of a Cooperative) may be of such a nature, that objectively speaking, it also violates the good name of a specific legal person (*vide*: wyrok Sądu Najwyższego z dnia 10 listopada 2005 r., V CK 314/05)”<sup>40</sup> [emphasis ours].

An interesting observation made by the District Court in Sieradz in the judgment of October 13, 2022, is noted: “Of course, the court does not disregard the archaic but common understanding of a concept such as ‘Chinese’ [pl. Chińszczyzna] associated with mass products and questionable quality. Nevertheless, in the realities of the third decade of the 21st century, such associations are groundless. What is additionally important, even if we agree with the claimant’s arguments regarding the negative connotation of the statement that a given product is Chinese or even of poor quality, it is worth noting that the claimant is not the manufacturer of the padlocks sold, so it would not be his brand that would be criticised”<sup>41</sup>. In this particular case, the connotation of a brand seems wider, overarching to all its aspects and tenets. It is also possible to narrow it down to a mere reputation, which would fit in this case.

<sup>39</sup> Ruling of the Court of Appeals in Białystok of April 25, 2013, I Aca 102/13, Lex No. 1315629.

<sup>40</sup> Ruling of the Court of Appeals in Poznań of October 22, 2009, I Aca 613/09, Lex No. 628205.

<sup>41</sup> Ruling of the District Court in Sieradz of October 13, 2022, IC 232/21, Lex No. 3431100.

There are a few more recent judgments bringing up the concept of brand:

– judgment of November 23, 2022, of the District Court in Warszawa: “Emphasising the external perception of the sphere of non-property values of a legal person in jurisprudence leads to the display of such personal rights of legal persons as: good name (reputation, prestige, authority, commercial opinion, brand or established position)”<sup>42</sup>;

– judgment of December 4, 2020, of the Court of Appeals in Kraków: “Since the company does not conduct operations, does not sell products, does not have to seek customers on the market, it does not have to build a brand”<sup>43</sup>;

– judgment of August 6, 2015, of the Court of Appeals in Kraków: “The personal interest of a legal person is, *inter alia*, its good name, including image and reputation (...). A good name is understood as a brand, and an established position”<sup>44</sup>;

– judgment of September 6, 2013, of the Court of Appeals in Katowice: “The plaintiff was exposed to the loss of trust among its clients (...), and thus the loss of reputation, which the brand developed throughout the entire period of operation on the real estate management market” and “the good of a legal person, is, e.g. its good name, understood as a brand or an established position”<sup>45</sup>.

There is also a broader understanding that dates back to 2010 when the Court of Appeals in Warszawa<sup>46</sup> defined a brand as an “established position in a given market”. However, in the full context, this term is back to its previous understanding, which is synonymous with the concept of a good name: “The defendant’s actions damaged the plaintiff’s good name (Article 23 in conjunction with Article 331 § 1 and 43 of the Civil Code). It should be understood as a brand or an established position in a specific market where there are also entities such as the author of a letter or all its addressees. Arguing in the lawsuit that the defendant slandered the plaintiff with such conduct or the plaintiff’s characteristics that may humiliate her in the eyes of the public and expose her to the loss of trust needed to run a business and the loss of contractors, the plaintiff indicated the category of her infringed personal goods”.

Another interesting dispute with the concept of a brand took place in 2010 with regard to the Polish President’s daughter and her then-husband-to-be. They sued a magazine that published their private vacation pictures. Interestingly, it was also pointed out that “The plaintiff, as an educated and awarded jazz musician, a member of the band (...), a man with an established position

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<sup>42</sup> Ruling of the District Court of Warszawa of November 23, 2022, XXV C 256/17, Lex No. 3481562.

<sup>43</sup> Ruling of the Court of Appeals in Kraków of December 4, 2020, ACa 733/20, Lex No. 2516032.

<sup>44</sup> Ruling of the Court of Appeals in Kraków of August 6, 2015, I ACa 544/15, Lex No. 1916612.

<sup>45</sup> Ruling of the Court of Appeals in Katowice of September 6, 2013, I ACa 493/13, Lex No. 1369229.

<sup>46</sup> Ruling of the District Court of Warszawa of May 26 2011, VI ACa 1132/10, Lex No. 1645906.

in his musical and professional environment, began to fear that the brand he had developed so far would lose value. The rumours had it he had sold himself because, so far, the plaintiff had not talked publicly about his private life. Such sensationalism is considered dishonourable in his industry. (...) This bad mental state had a negative impact on the claimant's work"<sup>47</sup>. There was also a ruling of the Court of Appeals in Kraków of January 22, 2016, in which the concept of a brand refers to the entrepreneurship name, as well as to creating "positive associations with the brand (...) to build the claimant's market position"<sup>48</sup>. There are also a few more judgements representing the approach that a brand can be equated with entrepreneurship:

- judgment of November 21, 2022, of the Court of Appeals in Poznań: "Trademarks, brand, company, logo belong to (...) the Company"<sup>49</sup>.

- judgment of May 21, 2018, of the Court of Appeals in Warszawa: "cooperation with a footwear brand"<sup>50</sup>,

- judgment of March 15, 2018, of the Supreme Court: "a brand sells better"<sup>51</sup>,

Can, therefore, the term "brand," used above, be understood as just another synonym for reputation or renown? As established by the Court of Appeals in Warszawa: "In terms of infringement of personal rights of legal persons, the sphere of **good reputation** should be differentiated depending on the nature and basic directions and goals, activities of legal persons, all factors that create the broadly understood good name, prestige and reputation of a legal person can be listed here. Personal rights of legal persons are non-property allowing a legal person to function in accordance with its scope of activities. The **good name** of a legal person is combined with the opinion that other people have about it due to the objectives of its activity. This includes not only the so-called **reputation** resulting from its activities to date, but also the assumed reputation of a legal person from the moment of its establishment. The good name of a legal person is violated by statements which, objectively assessed, attribute to it improper conduct that may cause the loss of trust necessary for its proper functioning. In the case of infringement of the personal goods of legal persons, the decisive, but also the only, criteria are the objective criteria of the violation of personal rights. Legal persons cannot feel, like people, the harm done to them, and it is impossible to consider the negative feelings of persons forming the personal substrate of a legal person in this regard. The protection of personal goods of legal persons depends only on the

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<sup>47</sup> Ruling of the Court of Appeals in Warszawa of September 12, 2013, I ACa 324/2013, Lex No. 1392085.

<sup>48</sup> Ruling of the Court of Appeals in Kraków of January 22, 2016, I ACa 1599/15, Lex No. 2009586.

<sup>49</sup> Ruling of the Court of Appeals in Poznań of November 21, 2022, I ACa 899/21, Lex No. 3454547.

<sup>50</sup> Ruling of the Court of Appeals in Warszawa of May 21, 2018, I ACa 164/18, Lex No. 2516032.

<sup>51</sup> Ruling of the Supreme Court of March 15, 2018, III CSK 387/16, Lex No. 2510660.

objectively established fact of infringement of personal goods as an unlawful activity”<sup>52</sup> [emphasis ours].

## **From branding to brand. Overarching economic understanding**

In reaction to smart technologies, hyperconnectivity, ubiquitous access to information, social practices and trends across social media, and greater environmental volatility, brands are drastically transforming and becoming significantly more complicated<sup>53</sup>. At first glimpse, it can be noted that brands come in many kinds as:

- corporate/human brands<sup>54</sup>,
- national brands/private labels (PL) brands<sup>55</sup>,
- service/product brands,
- hedonic/utilitarian brands.

Before any attempt to define a brand is made, one can pursue to gauge it from the perspective of branding in the hope of decoding the meaning of a brand from this overarching activity. Soon enough, it turns out that also branding is not a monolith, as the literature offers at least four different takes, summarised by S.M.F. Padela, B. Wooliscroft and A. Ganglmair-Wooliscroft<sup>56</sup>:

1) Product- and firm- centric branding – according to this viewpoint, brands are strategic and financial assets that result from extensive marketing initiatives. The brand manager is tasked with strategising, creating a budget, implementing, and monitoring the brand’s performance. They are gauged as the link between functional departments, suppliers, distributors, retailers, and customers. These are theorised models of a corporate brand<sup>57</sup>, brand equity and value<sup>58</sup>, and brand identity<sup>59</sup>.

<sup>52</sup> Ruling of the Court of Appeal in Warszawa of April 13, 2021, IACa 93/21, Lex No. 3189041.

<sup>53</sup> T.T. Oh, K.L. Keller, S.A. Neslin, D.J. Reibstein, D.R. Lehmann, *The past, present, and future of brand research*, „Marketing Letters” 2020, Vol. 31, No. 2/3, pp. 151–162.

<sup>54</sup> A.M. Muñoz Jr, T. Norris, G.A. Fine, *Marketing artistic careers: Pablo Picasso as brand manager*, „European Journal of Marketing” 2014, Vol. 48, No. 1/2, pp. 68–88.

<sup>55</sup> J. Dawes, *Reasons for variation in SCR for private label brands*, „European Journal of Marketing” 2013, Vol. 47, No. 11/12, pp. 1804–1824; S.H. Hsiao, Y.Y. Wang, T. Wang, T.W. Kao, *How social media shapes the fashion industry: the spillover effects between private labels and national brands*, „Industrial Marketing Management” 2020, Vol. 86, pp. 40–51, <https://doi.org/10.1016/j.indmarman.2019.02.022>.

<sup>56</sup> S.M.F. Padela, B. Wooliscroft, A. Ganglmair-Wooliscroft, *Brand systems: interpreting branding research perspectives*, „European Journal of Marketing” 2022, Vol. 57, No. 2, p. 390.

<sup>57</sup> S. Knox, D. Bickerton, *The six conventions of corporate branding*, „European Journal of Marketing” 2003, Vol. 37, No. 7/8, pp. 998–1016.

<sup>58</sup> K.L. Keller, *Strategic brand management: building, measuring and managing brand equity*, New Jersey 2013.

<sup>59</sup> S.M.F. Padela, B. Wooliscroft, A. Ganglmair-Wooliscroft, op. cit., p. 390; D.A. Aaker, *Building strong brands*, New York 1996.

2) Consumer-centric branding – consumer-centrism asserts that brands come first in consumers' self-expression and identity maintenance, positing a brand as a perceptual construct and stereotyping customers in a symbolic transaction<sup>60</sup>. This viewpoint helped conceptualise brand knowledge, including brand awareness, brand image<sup>61</sup>, brand personality<sup>62</sup>, and customer-based brand equity<sup>63</sup>.

3) Relational branding – according to this take, a brand is the result of an ongoing process of value co-creation between a company and other stakeholders<sup>64</sup>. The interactions and connections made during the value-generation process result in brand value<sup>65</sup>. Brand relationships<sup>66</sup>, brand interaction<sup>67</sup>, brand experience<sup>68</sup>, brand engagement<sup>69</sup>, brand co-creation<sup>70</sup>, brand community, and brand tribes<sup>71</sup> were advanced by this perspective<sup>72</sup>.

4) Socio-cultural branding – from this angle, relational branding is expanded, and a brand is seen as a cultural resource and a cultural hotspot<sup>73</sup>.

<sup>60</sup> J. Berger, C. Heath, *Where consumers diverge from others: identity signaling and product domains*, „Journal of Consumer Research” 2007, Vol. 34, No. 2, pp. 121–134; J.E. Escalas, J.R. Bettman, *Self-construal, reference groups, and brand meaning*, „Journal of Consumer Research” 2005, Vol. 32, No. 3, pp. 378–389.

<sup>61</sup> A.L. Biel, *Discovering brand magic: the hardness of the softer side of branding*, „International Journal of Advertising” 1997, Vol. 16 No. 3, pp. 199–210; K.L. Keller, *Brand synthesis: the multidimensionality of brand knowledge*, „Journal of Consumer Research” 2003, Vol. 29, No. 4, pp. 595–600.

<sup>62</sup> Cf. D.A. Aaker, op. cit.

<sup>63</sup> K.L. Keller, *Conceptualizing, measuring, and managing customer-based brand equity*, „Journal of Marketing” 1993, Vol. 57 No. 1, pp. 1–22.

<sup>64</sup> Cf. R.J. Brodie, M. Benson-Rea, C.J. Medlin, *Branding as a dynamic capability: strategic advantage from integrating meanings with identification*, „Marketing Theory” 2017, Vol. 17, No. 2, pp. 183–199; M.A. Merz, Y. He, S.L. Vargo, *The evolving brand logic: a service-dominant logic perspective*, „Journal of the Academy of Marketing Science” 2009, Vol. 37, No. 3, pp. 328–344.

<sup>65</sup> R. Jones, *Finding sources of brand value: developing a stakeholder model of brand equity*, „Journal of Brand Management” 2005, Vol. 13, No. 1, pp. 10–32.

<sup>66</sup> S. Fournier, *Consumers and their brands: developing relationship theory in consumer research*, „Journal of Consumer Research” 1998, Vol. 24, No. 4, pp. 343–373.

<sup>67</sup> A. Fyrberg, R. Jürriado, *What about interaction? Networks and brands as integrators within service-dominant logic*, „Journal of Service Management” 2009, Vol. 20, No. 4, pp. 420–432.

<sup>68</sup> J.J. Brakus, B.H. Schmitt, L. Zarantonello, *Brand experience: what is it? How is it measured? Does it affect loyalty?*, „Journal of Marketing” 2009, Vol. 73, No. 3, pp. 52–68.

<sup>69</sup> C. France, B. Merrilees, D. Miller, *An integrated model of customer-brand engagement: drivers and consequences*, „Journal of Brand Management” 2016, Vol. 23, No. 2, pp. 119–136.

<sup>70</sup> M.J. Hatch, M. Schultz, *Toward a theory of brand co-creation with implications for brand governance*, „Journal of Brand Management” 2010, Vol. 17, No. 8, pp. 590–604.

<sup>71</sup> B. Cova, S. Pace, *Brand community of convenience products: new forms of customer empowerment – the case ‘my Nutella the community*, „European Journal of Marketing” 2006, Vol. 40, No. 9/10, pp. 1087–1105.

<sup>72</sup> S.M.F. Padela, B. Wooliscroft, A. Ganglmair-Wooliscroft, op. cit., p. 390.

<sup>73</sup> Cf. N. Diamond, J.F.M. Sherry Jr, A. Muñoz Jr, M.A. McGrath, R.V. Kozinets, S. Borghini, *American girl and the brand gestalt: closing the loop on sociocultural branding research*, „Journal of Marketing” 2009, Vol. 73, No. 3, pp. 118–134.



The value of brands is networked and based on myths and cultural connotations. This viewpoint gave rise to concepts like brand heritage<sup>74</sup>, brand culture<sup>75</sup>, and brand iconicity<sup>76</sup>, highlighting how brands change over time in line with shifts in ideological, communal, and socio-cultural values<sup>77</sup>.

These many angles on branding take us to the model concepts of brand systems and brand management systems, which offer many different takes on the concept of a brand alone. The brand system incorporates the historical, spatial, cultural, and political groundings required to see and analyse brands in context<sup>78</sup>.

### **Brand as asset. Economic approach**

Simply put, a brand is a psychological relation between a brand's name, image, and consumers' perceptions of it<sup>79</sup>. In D.A. Aaker's view, a brand is a strategic asset that interacts with other related brands in one system<sup>80</sup>. His approach emphasises the relationship between them. L.P. Katsanis, in his brand management system, presents a brand as a strategic resource, which is placed somewhere between internal and external information, the cultural and environmental evaluation of a brand, and consumers' commitment<sup>81</sup>. J.-N. Kapferer identifies it as strategic intangible asset that merge the brand's name, symbolism as well as product or service experience<sup>82</sup>. This theory builds around brand personality's overarching assumption. There are also social takes based on the theory of communication that consider brands to be modes of communication<sup>83</sup>. A much more complex approach was offered by P.P. Maglio,

<sup>74</sup> G.M. Rose, A. Merchant, U.R. Orth, F. Horstmann, *Emphasizing brand heritage: does it work? And how?*, „Journal of Business Research” 2016, Vol. 69, No. 2, pp. 936–943.

<sup>75</sup> J.E. Schroeder, M. Salzer-Mörling, *Brand culture*, London–New York 2006.

<sup>76</sup> D.B. Holt, *How brands become icons: the principles of cultural branding*, Boston, MA 2004.

<sup>77</sup> B. Cova, S. D'Antone, *Brand iconicity vs. anti-consumption well-being concerns: the Nute-lla palm oil conflict*, „Journal of Consumer Affairs” 2016, Vol. 50, No. 1, pp. 166–192.

<sup>78</sup> J.E. Schroeder, *The cultural codes of branding*, „Marketing Theory” 2009, Vol. 9, No. 1, pp. 123–126; S.M.F. Padela, B. Wooliscroft, A. Ganglmair-Wooliscroft, op. cit., p. 414.

<sup>79</sup> D.B. Holt, *Why do brands cause trouble? A dialectical theory of consumer culture and branding*, „Journal of Consumer Research” 2002, Vol. 29, No. 1, pp. 70–90; K.L. Keller, *Brand synthesis...*, pp. 595–600.

<sup>80</sup> D.A. Aaker, op. cit.

<sup>81</sup> L.P. Katsanis, *Some effects of changes in brand management systems: issues and implications*, „International Marketing Review” 1999, Vol. 16, No. 6, pp. 518–532.

<sup>82</sup> J.-N. Kapferer, *The new strategic brand management: creating and sustaining brand equity long term*, London–Philadelphia 2008.

<sup>83</sup> M. Giesler, *Social systems in marketing*, [in:] D. Turley, S. Brown (eds.), *European advances in consumer research. Vol. 6. All changed, changed utterly?*, Association for Consumer Research, Dublin 2003, pp. 249–256; M. Luedicke, M. Giesler, *Brand systems: a conceptual framework for the sociological analysis of brand phenomena*, [in:] K.M. Ekström, H. Brembeck (eds.), *European advances in consumer research. Vol. 7*, Association for Consumer Research, Goteborg 2005, pp. 520–521.



S. Nusser, K. Bishop, who see a brand system as a mix of human interaction, technology and stakeholders. Therefore, in his doctrine, brands are expected to become service vehicles made as an outcome of economic entities interactions<sup>84</sup>. A similar concept was elaborated by S. Bergvall, who stresses the halo effect related to the brand as well as the cultural aspect of it, which makes a brand into a cultural artefact<sup>85</sup>. There are also other approaches that bring out most of all the awareness and meaning conveyed by brands. These are mostly offered by G. Franzen and S. Moriarty<sup>86</sup>, K.L. Keller and D.R. Lehmann<sup>87</sup>, F. Conejo and B. Wooliscroft<sup>88</sup>.

According to J.-N. Kapferer, brands are conditional assets that start with value propositions centred on their intended target market<sup>89</sup>. Multiple models that describe managerial brand-building inputs, such as product and service design, packaging, positioning, promotions, and brand extensions, are offered in the literature on product- and firm- oriented branding<sup>90</sup>. The planning and execution of brand architecture strategy, brand elements, product development and channel strategies, as well as the synchronisation of brand-controlled communications with uncontrolled communications and external events, are all examples of managerial decisions that make brands grow and proliferate<sup>91</sup>. What is also to be noticed is that the construct of the brand is influenced, that is, co-created, by many stakeholders, including the brands' employees themselves (word-of-mouth effect, also influencing consumers' views)<sup>92</sup>. Co-creation often examines how businesses and customers may jointly generate value. However, as businesses increasingly prioritise their values, they are realising the importance of internal stakeholders – i.e., employees – as “essential ambassadors in the brand-building process”<sup>93</sup>. To gain a competitive advantage, it is crucial that the firm's culture ensures that employees under-

<sup>84</sup> P.P. Maglio, S. Nusser, K. Bishop, *A service perspective on IBM's brand*, „Marketing Review St. Gallen” 2010, Vol. 27, No. 6, pp. 44–48.

<sup>85</sup> S. Bergvall, *Brand ecosystems: multilevel brand interaction*, [in:] J.E. Schroeder, M. Salzer-Mörling (eds.), *Brand culture*, London–New York 2006, pp. 181–191.

<sup>86</sup> G. Franzen, S. Moriarty, *The science and art of branding*, New York 2008.

<sup>87</sup> K.L. Keller, D.R. Lehmann, *Brands and branding: research findings and future priorities*, „Marketing Science” 2006, Vol. 25, No. 6, pp. 740–759.

<sup>88</sup> F. Conejo, B. Wooliscroft, *Brands defined as semiotic marketing systems*, „Journal of Macromarketing” 2015, Vol. 35, No. 3, pp. 287–301.

<sup>89</sup> R.J. Brodie, M. Benson-Rea, C.J. Medlin, op. cit.

<sup>90</sup> S.M.F. Padela, B. Wooliscroft, A. Ganglmair-Wooliscroft, op. cit., p. 398.

<sup>91</sup> Ibidem.

<sup>92</sup> J. Jacobsen, A. Gomes Rinaldi, J. Rudkowski, *Decoding the employee influencer on social media: applying Taylor's six segment message strategy wheel*, „European Journal of Marketing” 2023, Vol. 57, No. 1, p. 30.

<sup>93</sup> L. de Chernatony, S. Cottam, S. Segal-Horn, *Communicating services brands' values internally and externally*, „The Service Industries Journal” 2006, Vol. 26, No. 8, p. 820, DOI: 10.1080/02642060601011616; S.L. Vargo, R.F. Lusch, *Evolving to a new dominant logic for marketing*, „Journal of Marketing” 2004, Vol. 68, No. 1, pp. 1–17, DOI: 10.1509/jmkg.68.1.1.24036.

stand this<sup>94</sup>. Employee-employer co-branding is facilitated by motivated staff members who offer suggestions on ways to make products and services better, encourage their friends and family to use the brand, and go above and beyond to assist customers<sup>95</sup>. In Park and Chan's view, "brands act as relationship partners for consumers, providing a sense of belongingness and helping them construct, express and affirm their desired identities"<sup>96</sup>. This concept resonates with the American Marketing Association definition of 1948, which is "A name, term, symbol, or design, or a combination of them which identifies the goods or services of a seller or group of sellers and distinguishes them from those of competitors"<sup>97</sup>.

M. Avis and I.L. Henderson, in their latest paper of 2022, juxtaposed two concepts related to a brand: "component model" and "label and association model" (LAM). Under LAM, the brand is a name or logo that serves as a catalyst for brand associations. Virtually anything could be a brand association, but it must be associated with the brand's name or emblem. These authors make a compelling case in their paper that the best way to address the problems with brand definition is to re-adopt the LAM of the brand concept<sup>98</sup>.

## Brand personality

Brand personality is another concept that has been analysed since the 1970s<sup>99</sup>. To start with, its symbolic character comes to the forefront, but in the marketing literature, it has also been identified that it can be "conditioned" by several elements, such as brand quality or innovativeness. It is an explicable concept that triggers feelings of trust, loyalty, affection, and self-contentment related to the purchase. It is trivial to say that products (artefacts of brands) are purchased for a good many reasons, out of which the least that matters is their functionality<sup>100</sup>. The brand personality construct is predicated on the

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<sup>94</sup> D. Bennett, K. Karvinen, *Enhancing performance through the introduction of customer orientation into the building components industry*, „International Journal of Productivity and Performance Management" 2006, Vol. 55, No. 5, pp. 400–422.

<sup>95</sup> B. Merrilees, D. Miller, R. Yakimova, *The role of staff engagement in facilitating staff-led value co-creation*, „Journal of Service Management" 2017, Vol. 28 No. 2, pp. 250–264, DOI: 10.1108/JOSM-10-2015-0326.

<sup>96</sup> H.Y. Park, S.R. Chang, *When and how brands affect importance of product attributes in consumer decision process*, „European Journal of Marketing" 2002, Vol. 56, No. 13, p. 2.

<sup>97</sup> American Marketing Association, *Report of the definitions...*, pp. 202–217.

<sup>98</sup> M. Avis, I.L. Henderson, *A solution to the problem of brand definition*, „European Journal of Marketing" 2022, Vol. 56, No. 2, p. 352.

<sup>99</sup> U. Aegerup, S. Anderson, G.B. Awuah, *Building a warm and competent B2B brand personality*, „European Journal of Marketing" 2022, Vol. 56, No. 13, p. 168.

<sup>100</sup> Ibidem; cf. F.J.F. Coelho, C.M. Bairrada, A.F. de Matos Coelho, *Functional brand qualities and perceived value: the mediating role of brand experience and brand personality*, „Psychology and

idea that consumers anthropomorphise brands and perceive them as potential partners. According to how they see the companies' personalities, consumers decide which brands to develop relationships with and what kind of relationships to develop. Therefore, using the personality metaphor to understand brands only works if one genuinely thinks of them as people. If one embraces the metaphor of the brand as a person, one should think of brands in the same way that one would describe a person<sup>101</sup>. A brand, like a human being, can only embrace one personality. It is especially important for the internal branding and living the brand concepts. Consumer brand personality research has evolved since Aaker's seminal study on the Big Five brand personality scale in 1997 and the adoption of related trait-based brand personality scales by later scholars for various markets and industries<sup>102</sup>. This shift has occurred from multi-dimensional scales to a more condensed method<sup>103</sup>. The development of the past 10 years appears to have essentially stabilised on a two-dimensional brand personality notion of: warm or competent brands. The stereotype content model (SCM), created by Fiske et al. in social psychology, emphasises the value of friendliness and competence for social judgements. Later in 2012, N. Kervyn, S.T. Fiske, C. Malone used the model to analyse brand personality<sup>104</sup>. In general, high-quality engineered luxury tends to promote brand competence. Competent brands have a thorough knowledge of their products, including design, production, and quality control. Thus, trust and expertise go together. The first one is invoked in consumers by proving the brand's status<sup>105</sup>. Consumers have been shown to spontaneously link certain brands to specific human personality qualities, according to research. The five main qualities of BP, according to Aaker's scale development study, are sincerity, excitement, competence, sophistication, and ruggedness<sup>106</sup>. These features are analogous to the FFM of human personality traits<sup>107</sup>.

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Marketing" 2020, Vol. 37, No. 1, pp. 41–55; D.J. MacInnis, *Brands as intentional agents: questions and extensions*, „Journal of Consumer Psychology" 2012, Vol. 22, No. 2, pp. 195–198; P.M. Doney, J.M. Barry, R. Abratt, *Trust determinants and outcomes in global B2B services*, „European Journal of Marketing" 2007, Vol. 41, No. 9/10, pp. 1096–1116.

<sup>101</sup> U. Aegerup, S. Anderson, G.B. Awuah, op. cit., p. 170.

<sup>102</sup> J.L. Aaker, *Dimensions of brand personality*, „Journal of Marketing Research" 1997, Vol. 34, No. 3, pp. 347–356; M. Geuens, B. Weijters, C. De Wulf, *A new measure of brand personality*, „International Journal of Research in Marketing" 2009, Vol. 26, No. 2, pp. 97–107.

<sup>103</sup> G. Davies, J.I. Rojas-Méndez, S. Whelan, M. Mete, T. Loo, *Brand personality: theory and dimensionality*, „Journal of Product and Brand Management" 2018, Vol. 27, No. 2, pp. 115–127.

<sup>104</sup> S.T. Fiske, A.J. Cuddy, P. Glick, *Universal dimensions of social cognition: warmth and competence*, „Trends in Cognitive Sciences" 2007, Vol. 11, No. 2, pp. 77–83; N. Kervyn, S.T. Fiske, C. Malone, *Brands as intentional agents framework: how perceived intentions and ability can map brand perception*, „Journal of Consumer Psychology" 2012, Vol. 22, No. 2, pp. 166–176.

<sup>105</sup> U. Aegerup, S. Anderson, G.B. Awuah, op. cit., p. 173.

<sup>106</sup> J.L. Aaker, *Dimensions of brand...*, pp. 347–356.

<sup>107</sup> R.R. McCrae, P.T. Costa, *A five-factor theory of personality*, [in:] L. Pervin, O. John (eds.), *Handbook of personality: theory and research*, 2nd ed., New York 1999, pp. 139–153.

Can brand personality be examined in the light of personal interests or IP regimes? The authors intend to undertake the relevant research as part of further work in this area.

## Summary

This article begins a discussion regarding the idea of a brand, which the Court of Appeals in Warszawa had recently observed in a number of distinct rulings in which a brand is categorised as a personal good. It was shown that this approach is not a new one. The main concern of this research is how a brand should be defined for legal purposes, especially as lawyers haven't given the idea of brands much thought thus far. However, this idea is frequently attacked and applied in economic studies. The body of economic scholarship does not offer much help to legal studies approach, as economists define the term in a way that seems barely appropriate in legal contexts. This is also due to the term's ambiguous and broad definition in economics. It is asserted in marketing and economics studies that strong brands enhance client relationships, lower price sensitivity, and increase the value of organisations, which are all desirable results for businesses. Therefore, branding and brand management expertise is a crucial yet undervalued component of company success<sup>108</sup>. Companies primarily develop their brands through the items they provide and through interactions with clients<sup>109</sup>. The economic studies require further examination, as they heavily touch on or encompass previously well-established legal notions like copyright, trademarks, and entrepreneur's names (pl. Firma). Many businesses, especially B2B, frequently use the same name for both their business and their products because they place more emphasis on corporate branding than product branding. From all the data they gather from their direct and indirect interactions with the brand, stakeholders deduce the personality of the brand<sup>110</sup>. As to the legal take, there are some legal decisions that refer to a brand in this same large meaning; however, a vast majority of rulings seem to equate a brand with a good name, reputation or goodwill.

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<sup>108</sup> U. Aegerup, S. Anderson, G.B. Awuah, *op. cit.*, p. 168.

<sup>109</sup> D. Ballantyne, R. Aitken, *Branding in B2B markets: insights from the service-dominant logic of marketing*, „Journal of Business and Industrial Marketing” 2007, Vol. 22, No. 6, pp. 363–371.

<sup>110</sup> G.V. Johar, J. Sengupta, J.L. Aaker, *Two roads to updating brand personality impressions: trait versus evaluative inferencing*, „Journal of Marketing Research” 2005, Vol. 42, No. 4, pp. 458–469.

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## Summary

### **‘Brand’ as a personal interest. Legal and economic insights**

**Keywords:** intellectual property law, fashion law, personal goods, personal interests, brand, branding.

This paper is a small glimpse of a study whose objective is to ascertain the relationship between the legal and economic notions of a brand. It also seeks to establish whether a brand can lawfully be regarded as a “personal interest” distinct from products covered by an intellectual property (IP) regime under Polish law. This pilot article is the outcome of an initial investigation conducted to launch grant-funded research. Strong brands are said to improve customer relationships, reduce price sensitivity, and boost the value of organisations, all of which are desirable outcomes for firms, according to marketing and economics studies. As a result, knowledge in branding and brand management is an essential yet underappreciated element of business success. Regarding the legal perspective, while some judgements appear to use the term ‘brand’ as an entrepreneurship, the great majority of rulings appear to view a brand as a good name or reputation.

## Streszczenie

### **„Marka” jako dobro osobiste. Dyskurs prawny i ekonomiczny**

**Słowa kluczowe:** prawo własności intelektualnej, prawo mody, dobra osobiste, marka, brand, branding.

Niniejszy artykuł stanowi wprowadzenie do dalszych badań, których celem jest ustalenie relacji między prawnym i ekonomicznym pojęciem marki. Ma również na celu ustalenie, czy marka może zostać uznana za „dobro osobiste”,

odrębnie od dóbr objętych ochroną systemu własności intelektualnej (IP) w prawie polskim. Ten artykuł pilotażowy jest wynikiem wstępnego rozpoznania meritum w celu rozpoczęcia badań finansowanych z grantów. W biznesie twierdzi się, że silna marka buduje relacje z klientem, zmniejsza wrażliwość cenową nabywcy, jak też zwiększa wartość przedsiębiorstwa, co według badań marketingowych i ekonomicznych jest nadrzędnym celem wielu firm. W rezultacie wiedza z zakresu branding i zarządzania marką jest niezbędnym, choć niedocenianym elementem sukcesu w biznesie. Jeśli chodzi o perspektywę prawną, podczas gdy niektóre wyroki wydają się używać terminu „marka” jako przedsiębiorstwa, zdecydowana większość orzeczeń wydaje się postrzegać markę jako dobre imię lub reputację.

