

Rebranding strategies and their boomerang effect—The curious case of Burberry

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Abstract

The analysis considers the way in which Burberry masterfully capitalized on consumers' emotional attachments to social and cultural events and technological changes since the company's establishment in 1856 to the present day. To this end, the article examines Burberry's branding strategies and the brand's image as reflected in its advertisements over a period of over 100 years. The case study highlights the increasingly important role of consumers in creating or destroying a brand's image, raising some questions about some of the assumptions with which the European trade mark law operates in the area of dilution.

KEYWORDS

culture, digitization, Key Topics, labour, trade marks

1 | INTRODUCTION

The idea of protecting trade marks with reputation against dilution is justified, among other things, on the principle that it is only fair to reward the trade mark holder for her financial investment in creating a strong brand.¹ The idea that the image and value of the trade mark are under the exclusive control of the trade mark holder, regarded by Gangjee as “the corporate or managerial approach to brands” (D. S. Gangjee, 2013, p. 37), has been embraced by the Court of Justice of the European Union (“CJEU”) in its decisions construing the European provisions regarding trade mark dilution (e.g., *Sigla SA v. OHIM II-00711*, 2007; *Mülhens GmbH & Co. KG v. OHIM ECLI:EU:T:2008:215*, 2008; *Farmeco v. OHIM ECLI:EU:T:2010:458*, 2010). However, this approach has been rightly criticized in the literature (D. S. Gangjee, 2013, p. 37; Handler, 2016, p. 639; McDonagh, 2015; Senftleben, 2009, p. 57) considering

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that there are other factors equally important in the creation of the brand such as “the culture industries, intermediaries, such as critics and salespeople, and customers as individuals, but more significantly as communities” (D. S. Gangjee, 2013, p. 37 citing Holt, 2004). Among these factors, the “immaterial labour of consumers” (Arvidsson, 2005, p. 235) it is said to generate “a social relation, a shared meaning, or a sense of belonging” (Arvidsson, 2005, p. 241) thus making the brand in question more valuable for its owner (Arvidsson, 2005, p. 241). While this “free labor is managed so that it comes to produce desirable and valuable outcomes” (Arvidsson, 2005, p. 241), under the dilution provisions it is trade mark owners and not consumers who are rewarded by the law for “succeeding in creating a famous mark” (Fhima, 2008, p. 634).

In this article, I intend to make a minimal contribution in support of these earlier, more complex and much better written works criticizing law's disregard of other factors equally important in creating a valuable and popular trade mark, worthy of dilution protection. For this purpose, I will use Burberry as a case study to illustrate that in its branding strategies, this company capitalized on the immaterial contribution of its core consumers and on the values that consumers attach to historical events or particular lifestyles considered fashionable at a specific point in time. With this analysis I do not intend to argue that Burberry's financial efforts in creating a strong brand were insignificant. Nor do I contend that it is the only company that has done this. What I want to highlight instead is that sometimes the image of a brand can get outside the control of the brand owner regardless of the efforts of the respective brand owner to position itself in a certain way in the market. This aspect is essential for the analysis of tarnishment and free-riding infringement cases because both the detriment to the reputation of the trade mark and the taking of unfair advantages are assessed considering the image of the trade mark. The reason I chose Burberry is that throughout its 150 years history, this brand faced several ebbs and flows in terms of both profitability and success in positioning itself as a luxury brand.²

I will begin the analysis in Section 2 by presenting some of the patterns that guide the case law of the CJEU with respect to what the reputation of a trade mark consists of and who is considered responsible for it. Section 3 presents Burberry's branding strategies and the way in which this company exploited the effects of social, cultural and technological changes to create a powerful brand. The period from the establishment of the company in 1856 to the present day is divided into four phases and the analysis will proceed according to these phases (Cooperstein et al., 2010; Grant, 2011). The examination will also bring to light the evolution of the notion of innovation, from the creation of tangible items (i.e., the patenting of gabardine in 1898) to the digitalization and thus the disembodiment of “many dimensions of the physical embodiment of the brand into the virtual world” (Weinman, 2015, p. 106). In Section 4, I will bring together the arguments presented in the previous sections, concluding that sometimes the public's perception of a brand's image may be different from what the trade mark owner wants it to be.

2 | STEREOTYPES RELATING TO THE BRAND-CONSUMERS RELATIONSHIP

2.1 | The relationship between trade marks and brands

Although there is no unanimously accepted definition of the brand (Davis, 2010, p. 80), it is prudent to differentiate between brands and registered trade marks. A registered trade mark is a sign which, if successfully registered, becomes personal property (Trade Marks Act, 1994, S.22) thus bestowing its holder with certain exclusionary rights. Such rights authorize the trade mark holder to prohibit any acts which are likely to hinder the trade mark's ability to differentiate the products of one undertaking from those of another one. In contrast, the concept of brand does not have a definition in law nor in another authoritative instrument (Tynan et al., 2010, p. 1156). Nevertheless, the recent marketing literature³ has outlined the basic components of brands: “identity, functionality, symbol(ism), sustainability, differentiation, and value creation/delivery” (Tynan et al., 2010, p. 1157). These features resulted from a historical analysis of the concept of brands, one which evolved over time as shown in the following paragraphs (Tynan et al., 2010, p. 1157).

In the beginning of the 19th century, “brand marketing” involved the use of “brand identifiers” (such as the names of the founders of a company or words that described the products of that undertaking which were most of the times the actual trade marks of the undertaking) without the intention of creating a particular brand personality outside the quality of the product (Petty, 2016, p. 98). Apparently, the purpose of brands at that time was to support direct communication between customers and producers “through presentation, packaging and other media” (Lury, 2012, p. 139). Later on, towards the end of the 19th century, noticing that brands had the ability “to conjure feelings” (Klein, 2005, p. 6), marketing techniques shifted focus. Thus, instead of promoting the quality of the products as the identity of the brand, branding strategies started to centre on “more psychological/anthropological examinations” (Klein, 2005, p. 7). This was made possible through the use, in advertising,⁴ of “the systemic use of strong emotional appeals like fear rage and love” (Arvidsson, 2006, p. 44) which were said to “foster new forms of overall consumer behaviour regardless of the individual situation of consumers” (Arvidsson, 2006, p. 44). It seems, however, that the thing that contributed most to changing the content of the brand concept from something related to the quality of the products to something related to the feelings of those who bought them, was the phenomenon of mass production and its inevitable consequence of “mass consumerism which underpinned consumers society from the 1960s to the 1980s” (Berg, 2012, p. 177). Berg argues that since the 1980s this “phenomenon of upscaling, branding and status seeking through consumer goods has intensified dramatically” (Berg, 2012, p. 177). This sociological change generated a “consumer culture” concerned with “the significance and character of values, norms and meanings produced” (Lury, 2012, p. 44) by consumers in the process of consumption (Lury, 2012, p. 44). As discussed in a different paper (Olteanu, 2020), Lury (2012), citing the work of Douglas and Isherwood explains that nowadays “consumption is to do with meaning, value and communication as much as it is to do with exchange and economic relations” (Lury, 2012, p. 14). Thus, the content of the notion of brand, although not completely departing from its initial meaning (i.e., token indicating the source of origin and quality of the goods), encompasses now “a person's gut feeling about a product, service or organization” (Neumeier, 2005, p. 1) too. Nowadays, it is quite undisputed that the content of the brand is built via complex branding techniques which are seen “as a primarily communicative process that involves the efforts of corporations to shape human identity and influence the cultural and social landscape to sell consumer products” (Mumby, 2012, p. 282).

Arvidsson (2006) explains that the “the brand name” is what prompts consumers’ reactions related to their “future experiences and attachments”. Hence, it is easy to conclude that from this point of view too, the two concepts (brand v trade mark) overlap considerably. The existence of this junction provides a basis for trade marks to mutate into something more than an origin indication sign (Olteanu, 2020). The same can be said also for the costs invested in advertising which are no longer strategic costs and become an investment in “hard equity” as Klein (2005) puts it (Olteanu, 2020). Following this transformation, a different type of value is added to the trade mark, a value in the “form of immaterial capital” (Arvidsson, 2006, p. 7). While this process in which the trade mark signifies to consumers more than the origin of the goods may occur *organically*, let's say for example because of the innovative nature of the goods (Lury, 2012, p. 14), more recently “creating associations between products is becoming established as the exclusive prerogative of the trade mark owner” (Lury, 2010, p. 212), as argued in more detail somewhere else (Olteanu, 2020). It could be concluded that the provisions regarding protection against dilution contribute to the transformation of the trade mark into a brand and to the preservation of the image of the brand as designed by the brand owner. How this actually occurs in practice, from the perspective of trade mark law, is detailed in the following sub-section.

2.2 | What is trade mark reputation and who creates it according to the law

Under the European dilution provisions, the owner of a trade mark with reputation may prohibit the registration or use of a sign identical with, or similar to, her earlier reputed trade mark “irrespective of whether the goods or services for which it is applied or registered are identical with, similar to or not similar to those for which the earlier

trade mark is registered” (Directive (EU) 2436, 2015, Article 5(3)(a); Regulation (EU) 1001, 2017, Article 8(5)) if “the use of the later trade mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark” (Directive (EU) 2436, 2015, Article 5(3)(a); Regulation (EU) 1001, 2017, Article 8(5)).

In *General Motors*, the CJEU defined reputation as a “knowledge threshold requirement” (*General Motors Corporation v. Yplon SA*, I-05421, 1999), more specifically “a certain degree of knowledge of the earlier trade mark among the public” (*General Motors Corporation v. Yplon SA*, I-05421, 1999). While the CJEU stated that a certain percentage of knowledge may not be set by the court, it made clear that the part of the public concerned should be significant (*General Motors Corporation v. Yplon SA*, I-05421, 1999). The CJEU indicated that “it is only where there is a sufficient degree of knowledge of that mark that the public, when confronted by the later trade mark, may possibly make an association between the two trade marks, even when used for non-similar products or services, and that the earlier trade mark may consequently be damaged” (*General Motors Corporation v. Yplon SA*, I-05421, 1999). The court clarified that the degree of recognition of the senior mark among the relevant public is one of the elements that determines the association between two trade marks or a trade mark and a sign (Fhima, 2011, p. 96).

The subsequent decisions of the CJEU however have further divided the analysis of the reputation requirement in two stages. After establishing that a trade mark is known by a significant part of the public, thus allowing the analysis of infringement to go forward, the reputation is re-assessed to determine whether it is the kind that may generate a link between the senior trade mark and the junior sign (*Aktieselskabet af 21v. OHIM*, ECLI:EU:T:2011:722, 2011; *Swatch AG v. OHIM*, ECLI:EU:T:2015:293, 2015, p. 293).⁵ Once the courts establish that the public is likely to associate the two trade marks because the reputation of the senior trade mark is strong enough, the same “strength of the reputation” benchmark is used to assess to what extent one of the dilution harms is likely to occur. In this sense, in *General Motors*, the court consecrated the famous expression that “the stronger the earlier mark’s distinctive character and reputation the easier it will be to accept that detriment has been caused to it” (*General Motors Corporation v. Yplon SA*, I-05421, 1999). Consequently, a third role played by the reputation requirement may be deduced from CJEU’s reasoning, namely that reputation is the element of the trade mark that could be impaired through prohibited dilutive acts (Fhima, 2011, p. 95). In correlating reputation with the dilution harms, the CJEU promoted a coherent interpretation of the role of the reputation requirement. This interpretation of the role of the reputation requirement meant that reputation could have been assessed in a qualitative way, depending on the “specific content of the ‘reputation’ connected with the protected mark” (Kur, 1992, p. 227).

However, to understand what the reputation of the trade mark consists of, it was necessary for the CJEU to lay down assessment criteria as the European dilution provisions did not offer any benchmarks for measuring reputation. To this effect, the Court stated that in assessing trade mark reputation, all “elements of the case” (*General Motors Corporation v. Yplon SA*, I-05421, 1999) need to be considered. Nevertheless, the following factors were stressed: “market share held by the trade mark, the intensity, geographical extent and duration of its use, the size of investment made by the undertaking in promoting it” (*General Motors Corporation v. Yplon SA*, I-05421, 1999). In addition, the subsequent case law of the Member States and the decisions of the European Intellectual Property Office (“EUIPO”) have brought to light other criteria such as: “the company’s turnover, unit sales, the actual degree of knowledge among the public” (Fhima, 2011, p. 55) or the value associated with the mark obtained through licensing, merchandising and sponsoring as detailed in the EUIPO Guidelines (EUIPO, 2017).

Even if the *General Motors* criteria have a guiding role and are not exhaustive, they seem to be most frequently used criteria in evaluating reputation (Fhima, 2011, p. 53). Considering the complex interaction between reputable marks, their audience, sales volumes or the degree of brand recognition, how should the *General Motors* criteria be applied to reflect the image and prestige of a brand as accurately as possible? What else counts when evaluating if a trade mark meets the reputation threshold? First, the image of the trade mark may be a powerful one (i.e., benefiting from a high degree of recognition) even in those cases when less consumers buy the respective good. This is specifically the case of luxury products in relation to which the brand owners try to “maintain low sales”

(Fhima, 2011, p. 53). While in this case the EUIPO Guidelines contain a caveat in the sense that a “moderate market share will not always be conclusive against reputation” (EUIPO, 2017), the trade mark owner will still be required to show that her goods have a certain market share. Instead, what is indeed accurate in for evaluating the brand image that is likely to be unfairly exploited (or tarnished as further explained below) is “the nature and scale of the promotional activities undertaken” (EUIPO, 2017) for the purposes of creating “brand image and enhance trade awareness among the public” (EUIPO, 2017). The EUIPO Guidelines recognize these qualitative factors which may be employed to determine the reputation of the trade mark. The Guidelines further explain that scale of the promotional activities may be proved “directly, by reference to the amount of promotional expenditure, or indirectly, by way of inference from the nature of the promotional strategy adopted by the opponent and the kind of medium used for advertising the mark” (EUIPO, 2017, p. 24).

Second, expensive promotional activities are not always successful. This was certainly not always the case in relation to one of Pepsi's £40 million ad campaign undertaken which faced a backlash from their millennial public, the advertisement's target audience, and decreased the popularity of the promoted drink (Marzilli, 2018). The advert portrays US celebrity, Kendall Jenner, joining a peace march and handing a can of Pepsi to a law enforcement officer as a sign of unity and understanding. Irrespective of Pepsi's intention, the advert was perceived as Pepsi attempting to free-ride on the popularity of the Black Lives Matter movement (a protest condemning police violence against black people in the United States (Black Lives Matter, 2017)). Pepsi's actions were severely criticized as “simplistic and inconsiderate” by Black Lives Matter activists, which not only caused Pepsi to the withdraw the commercial, but also triggered a decrease in “Pepsi's Purchase Consideration score with millennials down from 27% to 24% from early April to mid-July” (Marzilli, 2018).⁶

Third, from the analysis of the criteria used to measure reputation it seems that the trade mark holder is the one who is considered the “author” of the brand image and of the messages it conveys. This proposition has been confirmed by the CJEU in the *Sigla* case (*Sigla SA v. OHIM II-00711*, 2007). Although in *Sigla* the CJEU refrained from pointing out the “communication function of trade marks” which was later coined in *L'Oreal*, the court explained that “a mark also acts as a means of conveying other messages concerning, inter alia, [...] luxury, lifestyle, exclusivity, adventure, youth” (*Sigla SA v. OHIM II-00711*, 2007).

At the same time, the CJEU has made it clear that such messages endow the reputed trade mark with an inherent economic value that must be protected via dilution provisions (*Sigla SA v. OHIM II-00711*, 2007). Next, the court contended that in most cases “the reputation of a mark is the result of considerable effort and investment on the part of its proprietor” (*Sigla SA v. OHIM II-00711*, 2007). Nevertheless, this “corporate or managerial approach to brands” (D. S. Gangjee, 2013, p. 37), promoted by the CJEU seems to ignore other factors equally important in the process of successfully creating a specific image of the brand. For example, consumer movements seem to be growing stronger, contributing themselves to the creation of the brand's image regardless of the financial efforts or wishes of the brand owner. Hilton shows that over the past 30 years, a type of consumerism has developed, one “which is associated with ethical consumerism, green consumerism, and fair trade” (Hilton, 2012, p. 508). Additionally, consumers' contribution in developing a valuable image is prominent in the case of luxury brands too. In a 2010 study on how consumers of luxury brands “co-created a superior value” (Tynan et al., 2010, p. 1160) for luxury products, the authors concluded that “the constellation of individuals in these value-creating networks [...] includes unofficial and official brand communities, experts including the curator of a national museum, designers across a range of fields, symbols of popular culture (viz., an iconic 1960s fashion model, a renowned musician, a photographer, a graphic artist), as well as editors and journalists” (Tynan et al., 2010, p. 1156). What is even more interesting for the topic discussed in this section, is the fact that the findings of the study referred to above showed that “customers of Brand X were the most involved in creating events for themselves through enthusiasts' international, national and regional events and meetings” (Tynan et al., 2010, p. 1156). These unpaid and independent consumer actions that add value to a brand are not considered by the trade mark law narrative. This therefore invites to a careful application of the *General Motors* criteria and a deeper reflection on what kind of brands should have access to this type of protection. In the next sub-section, I will briefly discuss the three types of negative consequences that may affect the image of a trade mark.

2.3 | Damaging the reputation of the trade mark

Antidilution provisions protect trade marks with reputation against the taking of unfair advantages of the reputation or distinctiveness of the trade mark or detriment to the repute (tarnishment) or distinctiveness (blurring) of the trade mark with reputation. These are the three types of negative consequences, sometimes also called “harms” that owners of reputed trade marks may prohibit. In this article I will not focus on the content of reputation as part of the assessment of blurring. This is because anti-blurring provisions protect the distinctiveness of the mark and not necessarily the reputation of the mark in the sense of the image of the mark that conveys messages to the public “such as, for example, luxury, lifestyle, exclusivity, adventure, youth” (*Sigla SA v. OHIM II-00711*, 2007) which are the focal point of the article. Hence, I proceed with the analysis of tarnishment and free-riding, as both types of harm are mainly concerned with the image of the senior mark, rather than its distinctiveness.

In its landmark decision in *L’Oreal (L’Oreal S.A. v. Bellure N.V. and others*, 2009), the CJEU explained that the taking of unfair advantage of the trade mark’s distinctiveness or repute, also known as “free-riding” covers “cases where, by reason of a transfer of the image of the mark or of the characteristics which it projects to the goods identified by the identical or similar sign, there is clear exploitation on the coat-tails of the mark with a reputation” (*L’Oreal S.A. v. Bellure N.V. and others*, 2009). The Court maintained that this happens when third parties seek to benefit from the power of attraction, reputation and prestige of the trade mark in question but without “paying any financial compensation” (*L’Oreal S.A. v. Bellure N.V. and others*, 2009). At paragraph 49 of the decision in *L’Oreal* the CJEU explains that “the power of attraction, reputation and prestige” are the result of the “marketing effort expended by the proprietor of that mark to create and maintain the image of that mark” (*L’Oreal S.A. v. Bellure N.V. and others*, 2009). This wording leads to the conclusion that what it is intended to be protected is the image desired by the trade mark owner, regardless of how the respective mark is received by the public.

On the other hand, tarnishment or the degradation of the trade mark with reputation, occurs “when the goods or services for which the identical or similar sign is used by the third party may be perceived by the public in such a way that the trade mark’s power of attraction is reduced” (*L’Oreal S.A. v. Bellure N.V. and others*, 2009). The CJEU stated that “such detriment may arise in particular from the fact that the goods or services offered by the third party possess a characteristic or a quality which is likely to have a negative impact on the image of the mark” (*L’Oreal S.A. v. Bellure N.V. and others*, 2009). For tarnishing purposes, the reputation of the trade mark consists either of its image or its power of attraction. Thus, the reputation of the trade mark, the element of the trade mark which may be harmed by the junior use, embodies what the trade mark conveys to the public. The decision in *L’Oreal* is controversial and rightly criticized, especially for the elusive way in which free-riding was described by the Court (G. Gangjee & Burrell, 2010, p. 288). Nevertheless, CJEU’s recognition of the fact that trade marks represent a way of communicating with the public through advertising is a mere observation of how consumers engage with brands nowadays, as described in Section 2.1. As it was discussed in the previous section, branding strategies use advertising to convey messages to the public (Klein, 2005, p. 6), and the vessel by which they do so is usually the registered trade mark, whether it consists of—a verbal element or a logo. However, CJEU’s analysis with respect to how trade mark degradation occurs, hints to the idea that the public perception of the image of a brand is relevant.

The public perception of certain marks seems to be relevant for the assessment of dilution cases only when such perception could be different than the image portrayed by the trade mark owner. In other words, the senior user is not required *ab initio* to demonstrate what the public perception is with respect to the image of the trade mark. From this point of view, the law appears to operate with a legal presumption that the senior user has a “positive” perception. However, when it comes to assessing what it is happening to the mark when a junior user comes into the equation, then the public perception of the mark seems to matter. And even in these cases, the potentially “bad perception” triggered by certain junior users is grounded on logical deductions deriving for example from the inferior quality of the products of the junior user that can generate negative associations. In this context, we can ask ourselves if there are situations when the public perception of the brand may vary significantly from what the trade mark owner says about the brand? And if the answer is yes, then should we place more weight

on the public perception of the mark in the analysis of free-riding and tarnishment claims? I will try to answer this question, among other things, in the next section using the example of Burberry's branding campaigns and their results over time.

3 | CREATING BRITISHNESS OR SOMETHING ELSE?

3.1 | Some facts and figures about Burberry

Burberry was established in 1856 in Basingstoke, England by Thomas Burberry (Burberry, 2019). The first Burberry store was “selling men's outerwear” (Moore & Birtwistle, 2004, p. 412), with the stated intention to “protect people from the British weather” (Burberry, 2019). On February 15, 1987, Thomas Burberry, on behalf of T. Burberry and Sons successfully filed with the Patent Office in London, patent application no. 4065 for the “improved manufacture of drabbet cloth for gabardine fabrics” (Burberry & Unwin, 1897), “a fabric that was resistant to tearing; was weatherproof but was also breathable” (Moore & Birtwistle, 2004, p. 412). Burberry's monopoly over this new and innovative fabric made the company a frontrunner in the supply of endurance clothing. To this end, in 1901 Burberry was “commissioned to design new service uniforms for British officers” (Financial Times, 2002). Next, in 1903 the company equipped Norwegian explorer Roald Amundsen during the latter's crossing of the Northwest Passage (Weston, 2016, p. 101). Ten years later, Burberry dressed Sir Ernest Shackleton for his expedition to Antarctica (Weston, 2016, p. 101). The iconic Burberry coat made of the newly invented gabardine fabric ‘was adapted for the military's office coat for a War Office commission in 1914’ (Pike, 2011, p. 124) and acquired the name of “trench coat” following its associations with Burberry's supply of rain coats for the military during the First World War (Moore & Birtwistle, 2004, p. 412).

Next on Burberry's list of high-profile events involvement is the sponsorship of the 1937 “record-breaking flight from Croydon to Cape Town in an aeroplane called ‘The Burberry’” (Burberry, 2019). While Burberry's association with the events described above aimed at highlighting the quality and durability of Burberry's fabrics (Sijuwola, n.d.), at least to a certain extent, Burberry's later associations occurred in slightly different though equally popular contexts. In 1942 Burberry coats were worn by well-known actors Humphrey Bogart and Ingrid Bergman in the Academy Award movie *Casablanca* (Tokatli, 2012, p. 57) and then in 1961 by Audrey Hepburn in the famous film *Breakfast at Tiffany's* (*The Guardian*, 2017).

After being acquired by Great Universal Stores in 1955, Burberry adopted a different type of public engagement as its business model focused on expanding to other geographic markets (Sijuwola, n.d.). To this end it started to license its trade marks to its subsidiaries in Spain and Japan (Tokatli, 2012, p. 57). The number of Burberry trade mark registrations increased exponentially during 1960–1990, when 95 trade marks were registered by Burberry in the United Kingdom only.⁷ Despite this shift in its commercial strategy, Burberry's historic tendencies to have its name associated with topical events and popular figures did not phase out. In 1964 the British Women's Olympic team wore Burberry outfits for their publicized visit to Buckingham Palace (Weston, 2016, p. 101). In 1968, Burberry's photoshoot for magazine adverts took place at the recently inaugurated Hayward Gallery on London's Southbank (Weston, 2016, p. 118). It is submitted that “this particular venue helped the company to associate itself with an absolutely up-to-the-minute element of British culture—the contemporary visual art exhibition” (Weston, 2016, p. 118). Other efforts aimed at allowing Burberry to benefit from a positive image transfer included the hiring of Lord Lichfield, a cousin of Queen Elizabeth II, as the company's photographer and the use of Sherlock Holmes in one of their commercials (Weston, 2016, p. 118). Sadly however, these latest attempts to capitalize on the popularity of others were considered unsuccessful (Weston, 2016, p. 118).

The company's most notorious crisis in 1997 resulted in a decrease in profits from £62 million to £25 million (Moore & Birtwistle, 2004, p. 412). This downturn forced the company to undergo a significant transformation of its business model. The change started in the same year with the appointment of Rose Marie Bravo as the company's

CEO (Marketing, 2002, p. 17). Burberry's new management focused, on the one hand, on updating the company's brand image. In this sense, model icon Kate Moss became the focus of Burberry's advertising campaigns as it will be further detailed in the next sections, as opposed to the previous "fashion-conservative men" (Moore & Birtwistle, 2004, p. 414) centred advertising campaigns (Moore & Birtwistle, 2004, p. 414). In addition, Bravo decided to "introduce lower cost product lines into the mainstream collection" (Weston, 2016, p. 175) in an attempt to broaden the brand's customer base. Although initially the repositioning campaign had promising results (Moore & Birtwistle, 2004, p. 415), the strategy was considered to have "backfired". In 2003 the brand became associated with football hooligans (Kelbie, 2004) and the so called "chav" culture (Bothwell, 2005; Weston, 2016, p. 176). Furthermore, self-induced tarnishment and blurring (Pike, 2011, p. 120) contributed to the deterioration of the brand's perception, the Burberry trade marks being widely licenced, including for products inconsistent with the luxury appearance of the brand such as dog diapers (Rose, 2015).

The erosion of the brand's premium image led to a significant drop in sales for the British household name (Hall, 2004). This called again for a brand revitalization process that successfully began in 2006 when a new CEO was appointed (Gasparini, 2016; Kotter, 2013). This time, however, the branding strategy focused on integrating the historical heritage of the brand in its communication strategy and popularizing it through a digital agenda (Weston, 2016, p. 217; Weinman, 2015, p. 110). The results of the campaign spoke for themselves: in 2015, Burberry achieved the highest rating in its recent history in terms of brand value (O'Connell, 2019). Moreover, in the same year Burberry managed to reach "a 10-year track record of dramatic growth in revenues, profitability, and market capitalization, even after accounting for the costs of resurrecting" (Weinman, 2015, p. 114). At the date of writing this article, Burberry is the proud owner of 122 registered trade marks in the United Kingdom, 59 at the level of the EUIPO and 63 at the level of the USPTO.

After this brief overview of what I consider to be some of the most interesting events in Burberry's history, we shall now turn to a more detailed examination of Burberry's image. Thus, the following sub-sections discuss Burberry's advertising strategies as portrayed in the press adverts (both print and online) and the trends existing at that time in marketing and social communication in advertising. I have decided to focus only on this type of advertising as it is submitted that 'Burberry's preferred promotional media were newspapers and magazine advertisements, and in the late nineteenth and early twentieth century the company produced almost no "designed" packaging' (Weston, 2016, p. 101). The aim of this review is to investigate why consumers' engagement with this brand was different despite Burberry's attempt to keep up with the trends.

3.2 | The product manufacturing era

In the product manufacturing era beginning in the 1900s and ending approximately in the 1960s, at the macro level, companies' competitive advantages relied heavily on their "manufacturing strength" (Cooperstein et al., 2010). During this period, "the roles and functions of advertising" (Beard, 2016, p. 216) were still confined to selling "products directly by informing or in some cases educating buyers about how to live better" (Beard, 2016, p. 216). Until the 1930s, advertisers preferred "a product-focused descriptive rational approach due, in part, to embarrassment over the frequently dishonest 'bombast and ballyhoo,' circus style entertainment and patent medicine advertising of the nineteenth century" (Beard, 2016, p. 217) in their communication strategies. The analysis of the two ads in Figure 1 featured by Burberry in fashion magazines before 1910 shows that this company was also trying to emphasize in its commercial messages the superior qualities of Burberry products.

Under the slogan "Burberry for the moors," these ads depict women trying to protect themselves from the wind and rain. The commercial messages that accompany these images speak about the superior properties of the Burberry clothing which keeps them dry in case of rain and consequently keep the body temperature at a healthy level. Later, in the 1910s, in the context of Britain's involvement in the wars that took place in that decade, the fact that Burberry was providing gear for the British Army was at the forefront of Burberry's communication campaign.

1909 Ad Featured in Fashion Magazines

BURBERRY FOR THE MOORS.
Prepare for all Weathers
 It is easy to do so because **BURBERRY** adjusts its protective qualities to every kind of day—warm, dry, cold, windy, or wet.
BURBERRY Gowns and Top-Coats increase comfort and ensure health. The designs afford perfect liberty for active pursuits, and their light weight averts fatigue.
 Materials of **BURBERRY** are woven in the most perfect manner, and their beautiful artistic colours, and original patterns.
The Advertising Archives
BURBERRY FOR TRAVEL BY RAIL OR CAR
 Long journeys are made much more enjoyable when **BURBERRY** is an accompaniment, because of the snugness and luxury that it supplies.
 Draughts are excluded and the body kept at a healthful temperature; and this without cumbersome weight, or any distasteful of chafes.
"BURBERRY-PROOF FOR LADIES,"
 Superior and better than will be found on any other brand.
30 to 33, Haymarket, LONDON.
10, Boul. Malesherbes, PARIS.

THE TWELFTH
GOING NORTH, GO PREPARED!
THIS SUMMER HAS GIVEN WARNING WHAT TO EXPECT
 Take notice and thousands of **BURBERRY** coats are visible on the streets of the most frequented cities of the world. **BURBERRY'S** coats will not only see you safe, when general weather and health will be suffering from the effects of the weather.
 Thousands of **BURBERRY'S** for a double purpose—of being the best and that of making them the most useful and most comfortable for the winter.
The Advertising Archives
BURBERRY-PROOF FOR LADIES.
 Superior and better than will be found on any other brand.
EVERY GOWN BURBERRY-PROOF FOR LADIES.
BURBERRY-PROOF FOR LADIES.
THE BURBERRY
BURBERRYS
LONDON: 30 to 33, HAYMARKET.
PARIS: 10, BOULEVARD MALESHERBES.

Credit: Image Courtesy of The Advertising Archives

FIGURE 1 Credit: Image Courtesy of The Advertising Archives [Color figure can be viewed at wileyonlinelibrary.com]

From Every Front
 —from soldiers fighting in the desperate battles of France and Flanders; beneath the sweltering sun of Palestine and Mesopotamia; amongst the wind-swept Balkan mountains; and in the miasmatic depths of African jungle — comes the same consistent story of the perfect protection afforded by The
BURBERRY
 Made in **BURBERRY**—women's proofed cloth, which is five times as strong as any other fabric, and which is proofed against any wet that falls or wind that blows.
 Unlike coats loaded with rubber, oiled-silk or other artificial fabrics, **THE BURBERRY** is so airy and faultlessly self-ventilating, that it is as comfortable to wear in hot weather as in cold.
Officers Under Orders
 for France or the Near or Far East can obtain at **BURBERRY'S** Uniforms in variable materials, as well as every detail of dress and equipment.
READY-TO-PUT-ON
 Pattern 14 is assumed, heavy garments made in no less than 35 different sizes. Complete kit to measure in from 2 to 4 days.
BURBERRY'S HAYMARKET LONDON
 8 & 10 Boul. Malesherbes PARIS; also Agents
 SERVICE WEATHERPROOFS, CLEAN AND REPROOF GOWNS, BATHING, TRAVELLING, HOLIDAY AND WINTER TRUNK WEARS. **FREE OF CHARGE.**
 Illustrated Naval or Military Catalogue Post Free.

Credit: Image Courtesy of The Advertising Archives

THE 1918 BURBERRY
A New Service Weatherproof
 As supplied to His Majesty the King. Combines to perfection the most distinctive qualities of a Burberry Safeguard—double protection over vital areas, resistance to wet and cold, light-weight, self-ventilation, and durability.
 Collar can be worn open, closed to the throat, or turned up.
 The 1918 Burberry is made in proofed material which need not be rubber, oiled-silk or other artificial ventilating agents, and so to be efficiency.
 Whilst allowing free circulation of air through the texture, it offers reliable security against weather.
Officers' Complete Kit in 2 to 4 Days, or Ready to Put On.
 During the War **BURBERRY'S CLEAN and RE-PROOF** Officers' Burberry Weatherproofs **FREE OF CHARGE.**
BURBERRY'S HAYMARKET LONDON
 Boulevard Malesherbes, PARIS; also Provincial Agents

Credit: Image Courtesy of The Advertising Archives

FIGURE 2 Credit: Image Courtesy of The Advertising Archives [Color figure can be viewed at wileyonlinelibrary.com]

The silhouette of a military man appears on an advertisement featured in a 1910 magazine accompanied by a message describing Burberry's reliability in relation to clothing for war, irrespective of the climate (Figure 2, left). Nonetheless, Burberry has not positioned itself to the public only as Army's preferred supplier. In a 1918 ad under the slogan 'The 1918 Burberry. The New Weatherproof Service', Burberry promises to its customers that the 1918 Burberry coat can be made available to them "as supplied to His Majesty the King" (Figure 2, right).

Hence, during that difficult period, although Burberry did not abandon its strategy related to selling the superior quality of their products, the company also tried to capitalize on topical events and situations, probably to benefit from a transfer of popularity. According to Weston's findings in her thesis examining how Burberry metamorphosed from a "semi-rural craft-based" (Weston, 2016, p. 6) business into a "successful, global luxury fashion brand in the 21st Century" (Weston, 2016, p. 7), during this period in which Burberry's apparently benefited from positive associations, the company has entered the Government's spotlight for exploiting women in illegal working conditions at its factories (Weston, 2016, p. 107). At that time, the public disclosure of these practices may not have necessarily had a significant impact on the brand's image and may not have had any effect on the purchase consideration among consumers. But nowadays, when society is "marked by the popularity of the boycott" (Hilton, 2012, p. 514), such information would have the potential to contribute to the deterioration of the image of such a brand, irrespective of how luxurious the undertaking is. The advertisements featured in magazines in the 1920s continue to spread the company's initial message regarding the weatherproof and weightless qualities of the Burberry clothing as per Figure 3.

But many of the ads from the 1920s depicted in Figure 4 also portray groups of people having a great time skiing, hinting to the idea that Burberry provided adequate clothing for winter and field sports thus endorsing this type of lifestyle. Later, in its ads during the 1930s, the frequency of the words "quality," "style" and "distinction" distinguish themselves (Figure 5, upper row). While still portraying elegant figures in its ads in the 1940s, Burberry seems to position itself as the efficient choice for consumers on a budget (Figure 5, lower row).

Beginning with the 1950s, several changes occurred in the way advertising practices are applied. Leiss, Kline and Jhally in their book on social communication in advertising (Leiss et al., 1997, p. 328) identified the "evolution of cultural frames for goods in relation to the development of media, marketing and advertising" (Leiss et al., 1997, p. 328) by analysing historical magazine advertising and advertising practices during 1890–1980. According to these authors, the 1950s were characterized by behaviourist marketing strategies and personalization in advertising strategies. Moreover, the topics covered in commercials during this decade include to "glamor, romance, sensuality, black magic, self-transformation" (Leiss et al., 1997, p. 329). Burberry's magazine ads during this period do not seem to reflect any of these themes that apparently were popular in the 1950. On the contrary, on most of its ads feature traditional couples and sometimes even the motto "A Family Tradition" as depicted in Figure 6.



FIGURE 3 Credit: Image Courtesy of The Advertising Archives [Color figure can be viewed at wileyonlinelibrary.com]



FIGURE 4 Credit: Image Courtesy of The Advertising Archives [Color figure can be viewed at wileyonlinelibrary.com]

3.3 | The product distribution era

During the 1960s until 1990, “global connections and transportation systems make distribution key” (Grant, 2011) in terms of competitive advantages. At the same time, this period is marked by the establishment of a consumer culture in most industrialized countries, including the United Kingdom (Beard, 2016, p. 218). Trentmann explains that this was possible because the phenomenon of consumption ‘in the 1970–1980 appeared in a new positive light. It was hailed as a source of creativity and meaning central to social relations and identity formation’ (Trentmann, 2012, p. 2). According to the sociologists of the time, this new mode of consumption during the 1970s also gave rise to the phenomenon of “cultural class” (Leiss et al., 1997, p. 304), a “component group within a modern society that has a shared pattern of consumption” (Leiss et al., 1997, p. 304). Hence, starting with the 1960s the transition from a behaviourist approach to marketing to a market segmentation based one began (Leiss et al., 1997, p. 304; Beard, 2016, p. 218). Market segmentation is “the process of breaking down the total market for a product or service into distinct sub-groups” (Reynolds & Lancaster, 2013). This is generally necessary because in this way “the company is best able to serve in such a way that pressure from competition is minimized” (Reynolds & Lancaster, 2013). From the perspective of the advertising strategies, during the 1960s until 1990, they were focused on lifestyle, and the main themes addressed in advertisements were “activity (person/thing) leisure, health, groups, friendship” (Leiss et al., 1997, p. 329).

Burberry's intention to persuade the public to become part of a particular group, namely the group that adopts the “Burberry look,” is rather conspicuous in its advertisements in fashion magazines between 1960 and 1980 as depicted in Figure 7 and 8.

In this sense, the tag line “The Burberry Look” is pervasively accompanying the images portrayed in these magazine ads. However, according to Weston, these images “seemed old fashioned, often depicting a gentle and cozy middle-aged, middle-class, semi-rural life” (Weston, 2016, p. 118). At first glance, it seemed that Burberry was doing things by the book, adapting its communication strategy to the trends in advertising that suggested that commercial messages portrayed in advertisements must induce the idea of a certain lifestyle to which consumers to aspire and belong. However, the lifestyle that Burberry was proposing was not necessarily appealing to consumers. In his work on branding and origination, Pike points out that Burberry's image of that period was perceived as dying, lacking in innovation and lacking in style (Pike, 2011, p. 120). Burberry's image problems did not stop



FIGURE 5 Credit: Image Courtesy of The Advertising Archives [Color figure can be viewed at wileyonlinelibrary.com]

there: since the 1980s, excessive licensing of the brand in Asia and Europe (including for coasters, whiskey and umbrellas), although apparently bringing in sales, has diluted the “brand’s meaning and value” (Pike, 2011, p. 120). Thus, the end of the product distribution era caught the Burberry brand in a “relative decline” (Pike, 2011, p. 130), one in which it had lost its component of “luxury exclusivity and premium pricing” (Pike, 2011, p. 123).

3.4 | The information era

During the 1990s until the 2010s, having control over information flows was regarded as a company’s main competitive advantage (Grant, 2011). In the early 1990s, Burberry was still using in its ads the already 30 years old “The Burberry Look” tag line.

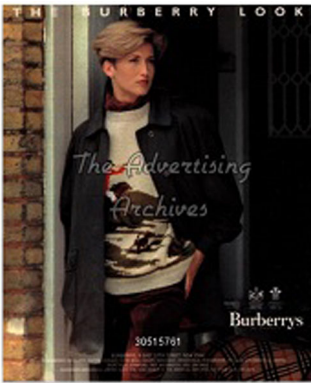


FIGURE 6 Credit: Image Courtesy of The Advertising Archives [Color figure can be viewed at wileyonlinelibrary.com]

By the end of the 1990s, however, and during the 2000s, with Bravo's arrival as Burberry's CEO (Weston, 2016, p. 123), model Kate Moss started to dominate the company's ads campaigns, often photographed among groups of young and uninhibited people (Figure 9). In one ad, Kate Moss poses in a bathing suit made of the famous Burberry check, thus breaking the pattern of a conservative image. Bravo's marketing strategy considered, among other things, the combination of novelty elements with those aspects that made the Burberry brand a symbol of Britishness (i.e., "black taxi or red telephone box" (Pike, 2011, p. 123). The new image of the brand conveyed through the advertisements in fashion magazines, jointly with other measures of branding such as "brand association and placement among global celebrity" (Pike, 2011, p. 123) and marketing have been successful in creating a revitalized and aspirational image of the brand (Pike, 2011, p. 123).



FIGURE 7 Credit: Image Courtesy of The Advertising Archives [Color figure can be viewed at wileyonlinelibrary.com]



Credit: Image Courtesy of The Advertising Archives

FIGURE 8 Credit: Image Courtesy of The Advertising Archives [Color figure can be viewed at wileyonlinelibrary.com]

The joy did not last long because in 2004 the image of Burberry seemed to temporarily escape the control of the company. This happened because football hooligans adopted this style of clothing that was perceived as higher class and expensive for the purpose of “avoidance of police attention” (Weston, 2016, p. 188). Thus, a connection “between the brand and incidents of football hooliganism” (Weston, 2016, p. 189) was created. However, the scepticism related to Burberry clothing was not just a change of perception among the population. A network of bars some of which located in Leicester had announced that people wearing Burberry clothes shall be banned from entering their premises. Figure 10 depicts one such message.

It all culminated with the statement that “many bar owners in Scotland felt that Burberry has become the badge of thuggery” (Weston, 2016, p. 189). Weston analysed this phenomenon in depth, investigating the special police forums at the time of this conflict. In this regard, Weston points out that “the link between Burberry and hooliganism persisted, as these posts on the Police Specials Forum confirm” (Weston, 2016, p. 189). One of the participants in this forum quoted by Weston indicates that hooligans could be easily be identified among others as a result of wearing Burberry caps.

This is a very eloquent example to show that despite a luxury and refinement image that the owner of a brand promotes in her marketing strategy, and especially in her advertising campaigns, consumers may sometimes counter such desired image. At the same time, this example should give us something to think about when we are



Credit: Image Courtesy of The Advertising Archives



Credit: Image Courtesy of The Advertising Archives



Credit: Image Courtesy of The Advertising Archives

FIGURE 9 Credit: Image Courtesy of The Advertising Archives [Color figure can be viewed at wileyonlinelibrary.com]

FIGURE 10 Credit: Image Courtesy of The Advertising Archives [Color figure can be viewed at wileyonlinelibrary.com]



*Snobs' club, Birmingham, 2004.
Image courtesy of William Fallows on Flickr*

faced with the question of determining the image of a brand that is tarnished or unfairly taken advantage of. Indeed, it is hard to believe that in a context similar to the one presented above a new market entrant would like to be associated with a brand tarnished by a category of consumers with a bad reputation. What is however interesting is that this conflict between what Burberry wanted to communicate through its brand and what Burberry actually meant for UK consumers has led to a drop in demand for Burberry products, particularly in central London (Weston, 2016, p. 191). Thus, consumers' perception of the brand had a direct effect on the “economic behaviour of other consumers”. This example should therefore be a convincing argument in support of the idea that when a brand's reputation needs to be proven, it is not enough for the person claiming tarnishment or free-riding to prove only how it has positioned her brand. It is even more relevant to see how the brand was received and perceived by the public. On the other hand, this example seems to confirm the assertion that, mainly at that time, those who lost controlled over the communication channels suffered negative consequences.

3.5 | The customers era

‘It is a time where profitability is a result of customer happiness. It is an age where the customers are the CEOs’ is the statement made in 2016 by the brand director of the largest supermarket chain in Singapore (Lim, 2016). It appears that during this “era” which allegedly began in 2010 and continues today, the competitive advantage of a company is given by the undertaking's success in engaging with its customers (Grant, 2011). The communication between companies and their customers has been bolstered by the World Wide Web where “emerging social networks offered the chance not just to advertise to consumers, but also to converse with them” (Tungate, 2013, p. 201). Digital platforms such as Facebook, Twitter, Instagram, Google, and so forth not only connect consumers with the brand, but offer the brand the opportunity to obtain “addressability at scale” (Dempster & Lee, 2015, p. 3), considered in reality the real competitive advantage that a company can create nowadays (Dempster & Lee, 2015, p. 3). This happens through “the application of data and analytics to the digital audience platform marketplace that

is now at a massive scale” (Dempster & Lee, 2015, p. 3). Nowadays Burberry is considered a “heavy user of analytics to understand shifts in consumer preferences and behavior, such as changing product or color preferences, items bought together, or growth in online purchasing” (Weinman, 2015, p. 106).

In its advertising campaigns, Burberry continued its tradition of being associated with the “it” women and men as illustrated in Figures 11 and 12. In 2010 they managed to co-opt Emma Watson, the lead female actor in the Harry Potter cult series, and in 2012 the then British rising stars at that time Cara Delevingne and Eddie Redmayne (Figure 11).

Next, Romeo Beckham was featured in 2013 (Figure 12, left) in their ad campaigns targeting a younger but yet “sophisticated” audience. The years 2014–2015 were marked by a reunion of the past with the present: 1990s icon model Naomi Campbell (Figure 12, middle) is brought back to the spotlight by Burberry. The same comeback is enjoyed by Kate Moss, who appears alongside Cara Delevingne, promoting Burberry’s perfume called “My Burberry” (Figure 12, third).

Nonetheless, Burberry did not give up on positioning itself as a conservative and rather traditional brand (Figure 13 showing an opulent dinner party). Thus, among the various ads featured during 2010 and 2019, Burberry continues to promote a somewhat aristocratic image of the brand.

In contrast however to the other periods analysed above, in which we can observe a certain pattern regarding the dominant aspects in the advertising campaigns of the Burberry brand, the advertisements from 2010 to date do not focus on a single segment of the population (i.e., a certain income category, a certain age category, a certain lifestyle).

Without undermining Burberry’s investments in creating and maintaining a luxurious image, the marketing literature highlighted Burberry’s craftiness in harvesting consumers’ contribution through social media. Weinman in his book on market leadership describes Burberry as “extremely effective in leveraging popular social platforms, not just maintaining a presence there but being on the cutting edge of innovation in partnership with them” (Weinman, 2015, p. 107). In this sense, in 2015 it was reported that Burberry had “more than 30M fans across these various sites and platforms” (Weinman, 2015, p. 107). The cherry on top however was the statement of Angela Ahrendts, Burberry’s former CEO from 2006 to 2014, who in an interview about the business model promoted by Burberry acknowledges that Burberry managed to build a “social enterprise” (Ahrendts, 2012).

Burberry’s success in recreating a positive luxury image in the period after the hooligans scandal was recognized by the EUIPO too, in an opposition settled in 2016 (*Burberry Limited v Hillsun International Industrial Co. Ltd Opposition*, no B 2 506 098, 2016). In this case, Burberry filed an opposition against the registration of a trade mark similar to the Prorsum knight for goods in class 12, respectively “Cars; motor cars; vehicles for locomotion by land, air, water or rail; motorcycles; and so forth”. Among others, Burberry claimed that the applicant sought to gain unfair advantages from the reputation of the Burberry brand. Burberry’s evidence in support of the reputation requirement included the following: ‘Brand Finance ranking mentioning Burberry among top 50 “Best Brands of British Origin” between 2011

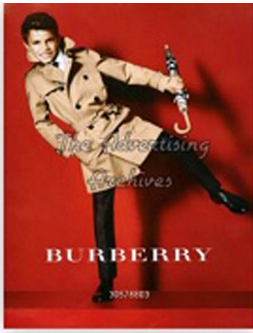


Credit: Image Courtesy of The Advertising Archives



Credit: Image Courtesy of The Advertising Archives

FIGURE 11 Credit: Image Courtesy of The Advertising Archives [Color figure can be viewed at wileyonlinelibrary.com]



Credit: Image Courtesy of The Advertising Archives



Image source:
<https://models.com/work/burberry-my-burberry-fragrance-2016>

FIGURE 12 Credit: Image Courtesy of The Advertising Archives [Color figure can be viewed at wileyonlinelibrary.com]



BURBERRY

Credit: Image Courtesy of The Advertising Archives



BURBERRY

Credit: Image Courtesy of The Advertising Archives

FIGURE 13 Credit: Image Courtesy of The Advertising Archives [Color figure can be viewed at wileyonlinelibrary.com]

and 2014' (*Burberry Limited v Hillsun International Industrial Co. Ltd Opposition*, no B 2 506 098, 2016) and a report called "Deloitte Global Powers of Luxury Goods" from 2014 and 2015 with Burberry being ranked among top luxury brands (*Burberry Limited v Hillsun International Industrial Co. Ltd Opposition*, no B 2 506 098, 2016). EUIPO's examiners in charge with settling this opposition concluded that "it transpires from the evidence that the opponent's trade mark enjoys a special image of luxury and genuine Britishness" (*Burberry Limited v Hillsun International Industrial Co. Ltd Opposition*, no B 2 506 098, 2016). No evidence of the public perception of the brand was needed in this case as the image of the brand and the brand rankings spoke for themselves.

4 | FINAL REFLECTIONS

Without in any way attempting to minimize Burberry's own efforts in creating a strong brand, we cannot help but notice that throughout its history, Burberry's endeavours to stay contemporary, rode, to a certain extent, on the coat-tails of popular people or events. And its efforts were, on balance, successful. Nonetheless, even in the case of a strong brand such as Burberry in which its luxurious and exclusivist image were the jewels in Burberry's crown, it has been proven that sometimes the image of the brand can get out of the control of the brand owner. In the last decade, Burberry engaged in a new form of coat-tail ridding, namely "leveraging popular social platforms" (Weinman, 2015, p. 107). In this context, the question that one asks herself is how much of the success of the brand is owed to the actual effort of the trade mark owner? How much is owed to the immaterial labour of consumers?

Unfortunately, these questions have not been fully answered by this article. However, I hope that the analysis above managed to provide a concrete example that would dismantle some of the assumptions underlying the justifications for the protection against dilution. The theory according to which the image of a brand is the one that the trade mark holder wants, was closer to reality until the early 1990s. The advent of the Internet facilitated interactions between consumer communities among other things, which made the brand image to escape the control of the brand owner. As illustrated by the 2004 hooligan scandal, the public perception of a brand, irrespective of how "respectable" the brand is and the brand owner's efforts to control it, may still be different than what the brand owner wishes. In this context, it would have been interesting to see the outcome of the opposition discussed above if this was settled in 2004–2005, as well as what evidence would have been needed to prove the brand image that allegedly risked of being unfairly exploited or tarnished.

From a normative perspective, the explanation according to which protection against dilution is given to the brand owner to reward her for her efforts in creating a successful image through advertising should be treated with scepticism or at least not taken for granted. The financial efforts of the trade mark owner in building a strong brand by generating brand awareness (letting people know about the brand) and then by communicating the qualities of the products sold under that brand were indeed significant in the beginning of the 20th century. During those times, because the mass media were limited (i.e., newspapers, posters, etc.), such financial efforts were necessary and made a difference. Subsequently, the Internet allowed the process to be decentralized, causing many of the tasks that traditionally belonged to the brand owner to be delegated, willingly or not, to consumers. Even more so in a society where companies like Burberry rely heavily on consumer data harvesting to create and disseminate a positive brand image.

And then what is the practical purpose of the above analysis? What negative consequences could occur if the antidilution provisions are still applied based on the same principles and taking into account only the image of the brand as depicted by the brand owner? A negative consequence that one can think about is the fact that the provisions against dilution are applied without too much doubt in the case of established brands. This may lead to the temporary creation of an unjustified barrier to entry into the market. I say temporary, because the party who was unsuccessful in registering a mark similar or identical to a reputed trade mark can still enter the market under a new trade mark. However, the party who was unsuccessful will have to bear some additional costs with the

opposition and in relation to the creation and promotion of that new trade mark. Such “punishment” however seems unjustified when the said party has nothing to gain from the brand image of the senior user.

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ENDNOTES

¹The Court of Justice of the European Union adopts this explanation in most of its decisions interpreting dilution provisions for the past 12 years.

²Weston argues that “although Burberry positions itself within the luxury market, its meaning remains mobile, which is simultaneously precarious, contradictory and paradoxical” (Weston, 2016, p. 7).

³According to Hunt, the definition of “marketing” is considered to have evolved over time. In this paper I will refer to marketing as “the performance of business activities that direct the flow of goods and services from producer to user” (Hunt, 1976, p. 17).

⁴As Klein correctly points out, advertising is only one of the various tools by which branding is done (Klein, 2005, p. 7).

⁵The same practice is adopted by examination offices as well. See for a recent decision issued by the United Kingdom Intellectual Property Office *In the Matter of Application no. 3229347 by Tasty Snacks Ltd and of Opposition Thereto Under no. 410529 by Cosmetic Warriors Limited*, (2018), p. 7.

⁶The purchase consideration is a metric that indicates consumers’ buying preferences. For the purposes of determining Pepsi’s purchase consideration, adults in the United States aged 18–34 were asked the following question “When you are in the market next to purchase beverages from which of the following brands would you consider purchasing?” (Marzilli, 2018).

⁷According to EUIPO’s data base, Burberry had 252 trade marks registrations in the United Kingdom during July 23, 1909 and October 7, 2019.

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