The Relationship between Intellectual Property Rights and the Quasi–Proprietary Rights Protected by Unfair Competition Law – Perspectives from German, European, and Japanese Law

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Abstract

The confusing relationship between the law of intellectual property rights and the law of unfair competition has been a contentious one. The resulting controversy gives rise to a disagreement between intellectual property rights and the quasi-proprietary rights protected by the law of unfair competition in civil law countries. Under Anglo-American law, the claims framed upon these two kinds of rights can be filed concurrently or alternatively because the infringement of intellectual property rights is also a type of commercial wrong. In civil countries, intellectual property rights are personal properties or intangible movables, and thus can be traded in commerce or assigned in law. The reputation, interests or value in exchange protected by the law of unfair competition, however, is only an interest protected by law. It cannot be assigned or otherwise transferred. Consequently, some civil law courts have held that if there is no claim that can be framed upon intellectual property right infringement, then there is also no unfair competition claim that can be filed in the same case. Some commentators, nevertheless, have argued differently. This article relies on German and Japanese law to explore this tricky relationship.

Key words: the principle of free competition; the principle of free copying; the doctrine of misappropriation; competitive characteristics; acquired-distinctiveness signs; famous signs; passing off; intellectual property rights; industrial design; unfair competition.

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