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# Intellectual Property Philosophies and Brand Strategies: Converging Theories and Integrative Approaches\*

## Abstract

This research extends the examination of intellectual property (IP) law by delving into its intricate relationship with branding in the contemporary marketplace. Building on foundational philosophical theories such as John Locke's Labour Theory, Hegelian Personality Theory, and Utilitarianism, the study explores how these theories influence both the legal frameworks and strategic dimensions of branding. Branding is positioned as a vital form of intellectual capital that transcends trademarks and logos, embodying corporate identities and fostering emotional connections with consumers. The research investigates the alignment of IP philosophies with branding objectives, highlighting the role of IP law in protecting and promoting brand identities.

Furthermore, the study examines the Economic Theory of IP, emphasizing its impact on innovation and creativity in brand development, alongside the Theory of Social Good, which considers brands' contributions to societal welfare and cultural richness. The Democratic Theory and Theory of Justice are also explored to understand brand equity and equitable access to cultural symbols.

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Through real-world case studies, the research demonstrates the practical linkages of IP philosophies on branding strategies, illustrating the balance between creator rights and the public interest, as well as the ethical considerations in brand protection and development. This exploration reveals the dynamic interplay between legal and philosophical frameworks, offering a nuanced understanding of how IP law and branding collectively shape the global marketplace and cultural landscape.

**KEYWORDS:** Intellectual Property Law, Philosophical Foundations, Labour Theory, Utilitarianism, Personality Theory, Economic Incentives, Cultural Diversity, Legal Frameworks, Branding, Brand Strategy

## 1 | Introduction

In this extended exploration, our research navigates the complex and multifaceted relationship between intellectual property rights (IPRs) and the dynamic world of branding. While our initial journey took us through the philosophical underpinnings of IPRs<sup>[1]</sup>, from John Locke's Labour Theory, through the Hegelian Personality Theory to Cultural Theory, this sequel widens the lens to encompass the strategic and philosophical dimensions of branding<sup>[2]</sup>. Here, we delve into how these foundational intellectual property (IP) philosophies not only influence the legal framework but also resonate within the branding strategies that shape consumer perceptions, corporate identities, and the marketplace at large.

This research positions branding as a form of intellectual capital that goes beyond mere trademarks and logos to embody the essence of a company's identity and the emotional connections it fosters with its consumers. We explore the synergy between IP's philosophical tenets – such as Locke's emphasis on the fruits of one's labor and Hegel's focus on personal expression – and branding's aims to encapsulate and communicate a company's values, story, and innovations. The intersection of IPRs and branding

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<sup>1</sup> This paper is a continuation of our previous work: Marlena Jankowska, Mirosław Pawełczyk, "Intellectual Property Law: Philosophical Foundations, Theoretical Frameworks, and Cross-Pollination" *Prawo i Więź*, No. 4 (2023): 549-587.

<sup>2</sup> Michele Boldrin, David Levine, „The Case Against Intellectual Property” *American Economic Review*, No. 2 (2002): 209-212.

emerges as a critical arena for understanding how legal rights and philosophical ideas underpin the creation and protection of brand identities.

We will examine the role of the Economic Theory of IP in supporting the commercial aspects of branding, including how IPRs can incentivize innovation and creativity in brand development. The Theory of Social Good will also be revisited in the context of branding, probing how brands can contribute to societal welfare and cultural richness. Furthermore, the Democratic Theory and the Theory of Justice offer lenses through which to view brand equity and access to cultural symbols in a more equitable manner.

Through real-world case studies, this research illuminates the practical implications of IP philosophies for branding strategies, from dispute resolutions that highlight the moral rights of creators to branding campaigns that navigate the fine line between inspiration and infringement. By bridging the gap between intellectual property law and branding, this sequel seeks to uncover deeper insights into how legal and philosophical frameworks shape not only the protection of creative works but also the very essence of how brands are perceived and experienced in the global marketplace.

## 2 | Foundations and frameworks: Understanding intellectual property through diverse theories – a glimpse at the core IP theories

The philosophical foundations of IP are based on several key theories, which can generally be categorized as follows<sup>[3]</sup>:

- a. **Lockean Labour Theory:** John Locke's theory posits that individuals possess a natural right to own property that originates from their labor. Applied to IP, this theory advocates that creators inherently have the right to control and benefit from their creations, as these works are a product of their intellectual effort<sup>[4]</sup>.

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<sup>3</sup> Jankowska, Pawełczyk, „Intellectual”, 549-587.

<sup>4</sup> Adam D. Moore, „A Lockean Theory of Intellectual Property Revisited” *San Diego Law Review*, 49 (2012): 1069; Ken Shao, „From Lockean Theory to Intellectual Property: Marriage by Mistake and its Incompatibility with Knowledge, Creativity

- b. Utilitarianism: Influenced significantly by Jeremy Bentham and John Stuart Mill, this perspective asserts that laws, including IPRs, should aim to maximize overall happiness or utility<sup>[5]</sup>. In the realm of intellectual property, this implies establishing a system that promotes innovation and creativity for the collective benefit, while also ensuring public access to the advantages of such creations<sup>[6]</sup>.
- c. Personality Theory (Hegelian Perspective): Rooted in the ideas of Georg Wilhelm Friedrich Hegel, this theory argues that individuals have a moral right to control the external representations of their personality, including their creative works. Consequently, IPRs are seen as an extension of an individual's personality and identity<sup>[7]</sup>.
- d. Economic Theory: This approach considers IP as essential to fostering innovation and creativity. By providing temporary monopolies, such as patents and copyrights, it argues that creators are motivated

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and Dissemination” *Hong Kong Law Journal*, 39 (2009): 401; Adam Mossoff, „Saving Locke from Marx: The Labor Theory of Value in Intellectual Property Theory” *Social Philosophy and Policy*, 2 (2012): 283-317.

<sup>5</sup> Estelle Derclaye, Tim Taylor, *Happy IP: Replacing the Law and Economics Justification for Intellectual Property Rights with a Well-Being Approach*, 2015, papers.ssrn.com.

<sup>6</sup> Patrick Croskery, „Institutional Utilitarianism and Intellectual Property” *Chicago-Kent Law Review*, 69 (1992): 631; Giovanni Tamburrini, Sergey Butakov, „The Philosophy Behind Fair Use: Another Step Towards Utilitarianism” *Journal of International Commercial Law and Technology*, No. 3 (2014): 190; Adam D. Moore, „Personality-Based, Rule-Utilitarian, and Lockean Justifications of Intellectual Property”, [in:] *The Handbook of Information and Computer Ethics*, ed. Kenneth Einar Himma, Herman T. Tavani (John Wiley & Sons: Hoboken, 2008), 105; Elizabeth L. Rosenblatt, „Intellectual Property's Negative Space: Beyond the Utilitarian” *Florida State University Law Review*, 40 (2012): 441.

<sup>7</sup> Kanu Priya, „Intellectual Property and Hegelian Justification” *National University of Juridical Sciences Law Review*, 1 (2008): 359; Justin Hughes, „The personality interest of artists and inventors in intellectual property” *Cardozo Arts & Entertainment Law Journal*, 16 (1998): 81; Jeanne L. Schroeder, „Unnatural rights: Hegel and intellectual property” *University of Miami Law Review*, 60 (2005): 453; Moore, „Personality-Based”; William W. Fisher, „Theories of Intellectual Property”, [in:] *New Essays in the Legal and Political Theory of Property*, ed. Stephen Munzer (Cambridge, UK: Cambridge University Press, 2001). <https://dash.harvard.edu/bitstream/handle/1/37373274/iptheory.pdf?sequence=1>; David Vaver, „Does intellectual property have personality?” *Rights of Personality in Scots law: A Comparative Perspective*, 2009, 403; Radu Uszkai, „Intellectual Property has no Personality” *Annals of the University of Bucharest. Philosophy Series*, 2 (2017): 181-205; Cheng-chi Chang, „The Clash of Theories: Semiotic Democracy and Personality Theory in Intellectual Property Law” *Law & World*, 26 (2023): 14.

to produce new works, which in turn benefits society through technological progress and cultural development<sup>[8]</sup>.

- e. **Democratic Theory:** This theory highlights the importance of IP in sustaining a democratic society. It contends that the free exchange of ideas and information is crucial to democracy, and that IPRs should strike a balance between protecting creators' rights and ensuring public access to information and cultural works<sup>[9]</sup>.
- f. **Theory of Social Good:** This theory highlights the societal benefits and ethical considerations involved in the creation and dissemination of knowledge. It supports IPRs that ensure wide public access to knowledge, balance the rights of creators with public interests, and prioritize innovation for the benefit of society. This perspective aligns closely with the idea that IP should serve the common good and act as a tool for societal advancement and ethical progress<sup>[10]</sup>.
- g. **Theory of Justice:** This theory, notably articulated by philosophers such as John Rawls, emphasizes fairness and equity in the distribution of rights and resources. Applied to intellectual property, the theory of justice aims to ensure that IPRs are equitable and do not disproportionately benefit certain individuals or groups. It seeks

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<sup>8</sup> Joseph E. Stiglitz, „Economic foundations of intellectual property rights” *Duke Law Journal*, 57 (2007): 1693; Bart Verspagen, „Intellectual property rights in the world economy”, [in:] *Economics, law and intellectual property: seeking strategies for research and teaching in a developing field* (Boston, MA: Springer US, 2003), 489-518; Christopher May, *The global political economy of intellectual property rights: The new enclosures* (London: Routledge, 2015); Livia Ilie, „Intellectual property rights: an economic approach” *Procedia Economics and Finance*, 16 (2014): 548-552.

<sup>9</sup> Oren Bracha, Talha Syed, „Beyond efficiency: Consequence-sensitive theories of copyright” *Berkeley Technology Law Journal*, 29 (2014): 229; David A. Snyder, „Two Problems with the Value of Participation in Democratic Theory and Copyright” *Texas Law Review*, 89 (2010): 1019; Rosemary J. Coombe, „Objects of property and subjects of politics: Intellectual property laws and democratic dialogue” *Texas Law Review*, 69 (1990): 1853; Spencer McKay, *Democratic theory and the commons: conceptualizing the relationship between deliberation, publics, and the internet* (Diss. University of British Columbia, 2013); Yoonmo Sang, „Revisiting Copyright Theories: Democratic Culture and the Resale of Digital Goods” *Communication Theory*, 3 (2019): 277-296; Chang, „The Clash of Theories”.

<sup>10</sup> Lateef Mtima, „IP Social Justice Theory: Access, Inclusion, and Empowerment” *Gonzaga Law Review*, 55 (2019): 401; Irina Heim, „The Protection of IP” *Intellectual Property Management: Interdisciplinary Knowledge for Business Decision-Making* (2023): 37-52; Christophe Geiger, „Can IP Rights Be Freely Reformed, Limited or Repealed, or Are There Restrictions Resulting from Constitutional Theory and Fundamental Rights?” *Jotwell: Journal of Things We Like* (2021): 1.

to strike a balance where creators are appropriately rewarded for their contributions, while ensuring that society at large favours from access to knowledge and cultural works<sup>[11]</sup>.

- h.** Cultural Theory: This perspective examines IP in terms of cultural impact and diversity. It acknowledges that intellectual creations are more than economic assets; they are essential elements of cultural expression and identity. Cultural theory advocates the protection of cultural heritage, traditional knowledge, and folklore from exploitation. It also stresses the importance of preserving a diverse cultural landscape by safeguarding and encouraging various voices and forms of expression. This theory often intersects with discussions on the effects of globalization on local cultures and the need to protect cultural diversity from dominant cultural influences<sup>[12]</sup>.

Each of these philosophical foundations contributes to the ongoing debate about the scope, nature, and enforcement of IPRs, highlighting the complex interplay between individual rights, the public interest, economic incentives and cultural development. These IP theories can also be applied to branding, providing insights into how brands are protected, promoted and perceived.

While the intersection of IP and branding has been acknowledged in previous research<sup>[13]</sup>, there has been a notable lack of efforts to systematically

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<sup>11</sup> Madhavi Sunder, „Review of ‘Intellectual Property and Theories of Justice’” *Erasmus Journal for Philosophy and Economics*, 3.1 (2010); Giovanni Battista Ramello, „Access to vs. exclusion from knowledge: Intellectual property, efficiency and social justice”, [in:] *Intellectual property and theories of justice*, ed. Axel Gosseries, Alain Marciano, Alain Strowel (New York: Palgrave, 2008): 73-93; Rémy Guichardaz, „4. What would be a fair intellectual property? A dynamic inquiry through the Rawlsian theory of justice” *Cahiers d'économie politique*, 1 (2022): 91-125.

<sup>12</sup> Madhavi Sunder, *From goods to a good life: Intellectual property and global justice* (New Haven: Yale University Press, 2012); Ronald V. Bettig, *Copyrighting culture: The political economy of intellectual property* (London: Routledge, 2018); Julie E. Cohen, „Creativity and culture in copyright theory” *Copyright Law*, (2017): 473-527.

<sup>13</sup> Cf. John Palfrey, *Intellectual property strategy* (Boston: MIT Press, 2011); Wilson Bastos, Sidney J. Levy, „A history of the concept of branding: practice and theory” *Journal of Historical Research in Marketing*, 3 (2012): 347-368; Jacob H. Rooksby, *The branding of the American mind: How universities capture, manage, and monetize intellectual property and why it matters* (Baltimore: John Hopkins University Press, 2016); Karen Robson, Jeremy de Beer, Ian Paul McCarthy, „Open branding: Managing the unauthorized use of brand-related intellectual property” *Business Horizons*, 6 (2020): 773-785; Yong-Chun Huang, Yang Chen, Huang Mu Han, „The Research

apply IP philosophies to brand strategies. This paper aims to fill this gap by providing examples of how specific brands integrate these philosophical frameworks into their strategic approaches. The subsequent section explores how these theories inform various aspects of branding, such as trademark protection, brand identity, market positioning, cultural significance and ethical considerations. By applying these theories to branding, we can better understand the broader implications of brand management as well.

### 3 | Balancing intellectual property rights and brand strategies

Branding and intellectual property are deeply intertwined concepts that play a critical role in the business landscape. Branding involves the process of creating a distinct identity for a product, service, or company. This identity is crafted through a combination of names, logos, taglines, design elements, and communication styles, all aimed at establishing a significant and differentiated presence in the marketplace. The ultimate goal of branding is to attract and retain customers by fostering a strong, memorable, and appealing brand image<sup>[14]</sup>.

Intellectual property, on the other hand, refers to the legal protection provided to creations of the mind, which include inventions, literary and artistic works, designs, symbols, names, and images used in commerce. The primary forms of IP relevant to branding are copyrights, patents, designs, trademarks and trade secrets. Trademarks are particularly crucial in the context of branding because they protect brand names, logos, and slogans, ensuring that these elements can only be used by the owner and preventing others from causing confusion in the marketplace.

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on the Constituent System of Growth Competence of Independent Intellectual Property Famous Brand-Based on Brand Competitiveness Theory”, [in:] *2010 International Conference on Management and Service Science* (Kunming: IEEE, 2020), 1-5; Apostolos Chronopoulos, Spyros M. Maniatis, „Property Rights in Brand Image: The Contribution of the EUIPO Boards of Appeal to the Free-Riding Theory of Trade Mark Protection” *EUIPO*, 20 (2017): 147-162.

<sup>14</sup> Rooksby, *The branding*; Chronopoulos, „Property Rights”.



Market differentiation is a critical aspect of the branding-IP nexus. In a competitive marketplace, the ability to stand out is paramount. IPRs, particularly trademarks, provide the exclusivity necessary for a brand to differentiate itself from its competitors. When a company's branding elements are protected by IPRs, it can confidently build a unique market identity without fear of imitation. This differentiation not only attracts customers but also fosters brand loyalty, as consumers come to associate specific qualities and experiences with the protected brand.

The value creation potential of branding is significantly enhanced by robust IP protection. A strong, well-protected brand can command higher prices, attract a loyal customer base, and generate substantial goodwill. IPRs contribute to this value by ensuring that the distinctive elements of the brand are legally recognized and protected. This legal recognition can transform branding elements into valuable assets that contribute to the overall worth of the company. For instance, trademarks and copyrights can be licensed or sold, generating additional revenue streams for the company.

From a strategic perspective, integrating branding and IP into a cohesive business strategy is vital for long-term success. A well-developed branding strategy, supported by robust IP protection, can enhance a company's market position and drive sustainable growth.

Many companies rely on innovation intertwined with a strong IP protection. Coca-Cola's distinctive bottle shape<sup>[15]</sup>, while protected as a trademark, is also a unique design element that enhances brand recognition and consumer appeal. Additionally, Apple's sleek product design and user interface significantly contribute to its brand identity<sup>[16]</sup>. While these aspects are protected by design patents and trade dress, their influence extends beyond legal protections, shaping consumer perception and loyalty. Furthermore, Tiffany & Co.'s use of the distinct „Tiffany Blue” color in its packaging is

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<sup>15</sup> John E. Gersen, C. Scott Hemphill, „The Coca-Cola Bottle: A Fragile Vessel for Building a Brand” *NYU Law and Economics Research Paper*, No. 23-12 (2022); Norman L. Dean, *The Man behind the bottle: the origin and history of the classic contour Coca-Cola bottle as told by the son of its creator* (Xlibris Corporation, 2010); Bill Lockhart, Bill Porter, „The dating game: tracking the Hobble-Skirt Coca-Cola bottle” *Bottles and Extras*, September-October (2010): 47.

<sup>16</sup> Cameron Shelley, „The nature of simplicity in Apple design” *The Design Journal*, 3 (2015): 439-456; Stefan Thomke, Barbara Feinberg, „Design thinking and innovation at apple” *Harvard Business School Case*, (2009): 609-066; Young Joong Chang, Kim Jaibeom, Joo Jaewoo, „An Exploratory Study on the Evolution of Design Thinking: Comparison of Apple and Samsung” *Design Management Journal*, 1 (2013).



a strong brand identifier that evokes luxury and exclusivity<sup>[17]</sup>, illustrating how specific design choices can become iconic elements of a brand's identity.

While IPRs are fundamental to brand protection and market differentiation, branding oftentimes encompasses aspects that extend beyond legal protections. For instance, the different colors of M&Ms have been a subject of the research demonstrating that a greater variety of colors can increase consumption<sup>[18]</sup>.

## 4 | Locke's Labor Theory: shaping modern branding practices

John Locke's Labour Theory, originating from his 17th-century work *Two Treatises of Government* (1689)<sup>[19]</sup>, has significantly influenced the philosophy of property rights, extending to IP. Locke, anchoring his theory in natural law, argued that property ownership derives from individual labor, provided it leaves enough resources for others. This theory, emblematic of Enlightenment thought, has profoundly shaped modern notions of rights and capitalism, impacting the foundational values of modern nations like the United States, particularly in property rights and individual liberties.

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<sup>17</sup> Stacey M. Baxter, Jasmina Ilicic, Alicia Kulczynski, „Roses are red, violets are blue, sophisticated brands have a Tiffany Hue: The effect of iconic brand color priming on brand personality judgments” *Journal of Brand Management*, 25 (2018): 384-394; Jasleen Kaur, „Allure of the Abroad: Tiffany & Co., Its Cultural Influence, and Consumers” *M/C Journal*, 5 (2016).

<sup>18</sup> Brian Wansink, *Helping consumers eat less*. *Food Technology*, May, 2007; Barbara E. Kahn, Brian Wansink, „The Influence of Assortment Structure on Perceived Variety and Consumption Quantities” *Journal of Consumer Research*, No. 4 (2004): 519-533.

<sup>19</sup> John Locke, *Locke: Two treatises of government student edition* (Cambridge: Cambridge University Press, 1988); John Locke, *The Works of John Locke*. Vol. I (London: T. Longman, 1794); John J. Jenkins, „Locke and Natural Rights” *Philosophy* 42 (1967): 149-154; Steven J. Heyman, „The Light of Nature: John Locke, Natural Rights, and the Origins of American Religious Liberty” *Marquette Law Review*, 101 (2017): 705.

Its principles have been adapted to contemporary issues, including IP, showcasing Locke's lasting relevance<sup>[20]</sup>.

John Locke's Theory of Property argues that individuals have a natural right to own the products of their labor. In the context of brands, this means that the intellectual and creative efforts that go into developing a brand should be recognized as the property of the creators. For example, the distinct contour bottle shape of Coca-Cola<sup>[21]</sup> and the sleek design innovations of Apple products are not merely aesthetic choices but the result of significant intellectual labor<sup>[22]</sup>. According to Locke's theory, these brand elements are a form of intellectual property that deserves protection. This protection ensures that the creators, such as Coca-Cola and Apple, can control and benefit financially from their unique contributions. By securing exclusive rights to these creations, the theory supports a system in which innovation and creativity and innovation are rewarded, thus encouraging further advancements and the continued development of distinctive brand identities.

Companies across different industries exemplify the principles of the Labour-Desert Subtheory and the Value-Added Subtheory through their branding strategies. They have made significant investments in creating and maintaining strong brand identities, adding value to their offerings and solidifying their ownership claims over their unique brand elements. Apple's commitment to design and innovation is a clear manifestation of the Labour-Desert Subtheory. The company's labor in creating user-friendly, aesthetically pleasing products justifies its ownership and protection of its brand and product designs, evidenced by its rigorous defense of intellectual property rights in courts around the world<sup>[23]</sup>. Apple has also masterfully added value to its products through branding. The Apple brand transforms electronic devices into luxury fashion statements, commanding premium prices and fierce loyalty. This value addition is largely due to the company's branding efforts, which emphasize innovation, quality, and a seamless ecosystem<sup>[24]</sup>. It is fair to say that Apple incorporates both the

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<sup>20</sup> Jankowska, Pawełczyk, „Intellectual”, 549-587.

<sup>21</sup> Gersen, Hemphill, „The Coca-Cola Bottle”; Dean, *The man*; Lockhart, Porter, „The dating”.

<sup>22</sup> Shelley, „The nature”; Thomke, Feinberg, „Design thinking”; Chang, Kim, Joo, „An Exploratory”.

<sup>23</sup> Abdulla Aljafari, „Apple Inc. industry analysis business policy and strategy” *International Journal of Scientific & Engineering Research*, 3 (2016): 406-441; Loizos Heracleous, „Quantum strategy at apple inc.” *Organizational Dynamics*, 2 (2013): 92-99.

<sup>24</sup> Aljafari, „Apple”; Heracleous, „Quantum strategy”.

Labour-Desert Subtheory and the Value-Added Subtheory in its **Quantum Strategy** for branding and business<sup>[25]</sup>. By integrating these subtheories, Apple emphasizes the effort and innovation behind its products and the unique value they offer to consumers.

## 5 | Utilitarian Principles in Branding: Balancing innovation, access and consumer benefits through rule, act, and negative approaches

Rooted in the philosophies of Jeremy Bentham and John Stuart Mill<sup>[26]</sup>, Utilitarianism has profoundly shaped IPRs by advocating for regulations that maximize overall happiness by incentivizing innovation through the provision of temporary monopolies such as patents and copyrights<sup>[27]</sup>. This approach balances the right of creators with the public interest to ensure wide access to innovations, promoting societal good and economic growth. Utilitarianism in IP encompasses subcategories like Rule, Act, and Negative Utilitarianism, each offering distinct perspectives on law formulation and application<sup>[28]</sup>. These utilitarian approaches demonstrate the nuanced

<sup>25</sup> Heracleous, „Quantum strategy”.

<sup>26</sup> Jeremy Bentham, John Stuart Mill, *Utilitarianism and other essays* (London: Penguin, 2004); Jacob Viner, „Bentham and JS Mill: The utilitarian background” *The American Economic Review*, 2 (1949): 360-382; Paul Joseph Kelly, *Utilitarianism and distributive justice: Jeremy Bentham and the Civil Law* (Oxford: Clarendon Press, 1990).

<sup>27</sup> Moore, „Personality-Based”; Robert P. Merges, *Philosophical foundations of IP law: the law and economics paradigm*, 2016; Ioannis Lianos, *A Regulatory Theory of IP. Implications for Competition Law*, 2008; Evan G. Williams, „Rule Utilitarianism and Rational Acceptance” *The Journal of Ethics* (2023): 1-24.

<sup>28</sup> Jankowska, Pawełczyk, „Intellectual”, 549-587, cf. Sarah Burnick, „The importance of the design patent to modern day technology: The Supreme Court’s decision to narrow the damages clause in *Samsung v. Apple*” *North Carolina Journal of Law & Technology*, 5 (2017): 283; Alan Devlin, Neel Sukhatme, „Self-Realizing Inventions and the Utilitarian Foundation of Patent Law” *William & Mary Law Review*, 51 (2009): 897; Peter Lee, Madhavi Sunder, „Design patents: law without design” *Stanford Technology Law Review*, 17 (2013): 277. Moore, „Personality-Based”; Robert P. Merges, „Philosophical foundations of IP law: the law and economics paradigm”; Peter Lewin, „Creativity or coercion: Alternative perspectives on rights to intellectual property” *Journal of Business Ethics*, 71 (2007): 441-455; Michael Boylan, „Utilitarianism”

interplay between encouraging creativity and ensuring public access to innovations, reflecting utilitarianism's historical influence ethical and legal dimensions of IP law<sup>[29]</sup>.

In the realm of branding and IP, the utilitarian principles manifest in varied and compelling ways, showcasing how brands navigate the balance between innovation, consumer benefit, and societal welfare.

Under Rule Utilitarianism, we see companies like Patagonia embedding environmental sustainability into their branding strategy, establishing rules that promote the long-term utility of preserving natural resources<sup>[30]</sup>. This commitment is evident in their use of recycled materials and efforts to minimize environmental impact, which, while fostering innovation in sustainable practices, also aims to set a broader precedent for the industry. Similarly, Microsoft's establishment of cybersecurity standards protects not only its own interests but also those of its users and the broader digital ecosystem, embodying rule utilitarianism by creating guidelines that benefit the greatest number<sup>[31]</sup>. Adobe's transition to a subscription-based model for its software suite, including Photoshop and Illustrator, reflects another application of Rule Utilitarianism. By making its products more accessible through cloud-based services, Adobe promotes widespread creativity and innovation which benefits a larger segment of society<sup>[32]</sup>.

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*Teaching Ethics with Three Philosophical Novels* (2017): 45-62; Emily Anne Proskine, „Google's technicolor dreamcoat: A copyright analysis of the Google Book Search library project” *Berkeley Technology Law Journal*, 1 (2006): 213-239; Pamela Samuelson, „The Google book settlement as copyright reform” *William & Mary Law Review*, (2011): 479; Emmanuel Kornyo, „Patent Protection and the Global Access to Essential Pharmaceuticals during Patent Infringements under TRIPS” *Voices in Bioethics*, (2015); Matthew B. Flynn, *Pharmaceutical autonomy and public health in Latin America: State, society and industry in Brazil's AIDS program* (London: Routledge, 2014).

<sup>29</sup> Jankowska, Pawełczyk, „Intellectual”, 549-587.

<sup>30</sup> Federico Cosenz, Vinicius Picanco Rodrigues, Francesco Rosati, „Dynamic business modeling for sustainability: Exploring a system dynamics perspective to develop sustainable business models” *Business Strategy and the Environment*, 2 (2020): 651-664; Stappmanns, „Sustainable Business Model Innovation”, 349; Francesco Rattalino, „Circular advantage anyone? Sustainability-driven innovation and circularity at Patagonia” *Thunderbird International Business Review*, 5 (2018): 747-755.

<sup>31</sup> Jamie Anderson, Robin Wood, „Seven management lessons from Microsoft” *Business Strategy Review*, 3 (2002): 28-33; Michael Baye, *Managerial economics and business strategy* (New York: McGraw-Hill, 2010); Sunny Baker, „What every business should learn from Microsoft” *Journal of Business Strategy*, 5 (1998): 36-42.

<sup>32</sup> Jitendra Bansal, Krishna Chandra Balodi, Rajesh Jain, Sagnika Datta, „Strategy and business model evolution at Adobe: Competing in digital media software industry” *Journal of Information Technology Teaching Cases*, 2 (2023): 136-144.

Act Utilitarianism is vividly illustrated by Spotify's decision to allow selected artists to release their music exclusively on its platform for limited periods of time. This strategy, tailored to maximize the utility of specific releases, balances artist visibility and platform exclusivity with user access to new music<sup>[33]</sup>. When Netflix negotiates exclusive content rights with production companies, it exercises Act Utilitarianism by evaluating the potential utility of bringing unique content to its audience, thereby enhancing user experience on a case-by-case basis<sup>[34]</sup>. Google's approach to copyright disputes in its book scanning project is another example, where decisions were made by weighing the specific benefits of making literary works accessible against the potential harm to copyright holders, demonstrating a flexible application of utilitarian principles to maximize overall benefits<sup>[35]</sup>.

Negative Utilitarianism in branding is demonstrated by pharmaceutical companies such as Gilead Sciences offering voluntary licensing agreements for the production of generic versions of their HIV drugs in developing countries<sup>[36]</sup>. This approach minimizes the negative impact of IP protection on access to essential medicines and prioritizes public health over exclusive rights. Educational publishers that provide free or discounted access to textbooks and learning materials during global crises, such as the COVID-19 pandemic, reflect Negative Utilitarianism by reducing the harm of educational disruption and ensuring that students remain engaged and informed. Tech companies, such as Tesla, opening up some of their patents to accelerate the development of sustainable transportation solutions, showcase Negative Utilitarianism by prioritizing environmental benefits

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<sup>33</sup> Josko Lozic, „Comparison of business models of the streaming platforms Spotify and Netflix” *Economic and Social Development: Book of Proceedings*, (2020): 110-119.

<sup>34</sup> Ibidem.

<sup>35</sup> David J. Teece, „Business models, business strategy and innovation” *Long range planning*, 2-3 (2010): 172-194; Vanessa Fox, *Marketing in the Age of Google, Revised and Updated: Your Online Strategy IS Your Business Strategy* (New York: John Wiley & Sons 2012).

<sup>36</sup> Derek Haacker, Cory Nolan, Venkatachalam Seshan, „Acquiring Gilead Sciences as a Proposed Strategy for Merck & Co. Growth” *Emerging Dimensions of Technology Management*, (2013): 185-200; William Lazonick, Matt Hopkins, Ken Jacobson, Mustafa Erdem Sakinç, Öner Tulum, „US Pharma's Business Model: Why it is broken, and how it can be fixed”, [in:] *The Routledge Handbook of the Political Economy of Science* (London: Routledge, 2017), 83-100.

and societal welfare over strict enforcement of IPRs, aiming to reduce the global carbon footprint through shared innovation<sup>[37]</sup>.

These examples of rule, act, and negative utilitarianism illustrate the dynamic ways in which brands apply utilitarian principles, and navigate the complexities of innovation, consumer interest, and societal good within the framework of branding and intellectual property.

## 6 | Exploring the Self: Personality Theory in branding from a Hegelian perspective

Personality Theory in intellectual property, inspired by Hegel, views creations as extensions of the creator's personality rather than merely economic assets<sup>[38]</sup>. Hegel's ideas about personal identity and self-expression, though not directly addressing IP, laid the foundation for this theory, which emphasizes the personal connection between creators and their works. Legal scholars in the 19th and 20th centuries expanded on these concepts, recognizing creations as expressions of personality deserving of protection. Influences from other philosophers such as Johann Gottlieb Fichte, who saw self-expression as an extension of personality, and Immanuel Kant, with his focus on moral rights, further shaped the theory. Modern legal and cultural scholars have continued to develop Personality Theory, arguing for IP protection that considers both cultural and personal significance<sup>[39]</sup>.

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<sup>37</sup> Khamis M. Bilbeisi, Moulare Kesse, „Tesla: A successful entrepreneurship strategy” *Morrow, GA: Clayton State University*, 1 (2017): 1-18; Salma Ahmad, Azmi Khan, „Tesla: Disruptor or Sustaining Innovator” *Journal of Case Research*, 1 (2019); John W. Lang, Beat Reber, Huda Aldori, „How Tesla created advantages in the ev automotive paradigm, through an integrated business model of value capture and value creation” *Business & Management Studies: An International Journal*, (2021): 385-404.

<sup>38</sup> Andrew Seth Pringle-Pattison, *Hegelianism and personality* (Edinburgh: Blackwood, 1887); Schroeder, „Unnatural rights: Hegel and intellectual property”, 453; Dudley Knowles, „Hegel on property and personality” *The Philosophical Quarterly*, 33.130 (1983): 45-62; Karla M. O'Regan, „Downloading personhood: A Hegelian theory of copyright law” *Canadian Journal of Law and Technology*, 2 (2010); James Alexander Clarke, „Fichte and Hegel on recognition” *British Journal for the History of Philosophy* 17.2 (2009): 365-385.

<sup>39</sup> Jankowska, Pawełczyk, „Intellectual”, 549-587.

This theory has evolved to view creations as integral to the identity of the creator and to advocate for protections that reflect this deep connection. While Personality Theory does not have subcategories per se, it encompasses dimensions like moral rights focus, expression of identity, personhood and dignity, creative autonomy, and public interest and access, each highlighting different aspects of the creator's rights versus public domain tensions.

Critics point out that the theory may overemphasize moral rights, potentially limiting cultural and technological innovation and posing challenges in balancing personal rights with economic interests within the legal system.

Apple Inc. transcends typical technology branding by infusing the late Steve Jobs' personal ethos into every aspect of its marketing and product design, making innovation and sleek design its hallmarks. This strategy positions Apple products not merely as gadgets but as embodiments of creativity and innovation, reflecting Jobs' belief in the intersection of technology and the arts. The connection between Jobs' minimalist aesthetic and Apple's product line, from the iPhone to the MacBook, demonstrates a direct lineage from the founder's personal tastes to the company's global brand identity<sup>[40]</sup>.

Patagonia's approach to branding is a reflection of founder Yvon Chouinard's passion for the outdoors and environmental activism. The company's commitment to using sustainable materials and its initiatives such as the „1% for the Planet” campaign are manifestations of Chouinard's personal values. This has cultivated a brand image that resonates with consumers who share similar environmental concerns, making Patagonia synonymous with environmental stewardship and ethical business practices. The brand's ethos is communicated through storytelling in marketing materials which often feature Chouinard and the company's environmental projects, further solidifying the personal connection to the brand<sup>[41]</sup>.

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<sup>40</sup> Kuo-Lun Hsiao, „What drives smartwatch adoption intention? Comparing Apple and non-Apple watches” *Library Hi Tech*, 1 (2017): 186-206; Yanhui Mao, Yao Lai, Yuwei Luo, Shan Liu, Yixin Du, Jing Zhou, Jianhong Ma, Flavia Bonaiuto, Marino Bonaiuto, „Apple or Huawei: Understanding flow, brand image, brand identity, brand personality and purchase intention of smartphone” *Sustainability*, 8 (2020): 1-22; Aljafari, „Apple”.

<sup>41</sup> Cosenz, Rodrigues, Rosati, „Dynamic business models”, 651-664; Stappmanns, „Sustainable Business Model Innovation”, 349; Rattalino, „Circular advantage



The Oprah Winfrey Network is a prime example of a brand built around a powerful personal narrative. Oprah Winfrey's journey from poverty to becoming one of the most influential media personalities is woven into the fabric of OWN. The network's content, which focuses on empowerment, personal growth, and inspiration, mirrors Winfrey's own life story and her public persona as a champion for self-improvement and enlightenment. This alignment between Winfrey's personal brand and her network's content strategy has made OWN a destination for viewers seeking content that inspires and empowers, demonstrating the power of personal Dynamic Branding in media<sup>[42]</sup>.

Virgin Group demonstrates how Sir Richard Branson's personal brand of adventure, risk-taking, and entrepreneurship is seamlessly integrated into its branding strategy. Branson's well-publicized attempts to break world records and his ventures into space tourism with Virgin Galactic are emblematic of the brand's ethos. Virgin's branding across its companies leverages Branson's image to differentiate itself, whether through innovative customer service in Virgin Atlantic or breaking new ground with Virgin Hotels, making the brand synonymous with a daring and customer-focused approach to business<sup>[43]</sup>.

Under Elon Musk's leadership, Tesla has become more than an automotive company; it is a direct reflection of Musk's vision for a future powered by sustainable energy. Tesla's branding, which focuses on cutting-edge technology and environmental sustainability, mirrors Musk's personal interests in space exploration and renewable energy solutions. Musk's active social media presence and his involvement in product launches and announcements have made him the face of the Tesla brand, closely aligning the company with his personal mission to combat climate change through innovation in electric vehicles and beyond<sup>[44]</sup>.

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anyone?", 747-755. Anderson, Wood, „Seven management lessons”; Baye, *Managerial economics and business strategy*; Baker, „What every business”.

<sup>42</sup> Janice Peck, „The secret of her success: Oprah Winfrey and the seductions of self-transformation, *Journal of Communication Inquiry*, 1 (2010): 7-14; Eitan Wilf, Eva Illouz, „'Dynamic branding': The case of Oprah Winfrey” *Women & Performance: a journal of feminist theory*, 1 (2010): 71-84.

<sup>43</sup> Zhenya Lindgardt, Martin Reeves, George Stalk, Jr, Michael Deimler, „Business model innovation: When the game gets tough, change the game”, [in:] *Own the future: 50 ways to win from The Boston Consulting Group*, (Hoboken: Wiley, 2012), 291-298.

<sup>44</sup> Bilbeisi, Kesse, „Tesla: A successful”; Ahmad, Khan, „Tesla: Disruptor”; Lang, Reber, Aldori, „How Tesla”.

Together, these examples underscore how the application of Personality Theory in branding goes beyond mere marketing tactics, embedding the founders' and leaders' personal beliefs, values, and narratives into the very DNA of their companies, creating brands that are authentic, resonant, and deeply connected with their audiences.

## 7 | Incentives and Innovations: Leveraging Economic IP Theory in branding

The Economic Theory underpinning intellectual property is crucial in understanding how IP laws and practices influence innovation and creativity in society<sup>[45]</sup>. When applied to branding, this theory elucidates how brands as IP assets contribute to economic activity, drive competition, and foster innovation<sup>[46]</sup>.

Brands represent a significant form of IP, encapsulated under trademark laws. The economic theory of IP, when applied to branding, underscores the incentives for businesses to invest in creating distinctive and recognizable brands. These brands not only differentiate products and services in the market but also convey quality and build consumer trust. By granting exclusive rights to brand owners, trademark laws encourage firms to invest in brand development, marketing, and quality assurance, knowing that their investments will be protected from imitators.

The roots of economic theory in branding can be traced to the same historical developments in IPRs as those for copyright and patents. For example, the British Statute of Anne in 1710, while primarily focused on copyright, set a precedent for recognizing the value of intellectual creations. Similarly, early trademark cases in both Europe and the United

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<sup>45</sup> Stiglitz, „Economic foundations of intellectual property rights”; Verspagen, „Intellectual property rights in the world economy”. Brett M. Frischmann, Mark A. Lemley, „Spillovers” *Columbia Law Review*, 107 (2007): 257; Christopher May, *The global political economy of intellectual property rights: The new enclosures* (London: Routledge, 2000); Zoltan J. Acs, Mark Sanders, „Patents, knowledge spillovers, and entrepreneurship” *Small business economics*, 39 (2012): 801-817.

<sup>46</sup> Jankowska, Pawełczyk, „Intellectual”, 549-587.

States in the 19th century laid the groundwork for understanding brands as valuable assets deserving legal protection.

John Locke's Labour Theory, which posits that individuals have a right to the fruits of their labor, applies directly to branding. When a company invests substantial resources in creating and promoting a brand, Locke's theory supports the notion that the company should have exclusive rights to the brand. This encourages firms to innovate not only in their products, but also in how they market and present these products to consumers.

Adam Smith's ideas about free markets and the division of labor also support the economic theory of branding. In a free market, brands act as signals that reduce information asymmetry between producers and consumers. A well-known brand can indicate a certain level of quality or consistency, which simplifies consumer choices and fosters market efficiency. This brand signaling reduces transaction costs and can lead to a more efficient allocation of resources.

The Industrial Revolution exemplified the need for brand protection, as mass production and the proliferation of goods required distinctive branding to maintain competitive advantage. Companies such as Coca-Cola<sup>[47]</sup> and Kellogg<sup>[48]</sup> developed strong brands that became integral to their business strategies. These brands were legally protected, ensuring that the companies could capitalize on their market position without fear of direct imitation.

International agreements such as the Paris Convention for the Protection of Industrial Property and the Madrid System for the International Registration of Marks standardized trademark protection and recognized the global economic importance of brands. These agreements facilitated international trade by ensuring that brands were protected in multiple jurisdictions, thereby encouraging companies to expand into new markets with confidence.

In modern times, the economic theory of branding has been significantly influenced by digital technology and globalization. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) expanded the

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<sup>47</sup> Gersen, Hemphill, „*The Coca-Cola Bottle*”; Dean, *The man*; Lockhart, Porter, „*The dating*”.

<sup>48</sup> J.A. Fraser, „*A return to basics at Kellogg*” *MIT Sloan management review*, 4 (2004): 27; David Dranove, Sonia Marciano, *Kellogg on Strategy: concepts, tools, and frameworks for practitioners* (Hoboken: Wiley, 2005); Gerald Brown, Joseph Keegan, Brian Vigus, Kevin Wood, „*The Kellogg company optimizes production, inventory, and distribution*” *Interfaces*, 6 (201): 1-15; Philip Kotler, „*Thinking about Marketing*”, [in:] *Kellogg on marketing*, ed. Alice M. Tybout, Bobby J. Calder (Hoboken: Wiley, 2010), 8.

scope of IPRs, including trademarks, and established minimum standards of protection globally. This has been particularly important in the digital age, where brands can be easily replicated and distributed online. Trademark laws adapted to address these challenges, providing mechanisms to combat online infringement and protect digital brand assets.

Central to the Economic Theory of branding is the concept of the incentive to create. Companies are motivated to invest in branding because trademarks provide them with exclusive rights to use their brands, which can result in significant economic returns. This exclusivity allows firms to recoup their investments in advertising and brand development, thereby fostering innovation in how products are marketed and consumed.

The spillover effects of strong brands are also significant. Well-established brands can elevate entire industries by setting standards for quality and innovation. For instance, Apple's brand has not only driven its own success but has also spurred advancements in the tech industry, pushing competitors to innovate continuously<sup>[49]</sup>. This dynamic competition propels technological progress and economic growth, exemplifying the broader societal benefits of robust brand protection.

In the context of globalization, brands have become central to international trade and economic relations. Strong brands enable companies to compete globally, contributing to export growth and economic development. For example, brands benefit from international trademark protection, allowing them to maintain their brand integrity and value across diverse markets.

The digital age presents new challenges for brand protection, particularly concerning digital copying and distribution. Counterfeit goods and online brand infringement have necessitated stronger enforcement mechanisms and innovative strategies to protect digital brand assets. Companies now employ advanced technologies such as blockchain for supply chain verification and artificial intelligence for monitoring online brand use, reflecting the evolving nature of IP enforcement in the digital age.

The Economic Theory of IP, when applied to branding, highlights the critical role of trademarks in encouraging investment in brand development, fostering market efficiency, and driving innovation. Through historical and contemporary examples, it is evident that strong brand protection not only benefits individual companies but also contributes to broader economic growth and technological advancement. The dynamic interplay between

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<sup>49</sup> Heracleous, „Quantum strategy”.

individual rights and societal benefits continues to shape the landscape of brand IP in an increasingly globalized and digital world.

## 8 | Applying Economic IP Theory to branding: Case studies of Apple and Louis Vuitton

Apple Inc. epitomizes the intersection of Economic Theory and intellectual property in fostering innovation and economic growth. The company's brand, encompassing its iconic apple logo and the „Apple” name, is synonymous with innovation, quality, and premium user experience. This brand, one of the most valuable globally, showcases how strong IP protection drives investment, competitive advantage, and market leadership<sup>[50]</sup>.

Apple's commitment to innovation is underpinned by the economic concept of the incentive to create. The company invests billions annually in research and development (R&D), marketing, and brand management. This extensive investment is motivated by the assurance that its IP will be safeguarded<sup>[51]</sup>. For instance, the Apple logo, a simple yet instantly recognizable symbol, is a registered trademark. Trademark protection ensures that other companies cannot use a similar logo, protecting Apple's brand identity and allowing the company to recoup its significant investment in brand development.

Apple's product designs are also protected by design patents, which cover the unique aesthetic features of its products. Take the design of the iPhone: its sleek, minimalist look is a key differentiator in the market. Design patents grant Apple exclusive rights to this design, preventing competitors from creating similar-looking products. This exclusivity is crucial for maintaining Apple's premium market position, allowing the company to charge higher prices for its products, reflecting their perceived value and uniqueness<sup>[52]</sup>.

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<sup>50</sup> Shelley, „The nature”; Thomke, Feinberg, „Design thinking”; Chang, Kim, Joo, „An Exploratory”.

<sup>51</sup> Nigel Walton, „‘Four-Closure’: How Amazon, Apple, Facebook & Google are driving business model innovation”, [in:] 2012 *International Conference*, 97-101.

<sup>52</sup> Raphael Amit, Christoph Zott, „Creating value through business model innovation” *MIT Sloan management Review* (2012).

Market signaling is another critical aspect of Apple's brand strategy. Brands serve as indicators of quality, helping consumers make informed purchasing decisions without needing detailed product knowledge. Apple's brand conveys a promise of quality, innovation, and reliability. When consumers see the Apple logo, they trust that the product will meet high standards of performance and quality. This trust simplifies purchasing decisions and fosters strong consumer loyalty.

Apple's brand strength is further reinforced through consistent and strategic marketing efforts. Campaigns such as „Think Different” not only reinforce Apple's innovative and forward-thinking image but also build an emotional connection with consumers. This emotional branding, combined with the functional benefits of Apple products, creates a robust value proposition that is difficult for competitors to replicate.

Apple's brand and its associated IPRs also generate significant **spillover effects**. The company's relentless focus on innovation sets industry standards, pushing competitors to innovate to keep up. This dynamic competition drives technological advancement and overall industry growth. For example, the introduction of the iPhone revolutionized the smartphone industry, setting new benchmarks for design, functionality, and user experience. Competitors had to innovate rapidly to offer products that could compete with the iPhone, leading to a surge in technological advancements in the mobile industry.

Moreover, Apple's influence extends beyond its own products. The company's design philosophies and technological innovations inspire other industries, from consumer electronics to automotive design. This cross-industry impact illustrates the broader societal benefits of robust IP protection for strong brands. Apple's success encourages other companies to invest in brand development and innovation, knowing that their IPRs will protect their investments.

Louis Vuitton, part of the luxury conglomerate LVMH, is a prime example of how strong brand protection, grounded in Economic Theory, sustains exclusivity, high market value, and global economic impact. The brand, synonymous with luxury, craftsmanship, and exclusivity, exemplifies how intellectual property rights protect and enhance brand value. The application of economic theory to Louis Vuitton's brand strategy highlights the

importance of IP in maintaining competitive advantage, ensuring premium pricing, and driving economic growth<sup>[53]</sup>.

The Economic Theory underpinning IP, in particular the concept of exclusive rights, is crucial in understanding Louis Vuitton's brand strategy. The brand's distinctive monogram, featuring the LV initials, is protected by trademarks across multiple jurisdictions. This trademark protection ensures that only Louis Vuitton can use this specific logo, preserving the brand's uniqueness and market position. The monogram is not just a logo; it represents a storied heritage, luxury, and unparalleled craftsmanship. By securing exclusive rights to this logo, Louis Vuitton prevents counterfeiters and imitators from diluting the brand's value, ensuring that the brand maintains its exclusive status and customer trust.

Trademarks also protect the design of Louis Vuitton products, including their iconic handbags, luggage, and accessories. Design patents and trademarks ensure that other companies cannot legally produce items closely resembling Louis Vuitton's offerings. This protection is crucial for maintaining the brand's exclusivity and prestige. For example, the design of the Louis Vuitton Speedy bag, with its unique shape, pattern, and craftsmanship, is protected, ensuring that competitors cannot create knock-offs that could confuse consumers. In the luxury market, where brand image and exclusivity are paramount, such IP protection allows Louis Vuitton to maintain high prices and a loyal customer base.

Louis Vuitton's brand strategy involves significant investment in marketing and maintaining its luxury image. The company's advertising campaigns, store designs, and celebrity endorsements all reinforce the brand's identity as a symbol of high fashion and sophistication. For instance, Louis Vuitton's collaboration with high-profile figures like actress Emma Stone<sup>[54]</sup> or campaigns featuring top models like Naomi Campbell<sup>[55]</sup> help to perpetuate the brand's elite image. These marketing efforts create an aspirational brand image that attracts customers willing to pay a premium for Louis Vuitton products.

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<sup>53</sup> Shin'ya Nagasawa, *Marketing Principles of Louis Vuitton-The Strongest Brand Strategy* (Doctoral dissertation, Waseda University, 2009); Jean-Noël Kapferer, Vincent Bastien, *The luxury strategy: Break the rules of marketing to build luxury brands* (London: Kogan Page, 2012).

<sup>54</sup> <https://us.louisvuitton.com/eng-us/stories/women-campaign-fw23>.

<sup>55</sup> <https://people.com/naomi-campbell-purple-blue-hair-louis-vuitton-fashion-show-photos-7551324>.



The exclusivity granted by IPRs allows Louis Vuitton to maintain tight control over its distribution channels, ensuring that its products are only available in selected high-end stores and boutiques. This controlled distribution strategy reinforces the brand's luxury status and helps prevent counterfeiting. Louis Vuitton's stores are designed to offer an exclusive shopping experience, with opulent interiors and personalized customer service, further enhancing the brand's image<sup>[56]</sup>. The company also employs advanced technologies, such as RFID tags and blockchain, to authenticate its products and protect its brand from counterfeiters. These technologies enable Louis Vuitton to track each product from production to sale, ensuring authenticity and providing consumers with confidence in their purchases.

Louis Vuitton's global brand protection strategy underscores the economic importance of IP in the luxury market. Through international agreements like the Paris Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Louis Vuitton ensures its brand is protected worldwide. This global protection facilitates international trade and allows the brand to expand into new markets with confidence that its IP rights will be upheld. For example, Louis Vuitton has successfully entered and grown in markets such as China and India<sup>[57]</sup>, where strong IP protection is crucial for preventing counterfeiting and ensuring brand integrity.

The economic impact of the Louis Vuitton's brand extends beyond the company itself. The brand's success drives demand for high-quality materials and skilled craftsmanship, supporting industries such as leather production and artisanal craftsmanship. Louis Vuitton sources materials from various regions, including Italy and France, known for their high-quality leather and skilled artisans. This demand creates jobs and economic opportunities in these regions, supporting local economies. Additionally, the prestige associated with the Louis Vuitton brand sets standards for quality and innovation in the luxury market, pushing competitors to raise their own standards to compete. Competitors must innovate in terms of design, quality, and customer experience to match the high bar set by Louis Vuitton, driving overall industry growth and advancement.

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<sup>56</sup> Vandana Ahuja, „Louis Vuitton: Using digital presence for brand repositioning and CRM”, [in:] *Handbook of research on effective marketing in contemporary globalism* (Pensylvania: IGI Global, 2014), 315-324.

<sup>57</sup> Soyoung Oh, Jongeun Kim, „Analysis of the Marketing Strategy of a Luxury Brand and its Success in Selected Asian Countries” *International Journal of Interdisciplinary Social Sciences*, 1 (2011).

Moreover, Louis Vuitton's focus on sustainability and ethical production further exemplifies the broader societal benefits of strong IP protection. The brand's commitment to sustainable practices, such as using environmentally friendly materials and ensuring fair labor practices, enhances its image and attracts socially conscious consumers. This commitment not only reinforces Louis Vuitton's brand value but also encourages industry-wide adoption of sustainable practices, benefiting society as a whole.

## 9 | Navigating Democratic IP Theory in branding

The Democratic Theory underpinning intellectual property intertwines the ideals of democracy with the dynamics of IPRs, advocating for a balance that supports a democratic society<sup>[58]</sup>. This theory, with its deep historical roots and various subtheories, emphasizes that the free flow of ideas and information is not just beneficial but essential for a healthy democracy, and that IP laws should be crafted to support this balance. The foundations of the Democratic Theory in IP can be traced back to the Enlightenment, an era marked by a burgeoning emphasis on individual rights, freedom of expression, and democratic ideals. Philosophers like John Locke and Immanuel Kant discussed concepts of personal property and freedom of expression, laying the intellectual groundwork for later discussions about IP in a democratic context. Their ideas highlighted the importance of access to information as a pillar of democratic society<sup>[59]</sup>.

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<sup>58</sup> Elisabeth Ellis, *Provisional politics: Kantian arguments in policy context* (New Heaven: Yale University Press, 2008); Jack M. Balkin, „Digital speech and democratic culture: A theory of freedom of expression for the information society” *New York University Law Review*, 1 (2017): 325-382; Pamela Samuelson, „Copyright and freedom of expression in historical perspective” *Journal of Intellectual Property Law*, 10 (2002): 319; Mark A. Lemley, Eugene Volokh, „Freedom of speech and injunctions in intellectual property cases” *Duke Law Journal*, 48 (1998): 147; Peter Johan Lor, Johannes Jacobus Britz, „Is a knowledge society possible without freedom of access to information?” *Journal of information science*, 4 (2007): 387-397. Coombe, „Objects of Property and Subjects of Politics: Intellectual Property Laws and Democratic Dialogue”; Jerome H. Reichman, Jonathan A. Franklin, „Privately legislated intellectual property rights: Reconciling freedom of contract with public good uses of information” *University of Pennsylvania Law Review*, 147 (1998): 875.

<sup>59</sup> Jankowska, Pawełczyk, „Intellectual”, 549-587.

As a non-profit organization, Wikipedia embodies the Democratic IP Theory by providing free access to a vast repository of knowledge<sup>[60]</sup>. It operates on the principles of **open collaboration** and free dissemination of information, allowing anyone to contribute and edit content. This approach supports the democratic ideal of the free flow of ideas and information, ensuring that knowledge is accessible to all.

Creative Commons offers flexible copyright licenses that allow creators to share their work with others under the terms that they choose<sup>[61]</sup>. By promoting sharing and collaboration, Creative Commons supports the Democratic IP Theory by enabling the free exchange of ideas and information. This helps to ensure that creative works can be widely used and built upon, fostering a more open and democratic culture.

Mozilla, the company behind the Firefox web browser, operates on an open source model. This means that the source code for Firefox is freely available for anyone to view, modify, and distribute<sup>[62]</sup>. This transparency and openness align with the Democratic IP Theory, as it encourages community involvement, innovation, and the free flow of information, all of which are essential to a healthy democratic society.

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<sup>60</sup> Zeki Yüksekbilgili, „The use of guerilla marketing in SMEs” *International Journal of Advanced Multidisciplinary Research and Review (IJAMRR)*, 2 (2014): 2-7; H. Oh, „Learners Writing Performance, Revision Behavior, Writing Strategy, and Perception in Wiki-mediated Collaborative Writing” *Multimedia-Assisted Language Learning*, 17 (2014): 176-199; Pum-Mo Ryu, Myung-Gil Jang, Hyun-Ki Kim, „Open domain question answering using Wikipedia-based knowledge model” *Information Processing & Management*, 5 (2014): 683-692; Leonhardt Dobusch, Jacob Kapeller, „Open strategy between crowd and community: lessons from wikimedia and creative commons”, *Academy of Management Proceedings*, No. 1 (2013).

<sup>61</sup> Dobusch, Kapeller, „Open strategy-making with crowds and communities”, 561-579; Andrew S. Utama, Ade P. Susanty, „Legal Strategy for Intellectual Property Protection in the Era of Open-source and Creative Commons in Indonesia” *The Easta Journal Law and Human Rights*, 1 (2023): 17-24.

<sup>62</sup> Tom-Michael Hesse, Veronika Lerche, Marcus Seiler, Konstantin Knoess, Barbara Paech, „Documented decision-making strategies and decision knowledge in open source projects: An empirical study on Firefox issue reports” *Information and Software Technology*, 79 (2016): 36-51.

## 10 | Applying Democratic IP Theory to branding: Case studies of Apple and Tesla

Apple Inc. provides a compelling case study in the application of Democratic Theory to branding within the framework of intellectual property. Apple's brand, synonymous with innovation, quality, and a premium user experience, is protected by a robust portfolio of IP rights, including trademarks and design patents. This protection ensures that Apple can maintain its market position and continue to invest in R&D. However, Apple also faces significant scrutiny regarding how its IP strategies align with democratic values of access to information and the free flow of ideas.

Apple's trademark on its logo and design patents on its products prevent competitors from producing knock-offs, ensuring that consumers can trust the quality and authenticity of Apple products. This exclusivity fosters innovation by providing Apple with the economic incentives necessary to invest in new technologies and designs. However, the company's aggressive IP enforcement has raised concerns about its impact on competition and the accessibility of technological knowledge.

From a democratic perspective, Apple's approach to IP must balance its legitimate interests in protecting its brand and innovations with broader societal needs. For instance, Apple's participation in educational initiatives and its provision of free software updates support the Access to Knowledge (A2K) movement, enhancing public access to valuable technological tools and information. Additionally, Apple's commitment to environmental sustainability and ethical production practices reflects an alignment with democratic values, emphasizing corporate responsibility and transparency.

Tesla, Inc. is another illustrative example of how the Democratic Theory of IP can be applied to branding in the high-tech and automotive sectors. Tesla's brand is synonymous with innovation, sustainability, and cutting-edge technology. The company's approach to IP, particularly its open-patent strategy, reflects democratic principles by promoting the dissemination of technological advances and supporting broader societal benefits<sup>[63]</sup>.

Tesla's business model revolves around continuous innovation in electric vehicle (EV) technology, battery development, and sustainable energy solutions. The company's brand, symbolized by the distinctive Tesla logo,

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<sup>63</sup> Bilbeisi, Kesse, „Tesla: A successful”; Ahmad, Khan, „Tesla: Disruptor”; Lang, Reber, Aldori, „How Tesla”.

is protected by trademarks, ensuring that its name and visual identity are safeguarded from misuse. This protection allows Tesla to maintain its reputation for quality and innovation, that is crucial for consumer trust and brand loyalty.

In a move that aligns with the Democratic Theory of IP, Tesla announced in 2014 that it would allow its patents to be used by anyone in good faith. This decision was a significant departure from traditional IP strategies, which typically involve closely guarding technological innovations to maintain competitive advantage. Tesla's open-patent initiative aims to accelerate the development and adoption of sustainable energy technologies. By allowing other companies to use its patents, Tesla promotes the free flow of technological knowledge, which is essential for addressing global challenges such as climate change.

Tesla's open-patent strategy has a profound implications for the EV market and technological innovation. By sharing its patents, Tesla encourages other automakers and technology companies to develop their own electric vehicles and sustainable energy solutions. This collaborative approach can lead to faster knowledge dissemination, technological advancements, lower costs, and increased availability of EVs, benefiting consumers and the environment.

This strategy aligns with the Access to Knowledge (A2K) movement within the Democratic Theory of IP, which advocates for the broad dissemination of knowledge to promote innovation and societal progress. Tesla's patents cover a wide range of technologies, including battery management systems, powertrain designs, and charging infrastructure. By making these patents available to others, Tesla helps to create a more competitive and dynamic market, driving technological progress and economic growth.

Tesla's brand identity is built on a commitment to sustainability and environmental stewardship. The company's open-patent strategy enhances its brand image by demonstrating a commitment to global welfare and the democratization of technology. This approach not only supports Tesla's mission to accelerate the world's transition to sustainable energy but also strengthens its brand as a leader in corporate social responsibility.

Tesla's approach to IP also involves significant investments in research and development (R&D) to continually improve its products and technologies. The company's dedication to innovation is reflected in its extensive patent portfolio, which covers advancements in EVs, autonomous driving, and energy storage. By protecting these innovations through patents, Tesla

ensures that it can continue to lead the market while sharing the benefits of its technological advancements with the broader industry.

While Tesla's open-patent strategy exemplifies the Democratic Theory of IP, it also presents challenges and ethical considerations. The decision to share patents requires careful management to ensure that the technology is used in ways that align with Tesla's mission and values. For instance, the open-patent pledge specifies that the patents can be used by anyone acting in good faith, which means they should not be used to file patent lawsuits against Tesla or for purposes that undermine sustainable energy goals.

Tesla's approach also raises questions about the balance between protecting IP rights and promoting public interest. While the open-patent strategy supports broader access to technology, it also requires Tesla to maintain its competitive edge through continual innovation and brand differentiation. This balance is crucial for ensuring that the company remains a market leader while contributing to societal goals.

Tesla's influence extends beyond the automotive industry, impacting global efforts to combat climate change and promote sustainable development. By sharing its patents, Tesla supports the global transition to renewable energy and reduces reliance on fossil fuels. This contribution is particularly significant given the urgent need to address environmental challenges and achieve sustainable development goals.

Tesla's open-patent strategy also fosters international collaboration and knowledge sharing, supporting democratic values on a global scale. By making its technological advancements accessible to companies worldwide, Tesla promotes a more inclusive and cooperative approach to innovation. This strategy reflects the principles of the Democratic Theory of IP, which emphasizes the importance of access to information and collective progress for the benefit of society.

In conclusion, Tesla exemplifies how the Democratic Theory of Intellectual Property can be applied to branding within the high-tech and automotive sectors. The company's open-patent strategy, commitment to innovation, and focus on sustainability demonstrate how IP can be managed in a way that supports both business interests and broader societal goals. Tesla's approach highlights the importance of balancing IP protection with the free flow of knowledge to ensure that technological advances benefit the global community and support democratic ideals.

## 11 | Shaping Progress: Theory of Social Good in branding and IP

The Theory of Social Good in the context of Intellectual Property is an evolving perspective that places societal benefits and ethical considerations at the forefront of the creation and dissemination of knowledge. Rooted in Enlightenment thought, this theory advocates for IP laws that protect the rights of the creator while promoting public access to knowledge and prioritizing innovation for the greater good of society<sup>[64]</sup>. Over time, this theory has evolved to balance the interests of creators with the broader needs of society, emphasizing public access, ethical considerations, and cultural development. This perspective underscores the role of IP not just as a means of individual or corporate gain but also as a vital tool for fostering societal advancement and addressing global challenges<sup>[65]</sup>.

Let us briefly examine three examples of brands that incorporate the Theory of Social Good in the context of IP. Tesla has made a significant impact by adopting an open patent policy. In 2014, CEO Elon Musk announced that Tesla would not initiate patent lawsuits against anyone who, in good faith, wanted to use their technology<sup>[66]</sup>. This approach aligns with the Theory of Social Good by promoting the dissemination of knowledge and innovation in the electric vehicle industry. By allowing other companies to build on their advancements, Tesla fosters competition and collaboration, driving the broader adoption of sustainable technologies that benefit society as a whole.

Patagonia is well-known for its commitment to environmental and social responsibility. The company applies the Theory of Social Good by advocating for and using environmentally friendly materials and practices. They have also shared their proprietary methods and technologies with competitors to encourage the industry-wide adoption of sustainable

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<sup>64</sup> Jankowska, Pawełczyk, „Intellectual”, 549-587.

<sup>65</sup> Mtima, „IP Social Justice Theory: Access, Inclusion, and Empowerment”; Rolf H. Weber, Ulrike I. Heinrich, „IP address allocation through the lenses of public goods and scarce resources theories” *SCRIPTed*, 8 (2011): 69; Claude Henry, Joseph E. Stiglitz, „Intellectual property, dissemination of innovation and sustainable development” *Global Policy* 1.3 (2010): 237-251; Alina Ng Boyte, „The Social Value of Intellectual Property” *IP Theory*, 12.3 (2023): 1.

<sup>66</sup> Bilbeisi, Kesse, „Tesla: A successful”; Ahmad, Khan, „Tesla: Disruptor”; Lang, Reber, Aldori, „How Tesla”.



practices. By prioritizing the greater good over competitive advantage, Patagonia ensures that its innovations contribute to broader environmental preservation and societal well-being<sup>[67]</sup>.

GlaxoSmithKline, a major pharmaceutical company, has adopted policies that reflect the Theory of Social Good, particularly in making medications accessible in developing countries. The company has pledged to offer licenses for their patents to generic manufacturers, thereby increasing access to essential medicines. GSK's strategy balances the need to protect its intellectual property and recover research costs with the imperative to address public health challenges globally. In doing so, they ensure that critical innovations in healthcare reach those who need them most, supporting societal advancement and ethical considerations<sup>[68]</sup>.

## 12 | Applying Theory of Social Good to branding: Case studies of Tesla and Gilead Sciences

One company that embodies the Theory of Social Good in IP is Tesla. Tesla has taken an unconventional approach to its patents, opening up its electric vehicle patents for public use in good faith. This initiative, announced by CEO Elon Musk in 2014, was aimed at accelerating the growth of sustainable transport. By allowing other manufacturers to use Tesla's patented technology, the company encourages innovation and competition in the electric vehicle market. This move aligns with the subtheory of Innovation for Societal Benefit, as it promotes broader societal welfare by fostering technological advancements and speeding up the transition to sustainable energy. Tesla's approach demonstrates a commitment to addressing significant environmental challenges, such as reducing carbon emissions and combating climate change, by leveraging its IP for the greater good<sup>[69]</sup>.

<sup>67</sup> Cosenz, Rodrigues, Rosati, „Dynamic business models”; Stappmanns, „Sustainable”; Rattalino, „Circular advantage anyone?”.

<sup>68</sup> Alan D. Smith, „Corporate social responsibility practices in the pharmaceutical industry” *Business Strategy Series*, 6 (2008): 306-315.

<sup>69</sup> Bilbeisi, Kesse, „Tesla: A successful”; Ahmad, Khan, „Tesla: Disruptor”; Lang, Reber, Aldori, „How Tesla”.

Tesla's decision to open its patents can also be seen as a strategic move to build a larger ecosystem around electric vehicles. By encouraging other manufacturers to develop electric vehicles using Tesla's technology, the company helps create a more robust market for electric vehicles, which in turn benefits Tesla by increasing demand for related infrastructure, such as charging stations. This approach not only supports environmental sustainability but also drives the overall growth of the electric vehicle market, aligning Tesla's business interests with societal needs. For instance, Tesla's Supercharger network expansion is indirectly supported by the growth of electric vehicles using Tesla's patents, creating a win-win scenario where Tesla's open IP policy enhances both its business model and societal impact.

Additionally, Tesla's open patent strategy helps to mitigate potential patent wars in the nascent electric vehicle industry. By setting a precedent of collaboration rather than litigation, Tesla fosters a cooperative environment where companies can innovate without the fear of costly legal battles. This approach reflects a forward-thinking application of the Theory of Social Good, where IP policies are used not only to protect corporate interests but to cultivate an industry-wide culture of innovation and mutual progress.

Another example is the pharmaceutical company Gilead Sciences. During the Ebola outbreak, Gilead Sciences took significant steps to ensure that its antiviral drug, Remdesivir, was accessible in the regions most affected by the virus. They entered into licensing agreements with generic manufacturers, allowing for the production and distribution of the drug at lower costs in developing countries. This approach reflects the subtheory of Balancing Rights and Public Interest, where the company protected its IP while also prioritizing public health needs. By enabling broader access to Remdesivir, Gilead demonstrated a commitment to societal good, ensuring that life-saving medication was available to those in urgent need.

Gilead's strategy also highlights the importance of ethical considerations in IP management. By licensing Remdesivir to generic manufacturers, Gilead ensured that the drug could be produced and distributed more widely and affordably, particularly in low-income regions. This move not only addressed the immediate health crisis but also set a precedent for how pharmaceutical companies can balance profitability with social responsibility. Gilead's actions during the Ebola outbreak underscore the potential for IP laws to be structured in a way that supports both innovation and

accessibility, aligning with the broader ethical imperatives of the Theory of Social Good<sup>[70]</sup>.

Additionally, Gilead Sciences has taken similar steps in the context of the HIV/AIDS epidemic. The company has entered into licensing agreements with generic manufacturers to produce and distribute HIV treatment drugs at reduced costs in developing countries. This initiative is part of the Medicines Patent Pool, a United Nations-backed public health organization working to increase access to life-saving medicines. By participating in such programs, Gilead not only protects its intellectual property but also contributes to global health efforts, demonstrating how IP can be used to achieve significant social benefits. This approach exemplifies the subtheory of Public Access to Knowledge, which advocates for making essential knowledge and treatments widely accessible to promote societal progress.

Both Tesla and Gilead Sciences exemplify how the Theory of Social Good in IP can be applied in practice. Tesla's open patent strategy and Gilead's licensing agreements for Remdesivir and HIV treatments illustrate how companies can leverage their intellectual property to address global challenges and promote societal welfare. These examples demonstrate that IP management can be aligned with ethical and social considerations, fostering innovation and progress while ensuring that the benefits of such advancements are widely accessible. Through these approaches, companies can contribute to a more equitable and sustainable world and highlight the critical role of IP in driving societal advancement.

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<sup>70</sup> Haacker, Nolan, Seshan, „Acquiring Gilead Sciences as a Proposed Strategy for Merck & Co. Growth”, 185-200; Sasan Dastaran, *Balancing Profits and Ethics: Gilead's Innovative Strategy in Low-Income Countries*, 2022; Alexander Schuhmacher, Oliver Gassmann, Nigel McCracken, Markus Hinder, „Open innovation: A paradigm shift in pharma R&D?” *Drug Discovery Today*, 9 (2022): 2395-2405.

## 13 | Equity and ethics in branding: A Theory of Justice Approach

The Theory of Justice in the context of intellectual property offers a nuanced perspective, deeply rooted in philosophical discussions about fairness and equity. Influenced significantly by thinkers such as John Rawls, this theory advocates for a balanced approach to IP rights, ensuring equitable distribution and access<sup>[71]</sup>. Central to the Theory of Justice in IP is the fair distribution of rights and resources. This aspect focuses on ensuring that IP laws do not disproportionately favor certain individuals or groups, such as large corporations or affluent creators, to the detriment of others, particularly marginalized communities. It also emphasizes the public's right to access knowledge and cultural works, contending that while creators deserve rewards for their contributions, the public should also benefit from these creations, especially in fields like education, science, and culture. Reflecting on the Theory of Justice in IP, it challenges the traditional view of IP as merely a tool for economic incentive. Instead, it reframes IP rights as a social contract between creators and society, where each party has rights and responsibilities. This perspective encourages a holistic view of IP, considering its impact on social welfare, ethical practices, and equitable access to cultural and intellectual works<sup>[72]</sup>.

Applying the Theory of Justice to branding, we see its principles manifest in the strategies of companies like Ben & Jerry's and Patagonia, both of which emphasize social equity and ethical considerations in their brand management and IP practices.

Ben & Jerry's, the popular ice cream brand, has long been a champion of social justice and equity, integrating these values into its branding and business practices<sup>[73]</sup>. The company's commitment to the fair distribution of

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<sup>71</sup> Darryl J. Murphy, „Are intellectual property rights compatible with Rawlsian principles of justice?” *Ethics and information technology*, 14.2 (2012): 109-121; Thomas Nagel, „Rawls on justice” *The Philosophical Review* (1973): 220-234; Dustin S. Nelson, „Justice in Intellectual Property” *Ethics, Politics & Society* 3 (2020): 49-72. Murphy, „Are intellectual property rights compatible with Rawlsian principles of justice?”.

<sup>72</sup> Jankowska, Pawełczyk, „Intellectual”, 549-587.

<sup>73</sup> Philip H. Mirvis, „Environmentalism in progressive businesses” *Journal of Organizational Change Management*, 4 (1994): 82-100; Inês Peso de Oliveira Barros, *Ben & Jerry's: Case Study on Children's Social Awareness and its Impact on Corporate Strategy* (Master's thesis, Universidade NOVA de Lisboa, 2011); Antony Page, Robert

rights and resources is evident in its support for various social causes and its equitable approach to sourcing ingredients. For instance, Ben & Jerry's sources Fairtrade-certified ingredients, ensuring that farmers receive fair compensation for their labor. This practice aligns with the Theory of Justice by promoting economic equity and supporting marginalized communities. Fairtrade certification involves rigorous standards for ethical labor practices, fair wages, and sustainable farming methods. By adhering to these standards, Ben & Jerry's ensures that its suppliers are treated fairly and that the environmental impact of its sourcing is minimized.

Moreover, Ben & Jerry's uses its brand platform to advocate for social and environmental issues. The company has launched numerous campaigns on topics such as climate change, racial justice, and LGBTQ+ rights. For example, Ben & Jerry's „Justice ReMix'd” flavor was created to support criminal justice reform, with proceeds going to nonprofit organizations working on these issues. The company also has a history of taking strong stances on environmental sustainability, such as its opposition to Arctic oil drilling. By leveraging its brand and IP to support these causes, Ben & Jerry's balances its commercial interests with broader societal benefits, demonstrating its commitment to the Theory of Justice. The company's trademark and branding strategies ensure that its social messages are consistently and effectively communicated, reinforcing its identity as a socially responsible brand.

Patagonia, an outdoor apparel company, also embodies the principles of the Theory of Justice in its branding and IP practices. Patagonia is known for its strong stance on environmental conservation and social responsibility, which are central to its brand identity<sup>[74]</sup>. The company's Worn Wear program, which encourages customers to repair and reuse their clothing instead of buying new items, reflects its commitment to sustainability and the equitable resource distribution. By promoting the longevity of its products, Patagonia reduces environmental impact and challenges the consumerist culture, aligning with the broader societal interest. The Worn Wear program includes initiatives such as offering repair services, providing guides for do-it-yourself repairs, and selling used Patagonia gear

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A Katz, „Freezing out Ben & Jerry: Corporate law and the sale of a social enterprise icon” *Vermont Law Review*, 35 (2010): 211; Solange Hai, Richard L Daft, „When missions collide” *Organizational Dynamics*, 4 (2016): 283-290.

<sup>74</sup> Cosenz, Rodrigues, Rosati, „Dynamic business models”; Stappmanns, „Sustainable”; Rattalino, „Circular advantage anyone?”.

at a discount. This approach not only reduces waste but also makes high-quality outdoor apparel more accessible to a wider audience.

Additionally, Patagonia has taken legal action to protect its brand from misuse that contradicts its values. For instance, the company has filed lawsuits against businesses that use the Patagonia name or logo in ways that could mislead consumers or damage the brand's reputation. In one notable case, Patagonia sued Anheuser-Busch InBev for using Patagonia name on a beer brand, arguing that it could create consumer confusion and dilute Patagonia's brand identity. This enforcement of IP rights is done ethically and fairly, emphasizing the importance of maintaining brand integrity without resorting to overly punitive measures. Patagonia's legal strategy focuses on protecting its brand values and ensuring that its trademarks are not used to endorse activities that harm the environment or conflict with its mission.

Both Ben & Jerry's and Patagonia demonstrate how the Theory of Justice can be applied to branding in a way that prioritizes fairness, equity, and ethical considerations. By integrating these principles into their IP practices, these companies not only protect their brands but also contribute to societal welfare. This approach ensures that their branding efforts do not disproportionately benefit the company at the expense of the public, but rather promote a fair and just distribution of resources and benefits, aligning with the broader goals of the Theory of Justice in IP. Through their commitment to ethical sourcing, social advocacy, and responsible IP enforcement, Ben & Jerry's and Patagonia exemplify how brands can operate within a framework of justice and equity, that ultimately benefit both society and their businesses.

## 14 | Preserving identity and diversity: The role of Cultural Theory in branding

The Cultural Theory in IP emphasizes the importance of cultural impact and diversity, viewing intellectual creations as integral parts of cultural expression and identity rather than mere economic commodities. Historically, this theory evolved through different contexts, recognizing the connection between artistic works and cultural practices. In contemporary times, it

highlights the significance of protecting cultural heritage and traditional knowledge from exploitation, advocating for laws and policies that ensure communities retain control over their cultural expressions. Additionally, it stresses the need to maintain a diverse cultural landscape, especially in the face of globalization, which can lead to cultural homogenization. The Cultural Theory in IP calls for a balanced approach that respects economic values while celebrating cultural diversity and integrity<sup>[75]</sup>.

When applied to branding, the Cultural Theory underscores the importance of cultural authenticity and diversity in brand identity and marketing strategies. Brands that incorporate this theory prioritize the preservation and celebration of cultural expressions, ensuring their marketing practices are respectful and inclusive of different cultural identities. One notable example is Ben & Jerry's, which has consistently integrated cultural and social issues into its branding<sup>[76]</sup>. The company is known for its commitment to social justice, environmental sustainability, and supporting diverse communities. For instance, Ben & Jerry's frequently uses its platform to highlight issues like racial equality and climate change. Campaigns such as „Justice ReMix'd” and „Save Our Swirled” demonstrate the brand's dedication to cultural and social advocacy. By doing so, Ben & Jerry's ensures that its brand identity is not only about selling ice cream but also about advocating for a more just and inclusive society. This approach aligns with the Cultural Theory in IP by emphasizing the brand's role in cultural expression and social advocacy.

Nike, another prominent brand, effectively utilizes cultural narratives in its branding by incorporating elements from various cultural identities and social movements<sup>[77]</sup>. The brand's „Equality” campaign, launched during Black History Month, celebrated diversity and inclusion, featuring

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<sup>75</sup> Susan Scafidi, „Intellectual property and cultural products” *Boton University Law Review*, 81 (2001): 793.

<sup>76</sup> Mirvis, „Environmentalism”; de Oliveira Barros, *Ben & Jerry's*; Page, Katz, „Freezing”; Hai, Daft, When”.

<sup>77</sup> Hussain A Ali Mahdi, Mohammed Abbas, Taher Ilyas Mazar, Shaju George, „A Comparative Analysis of Strategies and Business Models of Nike, Inc. and Adidas Group with special reference to Competitive Advantage in the context of a Dynamic and Competitive Environment” *International Journal of Business Management and Economic Research*, 3 (2015): 167-177; Vivek Ramaswamy, „Co-creating value through customers' experiences: the Nike case” *Strategy & leadership*, 5 (2008): 9-14; Apeksha Champaneri, Jain Prachi, „A content marketing as the leading technique in digital marketing: A case of Nike” *International Journal of Research and Analytical Reviews*, 4 (2021).



prominent athletes like LeBron James and Serena Williams advocating for social justice. Additionally, Nike's collaborations with athletes and designers from diverse backgrounds, such as its partnership with Native American athlete and designer Bunky Echo-Hawk to create the N7 collection, demonstrate its commitment to celebrating cultural diversity. These initiatives enhance Nike's brand appeal and support the preservation and promotion of cultural expressions, aligning with the principles of Cultural Theory in IP.

Coca-Cola, with its global presence, has a long history of integrating cultural diversity into its branding strategy<sup>[78]</sup>. The „Share a Coke” campaign, which featured names from various cultures and languages on its bottles, is a prime example of how the brand embraces cultural diversity and personal connection. Coca-Cola's advertising often reflects multicultural themes and celebrations, such as the iconic „Hilltop” commercial featuring people from different nationalities singing together. This commitment to inclusivity is further exemplified by its support for multicultural events and partnerships, like its sponsorship of the Chinese New Year celebrations and Diwali festivals worldwide. By reflecting and respecting different cultural identities, Coca-Cola reinforces the idea that it values cultural diversity, thereby maintaining a rich cultural landscape in line with the Cultural Theory in IP.

By incorporating the principles of the Cultural Theory in IP, these brands not only enhance their market presence but also contribute to the preservation and celebration of cultural diversity. Their branding practices resonate with a wide range of cultural identities and expressions, ensuring that they remain relevant and respected in a globalized world.

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<sup>78</sup> Lockhart, Porter, „The dating”; Michael Ba Banutu-Gomez, „Coca-Cola: International business strategy for globalization” *The Business & Management Review*, 1 (2012): 155; Bodi Chu, „Analysis on the success of Coca-Cola marketing strategy”, [in:] *2020 2nd International Conference on Economic Management and Cultural Industry (ICEMCI 2020)* (Atlantis Press, 2020), 96-100.

## 15 | Summary

This paper extends the application of IP philosophies beyond the traditional realm of IP to the dynamic field of branding. By examining the branding strategies of notable companies through the lens of various IP theories, it becomes evident that these philosophical frameworks offer valuable insights into how brands develop, sustain, and communicate their identities. Additionally, many companies adopt a blend of these philosophies to craft comprehensive and effective branding strategies.

Lockean Labour Theory posits that individuals have a right to the fruits of their labor, which translates into branding as companies build a strong identity and value through their efforts. For example, Coca-Cola and Apple exemplify this theory by investing heavily in their brand image and innovation, thereby creating a unique market position that reflects their labor and creativity.

Utilitarian Principles in branding focus on maximizing overall happiness and welfare. Companies such as Patagonia, Microsoft, Adobe, Spotify, Netflix, Gilead Sciences, and Tesla align with this approach by ensuring that their brands make positive contribution to society. They emphasize sustainability, accessibility, and user satisfaction, reflecting a commitment to the greater good.

Personality Theory suggests that brands can have distinct personalities that resonate with consumers. Apple, Patagonia, and the Oprah Winfrey Network leverage this theory by creating strong, relatable identities that forge emotional connections with their audience. These brands stand out by embodying specific traits and values that appeal to their target markets.

Economic Theory views branding as a driver of economic value and market differentiation. Companies such as Coca-Cola, Kellogg, Apple, and Louis Vuitton use branding to establish market dominance and economic advantage, demonstrating how a strong brand can translate into financial success and competitive edge.

Democratic Theory emphasizes the free flow of information and broad access to knowledge, reflecting branding strategies that promote transparency and user engagement. Wikipedia, Creative Commons, Mozilla Firefox, Apple, and Tesla embody this theory by fostering open-source platforms and community-driven initiatives, ensuring their brands are seen as accessible and inclusive.

Theory of Social Good underscores the importance of balancing individual interests with societal benefits. Brands like Tesla, Patagonia,

GlaxoSmithKline, and Gilead Sciences incorporate this theory by pursuing initiatives that address critical social issues such as environmental sustainability and public health, aligning their branding with broader social responsibilities.

The Theory of Justice, as applied to branding, highlights fairness and ethical practices. Ben & Jerry's and Patagonia are notable examples, as they emphasize fair trade, environmental stewardship, and social justice in their branding efforts, ensuring their brands are associated with ethical conduct and equity.

Cultural Theory focuses on preserving cultural diversity and heritage within branding. Ben & Jerry's, Nike, and Patagonia use this approach to celebrate and protect cultural expressions, ensuring that their brands resonate with diverse cultural identities and contribute to a rich global cultural landscape.

In conclusion, this paper reveals that the application of IP philosophies to branding offers a multifaceted understanding of how brands can be developed and managed. Companies often use a mix of these theories, creating holistic branding strategies that not only drive economic success but also reflect their commitment to societal values, ethical practices, and cultural diversity. The interplay of these philosophies in branding underscores the evolving nature of brand management in a complex, interconnected world.

## 16 | Discussion

In addition to the application of individual IP theories to branding, several overarching themes and emerging trends can be spotted as illuminated by these philosophies. Brands increasingly adopt a combination of IP philosophies, demonstrating a sophisticated and flexible approach to branding. For instance, Apple incorporates elements from Lockean Labour Theory, Economic Theory, Personality Theory, and Democratic Theory, showcasing how multifaceted strategies can enhance brand resilience and appeal. Modern consumers are more informed and value-driven, seeking brands that such as with their personal beliefs and social values. This shift is reflected in the rise of brands like Patagonia and Ben & Jerry's, which integrate the Theory of Social Good and the Theory of Justice into their branding, appealing to consumers' desire for ethical and socially responsible companies.

The digital age has revolutionized branding, particularly under the Democratic Theory. Brands like Wikipedia and Mozilla Firefox thrive on the principles of open access and community collaboration. This trend underscores the importance of transparency, user participation, and the democratization of information in contemporary branding strategies. Furthermore, the emphasis on sustainability and innovation, as seen in Tesla and Patagonia, aligns with both Utilitarian Principles and the Theory of Social Good. Brands that prioritize sustainable practices and innovative solutions not only address pressing environmental concerns but also position themselves as forward-thinking and responsible, enhancing their long-term brand value.

In a globalized marketplace, brands must navigate cultural diversity thoughtfully, as highlighted by Cultural Theory. Nike and Ben & Jerry's exemplify how acknowledging and celebrating cultural differences can enhance brand relevance and foster a deeper connection with diverse consumer bases. The Theory of Justice emphasizes the need for fairness and ethical practices, which are becoming increasingly important in brand narratives. Consumers are more likely to support brands that are transparent about their ethical practices, such as fair trade and labor conditions, as seen with Ben & Jerry's and Patagonia.

Personality Theory underscores the importance of creating a relatable and distinct brand personality. Brands like the Oprah Winfrey Network and Apple excel at establishing an emotional connection with their audience, fostering loyalty and a sense of community. Economic Theory remains crucial as brands navigate competitive markets. By strategically leveraging branding to establish economic value and market positioning, companies like Coca-Cola and Louis Vuitton demonstrate how strong brand identities can drive financial performance and market leadership.

In conclusion, the application of IP philosophies to branding offers a comprehensive framework for understanding the multifaceted nature of brand development and management. These philosophies not only guide the creation of effective branding strategies but also reflect the broader societal, ethical, and cultural values that brands must navigate in today's complex market landscape. The integration of these diverse theories shows the dynamic and evolving nature of branding, highlighting the importance of flexibility, consumer engagement, and ethical considerations in building successful and resilient brands.

Notably, this research is unprecedented, as no previous studies have explored the application of these IP philosophies to branding in such a detailed and integrative manner.

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