

Marks of Rectitude: Fair Trade, Brand-based Regulation and New Global Governance

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Abstract: Questions raised by certification marks are endemic to trademark law but have specific nuances as applied to marks denoting socially responsible practices – or marks of rectitude. Marks of rectitude are particularly noticeable in the context of global trade, where market integration is accompanied by relatively uneven integration of labor, environmental and other standards, and consumers in the so-called global North choose how to empower producers and/or encourage development of markets or standards in the global South. But consumer participation in these transactions is under-explored. And the roles of the producers are also ambiguous, where a ‘benevolent’ third party controls quality and consistency of the mark. Marks of rectitude can be viewed as a type of decentralized regulation in response to a felt need for heightened standards or social norms. Trademark law potentially can function to mediate between extremely different local conditions within a globalized market system, to signal not source of manufacturing origin (as in classic trademark law), or even geographic origin (as in the more typically understood use of certification marks—pushed by the USPTO as a viable alternative to GI protection), but rather socially responsible practices within a global administrative framework. The “branding” aspect of this decentralized, privatized regulation raises many issues, including the extent to which slippage occurs between the mark’s function as a reliable indication of source and its newer regulatory functions. Can marks of rectitude bear the weight of the various goals that have proliferated in the global regulatory marketplace?

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