

Differing Conceptions of Trademark Infringement in the Virtual World and the Assumption of Multiple Parallelism

Yee Fen LIM

Abstract

Second Life was the first virtual world that gave users full intellectual property rights in their creations when using the virtual world. There is an assumption by many that the intellectual property regime as it exists in the real world can and is carried over into virtual worlds such as Second Life, with only some minor adjustments required. This assumption however is riddled with problems. This paper will focus on the infringement aspects of Australian trademark law protection for famous marks and it will demonstrate that the assumption is misguided in a number of aspects.

Secondly, there is an assumption that Trade Mark laws are more or less in parallel across jurisdictions. Section 120 of the Australian Trade Mark Act contains the main infringement provision for the Australian regime. The first point to note about this section is that unlike its counterparts in for example, the US, there is no explicit provision for anti-dilution. It may be possible that subsection 120(3) of the Australian Act could be interpreted to inject the concept of dilution into the Australian Trade Mark law landscape but this is not likely nor is it a settled issue. The paper will explore the implications of this uncertainty on the protection of famous marks in virtual worlds. It will conclude that under Australian law, famous marks would not be as well protected in virtual worlds as in jurisdictions such as the US, and as such would not be the most ideal forum for a plaintiff to bring an action.