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What Brand are You Planting?

An introduction to Trademark Law
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What is your name? If you pause to think about it, would you agree that your name is the most central feature of your identity? In the most basic sense, a name is a locating tool. News reporters rely heavily upon secret books filled with names of key informants, successful politicians know the names of influential constituents, and agriculture landlords seek farm tenants with good names. One's reputation in a farm community is often driven by name recognition and observations. Good farmers keep their good name through hard work, good choices, and fair dealing.

While shopping recently, I overheard a man in a nearby checkout line as he discovered that he had misplaced his wallet. The thought of someone else having access to his identity triggered immediate concerns of identity theft. He knew he would have to cancel his credit cards and get a new drivers license, and he could only hope that nobody stole his identity.

Most people would be outraged if their wallet and identity were stolen, yet a significant number of those same people purchase fake Rolexes, knock-off sunglasses, and brown-bagged seed. In a free-market economy, cheapest is best, right? All those trademarks, patents, and copyrights protect only the corporate interests, right?

As an intellectual property lawyer who emphasizes his practice in the agricultural industry, I feel compelled to set the record straight—intellectual property protection was designed by Congress primarily to protect the consumer.

Trademark law follows the concept that, like people, products are known only by name. There is no doubt that trademarks such as John Deere, Pioneer, AgriPro, Pennington, Syngenta, and Garst are strong, enviable, and valuable. In order to

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protect the intrinsic value of brands, the government affords legal protection to the names of products and services. This protection is a strategic step in protecting both the investment in research and development by these companies and, more importantly, the consuming public.

The key to understanding the law behind branding and trademarks is to recognize that Congress wanted to protect the consumer from unscrupulous counterfeits and inferior quality, and to give manufacturers an incentive to put the best products on the market.

The image I use to illustrate the importance of trademarks for a jury is to ask them to walk through the aisles of a grocery store. In a world without trademarks, all boxes of cereal and all canned vegetables would appear the same. With no brand identification, the consumer is the one who suffers at a local level. Who really knows the quality of beans in a black and white generic “BEANS” can? Likewise, who knows the true quality of brown-bagged seed? When farmers purchase brown-bagged seed, they really cannot know what it is they are getting.

When trademarks and brand identification are given proper legal

protection, farmers can achieve the highest possible yields by tailoring their crops to the good quality seed products offered by reputable companies. Germination rates will constitute a warranty, and companies will stand behind their product. Farmers can make their seed selection with confidence that their repeated selection of the product will provide them with the same level of good quality, yield, germination, and herbicide resistance.

There is another benefit to farmers who rely upon brand identification and trademarks as part of good farming practices. When a farmer becomes dissatisfied with his purchase, the farmer will be able to select another brand the next season, all the while telling his friends about the unwelcome surprise he experienced.

In essence, trademarks and brand identification place responsibility on the trademark owner to take measures to ensure that only high quality products and seedstock enters the marketplace. With trademarks, the reputable manufacturers are given incentive to invest in research and development in high quality seedstock, to promote and advertise their product to a wider audience, and to invest in marketing campaigns

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structured around farmer rebates. Farmers get the benefit of knowing the quality of the seed before it is planted and having someone to turn to if the seed fails to live up to its name. With trademarks, everybody wins — especially farmers.