



Impacts of Artificial Intelligence on Branding

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Artificial Intelligence (“AI”) applies intelligent algorithms in a manner that enables machines to perform tasks that generally require human thinking. Needless to say, AI is viewed as “the way of the future” and it is expected that consumer experiences will soon be driven entirely by AI. While the development of AI has already changed the way brand owners interact with their consumers, it still has a long way to go. The rise of AI will undoubtedly make significant impacts on an entity’s branding and trademark practices.

Brands are akin to a company’s “personality” and a brand’s value is connected to the relationship it builds with its consumers – namely, how well consumers relate to it and come to trust it. AI has allowed brand owners to personalize consumer experiences. Today, brand owners can provide personalized services, such as: product recommendations and targeted advertising based on prior searches or purchases, fitness training advice based on the user’s activity and goals, and tv show suggestions based on other shows a user has enjoyed.

AI has also allowed brand owners to manage their brands more efficiently and accurately, and provide a seamless customer experience. A common example of this is the use of online customer service chat bots, which allows brand owners to quickly respond to inquiries and resolve issues. In addition, brand owners can monitor their customer feedback or comments easily across various platforms in order to respond quickly and preserve their reputations. AI can also be used to track trends and stay competitive in the marketplace. The implementation of AI has allowed brand owners to automatically humanize their brands, provide better customer care, improve consumer loyalty and expand their reach effectively. Overall, the shift to AI has helped brand owners manage their brands better, which in turn has resulted in increased brand values.

While AI has introduced meaningful benefits for brand owners and consumers, there are potential downfalls to be aware of. There are concerns that AI may eliminate jobs given its efficiency. In addition, since AI is used to track and follow trends, it may reduce creativity. From a consumer’s perspective, AI has the potential to limit consumer choice because it reduces how much consumers shop around as, for example, machines display top matches or suggestions. For brand owners, AI could make it more difficult to stay competitive. Since AI bases suggestions on data collected, such as previous searching history, it may result in potential disadvantages to new entrants in the market. AI could result in a loss of control over one’s brand as it collects data and gets “smarter”. Furthermore, using AI to develop branding can have negative consequences. With the increase in the use of mobile applications, trademarks and logos have to be short and simple, and consumers find it easier to process simple and descriptive marks. However, from a trademark perspective, descriptive marks are weak, and thus enjoy a narrow scope of protection (if any).

Given that AI has clearly impacted how consumers encounter products and services, it will affect trademark law as well. Trademark law has historically revolved around human characteristics and human faults. This is evident, for example, in the test for confusion, which considers the *first impression* of the *casual consumer somewhat in a hurry*, having *imperfect recollection*. How will confusion be assessed when a machine is encountering different marks as opposed to a human? Can a machine be confused? Who will be at fault if a machine recommends a counterfeit product to a customer? It remains to be determined how a Court will apply trademark law to AI technology.

In the meantime, brand owners should review their trademark registrations periodically and ensure these registrations accurately cover their uses. Once AI is incorporated into goods or services, the nature of the goods or services may change. For example, “colour printers” may not fully cover printers that automatically order ink when it is running low. To



that end, brand owners should also think ahead when developing their goods and services descriptions to anticipate how their goods and services will change over time.

It can be challenging to specify goods and services given how quickly AI develops. The only preapproved AI term in CIPO's goods and services manual is "humanoid robots with artificial intelligence". Furthermore, given the way CIPO has applied the requirements to describe goods or services in "specific and ordinary commercial terms", it can be difficult to specify AI in a manner that accounts for future developments in the industry. In Canada, when including software in the description of goods, applicants are required to specify the function of the software, and if not obvious from the function, applicants are also required to specify the area of use of such software. Carefully crafting the goods and services while thinking broadly is important to ensure all uses are covered, and that the goods and services cover future uses as well.

Not only can AI have an impact on trademark law, but it can also impact intellectual property ("IP") law more broadly. We previously wrote about how the [rising popularity of AI has resulted in copyright and privacy issues](#). AI can impact many areas of technology law as well, including ownership and user rights. Companies using AI will need consider the effects of AI on their rights and legal obligations.

In a world where AI continues to grow rapidly, an IP professional can provide strategic guidance in ensuring brand owners are properly protected.

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