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ARTICLES

TRADEMARK CO-OWNERSHIP: BALANCING THE SINGLE-SOURCE DOCTRINE AND PROPERTY RIGHTS IN THE AMERICAN CONTEXT

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Abstract

This article explores the issue of trademark co-ownership, which arises due to the contradiction between the individualizing function of a trademark and the proprietary nature of exclusive rights. On the one hand, the single-source doctrine requires that a trademark be associated with a single source in the minds of consumers, preventing consumer confusion. On the other hand, the right of co-ownership allows multiple parties to manage the trademark at their discretion, which can disrupt the connection between the mark and its source. The aim of this study is to determine the extent to which models of trademark co-ownership can maintain a balance between these conflicting interests in the modern economy. The development of digital technologies, global platforms, and joint branding has changed consumer behavior, making consumers more informed and less susceptible to confusion. In this context, strict limitations on trademark co-ownership, based on traditional notions of consumer protection, may require reconsideration. The research methodology includes a comparative legal analysis of case law, legislative provisions, and doctrinal sources, as well as elements of economic analysis of law. The article examines contemporary legal approaches to trademark co-ownership, including U.S. case law precedents such as *East West Tea Co., LLC v. Puri*, as well as alternative regulatory models in other jurisdictions (for example, the German model, which requires the consent of all co-owners for licensing). The study's findings indicate that existing approaches to trademark co-ownership in the U.S. provide co-owners with significant freedom but may also create risks of bargaining power imbalances and opportunistic behavior. However, in the digital economy, where consumers are more knowledgeable, strict protections against brand confusion may be losing relevance. This opens the possibility for more flexible regulations, where co-ownership of exclusive trademark rights becomes a more sustainable and predictable ownership model.

Keywords

trademark co-ownership, models of exclusive rights co-ownership, single-source doctrine, use-based trademark protection, tragedy of the commons

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СТАТЬИ

СООБЛАДАНИЕ ПРАВОМ НА ТОВАРНЫЕ ЗНАКИ: МЕЖДУ ДОКТРИНОЙ ЕДИНОГО ИСТОЧНИКА ПРОИСХОЖДЕНИЯ ТОВАРОВ И ИМУЩЕСТВЕННЫМ ХАРАКТЕРОМ ИСКЛЮЧИТЕЛЬНЫХ ПРАВ В АМЕРИКАНСКОМ КОНТЕКСТЕ

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Аннотация

В статье исследуется проблема сообладания правом на товарный знак, возникающая из-за противоречия между индивидуализирующей функцией товарного знака и имущественным характером исключительных прав. С одной стороны, доктрина единого источника происхождения товаров требует, чтобы товарный знак ассоциировался у потребителей с единым источником, предотвращая их введение в заблуждение. С другой стороны, право сообладания товарным знаком позволяет нескольким лицам распоряжаться им по своему усмотрению, что может разрушать связь между знаком и источником. Цель исследования — определить, в какой мере модели сообладания правами на товарный знак могут сохранять баланс между этими противоречивыми интересами в условиях современной экономики. Развитие цифровых технологий, глобальных платформ и совместных брендов изменило поведение потребителей, сделав их более осведомленными и менее подверженными заблуждению. В этом контексте жесткие ограничения на сообладание товарными знаками, основанные на традиционных представлениях о защите потребителей, могут требовать пересмотра. Методология исследования включает сравнительно-правовой анализ судебной практики, законодательных положений и доктринальных источников, а также элементы экономического анализа права. В статье рассматриваются современные правовые подходы к сообладанию товарными знаками, включая прецеденты американского права, такие как *East West Tea Co., LLC v. Puri*, а также альтернативные модели регулирования в других юрисдикциях (например, германская модель, требующая согласия всех соправообладателей на лицензирование). Результаты исследования показывают, что действующие подходы к сообладанию правами на товарные знаки в США предоставляют соправообладателям значительную свободу, но могут создавать риски неравенства в переговорной силе и оппортунистического поведения. Однако в условиях цифровой экономики и повышенной осведомленности потребителей строгая защита от смешения брендов может терять свою актуальность. Это открывает возможность для гибкого регулирования, при котором сообладание исключительными правами на товарные знаки становится более устойчивой и предсказуемой моделью владения.

Ключевые слова
совместное обладание правом на товарный знак, модели сообладания исключительным правом, доктрина единого источника происхождения товаров, охрана товарных знаков на основе использования, трагедия общин

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Joint ownership of a trademark is largely considered as problematic because of the trademark's main function—to indicate the particular source of the product. As one of the most authoritative scholarly works on Trademark law put it, "Legal recognition of more than one owner of a single mark is contrary to the basic definition of a mark as identifying and distinguishing a single seller's goods and services." (McCarthy, 2024, §16:40)

Why should one adopt and defend the single-source rule? There are two main reasons for this. First, the origin of this rule traces back to the natural rights concept of trademarks, which was advocated by early trademark scholars.[1] Those scholars apparently found that "ownership of the goodwill adhering to a mark was cultivated through the "skill and industry" of the person who affixed his mark to a good upon presenting it to consumers, while the mark itself had no value outside of its "use" as an indicator of source."

The second reason to protect the single-source trademark concept is efficiency. According to the advocates of Law&Economics, "the benefit of the brand name is...analogous to that of designating individuals by names rather than by descriptions." (Landes & Posner, 2003, p. 167) In other words,

[1] See Alsberg (2014, p. 67, citing *In re Trade-Mark Cases*, 100 U.S. 82, 95 (1879)); *United Drug Co. v. Theodore Rectanus Co.*, 248 U.S. 90, 97 (1918).

the appeal to economic efficiency stresses the ability of trademarks to reduce the cost to consumers of distinguishing among product brands. In return, this power creates incentives for producers of trademarked goods to keep the quality of their output consistent. From this standpoint, it is obvious that anything that will ruin the single-source concept of trademarks will also destroy their utility for the economy.

However, there is another powerful interest to be honored, which can outweigh the single-source doctrine. This interest is the trademark owners' right to dispose of their property in ways they consider proper and most efficient. This is powerful because it preserves the nature of trademark rights as property rights. (Merges, 2018, pp. 590–591)

This interest in trademark co-ownership has been recognized since the late 19th century (Alsberg, 2014, p. 68, citing *Menendez v. Holt*, 128 U.S. 514 (1888)). Early trademark law jurisprudence acknowledged that upon the dissolution of a partnership, "each of [a firm's] former partners would be allowed to obtain 'his share in the goodwill, so far as that might consist in the use of the trademarks.'" Based on this decision, trademarks were treated primarily as property that could be shared from that time until the adoption of the Lanham Act in 1946.

The challenges associated with joint ownership of a trademark tend to align with the two conflicting policies mentioned above (McCarthy, 2024, pp. 590–591). These issues become particularly evident when the concept of a trademark shifts from the single-source rule toward being treated as a "property asset". This shift disrupts the exclusive link between the trademark owner and the product, increasing the risk of consumer confusion.

How can these problems be addressed? The first and most radical solution is a complete ban on the joint ownership of trademark rights. Some scholars argue that American trademark law took this approach with the enactment of the Lanham Act in 1946, when "trademark law became focused on protecting the "deceived buyer" from confusion" (Alsberg, 2014, p. 68). While this approach aims to eliminate the inefficiencies associated with moving away from the "single-source" concept, it presents certain challenges—most notably due to the use-based nature of American trademarks. When multiple entities or individuals use the same mark for a specific group of goods or services, the use-based principle necessitates recognition of joint ownership. In other words, a strict prohibition of joint ownership of trademark rights could only be effectively implemented in purely registration-based systems.

Secondly, the radical approach is unlikely to be viable in the modern economy. As Matthew A. Alsberg asserts, the new market reality is so-called "collaborative ownership" (Alsberg, 2014, p. 64). This term refers to situations in which multiple parties may have a legitimate expectation of lawfully exploiting a proprietary mark.

In particular, there are three contexts in which "collaborative trademark ownership" may arise:

1) When a "composite mark", consisting of multiple trademarks owned by independent entities, is used by a joint venture established by those entities. In this scenario, the unrelated entities "license their intellectual property, including trademarks, to that joint venture for use in the market."
2) When multiple entities, each holding separate trademark registrations, are permitted to use the same mark for a similar product in different geographic markets—commonly referred to as the "concurrent use" context.
3) When a trademark registration is jointly owned by the heirs of a single original owner.

The three contexts in which joint trademark ownership appears necessary and inevitable make the radical solution of its elimination at the very least undesirable, if not entirely impractical. This invites an alternative approach—balancing the conflicting interests of "ownership" and "consumer protection" through contractual regulation among co-owners (McCarthy, 2024, pp. 590–591). According to McCarthy, shared ownership of trademark rights can be feasible because it is in the co-owners' best interests to establish contractual safeguards that preserve the distinctiveness of the co-owned trademark. This solution appears promising, particularly given the increasing sophistication and empowerment of consumers, who are becoming less sensitive to the dilution of the "single-source" rule (Alsberg, 2014, pp. 71–74).

While this perspective is reasonable and persuasive, it does not fully account for the common ownership dilemma known as the "tragedy of the commons" (Merges & Locke, 1990, pp. 592–593). This issue arises because co-owners have incentives to act "opportunistically" toward one another, overusing the shared resource without proportionally investing in its maintenance. "The classic example of such a situation is the "tragedy of the commons," where common pastureland is overexploited since each individual owner of animals using the pasture maximizes earnings by using the land beyond the point where it is cost-effective." However, the economic considerations on both sides of the debate are difficult to reconcile, and it remains unclear which argument is more compelling. Nonetheless, a strong case can still be made for allowing co-ownership of trademark rights, as co-owners have the ability and incentive to establish contractual arrangements that mitigate these risks.

If this is the case, several critical questions arise regarding what optimal and efficient contractual arrangements between trademark co-owners should look like. What specific rules will enable the effective and harmonious coexistence of co-owners while maintaining the distinctiveness of the trademark? Specifically, can one co-owner license the trademark to a third party, or is the other co-owner's consent required? If consent is necessary, is the non-licensing co-owner entitled to an accounting or compensation for royalties received under the license agreement? Can a co-owner sell their share of the trademark to a third party without the other co-owner's consent?

Trademark Co-Ownership Models

Some of these questions were addressed by the court in *East West Tea Co., LLC v. Puri*[2], which we will examine below.

In this case, the trademarks at issue were first licensed to East West Tea Company (hereinafter, the "Plaintiff") when they were under the exclusive ownership of a third party. These trademarks, along with other assets, were held in a living trust (hereinafter, the "Trust") owned by the third party and Bibiji (hereinafter, the "Defendant").

After the third party's death, the Defendant and the Trustees inherited an undivided 50% interest in the intellectual property held by the Trust, including the disputed trademarks. A few years later, the relationship between the Plaintiff and the Defendant deteriorated, leading the Plaintiff to stop paying royalties under the license agreement. The Defendant sued the Plaintiff, and an arbitration panel ruled that the Plaintiff had breached the license and infringed on the Defendant's trademark rights. As a result, the panel ordered the Plaintiff to pay damages to the Defendant and issued an injunction prohibiting further use of the disputed trademarks.

Following the arbitration ruling, the Plaintiff entered into a separate license agreement with the Trustees, another co-owner of the trademarks. Soon after, the Plaintiff filed an action against the Defendant, seeking to partially vacate the arbitration award that had found it liable and prohibited

[2] *East West Tea Co., LLC v. Puri*, No. 3:11-CV-01358-HZ, 2022 WL 900539 (D. Or. March 28, 2022)

its use of the trademarks. The Plaintiff also requested a declaratory judgment clarifying the parties' rights and obligations under the initial license agreement.

The court partially vacated the initial arbitration award and ordered the arbitrators to conduct additional hearings to assess the impact of the new license on the original ruling.[3] Eventually, the court confirmed the final arbitration award. This decision is particularly significant, as it suggests that trademark licenses must be granted by all co-owners collectively and that a license issued by only one co-owner may not be valid.

The parties appealed, and on August 19, 2019, the Ninth Circuit reversed the lower court's ruling, ordering it to confirm the original arbitration award. The Defendant, as the second co-owner, sought a declaration that the licenses issued by the first co-owner were "insufficient to allow full use of the trademarks at issue without a license from [the Defendant]" and that by using the marks without her authorization, the Plaintiff had "continued to infringe on [the Defendant's] rights" and had "deprived [the Defendant] of her rightful royalty for use of the trademarks." (*East West Tea Co., LLC v. Puri*) The Defendant also requested an accounting and damages for profits the Plaintiff had earned from the unauthorized use of the marks.

Meanwhile, the Trustees sought a declaration affirming the validity of their license agreement with the Plaintiff and asserting that it did not infringe upon the Defendant's rights. They also requested confirmation that the Defendant was not entitled to an accounting or any royalty payments for the revenues the Trust had received under its license agreement with the Plaintiff.

The court found that the Plaintiff's use of the trademarks under the second license agreement with the Trustees did not infringe on the Defendant's trademark rights based on the following reasoning. It reaffirmed the principle that a trademark co-owner cannot infringe on trademark rights.[4] *Expanding on this principle, the court concluded that a trademark co-owner also cannot infringe trademark rights by extending use through licensees*, stating: "It reasonably follows, then, that a valid licensee of one co-owner of a trademark cannot be liable to another co-owner for infringement." In reaching this conclusion, the court considered the non-exclusive nature of the Trustees' license. This allowed it to reject the Defendant's argument that "any use of the [co-owned] mark is necessarily a use of the whole such that a license of the Trustee's interest amounts to an exclusive license that infringes on the Defendant's property rights."

Notably, the court referenced rulings on disputes between co-owners of patents and copyrights—likely due to the absence of relevant jurisprudence on trademark co-ownership. This may suggest a broader trend toward recognizing the uniform nature of intellectual property rights.

Regarding the second issue—the duty of the licensing trademark co-owner or licensee to account for royalties received from the licensee—the court also ruled against the Defendant. However, it remains unclear whether the court rejected the accounting duty as a general principle or based solely on the specific circumstances of the case. In this instance, *the license agreement required the Plaintiff to offer the Defendant (the non-licensing co-owner) a license on the same terms as the Trustees (the licensing co-owner), thereby ensuring that the Defendant had the opportunity to benefit from the licensing arrangement.* This provision could be interpreted as an acknowledgment by the involved parties of the non-licensing co-owner's right to participate in licensing revenues. However, *it does not necessarily establish that this right is a legal one rather than a moral one.* In other words, it does not indicate that the non-licensing

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3 *Golden Temple of Oregon, LLC v. Puri,* No. 3:11–cv–01358–HZ, 2017 WL 2432147 (D. Or. June 2, 2017).

4 Citing *Derminer v. Kramer,* 406 F. Supp. 2d 756 (E.D. Mich. 2005).

co-owner has an inherent right to share in royalties absent a contractual arrangement with the licensing co-owner.

The ruling can be seen as establishing or reaffirming a particular model of trademark co-ownership, under which:

1) Each trademark co-owner may grant non-exclusive licenses to third parties without the other co-owner's consent.
2) A co-owner does not have a duty to account for licensing royalties to the non-licensing co-owner.

This model grants maximum freedom and autonomy to each co-owner but may lead to inequities when a co-owner lacks the bargaining power to negotiate either a license with a third party or a share in the royalties received by the licensing party. A similar approach is applied in American patent law (Merges & Locke, 1990, pp. 592–595). Conversely, a less rigid and more redistributive model is arguably followed in American copyright law (*See* "Accounting between Co-Owners of a Copyright," 1948, pp. 425–427).

There are, however, various alternative models for structuring the relationships between trademark co-owners.

One possible model requires that trademark co-owners may only license the shared trademark with the mutual consent of all co-owners. Under this model, the issue of an accounting duty does not arise separately, as each co-owner would negotiate their share of royalties as a condition of granting consent—essentially setting a "price" for their approval. This model has been used in Germany for many years, particularly in the context of patent co-ownership (Henke, 2005, pp. 132–134). However, this approach is considered universally applicable to the regulation of relationships between co-owners of any property right. The "German" model is seen as a mechanism to protect each co-owner from the opportunistic behavior of the others.

Had this model been applied in *East West Tea Co., LLC v. Puri*, the answer to the first question—"Is a license issued by one co-owner valid?"—would be negative. Consequently, the second question—"Does the non-licensing co-owner owe a duty to account for the royalties?"—would not arise. This approach could be considered more desirable, as it would have prevented the Plaintiff's arguably opportunistic behavior. Specifically, it would have blocked the Plaintiff from ceasing payments to one co-owner due to their conflict and arbitrarily switching to another.

Another alternative model is the "French" model, under which each joint owner may use the shared intellectual property (or license it to a third party) but must equitably compensate the other joint owners who do not personally use the shared asset or have not granted a license (Merges & Locke, 1990, pp. 590–591). Under this system, any joint owner wishing to grant a non-exclusive license to a third party must notify the other joint owners and offer them the opportunity to purchase their share at a specified price. Within three months of receiving such notice, any of the other joint owners may oppose the license—provided they acquire the share of the joint owner who intends to grant the license.

While thought-provoking, this model is more complex than the previous two and arguably places an excessive burden on joint co-owners, forcing them to risk their property interest every time they wish to exercise their ownership rights. Although this approach could have better addressed the Plaintiff's opportunistic behavior in *East West Tea Co., LLC v. Puri*, the costs associated with its implementation might be considered too high.

From this analysis, it is evident that trademark co-ownership presents a complex and intricate challenge within trademark law, requiring significant intellectual effort to resolve. Even after establishing a theoretically sound justification, it raises additional questions about the efficient regulation of co-owner relationships. While American trademark law provides a relatively simple yet effective framework, alternative models could be explored to promote fairness and deter opportunistic behavior among co-owners.

The Common Law Use-Based Trademark Ownership

Another intriguing aspect of trademark co-ownership concerns how such arrangements come into existence beyond the three basic contexts previously discussed. Here, however, it is necessary to briefly address the common law use-based system of trademark ownership, which played a central role in the dispute at issue.

In common law jurisdictions, such as the United States, trademark rights primarily arise through use—a system known as the "use-based system". This approach differs significantly from the "registration-based system" prevalent in many continental jurisdictions (Menell, 2014, pp. 2, 22–23).

The use-based system, characteristic of common law jurisdictions, establishes trademark rights through actual use of the mark in commerce rather than through registration (Menell, 2014, pp. 2, 22–23). Under this system, *the first entity to use a trademark in commerce generally holds priority rights to that mark, even without formal registration* (Menell, 2014, pp. 2, 22–23). Trademark rights arise automatically upon the mark's use in commerce, without requiring official registration. However, *protection is typically limited to the geographic area where the mark is actively used and recognized*. In legal disputes, the trademark owner must demonstrate continuous use and consumer recognition of the mark.

In contrast, many continental jurisdictions follow a registration-based system, in which priority is generally granted to the first entity to file for trademark registration, regardless of prior use. Legal protection typically begins only after formal registration is completed, and registration usually confers nationwide protection. Unlike in use-based systems, there is often no initial requirement to prove actual use of the mark to obtain registration.

The key distinctions between these systems lie in their *basis of rights, timing of protection, scope of protection, and evidentiary requirements*. Use-based systems prioritize actual market use, while registration-based systems prioritize formal registration. In common law jurisdictions, trademark rights begin with use, whereas in continental jurisdictions, rights arise through registration. Additionally, use-based rights are often geographically restricted, whereas registration typically provides nationwide protection. In legal disputes, common law systems require proof of use, while registration-based systems rely more heavily on the registration itself as evidence of ownership.

It is worth noting that many jurisdictions, including the United States, have hybrid systems that incorporate elements of both use-based and registration-based approaches. These systems provide additional benefits to those who register their marks while still recognizing common law rights. This hybrid approach allows for a more flexible and comprehensive trademark protection framework, balancing the interests of both early users and diligent registrants.

Specifically, trademark rights in the United States arise under both:

(i) Common law, based on actual use in commerce; and

(ii) Federal law, under *Title 15 of the US Code*, through registration in the federal register.

According to 15 US Code § 1057, a certificate of registration of a mark on the principal register serves as "prima facie evidence of the *validity of the registered mark and of the registration of the mark, of the owner's ownership of the mark*, and of the *owner's exclusive right to use* the registered mark in commerce on or in connection with the goods or services specified in the certificate, subject to any conditions or limitations stated in the certificate."

This means that one person who first uses a trademark in commerce will own it under common law, while another person who registers the same mark in the federal register—such as through an intent-to-use application (i.e., without prior use but with an intent to begin using the mark shortly after registration)—will own the mark under federal law. The first person's common law rights will be geographically limited to the area where the mark has been used, whereas the second person's federally registered rights will extend nationwide. However, the federal registrant cannot prohibit the common law user from continuing to use the mark in the geographic area and for the goods or services where it was already established. In this sense, common law trademark rights function somewhat like a right of first use, akin to the principle found in patent law.

It is important to note that *the common law trademark owner and the federal registration owner do not co-own the same mark*.[5] Instead, they hold separate and distinct rights, each with different scopes and limitations. This distinction is particularly relevant in the case we will analyze below. Understanding this difference will help contrast the unique legal framework described here with the specific facts and legal issues presented in the case.

Formation of Co-Owned Trademarks

Let us now examine a recent and highly significant case that not only sheds light on the formation of trademark co-ownership but also offers insights into the use-based system of common law trademarks: *Zioness Movement, Inc. v. The Lawfare Project, Inc.*[6] This March 2024 decision serves as an instructive example of the complexities surrounding trademark ownership disputes.

In this case, Zioness Movement, Inc. (hereinafter, "ZMI" or the "Plaintiff") filed suit against The Lawfare Project, Inc. (hereinafter, "LPI" or the "Defendant") over the ownership of the ZIONESS trademark. The legal action was prompted by LPI's issuance of cease-and-desist letters and its petition to the Trademark Trial and Appeal Board (TTAB) seeking to cancel ZMI's trademark registration. The dispute arose from conflicting claims of ownership, with both parties asserting rights to the mark based on different legal grounds:

1) ZMI, led by Amanda Berman, claimed sole ownership of the trademark, relying on ZMI's federal registration of the mark with the United States Patent and Trademark Office (USPTO) and Berman's extensive efforts in promoting the brand.
2) LPI, represented by Brooke Goldstein, asserted that it was the rightful owner of the trademark, arguing that Berman's promotion of the ZIONESS mark occurred while she was employed at LPI and using its resources. LPI's claim of ownership was based on prior use of the mark in commerce, which is a legitimate basis for ownership under the common law system of trademark protection—even without federal registration.

The background of the dispute unfolded as follows.

In 2017, Brooke Goldstein and Amanda Berman were amicably working together at LPI in their respective capacities—Goldstein as legal counsel, founder, and executive director, and Berman as Director

5 Schwartz, B. D. (2022, May 6). *Common law™ v. Federally registered® trademark rights*. The National Law Review. https://natlawreview.com/article/common-law-v-federally-registered-trademark-rights

6 *Zioness Movement, Inc. v. The Lawfare Project, Inc.*, 746 F.Supp.3d 125 (S.D.N.Y. Mar. 27, 2024)

of Legal Affairs. Around August 2017, they coined the ZIONESS trademark, intending to promote Jewish American participation in a feminist march in Chicago that had planned to exclude Jewish organizations.

At the time, ZIONESS was considered a project of LPI. Founded in 2011, LPI aimed to combat antisemitism through litigation and investigations. The organization provided significant resources, including funding, legal support, and public relations services, to develop the ZIONESS brand. Berman was designated as the public face of the initiative, distinguishing it from LPI's broader and more conservative advocacy efforts.

However, the situation changed in February 2018, when Berman, while still employed at LPI, incorporated ZMI and subsequently filed a trademark registration application for the ZIONESS mark under ZMI's name in April 2018—reportedly without Goldstein's knowledge. Over time, tensions grew between Berman and Goldstein, eventually leading to Berman's resignation from LPI in December 2018. After leaving LPI, Berman ran ZMI full-time, maintaining that the ZIONESS trademark belonged solely to ZMI. Goldstein, on the other hand, asserted that LPI was the rightful owner, emphasizing that Berman had promoted ZIONESS while employed at LPI and using its resources.

The central issue in the case was whether Berman's activities in developing and using the ZIONESS trademark were conducted:

(i) As an employee of LPI, or

(ii) Independently of her role at LPI.

Accordingly, the trial focused on determining the first user of the mark, with the jury instructed to assess whether Berman's activities with ZIONESS were undertaken on her own behalf or as an employee of LPI. The court emphasized *that if Berman's activities were performed as part of her employment, LPI should be considered the prior user of the mark. Conversely, if Berman created and used the trademark independently of her work obligations at LPI, then she and ZMI could own, register, and exclusively use the trademark.*

Finally, the jury trial ultimately determined that both ZMI and LPI co-owned the trademark, rejecting LPI's claim that ZMI had committed fraud in the U.S. Patent and Trademark Office (USPTO) when registering the mark.

Following the verdict, ZMI filed post-trial motions for judgment as a matter of law, a new trial, and an amended judgment. However, Judge Hellerstein denied all of ZMI's motions. The court found that *there was sufficient evidence to support the jury's verdict of co-ownership and affirmed that co-ownership of a trademark is permissible under the law*. The judge also ruled that the jury instructions had accurately reflected the key issues of the case and had allowed both parties to present their arguments fully.

This case underscores the complexities of trademark ownership disputes, particularly when trademarks are developed within the scope of employment. It highlights the importance of clear agreements regarding intellectual property rights between employers and employees to prevent such conflicts. The ruling also emphasizes the challenges organizations may face in establishing ownership of intellectual property created under ambiguous circumstances.

Conclusion

In conclusion, the issue of trademark co-ownership presents a complex challenge, balancing the traditional single-source doctrine with the practical realities of modern collaborative ownership and the rights of trademark owners to manage their property. While a complete ban on joint ownership appears impractical due to the use-based nature of American trademark law and the rise of collaborative ventures, the potential for consumer confusion and the tragedy of the commons necessitate careful consideration of the contractual arrangements between co-owners.

The *East West Tea Co.* case highlights the complexities and potential inequities that can arise under a model that grants significant autonomy to individual co-owners. This trend, alongside cases like *Zionness*, reveals a move towards greater leniency, with courts increasingly allowing individual co-owners the right to use and license trademarks independently. This shift not only acknowledges the growing sophistication of consumers, potentially reducing the risk of confusion, but also reflects the dynamics of the modern economy, where intellectual property rights must be more readily disposable and adaptable to collaborative endeavors. Alternative models, such as the German approach requiring mutual consent for licensing or the French model mandating equitable compensation, offer potential solutions for mitigating these risks and ensuring fairer outcomes. Ultimately, the optimal approach to trademark co-ownership requires a nuanced understanding of the competing interests at stake and the development of contractual frameworks that promote both the distinctiveness of trademarks and the equitable treatment of co-owners in a rapidly evolving economic landscape. Further research and judicial interpretation are needed to refine these models and provide clearer guidance for trademark co-owners in navigating this area of intellectual property law.

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