

Privitizing Trademarks

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While trademarks are designed to promote a competitive and productive marketplace, the current system of trademark registration is run by the Patent & Trademark Office as a monopoly of questionable productivity. The average time that it takes for the Patent & Trademark Office to process a trademark application is fifteen months, and even registrations that do not encounter legal issues can require a year. As a result, trademark applicants risk investing substantial sums of money into a mark to discover much later that the Patent & Trademark Office will not register it. This Article considers a possible solution - a system of privatized trademark registration. The system would contain several features: 1) Multiple "entities" serving as registrars: Various private entities would compete with each other and register trademarks while sharing one database for pending and registered trademarks. Market mechanisms would thus encourage speedier and more effective registrations. 2) Optional expedited process: Different entities could employ price discrimination calibrated to the speed with which a trademark applicant wants to use his mark. 3) Quality control mechanisms: For example, to ensure the quality of the registration process, a rating system would permit clients to provide feedback after registration and years later. An entity providing ineffective services or issuing trademarks that later faced serious litigation would earn poor ratings while a reliable entity would fare well. To explore the viability of trademark privatization, the Article relies on both the theoretical privatization literature and practical examples in which government exclusivity has been removed from intellectual property (and other) decision-making. By challenging assumptions about the status quo surrounding the monopoly of the Patent & Trademark Office, the Article seeks to open a more general discussion about improvements to the existing system of trademark registration