

ARTIFICIAL INTELLIGENCE AS BRAND CREATOR AND INFRINGER: A CRITICAL LITERATURE REVIEW OF BRAND OWNERSHIP, REGISTRATION AND LEGAL PROTECTION IN THE ERA OF GENERATIVE AI

Gunawan Widjaja

Senior Lecturer, Faculty of Law Universitas 17 Agustus 1945 Jakarta,
widjaja_gunawan@yahoo.com

Abstract

Artificial intelligence, particularly generative AI, has transformed the role of brands as human creative products by enabling the automatic creation of names, logos and visual identities. This article examines AI as both a creator and an infringer of brands, focusing on three key aspects: ownership, registration, and legal protection of brands in the era of generative AI. It is analysed that the regulatory framework for brands based on human authorship faces serious challenges when AI output is not fully controlled by humans, thereby raising uncertainties regarding the subject of rights, uniqueness, and the validity of registration. On the other hand, AI also has the potential to be a source of trademark infringement when its outputs resemble or incorporate elements of registered trademarks, whether through data learning processes or irresponsible use, thus requiring a re-evaluation of legal liability and protection mechanisms. This article argues that trademark law needs to evolve towards a more adaptive, responsive, and risk-based approach, so as to accommodate the dynamics of AI without compromising the principles of legal certainty, justice, and the protection of exclusive rights for businesses.

Keywords: artificial intelligence, generative AI, brands, brand ownership, trademark registration, trademark infringement, legal protection, intellectual property rights.

Introduction

The development of artificial intelligence (AI), particularly generative AI, has brought about significant transformation across various industrial sectors, including the creative and branding industries. This technology enables the automatic creation of content, ranging from text and images to visual brand identities, which were previously the exclusive domain of humans. The presence of AI in the creative process raises fundamental questions regarding the shifting role of humans as the primary creators within the intellectual property ecosystem (R. A. Waelen, 2023).

Generative AI such as GPT, DALL·E and various similar models is now widely used to generate brand names, slogans, logos and marketing strategies. This creates efficiency whilst opening up opportunities for innovation in the business world. However, the use of AI in brand creation also presents new complexities, particularly regarding the legal aspects and ownership of such works (Beverley-Smith et al., 2005).

In the context of trademark law, the fundamental principle that has long applied designates individuals or legal entities as the primary subjects holding rights to trademarks. However, with the emergence of AI as an entity capable of producing