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The Patrimonial Function of the trademark

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## **Introduction**

The trademark has an ambivalent nature. It is both a tool for the producer, for the professional, but also an indicator for the consumer<sup>1</sup>.

This ambivalence is omnipresent in the decisions of the European Court of justice (ECJ) related to the function of the trademark.

Indeed, the ECJ brought out in a first time the function of exclusivity in the specialty in the following terms:

*“In relation to trademarks, the specific subject-matter of the industrial property is the guarantee that the owner of the trademark has the exclusive right to use that trademark, for the purpose of putting products protected by the trademark into circulation for the first time, and is therefore intended to protect him against competitor wishing to take advantage of the status and reputation of the trademark by selling products illegally bearing that trademark”<sup>2</sup>.*

This function corresponds exactly to the logic of the trademark right: Protect the holder of the rights against the competitors which are in the same specialty. The trademark is in this case a tool of competition.

The other function brought out by the ECJ is the function of guarantee of identity of origin which means that the trademark has for function to guarantee to the consumers the commercial origin of the goods or services targeted by the trademark:

*“In these cases, the basic function of the trademark is to guarantee to consumers that the product has the same origin is already undermined by the subdivision of the original right”<sup>3</sup>.*

Thus, a trademark shall guarantee the identity of the origin of the marked goods or services offered to each consumer or end user by enabling the latter to distinguish, without any possibility of confusion, the origin of the goods or services in question.

The trademark has therefore a double nature protection. It is strange that such a right of property has for consequence to offer prerogatives to the owner but also to recognize a significant importance to the third part and more precisely to the consumers.

I use the term significant importance because, today, the function of guarantee of origin is considered by the case law and by the doctrine as being the essential function of the trademark.

Today, each decision of the ECJ, and almost all the French decision, refers to this function and not only in the occasion of the enforcement of the exhaustion right but also for the assessment of the counterfeiting or for the assessment of the grounds for refusal of the trademark<sup>4</sup>.

We forget gradually the first function: the exclusivity. It is though the gist of a property right. That is why it is necessary to rehabilitate and to remind the “producer’s side” of the trademark: the functions for the holder of the trademark.

First of all, I want to precise why the term functions is with a –s.

Actually, we always make confusion. Indeed, we always use the word trademark to designate both the distinctive sign and the right on this sign. It is more appropriate to speak about the trademark, the distinctive sign which designates goods and services, subject of a right, and the right on this sign.

Now, if we accept this distinction, it seems that are able to find two different functions: one for the distinctive sign and one for the right on this sign. But, we need to demonstrate the existence of these different functions and the reason of this existence. Actually, I propose to group together these functions under the term: patrimonial functions.

Because of the specificity of our right, the intellectual property, we forget sometimes the ordinary law, the right which is the source of the intellectual property: in French, “*le droit des biens*” and in English the “property law”, designation which seems more restrictive.

Thanks to this ordinary law, I am going to try to demonstrate that the “trademark” has patrimonial functions. In order to understand what a patrimonial function is, it is necessary to give the definition of a patrimonial right. In a common use, the word patrimony means in French: “*Goods of the family, goods inherited from its ancestors*”. The definition in an English dictionary is almost the same: “*An inheritance from a father or other ancestor. An inheritance or legacy; heritage*”. The synonyms of the word patrimony are heritage assets, inheritance or property.

But, the word patrimony has an important legal aspect.

The theory of the patrimony was considered for the first time in France by Aubry et Rau. They defined the patrimony as a whole of goods and obligations of a person. The patrimony is

composed of the assets but also of the liabilities. The patrimony is a “universality of right”, a set of rights and obligations under a particular legal regime.

It exists in France an important debate related to the content of the patrimony. What is the content of the patrimony? Rights only<sup>5</sup>? Goods only? Or both? In fact, I think that we can consider that the patrimony is constituted of goods and rights<sup>6</sup>.

Thus, it is necessary to demonstrate that a trademark, understood as a sign, is a good. After that, it will be necessary to show the real function of this sign which gives its pecuniary value (I).

And, secondly, I would like to consider the right on the trademark which is usually considered as a right of property. And it will be necessary to consider the function of this right understood by the ECJ as the function of exclusivity in the specialty (II).

### **I. The patrimonial function of the distinctive sign**

The trademark could have a patrimonial function from the moment that we could consider the trademark as a good. The question which must be asked is: What is a good?

The problem with the intellectual property rights is that we have tendency to forget the basis of our right. Now, even if our right is original, the doctrine reminded many times that despite the originality of our right, the ordinary law is the “droit des biens”<sup>7</sup>. But, does this assertion mean that we have to consider the subjects of the intellectual property right as goods? Thus, the question is: Is the distinctive sign is a good? Is the function of the sign independent of the right on this sign? With other word, does the function of the sign of the sign exist independently of the right?

In order to answer, the first step of the demonstration concerns the legal nature of the trademark (A). The second step will concern the function of the distinctive sign (B).

### **A. The legal nature of the trademark as distinctive sign**

The Civil Code does not give any definition of the goods. It is therefore the doctrine and the philosophy of the right which have to elaborate a definition. But, this definition of the good is difficult<sup>8</sup> and it exists many conceptions. Some of them are restrictive, some of them are too extensive, and some of them are original but maybe useless. Those definitions have to be rejected (1). Nevertheless, it appears, that it exists a definition which can help us to define a trademark (2).

#### **1. The qualification rejected:**

##### **a. The restrictive conceptions**

Originally, the good was considered as a tangible thing (corporeal property) which is a subject of a property right. With other word, the good is a legal thing, a thing having accessed to the legal life by the way of the property<sup>9</sup>. The important elements are a corporeal thing and right of property. It is useless to consider now the term property, but it has to be understood as an exclusive and an absolute right. Concerning the thing, it must be considered *stricto sensu*. In order to be the subject of a material grip, the thing has to be able to be possessed in a traditional way. The actual possession, which is a mean of proof of the property but also a mean of acquisition of the property, exists if it combines the intent to

possess, the *animus possidendi*, and the *corpus* which is the real control of the possessed object<sup>10</sup>. The *corpus* exists if there are “material acts” on the object.

In this classical view, the possession exercises only over the corporeal things. Consequently, we can consider that the classical property exercises also only over the corporeal things and, thus, only the corporeal things can be appropriated and become a good. This consideration prevents the trademark and all the incorporeal things from becoming a good.

However, this restrictive definition has not to be retained. The reference to the material grip does not correspond anymore to the reality. For example, it is today admitted that the possession of the incorporeal object exists and has legal consequence<sup>11</sup>.

Another conception of the goods considers that the goods are only rights financially assessable. Indeed, some authors think that it is not the things subject of property which can be qualified of goods, but the right of property on this thing which is the good. The usefulness of the object are considered as consequences not of the object but of the property, itself: “*the usefulness whose the holder benefits is therefore less considered an advantage of the object than a result stem from the right*”<sup>12</sup>.

This definition must be criticized. First, why the definition of the patrimony precise that it contains goods and rights if, actually, the goods are rights. The definition is also too restrictive. Furthermore, the French Civil code designates obviously under the word “good” the subject of the property and not only the right itself. For example, the article 543 distinguishes the good and the property: “*One may have on the goods, or a right of ownership, or a mere right of enjoyment, or only land services to be claimed on property*”.

### **b. The extensive qualification**

Some authors consider on the contrary that can constitute a good something which has a certain financially value: “*The concept of financially value is essential, any financially value must be considered as a good*”<sup>13</sup>. This qualification is too extensive insofar as the “Law” is not taken into account in such a conception. Now, the word good has a legal aspect more than economic.

The problem is that the European Court of Human Right adopts such an extensive qualification: “*the applicants had built up a clientèle; this had in many respects the nature of a private right and constituted an asset and, hence, a possession within the meaning of the first sentence of Article 1 (P1-1)*”<sup>14</sup>. The word “good”, there asset has a autonomous impact and designates any good having a patrimonial value<sup>15</sup>. Obviously, it seems with such a conception that a trademark has a value and, consequently, is a good. But, we cannot retain this definition which is too extensive.

### **c. The useless qualifications**

One author defined the good according to its function. This function is a function of guarantee which is bound to the property<sup>16</sup>. A good is something which is a guarantee of a debt. He notably explains that the good is something which is seizable and alienable. However, this definition is useless. Even if a good can be a guarantee, it is not possible to define the goods by its function. We can not explain the nature of an object by its effect. This guarantee is only one of the expression of the good.

Another author gave a definition which is useless for our study. He considers that the subjects of intellectual property rights are goods and more precisely

intellectual goods<sup>17</sup>. An intellectual good is: *“a thing born from the human imagination in the exercise of a creative activity likely to be appropriated independently of any support”*<sup>18</sup>. This creation of “intellectual goods” is useless for us. We can ask ourselves if the recognition of a new category has a real impact on the system. It is already admitted in the ordinary law that goods having the same definition can follow different legal systems. For example, the French civil code makes a distinction between the goods of the public ownership and the goods of the private ownership.

## **2. The qualification retained**

Another definition of the good has been given by a part of the doctrine. This definition takes into account the specificity of the incorporeal objects.

Thus, a thing becomes a good if the thing has a certain financial value and is the object of a legal recognition. The good can not exist without the recognition of the law. But, what is this recognition?

The definition that we could give is the one given by the Professor Mousseron: *“Useful and rare, a value, in the economic sense of the term, becomes a good, in the legal sense of the word, when the Society answers, by the law, to complementary concerns of reservation and of commercialization of its master of the moment”*<sup>19</sup>. Other authors prefer the word appropriability and the commerciality<sup>20</sup>.

And it appears that the reservation or the appropriability can exist without a property right<sup>21</sup>. The Law knows other mechanisms of reservation and notably the civil liability which can transform the thing in a good. *“An incorporeal asset is the apprehension by the law of the immaterial value previously perceived by the economy”*<sup>22</sup>.

It is necessary to precise that the value can be very weak. But, we can consider that there is a value as soon as the thing in question is rare and useful for the owner.

With such a conception, we can consider the distinctive sign which designates goods or services as a good. This distinctive sign becomes a good, obviously, in the case of registration. It is the classical option insofar as there is an official right on the sign. But, a use trademark can be also considered as a good. Thus, for example, the owner of this kind of trademark can obtain a privative right by the way of the reputation. It is the case of the non registered well-known trademark. But, a use trademark which does not benefit of a private right can be more or less good protected, in function of the distinctiveness and of the availability, by the civil liability. In order to obtain the protection of the ordinary law, the use trademark must be distinctive and available. Without it, the trademark is not rare and does not have any value. It can not constitute a trademark et therefore a good. It is a complicated question which deserve obviously more development.

Nevertheless, this conception allow us to say that a trademark can constitute a good, a good having a particular function, independent of the right which protects it.

## **B. The function of the distinctive sign**

Actually, we could consider this function as the first function of a trademark. This function is a function of identification (1) having an important impact for the business of the owner (2).

### **1. The function of identification**

The trademark is a distinctive sign as the trade name, the shop sign and the business name. All these distinctive signs have a function of identification but they do not designate the same thing. They have an important place in the competition.

The trade name designates the company and allows to distinguish from the company of same nature. A company has only one trade name but can have many trademark.

The shop sign designates a commercial establishment in its location once again, in order to be distinguished of the competitors. The shop sign is affixed on the commercial premises. The shop sign appear on each establishment that the owner wants to exploit.

The company name identifies the legal entity and allows the administrative and commercial identification of the company.

On the contrary, the trademark designates the goods and the services of the company. A trademark individualizes the production of the owners and allows to be distinguished of their competitor. This identification function is foreseen by the article L. 711-1 of the French intellectual property code, which is the first article related to the trademark in this Code. “*A trademark or service mark is a sign capable of graphic representation which serves to distinguish the goods or services of a natural or legal person*”. Even if this article is related only to the registered trademark and does not take into account the use trademark, which normally does not exist in the French legal system, it is interesting to see that the first function of the sign is to distinguish the goods and the services.

This function explains why a trademark must be distinctive and available. If a trademark is not distinctive and not available, the identification and the distinction with the competitor are harder. The trademark has in consequence a weaker value and does not have real economic impact.

In fact, this function which is without any doubt the most important one of a trademark is not recognized by the doctrine and the jurisprudence. This function is the *raison d'être* of the trademark and deserve to be taken into account in order to offer a better protection to the owner.

The trademark allows therefore to ensure a good differentiation between the competitors. In consequence, the trademarks hold an important place in the business of the producers and can have an important financial value.

## **2. The consequence on the business**

The economist brought out the importance of a trademark as rallying sign of the clientele and as a mean of conquest of this one. The clientele is one of the essential elements of the business. Actually, in many cases, we can consider that the trademark is the most important element of attachment of the clientele. That is why the trademark, the use one and the registered one, should respect the condition of distinctiveness and availability. Without it, the trademark is useless in its function of conquest of clientele.

The trademark can constitute a particularly precious good. That is one of the reasons why the legislator recognized a strong special right in order to protect this good and its function. The special privative right on the sign comes from the registration or from the reputation for the non-registered well-known trademark, and, this right has also a patrimonial function.

## **II. The patrimonial function of the right on the sign**

We usually speak about the intellectual property and industrial property right. But, does it a property? The debate is still open and the doctrine is not unanimous and many qualification are suggested. First, we will classically consider the legal nature of the right (A) and then we will study the function of the right retained (B).

## **A. The legal nature of the right:**

### **1. The qualification rejected**

Some authors consider that the right on the invention, on the work or on the trademark is not a property right. They tried to find a *sui generis* qualification. Thus, for example, Dabin spoke about intellectual rights (a) and Roubier spoke about Clientèle rights (b).

#### **a. The Intellectual rights of Dabin**

The first author who suggested a new category of patrimonial right was the Belgian Picard: the intellectual rights which are a patrimonial *sui generis* right having financial value. Dabin tried after to give a definition of the intellectual right<sup>23</sup>. For him, it is a *jus in re incorporali*, characterized by an expropriation on an incorporeal thing. He considers that it is impossible to speak about a property because there is no physical appropriation. However, the right looks like the classical property. It is possible to say as for the corporeal thing “my invention” or “my trademark”. He explains also the creation of a new right because the intellectual rights have an extrapatrimonial aspect. The problem is that even if the

extrapatrimonial aspect exists for the author of a work, concerning the distinctive sign, it does not exist any moral right. The creation of a new category is therefore less justified.

### **b. The Clientèle Right of Roubier**

Roubier wanted to create a new right: the clientele right<sup>24</sup>. This doctrine had a certain influence. Roubier considered that the right on the incorporeal object is not a right inherent to the human being because the right on a trademark is opposable *erga omnes*. It is also different from a real right because the monopoly eliminates the competitor which is not the case of the ordinary property. He considers that the right on the intellectual things is dynamic and totally bound to the exploitation. The financial value depends on the exploitation and therefore on the clientele. It is the clientele which constitutes the financial value and there is a third category of patrimonial right: the clientele right. For Roubier, the intellectual right are the instrument of the conquest and the attachment of the clientele. These rights give a better position in the struggle against the competitor for the clientele. That is why the right exists only when the good in question is exploited.

However, this theory is not completely satisfactory. Even if it is true that the object of the intellectual right allows the conquest and the attachment of the clientele, it is not possible to explain the nature of a right by its effect<sup>25</sup>. The right in question does not confer any real right on the clientele which is a fact and which can not be appropriated.

## **2. The qualification retained**

Unfortunately, even today, the doctrine is not still unanimous. Thus, for the Professors Terré and Simler, the nature of the right is really different from the property. They

keep a classical view of the property which can only concern the material things<sup>26</sup>. However, the majority doctrine considers that the qualification which must be retained is the property<sup>27</sup>. The property is the model of intellectual property<sup>28</sup>. And even if it exists some difference in the system, it is possible to consider the right on a trademark as a property right, a specific property right.

The article 544 of the French civil code provides: “*Ownership is the right to enjoy and dispose of things in the most absolute manner, provided they are not used in a way prohibited by statutes or regulations*”.

One of the most important elements of the property right is a thing. Actually, the subject of the right is for the intellectual property right the work, the invention or the trademark. Mousseron said: “*The corporeal or incorporeal nature of the res does not matter if there is a res, that is to say an economic value, necessary to the legal intervention*”<sup>29</sup>.

The other important elements of the property are the exclusive and the absolute right.

The classical property appears for its owner as a monopoly. The exclusivity means that the third party cannot use, enjoy and dispose of the good subject of the property<sup>30</sup>. The third party can not have any personal usefulness on the good. He can by the mean of the counterfeiting action prohibit that the third party exploits his good, and therefore his usefulness, without any authorization. The owner has a real monopoly in the exploitation of his good.

Concerning the absolute right, it means notably that the property right is the most important and the most complete of the real right. The right does not have any limit<sup>31</sup>. The owner can choose himself to enjoy his good and to grant license, to transfer it or even to loose his right. But, the use of the right can be limited by the law. And, even the classical property knows many limitations.

The owner of an intellectual property right has therefore the *usus, fructus and abusus* of his good.

The right of property has a third important element: the perpetuity. However, it does not mean that it does not exist temporary property<sup>32</sup>. The word perpetuity means only that it does not exist an extinctive period for the right. However, the right exists as long as the subject of the right exists: “*The disappearance of the thing, subject of the right, brings about the extinction of this latter*”<sup>33</sup>. The right of property disappears with the good, subject of the right. The Professor Mousseron preferred to use the term permanence rather than the word perpetuity<sup>34</sup>.

The fact that the intellectual property rights are not perpetual is not contrary to the principle of the classical property right. Not at all. “*The precariousness of the monopoly is justified by the one of its subject*”<sup>35</sup>. The right is granted for the life of the good. And, the life of an invention is statistically lower than twenty years. After it, the good is useless and the right disappeared.

This conception could explain that the trademark right is the only one in the field of the intellectual property which can be really perpetual. The sign which is correctly exploited stays usefulness and deserves to be protected by a property right. On the contrary, if the owner does not exploit the sign, it loses its financial value and the revocation for non-exploitation is possible. In the same way, if the sign becomes generic, the sign is useless and can not be protected anymore.

Even if this argument could be considered as incorrect. It exists other explanation. Thus, some author prefer to see in the end of the intellectual property right an expropriation for public utility<sup>36</sup>. But, it can be understood simply as a choice of the legislator who has foreseen a temporary property.

After this demonstration, it seems that the intellectual property right and trademark right does not have only the name of property but also the system. It is necessary to consider now the real function of this right: the exclusivity in the specialty.

### **B. The function of the right: the exclusivity in the specialty**

Obviously, the right on the trademark allows to protect the function of identification of the goods. More precisely, the right has for function to reserve the exclusivity of the use of the sign in the specialty.

This function of exclusivity in the specialty was consecrated by the ECJ in the decision Centrafarm: *“the owner of the trademark has the exclusive right to use that trademark, for the purpose of putting products protected by the trademark into circulation for the first time”*<sup>37</sup>.

This function ensures the owner of the trademark to enjoy it in his specialty of an absolute exclusivity on his sign. He can prohibit the third part to use a identical sign which designates the same goods and services. With other words, the function of the right of the trademark is to protect the owner against counterfeiters who are competitors using the same sign without legal asset. According to this decision, we do not have to consider that the protection of the consumers has to be taken into consideration by this function. But, the ECJ recognized few years later the function of guarantee of origin<sup>38</sup> which take into account the consumers. And today, the case law of the ECJ and of the French court considers this function as the most important and forget the “patrimonial function of the trademark”.

## Conclusion

It appears that it exists other legal trademark's function. We tried to demonstrate the existence of two patrimonial functions: a function of identification of the sign and a function of exclusivity in the specialty for the right on the sign. It seems necessary to rehabilitate the relation between the trademark and its owner. Even if the trademark has an impact for the consumers, is it normal to consider the protection of the trademark according to the function of guarantee of origin which is obviously a function which concerns the consumer? A better protection of the owner goes through by the recognition of the function for the owner. The ECJ seems to have understood such a need. Indeed, recently in the decision L'oréal/Bellure<sup>39</sup>, the ECJ identifies the existence of other function: the "communication function", the "advertising function" and the function of protecting the investment covered by a trademark. Unfortunately, the ECJ does not explain the content of this function and the doctrine will have to intervene in order to precise the content and the impact of those functions.

## Endnotes:

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\* Yann BASIRE was research assistant in the CEIPI and is now ATER in the University of Strasbourg. His thesis is related to the function of the trademark. This paper is the summary of the first chapter of his thesis.

<sup>1</sup> SCHMIDT-SZALEWSKI J. & PIERRE J.-L., *Droit de la propriété industrielle*, 4 éd., Litec, 2007, n° 460, p. 193.

<sup>2</sup> ECJ, 31 oct. 1974, Case n° 16/74, Centrafarm/Winthrop, Rec. ECJ, I, p. 1183; Rev. crit. DIP 1975, p. 272, obs. FRANÇON; JDI 1975, p. 208, obs. KOVAR; JCP 1976, I, 2652, chron. BURST et KOVAR

<sup>3</sup> ECJ, 22 June 1976, Case n° 119/75, Terrapin/Terranova, Rec. ECJ, I, p. 1039.

<sup>4</sup> The OHMI refers to the function of guarantee of origin notably for the assessment of the distinctivity and of the availability of the sign.

<sup>5</sup> MAZEAUD H. L. J & CHABAS F, *Leçons de droit civil, Introduction à l'étude du droit*, 12<sup>e</sup> éd. Montchrestien 2000, n° 280 ; AUBERT J.-L., *Introduction au droit et thèmes fondamentaux du droit civil*, 9<sup>e</sup> éd., Armand Colin 2002, n° 206, p. 219.

<sup>6</sup> SERIAUX A., *Patrimoine, Répertoire Civil Dalloz*, Déc. 2002. ; SERIAUX A., *La notion juridique de patrimoine. Brève notation civilistes sur le verbe avoir*, RTD civ., 1994, p. 80.

<sup>7</sup> MOUSSERON J. M., *Valeurs, Biens, Droits.*, Mélanges BRETON A. et DERRIDA F., Dalloz, 1991, p. 277. ; CARON C., *Du droit des biens en tant que droit commun de la propriété intellectuelle*, JCP G. , 2004, I, 162.

<sup>8</sup> GRZEGORCZYK C., *Le concept de bien juridique : l'impossible définition ?*, Arch. Phil. Dr., t. 24, Les biens et les choses, Sirey, 19799, p. 259.

<sup>9</sup> BERLIOZ P., *La notion de bien*, L.G.D.J., Coll. Bibliothèque de droit Privé, n° 60 et s., p. 25.

<sup>10</sup> CORNU G., *Droit civil, les Biens*, Montchrestien, 13<sup>e</sup> éd., 2007, n° 42, p. 103.

<sup>11</sup> PELISSIER A., *Possession et meubles incorporels*, Dalloz, 2001.

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- <sup>12</sup> BERLIOZ P., La notion de bien, *op. cit.*, n° 486, p. 155.
- <sup>13</sup> PIEDELIEVRE, Le matériel et l'immatériel, essai d'approche de la notion de bien, Mél. M. de JUGLART, LGDJ, 1986, p. 62.
- <sup>14</sup> ECHR, Van Marle c/ Netherlands, 26 june 1986, A.101.
- <sup>15</sup> ECHR, Oneryildiz c/ Turkey, 18 june 2002, JCP G, 2002, I, 157, obs. SUDRE F. "The Court reiterates that the concept of "possessions" in Article 1 of Protocol No. 1 has an autonomous meaning and certain rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision".
- <sup>16</sup> *Ibid*, n° 625, p. 206.
- <sup>17</sup> BINCTIN N., Le capital intellectuel, Litec, Bibliothèque du droit de l'entreprise, 2007.
- <sup>18</sup> *Ibid*.
- <sup>19</sup> MOUSSERON J. M., De la propriété comme modèle, in Mél. offerts à André COLOMER, Litec 1993, n° 13, p. 285. – Voir aussi, MOUSSERON J. M., Valeurs, Biens, Droits., *op. cit.*
- <sup>20</sup> LIBCHABER R., Rép. Civ. Dalloz, Biens, 2002.
- <sup>21</sup> PELISSIER A., Possession et meubles incorporels, *op. cit.*, n° 241, p. 111.
- <sup>22</sup> *Ibid*.
- <sup>23</sup> DABIN J., Les droits intellectuels comme catégorie juridique, Rev. crit. de légis. et de juris., 1939, p. 413 et s.
- <sup>24</sup> ROUBIER P., Le droit de la propriété industrielle, Sirey, 1952, Tome 1, n° 23, p. 104.
- <sup>25</sup> POLLAUD-DULIAN F., Droit de la propriété industrielle, Montchrestien, 1999, n° 22, p. 10
- <sup>26</sup> TERRE F and SIMLER Ph., Droit civil, les biens, Précis Dalloz, 7<sup>éd.</sup>, 2006, n° 62.
- <sup>27</sup> ZENATI-CASTAING F & REVET T., Droit des biens, PUF, 3<sup>ème</sup> éd., 2008, STRICKLER Y., Les biens, PUF, Thémis Droit, 2006, n° 63.
- <sup>28</sup> MOUSSERON J. M., De la propriété comme modèle, in Mél. offerts à André COLOMER, Litec 1993, p. 281. – Dans le même sens, voir STRICKLER Y., Les biens, *op. cit.*.
- <sup>29</sup> MOUSSERON J. M., De la propriété comme modèle, *op. cit.*, n° 14.
- <sup>30</sup> CORNU G., Droit civil, les Biens, *op. cit.*, n° 30.
- <sup>31</sup> MALAURIE Ph. and AYNES L., Droit civil, Les biens, 3<sup>e</sup> éd., Defrénois, 2007, n° 431, p. 117.
- <sup>32</sup> ATIAS C., Droit civil, les biens, 9<sup>e</sup> éd., Litec, 2007, n° 122, p. 97.
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