

In Defense of Culture: Protecting Traditional Cultural Expressions in Intellectual Property

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From Hakuna Matata to Bula to Dia de los Muertos, federal trademark registrations by commercial entities seeking to profit from rising interest in the traditions of indigenous peoples and local communities is commonplace. This issue is only a small part of a much broader issue around indigenous peoples' traditional knowledge and traditional cultural expressions being appropriated without any benefit to the communities. The misappropriation has attracted global concern, leading to national and international efforts to create legislation to protect the cultural resources of indigenous peoples and local communities around the world. Countries have engaged in national and regional initiatives to solve the issue by adapting their current intellectual property laws or creating sui generis laws specifically geared to remedy the misappropriation of indigenous peoples' cultural resources, and negotiations are ongoing at the World Intellectual Property Organization to provide sui generis protection for traditional knowledge and traditional cultural expressions.

U.S. federal trademark law currently contains provisions that may provide defensive protection to traditional cultural expressions by preventing their registration by nonindigenous entities. However, structural deficiencies in the trademark registration system have resulted in these provisions being virtually ineffective in providing this protection.

This Comment first proposes the creation of a wide database of traditional cultural expressions that examiners would be required to consult before granting trademark registrations. The database would be an official acknowledgment of the limitations of the current system of trademark registration in preventing trademarks containing traditional cultural expressions from being granted in violation of the Lanham Act. This Comment then proposes an adaptation of the collective and certification marks regime to strengthen defensive protection and grant positive protection of indigenous peoples and local communities' cultural resources.