

Is a right to use trademarks mandated by the TRIPS Agreement?

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ABSTRACT

In light of recent complaints based on bilateral investment treaties and WTO rules against laws limiting the use of tobacco-related trademarks, this article discusses whether there exists a positive right to use trademarks under the TRIPS Agreement. It examines the claim that Article 20 and other provisions in the TRIPS Agreement should be interpreted as requiring WTO members to recognize such a right. With the aid of WTO jurisprudence, the article concludes that the obligation on members is to only provide negative rights in relation to trademarks. A positive right of use would neutralize the regulatory power of States and prevent them from adopting measures they deem necessary for the protection of public health.

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