Trademark Dilution Act of 1995 and Trademark Dilution Revision Act of 2006 significantly expanded the scope of trademark protection. This project examined the schematic properties of major sponsors in high profile sport events to substantiate the primary notion of trademark dilution, i.e., the protection of the “unique” or “distinctive” schematic value of famous trademarks.

In 2009, a sport merchandising giant, Adidas America, Inc., brought a lawsuit against a nutrition product brand, Herbalife, inter alia, for trademark infringement and dilution under 15 U.S.C. § 1114(1)(a) and (c) (2005). Adidas America, Inc. et al. v. Herbal Life International, Inc. (D.C. Or. filed June 12, 2009) (No. CV 09-661-MO). The plaintiff’s complaint argued that Herbalife allegedly violated federal trademark law when Herbalife entered into a sponsorship agreement with L.A. Galaxy while Adidas had maintained a preexisting sponsorship right with the same MLS franchise. As Adidas’ TREFOIL brand logo and Herbalife’s TRILEAF are now in a collision course in the MLS sponsorship market, Adidas would likely have a legitimate infringement claim in light of the Polaroid Multifactor Test. Polaroid Corp. v. Polarad Electronics, Corp. 287 F.2d 492 (2d Cir. 1961). Additionally, under 15 U.S.C. § 1114(1)(c), Adidas has a strong dilution claim. Indeed, the federal dilution statute vigorously protects famous sport trademarks from other companies’ dilutive sponsorship practices.

Commentators indicate that the traditional public policy of trademark law is the protection of general consumers from being confused as to sources of goods or services (Grady & McKelvey, 2008). According to this notion, trademark owners’ interest would not be a primary concern in the jurisprudence of trademark law. A scholar argued that the federal trademark statute, Lanham Act, never intended to help trademark owners maximize profits at the expense of general consumers (Lemley, 1999). Indeed, the legislative history of Lanham Act indicates that Congress did not intend to create unfettered exclusive property rights for trademark owners except to the extent that might be necessary to prevent deceptive use of marks protected under the law (Kahn, 2004). Thus, the traditional notion recognizes trademarks not more than source identifiers. They are designed to facilitate repeated purchases of goods and services that have delivered positive prior consumption experience. Essentially, trademark law intends to provide manufacturers and retailers with incentives to maintain the consistent quality control in production and distribution. Because the law principally exists for the benefit of general public instead of that of trademark owners, the trademark infringement statute, 15 U.S.C. § 1114(1)(a), does not provide any cause of action unless plaintiffs can prove at least some degree of consumer confusion (Kahn, 2004).

Trademark Dilution Act of 1995 and Trademark Dilution Revision Act of 2006 significantly changed the topography of trademark law. 15 U.S.C. § 1125(c)(1) (amended Oct. 6, 2006) provides: “the owner of a famous mark ... shall be entitled to an injunction against another person who ... commences use of a mark ... that is likely to cause dilution by blurring or ... tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.” Under the statute, a plaintiff who owns a famous trademark may enjoin another legitimate trademark owner whose mark is likely to “dilute” the unique value of the plaintiff’s mark in terms of “blurring” or “tarnishment.” 15 U.S.C. § 1125(c)(2). The statute reflects a remarkable change of the public policy because a dilution claim does not need to be supported by harmful effects on general public, i.e., market confusion. That is, the federal dilution law intends to protect trademark owners’ right associated with the schematic values of trademarks, so called brand schemata, which have been consistently negated under the traditional notion of trademark law. Scholars have criticized this radical change (Curran, 2004; Jacobs, 2004) because the concept of brand schemata is too speculative to provide owners with strong legal remedies such as injunction. In addition, the harm allegedly inflicted by blurring or tarnishment, i.e., so called “death by paper cuts” would hardly be proved in litigation, if ever required.
Given the issue, this study sought to clarify the central notion of trademark dilution, i.e., “unique” or “distinctive” schemata of famous trademarks, in the context of sponsorship. It developed an empirically driven measurement platform (N=212) based on different brand schema theories (Aaker, 1997; Keller, 1993; Lee & Cho, 2009) and substantiated the psychological value that federal trademark dilution law intends to protect. After a series of CFAs, it proposed a scale (RMSEA=0.06; NNFI= 0.86). Given the empirically substantiated schematic value of trademarks, the study addressed several managerial implications related to trademark dilution in the context of sponsorship, such as how to enjoin other sponsors or competitors from dilutive practices in or around sport events, the importance of logo, trademark, insignia, and crest identification in global brand awareness, brand asset valuation and brand promise, as well as commercial ramifications regarding knockoff (i.e., inferior) merchandise.