

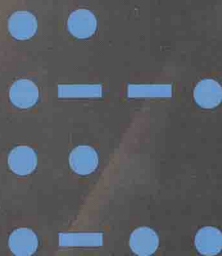
Cambridge Intellectual Property and Information Law

Trade Marks and Brands

An Interdisciplinary Critique

Edited by

**Lionel Bently, Jennifer Davis,
and Jane C. Ginsburg**



CAMBRIDGE

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Trade Marks and Brands

Recent developments in trade mark law have called into question a variety of basic features, as well as bolder extensions, of legal protection. Other disciplines can help us think about fundamental issues such as: What is a trade mark? What does it do? What should be the scope of its protection? This volume assembles essays examining trade marks and brands from a multiplicity of fields: from business history, marketing, linguistics, legal history, philosophy, sociology and geography. Each part pairs lawyers' and non-lawyers' perspectives, so that each commentator addresses and critiques his or her counterpart's analysis. The perspectives of non-legal fields are intended to enrich legal academics' and practitioners' reflections about trade marks, and to expose lawyers, judges and policy-makers to ideas, concepts and methods that could prove to be of particular importance in the development of positive law.

LIONEL BENTLY is Herchel Smith Professor of Intellectual Property Law at the University of Cambridge, Director of the Centre for Intellectual Property and Information Law at the University of Cambridge, and a Professorial Fellow at Emmanuel College, Cambridge.

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Cambridge Intellectual Property and Information Law

As its economic potential has rapidly expanded, intellectual property has become a subject of front-rank legal importance. *Cambridge Intellectual Property Rights and Information Law* is a series of monograph studies of major current issues in intellectual property. Each volume contains a mix of international, European, comparative and national law, making this a highly significant series for practitioners, judges and academic researchers in many countries.

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A list of books in the series can be found at the end of this volume.

List of figures and tables

FIGURES

2.1	Total trade mark registrations in England, 1882–1914.	page 50
7.1	COLOMA advertisement, c. 1999.	165
7.2	Classical architectural imagery from Danske Bank, Copenhagen (photo: Jonathan E. Schroeder).	168
7.3	Merrill Lynch advertisement, c. 1998. Reproduced courtesy of Merrill Lynch.	171
7.4	Architectural referents from VERISIGN, c. 2003. Reproduced courtesy of VERISIGN.	173
7.5	Dimensions of brand culture.	175
16.1	Examples of elaborate labels (FISH SAUCE label, OLD ENGLAND SAUCE label). Source: R. L. Moorby <i>et al.</i> for the Patent Office, <i>A Century of Trade Marks 1876–1976</i> (London: HMSO, 1976) 42.	346
16.2	KANGAROO, BOOMERANG and EMU trade marks. Source: http://pericles.ipaustralia.gov.au/atmoss/falcon.application.start .	354

TABLES

2.1	Highly trade-mark-intensive classes, 1882–1914.	52
2.2	Duration of registered trade marks.	53

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Editors' preface

Recent developments in trade mark law have called into question a variety of basic features, as well as bolder extensions, of legal protection. Other disciplines can help us think about fundamental issues such as: What is a trade mark? What does it do? What should be the scope of its protection? The present volume assembles essays examining trade marks and brands from a multiplicity of fields. We believe the broad range of the contributions to this volume makes it unique. There are already works on trade mark law, works on branding and marketing, works on linguistics and marketing, and works on sociological aspects of commercial identity, but no attempt to bring these approaches together. Equally importantly, rather than offering a litany of discrete chapters each independently covering a different discipline, each part of this book pairs lawyers' and non-lawyers' perspectives, so that each commentator will address and critique his or her counterpart's analysis. Authors of the main papers and of the commentaries divide roughly evenly between lawyers and specialists from other disciplines.

The perspectives of non-legal fields are intended to enrich legal academics' and practitioners' reflections about trade marks, as well as to expose lawyers, judges and policy-makers to ideas, concepts and methods that could prove to be of particular importance in the development of positive law. For those who wish to explore further, an extensive bibliography collecting commentaries from all the fields here represented concludes the volume. We hope the volume will prove of interest as well to academics both in law and in other disciplines whose modes of analysis are brought to bear on the intellectual property issue in question.

The essays grow out of two successive workshops held at Emmanuel College, University of Cambridge, in July 2005 and July 2006. We are grateful to all the participants, including those who did not present papers, but whose questions and critiques helped the presenters sharpen or rethink their arguments. We would also like to thank Gaenor Moore, for her assistance in editing and the compilation of the bibliography and case-list. We express our appreciation as well to the Master and

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LIONEL BENTLY

JENNIFER DAVIS

JANE C. GINSBURG

Cambridge and New York, July 2007

Table of cases

- 1-800 Contacts, Inc. *v* Cohenll. com, Inc. 414 F. 3d 400 (2nd Cir. 2005) 154
- A. G. Spalding & Bros. *v* A. W. Gamage Ltd (1915) 32 RPC 273
230, 237
- Abercrombie & Fitch Co. *v* Hunting World Inc. 537 F. 2d 4 (2nd Cir. 1976) 96, 108, 142
- Adam Opel *v* Autec AG, Case C48/05 [2007] ETMR (33) 500 88, 153,
154, 155, 156, 258, 263
- Adidas-Salamon AG and Adidas Benelux Bv *v* Fitnessworld
Trading Ltd, Case C-408/01 [2003] ECR I-12537, ETMR 91,
[2004] I CMLR (14) 448, [2004] ETMR (10) 129 82, 84, 85,
212, 224, 232, 262
- A-G *v* Guardian Newspapers Ltd (No. 2) [1990] 1 AC 109 194
- Ainsworth *v* Walmsley (1866) LR 1 Eq Cas 518 12
- Aktiebolaget Manus *v* R. J. Fullwood & Blard, Ltd (1948) 65 RPC
329 233
- Alcon *v* OHIM, Case C-192/03 [2004] ECR I-8993, [2005] ETMR
(69) 860 256
- Aldrich *v* One Stop Video Ltd (1987) 39 DLR (4th) 362 (BCSC) 195
- Alfred Dunhill Ltd *v* Sunoptic SA [1979] FSR 337 231
- American Family Life Insurance Company *v* Hagan, et al., 266 F.
Supp.2d 682 (ND Ohio, 2002) 101
- American Greeting Corporation's Application ('Holly Hobbie') [1984] 1
WLR 189 206, 229
- Anheuser-Busch, Inc. *v* Budejovicky Budvar, Case C-245/02 [2004]
ECR I-10989, [2005] ETMR 286 153, 263
- Anheuser-Busch, Inc. *v* Balducci Publications (1995) 28 F. 3d 769 (8th
Cir. 1994), cert. denied, 513 US 1112 137
- Ansell *v* Gaubert (1858) Seb. Dig (163) 91 12
- Arsenal Football Club plc *v* Matthew Reed [2001] RPC 922 (H.
Ct); Case C-206/01 [2002] ECR I-10273, [2002] CMLR 12

- (ECJ); [2003] RPC (39) 696 [2003] ETMR (73) 895 (Court of Appeal), 1 CMLR 12, 2 CMLR 25 81, 82, 86, 87, 88, 135, 143, 153, 154, 211, 254, 260, 263, 314, 350
- Aunt Jemima Mills Co. v Rigney & Co.* 247 F. 407 (2nd Cir. 1917) 98
- Bach Flower Remedies* [1999] RPC 1 230
- Batty v Hill* (1863) 1 H & M 264, 71 ER 115 12
- Bayer Co. v United Drug Co.* 272 F. 505, 509 (SDNY 1921) 93, 148
- Bayerische Motorwerke AG v Deenik*, Case C63/97 [1999] ECR 905, [1999] 1 CMLR 1099, [1999] ETMR 339 257
- Beard v Turner* (1865) 13 LT 746 12
- Belcher v Tarbox* 486 F. 2d 1087 (9th Cir. 1973) 195
- Belisle Du Boulay v Jules René Herménégilde du Boulay* (1869) LR 2 PC 430 21
- Bile Bean Mfg Co. v Davidson* (1905) 22 RPC 560, *aff'd* (1906) 23 RPC 725 (Ct Sess., IH) 194, 195, 197
- Birmingham Vinegar Brewery Company, Limited v Powell* [1897] AC 710 226
- Blackwell v Crabb* (1867) 36 LJ Ch 504 12
- Blanch v Koons* 467 F. 3d 244 (2nd Cir. 2006) 104
- Bleistein v Donaldson Lithographing Co.* (1903) 188 US 239 197
- Blofeld v Payne* (1833) 4 Barnewall and Adolphus 410, 110 ER 509 227, 228
- Bollinger v Costa Brava Wine Co. Ltd* [1960] Ch 262, [1959] 3 WLR 966 182
- Bollinger v Costa Brava Wine Co. Ltd* (No. 2) [1961] 1 WLR 277 182, 193
- Bongrain SA's Trade Mark Application* [2005] ETMR 472 79, 94
- Bostitch Trade Mark* [1963] RPC 183 231, 233
- Boston Athletic Ass'n v Sullivan* 867 F. 2d 22 (1st Cir. 1989) 100
- Bowden Wire Ltd v Bowden Brake Co. Ltd* (1914) 31 RPC 385 229
- Boy Scouts of America v Dale* 120 S. Ct 2446 (2000) 308
- Braham v Beachim* (1878) LR 7 Ch D 848 54
- Braham v Bustard* (1863) 1 H & M 447, 71 ER 195 12, 25
- Bristol-Myers Squibb v Paranova*, Case C-427/93 [1996] ECR I-3457, [1996] ETMR 1 242
- British Sugar Plc v James Robertson & Sons Ltd* [1996] RPC 281 80
- Browne v Freeman* (1864) 12 WR 305 12
- Bulun Bulun v R&T Textiles Pty Ltd* (1988) 157 ALR 193 352
- Burgess v Burgess* (1850) 3 De G M & G 896 21

- Burgoyne's Trade Mark (1889) 6 RPC 227 347, 353
Bury *v* Bedford (1863) 32 LJ Ch 741 9
- C. T. Brock & Co.'s Crystal Palace Fireworks Ltd *v* James Pain & Sons [1911] RPC 28 54–5
Cadbury Schweppes Pty Ltd *v* Darrell Lea Chocolate Shops Pty Ltd (No. 4) [2006] FCA 446 (Fed. Ct, Aust.) 188
Cadbury Schweppes Pty Ltd *v* Pub Squash Co. Pty Ltd [1981] 1 WLR 193 (PC) 188, 190
Campbell *v* Acuff-Rose Music, Inc. (1994) 114 S. Ct 1164 315
Campina Melkunie BV *v* Benelux-Merkenbureau, Case C-265/00 [2005] 2 CMLR 9 77
Campomar Soc. Ltd *v* Nike International Ltd (2000) 202 CLR 45 (High Ct of Australia) 350
Canadane Cheese Trading *v* Hellenic Republic, C-317/95 [1997] ECR I-4681 395
Canham *v* Jones (1813) 2 V & B 218, 35 ER 302 21
Canon Kabushiki Kaisha *v* MGM, Case C-39/97 [1998] ECR I-5507, [1999] 1 CMLR 77, [1999] RPC 117 259, 260
Cartier *v* May, *The Times*, 13 July 1861, p. 11a 12
Cartier *v* Westhead, *The Times*, 12 July 1861, p. 11a 12
Central Hudson Gas & Electric Corporation *v* Public Service Commission of New York (1980) 109 S. Ct 2343 312
Church of Scientology of California *v* Kaufman [1973] RPC 635 (Ch.) 194
Churton *v* Douglas (1859) Seb. Dig (172) 96 12
Clark *v* Freeman (1848) 11 Beav 112, 50 ER 759 21
Coca-Cola Co. *v* Koke Co. of America (1920) 254 US 143, 147 by Holmes J, rev'ing 255 F. 894 (9th Cir. 1919) 196
Collins Co. *v* Brown (1857) 3 K&J 423, 69 ER 1174 5, 12
Collins Co. *v* Cohen (1857) 3 K&J 428, 69 ER 1177 12
Colonial Life Assurance Co. *v* Home and Colonial Life Assurance Co. (1864) 33 Beav 548 25
Comité Interprofessionnel du Vin de Champagne *v* Wineworths Group Ltd [1991] 2 NZLR 432 (Wellington HCt) 385
Commissioners of Inland Revenue *v* Muller & Co.'s Margarine [1901] AC 217 242
Community of Roquefort *v* William Faehndrich, 303 F. 2d 494 (2nd. Cir. 1962) 394
Compaq Computer Corp. *v* Dell Computer Corp. Ltd [1992] FSR 93, (1991) 21 IPR 433 195
Crawshay *v* Thompson (1842) 4 Man & G 357, 134 ER 149 7, 228
Croft *v* Day (1843) 7 Beav 84, 49 ER 994 22

- Dastar Corp. *v* Twentieth Century Fox Film Corp. (2003) 539 US 23 149
 Davidoff *v* Gofkid, Case C-292/00 [2003] ECR I-389, [2003] CMLR 35, [2003] ETMR 534 262
 Davis *v* Commonwealth (1988) 166 CLR 79 350
 Dawn Donut Co. *v* Hart Food Stores, Inc. 267 F. 2d 358 (2nd Cir. 1959) 148
 Day *v* Binning (1831) 1 CP Coop 489, 47 ER 611 228
 Day *v* Day (1816) 227
 De Beers Abrasive Products Ltd *v* International General Electric Co. of New York Ltd [1975] 1 WLR 972 183
 Dence *v* Mason (1880) 41 LTNS 573 22
 Densham & Son's Trade Mark (1895) 2 Ch 176 (CA) 347
 Dent *v* Turpin (1861) 2 J & H 139 5, 12
 Dixon *v* Fawcus (1861) 3 El & El 537, 121 ER 544 5
 Dunnachie *v* Young (1883) 10 Sess. Cas. (4th Ser.) 874 22, 30
 Dyer *v* Gallacher (2006) Scot SC 6 (Glasgow Sheriff Ct Scot.) 154
 Dyson Ltd *v* Registrar of Trade Marks, Case C-321/03 [2007] 2 CMLR (14) 303 70
- Eastman Photographic Materials Co. Ltd *v* Comptroller-General of Patents, Designs and Trade-Marks [1898] AC 571 347
 Eastman Photographic Materials Company, Ltd *v* The John Griffiths Cycle Corporation, Ltd (1898) 15 RPC 105 231
 Edelsten *v* Edelsten (1863) 1 De GJ & S. 185, 46 ER 72 12
 Edelsten *v* Vick (1853) 11 Hare 78, 68 ER 1194 12, 25
 Eden SARL *v* Office for Harmonisation in the Internal Market, Case T305/04 [2005] ECR II-4705, [2006] ETMR (14) 181 73
 Edwards *v* Dennis (1885) 30 Ch D 454 33
 Electrocoin Automatics *v* Hitachi Credit [2005] FSR 7 84
 Elvis Presley Trade Marks [1999] RPC 567 (CA) 234, 235, 254, 350
 Erven Warnink BV and others *v* J. Townsend & Sons (Hull) Ltd [1978] FSR 1 (Ch); [1979] AC 731 (HL) 181, 183, 193, 195, 352, 357
 Eurocermex SA *v* OHIM, Case C-286/04P [2005] ECR I-5797 78, 79
 European Communities – Protection of Trademarks and Geographical Indications for Agricultural Products and Foodstuffs (15 Mar. 2005) WT/DS174/R 397
 Executrices of the Estate of Diana, Princess of Wales' Application [2001] ETMR 25 234, 235
 Ex parte Stephens (1876) 3 Ch D 659 27, 32
- Farina *v* Cathery (No. 1), *The Times*, 30 April 1864, p. 13c 12
 Farina *v* Cathery (No. 2), *The Times*, 27 April 1867, p. 10d 12