



Brand New World:

Distinguishing Oneself in the Global Flow

A Google-sponsored Conference to be held at
University of California, Davis

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Ancient Greek physicians engaged in property disputes over the seals they impressed on the containers of their medications, making brand marks the oldest branch of intellectual property. The antiquity of business marks, however, has not helped their proper understanding by the law. And while the conceptual and historical foundations of copyrights and patents continue to be part and parcel of contemporary legal debates, the long term history and theorizing on brand marks is largely external to trademarks doctrine. Furthermore, whatever scholarship exists on those topics has been mostly done not by legal scholars but by archaeologists, art historians, anthropologists, sociologists, and historians of material culture.

This is not just a scholarly problem: Given the extraordinary importance of brands in the global economy and the growing awareness of a dangerous disjuncture between the way brands function and the way trademark law conceptualizes that function, a profound rethinking is needed to re-align the law with business practices and consumers' culture and behavior.

The rise of brands marks a fundamental shift in the law and business practice of trademarks. Where trademarks have long protected marks that signal the source of a good or service to consumers, increasingly today customers value logos such as the Nike Swoosh in and of themselves. In the "experience economy" corporations sell identity and community, authenticity and auras, not products. Starbucks is "everything but the coffee;" it is an experience, an identity, and a place to connect with others. At this point, advertisement professionals have probably a better grasp than legal scholars of how brands work.

The scale of branding practices exacerbates the problem. Branding is ubiquitous. Every charity, organization, and social movement seeks to brand itself, that is, to cultivate



and trade off its distinct identity. This workshop explores the challenges brands pose to traditional trademark law, and the use of brands as a vehicle for creating and maintaining personality, identity, community, and meaning in a global economy. Traditional trademark protects consumers against fraud and confusion. Brand creation, management, and licensing involve distinct concerns, less focused on consumer confusion and more akin to copyright law's concerns for story-telling and expressive control. The symposium will also examine the ways that Internet intermediaries—from Amazon to eBay and from Facebook to Google—interact with the branding phenomenon.

These trends may exceed the logic of trademark law and its justification, but are certainly not surprising to scholars external to the legal community who have approached marks on objects (in both the past and present, in the West and everywhere else) as ways to develop and maintain social relations, construct persons and personae, produce cultural and material distinction, standardize practices and goods, or even protect intellectual property when patents or copyrights are not available or do not seem to provide sufficient protection. Similarly, scholars interested in collaborative and collective forms of cultural and knowledge production have focused on brands as windows beyond the individualist view of the author and the inventor. (For instance, the role of brands and trademarks is central to studies of cultural and religious heritage).

Rarely has there been so large a gap between the empirical and conceptual understanding of a set of practices and its codification by the law. We want to address that gap with a large international research workshop bringing together key trademark law specialists with ethnographers, advertising professionals, art historians, cultural studies practitioners, design historians, semioticians, and historians of consumer society.