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.

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Trade Marks and Brands

An Interdisciplinary Critique

Edited by
Lionel Bently,
Jennifer Davis
and
Jane C. Ginsburg
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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
Editors’ preface

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LIONEL BENTLY
JENNIFER DAVIS
JANE C. GINSBURG

Cambridge and New York, July 2007
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