

Cambridge University Press

978-1-107-10346-7 - Brands, Competition Law and IP

Edited by Deven R. Desai, Ioannis Lianos and Spencer Weber Waller

Index

[More information](#)

INDEX

- 44 Liquormart decision 19–21
4 “P”s, moving beyond 80–2
- Aaker, D. 79, 101
- Ackerberg, Daniel 15, 20–2
- advertising
44 Liquormart decision 19–21
and competition law 85–6
economics of 152–61
information provision by 18–19, 138–9
informative/persuasive,
distinguishing between 20–2
normative economics of 15
persuasive effect of 14–15
pro-competitive aspects of
branding 16–20
resale price maintenance
(RPM) 144–5
store/national brands, findings
summary 26
store/national brands, impact on
interaction between 32–3, 43–6
- Allenby, G.M. 212
- Alston, J.M. 26
- anti-competitive aspect of branding
barriers to entry and expansion 16
consumer protection 16
reduced price competition 15
- anti-competitive harm in
mergers 97–100
- antitrust law
advertising 85–6
anti-competitive harm in
mergers 97–100
barriers to entry 100
benefits of branding 139–42
and branding 1
- brands discussion in cases, lack
of 89–90
- brands’ role in anti-competitive
mergers 102
- distribution restraints 140–2
- effects of brands on
competition 125–7
as enabler of brands 102–8
horizontal collusion 131
as ignoring impact of brands 83, 87–9
integration of brands into,
suggestions for 108–11
laissez-faire approach 90
and market definition 90–7
marketing, brands as integral to 125
monopolistic competition 83–5
prevailing ethos in 88
price theory as focus for 88
product differentiation
116–17, 130–2
product differentiation, brands as
real 124
repositioning of brands 101
single-brand markets 135–7
sub-brands 101–2
vertical restraints 102–8
- associative network theory 212
- Bagwell, K. 152
- Bain, J. 85–6
- barriers to entry 100
- bathroom tissue products 33–47
- Becker, G. 18
- benefits of brands 139–42, 239–40
for consumers 16–17, 117–20
economic 50–2
trademarks 204

- Blatt, R. 33
- blurring, dilution by 208–9, 212, 219–22
- Body Shop 81–2
- brands/branding
- anti-competitive aspect of 15–16
 - anti-competitive harm in mergers 97–100
 - antitrust law as enabler of 102–8
 - as basis of competition 51
 - benefits of 16–17, 50–2, 117–20, 139–42, 204, 239–40
 - broader values and meaning of products 81
 - business organisation and 246–9
 - and competition 239–41
 - competition, effects on 125–7
 - as complex strategic tools 82–3
 - and consumers 51
 - context 233–6
 - as creating market entry barriers 51–2
 - as defence tool 169–72
 - definition 49, 77, 79–80, 118
 - difference as created by 119
 - differences in understanding of 48
 - discussion of in antitrust cases, lack of 89–90
 - dominance 211
 - emotional and cognitive appeal of 255–8
 - equity 122–3
 - functions for
 - consumers 119–20
 - and higher prices 81–2
 - inelastic demand curve 162–3
 - and innovation 252
 - as integral to marketing 125
 - integration into antitrust law, suggestions for 108–11
 - investment in 50
 - law as ignoring impact of 83
 - loyalty to 123, 126, 183, 186
 - and market definition 90–7
 - market definition, effect on 87
 - and market power 161–9
 - as marketing resource 241–6
 - negative side to 132–4, 138–9
 - as operational concept in competition law 146–7
 - overbranding 133–4
 - parasitic copying, impact on 59–61
 - as positive for consumers 52
 - premium, recognition of importance of 86–7
 - and price discrimination 93–4
 - and price theory 92, 93, 147
 - pricing of, and private brands 187–8
 - private label products, competition with 182–91
 - pro-competitive aspects of 16–20
 - product differentiation
 - through 80–3
 - and quality, variety and innovation 169–72
 - quality assurance and 249–55
 - as real product differentiation 124
 - regulation of, extent of 52
 - repositioning of 101
 - responsibility for individual brands 121
 - role in anti-competitive mergers 102
 - roles played by 13–15
 - single-brand markets 135–7
 - strategies of brand management 120–2
 - sub-brands 101–2
 - success factors in 49–50
 - tracking brand health 211–15
 - and trademark and antitrust law 1
 - and trademarks 78–9, 203, 209–10, 241–6
 - typicality 211
 - value of 122–3
 - see also* private label brands

Bristol-Myers Squibb v. Paranova 228–9

British Brands Group 48–9

Bronnenberg, B. 16, 153–4

Brown Shoe merger decision 91

Bullmore, Jeremy 49

business organisation and brands 246–9

buyer power 185–6

 - and competition law 197

- case by case approach 20–2
- Centrafarm v. Winthrop* 218–19, 228
- Chamberlin, E. 20, 83–5, 115, 129, 148
- Chicago School 88
- Chintagunta, P.K. 27–31, 32, 34, 36–7
- co-branding strategies 120
- Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code) 62, 66
- cognitive appeal of branding 255–8
- Colloseum v. Levi Strauss* 234–5
- collusion 131
- Comanor, W. 132, 153
- competition
 - anti-competitive aspect of branding 15–16
 - and branding 239–41
 - branding as basis of 51
 - distortions of 154
 - distribution restraints 140–2
 - effects of brands on 125–7
 - imperfect 147–8
 - inter/intra-brand 103–7
 - intra-brand 17–18
 - monopolistic competition, theory of 83–5
 - private labels, effects of 191–5
 - private labels/brands 182–91
 - pro-competitive aspects of branding 16–20
 - suppliers 194
- Competition and Markets Authority (CMA) 67
- competition law
 - advertising 85–6
 - anti-competitive harm in mergers 97–100
 - attitude towards brands 162–9
 - barriers to entry 100
 - benefits of branding 139–42
 - and branding 1
 - brands discussion in cases, lack of 89–90
 - brands' role in anti-competitive mergers 102
 - buyer power 197
 - effects of brands on competition 125–7
 - as enabler of brands 102–8
 - enforcement with private label products 198–9
 - horizontal collusion 131
 - as ignoring impact of brands 83, 87–9
 - integration of brands into, suggestions for 108–11
 - laissez-faire approach 90
 - and market definition 90–7
 - marketing, brands as integral to 125
 - monopolistic competition 83–5
 - normative choices 149–61
 - operational concept in, brands as 146–7, 161–78
 - parasitic copying 62
 - prevailing ethos in 88
 - price theory as focus for 88
 - private label products 172–8, 195–8
 - product differentiation 130–2
 - product differentiation, brands as real 124
 - quality, variety and innovation 169–72
 - repositioning of brands 101
 - single-brand markets 135–7
 - sub-brands 101–2
 - vertical restraints 102–8
- competitive harm in mergers 97–100
- Competitive Strategy* (Porter) 88–9
- confusion, principle of 205–6
- Consten and Grundig* 171
- Consumer Protection from Unfair Trading Regulations (CPRs) 66–9
- consumer surplus 149–50
- consumers
 - anti-competitive aspect of branding 16
 - benefits from brands 16–17, 117–20
 - brand loyalty 123, 126
 - and brands 51, 149
 - brands as positive for 52
 - choice 151
 - emotional and cognitive appeal of brands 255–8
 - experience of product and advertising impact 20–2
 - functions of brands for 119–20

Cambridge University Press

978-1-107-10346-7 - Brands, Competition Law and IP

Edited by Deven R. Desai, Ioannis Lianos and Spencer Weber Waller

Index

[More information](#)

264

INDEX

- consumers (*cont.*)
 locked in 162–6
 marginal/inframarginal 156–7
 negative side to branding for 132–4
 parasitic copying 54–5, 56–9, 66–9
 product differentiation and real preferences of 158–9
 sovereignty 133, 151–2
 context, brand 233–6
Continental TV Inc v. GTE Sylvania Inc 18
Copad 230–1
 copycat packaging. *see* parasitic copying
 copyright 64
 copyright 64
 cost leadership 162
 Cotterill, R.W. 30, 31–2, 33, 34
 Court of Justice of the European Union (CJEU)
 blurring, dilution by 219–22
 brand context 233–6
 brand image in early case law 217–18
Bristol-Myers Squibb v. Paranova 228–9
Centrafarm v. Winthrop 218–19, 228
Colloseum v. Levi Strauss 234–5
Copad 230–1
De Vries 227–8
Dior v. Evora 229–30
Google France 231–2
 image, brand, protection of 228–33
Intel v. CPM 220–1, 224
Interflora 226–7, 232
L’Oreal v. Bellure 226, 227, 231
L’Oreal v. eBay 233
Nestle v. Mars 234
 signs similar to trademarks 245–6
Specsavers v. Asda 235–6
 tarnishment, dilution by 222–5
 unfair advantage 226–8
 cross price elasticity
 asymmetry between national/store brands 31–2
 bathroom tissue products 33–45
 business strategy, implication for 45–7
 national/store brands, interaction between 26, 27, 33–45
De Vries 227–8
 dealer location clauses 142
 dealerships, exclusive 142–3
 Desai, D.R. 13
 design of products, growth in importance of 80
 differentiation between products
 in antitrust 116–17, 130–2
 brands as real 124
 as defence tool 169–72
 economics of 115–17
 horizontal collusion 131
 imperfect competition 147–8
 inelastic demand curve 162–3
 and market power 128–32
 monopolistic competition 84–5, 116
 origins of 152
 private label products 159–60
 and real preferences of consumers 158–9
 through brands 80–3
 dilution, trademark
 by blurring 208–9, 212, 219–22
 business practice and protection from 209–15
 famous/not famous trademarks 210–11
 Federal Trademark Dilution Act 1995 207–8
 future research 215–16
Moseley v. V Secret Catalogue, Inc. 208
 principle of 206–7
 by tarnishment 209, 215, 222–5
 tests of 212–15
 tracking brand health 211–15
 Trademark Dilution Revision Act 2006 208–11, 215–16
Dior v. Evora 229–30
 distribution restraints
 dealer location clauses 142
 exclusive retailing 142–3
 growth in 140–2
 resale price maintenance (RPM) 143–5
 dominance 211
Dr. Miles 105–6, 140
 DuPont 90–1

- Eastman Kodak* 164–5
- economics and branding
 44 Liquormart decision 19–21
 anti-competitive aspect of
 branding 15–16
 benefits of branding 50–2
 brands and advertising, need to
 understand 15
 informative/persuasive advertising,
 distinguishing between 20–2
 normative economics of
 advertising 15
 pro-competitive aspects of
 branding 16–20
 role of brands 13–15
- Economides, N. 154
- elasticity
 bathroom tissue products 33–45
 business strategy, implication
 for 45–7
 cross price elasticity 26, 31–2, 42–4
 national/store brands, assessment of
 interaction between 26–7
 own price elasticity 26, 27–30, 42–4
- emotional and cognitive appeal of
 branding 255–8
- entry barriers
 anti-competitive aspects of
 branding 16
 pro-competitive aspects of
 branding 16
- equity, brand 122–3
- European Union
 attitude towards brands 162–9
 Merger Guidelines 100
 normative choices 149–61
 operational concept in competition
 law, brands as 146–7, 161–78
 parasitic copying 65–6
 quality, variety and
 innovation 169–72
 Treaty on the Functioning of the
 European Union (TFEU) 167, 169,
 170, 172, 195, 196, 197, 198
 Unfair Commercial Practices (UCP)
 Directive 66–9
see also Court of Justice of the
 European Union (CJEU)
- exclusive retailing 142–3
- experience of product and advertising
 impact 20–2
- extension strategies 120
- family branding 120
- Federal Trademark Dilution Act
 1995 207–8
- Fong, N.M. 27, 30
- franchises 170–1
- Galbraith, J.K. 15
- gatekeepers, retailers as 182–3
- General Mills-Pillsbury merger
 case 98–9
- genericisation 221–2
- Gengler, C. 212
- Gertner, R. 87–8
- Google France* 231–2
- Green, R. 26
- Grimes, W.S. 87
- Häagen-Dazs 82
- Hausman, J. 37
- hierarchical benefit-chain 118–19
- Hill, C.W.L. 162
- Hollywood* 225
- horizontal collusion 131
- Horizontal Merger Guidelines
 1982 91–2, 93–4
 2010 131–2
- Hotelling, H. 15
- Hovenkamp, H. 136
- Howard, D.J. 212
- Hugin* 163
- Hugo Boss 82
- hypothetical revealed preference
 theory 151–2
- image, brand 217–18, 228–33
- imperfect competition 147–8
- information
 access to 189–90
 brands as conveying 13–14, 138
 distinguished from
 persuasion 18–19
 as pro-competitive aspect of
 branding 18–19

- inframarginal consumers 156–7
 innovation
 and brands 169–72, 252
 private label products 176, 189–90, 192–3, 194
 Institute of Grocery Distribution 62–3
Intel v. CPM 220–1, 224
 intellectual property rights
 benefits of 50–1
 parasitic copying 63–6
 inter-brand competition 103–7, 126–7
 exclusive retailing 142–3
 resale price maintenance (RPM) 144
Interflora 226–7, 232
 intra-brand competition 103–7, 126–7, 135–7
 dealer location clauses 142
 investment in branding 50

 Jacoby, J. 212

 Kaldor, N.V. 15
 Kamakura, W. 31, 38
 Kang, W. 31, 38
 Kerin, R.A. 212
Kesko/Tuko 190, 197
 Keyte, J.A. 95
Kodak 135–6
 Kotler, P. 79

 Landes, W. 130
 Lee, J. 212
Leegin 105, 106, 107–8, 140–1, 143–4
 Leibenstein, H. 157, 158
 Lerner index 92–3
 line extension strategies 120
 linear approximate almost ideal demand system (LA/AIDS) model 34–7
 locked in consumers 162–6
 lookalikes. *see* parasitic copying
L'Oreal v. Bellure 58–9, 63, 226, 227, 231
L'Oreal v. eBay 233
 low-cost brands 162
 loyalty to brands 123, 126, 183
 store and brand loyalty 186
Lucas Bols v. Colgate Palmolive 223
 Lunney, G. 93
 Lury, C. 81

 management of brands
 responsibility for individual brands 121
 strategies for 120–2
 manufacturer/retailer relationship
 impact of brands 159
 see also private label products
 marginal/inframarginal consumers 156–7
 market definition
 branding, effect of on 87
 and brands 90–7
 trademark law 96
 market power
 brands and product differentiation 161–9
 gatekeepers, retailers as 183
 negative side to branding 132–4
 private label products 193
 and product differentiation 128–32
 retailers of private label products 195–7
 single-brand markets 135–7
 marketing
 brands as resource for 241–6
 emotional and cognitive appeal of branding 255–8
 private label products 188–9
 quality assurance and 249–55
 marketing literature
 brand equity 122–3
 brand loyalty 123
 brands as integral to 125
 effects of brands on competition 125–7
 responsibility for individual brands 121
 strategies of brand management 120–2
 Marks and Spencer 17
 McCarthy, J. 222
 mergers
 anti-competitive harm in 97–100
 buyer power 197
 coordinated effects theories 97–8
 EU guidelines 100
 Horizontal Merger Guidelines 1982
 91–2, 93–4

- unilateral effects theories 98–100
- United States Merger
 - Commentary 101
- Metro I* 169–70
- Milyo, J. 19–20
- monitoring of brand health 211–15
- monopolistic competition, theory of
 - 83–5, 115, 116, 129, 148
- Moore, K 79
- Morrin, M. 212
- Moseley v. V Secret Catalogue, Inc.*
 - 208, 209
- multi-branding strategies 120
- Murphy, M. 18
- national/store brands, interaction
 - between
 - bathroom tissue products 33–47
 - business strategy, implication for 45–7
 - cross price elasticity 27, 31–2, 33–45
 - elasticity and assessment of interaction 26–7
 - existing research 27–33
 - findings summary 26
 - own price elasticity 27–30, 32, 33–45
 - price changes, response to 30–1
 - promotion, impact of 32–3, 43–6
 - store brand entry, impact on national brands 32
 - see also* private label brands
- Nelson, P. 19, 155
- nested logit models 168–9
- Nestle v. Mars* 234
- Netemeyer, R.G. 212
- normative choices 149–61
- Office of Fair Trading (OFT) 67
- operational concepts
 - in competition law, brands as 146–7, 161–78
 - defined 146
- Orbach, B. 107, 109
- overbranding 133–4
- own price elasticity 26
 - bathroom tissue products 33–45
 - business strategy, implication for 45–7
- defined 25
- national/store brands, interaction
 - between 27–30, 33–45
- packaging, mimicking of. *see* parasitic copying
- parasitic copying
 - brands, impact on 59–61
 - civil action against 68–9
 - competition law 62
 - complaints regarding 67–8
 - and consumer behaviour 54–5
 - consumer law 66–9
 - consumers, effect of on 56–9
 - copyright 64
 - debate over 55
 - definition 53
 - European Union 65–6
 - IP remedies 63–6
 - passing off 64–5
 - and private label products 53, 189, 192
 - problem of 52–3
 - registered designs 64
 - remedies 61–9
 - self-regulation 62–3
 - trademark law 63–4
- Paris Convention 65
- passing off 64–5
- Peritz, R. 85
- Peterson, R.A. 211
- Pierre Fabre* 172
- points of difference (PODs) 119
- points of parity (POPs) 119
- Porter, M. 88–9, 162
- Posner, R. 130
- price discrimination and brands 93–4
- price theory
 - and brands 92, 93, 147
 - as focus for antitrust law 88
 - normative choices 149–52
- prices, higher, brands as enabling 81–2
- prices and advertising
 - 44 Liquormart decision 19–21
 - store/national brands, findings summary 26
 - see also* national/store brands, interaction between

- private label brands
 - buyer power 185–6, 197
 - and competition law 172–8
 - competition law analysis 195–8
 - competition with brands 182–91
 - copycat brands 189, 192
 - defined 179–80
 - enforcement choices 198–9
 - foreclosure of traditional
 - brands 193–4
 - gatekeepers, retailers as 182–3
 - growth of 180
 - information, access to 189–90
 - innovation 189–90, 192–3, 194
 - market power 193, 195–7
 - marketing 188–9
 - negative competition effects 193–5
 - positive competition effects of 191–3
 - pricing of, and traditional
 - brands 187–8
 - and product differentiation 159–60
 - quality erosion 184–5, 194–5
 - quality of, increase in 181–2
 - as recessionary phenomenon 181
 - risk management 191
 - shelf space 188
 - store and brand loyalty 186
 - sub-categories of 182
 - suppliers, competition among 194
 - switching costs 184
 - see also* store/national brands, interaction between
- pro-competitive aspects of branding
 - consumer benefits from
 - brands 16–17
 - information provision 18–19
 - intra-brand competition 17–18
 - reducing entry barriers 16
- Procter & Gamble/Gillette* 175
- product, price, place, promotion, moving beyond 80–2
- product differentiation
 - in antitrust 116–17, 130–2
 - brands as real 124
 - as defence tool 169–72
 - economics of 115–17
 - horizontal collusion 131
 - imperfect competition 147–8
 - inelastic demand curve 162–3
 - and market power 128–32, 161–9
 - monopolistic competition 84–5, 116
 - origins of 152
 - private label products 159–60
 - and real preferences of
 - consumers 158–9
 - through brands 80–3
- promotion
 - private label products 188–9
 - resale price maintenance (RPM) 144–5
 - store/national brands, findings
 - summary 26
 - store/national brands, impact on
 - interaction between 32–3, 43–6
 - see also* advertising
- Pronuptia* 170
- Pullig, C. 212
- quality
 - assurance and brands 249–55
 - competition, role of on 169–72
 - erosion 184–5, 194–5
 - private label products 184–5
 - trademarks as signifiers of 207
- ReaLemon 133–4
- registered designs 64
- regulation of brands 52
- Reid, S. 79
- Renault* 165
- repair and maintenance
 - markets 162–6
- repositioning of brands 101
- resale price maintenance (RPM) 103, 104, 105, 106, 139–40, 143–5
- restraints
 - dealer location clauses 142
 - exclusive retailing 142–3
 - growth in distribution
 - restraints 140–2
 - vertical 102–8, 130, 132
- retailer/manufacturer relationship
 - impact of brands 159
 - see also* private label products
- retailing, exclusive 142–3
- Rewe/Meinl* 184

- risk management for private label products 191
- Robinson, J. 147–8, 153
- Rossignol* 166–7
- Sara Lee* 168–9
- Schechter, F.I. 206–7
- self-regulation of parasitic copying 62–3
- shelf space for private label products 188
- signals, brands as 13–14
- Simmons, C.J. 212
- Simonson, I. 205–6
- single-brand markets 135–7
- Smith, K.H. 211
- social branding 160–1
- Song, I. 27–31, 32, 34, 36
- spare parts markets 162–6
- Specsavers v. Asda* 235–6
- SSNIP test 92
- Steiner, R.L. 173–4
- Stigler, G. 18
- store and brand loyalty 186
- store/national brands, interaction between
 - bathroom tissue products 33–47
 - business strategy, implication for 45–7
 - cross price elasticity 27, 31–2, 33–45
 - elasticity and assessment of interaction 26–7
 - existing research 27–33
 - findings summary 26
 - own price elasticity 27–30, 32, 33–45
 - price changes, response to 30–1
 - promotion, impact of 32–3, 43–6
 - store brand entry, impact on national brands 32
 - see also* private label products
- strategies of brand management 120–2
- sub-brands 101–2
- Sullivan, L.A. 87
- suppliers, competition among 194
- Swatch 82
- Sylvania* 103–4, 132, 140, 141
- tarnishment, dilution by 209, 215, 222–5
- Telser, L. 18, 86, 155
- Theory of Monopolistic Competition, The* (Chamberlin) 83–5
- tracking of brand health 211–15
- Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement 65–6
- trademark law
 - brand context 233–6
 - and branding 1
 - brands discussion in cases, lack of 89–90
 - CJEU, early case law of 217–18
 - and market definition 96
 - and market power 130
 - parasitic copying 63–4
- trademarks
 - benefits of 204
 - blurring, dilution by 208–9, 212, 219–22
 - business organisation and 248–9
 - business practice and dilution protection 209–15
 - compared to brands 78–9, 203, 209–10
 - confusion, principle of 205–6
 - development and use of 77–8
 - dilution principle 206–7
 - dominance 211
 - famous/not famous 208, 210–11
 - Federal Trademark Dilution Act 1995 207–8
 - future research into dilution 215–16
 - image, brand, protection of 228–33
 - on the internet 231–2
 - legal protection of 204
 - Moseley v. V Secret Catalogue, Inc.* 208, 209
 - quality assurance and 251
 - as quality signifiers 207
 - relationship with brands 241–6
 - signs similar to 245–6
 - tarnishment, dilution by 209, 215, 222–5
 - tests for dilution 212–15
 - tracking brand health 211–15

Cambridge University Press

978-1-107-10346-7 - Brands, Competition Law and IP

Edited by Deven R. Desai, Ioannis Lianos and Spencer Weber Waller

Index

[More information](#)

270

INDEX

- trademarks (*cont.*)
 Trademark Dilution Revision Act
 2006 208–11, 215–16
 typicality 211
 Trading Standards 67
 Treaty on the Functioning of the
 European Union (TFEU) 167, 169,
 170, 172, 195, 196, 197, 198
 typicality 211
 unfair advantage 225–8
 Unfair Commercial Practices (UCP)
 Directive 66–9
 unilateral effects theories 98–100
Unilever 168–9
 United States Merger
 Commentary 101
United States v. Arnold, Schwinn & Co 140
*United States v. E. I. du Pont de
 Nemours and Co.*, 90–1
*United States v. Parke, Davis and
 Co.* 140
 value of brands 122–3
 variety of products 169–72
 Veblen, T.B. 17, 157
 Veblen goods 134, 157–8
 vertical minimum price fixing. *see*
 resale price maintenance (RPM)
 vertical restraints 102–8, 130, 132
Volvo 165
 Waldfoegel, J. 19–20
 Weber Waller, S. 13
 Wilson, T.A. 153
 Wisniewski, K. 33
 Yoplait 150 21–2
 Zerrillo, P.C. 211