

PART I

Are Academic Brands Distinctive?

1

Distinctive Excellence

The Unusual Roots and Global Reach of Academic Brands

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The study of academic brands intersects trademark law with critical university studies around questions both empirical and conceptual, from rather mundane things like universities' trademark policies and lawsuits over T-shirts and hoodies carrying university insignia all the way to the complex cultural, political, and economic tensions that frame the conflicted identity of the modern university. Straddling the line between knowledge and business, public and private, or between its local ties to the state and its reach toward the global economy of higher education, the modern university seems to have found in brands a tool to construct a coherent and attractive image, if perhaps only skin deep, of itself, its role, and its "excellence."

WHEN AND WHY

The contours of these developments can best be traced through some general questions. How has the self-representation of universities, colleges, and polytechnics changed over time, and at what point do we see a shift in focus from individual insignia to comprehensive brand strategies managed by marketing and communication offices? Is that transition reflected in a stylistic change of the marks from scholarly insignia to corporate logos, from ponderous seals and Latin mottos ("Fiat Lux," "Veritas," "Rerum Cognoscere Causas") to agile modern marks? Often consisting of just one single noun or acronym – Harvard, Michigan, UCLA,

* I wish to thank my colleagues at the UCLA School of Law for the thoughtful and detailed suggestions and criticism, which they probably will not think I have adequately answered here. Thanks to Beatrice Dumin, Kriss Ravetto, and Madhavi Sunder for their comments and support, and to Vinson Lin for his research assistance.

¹ The seal of the University of California, for instance, was designed by Tiffany & Co. in 1908, but that was an isolated commission rather than an element of a comprehensive brand strategy.

NYU, SciencesPo, LSE, etc. – modern university marks can fully convey their comprehensive brands without even mentioning the term “university.”²

Was the turn to branding driven by an attempt to strengthen the ties with students and parents as potential future donors, or was the university simply following the lead of its brand-conscious corporate partners? Either way, has the university’s turn to branding merely followed established trends or can we find something more specific to it, something inherently tied to the university and its history, like, for example, the US universities’ unique investment in sports (see Chapter 8) and the consequent engagement with the media, the world of merchandising, and audiences that have quickly grown beyond campus, embracing a national and even international public?³ Is it the nexus of sports and media that introduced a brand mentality into the university, perhaps together with that peculiar form of sports stats we now call academic rankings? And has something as mundane as Sky Sports’ decision to include US college games in their all-reaching broadcast network been instrumental in turning those academic brands into a global phenomenon?⁴

Or did it start at the other end of the geographical scale, in the local gift shop? Has the tradition of selling branded sweatshirts, umbrellas, coffee mugs, rings, and shot glasses functioned as a humble “brand incubator” where the university learned the importance of developing relations with alumni, students, and parents through souvenirs and wearable memorabilia that could also communicate the brand to other admirers in the making? Or was it just a way to generate some additional revenue, like the gift shops we have to traverse before we are allowed to exit an art museum? To put it differently, did universities start to aggressively enforce their trademarks to protect their merchandise revenue (see Chapter 7), or to control their

² Marks that consist of just a few letters seem to function more as visual logos than the mere linguistic acronyms of their longer descriptive marks like the “Massachusetts Institute of Technology” or “London School of Economics and Political Science.” Less signifies more. For instance, the minimalist “LSE” or “MIT” acronyms and logos convey much more than the teaching of economics in London or a polytechnic in Massachusetts – older referents that, in any case, are becoming both unfamiliar and irrelevant to younger audiences.

³ While the brand-building potential of sports is undisputed, how can we explain the relation between generally elevated or simply pretentious mottos like “Veritas” or “Under God’s Power She Flourishes” and the distinctly lowbrow (occasionally adolescent-sounding) names of universities’ sports teams and their mascots? How can the “Yale Bulldogs” go hand in hand with the university’s “Lux et Veritas” logo? Or how can UC Santa Cruz’s mascot “Sammy the Slug” be associated with the same research university that prominently features “Let There Be Light” in its seal? How can a mascot function as a successful sub-brand if its meaning is so radically removed from that of the main brand? (It would be a stretch, I believe, to call it product differentiation.) On the relationship between university, sports, and branding, see Mark Garrett Cooper and John Marx, *Media U: How the Need to Win Audiences Has Shaped Higher Education* (New York: Columbia University Press, 2018); Gaye Tuchman, *Wannabe U: Inside the Corporate University* (University of Chicago Press, 2011); Joshua Hunt, *The University of Nike: How Corporate Cash Bought American Higher Education* (New York: Melville House, 2018).

⁴ I owe this point to Guido Guerzoni. Grazie.

“identity” and defend their brand from dilution? And if there was a transition from the former goal to the latter, when did a counterfeit T-shirt morph into a threat to a university’s identity?

One could take a very different perspective, if only as a heuristic experiment. Could it be that prestigious academic institutions have not actually turned to branding but have instead exemplified luxury brands before that concept even existed – “Oxford,” “Yale,” or the “École Normale Supérieure” having always functioned as signs of social distinction and identity for students, alumni, and even the nation as a whole rather than as simple providers of educational services? Not unlike nineteenth-century corporate trademarks, older universities seem to identify their brand with vintage, which is unsurprising given that universities are among the oldest of corporations. Harvard, for instance, claims to be “the oldest corporation in the Western Hemisphere,”⁵ and a few other universities secured international name recognition several centuries before any of today’s brand-based businesses even existed. Could it be that the ability of brands to lend distinctiveness to their goods and services and provide “identity narratives” to their purchasers is something that the names of some universities have been doing since the late Middle Ages, thus prefiguring the very function of the modern brand?

EXPANDING MARKETS, PIVOTING ORIGINS, STRETCHING IDENTITIES

Like other corporations offering an expanding range of different products and services, modern universities have much to gain from developing distinctive brands.⁶ (Research in higher education, for instance, frequently models the university–alumni relationship in terms of “brand loyalty.”⁷) At the same time, the goal of university branding is not just to attract donors, high-achieving students, and corporate partnerships but also to give a sense of unity and identity to their

⁵ www.harvard.edu/about-harvard/harvards-leadership/president-and-fellows-harvard-corporation (last accessed February 10, 2021).

⁶ Robert M. Moore, *The Real U: Building Brands that Resonate with Students, Faculty, Staff, and Donors* (Washington: CASE, 2010).

⁷ James H. McAlexander and Harold F. Koenig, “University Experiences, the Student-College Relationship, and Alumni Support,” *Journal of Marketing for Higher Education* 10 (2001): 21–43; John M.T. Balmer and Mei-Na Liao, “Student Corporate Brand Identification: An Exploratory Case Study,” *Corporate Communications: An International Journal* 12 (2007), 356–75; Brandi A. Watkins and William J. Gonzenbach, “Assessing University Brand Personality through Logos: An Analysis of the Use of Academics and Athletics in University Branding,” *Journal of Marketing for Higher Education* 23 (2013): 15–33; M. Pinar, P. Trapp, T. Girard, and T.E. Boyt, “Utilizing the Brand Ecosystem Framework in Designing Branding Strategies for Higher Education,” *International Journal of Educational Management* 25 (2011): 724–39; A. Lowrie, “Branding Higher Education: Equivalence and Difference in Developing Identity,” *Journal of Business Research* 60 (2007): 990–99; C. Chapleo, “Do Universities Have ‘Successful’ Brands?” *International Journal of Educational Advancement* 6 (2005): 54–64.

increasingly diverse portfolio of goods and services that now extends well beyond their traditional pedagogical mission: for example, art museums, technology parks, sports and sports-related merchandising, technology licensing, executive education, hospitals, book publishing, extension courses, distance learning programs, and so on.

The geographical spread of the services offered by the modern university is as conspicuous as the increasing diversity of their nature. More than ever, the university is trying to reach beyond the traditional physical boundaries of its campus. As we see among luxury brands (see Chapter 6), the trend toward academic branding is visibly tied to globalization, in this case the conspicuous transformation of higher education into a global market in which universities compete for foreign students (who often pay higher fees), while also franchising their brands to satellite campuses and partnerships like NYU Abu Dhabi, Yale-NUS, MIT-Skoltech, and so on. (This is a trend that premier museum brands like the Guggenheim and the Louvre have also been pursuing, pointing to the emergence of a global market for “cultural brands,” not just academic ones.)⁸ Even when the ambitions are less than global, the mobilization of academic brands is still associated with the university’s attempt to reach beyond its physical campus. Examples are the development of online distance learning programs that crucially rely on the brand to offset possible doubts about their pedagogical value (see Chapter 4), or the use of brands like “Stanford” or “UCLA” with strong associations to top medical schools and hospitals to leverage a university’s entry into broader regional health care markets.⁹

What prestigious universities share with famous museums like the Louvre or the Guggenheim (but not with other corporations with equally distinctive brands and global recognition) is that, until recently, they have been physically unmovable, and for good reasons. Corporations can relocate both their headquarters and production facilities (the latter virtually anywhere in the world), but universities and museums have drawn most of their distinctiveness from their history in the places where they have grown,¹⁰ creating a resemblance between their brands and the “terroir” that

⁸ The franchising of the Guggenheim Museum also indicates a conscious attempt to create a “trade dress” effect by commissioning the design of all its foreign museum buildings to Frank Gehry, who has used his signature tri-dimensional effect produced by undulating titanium panels to create very different buildings that at the same time display an unmistakable brand-like family resemblance.

⁹ I thank Joel Braslow for this point.

¹⁰ Because the image and institutional culture of technology-focused institutions involve the future more than the past, their relatively short pedigree may even be seen as a sign of distinction. For the same reasons, the reputation of such universities is also less dependent on their location and “terroir.” Even though Stanford seems to be connected to a specific local innovative ecology, it is one that Stanford helped constitute. Whether Stanford made Silicon Valley or vice versa is a matter of debate while, by contrast, it is clear that Paris made the Louvre.

geographical indicators try to capture (see Chapter 5).¹¹ A trademark relates a good or service to an origin, but not literally so. It needs to connect the good to a source to guide the customer through his/her purchasing choices, but it would be irrelevant to that function of the trademark to disclose the precise identity or physical location of that origin: “We may safely take it for granted that not one in a thousand knowing of or desiring to purchase ‘Baker’s Cocoa’ or ‘Baker’s Chocolate’ know of Walter Baker & Co., Limited,” or of where Walter Baker & Co. may be located.¹²

But it is commonly known that the Louvre is based in Paris, the Uffizi in Florence, the Guggenheim in New York, Oxford in Oxford, and Cambridge in Cambridge. In several cases, they have been occupying the same buildings for centuries – buildings that prospective students or visitors could find pictured in print media and now online, imagining themselves visiting or studying there.¹³ Far from incidental, the locations of these institutions are intertwined with both the experience of their brand and the genealogy of its appeal. Universities and museums become distinctive through accumulation in one place: by bringing works of art from different places and periods to one museum building; many books and manuscripts in different languages and on different topics to one library; and many distinguished faculty and top-performing students to one campus. While most corporations can sell and ship their goods anywhere in the world, tourists and students have traveled to very specific places to enjoy the services of academic and museum brands – brands that could have hardly come into being outside of those locations and without their specific historical roots to them.¹⁴

“Enjoyment,” however, means something quite specific in this case. It does not refer primarily to purchasing a branded good to take it home or wear it, but rather to paying tuition or admission in order to spend time in a cultural institution, admire its collections, use its libraries, learn, do research, meet other people, etc. Though

¹¹ Among the substantial literature on the subject, see Dev Gangjee, *Relocating the Law of Geographical Indications* (Cambridge University Press, 2012).

¹² *Walter Baker & Co., Ltd. v. Slack*, 130 Fed. 514, 518 (C. C. A. 7th, 1904), discussed in Frank Schechter, “The Rational Basis for Trademark Protection,” *Harvard Law Review* 40 (1927): 813–33 (at 815).

¹³ It is also worth noticing that the connection between institutional identity and location is less relevant to the brand of museums of contemporary art, which are by definition newer institutions that can be successfully established in a variety of different locations, with shallower roots, if any, in the local cultural terroir. Comparable differences might also be seen between older broad-spectrum universities and more recent elite institutions that have specifically tied their image to high-tech. It would be difficult to imagine Oxford having grown a brand like the one it has in Oxford, England in, say, Pasadena, California. At the same time, one could imagine Caltech having developed its strong brand in other locations.

¹⁴ In the case of museums, their brand is obviously rooted in their direct genealogical connections to prestigious past sovereigns, relations that developed and are reflected in the museum’s present location – the Hermitage Museum being the czars’ former palace, the Uffizi in the former Medici Galleria, etc. To some extent, that can also be said of some of the oldest universities like Cambridge or Oxford and their relationship with past sovereigns, aristocrats, and the Church.

universities and museums may include gift shops, they do not function like shops. Nor can universities be easily treated as sites of so-called experiential purchasing, “the manufacturing of experiential consumer practices, that is, [the] consumption of non material objects.”¹⁵ Like going on a cruise, the college experience involves expenditures and emotions, but obtaining an academic degree requires work and the fulfillment of requirements that the student has modest control over. Academic curricula allow for choices but are not a buffet. Recent studies of brand identification in higher education suggest that in fact buffets are not the point. The main long-lasting source of alumni allegiance is “recalled academic experience,” not “recalled social experience.”¹⁶ Among those who feel connected to their alma mater, the memory of parties fades away faster than that of transformative educational experiences – experiences the student had to work for, not just pay for.

At the same time, the recent transformation of those local institutions imbued in local sociocultural charisma into internationally recognized brands through the globalization of higher education (or, in the case of museums, the emergence of mass tourism) has also created the conditions of possibility for them to branch out from their original locations. I argue, however, that universities could not have franchised prior to becoming academic brands because an earlier geographical spread would have preempted the development of the very brand that eventually enabled their franchising. The university changes constantly through generational flows of students, faculty, administrators, curricula, and programs, and yet it is perceived to remain “one” by staying physically put, by growing around its first buildings, which always remain (if still standing) part of the campus. Unlike other corporate trademarks, therefore, a university’s mark always points to a real physical point of origin, even when that location is not explicitly featured in the mark. There would be no academic brand without an original campus. (That might also explain why it is difficult to imagine a successful university mark becoming generic and losing its ability to function as a trademark.)¹⁷

Unsurprisingly, mobility means something quite specific in the case of the university. NYU’s expansion to Abu Dhabi, for instance, exemplifies a form of movement that is conceptually closer to grafting than to franchising. Unlike restaurant chains (or corporate headquarters) that can be located virtually anywhere

¹⁵ Eva Illouz, “Emotions, Imagination and Consumption: A New Research Agenda,” *Journal of Consumer Culture* 9 (2009): 377–413 (at 386–87).

¹⁶ Adrian Palmer, Nicole Koenig-Lewis, and Yousra Asaad, “Brand Identification in Higher Education: A Conditional Process Analysis,” *Journal of Business Research* 69 (2016): 3033–40 (esp. 3037–38).

¹⁷ Could you imagine a scenario where a famous university brand – e.g., Cambridge, Princeton, or Berkeley – would become a generic designator for higher education itself, the way Kleenex, Thermos, or Aspirin have come to be used as the name for an entire class of products rather than a specific member of that class? If you cannot, I believe it is because academic brands, no matter how famous they become, never refer to more than one specific university in its location, or to its possible satellites, which are satellites, not franchises.

because they are specific to nowhere, in the case of prestigious universities and museums the “original plant” stays back in Paris, New York, or Cambridge, while the “brand cuttings” are spliced onto other newer institutional stocks, in other locations, where more people may enjoy their fruits. All that a restaurant chain’s brand can convey is the consistency of its menus and ambience, but university and museum satellites deliver a little bit of the real thing – for example, some courses taught by faculty from the original campus, or some artwork from the original collection. It’s a chain, but it’s original. What spreads is not just the brand as a sign different from other signs but also some unique things and persons – something “auratic” – that come from the brand’s place of origin. (A satellite Louvre museum featuring only photographic reproductions of artwork on display in Paris would not work, in the same way that a satellite campus of a major university would not be attractive if all that the two shared was a course catalog.)¹⁸ The exhibits at the Louvre Abu Dhabi do not need to include the Mona Lisa, and Yale does not need to ship its Nobel Prize winners to Singapore, but something more than the brand as sign, something material and from the center – a “cutting” – needs to be grafted onto the new branches, or perhaps just sent to the satellite campus for a little while.¹⁹ A mere “university chain” – that is, a centerless chain identified only by its mark and perhaps by the trade dress of its buildings – would just look like another for-profit college populating nameless strip malls.

If I have stressed the specificity of academic brands it is because it does not seem to match entrenched views about the function of marks and its historical trajectory. In his seminal 1927 article, Frank Schechter argued that:

The signboard of an inn in stage-coach days, when the golden lion or the green cockatoo actually symbolized to the hungry and weary traveler a definite smiling host, a tasty meal from a particular cook, a favorite brew and a comfortable bed, was merely “the visible manifestation” of the good will or probability of custom of the house; but today the trademark is not merely the symbol of good will but often the most effective agent for the creation of good will, imprinting upon the public mind an anonymous and impersonal guaranty of satisfaction, creating a desire for further satisfactions. The mark actually *sells* the goods.²⁰

Schechter contrasted the premodern “Golden Lion” signboard with the function of modern trademarks, stressing the difference between marks that consumers took to

¹⁸ Even if the course syllabi are the same, it makes a crucial symbolic difference who teaches them. One can find all MIT syllabi and course materials online, but using them on your own or with a tutor, however competent, would not produce an “MIT education.”

¹⁹ Another figure for this transfer could be the relic – a material and unique testimonial that is made to circulate in time and space from the center of charisma. I am following Eva Illouz’s suggestion that, “The relic marks the irruption of the past inside the present through a unique and unreproducible object. Consumer goods are similar to relics in that they also open up inside the present a temporal breach: however what is opened up here is not the past but the future, through infinitely reproducible goods” (“Emotions, Imagination and Consumption,” 396).

²⁰ Schechter, “Rational Basis for Trademark Protection,” 818–19.

signify known specific services and goods provided in a specific place by specific individual providers, and marks that no longer signify the consumers' goodwill in specifically localized services. Modern trademarks become the means through which business can create such goodwill by signaling to customers that any inn in any location bearing that sign will provide them with the quality of services they are accustomed to, whether or not they have stopped there before. Scholars may describe or locate this transition differently, but few would disagree with Schechter that it has happened, and that it established the roots of what has eventually grown into the brand economy.²¹

Surprisingly, however, academic brands still function very much like the "Golden Lion" or "Green Cockatoo." They have become global brands of academic excellence, and yet they remain essentially tied to specific campuses and to the services that specific, known individuals like a university's distinguished faculty provide. Contrary to Schechter's otherwise remarkably accurate forecast of the future of trademarks, the "Green Cockatoo" (*sub specie* Oxford) has become a global brand, signifying *both* goodwill *and* its own value as a floating signifier of academic excellence.²² It has gone global by remaining essentially local and thus playing two signifying functions (or signifying two kinds of value) at the same time.

FROM *BILDUNG* TO EXCELLENCE

Academic branding goes hand in hand with broader neoliberal management and cultural trends like the erosion of the university's traditional (if inconsistently upheld) nonprofit stance, or the perception of education as a product with students as its consumers, but there may be more to it than that.²³ The recent expansion of the university's activities and services as well as its new global ambitions have created a broad identity crisis across academic institutions. Even those universities that proudly claim their status as public institutions feel compelled to frame their "publicness" as a distinctive brand element:

The University of California is located wherever a UC mind is at work. At any given moment, people in the UC community are exploring, creating and advancing our shared experience of life in California and beyond. These [brand] guidelines ensure

²¹ Deven R. Desai, "From Trademarks to Brands," *Florida Law Review* 64 (2012): 981–1044; Rochelle Cooper Dreyfuss, "Expressive Genericity: Trademarks as Language in the Pepsi Generation," *Notre Dame Law Review* 65 (1990): 397–424; Barton Beebe, "The Semiotic Account of Trademark Doctrine and Trademark Culture," in Graeme B. Dinwoodie and Mark D. Janis (eds.), *Trademark Law and Theory: A Handbook of Contemporary Research* (Cheltenham and Northampton, MA: Edward Elgar, 2009), 42–64 (esp. 58–64); Mark P. McKenna, "The Normative Foundations of Trademark Law," *Notre Dame Law Review* 82 (2013): 1840–1916 (esp. 1896–1916).

²² On brands as floating signifiers, see Beebe, "Semiotic Account," 60–63.

²³ Christopher Newfield, *Ivy and Industry: Business and the Making of the American University* (Durham, NC: Duke University Press, 2004).

we express these shared values with every communication. In short, this site helps us all “Speak UC.”²⁴

For better or for worse, brands have become the university’s idiom of self-representation and marketing, but probably also the medium through which the so-called university of excellence – private, public, elitist, or inclusive – has come to think about itself. Trademark scholars have shown that brands function as discursive tools that allow consumers to construct or project their identities as self-styled narratives tied to the purchase and display of specific branded goods and the claim to values deemed to be associated with them.²⁵ The university appears to engage in a comparable process of self-fashioning. As the head of the UC Marketing Communication Department puts it, the goal of an academic brand is “to create a coherent identity that would help us tell the UC story in an authentic, distinctive, memorable and thoughtful way.”²⁶ The relation between branding and narrating the university does not stop at the level of corporate strategy but trickles all the way down to mundane fund-raising practices, where the university reaches out to potential donors by presenting them with students’ poignant stories of personal challenges followed by sterling professional successes that were enabled (and, it is implied, could only have been enabled) by that very unique university.

In *The University in Ruins* (1997), Bill Readings argued that the emergence of the now-pervasive discourse of excellence signaled a radical shift in the nature and function of the university and its relationship to the state.²⁷ The university of excellence – the one we inhabit – is the successor to the nineteenth-century German research university that, functioning as the educational wing of the state, was meant to lead its students to *Bildung*. More than the development of professional skills, the Humboldtian university was meant to support a process of individual and cultural development aimed at attuning the students’ sense of self to a specific culture. It was part of a clear educational program framed by the nation-state’s view of what culture and nation should be and sought to mold its students to produce a certain kind of citizen and civil servant. Assumptions about culture and nation went hand in hand with assumptions about education, curriculum, the students’ social background, and the function of the university, enabling one to think of the “quality” of the university as an index of how well it performed this state-specific function.

²⁴ <http://brand.universityofcalifornia.edu/#!the-university-of-transformation> (last accessed December 13, 2021).

²⁵ Madhavi Sunder, *From Goods to a Good Life: Intellectual Property and Global Justice* (New Haven, CT: Yale University Press, 2012).

²⁶ “Meet Vanessa Correa, UC’s Creative Director,” *The California Aggie*, December 6, 2012, <https://theaggie.org/2012/12/06/meet-vanessa-correa-ucs-creative-director> (last accessed February 15, 2021).

²⁷ Bill Readings, *The University in Ruins* (Cambridge, MA: Harvard University Press, 1997), 21–43.