

ACADEMIC BRANDS

The first comprehensive analysis of the emergence of academic brands, this book explores how the modern university is being transformed as it competes in an increasingly global economy of higher education where luxury is replacing access. More than just a sign of corporatization and privatization, academic brands provide a unique window on the university's concerns and struggles with conveying "excellence" and reputation in a competitive landscape organized by rankings, while also capitalizing on its brand to generate revenue when state support dwindles. This multidisciplinary volume addresses topics including the uniqueness of academic brands, their role in the global brand economy of distinction, and their vulnerability to problematic social and political associations. By focusing on brands, the volume analyzes the tensions between the university's traditional commitment to public interest values – education, basic research, and the production of knowledge – and its increasingly managerial culture framed by corporate, private values. This book is also Available as Open Access on Cambridge Core.

Mario Biagioli is Distinguished Professor of Law and Communication at UCLA. He has also taught at Harvard, Stanford, Chicago, UC Davis, and the EHESS (Paris). A former Guggenheim, IAS, and CASBS fellow, he is the author of Galileo Courtier (1993) and Galileo's Instruments of Credit (2006), the editor of The Science Studies Reader (1998), and the co-editor of Making and Unmaking Intellectual Property (2011), Nature Engaged (2011), From Russia with Code (2019), and Gaming the Metrics (2020).

Madhavi Sunder is the Frank Sherry Professor of Intellectual Property Law and Associate Dean for Graduate and International Programs at the Georgetown University Law Center. She is a leading scholar of intellectual property and law and culture. Her articles have appeared in the Yale Law Journal, Stanford Law Review and numerous other law journals. Her book, From Goods to a Good Life: Intellectual Property and Global Justice, was published in 2012 by Yale University Press.



Academic Brands

DISTINCTION IN GLOBAL HIGHER EDUCATION

Edited by

MARIO BIAGIOLI

UCLA School of Law and Department of Communication

MADHAVI SUNDER

Georgetown University Law Center





CAMBRIDGE UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
103 Penang Road, #05–06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org Information on this title: www.cambridge.org/9781108841375 DOI: 10.1017/9781108881920

© Cambridge University Press 2022

This work is in copyright. It is subject to statutory exceptions and to the provisions of relevant licensing agreements; with the exception of the Creative Commons version the link for which is provided below, no reproduction of any part of this work may take place without the written permission of Cambridge University Press.

An online version of this work is published at doi.org/10.1017/9781108881920 under a Creative Commons Open Access license CC-BY-NC-ND 4.0 which permits re-use, distribution and reproduction in any medium for non-commercial purposes providing appropriate credit to the original work is given. You may not distribute derivative works without permission. To view a copy of this license, visit https://creativecommons.org/licenses/by-nc-nd/4.0

All versions of this work may contain content reproduced under license from third parties. Permission to reproduce this third-party content must be obtained from these third-parties directly. When citing this work, please include a reference to the DOI 10.1017/9781108881920

First published 2022

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data NAMES: Biagioli, Mario, 1955– editor. | Sunder, Madhavi, editor.

TITLE: Academic brands : distinction in global higher education / Edited by Mario Biagioli, University of California, Davi, Madhavi Sunder, Georgetown University Law Center.

DESCRIPTION: Cambridge, United Kingdom; New York, NY, USA: Cambridge University Press, [2022] | Includes bibliographical references.

IDENTIFIERS: LCCN 2022001102 (print) | LCCN 2022001103 (ebook) | ISBN 9781108841375 (hardback) | ISBN 97811088794756 (paperback) | ISBN 9781108881920 (epub)

SUBJECTS: LCSH: Universities and colleges—Marketing. | Branding (Marketing) | Trademarks. |
Education, Higher—Marketing. | BISAC: LAW / Intellectual Property / General

CLASSIFICATION: LCC LB2342.82 .A23 2022 (print) | LCC LB2342.82 (ebook) | DDC 378.1/01–dc23/eng/20220218

LC record available at https://lccn.loc.gov/2022001102

LC ebook record available at https://lccn.loc.gov/2022001103

ISBN 978-1-108-84137-5 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet websites referred to in this publication and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.



Contents

Lis	t of Figures	page vii
Lis	t of Contributors	ix
Pre	Preface	
	PART I ARE ACADEMIC BRANDS DISTINCTIVE?	
1	Distinctive Excellence: The Unusual Roots and Global Reach of Academic Brands Mario Biagioli	3
2	One of a Kind Like You: The University as a Personalized Generic Celia Lury	27
3	The Public Higher Education Brand Deven R. Desai	46
	PART II LOCAL AND GLOBAL DIMENSIONS	
4	Academic Brands and Online Education Paul Schiff Berman	69
5	University Brands as Geographical Indications Jeremy N. Sheff	86
6	Elite Universities as Luxury Brands Haochen Sun	103



vi	Contents	
	PART III CONFLICTED INTERESTS, HAUNTING ASSOCIATIONS	
7	Academic Branding and Cognitive Dissonance Mark Bartholomew	127
8	A Captive Audience: Corporate Propaganda on the American College Campus Joshua Hunt	150
9	When Brands Go Bad: The Rise and Fall, and Re-Rise and Re-Fall, of Isaac Royall, Jr. Janet Halley	160
10	Epilogue: The Aesthetic University Madhavi Sunder	220



Figures

2.1 One of a kind like you (photo of UC Davis pennant by Celia

	, ,,	
	Lury).	page 35
9.1	Royall family shield with crest. W.H. Whitmore (ed.), The Heraldic	
	Journal Recording the Armorial Bearings and Genealogies of American	
	Families, vol. 1 (Boston: J.K. Wiggin, 1865), 12.	161
9.2	Royall House and Slave Quarters. Samuel Adams Drake, Some Events	
	of Boston and Its Neighbors (Boston, 1917).	162
9.3	Robert Feke, "Isaac Royall and Family." Harvard Law School Library,	
, ,	Historical & Special Collections.	163
9.4	Royall/HLS shield. HLS retired and removed this shield in March,	
	2016 (see Figure 9.13). Harvard Law School Office of	
	Communications.	179
9.5	Original sketch of the Harvard seal. Harvard University. Corporation.	
	College Book 1, 1639–1795. UAI 5.5 Box 1. Harvard University	
	Archives.	181
9.6	Bookcase in the Caspersen Room with the Royall/HLS shield.	
	Brooks Kraft.	185
9.7	Advertisement. Harvard Law School Bulletin 21:1 (October 1969).	187
9.8	Wm. Chelsea LTD, Scarsdale, NY, "Harvard Law School Silk	
	Necktie." Harvard Law School Library, Historical & Special	
	Collections.	187
9.9	Glass bottle with Royall family shield. Theresa Kelliher for the Royall	
	House and Slave Quarters.	188
9.10	Heitz Wine Cellars, St. Helena, CA, "Wine bottle belonging to	
	Archibald Cox." Harvard Law School Library, Historical & Special	
	Collections.	189
9.11	Charles Hamilton Houston Institute for Race & Justice Grand	
	Opening Celebration web page. Harvard Law School.	189



viii	Figures	
9.12	Tea ceremony at the Royall House. Harper's Bazaar, 1915.	190
9.13	Removing the Shield from Ames Courtroom. Lorin Granger/HLS	Í
	Staff Photographer.	199
9.14	Black Tape Incident. Lark Turner.	206
9.15	Drew Faust and Annette Gordon-Reed unveiling the monument in	
	the Crossroads. Rose Lincoln/Harvard University.	215



Contributors

Mark Bartholomew is Professor of Law at the State University of New York at Buffalo School of Law. He writes and teaches in the areas of intellectual property and law and technology, with an emphasis on copyright, trademarks, advertising regulation, and online privacy. His recent scholarship has appeared in the Vanderbilt Law Review, Washington University Law Review, Minnesota Law Review, William & Mary Law Review, and Advertising & Society Quarterly. He is the author of two books, Adcreep: The Case Against Modern Marketing (2017) and Intellectual Property and the Brain: How Neuroscience Will Reshape Legal Protections for Creations of the Mind, forthcoming from Cambridge University Press. He received his B.A. from Cornell University and his J.D. from Yale Law School. After clerking on the Ninth Circuit Court of Appeals, he practiced law, both as a litigator for a San Francisco law firm and as a deputy county counsel in Sonoma County, California.

Paul Schiff Berman, the Walter S. Cox Professor of Law at the George Washington University Law School, is one of the world's foremost theorists on the interactions among legal systems. He is the author of over sixty scholarly works, including Global Legal Pluralism: A Jurisprudence of Law beyond Borders, published by Cambridge University Press in 2012, and The Oxford Handbook of Global Legal Pluralism (2020). He was also among the first legal scholars to focus on legal issues regarding online activity, and he is co-author of one of the leading casebooks in the field. In addition to his scholarly work, Berman has extensive experience in university and law school administration, having served as Vice Provost for Online Education and Academic Innovation at George Washington University from 2013–16; Dean of the George Washington University Law School from 2011–13; and Dean of the Sandra Day O'Connor College of Law at Arizona State University from 2008–1. Berman is now regarded as one of the nation's thought leaders concerning online education, and he serves as a sought-after consultant to universities, corporations, and private equity firms.



Contributors

Mario Biagioli is Professor of Law and Communication at UCLA. He has also taught at Harvard, Stanford, The University of Chicago? and the EHESS (Paris). A former Guggenheim, IAS, and CASBS fellow, he is author of *Galileo Courtier* (1993) and *Galileo's Instruments of Credit* (2006), and the editor of *The Science Studies Reader* (1998).

Deven Desai is Professor at the Georgia Institute of Technology, Scheller College of Business. He joined the faculty in fall of 2014 in the Law and Ethics Program. His is also Associate Director for Law, Policy, and Ethics for ML@GATECH. He was the first Academic Research Counsel at Google, Inc., and a Visiting Fellow at Princeton University's Center for Information Technology Policy. His scholarship examines how business interests, new technology, and economic theories shape privacy, technology, competition, and intellectual property law and where those arguments explain productivity or where they fail to capture society's interest in the free flow of information and development. His work has appeared in the Georgetown Law Journal, Minnesota Law Review, Notre Dame Law Review, Florida Law Review, Wisconsin Law Review, U.C. Davis Law Review, and Harvard Journal of Law and Technology. He is a graduate of the University of California, Berkeley with highest honors. He received his law degree from the Yale Law School, where he was coeditor-in-chief of the Yale Journal of Law & the Humanities.

Janet Halley is the Royall Professor of Law at Harvard Law School and writes about family law, anti-trafficking, the regulation of sexual misconduct from international criminal law to Title IX, and the slavery legacy of her Chair. She is the author of Split Decisions: How and Why to Take a Break from Feminism (2006), and Don't: A Reader's Guide to the Military's Anti-Gay Policy (1999). She coedited Left Legalism/Left Critique with Wendy Brown (2002) and After Sex? New Writing since Queer Theory with Andrew Parker (2011), and solo-edited Critical Directions in Comparative Family Law, the Fall 2010 special issue of American Journal of Comparative Law. With Prabha Kotiswaran, Rachel Rebouché, and Hila Shamir, she has published Governance Feminism: An Introduction (2018) and Governance Feminism: Notes from the Field (2019). She holds a Ph.D. in English from UCLA and a J.D. from Yale Law School, and has taught at Hamilton College, Stanford Law School, the University of Toronto Faculty of Law, the Tel Aviv University Buchman Faculty of Law, and the Law Department of the American University of Cairo.

Joshua Hunt is a journalist and author. His writing has appeared in Vanity Fair, New York Magazine, Harper's, The New Yorker, GQ, Wired, Bloomberg Businessweek, The Atlantic, The New Republic, California Sunday Magazine, The New York Review of Books, The Nation, The Economist, The Guardian, and The Atavist Magazine. Previously a Tokyo-based foreign correspondent for Reuters, he has reported from Japan, China, Hong Kong, South Korea, India, Tanzania, Kenya, and throughout Europe and the Americas. In 2020, his reporting on the spread of



Contributors xi

Covid-19 among passengers aboard the Diamond Princess cruise ship won a Foreign Press Association award. He is a graduate of Columbia Journalism School, where he earned an M.S. as a fellow at the Toni Stabile Center for Investigative Journalism. As an undergraduate, he studied at Waseda University, in Tokyo, and Portland State University, in Oregon, earning degrees in Japanese language and in communication studies. His first book, *University of Nike: How Corporate Cash Bought American Higher Education*, was published in 2018 by Melville House. His next book, which explores the criminal underworld of counterfeit couture, will be published in 2022.

Celia Lury is Professor in the Centre for Interdisciplinary Methodologies, University of Warwick. She has a long-standing research interest in brands and the cultural economy. Her latest book is *Problem Spaces*: Why and How Methodology Matters (2020).

Jeremy N. Sheff is Professor of Law at St. John's University School of Law and the founding Faculty Director of the St. John's Intellectual Property Law Center. He teaches Property, Introduction to Intellectual Property, Patent Law, Trademark Law, International Intellectual Property, and First Amendment Law. His recent publications include articles in SMU Law Review, Cardozo Law Review, and Stanford Law Review. He is a co-author of the free, open-access Property Law casebook Open Source Property. His forthcoming book, Valuing Progress: A Pluralist Account of Knowledge Governance, is under contract with Cambridge University Press.

Haochen Sun is Associate Professor of Law at the University of Hong Kong Faculty of Law. He specializes in intellectual property, technology law, and Chinese law. His recent scholarship has focused on the theoretical and policy foundations of intellectual property, Chinese intellectual property law, and technology law and the public interest. His book *Technology and the Public Interest: Rethinking Rights and Responsibilities for Humanity's Future* will be published by Cambridge University Press in early 2022.

Madhavi Sunder is the Frank Sherry Professor of Intellectual Property Law and Associate Dean for Graduate and International Programs at the Georgetown University Law Center. She is a leading scholar of intellectual property and law and culture. Her articles have appeared in the Yale Law Journal, Stanford Law Review and numerous other law journals. Her book, From Goods to a Good Life: Intellectual Property and Global Justice, was published in 2012 by Yale University Press.



Preface

The many conversations that were eventually channeled into the pages of this book started at the intersection of two fields or bodies of literature that had not been previously brought into sustained discourse. On one side stands the legal scholarship on trademark law's role in the global brand economy – possibly the epitome of late capitalism – and on the other side the research on the transformation of higher education in the direction of the so-called neoliberal university and its adoption of corporate managerial and marketing strategies. Our goal is to focus on academic brands both as an emergent phenomenon within the global horizon of branding and as a window on the predicament of contemporary higher education and the way the university tries to conceptualize and represent what it is and does, and what its "value" is. This is just a first iteration of that interdisciplinary experiment.

We have organized the discussion around three clusters. The first, "Are Academic Brands Distinctive?" teases out the specificities of academic branding scenarios. Do they constitute just another iteration of the brand economy or can we see different roles and dimensions in them that both reflect and can make us better understand how higher education is and is not a "service" or an "industry"? Are students consumers or producers of the academic brand? And how do academic brands connect with the discourse of excellence, rankings, and the push to represent education as a personalized experience made possible by matching the "right" student with the "right" university?

The second cluster looks at the "Local and Global Dimensions" of academic brands. Does distance make one know a university more as a brand than as an actual institution, thus conferring on it "auratic" status (which may, for instance, make franchise campuses like NYU Abu Dhabi or Yale-NUS and their degrees more attractive)? Is the university like any other corporation that can place its headquarters virtually anywhere in the world, or does its brand resemble a geographical indicator, which ties it to a specific place? And what role does the simultaneous locality and globality of the academic brand play in the acceptance and success of its online



xiv Preface

education programs? Finally, how does the globalization of the student bodies of elite American universities, in particular as these colleges market themselves more and more to Asian students, converge with a growing clamor for luxury and status goods in Asia?

The third section, "Conflicted Interests, Haunting Associations," focuses on the ethical challenges that adopting corporate-style brands create for the university, which has been traditionally associated with a nonprofit ethos. Our contributors then take a step further, analyzing very recent scenarios concerning the relationship between the brand of the university and that of its sponsors, and the crucial ethical, cultural, and political tensions that emerge from that intersection – tensions we may have not yet learned how to address.

Fitting for a study of how universities try to monetize their distinctiveness, this project also started with funding. A generous Mellon-Sawyer grant to UC Davis for a year-long seminar series allowed us to both start this book project and support its completion as an open access publication. It has been a thoroughly collaborative effort, involving Jamey Fisher and Molly MacCarthy at the UC Davis Humanities Institute, colleagues and staff at the UC Davis School of Law, the Center for Science and Innovation Studies, and the Science and Technology Studies Program. We also wish to thank Anne O'Connor, Nicole Kramer, Yoke Dellenback, Anthony Parenti, and especially Nina Bell who made sure that the trains would run on time – always.

This project would not have come into being without crucial generous conversations with Gaye Tuchman, Margaret Chon, Guido Guerzoni, John Marx, Kavita Philip, and Michael Szalay who helped us frame the topic and understand its ramifications. Our thick ledger of debts does not end there. The conference where these chapters were first presented and discussed greatly benefited from the interventions, contributions, and criticism by James Boyle, Anupam Chander, Vanessa Correa, Nicole Ferry, Julie Hage, Cynthia Holmes, Jennifer Jenkins, Tim Lenoir, Angus MacDonald, Libby Morse, Anne O'Connor, Kriss Ravetto, Brian Soucek, and Teresa Vilaros. The masterful closing remarks by Alberto Moreiras and George Marcus made us realize how far we still had to go to fully trace the implications of the project. We hope to have come close enough.

Finally, in the postproduction phase, we were lucky to add Beatrice Lewin-Dumin to our team. It is her editorial finesse that has crafted these chapters into that kind of object called "a book."

Mario Biagioli and Madhavi Sunder