

THE UNIVERSITY *of York*



ESRC Conference

A New Kind of Property – an Old Perspective on Trade Marks

20 November, Heslington Hall, H/G09

Organised by

CEGBI – The York Management School, University of York

www.york.ac.uk/management/centres/cegbi

Theme

The purpose of this conference is to try to throw a new light on trade marks by making what has now become a familiar, taken-for-granted member of the family of intellectual or industrial properties seem strange and unfamiliar once again. For this we shall take as a premise how odd, in many ways, it was to create a new kind of property in the middle of the nineteenth century, and we will examine how that creation reverberated through the twentieth century. Something like this had only been done by statute once before in the creation of copyright through the Statute of Anne (1709); and nothing quite like it has been done since, leaving us with three strands of intellectual or industrial property, the patent, the copyright, and the neophyte trade mark.

In arguing the landmark case of *Donaldson v. Beckett* (1774), in which the courts finally accepted the Statute of Anne, Attorney-General Thurlow claimed that the statute produced "a new law to give learned men a property they had not had before". By extension, it seems reasonable to argue that trade mark law was "a new law that gave commercial men (and women) a property they had not had before". Indeed, the lawyers associated with the parliamentary inquiry into trade and merchandize marks in 1862 refused to endorse trade mark registration in fear that it implied a new property right.

William Hindmarch, a lawyer dealing in both patents and copyrights and so quite familiar with intellectual property, argued before the committee that a law giving property in marks was "fraught with mischief" and Lord Langdale's judgement was quoted, "I own that it does not seem to me that a man can acquire a property merely in the name or mark". And not only the lawyers resisted. The President of the Board of Trade worried that, if the interests of commercial men were followed, parliament "would create a new principle of law altogether, because the law now does not recognize any property in a trade mark". One merchant confessed "that I rather tremble at the consequences of universally making a property out of those miserable marks".

Almost 150 years later as the reach of trade marks grows ever wider, it seems potentially useful to take up this question of property again, asking such questions as what did merchants do before there was trade mark law? What happened in other countries where the question of property was barely raised? Who pushed for this new kind of property? Who pushed against it? And, in both cases, why? What have been the effects of making property out of marks? And why do lawyers still debate the issue of property?

With such questions in mind, this workshop should give us the opportunity to look at marking and marketing practices before and after trade mark law and in different parts of the worlds and how these practices have changed over time as a consequence of the creation of national trade mark law and international treaties. The conference will bring together scholars looking at different historical periods, distinct parts of the world, and themes that arise from the analysis of the interplay between strategy and law and their effects on producers, consumers, public institutions, and markets for both goods and information. Some of the themes are: brands before and after trademarks; collective brands; branding nations; and brands and international business.



ESRC Conference Programme

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11.00 - 11.10 – Welcome

Paul Duguid, University of California Berkeley

David Higgins, *University of York*

Teresa da Silva Lopes, *University of York*

11.10 - 12.40 – Introducing Trade Marks

Chair: Steve Tolliday, *University of Leeds*

The Spanish Experience of Trademarking between 1850 and 1905

J. Patricio Sáiz, *Universidad Autónoma de Madrid*; and Paloma Fernández Pérez, *Universitat de Barcelona*

The Historical Evolution of Trademark Laws and Brand Marketing in Latin America: The Argentine Experience.

Andrea Lluch, *National Research Council, Argentina*

Trade Marks in a Copying Culture: An Overview of Trademarks and Trademark Regulation in China since the late 19th century

Stephen L Morgan, *University of Nottingham*

12.40 - 1.30 – Lunch

1.30 - 3.00 – Building Competitiveness through Branding and Trade Marks

Chair: Michael Heller, *Royal Holloway, University of London*

Don't trust the Messenger? The Emergence and Evolution of Media Brands in News and Entertainment

Peter Miskell, *University of Reading* and Sian Nicholas, *University of Aberystwyth*

Global Trademarks, Local Laws and the Impact of Institutions on U.S. Corporate Expansion

Abroad: The Case of Coca Cola in Latin America

Julio Moreno, *University of San Francisco*

Brand Protection and Globalisation of British Business

Teresa da Silva Lopes, *The University of York*

3.00 - 3.15 pm – Coffee Break

3.15 - 4.45pm – Collective Marks

Chair: Colin Divall, *University of York*

Wine Appellations, Collective Brands, and the Production of Consumption

Kolleen M. Guy, *University of Texas at San Antonio*

"Forging" Steel: Sheffield and the Defence of Collective Interests in British Regional Marks

Dev Gangjee, *London School of Economics*

David Higgins, *University of York*

The Name of Wine: Brands and Denomination of origin of fortified wines from the Douro Region, 18th to 20th Century

Gaspar Martins Pereira, *University of Porto*

4.45 - 5.00 pm – Coffee Break

5.00 - 6.30 pm – Trademark Law and Valuation

Chair: Stefan Enchelmaier, *University of York*

A Review of Goodwill Valuation Practices c1870 –c1914 with particular focus on Bass and the Brewing Industry

Shraddha Verma and David Higgins, *University of York*

The Trade Mark Journal - A record of British trade marks from 1876 and before

David Newton, *World Patent Information*

Origins of Trademark Laws

Paul Duguid, *University of California Berkeley*

6.30 – End of Conference (Drinks and Dinner at Melton's Too)

How to get to Heslington Hall THE UNIVERSITY *of York*



For further information on how to reach Heslington Hall,
University of York go to: <http://www.york.ac.uk/np/maps/>

For more information please contact:

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