

Pirating Names: Trade Mark Law and the 19th Century Periodical Press

Megan Richardson and Julian Thomas

Abstract

Trade marks have long been identified with a narrowly-defined functional rationality. In the 19th century they were commonly seen as facilitating the industrial economy by making it easier for manufacturers to inform consumers of the reliable source of their goods. Even Frank Schechter's great 20th century challenge was premised on an alternative rational function in the mass-market American economy of the 1920s. As Schechter put it, where manufacturers and consumers were geographically distant, trade marks allowed anonymous manufacturers to 'reach over the shoulder' of the seller to communicate reliable qualities of their goods. And, if there was a challenge to this prevailing opinion, it came from Ralph Brown who in the austere post-war years of the late 1940s saw that consumers might purchase spontaneously, with traders exploiting their desires, but argued that trade mark law should support trade marks in respect of their rational 'informative' function, ignoring their more 'pleasurable' dimensions.

Most of the classical thinking about trade marks has been concerned with mainstream consumer goods, such as soap and food, the staple products of an industrial economy. But trade marks have also been critically important in other economic sectors, notably media and entertainment. These sectors suggest a different historical perspective on trade marks. In this paper we consider the example of the 19th century periodical press, which enthusiastically joined the industrial economy while maintaining their traditional functions as harbingers of news, shapers of opinions, and creators/communicators of advertising and entertainment. At the beginning there was some dispute as to whether 'suggestive' names, such as 'Household Words' and 'Tit-Bits', could be protected from copying by other traders under copyright but eventually legal argument turned to trade mark protection, subtly subverting any idea that (in this situation at least) trade marks and their law could be wholly or primarily about rationality.

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Selected publications

Books

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Selected publications

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