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Brands as Speech, Speech as Brands: Mapping the Two-Way Street
Between Trademark Law and Freedom of Expression

Alvaro Fernandez-Mora

Cast from the Safe Harbor into Open Waters of Active Duties: The Digital
Services Act Alters the Course of Intermediary Liability in the EU

*Anthonia Ghalamkarizadeh, Florian Richter, Janis Beckedorf, and
Marvin Jäschke*

Commentary: Zombies Online: U.S. Copyright Infringement Claims That
Never Die, and What We Should Do About Them

Rodrick J. Enns

Book Review: *Advanced Introduction to International Patent Law.*

Margo A. Bagley and Rochelle C. Dreyfuss

Tom Rammer

Book Review: *Branding Trust: Advertising and Trademarks in Nineteenth-
Century America.* Jennifer M. Black

Zvi Rosen

Book Review: *Research Handbook on the History of Trademark Law.*

Lionel Bently and Robert G. Bone, eds.

Lesley McCall Grossberg and Gavin Canzanese

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BOOK REVIEW*

*By Lesley McCall Grossberg** and Gavin Canzanese****

Research Handbook on the History of Trademark Law. Lionel Bently and Robert G. Bone, eds. 2024. Pp. 488. \$332.00 (hardback); from \$65.00 (eBook). Edward Elgar Publishing Limited, The Lypiatts, 15 Lansdown Road, Cheltenham Glos., GL50 2JA, UK; Edward Elgar Publishing, Inc., William Pratt House, 9 Dewey Court, Northampton, Massachusetts 01060, USA.

Trademarks are everywhere—yet the depth and richness of their history can go unnoticed. In *Research Handbook on the History of Trademark Law*, editors Lionel Bently (University of Cambridge) and Robert G. Bone (University of Texas) put forward a collection of scholarly essays by sixteen contributors, many of whom have made significant contributions to the field of trademark law or advanced the historical study of intellectual property. The essays explore intellectual history, regulatory choices, and the social, economic, cultural, and political factors that shape trademark use, registration, and enforcement. Together, they represent an important contribution to the field of trademark legal history.

The book is organized into three parts. Part I explores the “Ideas, Beliefs, and Concepts” that influenced the shape and development of trademark law from a largely comparative perspective. “A distinctive absence: registrable trade marks in 1875,” by Dev S. Gangjee, offers insight into how registrable trademarks were born in the United Kingdom, looking at Britain’s initial trademark registration system and analyzing its origins and shortcomings. “Brand property from below,” by Oren Bracha, explores the role of social practices in elevating trademarks from simple tools of communication to valuable commercial assets. Tracing a U.S. textile company’s evolving use and registration of trademarks in the early twentieth century, it offers a compelling real-world example of how the meaning and function of trademarks have shifted over time and under different statutory schemes, revealing “the emergence of the brand property experience out of ordinary trademark practices”

* This book review should be cited as Lesley Grossberg & Gavin Canzanese, 116 Trademark Rep. 607 (2026) (reviewing *Research Handbook on the History of Trademark Law* (Lionel Bently & Robert G. Bone eds. (2024))).

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through a record of communication between company executives and their intellectual property lawyers.

“Designing goodwill: from graphic design to trademarks,” by Jose Bellido, discusses goodwill in the context of shifting focus from the product to the packaging itself—highlighting its role in eliciting consumer responses even before product use. Bellido argues that emotional connections matter in branding, and that the ability to think like a consumer is a defining characteristic of effective brand management. This chapter highlights defining moments in branding history, such as the dawn of color television, which revolutionized visual advertising, and the start of efforts to develop a brand name so original that it bore no resemblance to any word in known languages. The conclusion notes that the content of articles published in *The Trademark Reporter* and other United States Trademark Association¹ publications in the 1960s and 1970s mirrors this “effervescent” period in which branding specialists emerged to advise on graphic design and marketing in the mass media age. The next chapter “Commercial marks and signs in European jurisprudence, 1300–1600,” moves from the “Mad Men” era to late medieval and Renaissance Italy. Authors Robert Fredona and Teresa da Silva Lopes demonstrate how the existence and value of marks and seals for indicating quality or origin was acknowledged in Roman and canon law between 1300 and 1600. And in “Beyond the brand: trademarks through the lens of information,” Paul Duguid traces how the rise of information theory has affected trademark law in the United States and the United Kingdom, considering conflict between the traditional focus on goodwill and the contemporary law and economics approach to consumer decision-making theory.

Part II delves into “Regulatory Models and Rule Choices.” The essay by Robert Burrell and Michael Handler (“The garden path and the road not taken: the Australian approach to trade mark ownership and its connection with a lost model of trade mark registration”) looks at Australia’s approach to trademark ownership, specifically the history of its development and how it diverged from the United Kingdom’s model. Next, “Secondary liability in U.S. trademark law: the ambivalent legacy of *Warner v Eli Lilly & Co.*,” by Mark D. Janis, offers an in-depth analysis of how trademark secondary liability jurisprudence evolved through the U.S. Supreme Court’s 1924 decision, with particular focus on how the decision’s ambiguity regarding induced or contributory infringement shaped subsequent judicial decisions. In the third and final chapter of Part II, N.M. Dawson explores in “Colour in trade mark law” the history of colors as trademarks in the United

¹ In 1993, the United States Trademark Association renamed itself as the International Trademark Association.

Kingdom, European Union, and United States. Like many contributions in the book, this one traces the historical roots of the concept under consideration through these comparative jurisdictions, gradually guiding the reader to a contemporary understanding by its conclusion.

Part III focuses on the “Social, Economic, and Political Context” of trademarks, examining how each factor has affected the field of trademarks and how best to protect them. This part comprises four historical case studies and two broader inquiries into the development of U.K. and U.S. trademark law.

David M. Higgins’s case study on GUINNESS beer, “Pure genius? Guinness and trade mark protection, c. 1890–1914,” examines the trademark challenges the company faced in the early twentieth century and its resulting successes and setbacks. This chapter includes reproductions of public apologies issued by publicans who had misleadingly sold GUINNESS porter in bottles labeled “Extra Stout,” as well as a thorough discussion of Guinness’s then-innovative Trade Mark Label Agreement, which regulated the use of the GUINNESS trademarks by beer bottlers and provided Guinness a viable alternative to tying its products to particular public houses as a means of ensuring quality and protecting goodwill. Next, Elena Cooper’s “The nineteenth-century history of the Jaeger trade mark in Britain” reviews the complex branding strategies of the British clothing brand JAEGER in the late nineteenth and early twentieth century, highlighting how non-geographical trademarks can evoke specific places—and the consequences that arise when those associations are challenged.

In the third case study, “Emergence of a brand: a case of Jaffa Oranges from Mandate Palestine,” Michael Birnhack draws upon his reconstructed trademark registry of Mandate Palestine² to examine how “Shamouti” oranges became known as “Jaffa” oranges, showing how the term came to represent an entire region, even while the law did not technically provide for protection of geographical indications. Finally, Amanda Scardamaglia (in “Historical trade mark form and function: Seidsh Match labels”) considers the history of SWEDISH MATCH matchbox labels—specifically how their matchbox labels promoting the ideas and values of the British Empire were registered for protection in Sweden to serve a purpose other than the typical source-identifying function of a trademark, as the matchboxes were distributed throughout the British colonies. Together, these case studies reveal how trademarks not only protect commercial interests but also reflect broader cultural, political, and historical dynamics.

² See Michael Birnhack, *Reconstructing the Trademark Registry of Mandate Palestine and What Historical Data Can Reveal*, 113 Trademark Rep. 815 (2023).

Next, Jennifer Davis analyzes British labor history through the lens of trademark law in “Trade marks and truth telling: sweated labour and the marking of goods in Britain, 1860–1920.” As U.K. trademark law developed in the late nineteenth century, production of goods largely relied on the “sweating system” that paid workers by the piece, which incentivized long hours and minimal earnings. Trademark laws at the time failed to require transparency about how or where goods were made, especially in relation to labor conditions. A company would put their reputable mark on products, conveying a different reality from the fact that the product was subcontracted at least once and produced by underpaid workers in poor and unregulated conditions. These realities have not disappeared with time, and these injustices still exist in the modern era.

The final chapter of Part III, “Edward S. Rogers, the Lanham Act, and the common law,” written by Jessica Litman and recently reprinted in full in *The Trademark Reporter*,³ sheds light on the career and contributions of U.S. lawyer Edward S. Rogers (1875–1949), the principal drafter of the Lanham Act. It begins by exploring Rogers’s background and the legal landscape of his time when trademark law was largely governed by common law and federal involvement was minimal. The author then traces Rogers’s efforts to establish a unified federal registration system for trademarks, while still preserving the protections offered by common law. Rogers helped lay the foundation for the modern framework of U.S. trademark law: drafting, revising, and drumming up support for the Lanham Act. The discussion details his pivotal role in that legacy.

The Research Handbook on the History of Trademarks offers a rich and nuanced exploration of how historical developments have shaped trademark law as we know it today. Through its varied contributions of case studies and historical discourses, this book is especially valuable for readers interested in the deeper context—the “how” and “why” behind modern trademark principles. It is ideally suited for those who seek to understand trademarks not just as legal tools, but as evolving cultural and commercial phenomena. And finally, it represents an important and welcome addition to the growing body of scholarship on intellectual property in a historical context.

³ Jessica Litman, *Edward S. Rogers, the Lanham Act, and the Common Law*, 115 *Trademark Rep.* 718 (2025).