SPECIAL SECTION
BRANDS AND TRADEMARKS

Teresa da Silva Lopes and Paul Duguid

Introduction: Behind the Brand

Once described as "neglected," brands and brand history have benefited from a recent surge of work in business history, economics, and management studies. This research, however, remains relatively tightly focused. Most attention is given to successful, long-lived brands and to the entrepreneurs who developed them.[1] As in the market, so in research, the attraction of successful brands is understandable. Nevertheless, such a focus only reinforces both the well-known tendency to read history through the eyes of the winners and the assumption that losers and also-rans have nothing to tell us. The authors of the articles in this special section share both the wish to look beyond such assumptions and the belief that one way to do so is by complementing the study of brands with the study of trademarks and of the related legal, economic, and business arrangements that stand behind brands and provide context for their development since the nineteenth century.

Toward these ends, as well drawing on company archives, parliamentary records, and contemporary newspaper accounts, the authors

[1] For the notion that brands were neglected, see Mira Wilkins, "The Neglected Intangible Asset: The Influence of the Trade Mark on the Rise of the Modern Corporation," *Business History* 34, no. 1 (1992): 66–95. For histories of brands, see for example, Nancy F. Koehn, *Brand New: How Entrepreneurs Earned Consumers' Trust from Wedgwood to Dell* (Boston, 2001); Roy Church and Christine Clark, "The Origins of Competitive Advantage in the Marketing of Branded Packaged Consumer Goods: Colman's and Reckitt's in Early Victorian Britain," *Journal of Industrial History* 3, no. 2 (2000): 98–199; Geoffrey Jones, *Renewing Unilever: Transformation and Tradition* (Oxford, 2005); Teresa da Silva Lopes, *Global Brands: The Evolution of Multinationals in Alcoholic Beverages* (New York, 2007); Teresa da Silva Lopes and Mark Casson, "Entrepreneurship and the Development of Global Brands," *Business History Review* 81, no. 4 (2007): 651–80; Geoffrey Jones, *Beauty Imagined: A History of the Global Beauty Industry* (New York, 2010).

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also enlist the rich and relatively neglected resource of state, regional, and national trademark registration records. These records allow a view of the past, not only from the perspective of memorable marks (though these are included), but also from that of forgotten and transient marks that shaped the market of the day and the people who developed them. Thus, instead of seeing the world of soft-drinks in the late nineteenth century through, for instance, the lens of Coca-Cola, we might expand our focus to include the twenty-eight other registrations for "tonics" and the nine others for medicinal "bitters" registered in the same year, along with the three hundred and twenty-five registrations for medicines and thirty-one for soft drinks, and perhaps (because Coca-Cola had begun life as Pemberton's French Wine Tonic), the one hundred and eight registrations for alcohol in the other U.S. registrations of 1893.[2]

Patrico Sáiz and Paloma Fernández Pérez begin this exploration of the world of marks by taking us beyond the conventional focus of brand research—the United Kingdom and the United States—to reveal the unacknowledged yet pioneering role of Spain in the history of trademarking. (Spain introduced national registration for manufacturing marks in the 1850s.) Exploring the dynamism of the Catalonia region and its once dominant cigarette-paper and textile industries, Sáiz and Fernández Pérez, using historical data recently made public in a pioneering venture by the Spanish Patent and Trademark Office, provide an example of how aggregate registration data can help explain not simply the trajectory of firms but also the internal competitiveness of sectors and regions. Trademark rather than brand research, their arguments suggest, offers a critical but underutilized instrument for tracking shifts in economic geography over the course of the rise and fall of once-important sectors. Their sectoral case studies, moreover, also reveal unexpected ways in which trademarks have been used, not only by firms to project new products, as is conventionally understood, but also by sectors to protect existing manufacturing processes.

David M. Higgins similarly not only shows how trademark data draw attention to regional and sectoral competitiveness but also highlights the role of collusion in his examination of the contribution of the English Northwest—particularly Manchester and Sheffield—to U.K. marks before there was statutory trademarking law. (The United Kingdom's first trademark registration law passed in 1875.) Looking at the edge-tool and textile industries, Higgins unearths developments in early marking traditions, in particular their registration and protection

[2] Any such accounting should also include the range of competitors in 1887, when Pemberton registered a "label" rather than a trademark, something most histories of the firm and mark overlook.

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within sectorally focused guilds. This traditional yet unheralded collective management of marks anticipated later legislation. Nonetheless, when the new law, which presumed that brand holders would be individual firms, came into conflict with established guild and sectoral practices, significant strains emerged that help explain anomalies in the conventional history of nineteenth-century U.K. brands and related law. Higgins's focus on the metal and textile trades not only draws attention to the historical importance of sectors no longer much associated with brands, but also suggests that the national strength of these collectivized sectors in the nineteenth century may have contributed to their later inability to compete internationally, as the trademark regimes of targeted export countries favored individual companies rather than trade groups. Though many of the goods Higgins discusses were durable, the marks and marking strategies, his argument suggests, were not.

Teresa da Silva Lopes and Mark Casson continue to highlight the importance of understanding not just individual brands but also trademarking regimes, showing how both shaped internationalization strategies of products in the nineteenth and early twentieth centuries.[3] In so doing, they show how a closer look at trademark data challenges standard theories of the evolution of multinational business. These theories favor concepts of competition through innovation. Consequently, they fail to notice the threat that internationalizing firms encountered from competition through infringement. Lopes and Casson look at the strategies of British multinationals through the lens of trademark infringement battles and explore the actions firms took, both individually and collectively, to counter trademark imitation in overseas markets between 1870 and 1929. By taking into account not only the ultimate victors in international trademark competition but also their vanquished (and so generally invisible) competitors, they show in their essay how critical counterimitation strategies could be to the international success of British consumer goods multinationals. These strategies ranged from negotiation and collective lobbying of (host and home) governments, to changing modes of entry into markets, to finding suitable grounds for suing infringers in court. Their argument suggests that future accounts

[3] On trademarks and countries' competitiveness, see Teresa da Silva Lopes and Paul Duguid, eds., *Trademarks, Brands and Competitiveness* (London, 2010). In this edited volume, see in particular the chapter on trademarks and innovation by Christian Helmers and Mark Rogers, "Trademarks and Performance in U.K. Firms"; and on competition within value chains, see Paul Duguid, "Brands in Chains." On innovation and trademarks, see also Sandro Mendonça, Tiago S. Pereira, and Manuel M. Godinho, "Trademarks as an Indicator of Innovation and Industrial Change," *Research Policy* 33, no. 9 (2004): 1385–404. On the development of export markets, see David M. Higgins and Geoffrey Tweedale, "The Trade Marks Question and the Lancashire Cotton Textile Industry, 1870–1914," *Textile History* 27, no. 2 (1996): 207–28.

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of the history of international brand management should examine more broadly trademark regimes and registrations and their legal, political, and economic implications.

Finally, returning the discussion to regional contributions to national policy, Paul Duguid uses the trademark registers of California to challenge standard accounts of the development of U.S. trademark law. Conventional brand history credits the Lanham Act of 1946 with bringing "modern" collective and certification marks to the United States. State registrations reveal, however, that such marks had been widespread in nineteenth century California—as, indeed, they had been in much of trademarking Europe. Following California practice, Duguid shows, by the turn of the century these kinds of marks were recognized in the statutes of many U.S. states. This article, like Higgins's account of the guilds, also illustrates missing strands in the history of trademark innovation. Brand innovation is generally credited to far-sighted entrepreneurs or insightful legislation. Yet, as in Manchester and Liverpool, so in California, new trademarking practices arose through collective action, in the case of California from the actions of trades unions. The undue credit given to the Lanham Act shows how sources of innovation can curiously be written out of historical accounts as well as written into them. Increasing amounts of attention are being paid today to collective and certification marks as people consider the spread of such things as "fair trade" labels. Such investigations, Duguid suggests, would gain by being grounded not only in accounts of particular brands, but also in the early and contentious history of collective marks.

While we believe that trademark data offer a rich resource to business historians, we should acknowledge that much work needs to be done to exploit that potential. Data in early registers tend to be hard to analyze, in part because of the sheer numbers (between 1860 and 1960 more than twenty million marks were registered in France, Spain, the United Kingdom, the United States, and the international registers). Such data, moreover, are hard to standardize across time, sectors, or regions. But the potential to modify our understanding of the brand and brand cultures by looking beyond the records of individual firms to the marks and marking regimes that lie behind them is undoubtedly there, as these essays attest.

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