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Brands, Competition Law and IP

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BOOK REVIEWS

Deven R. Desai, Ioannis Lianos & Spencer Weber Waller (eds), *Brands, Competition Law and IP* (Cambridge University Press, 2015), ISBN: 978-110-710-346-7, 282 pp.

One 2014 survey asked its readers, ‘Which brands are most deserving of your emotional attachment, respect and continued patronage?’¹ A brand, it would seem from this question, means something more than indicating a product’s source or quality. So what is a brand? Do the EU and US competition and trademark laws adequately reflect the dynamics of brands in today’s economy?

This volume, consisting of twelve chapters, explores these issues. One recurring theme throughout the volume is that the US and EU competition laws have had an ambivalent relationship with branding. Another theme is that the current antitrust perspective provides an incomplete picture of the effects of brands and brand management on the competitive process and consumers. The role of brands, as the authors point out, is too important in today’s economy to downplay. Antitrust lawyers and economists must deal with brands on issues of market definition, market power, entry barriers, theories of competitive harm (especially unilateral effects theory) and remedies.

One insight from this volume is how competition lawyers, trademark lawyers, economists, and business and marketing professionals look at brands differently. Thus to provide a better picture of branding and brand management, the volume collects legal, economic, and business perspectives from its contributors: Peter Davis, Kirsten Edwards-Warren, James Langenfeld, Wenqing Li, Sophie Yang, Tony Appleton, John Noble, Deven R. Desai, Spencer Weber Waller, Gregory T. Gundlach, Joan M. Phillips, Daniel A. Crane, Warren S. Grimes, Ioannis Lianos, Ariel Ezrachi, Ketan Ahuja, John D. Mittelstaedt, Ilanah Fhima, and Andrew Griffiths. The contributors explain what brands are, the many functions that brands can have (including as mechanisms for product differentiation, market segmentation, and price discrimination, and appealing to purchasers’ emotion, identity, and self-worth), the shortcomings under current EU and US trademark

¹ Jason Daley, ‘The 120 Most Trusted Brands’, *Entrepreneur*, 25 Mar. 2014, <http://www.entrepreneur.com/article/232389>.

and competition laws in assessing competition involving brands, and the implications of continuing to ignore the role brands play in the marketplace.

The volume brings the reader up to speed on the cutting edge economic, legal, and business literature on branding. It also provides antitrust practitioners and economists an overview of the leading EU and US cases on brands and some of the key economic, business, and legal issues involving branding, including the pro- and anti-competitive aspects of branding, the interplay between national brands and private label, the dynamics of vertical competition, the dangers of ‘parasitic packaging’ (where customers buy a copy by mistake), the importance of intra-brand and vertical competition, the complex relationship between branding and market power, and the nebulous relationship between brands and trademarks. As the welfare effects of branding are not always clear, competition and trademark scholars, lawyers and economists can benefit from the broader perspective and inter-disciplinary insights that this volume offers.

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Ioannis Lianos, Peter Davis & Paolisa Nebbia, *Damages Claims for the Infringement of EU Competition Law*, 1st edn (Oxford: Oxford University Press, 2015), ISBN: 978-01-995-7518-3, xviii+394 pp.

This book is one of the first fresh deep analysis of the damages topic published after the coming into force of the Damages Directive in December 2014. As the authors themselves acknowledge, the drafting process of the book has been long, due to the long gestation of the Directive itself. This explains why the book contains such thorough and bright reflections over the most relevant topics in this field of Competition Law.

However, the Damages Directive itself only amounts to one out of the eight chapters of the book, which aims at providing a more general approach towards damages, including a detailed examination of causation from both the legal and the economic perspective. Causation has received very little attention from the Directive and the Academia so far, and the book devotes an entire chapter to exploring the different views on this issue in the national tort law systems throughout the EU. Such a work poses an unquestionable interest for practitioners facing multijurisdictional damages actions.

It is also worth highlighting the generous time devoted by the authors to analysing the difficult issue of managing inter-jurisdictional competition in the EU