

Academic Branding and Cognitive Dissonance

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Harvard's motto is "Veritas" ("Truth"). Yale's motto is "Lux et Veritas" ("Light and Truth"). The University of Arkansas tells people that it will "Veritate Duce Progredi" ("Advance with Truth as Our Guide"). Most other university mottos suggest something similar, maybe with some references to faith or virtue sprinkled in as well.

These mottos about the discovery of truth are federally registered trademarks for their respective schools.¹ Yet "Veritas" does not exactly match the perceived mission of university licensing directors and marketing consultants responsible for shaping higher educational brands. How does attempting to register the word "THE" as a trademark for Ohio State University advance the search for knowledge?² Is licensing the use of university logos on caskets anything more than a money grab? When a university articulates its brand identity through a constellation of empty signifiers – "excellence," "community," "purposeful engagement" – does this contradict the motto that encapsulates its original reason for being?

In general, it is hard to square the university's search for truth with its practices for building brand awareness and equity. As Derek Bok, Harvard's president from 1971 to 1991, noted, the values bound up in university research and teaching are not the ones shared by advertising professionals. "Advertising has very different values, animated by an overriding desire to sell the product," he says. "Although constrained by law from misrepresenting the facts, advertisers continually stretch the

¹ U.S. Trademark Registration No. 4,146,627 (Harvard) (registered May 22, 2012); U.S. Trademark Registration No. 1,666,147 (Arkansas) (registered Nov. 26, 1991); U.S. Trademark Registration No. 1,275,126 (Yale) (registered Apr. 24, 1984).

² In 2019, Ohio State filed an application to register "THE" as a federal trademark in connection with the sale of various items of clothing. The US Patent and Trademark Office denied the application, concluding that consumers would interpret the word as merely decorative and not as indicating the source of the goods.

truth, engage in hyperbole, omit contrary and qualifying information, and otherwise act in contradiction to standard precepts of good teaching.”³

If the university is meant to foster the search for truth and advertising is meant to provide narratives that only have a tangential relationship to the truth, how do different university actors conceptualize academic branding? When an individual holds two or more cognitions that are in conflict, psychologists posit that the individual feels an unpleasant mental state – dissonance – that they are driven to resolve. Cognitive dissonance is so distasteful that we alter our ways of thinking or develop new ways of thinking to push it away.⁴

The university is composed of many constituencies and it would be inaccurate to suggest that all of them have the same relationship to academic branding. Brand managers and athletics staff will be more intimately involved with university marketing efforts than professors. Those in the central administration may view themselves as perfectly aligned with such efforts, whereas students may be more conflicted and some faculty members may even define themselves in partial opposition. Still, I think it would be incorrect to deem university marketing as the exclusive preserve of college presidents and provosts with no impact on the thoughts or behaviors of other university actors. As I will try to illustrate below, the disconnect between the university’s traditional mission and the logic of today’s academic branding strategies may influence the attitudes and conduct of various university stakeholders even if they are not aware of this influence.

In this chapter – after further illustrating the divide between the university’s historical mandate to uncover knowledge and the very different goals of modern university marketing – I will discuss the rationales advanced to try and reconcile academic branding with the university’s traditional reason for being. First, there is the confusion rationale, which ameliorates concerns over university marketing behaviors by conceptualizing them as providing informational inputs that can be used for rational decision-making. Second, there is the compartmentalization rationale, which contends that less-than-truthful university branding does not do violence to the university’s larger goals so long as it is quarantined from the core aspects of the university’s truth-seeking function. Third, there is the competition rationale, which maintains that a new era of reduced public funding and global competition has so fundamentally reshaped the university’s mission that a turn to hyper image consciousness in university messaging is necessary. How well these rationalizations succeed in reducing the dissonance that might otherwise trouble

³ DEREK BOK, *UNIVERSITIES IN THE MARKETPLACE: THE COMMERCIALIZATION OF HIGHER EDUCATION* 177 (2003).

⁴ In this chapter, I am using the concept of cognitive dissonance as a way to examine the internal reshaping of the beliefs and attitudes of university constituents. Not all of the phenomena I describe here will match everyone’s definition of cognitive dissonance, but I use the term to emphasize the way in which positions on academic branding in today’s university are often rationalizations that are less than fully considered by various university actors.

different university actors remains to be seen. But their presence signals rhetorical strategies and cognitive adaptations that could influence the shape of the academy for years to come.

I. THE TENSION BETWEEN ACADEMIC BRANDING AND THE UNIVERSITY'S MISSION

The reasoned pursuit of knowledge is the historical lodestar of the modern university. By contrast, academic branding relies on irrational appeals devoid of information. Changes in the prevalence and content of university self-promotion have made the gulf between the university's traditional reason for being and its methods of self-promotion wider than ever.

A. *Reason and the University*

If you had to come up with a guiding rationale for the modern research university, you would likely center on the production of knowledge. Patricia Gumpert, a sociologist of higher education, maintains that higher education should be understood primarily as “a knowledge-processing system.” Knowledge, she says, serves as “the defining core of academic work and academic workers.”⁵ “The proper function of a university is the imaginative acquisition of knowledge,” said the philosopher Alfred North Whitehead.⁶

Acquiring this knowledge necessitated an environment built for the development and operation of rational thought. Universities in the late nineteenth century were designed for “the teaching of reason to selves and citizens.”⁷ Essential to this teaching was the use of one's deliberative, rational faculties. This was a shift from the previous conception of the American university as a training ground for moral (not logical) rightness. Aligned with religious institutions, early universities used rote memorization to instill a mental and moral discipline considered more important than the acquisition of knowledge. Then, influenced by a German model of higher education that stressed original investigation over instruction in moral or cultural traditions, a group of new university leaders reconceptualized the American university with knowledge production as its centerpiece. This new approach to higher education took “reason as the only authority” for the university.⁸

⁵ Patricia J. Gumpert, *Academic Restructuring: Organizational Change and Institutional Imperatives*, 39 HIGHER ED. 67, 81 (2000).

⁶ Alfred North Whitehead, *Universities and Their Function*, 14 BULL. AAUP 448, 449 (1928).

⁷ CHRISTOPHER NEWFIELD, *IVY AND INDUSTRY: BUSINESS AND THE MAKING OF THE AMERICAN UNIVERSITY, 1880–1980* 15 (2003).

⁸ James Arthur, *Faith and Secularization in Religious Colleges and Universities*, 29 J. BELIEFS & VALUES 197 (2008).

This view of the university still holds sway today. In 2015, Scott Walker, the former governor of Wisconsin, tried to change the University of Wisconsin's mission statement (enshrined in a state statute). Walker proposed striking the sentence "Basic to every purpose of the system is the search for truth," instead substituting the phrase "The mission of the system is to develop human resources to meet the state's workforce needs." Walker's edits ignited a "political firestorm," perhaps revealing that "the search for truth" still held center stage in public (as well as academic) conceptions of the state university system.⁹ Ultimately, Walker bowed to public pressure and Wisconsin's mission statement remained the same.

The American Association of University Professors deems "reasoned inquiry" to be the university's overriding goal.¹⁰ Of course, exactly what grounds the principle of reasoned inquiry is open to question. In an address on the purpose of the university, the philosopher Jacques Derrida described this largely uninterrogated underpinning as "a most peculiar void" that the modern research university was "suspended above." But for Derrida, it was unquestionable that reason, which involves a search for explanatory roots and causes of phenomena, was at the heart of the university's mission: "one cannot think the possibility of the modern university, the one that is re-structured in the nineteenth century in all the Western countries, without inquiring into that event, that institution of the principle of reason."¹¹

B. *Truth in University Advertising*

If the mission of the modern research university is the reasoned pursuit of truth, then it is hard to reconcile modern university marketing with that mission. Both in general terms and in the particular context of academic branding, modern advertising's reliance on persuasive techniques unrelated to a product's actual attributes or functionality seems out of step with the work of the university.

In general, most advertising promises audiences psychological satisfaction based on some abstract or imagined quality that cannot be verified by purchase or consumption of the advertised product. Trademarks become the repositories of these emotional appeals. Through arguably artificial product differentiation, brands and their associated commercial entreaties promise life satisfaction from individualist and materialist pursuits.

Just like pitches for luxury cars and handbags, direct mail solicitations to prospective students typically rely on sex appeal and prestige, not actual information about the school. For example, a recent multimillion-dollar ad campaign for the University of Oregon focuses on the tagline "IF" and "shows vague scenes . . . and

⁹ Adam Harris, *The Liberal Arts May Not Survive the 21st Century*, THE ATLANTIC, Dec. 13, 2018.

¹⁰ AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS, FREEDOM AND RESPONSIBILITY (1970), www.aaup.org/report/freedom-and-responsibility.

¹¹ Jacques Derrida, *The Principle of Reason: The University in the Eyes of Its Pupils*, 13 DIACRITICS 2, 8 (1983).

doesn't highlight with any detail the specific academic programs at the university."¹² Justifying the rollout of an expensive new brand awareness initiative for DePaul University, that school's "senior vice president of Enrollment Management and Marketing" explained: "At DePaul, we know what sets us apart – a purposeful education, in a bold environment, supported by a caring ethos."¹³ This is the kind of empty blandishment used to sell any kind of product, from Doritos to Campbell's Soup. Cross-licensing arrangements – like the one between Victoria's Secret and nearly seventy public and private universities to feature both brands on T-shirts, sweatpants, and underwear – further tie academic brands to the well-worn path of emotional differentiation already blazed by non-educational entities.¹⁴

Advertising not only traffics in emotion rather than reason, but traffics largely in mistruths. In contrast to other modes of discourse, exaggeration is the rule rather than the exception when it comes to advertising. Although various parts of the advertising law ecosystem try to prevent deceptive marketing from infecting the marketplace, this ecosystem allows hyperbole to flourish with companies carefully skirting the line between verifiable falsehood and unverifiable prevarication. As described by one court, the legal doctrine of puffery amounts to "a seller's privilege to lie his head off, so long as he says nothing specific, on the theory that no reasonable man would believe him."¹⁵ Thanks to this legal loophole, our daily diet of advertising is chock full of boastful, untruthful claims.

Seemingly bemoaning the untruthful nature of modern advertising, Judge Learned Hand described it as "a black art" that "every year adds to its potency."¹⁶ But it is not just the courts that recognize that most of the marketing messages that surround us are ones no one should take at face value. A 2013 survey of adult consumers in the United States revealed that 76 percent believed advertising claims were either "very exaggerated" or "somewhat exaggerated."¹⁷ A 2018 Gallup poll of Americans' views on different business sectors showed that the advertising and

¹² Kellie Woodhouse, *Scaling Back on Branding*, INSIDE HIGHER ED, Jan. 20, 2016, www.insidehighered.com/news/2016/01/20/university-oregon-drops-multimillion-dollar-branding-campaign.

¹³ *DePaul University to Launch New Comprehensive Brand Awareness Campaign*, DEPAUL.EDU, Apr. 19, 2018, <https://resources.depaul.edu/newsroom/news/press-releases/Pages/here-we-do-brand-awareness-campaign.aspx>.

¹⁴ One might object to juxtaposing emotion and reason here. Neuroscientists argue over whether an actual split exists between emotional and cognitive thinking. See PETER A. ALCES, *THE MORAL CONFLICT OF LAW AND NEUROSCIENCE* 84, 92 (2018). Yet even if emotion and reason do not represent discrete physical processes, there are still benefits to encouraging actors to engage their more deliberative faculties and to prompting advertisers to rely on techniques that engage such faculties. See Alfred C. Yen, *The Constructive Role of Confusion in Trademark*, 93 N.C. L. Rev. 77, 125 (2014).

¹⁵ *Pizza Hut, Inc. v. Papa John's Intern.*, 227 F.3d 489, 496 (5th Cir. 2000).

¹⁶ *Proceedings in Memory of Justice Brandeis*, 317 U.S. ix, xiv–xv (1942).

¹⁷ Lenna Garibian, *3 in 4 Say Claims in Ads Are Exaggerated*, MARKETINGPROFS, Jan. 9, 2013, www.marketingprofs.com/charts/2013/0822/3-in-4-say-claims-in-ads-are-exaggerated.

public relations industry ranked toward the bottom, with an overall positive rating of just 3 percent.¹⁸ Another survey found that 65 percent of buying-age Americans agreed that they are “constantly bombarded with too much” advertising.¹⁹ If advertising is not filled with outright lies, the public considers it to be omnipresent, intrusive, and stuffed with vague untruthful promises and emotional appeals that a rational actor should not take seriously.

Modern university branding campaigns are no different. As explained by IMG College Licensing, which helps nearly two hundred US colleges and universities protect and promote their brands, “College is a lifestyle brand.” IMG’s mission is to stoke the “passion” of college consumers, not engage their deliberative faculties.²⁰ Like other marketers, universities engage in persuasive techniques that are less than completely honest. College admissions offices across the country tell high school seniors that they have been awarded “priority consideration” status even though virtually all candidates receive the same consideration. Purposely vague university marketing tends to obscure the real relationship between classroom offerings, actual learning outcomes, and job placement rates. Diversity is a characteristic that universities often sell through exaggeration rather than through information on the actual composition of their faculty or student body. One study determined that the whiter a school, the more diversity depicted in its college brochures.²¹ The exaggeration and non-informational content typical of today’s academic branding initiatives have little relationship to “reasoned inquiry.”

C. *Is There Really a Conflict?*

There is a long tradition of maintaining that the intrusion of commercial forces into the academic setting compromises the ability of university constituents to exercise their capacity for rational thought. Describing the philosophy that guided the rise of the research university in the nineteenth century, Christopher Newfield writes: “The faculty of reason could be developed and instilled in those fields where politics and commerce were held at bay. When politics and commerce intruded on these faculties, that would damage the development of reason.”²² In the early twentieth century, Upton Sinclair complained that advertising was unfit to serve as an academic subject in the modern research university because it lacked the rigor of real academic disciplines. For Sinclair, because advertising trafficked in racial

¹⁸ Lydia Saad, *Computer, Restaurant Sectors Still Top-Rated Industries*, GALLUP, Sept. 5, 2018, <https://news.gallup.com/poll/241892/computer-restaurant-sectors-top-rated-industries.aspx>.

¹⁹ Stuart Elliott, *The Media Business: A Survey of Consumer Attitudes Reveals the Depth of the Challenge that the Agencies Face*, NY TIMES, Apr. 14, 2004.

²⁰ *About IMG College Licensing*, IMG COLLEGE LICENSING, <https://imglicensing.com/clients/clc>.

²¹ Timothy D. Pippert et al., *We’ve Got Minorities, Yes We Do: Visual Representations of Racial and Ethnic Diversity in College Recruitment Materials*, 23 J. MKTG. HIGHER EDUC. 258 (2013).

²² NEWFIELD, *supra* note 7, at 15.

stereotypes and primal appetites, it grossly mismatched the reasoned discourse that was meant to be found in the university.²³ Along similar lines, Thorstein Veblen objected that business schools were “incompatible with the collective cultural purpose of the university.”²⁴

We see similar complaints from more modern critics. David Kirp maintains that embedded within the university are “values that the market does not honor,” including “the professor as a pursuer of truth and not an entrepreneur.”²⁵ Michael Sandel contends that advertising acts as a corrupting influence on the logical habits of mind that education is meant to cultivate. “Advertising encourages people to want things and to satisfy their desires,” he says. “Education encourages people to reflect critically on their desires, to restrain or to elevate them.”²⁶

A skeptic might argue that any diagnosis of a true disconnect between the university’s mission and today’s academic branding is overblown. The objections might come from two sides. First, one can argue that universities have always engaged in a bit of smoke and mirrors when it comes to presenting themselves to outsiders. Isn’t “Veritas” a branding exercise itself, more Barnum than Agassiz? If so, then maybe the university has been satisfactorily managing the tension between what it really does and how it sells itself to others for years.

It is true that universities have always engaged in a certain amount of self-promotion. Harvard sent out a promotional tract in 1643 entitled “New England’s First Fruits.” It depicted the college as a flourishing enterprise even though it had been temporarily closed for lack of funds. Over three hundred years later, a 1979 article in *The Atlantic* lamented “desperate new promotional techniques” in higher education, like handing out Frisbees to lure potential students.²⁷

Yet the prevalence and content of university self-promotion has changed greatly in recent years. There has been a sea change in the amount of university marketing from a flood of branded merchandise for sale to billion-dollar college sports television deals to full-body decals touting various schools wrapped around cars and buses. Academic branding now commands a significant share of higher education resources. American colleges spend over \$10 billion per year on marketing and the trend is headed steadily upward.²⁸

The actual messages imparted in university marketing have changed as well. Less and less of the message of university marketing is about tangible differences between one learning institution and another. Instead, much of today’s academic advertising

²³ UPTON SINCLAIR: *THE GOOSE-STEP: A STUDY OF AMERICAN EDUCATION* 315 (1923).

²⁴ Earl F. Cheit, *Business Schools and Their Critics*, 27 CALIF. MGMT. REV. 43, 44 (1985).

²⁵ DAVID L. KIRP, SHAKESPEARE, EINSTEIN, AND THE BOTTOM LINE: *THE MARKETING OF HIGHER EDUCATION* 7 (2003).

²⁶ MICHAEL J. SANDEL, *WHAT MONEY CAN’T BUY: THE MORAL LIMITS OF MARKETS* 200 (2013).

²⁷ Edward B. Fiske, *The Marketing of the Colleges*, *THE ATLANTIC*, Oct. 1979, at 93.

²⁸ John Katzman, *The Spending War on Student Recruitment*, *INSIDE HIGHER ED*, Apr. 18, 2016, www.insidehighered.com/views/2016/04/18/too-much-being-spent-higher-education-marketing-assault-essay.

tries to concoct a narrative difference rather than showcasing an existing intrinsic one. When schools like Arcadia University (née Beaver College) change their name based on focus group research, that is not advertising designed around reasoned deliberation.

Second, there is the argument that academic branding, rather than disseminating emotional narratives for unreflective consumption by the university's consumers, represents a dialogue with students, alumni, and others. Free discourse between the university mark holder and outside audiences makes academic brands valuable only because consumers actively choose to invest the brand with their own predispositions, thoughts, and concerns so that the brand will service their personal identity projects. No matter how hard they try, the argument goes, advertisers cannot force audiences to accept their interpretation of inevitably multivalent messages. Academic branding can be better reconciled with the university's traditional function if we view much of the power to control brand meaning as being held by outsiders rather than the university itself.

Undoubtedly, the targets of academic branding messages, like other consumers, have some power to resist and reshape those messages. Not every effort at university branding is successful. Universities have abandoned some marketing campaigns after negative student reactions. And often the branding process involves solicitation of various university constituencies – alumni, faculty, students, etc. – for input before settling on a brand message.

Yet even if the targets of academic branding do participate in the creation of meaning, it still does not follow that academic branding matches the research university's mission of truth and rational deliberation. The meaning that arises through the interplay between advertiser and consumer is often irrational or emotional or created with less than full awareness on the part of the consumer. As I have suggested in other work, this meaning is often devoted to the construction of social identity. Advertisements are used to build affinities within particular groups and to signal difference with other groups. This may be a natural process of human self-definition, but it can also reflect instinct rather than reason.²⁹ It is hard to argue that the ultimate end product of university branding demonstrates a knowing collaboration between academic institutions and their target audiences. Most of the time, the students subject to these marketing blitzes argue that they are not affected by them at all.

Hand in hand with university branding come efforts to restrict the speech of those both inside and outside the university in service of maintaining a consistent brand ethos. Duke University blocks a business from registering DRANK UNIVERSITY as a trademark for use on athletics apparel. Harvard sues NotHarvard.com, a website offering free online educational services. Ohio State insists that a tailgating event for

²⁹ Mark Bartholomew, *Advertising and Social Identity*, 58 BUFF. L. REV. 931, 936–44 (2010).

charity not be called “Eat Too Brutus.”³⁰ Enforcement of trademark rights means using the law to stop others from talking in order to protect the goodwill bound up in corporate identity. By leveraging trademark law to protect the value of their brands, university marketers engage in activity that can run counter to the university’s traditional goal of disseminating knowledge.

It is not just trademark litigation but the university’s approach to trademark management that runs counter to the ethos of the research university. University licensing guidelines attempt to screen out certain products from association with the university in an effort to preserve mark goodwill. But these guidelines are meant to police “taste” rather than facilitate the university’s truth-seeking mission. Indiana University prohibits use of its trademarks in “statements impugning other universities.”³¹ You can buy an official University of Georgia casket or barbecue set, but you can’t mention the DAWGS on a sex toy or merchandise involving “political issues.”³² The link between university trademark enforcement and taste suggests a throwback to an earlier era when universities were finishing schools teaching manners to young elites rather than engines for reasoned inquiry.

Another key element of today’s academic branding, cross-licensing, also makes the university complicit in restricting discourse. Victoria’s Secret, Dooney & Bourke, and Disney (specifically, the Star Wars franchise) all sell their own branded merchandise that simultaneously features university-held marks. Most recognizable is the cross-licensing that takes the form of sponsorship deals with sporting goods retailers. These arrangements can involve serious payouts for college athletics powerhouses as brands like Nike and Under Armour become fused with collegiate brands like the University of Oregon and Notre Dame. Even community colleges, which have much smaller athletics budgets and alumni networks than flagship universities, enter into multi-year arrangements with retailers like Adidas. But these deals come with many requirements, including contractual provisions obligating universities to take “reasonable steps” to address any remarks by university employees that disparage the supplier or its products. These contracts also specify the penalties for any attempts to avoid displaying the suppliers’ marks, including detailed sanctions for “spatting,” whereby a student athlete covers up the supplier’s logo with tape. Even though university branding guidelines routinely pay lip service to facilitating the university’s “educational mission,” it is hard to argue that such governance regimes are geared to the mission of seeking knowledge through reasoned inquiry.

³⁰ Brutus Buckeye is the athletics mascot of Ohio State University.

³¹ *Licensing and Trademark Policy*, UNIVERSITY POLICIES – INDIANA UNIVERSITY, <https://policies.iu.edu/policies/fin-It-licensing-trademark/index.html>.

³² *Trademark Policy*, MARKETING & COMMUNICATIONS – UNIVERSITY OF GEORGIA, <https://mc.uga.edu/policy/trademark#general-requirements>. DAWGS is a common nickname for the University of Georgia football team, also known as the Bulldogs. It is also a federally registered trademark of the University of Georgia. U.S. Trademark Registration No. 3,075,673 (registered Apr. 4, 2006).

II. DEALING WITH THE DISSONANCE CREATED BY ACADEMIC BRANDING

Cognitive dissonance theory conceptualizes dissonance as an aversive state much like hunger or thirst that we are compelled to reduce. According to Leon Festinger, the psychologist who introduced the theory, dissonance can be reduced by changing or downplaying one of the two cognitions that produce it.³³ If different university actors feel a tension between the university's mission of using the tools of reason to uncover truth and academic marketing strategies that appeal to the emotions rather than reason, then cognitive dissonance theory suggests that they will engage in a cognitive restructuring to ameliorate this tension. In the rest of this chapter, I unpack what I believe are the three primary rationalizations being deployed as part of this restructuring process.

A. *The Confusion Rationale*

Festinger proposed three primary methods for reducing dissonance: (1) altering one of the dissonant conditions; (2) minimizing the importance of a dissonant cognition; or (3) adding a new consonant cognition to the overall web of cognitions.³⁴ Under the confusion rationale, those troubled by academic branding can ease their discomfort by reconceptualizing university marketing as a benign means of providing relevant information for rational purchasing decisions. This rationale posits that academic branding does not traffic in irrational and emotional appeals. Instead, it provides outsiders with valid informational signals for making choices.

Under the confusion rationale, trademarking of university names, logos, slogans, and color schemes is valuable because it prevents consumers from confusing one school with another. As the person who oversees Stanford University's trademark licensing remarked in an interview, "if we didn't enforce our trademark rights in the name Stanford, the Block S and the Stanford seal, we might no longer be able to keep others from using them, and schools named Stanford could start popping up."³⁵ Seen from this perspective, university marketing teams and collegiate licensing firms are preventing confusion and promoting informational efficiencies in a way that does not clash with the university's mission.

There are some trademark disputes involving universities that do reflect a concern with making sure that consumers do not act under the influence of false information. Oklahoma State University objected to Ohio State University's attempt to register "OSU" as a trademark. One can disagree about the likelihood of confusion

³³ See LEON FESTINGER, *A THEORY OF COGNITIVE DISSONANCE* (1957).

³⁴ Amanda S. Hinojosa et al., *A Review of Cognitive Dissonance Theory in Management Research: Opportunities for Further Development*, 43 *J. MGMT.* 170, 173 (2017).

³⁵ *Working to Protect Stanford's Good Name*, STANFORD REPORT, Mar. 15, 2010, <https://news.stanford.edu/news/2010/march/weinstein-trademark-qanda-031510.html>.

in this scenario, but at least Oklahoma State's action seemed to track trademark law's prime directive: protecting consumers from acting under a misimpression. Trademark law promotes competition by making sure that buyers can rely on truthful information about the source of the products they are buying. If consumers are likely to accidentally purchase "OSU"-branded merchandise thinking they are supporting the Cowboys of Oklahoma when they are really funding the Buckeyes of Ohio, then it makes sense for the law to step in and allow the Cowboys to enforce their trademark rights.

But much of academic branding is not about leveraging trademarks as efficient source identifiers. Instead, the goal is to turn university names, seals, mottos, and mascots into products themselves. At this point, protecting the academic brand means giving one entity exclusive control over a product desired by consumers, something that would seem to stymie competition rather than aid it. "When a trademark is sold, not as a source indicator, but as a desirable feature of a product, competition suffers – and consumers pay – if other sellers are shut out of the market for that feature."³⁶ University brands are valuable not just for their role in providing information, but for the way they provide ornamentation for consumers wanting to display narratives about themselves. The concern is that universities can wield trademark law to enforce a monopoly on these desirable product features and blockade competing and complicating (yet not confusing) communications.

Just look at the kinds of enforcement actions prosecuted by universities that reflect more of a concern with image maintenance than actual confusion. Much of what gets trademarked is not what one might think of as a classic university source identifier, like the name YALE or the image of the Florida Gator. University slogans, which university counsel federally register to ensure maximum protection, typically employ somewhat empty turns of phrase designed to have the effect of creating a positive brand valence for university audiences.³⁷ Non-academic entities are targeted for selling products that may clash with the brand meaning sought to be engineered by the university, not because of an actual likelihood of confusion. It's hard to believe that the use of "12th Man Hands" by a Washington State soap company would confuse fans of Texas A&M University, which holds a federal trademark registration in the mark "12th Man." Likewise, did Duke University really oppose a trademark registration effort by a small California winery for the name "Duke's Folly" because it "deceptively and falsely" signals a link to the North Carolina school? Schools like the University of Florida and the University of Wisconsin police against any use of their marks by high schools even though it seems unlikely that even the most unthinking consumer would confuse secondary education with these institutions of higher learning.

³⁶ Stacey L. Dogan & Mark A. Lemley, *The Merchandising Right: Fragile Theory or Fait Accompli?*, 54 EMORY L.J. 461, 465 (2005).

³⁷ JACOB. H. ROOKSBY, *THE BRANDING OF THE AMERICAN MIND* 242 (2016).

Instead of being genuinely worried about consumers laboring under a misimpression, these legal actions are motivated by a desire to stifle any semiotic resistance to the university's desired brand personality. University marketing teams fret that outsider uses will cause people to change their impression of the academic brand or diminish the strength of that brand in their imaginations. The University of Texas, for example, filed a lawsuit to prevent a parody of its longhorn logo. The offending merchandise – a T-shirt featuring a longhorn silhouette, showing horns detached and drooping with the accompanying phrase “Saw ’Em Off” – was sold by an alumnus of Texas A&M. The T-shirts seemed unlikely to confuse anyone. Instead, the University of Texas wanted to use trademark law to prevent anyone supporting its in-state rival from depicting its longhorn logo in a bad light.

Even the legal action between Oklahoma State and Ohio State morphed from a dispute over consumer confusion into an effort to safeguard brand reputation. The schools reached a seemingly sensible settlement, agreeing to allow each other to use the OSU mark but stipulating that each school would avoid potentially confusing uses (e.g., Ohio State products featuring an orange-and-black color combination or referencing Oklahoma State's mascot Pistol Pete). But the settlement agreement also prohibits each school from using the OSU mark to disparage the other. The agreement offered these examples: Oklahoma State will not make T-shirts calling Ohio State a “wannabe OSU,” and Ohio State cannot produce T-shirts dubbing Oklahoma State a “copy-cat OSU.”³⁸ These are situations more relevant to “brand safety” than actual consumer confusion.

Using trademark law to centralize control over trademark meanings can be problematic, particularly when the trademark itself becomes the product being sold. Academic brands are increasingly used by consumers not to identify their source but to provide ornamentation. At the same time, trademark doctrine has become less rooted in protecting trademarks as vehicles for identifying a source, expanding instead to safeguard the emotional valences bound up with brands. The problem here is not trademark law as a whole but branches of trademark law that facilitate investment in the brand rather than the product itself.³⁹ Normally, trademark law spurs investment in product quality. If consumers are fooled into purchasing inferior

³⁸ Mark Cooper, *Oklahoma State, Ohio State Reach Agreement on Trademark Dispute over 'OSU' Acronym*, TULSA WORLD, Sept. 20, 2017, www.tulsaworld.com/sportsextra/osusportsextra/oklahoma-state-ohio-state-reach-agreement-on-trademark-dispute-over/article_a73a2be7-162d-5eba-8240-6c8646459299.html.

³⁹ Trademark law now recognizes confusion beyond source, including mere confusion as to whether a trademark use has been sponsored by or is affiliated with the university. Confusion away from the point of sale is also recognized. *E.g.*, *General Motors Corp. v. Keystone Automotive Indus.*, 453 F.3d 351, 358 (6th Cir. 2006). Maybe most significant in demonstrating how capacious current trademark protection can be, a cause of action for trademark dilution potentially allows colleges and universities to prevent unauthorized uses of their marks that are not confusing at all but somehow threaten to diminish their reputation or signaling power. 15 U.S.C. § 1125(c); *University of Kansas v. Sinks*, 565 F. Supp. 2d 1216, 1258-60 (D. Kan. 2008).

goods under false pretenses, consumers will punish the holder of the trademark by taking their business elsewhere and the incentives to invest in the quality of the underlying product decline. Trademark protection helps prevent this scenario and safeguards investments in goods and services by limiting consumer confusion. But business investment not in an underlying product but in the merchandising of the brand itself should arguably not be the concern of trademark law.⁴⁰

Concerns over granting trademark holders exclusive rights over ornamental use of their marks take on greater salience in the university context. For good reason, trademark law deems geographically descriptive marks as one of the weakest mark types and limits their protectability accordingly. Not only are such marks less likely to serve as an indicator of source to the public, but they are competitively important to other businesses as well. As one tribunal evaluating rights in the WISCONSIN BADGERS mark and Bucky the Badger logo surmised, these academic brands signify more than just the university, for some identifying the entire state.⁴¹ Many businesses in Wisconsin may want to use “Badger” in their names or the cardinal and white colors most associated with the state in their advertising. They may want to use such words and symbols to communicate their location in college towns or in the relevant state. Collegiate marks are also attractive because public universities can provide a source of civic belonging not just for students, faculty, and alumni but the greater community. Those outside of the public university often feel a sense of ownership and pride in it and use references to academic brands to convey their support not just for the institution itself but also for the larger public that institution is meant to serve. Nevertheless, state universities vigorously assert their exclusive rights to use state names and symbols on merchandise and courts have been favorably disposed to such efforts.

B. *The Compartmentalization Rationale*

Instead of reframing a problematic cognition, the compartmentalization rationale reflects an effort to minimize the importance of the belief that today’s university marketing strategies are antithetical to the truth-seeking mission of the university. By trivializing this concern, participants in academic branding can better justify their own counter-attitudinal behavior.

Under the compartmentalization rationale, appeals to non-reason designed to generate academic brand meaning are less of a concern because they can be walled off from the “real” work of the university. Corruption can be avoided in two chief ways. First, responsibility for academic branding can be outsourced to external actors

⁴⁰ Julie E. Cohen, *Lochner in Cyberspace: The New Economic Orthodoxy of Rights Management*, 97 MICH. L. REV. 462, 506–14 (1998).

⁴¹ *University Book Store v. Board of Regents*, 33 U.S.P.Q.2d 1385, 1994 WL 747886, *10 (T.T.A.B., June 22, 1994).

that are not part of the research and teaching process. Second, certain spaces can be viewed as suitable for advertising, allowing the university to continue in its mission so long as marketing efforts are confined to those spaces.

The compartmentalization rationale posits that a quarantine of academic branding is successful when the responsibility for making appeals to non-reason is given only to external actors not considered part of the university's core mission. This is a key point because cognitive dissonance theory predicts that dissonance only occurs when behavior is perceived to have an unwanted consequence. If different university constituents believe that they can continue to satisfy the university's core mission while outside actors take care of the dirty business of marketing, meaningful dissonance can be avoided.

At least if we look to current practice, it appears that this rationalization holds some sway over university decision makers. A variety of tasks that the university itself used to manage – dining, health care, computer services, student housing – have increasingly been tasked to outside vendors. At this stage, few would argue with the privatization of at least some of these activities. Whether or not Panda Express is in the dining halls or Barnes & Noble runs the bookstore should have little to do with the scholarly mission of the university's faculty and students.

Other outsourcing decisions, however, do seem to come uncomfortably close to the core mission of the university. The school "brand" is mapped out by marketing consultants, not the teachers and researchers that arguably have the most to do with the actual university experience. And admissions offices have been increasingly outsourced, leaving the character of the student body to be determined by those not involved in the rest of the university's activities.

Entrusting such tasks to outsiders has consequences. After initially addressing licensing and trademark enforcement concerns within the university, a switch occurred in the 1990s and 2000s, as responsibility for trademark licensing and enforcement devolved to outsiders. As a result, the collegiate trademark licensing industry became more professionalized and enforcement more stringent. Along similar lines, some contend that the outsourcing of admissions and financial aid departments has put a greater premium on standardized test scores and a student's ability to pay, with the consequence that first-generation and minority students experience more difficulties than if admissions decisions were still performed in house.

These changes to how the university conveys what it is about, who can share that message, and who becomes part of the student body are critical to the university's primary functions. But maybe the scholar says that such changes have little impact on her individual research or students maintain that these changes do not affect their experience in the classroom. Better to have public relations firms manage academic branding and third-party vendors calculate how to yield the best students so that professors can focus on their real areas of expertise and interest.

The problem with the compartmentalization rationale is that the academic branding imperative is so totalizing that faculty and students cannot escape its

influence. Even though an outside agency may determine the content of an academic branding push, faculty and administrators are frequently deputized into carrying that branding message. In fact, higher education marketing consultants contend that faculty engagement is “essential” to the success of university branding campaigns.⁴² As a result, pressure develops to force faculty to toe the marketing firm’s line. Faculty are criticized for being guided by their own vision of the university and not following the marketing plan. Take this commentary from the higher education “communications agency” Noir sur Blanc: “It is also important to carefully monitor the consistency not only of the messages expressed by the communications department, but also those of the professors, students, and governing authorities . . . They must all speak with the same voice.”⁴³

Pushback from administrators meant to keep the faculty on brand can take various forms. Academic workers are instructed to include only designated university branding on stationery, PowerPoint slides, and other media shown to the outside world. This is just part of a larger package of very specific branding guidelines, including approved logos, fonts, and color palettes, that faculty are expected to comply with. For example, Waldorf University commands its employees to communicate in the way considered best for brand positioning: “All faculty and staff must use the designated Waldorf University email signature. The design of the signature should not be adjusted or revised. Only terminal degrees may be listed on email signatures.”⁴⁴

Of course, faculty may resist these branding imperatives, whether actively or passively. But these communications commands can have an effect not just on faculty actions but on the way faculty think about the institutions in which they work. Slight behavioral changes can produce lasting attitudinal changes. Psychologists have shown that rather than being simply the product of rational choice, preferences often flow from actions. The more actions academic actors are compelled to take in support of academic branding, the more inclined they will be to trivialize earlier beliefs that such actions run counter to the university’s underlying ethos.

Branding instructions are examples of hard power, edicts from the university command structure to comply with a chosen marketing message. But perhaps more important is the soft power exercised over university constituents thanks to constant exposure to a branding message and ethos. For example, faculty are urged to “develop their brand,” just like the school.⁴⁵ Scholars are advised to leverage their

⁴² Woodhouse, *Scaling Back*, *supra* note 12.

⁴³ HANOVER RESEARCH, TRENDS IN HIGHER EDUCATION MARKETING, RECRUITMENT, AND TECHNOLOGY 7 (2014).

⁴⁴ *Waldorf University Branding Guidelines*, WALDORF UNIVERSITY, www.waldorf.edu/about/brand.

⁴⁵ Jack Stripling, *Even for ‘Mad Men’ Obsessives, Higher-Ed Marketing Inspires Unease*, CHRON. HIGHER ED., June 5, 2016 (describing pressure for faculty members to engage in self-branding).

identity (along with their home institution's) on multiple platforms like Google Scholar and ResearchGate. These interfaces encourage professors to solicit clicks and downloads, the currency of reputation in these forums, which can be fostered through acts of self-promotion and the reciprocal self-promotion of peers. When you are already busy selling yourself, it becomes less disturbing to sell your institution at the same time.

Psychologists have demonstrated that we feel dissonance based not just on our own behaviors but the behaviors of those social groups to whom we feel a connection or affinity. The dissonance experienced by one social group member will be inferred and can spread to other members of the same group. And just as dissonance can spread vicariously, so can the attitudinal changes designed to reduce dissonance. Group members find themselves engaging in the same attitude changes in an effort to reduce discomfort. Just observing a fellow group member behave in a counter-attitudinal fashion can cause onlookers to alter their own attitudes to match. Hence, outsourcing responsibility does not really isolate the strategies of academic branding. Marketers influence other members of the university administration who in turn influence faculty and students.

The other way the compartmentalization rationale plays out is through arguments about space and territory within the university. One can rationalize the tension between academic branding and reasoned inquiry by believing that branding initiatives take place in designated zones that have little to no impact on scholarship and teaching. If marketing messages reliant on irrational appeals and exaggeration are confined to certain sectors outside the university's core or to areas that have already been ceded to the forces of commercialism and cannot be reclaimed, then little violence is being done to the university's central mission.

An example of this line of thought comes from Derek Bok. He distinguishes between selling ad space in football programs and college yearbooks (which he considers well outside the university's core mission) versus the touting of private products in campus classrooms. He cautions that this boundary is not watertight: "At the periphery of the educational process, however, advertisers wait like predators circling a herd of cattle and occasionally manage to pick off some careless member that strays too far from the group."⁴⁶ Still, the idea seems to be that the "educational process" is not threatened by branding exercises that take place in agreed-upon spaces.

The problem with this rationalization about university geography is that advertisers tend not to be content with annexing one campus territory while showing respect for the supposed sanctity of others; rather, they are constantly seeking to colonize new spaces. One of the main attractions of advertising in the university setting is that this setting (for now) has more credibility precisely because of its

⁴⁶ BOK, *supra* note 3, at 73.

commercially resistant history. As a result, there is a continual push to infiltrate previously ad-free spaces.

The colonization of particular territories in the university that would have triggered concern years ago no longer raises objections. The first sale of football stadium naming rights by a Division 1-A school occurred in 1996. Now dozens of schools have signed such deals. Duke Law School offers the opportunity to sponsor a stairwell. Harvard Law School and the University of Colorado even sold off the naming rights to their bathrooms.

This adcreep can also be observed in the kinds of products that are eligible for academic branding. University merchandizers have moved far past T-shirts, coffee mugs, and chairs embossed with the university seal. Now, specialized lines of Pop-Tarts feature the logos of public universities. Forty-eight higher educational institutions allow their trademarks to be licensed for college-themed caskets. Some institutions periodically make statements attempting to draw the line on what items are acceptable spaces for academic branding. Merchandising is acceptable on T-shirts and mugs, says Stanford's top trademark official, but "You won't find Stanford on caskets, toilet seat covers or shoddy merchandise."⁴⁷ But that is also what the University of Georgia maintained until it lobbied for a change in state law to permit the licensing of its trademarks to the funeral industry.

C. *The Competition Rationale*

To lessen dissonance, people will sometimes add a new consonant cognition to their mental web that acts to tip the scales in their thought process. If the new cognition takes hold, this mode of resolving mental tension can be quite successful. The competition rationale suggests that the tension between marketers and other university constituents is minimal because the marketing tactics employed by the former are essential given the economic realities of the modern market for higher education. Prioritizing university marketing, perhaps at the cost of other, more traditional priorities, may not always be desirable but it is necessary to compete in an era of globalization and reduced public funding for education.

Academic branding is necessary, according to the competition rationale, to successfully compete in the now all-important domains of admissions and alumni development. A frequent suggestion is that universities need to be run more like businesses in order to respond to the decline in public funding. If universities can no longer be propped up by the state, then they need donor dollars and an influx of students willing to pay high tuitions to stay afloat. To win over these audiences, universities must engage in a somewhat ruthless effort to differentiate their product from their competitors. This effort at differentiation requires using all the tools in the modern marketer's arsenal, including a focus on vague, emotional appeals.

⁴⁷ *Working to Protect*, *supra* note 35.

The dissonance between reasoned inquiry in the university and university marketing based on image rather than substance still exists. But the competition rationale helps soothe this tension as university stakeholders believe they have no real choice if they want the university to survive. Studies reveal that dissonance from a behavior is only triggered when individuals believe they have a choice to act in one way or another; if the individual believes she has no decisional freedom, then dissonance is avoided.

We see this rationale advanced by universities to justify their academic branding activities, often in cases of zealous trademark enforcement. The University of Alabama sued artist Daniel Moore for painting famous college football scenes that used the school's crimson and white colors. Moore, an alumnus of the university, maintained that he was just seeking verisimilitude in his art and avoided likely confusion by being careful not to feature Alabama trademarks anywhere outside the four corners of his realistic paintings. Alabama and a group of twenty-seven other universities that filed a brief of support in the case disagreed. They maintained that the case was about more than just confusion; it was also about the need for tight control over the university's image by the university itself. According to the brief, without such control over messaging, critical relationships with existing and prospective donors would founder, jeopardizing the schools' financial survival.⁴⁸

A similar point is made as regards the importance of branding in attracting students. University presidents and other administrators explicitly link successful branding strategies to student yields. For example, in announcing a partnership with Nike to revamp her university's name (emphasizing "Uconn" over "University of Connecticut") and unveil a new, fiercer, more modern look for its Husky mascot, President Susan Herbst said:

We're not breakfast cereal, and we're not a detergent. But we still need to communicate what we do, why we do it, how we do it, and that we do it well. So branding actually matters a great deal. As an institution with a global reach, we must compete on an international level for virtually everything: for students, faculty, staff, grants, awards, donations – you name it. And when we compete, we need to present ourselves at our very best, because how key audiences perceive our academic strength and overall reputation influences the choices they make.⁴⁹

Statements like this suggest that the use of modern branding techniques is imperative to differentiate the university from its competitors and ensure its financial survival.

For those in university administration, branding is not just necessary but central to the university's overall mission. According to George Mason University's vice president for enrollment management, winning new students, often from out of state or

⁴⁸ Brief of Amici Curiae, *Board of Trustees University of Alabama v. New Life Art*, 683 F.3d 1266 (11th Cir. Sept. 22, 2010) (Nos. 09-16412-FF, 10-10092-FF), 2010 WL 5650459, at *4–6.

⁴⁹ Stefanie Dion Jones, *UConn Announces New Visual Identity Program*, UCONN TODAY, Apr. 4, 2013, <https://today.uconn.edu/2013/04/uconn-announces-new-visual-identity-program>.

out of the country, is now “core to the work” of the university.⁵⁰ Indiana University’s associate vice president of marketing views his role as not “merely supporting institutional priorities” when it comes to student recruitment, but as “shaping those priorities.”⁵¹ In other words, the process of academic branding for students becomes a priority on par with the pursuit of truth.

Of course these last two statements are from university marketing managers, individuals who may not experience any cognitive dissonance over academic branding in the first place. But their comfort in speaking these sentiments openly reveals the competition rationale at work. If they believe that a hyper-image-conscious approach to student recruitment outweighs other concerns, then perhaps other university constituents are starting to believe that too. While faculty members may view chief marketing officers and the central administrations they work for as far removed from their own goals and priorities, the public pronouncements of university leadership surely have a role in steering the behavior and attitudes of its rank and file members.⁵²

Notwithstanding the rhetoric surrounding today’s academic branding, one thing that should be made clear is that these marketing strategies do not actually rely on differentiation, at least not on the basis of tangible campus qualities, which could be seen as providing rational inputs for students and donors to make decisions. Differentiation solely on the basis of a trademark, as opposed to actual product characteristics, is a controversial strategy, at least for law professors and economists. By codifying goodwill, trademarks naturally serve as symbols to distinguish one business from another. But a too expansive protection of trademarks – including protection of the valences created by effective advertising as opposed to improved product design – “can inefficiently impede competition through artificial product differentiation.”⁵³

Nevertheless, businesses routinely try to differentiate themselves based on the various emotional auras they create for basically interchangeable products. The Supreme Court recognized this as far back as 1942, describing successful branding as “people float[ing] on a psychological current engendered by the various advertising devices which give a trade-mark its potency.”⁵⁴ For consumers, Nike is different from Under Armour. Apple is different from Microsoft. Pepsi is different from Coke,

⁵⁰ Hal Conick, *Can Marketing Save Failing University Enrollment Rates?*, AMERICAN MARKETING ASSN., Nov. 1, 2017.

⁵¹ Rob Zinkan, *Beyond the Brand: The Marketing Department of the Future*, INSIDE HIGHER ED, May 3, 2018, www.insidehighered.com/blogs/call-action-marketing-and-communications-higher-education/beyond-brand-marketing-department.

⁵² Nicolas Raineri & Pascal Paillé, *Linking Corporate Policy and Supervisory Support with Environmental Citizenship*, 137 J. BUS. ETHICS 129, 142 (2016) (discussing how executive practices and pronouncements can alter an employee’s environmental values).

⁵³ Hannah Brennan, *The Cost of Confusion: The Paradox of Trademarked Pharmaceuticals*, 22 MICH. TELECOMM. & TECH. L. REV. 1, 13 (2015).

⁵⁴ *Mishawaka Rubber & Woolen Mfg. Co. v. S.S. Kresge Co.*, 316 U.S. 203, 208 (1942).

with the former suggesting youth and the latter suggesting patriotism. These products are different in people's minds even if they are not very different from the perspective of product functionality.

Yet if academic marketing is meant to differentiate, it doesn't seem to be doing a very good job. University branding does little to indicate difference, and seems unlikely to be geared toward the product differentiation described by the Supreme Court, despite lip service to the contrary. "Sadly, all too many schools have branding messages that are interchangeable with hundreds of other schools. Happy students. Engaged profs. An emphasis on innovation."⁵⁵ Most people cannot articulate much difference between one university and another apart from geography and perhaps the record of their athletics teams. Part of the problem is that it is difficult to actually innovate in the university in a way that meaningfully changes the on-the-ground experience for students. Curricular reforms require staffing changes that can take years to accomplish.⁵⁶

Despite all the talk about the need for differentiation, scrutiny of university marketing shows that much academic branding is really about a message of sameness. Just a handful of consulting firms design university promotional materials, and they end up making them all look alike.⁵⁷ Schools rely on the same glossy viewbooks of pastoral scenes in their marketing. They employ buzzwords like "excellence" that are devoid of content. Attempts to define a unique brand personality collapse into vague signifiers that every school can lay claim to. For example, my institution lists its four brand attributes as "Purposeful Ambition," "Radical Empathy," "Global Perspective," and "Bold Participation." Branding guidelines claim these attributes "reflect the unique character of the university," but it is hard to argue there is anything unique about them.⁵⁸ Or take this supposed "revelation" from the focus groups convened to develop the brand strategy for Northern State University:

Our focus groups overwhelmingly showed NSU stakeholders want to see a caring and supportive brand instead of an angry or intimidating portrayal. Certain exceptions, such as athletics, are anticipated. Stakeholders also want to see professional portrayals of campus and its students, faculty and staff, but also fun and engaging interactions among faculty and students. Stakeholders believe students should be serious and focused, but willing to have fun, while being responsible.⁵⁹

Again, this is an effort to convey a brand message that does not yield to rational scrutiny. No one reading this or Northern State University's associated marketing appeals should think that the school is particularly "caring" or "fun" or "responsible"

⁵⁵ Roger Dooley, *College Branding: The Tipping Point*, FORBES, Feb. 5, 2013.

⁵⁶ Jeffrey Selingo, *Colleges Try to Make Humanities Majors More Popular*, THE ATLANTIC, Nov. 1, 2018.

⁵⁷ WESLEY SHUMAR, COLLEGE FOR SALE: A CRITIQUE OF THE COMMODIFICATION OF HIGHER EDUCATION 129 (1997).

⁵⁸ *Identity and Brand*, BUFFALO.EDU, www.buffalo.edu/brand/strategy/brand-attributes.html.

⁵⁹ *Northern's Brand*, NORTHERN.EDU, www.northern.edu/brand.

any more than they should believe non-university advertising that touts “delicious” food or “quality” service. Instead, university marketers flood targets with these vague signifiers in the hope that they will unreflectively associate those signifiers with the academic brand.⁶⁰

This is puffery, not a strategy of rational product differentiation in a competitive marketplace. Aside perhaps from the University of Chicago, schools are reluctant to emphasize scholarly rigor as a mark of difference between them and their competitors. And even “the place where fun comes to die” has been backing away from this method of differentiation, preferring to position itself as merely one part of a prestigious pack.⁶¹ As one marketing critic aptly writes, “Most higher education taglines are Weekend-at-Bernie’s-esque lifeless husks that do little more than reflect the pool of generispeak in which they float.”⁶²

Even if actual differentiation is not the goal, one can try to justify the current state of academic branding as necessary for other reasons. Advertising can be used to create positive emotional auras, even if those auras are not meant to develop a unique brand personality. Just by creating a positive emotional valence for their brand, advertisers can partially inoculate themselves from competitive forces. Sheer repetition, along with other efforts to reach consumer perceptions at a subconscious level, can produce positive somatic markers that are retrievable at subsequent moments of brand exposure and resistant to negative information the consumer may later be exposed to. This is advertising that does not serve an informational purpose, but may be useful for generating affirmative affective responses in its targets.

Yet if one is to believe this justification for the state of modern university marketing, then the university loses much of what made it different from other marketplace actors in the first place. Just because universities are supposedly becoming more sensitive to market forces, this does not mean they need to adopt the same persuasive strategies as all other commercial actors.⁶³ After all, the university has

⁶⁰ You may be able to think of a couple of exceptions. Deep Springs College stands out for its belief in student self-governance and the requirement that its students work as ranch hands during their undergraduate careers. Berea College charges no tuition. But these schools are outliers, exceptions that prove the rule when it comes to the general failure to differentiate the product of American higher education.

⁶¹ Meredith Meyer, *GPA's Get a .76 Boost from Grade Inflation*, CHICAGO MAROON, Jan. 18, 2005.

⁶² Ryan Millbern, *Taglines Are Dead: Who Killed Them, and How We Can Bring Them Back to Life*, RHB, July 3, 2016, www.rhb.com/taglines-are-dead.

⁶³ Part of the competition rationale maintains that schools need to use these non-informational advertising tactics to build a positive emotional aura for their donors lest they choose to spend their dollars elsewhere. But philanthropic donations are a drop in the bucket compared to the portion of university budgets that continue to rely on public funding and tuition dollars. Admittedly, in austere times every dollar helps. But it does seem strange to craft the university's image in an effort to reach a relatively small and non-essential group of people when it comes to the university's financial well-being. See CHRISTOPHER NEWFIELD, *THE GREAT MISTAKE: HOW WE WRECKED PUBLIC UNIVERSITIES AND HOW WE CAN FIX THEM* 126 (2016).

been treated as a special case under the law because it is thought to be a special, non-commercial place doing work for the public good. If the competition rationale is right, then higher education is no different from other enterprises seeking an advantage in the marketplace and its legal exceptionalism no longer makes much sense.

CONCLUSION

Academic branding is an intentionally public act with real consequences. Outsiders judge these acts. Insiders internalize them. We can't compartmentalize academic branding and assume it will have little effect on the university's public mission. And if we continue to believe that reasoned inquiry should form the centerpiece of that mission, the recent trajectory of university marketing initiatives is cause for concern.⁶⁴

Then there is the question of how to better harmonize academic branding with the tools of reason. Maybe debunking the rationalizations justifying the disconnect between current university marketing practices and the university's core mission will prompt a voluntary realignment, but I'm not optimistic. A more drastic but perhaps beneficial approach would be to alter the legal framework in which the university operates.

The vast majority of advertisers avoid telling outright lies, but university advertisers should be held to an even higher standard. In several areas of the law, exceptions exist for the special space of the university. Designed to promote the public externalities generated by higher education (e.g., technological advancement, supplying the workforce with skilled graduates), massive property tax exemptions for nonprofit status benefit both public and private universities. Another set of generous tax subsidies exists to stimulate demand on the part of potential students. Courts decline to do much to interrogate tenure decisions, in contrast to other employment actions, out of concern for academic freedom. Patent law provides special carve-outs for academic research.

All of these legal exceptions benefit higher educational institutions. But perhaps there is also room for special legal burdens for universities. To claim the benefit of its public mission, the university's communications messages should reflect that mission. Other businesses engage in puffery, but university marketers should decline

⁶⁴ Management studies reveal that cognitive dissonance represents a real and sometimes expensive psychological tax on the workers who experience it. When someone is unable to resolve cognitive dissonance, they remain in a negative affective state. Employees pushed to publicly display unfeigned emotions can experience emotional exhaustion as well as higher turnover rates and tendencies toward alcoholism. Alicia A. Grandey et al., *When Are Fakers Also Drinkers? A Self-Control View of Emotional Labor and Alcohol Consumption Among U.S. Service Workers*, 24 J. OCCUPATIONAL HEALTH PSYCH. 482 (2019); S. Douglas Pugh et al., *Willing and Able to Fake Emotions: A Closer Examination of the Link between Emotional Dissonance and Employee Well-Being*, 96 J. APPLIED PSYCH. 377 (2010).

the legal privilege to lie their heads off so long as they say nothing specific. Effective advocacy requires telling a good story, so narratives that have emotional as well as factual components should continue to be a staple of academic branding. However, these narratives should be more strictly scrutinized than the marketing of other products and services. The more the university engages in the same branding techniques as the rest of the marketplace, the less claim it has to a public character, or any distinguishing character at all.