

WestminsterResearch

<http://www.westminster.ac.uk/westminsterresearch>

Book review: Jose Bellido (ed.), Landmark Cases in Intellectual Property Law (Bloomsbury 2017) 416 pp.

Mandic, D.

© Dr Danilo Mandic, 2018.

The definitive, peer reviewed and edited version of this article is published in Queen Mary Journal of Intellectual Property, 8 (3), pp. 267-269, 2018.

It is available from the publisher at:

<https://dx.doi.org/10.4337/qmjip.2018.03.07>

The WestminsterResearch online digital archive at the University of Westminster aims to make the research output of the University available to a wider audience. Copyright and Moral Rights remain with the authors and/or copyright owners.

Whilst further distribution of specific materials from within this archive is forbidden, you may freely distribute the URL of WestminsterResearch: (<http://westminsterresearch.wmin.ac.uk/>).

In case of abuse or copyright appearing without permission e-mail repository@westminster.ac.uk

Book review

Jose Bellido(ed), *Landmark Cases in Intellectual Property Law* (Bloomsbury, London 2017), 416 pp

Danilo Mandic

Lecturer in Law, Westminster Law School, University of Westminster

Any attempt to engage with intellectual property law unavoidably demands looking back at its histories.¹ This entails not only tracing (the conditions for) the origin of legal principles, their development and preservation ever since, but also viewing these histories as a background against which the current function of intellectual property law is examined. Whilst such a historical tracing risks understanding legal history only ‘as the study of the forces that have shaped law’,² the intellectual property scholarship has indisputably demonstrated the opposite and confirmed law’s active role in writing its histories.³ But histories are stories that need to be retold and revisited, and in that process of reading and recounting, histories are (re)written, new positions discovered, and new light is shed that marks the conditions,

¹ ‘Whenever we look at intellectual property, then, we are always performe historians.’ A Johns, ‘Intellectual Property and the Nature of Science’ (2006) 20, 2-3 Cultural Studies 145, 162.

² A Sarat and TR Kearns, ‘Writing History and Registering Memory in Legal Decisions and Legal Practices: An Introduction’ in A Sarat and TR Kearns (eds) *History, Memory, and the Law* (The University of Michigan Press, Ann Arbor 1999) 1.

³ B Sherman and L Bently, *The Making of Modern Intellectual Property Law* (Cambridge University Press, Cambridge).

effects and significance of those *topoi* specific for the intellectual property law.⁴

Landmark Cases in Intellectual Property Law is giving account of precisely such histories and therefore an important contribution to the field of intellectual property law. The editor Jose Bellido has compiled a volume of significant value, not only due to book's thematic nature, but also because it gathers contributions from leading intellectual property scholars who have greatly advanced the study of history of intellectual property law. The choice of cases put forward in this volume suggests it is an outcome of close collaboration between the editor and the contributors, covering all the areas of intellectual property law making the disputes considered in this book to indeed fall under the rubric of 'landmark cases'.

This edited volume is a new addition to the publisher's *Landmark Cases* series that aims to identify and give prominence to notable cases in common law. Whilst the book's title therefore might be self-explanatory in terms of its subject matter, the volume nevertheless expands on the meaning, revisits some case's standing, unveils unreported cases and demonstrates different approaches to what and how constitutes 'landmark cases' in intellectual property law. The term 'landmark' in the title suggests the significance of these cases for the normative construction of the specific areas of intellectual property law, but also

⁴ From Greek *topos* meaning: a traditional theme, motif, convention or place.

for the narratives that revolve around and constitute the intellectual property and its histories. As the editor notes in his succinct and compelling Preface, the book ‘explores the nature of intellectual property law and the procedural conditions for its historical existence by looking at particular disputes’. By doing so, Bellido continues, ‘[a]ll the cases gathered here aim to show the versatile and unstable character of a discipline still searching for landmarks.’⁵ In that sense, whilst there are important cases that have marked the discourses of particular areas of intellectual property law, this book indicates that the actuality of ‘landmark cases’ is not necessarily always visible or readily recognizable, nor temporally confined, but they remain to be excavated, identified and interpreted for the very purposes of delineating the conceptual boundaries of both the subject matter and the histories of intellectual property law.

What these contributions all share alike is demonstrating how the term ‘landmark case’ is an elusive notion, that is, once a case becomes subject of observation, it reveals and manifests itself in unpredicted ways. In other words, the landmark status is not granted only on the basis of its relevance as legal precedent, but also because of the circumstances that gave rise to the disputes, as well as the effect they have on the normative formation relevant for both the legal practice and discipline. Importantly, this is achieved, as Bellido acknowledges,

⁵ Jose Bellido, ‘Preface’ in Jose Bellido (ed), *Landmark Cases in Intellectual Property Law* (Bloomsbury, London 2017) v.

by employing different methodological and interpretative approaches that are adopted by its contributors, which in turn open up the questions and further expand on what informs a 'landmark case' in these studies.

To this end, the thirteen chapters/cases are arranged in chronological order, traversing almost four hundred years and extending across different areas of intellectual property law – patent, copyright (and its overlap with designs), trade mark, law of confidentiality, passing off. The structure of the chapters is similar, which suggests they were faithfully following the editor's instructions. In addition to having the landmark case as the main thread that ties them together enables bridging the diversity of intellectual property areas and their respective specificities resulting into a well-integrated, rich, compact yet versatile compendium. The cases concern with an array of subject matters that are intriguing and effective: glass manufacture (*Mansell v Bunger* 1626); almanacs (*Stationers v Seymour* 1677); sea charts (*Sayer v Moore* 1785); boot polish (*Day v Day, Day and Martin* 1816); explosives (*Nobel's Explosives Company, Limited, v Anderson* 1894); speech (*Walter v Lane* 1900); rubberised canvas football (*Spalding v Gamage* 1915); Popeye comic strip (*King Features Syndicate, Inc and Betts v O & M Kleeman Ltd* 1940); software (*Slee & Harris's Application* 1966); two-stroke engine for moped (*Coco v AN Clark (Engineers) Ltd* 1969); genetic engineering (*Biogen v Medeva* 1996); bootleg CDs (*R v Johnstone* 2003); and Lego bricks (*Lego Juris A/S v OHIM* 2010). The

selection of 'objects' and the respective disputes not only demonstrate the 'legal and historical features' that inform the intellectual property discourse, but extend to recognizing the various economic, cultural, scientific, technological and political conditions that mark the spatio-temporality of the cases. In this way, the contributions simultaneously advance and probe the conceptual and legislative principles that have informed the narrative, question their significance and value, and attempt to comprehend the procedural enunciations that law, the courts and judges had made.

This review does not engage with providing an overview of the individual contributions and their telling commentary on the cases and the legal specificities for reasons it would not do justice to the finely presented and elaborated description of the disputes in question. Their depth and breadth is manifested by the archival material and extensive footnotes to substantial material that support the narrative and corroborate their in-depth interpretations, analysis or observations. It is worth mentioning that all of the contributions are carefully composed and presented that guide the reader, even when the topics or issues discussed may not be of 'common' knowledge. They become stories about stories, closely commenting on the very legal intellectual property concepts, their abstract nature but actual existence. Moreover, the narration by all the authors is clear, explicit and graphic to that extent that it manifests a cinematic portrayal of the stories and contexts surrounding these cases, which only complements the detailed

legal analysis or discussions about concepts, meanings, interpretations or historical facts they refer to.

Landmark cases in Intellectual Property is a rare occasion where an edited book has succeeded to be consistent in quality and continuity, and also to overcome the specificities peculiar for the different areas of the intellectual property law. Because of the detailed engagement with these landmark cases that go beyond the textbooks and immediate intellectual property law literature, this is a fundamental reading for scholars of intellectual property law and history of science, as well as for students. This is a book that will be revisited for the study of intellectual property but also as a guidance for conducting research about cases that run along the history that writes it.