

**DEVELOPING THE BRAND:
THE CASE OF ALCOHOL, 1800-1880**

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Abstract

Historians generally agree that "modern brands" arose in the vertically integrated corporations of the late nineteenth and early twentieth century and were used as competitive weapons between like firms. Looking at the alcoholic beverage trade and drawing on trade press, court reports, newspaper advertising, business records, and accounts of consumer behaviour, this essay suggests, on the contrary, that supply chains made up of small firms played both a significant and an earlier part in the genesis of brands. In these chains, firms used branding not only to fight direct competitors, but also to discipline and subordinate other links in the chain over whom they had no direct control and with whom they had to cooperate.

Since the publication of *The Birth of a Consumer Society*, historians have repeatedly pushed the advent of modern consumer-oriented activities back in time.¹ Marketing, advertising, and retailing have all been traced to the eighteenth century or before.² But not brands. Historians generally agree with Wilkins that modern brands arose in "the late nineteenth and early twentieth century."³ Wilkins's association between these modern brands and the "large-scale modern enterprise" seems to be true almost by definition.⁴ Brands that came before languish in the realm of the primitive, conceptually indistinguishable from those of Greek potters.⁵ There are exceptions. Koehn and McKendrick both look back to Josiah Wedgwood (1730-1795).⁶ Koehn, however, paints Wedgwood as a proto-modern entrepreneur. This approach makes her leap from Wedgwood in the late-eighteenth to Heinz in the late-nineteenth century relatively seamless, but reveals little about the historical context in which brands developed. McKendrick is far more sensitive to historical context, but attending centrally to Wedgwood's (and George Packwood's) activities, he is like Koehn mostly silent on the development of branding over time.⁷ Moreover, for a historian of consumer society, McKendrick is surprisingly silent about the role of the consumer.⁸ Overall, studies that claim to show when modern brands occurred are less forthcoming about how the transformation from ancient makers' marks was achieved and who, beyond the entrepreneur, was involved.

This paper proposes that that relatively unexplored gap between Wedgwood and Heinz, roughly from 1800 to 1880, can actually tell us much

about the development of modern brands. Looking at brands in alcoholic beverages in Britain in this period, it argues that these were neither the brainchild of "entrepreneurial action" nor the product of modern, integrated firms.⁹ Rather, they emerged from tensions between small producers, distributors, and consumers. Alcoholic beverages offer a lens to examine not simply brands as objects, but also branding as a social practice that developed over time and involved legal battles, marketing campaigns, supply-chain tensions, business strategies, and consumer behaviour. As none of these was determining, the paper, after first outlining the nineteenth-century market for alcohol, tries to characterize each in turn and highlight their interrelations. It concludes that if we change the history of brands, we may need to change the theory. In the disaggregated supply chains of the nineteenth century, firms used brands differently from the way brands have been used in vertically integrated corporations. As firms disaggregate once again, this may be a lesson for the future as well as about the past.

In 1883 an intriguing controversy about brands erupted in the London papers. A Portuguese bank had sought to dispose of port it had received to settle a Lisbon bankruptcy in the lucrative London market.¹⁰ For this, it had employed a brash London wine broker Edwards Southard. He in turn employed C.N. Kopke to prepare the consignment in Lisbon. The Kopke family had worked in the port trade since the seventeenth century but had sold the firm and its brands to their English agents in 1870. Southard no doubt assumed that

Kopke's name would provoke interest in the sale. It certainly provoked the port trade. In a letter to the paper, Albert Sandeman, head of the leading port house of the era, protested against Southard's implicit appropriation of the Kopke brand in his announcement in the *Standard*. Sandeman insisted that the "use of such a brand" was "objectionable from every point of view" and sought to "nip this pernicious system in the bud."¹¹ There followed a correspondence first in the *Standard* and then in the *Morning Post* about how brands should be used in the port trade, who in the supply chain could legitimately brand, and whether what Kopke did this once was materially different from what Sandeman's firm did regularly, associate its name with wine that it, like most port shippers, did not produce, but bought from Portuguese farmers and then prepared for export. Sandeman and the other major port exporters, Southard's supporters pointed out, were neither producers nor retailers, but classic middlemen who were attacking Southard simply to defend brands that unjustly "demand a high premium" while squeezing both ends of the supply chain. The Southard faction denounced the "tyranny," "farce," and "folly" of such brands. Despite his use of the Kopke name, Southard claimed to represent "the new order of ideas *versus* the old ... free trade *versus* the monopoly of brands." "Times," he insisted, "are travelling so fast, that the old landmarks of business are rapidly being effaced ... in future Wine will be sold much more upon its own merits than by the Brand it bears." On the other side, the heads of his five main competitors joined Sandeman. They collectively insisted on the enduring integrity of "the

guarantee offered by a well-known brand" that, as another supporter put it, had "braved many a difficulty but conquered in the end."¹²

The issue was taken up in the trade press under headings like "The True Value of Brands?"¹³ The debate covered a lot of thoroughly modern branding issues: whether brands increase competition or extract monopoly rents, whether they provide useful information or mystify consumers, the difference between a name and a brand, and under what conditions brands may be bought, sold, or licensed.¹⁴ In particular, the participants argued about what would happen to brands, given (in Southard's curiously modern phrase) the "compression of space and time." "I may be visionary," one contributor wrote, but "the day is going by when brands will count for anything." But while the future of brands was energetically debated, significantly all involved took for granted that brands and the complex branding practices under discussion, far from being new, had had a long past.

That the port trade took a long tradition of branding practices for granted in 1883 is worth comment. "Wine merchants," a contemporary noted, "were very conservative," while the wine writer André Simon believed that "there is no more conservative branch of the wine trade than the Port trade."¹⁵ Traditionalists among traditionalists, then, the port factions in the Southard affair are unlikely to be leading indicators in understanding what one summed up as the "question of brands or trade marks ... affecting not only the Wine trade, but commercial relations generally." Rather, in helping understand brands, the port traders are usefully lagging indicators. What concerned them

in 1883 had certainly concerned more entrepreneurial firms well before. Indeed, the more enlightened cognac trade had split over branding back in 1838.¹⁶

Representing the old guard, the port trade also offers a useful guide to the transformation of the sector in Britain in the nineteenth century--or at least that part of the sector where brands and trademarks were likely to have proved efficacious.¹⁷ In 1801, the port trade exported more wine to Britain than ever before; as a result Portuguese wines (principally port) commanded an extraordinary 76 percent of the British wine market.¹⁸ Yet the foundations on which success was built were soon to crumble. English politics had supported Portuguese wines since 1703, when the Methuen Treaty guaranteed Portuguese wines cheaper duties than French, and Portuguese politics had led to strict quality controls on port production from 1756. English taste for strong wines had also favoured port, which unlike most French wine, is "fortified" through the addition of brandy. And English prejudice had granted the wine an important symbolic role: drinking port announced the rejection of Frenchified, Whiggish ways and identification with Englishness and particularly Tory, landed interests.¹⁹ But trade treaties of 1810 and 1825 began to unpick Methuen, attacks on fortified wines suggested port was a health hazard, peace with France weakened its symbolic role, and the aftermath of Portugal's civil war (1828-1834) emasculated the controls on production. In 1831, French wines achieved equal taxation in Britain, then in the 1860s,

Cobden's Treaty with France and Gladstone's fiscal reform of the wine trade brought about what one contemporary aptly called the final "disestablishment" of port.²⁰ After more than a century and a half, the Methuen Treaty had been turned on its head: fortified wines like port now had to pay more duty than weaker ones, such as the unfortified wines of France. The sector went into crisis. By 1862, port made up only 24 percent of imported wines, one third of its market share in 1801. It did not return to the volume of 1801 until 1919.²¹

Inevitably, other sectors pursued port's markets. Sherry, as strong in alcohol but less pampered diplomatically and so perhaps more entrepreneurial, grew its status and its portion until in 1859 it surpassed port. But times were turbulent, so dominance more transient. French wines, headed by champagne and claret, took the lead fending off not only port and sherry, but also a growing challenge from the other wines made newly popular since the Great Exhibition of 1851. Meanwhile, beer and spirits, particularly India Pale Ale, French cognac, and Irish whisky, fought their way into the more lucrative sections of the market and, conversely, Gladstone's "single-bottle" act of 1861, allowing grocers to sell wine, spread wine drinking to a broader public.²² When its business primarily involved a carriage trade in port, sherry, and madeira, the wine merchant T.G. Shaw remembered, the wine business was relatively simple. With more products and outlets, ignorance, confusion, and inevitably duplicity spread, unleashing what a writer in the *New Quarterly Magazine* described as "a wave of ill-informed and unscrupulous cheap wine merchants bruited the unknown wines of France." This wave broke over

what Sandeman and his fellow shippers called paternalistically "thousands of confiding, if indiscriminating, consumers." Fraud became a major problem; brands, as writers in the *Wine Trade Review* noted in 1865, a possible solution.²³

Advertisements for "neat" and "natural" wines date back to the early eighteenth century.²⁴ Protested a little too much, the claim reminds us that alcohol products are, in fact, rarely "natural," while lines between blending, adulteration, and falsification can be particularly fine.²⁵ Thus, in the nineteenth century when adulteration was endemic in the food chain, alcohol products were particularly problematic.²⁶ Until the 1870s, most packaged alcohol was bottled by retailers, who had good and bad reasons for mixing different ingredients together.²⁷ Some sought a better product: even scrupulous merchants tried to "mend" "damaged" beer and "weak" wines. Some sought a quicker profit: unscrupulous merchants cut spirits with water, substituted weak beers for strong, and diluted expensive wines with cheap (such as the preferentially taxed Cape wines). The trade held casuistical debates over when adding spirits, colouring, gypsum, and even sulphuric acid counted as legitimate "mercantile blending" and when as criminal adulteration.²⁸ (Inexperience and incompetence, of course, could render distinctions between good and bad intentions irrelevant.) Meanwhile, other regions "falsified" the products of the more successful. Bogue sherry came from Hamburg, bogue champagne from Russia, bogue ports from South

Africa, Spain, and France, bogus cognacs from the Minorities. Indeed, dreadful "English" wines and spirits befuddled all levels of society.²⁹ Engels noted that ports "altogether *manufactured* (from spirits, dyes, etc.)" deceived the working class. "Those who can afford to pay more are not affected," he continued. But they were. Writers from the *Times* to Trollope reported that publicans generally falsified their wines, hoteliers regularly misrepresented theirs, while retailers mislabelled beer, diluted spirits, and "not unfrequently sen[t] wine of lesser merit and calibre than the name it bears." Even the professionals were misled.³⁰

Inevitably, consumers sought warrants of reliability before purchasing, and producers, retailers, and middlemen tried to produce them. For wine merchants, this was difficult. In 1825, one port shipper confidentially called them the "most rotten set in London," while a mid-century wine guide openly announced, "No branch of trade is open to the practice of more chicanery and fraud than that of wine dealing."³¹ So merchants looked for other ways to endorse their products. Some offered money-back guarantees. Unfortunately, these might only highlight the severity of the problem. The trade was so unstable and wine merchants so regularly gazetted among bankrupts that by the time the customer opened the wine, the guarantor might easily be out of business.³² Consequently, a long established name became another kind of warrant. "Established upwards of a century" boasted one retailer in its advertisements; "originally established 1687" trumpeted and trumped another. Those who could not trust to their own name or age started to use those of

others. Some retailers, for instance, boasted of famous customers or scientific approval. Others, particularly new enterprises, advertised the names of more more-established suppliers. This strategy became increasingly important. If the public would trust one name in a supply chain--be it producer's, intermediary's, or retailer's-- then that supply chain as a whole could establish a competitive position and the owner of the name a commanding one. Hence, as we shall see, from the fall of port to the ascendancy of claret and champagne, consumers, traders, courts, and legislators showed growing interest in names, brands, and trademarks in the alcoholic beverage trade.³³

In her discussion of brands, Wilkins begins with the legislators, arguing that trademark laws provided the necessary base from which corporations could launch modern brands and historians their enquiries.³⁴ Laws, however, are not always instigators.³⁵ They often come after the fact, codifying understandings that have developed in practice. Courts of equity often work in advance of statutes, breaking a trail rather than following one. This would seem to be the case with branding and trademarks.³⁶ While there are disputes about the relevance of cases in the seventeenth and eighteenth century, most commentators agree that by 1810, well before trademark law was passed in England, trademarks were squarely before the courts. From this time, cases multiply, tying up courts, absorbing legal fees, and creating pressure for statutory relief. Kerly's history suggests that *Rodgers v. Nowill*, the *Jarndyce v. Jarndyce* of trademark law, lasting nearly six years (1846-1853), costing the

plaintiff £2,211 and gaining him 40 shillings in damages "without in the end giving him any security" increased such pressure significantly, and resulted in the Merchandize Marks Act of 1862.³⁷ Far from planting the seed, this and subsequent legislation was, as a legal commentator wrote in 1876, the fruit of the past "seventy or eighty years."³⁸

To understand how trademarks and brands were established, then, we need to look beyond the legislation to the case law that both preceded it and immediately followed it. The former helped shape the writing of statutes and the latter their interpretation. Cox's *Manual of Trade-Mark Cases* (1881) is a useful window onto the reported case law and litigants of the time.³⁹ It notes 211 cases in courts of British and U.S. jurisdiction by the end of 1862 (the year of the Merchandize Marks Act) and a further 464 cases (to a total of 675) by 1880. The volume indexes litigants, the trade names, and the type of product at issue. Table 1, using Cox's index, provides a break down of those products that were involved in five or more cases. "Medical preparations" (essentially patent medicines), early to advertise, early to brand, and early to court, is the clear leader with 46 cases.⁴⁰ "Spirits" (whisky, brandy, gin, and bitters) come a distant second with 25. If, however, we create the plausible category of "alcoholic beverages" out of Cox's entries for "spirits," "beer," and "wine," this group comes in, as the last line of table 1 shows, a much closer second with 42 cases.⁴¹

Table 1: Product classes with more than five reported trademark cases in British, colonial, and U.S. courts prior to 1881

Class	Total to 1862	Total to 1880
Medical Preparation	22	46
Spirits	2	25
Publications	8	23
Toiletries	9	22
Tobacco	0	16
Newspapers	11	15
Sauces	4	13
Iron	1	12
Bottles	2	10
Beer	3	9
Sewing Machine	1	8
Wine	0	8
Soap	1	7
Oil	0	6
Pens	1	6
Mineral Water	0	5
<i>Alcoholic beverages</i> <i>[Spirits, Beer, Wine]</i>		42

Source: Rowland Cox, *A Manual of Trade-Mark Cases, Comprising Sebastian's Digest of Trade-Mark Cases* (Boston, 1881)

The significance of alcoholic beverages is even more noticeable when we look at table 2, showing the frequency with which proprietary brands went to court. Here alcohol firms are on top. Hennessy is the most litigious. (As the *Wine Trade Review* put it, "Messrs. Hennessy spare no trouble or expense in prosecuting anyone who may infringe their brand.")⁴² Wolfe's Schnapps is second.

Table 2: Trade names involved in two or more reported trademark cases in British, colonial, and U.S. courts before 1881

Name	Product	Number of cases
Hennessy	Brandy	6
Wolfe	Schnapps	5
Apollinaris	Water	4
BBH	Iron	4
Collins	Cast steel	4
Day & Martin	Blacking	4
Rodger	Cutlery	4
Taylor	Thread	4
Moët	Champagne	3
Burgess	Essence of anchovies	3
Cross	Medicine	3
Harvey	Sauce	3
Howe	Sewing machine	3
Roberts	Razors and scissors	3
Worcestershire	Sauce	3
Guinness	Beer	2
Amoskeag	Cotton cloth	2
Balm of 1,000 flowers	Medicine	2
Bass	Beer	2
Beeswax	Oil	2
Borwick	Baking powder	2
Brand	Essence of beef	2
Christy	Minstrels	2
Coe	Superphosphate of lime	2
Davis	Medicine	2
Frese & Co	Tea	2
Hall	Medicine	2
Hostetter	Bitters	2
India Rubber Comb Co	Combs	2
Irving	Hotel	2
James	Horse blisters	2
Lazenby	Sauce	2
Morison	Medicine	2
Perry Davis	Medicine	2
Pepper's	Oil	2
Radstock	Coal	2
Rose & Co	Lime juice	2
Spratt	Dog biscuit	2
Vanity Fair	Cigarettes	2

Source: Cox, *A Manual of Trade-Mark Cases*.

Cox 's cases involving this sector include only a portion of the total cases.⁴³ While Cox's lists forty-two such cases in all courts under review and twenty-five in British, Irish, and colonial courts, a far from exhaustive survey of newspapers, law reports, and the trade press turns up fifty-nine cases in the second group alone over the same period (see table 3) and these provide a broader basis from which to analyze the major branding concerns of the trade.⁴⁴

Table 3: Fifty-nine trademark cases involving alcohol firms in British, Irish, and colonial jurisdiction prior to 1881

Year	Plaintiff	Defendant	Source	Complaint
1838	Guinness [brewer]	Porteus ["engraver"]	<i>Times</i> (July 5, 1838): 6	engraving fake labels
1845	Guinness	Jones [distributor]	<i>Times</i> (Aug 4, 1845): 8	using fake labels
1845	Guinness	Weston [distributor]	<i>Times</i> (Nov 21, 1845): 7	selling bogus "Guinness"
1846	Guinness	Hill [distributor]	<i>Times</i> (March 27, 1846): 8	imitating Guinness's label
1846	Guinness	Whitmarsh [printer]	<i>Times</i> (Jun 5, 1846): 7	printing fake labels
1847	Guinness	Ulmer ["engraver"]	Cox 89; <i>Times</i> (Nov 12, 1847): 6	providing engraving blocks
1847	Guinness	Turner [distributor]	<i>Times</i> (Feb 25, 1847): 8	selling bogus "Guinness"
1847	Guinness	Hornblower ["printer"]	<i>Times</i> (Dec 17, 1847): 8	selling fake labels
1849	Duke de Montebello [champagne exporter]	Gemmer [importer?]	<i>Times</i> (May 9, 1849): 7	selling bogus "Montebello"
1853	Allsopp [brewer]	Fraser ["wholesaler"]	<i>Times</i> (July 26, 1853): 8	selling bogus "Allsopp"
1853	Allsopp	Coombes [distributor] & Fraser ["wholesaler"]	<i>Times</i> (Nov 26, 1853): 8; Dec 8, 1853): 8; (Dec 10, 1853): 11	selling bogus "Allsopp"
1853	Bass [brewer]	Gow [exporter]	<i>Times</i> (Aug. 1, 1853): 6	selling bogus "Bass"
1853	Bass	Fraser ["wholesaler"]	<i>Times</i> (Nov 21, 1853): 9; (Dec 8, 1853): 8; (Dec 20, 1853): 11	selling bogus "Bass"
1853	Guinness	Sutton [distributor]	<i>Times</i> (June 22, 1853): 7; (July 15, 1853): 7; (Aug 1, 1853): 6; (Nov 4, 1853): 9	selling bogus "Guinness"
1860	Bass	Williams ["wine and spirit merchant"]	<i>Times</i> (Aug 8, 1860): 11	selling bogus "Bass"
1863	Reg	Gray & Gosling	Cox 183	using forged labels
1863	Kinahan [distiller& retailer]	Bolton ["grocer," Dublin]	Cox 228; <i>Times</i> (May 28, 1863): 12	appropriating the "LL" brand
1863	Ponsardin [champagne exporter]	Stear ["warehouseman"]	<i>Ridley's</i> (March 6, 1863): 12	possessing fake "Clicquot"
1863	Ponsardin	Victoria Dock Company [wharfinger]	<i>Ridley's</i> (March 6, 1863): 13	possessing fake "Clicquot"
1863	Ponsardin	Peto [wharfinger]; ex parte Uzielli [importer?]	Cox 299; <i>RR</i> 33 (1865): 642-644	possessing fake "Clicquot"

1864	Moët & Chandon [champagne exporter]	Couston ["wine merchant"]	Cox 235; <i>RR</i> 33 (1865): 579-644; <i>Times</i> (May 4 1864): 13	selling fake "Moët & Chandon"
1864	Hunt ["wharfinger"]	Maniere [importer?]	Cox 239; <i>RR</i> 34 (1866): 157-161; <i>Times</i> (Dec 9, 1864): 8	refusing to release fake "Clicquot"
1866	Seixo ["wine grower"]	Provesende ["wine grower"]	Cox 256; <i>AR</i> 149 (1917): 529-537; <i>Times</i> (Feb 18, 1866): 11; (Nov 13, 1866): 11	infringing "Crown Seixo"
1866	Hudson [brewer]	Bennett [distributor?]	Cox 261	infringing Hudson's trademark
1866	Lockwood [retailer]	Symons [port shipper's agent]	<i>Ridley's</i> (May 8, 1866): 13; <i>Times</i> (May 2, 1866): 11	implied warrant of a brand
1866	Bass [brewer]	unnamed ["printer & lithographer," Glasgow]	<i>Times</i> (Sept 17, 1866): 4	printing fake labels
1867	Martell [brandy exporter]	Tucker [distributor]	<i>Times</i> (July 26, 1867): 12; Aug 8, 1867): 12	misusing Martell's labels & corks
1868-9	Bass	Dawber [distributor]	Cox 310; <i>Times</i> (Feb 1, 1868): 11; (Jan 22, 1869): 10	infringing Bass's triangle trademark
1869	Guinness	McManus [distributor]	<i>Times</i> (June 14, 1869): 11	selling bogus "Guinness"
1869	Hennessy [brandy exporter]	White [distributor, Australia]	Cox 650	putting Hennessy cask (cheap) brandy in Hennessy bottles
1869	Hennessy	Hogan [distributor, Australia]	Cox 651	putting Hennessy cask (cheap) brandy in Hennessy bottles
1870	Guinness	Cullen [distributor]	<i>Times</i> (July 16, 1870): 11	infringing Guinness's trademark
1870	Hostetter [bitters manufacturer]	Anderson [distributor, Australia]	Cox 652	refilling Hostetter's bottles with other bitters
1870	Rivero [sherry exporter]	Norris & Chapline [broker/auctioneer]	<i>WTR</i> (March 15, 1870): 54	misusing Rivero's "CZ" brand
1873	Raggett [brewer/distributor]	Findlater [brewer/retailer]	Cox 431; <i>LR</i> 27 (1873): 29-45	infringing "Nourishing Stout"
1874	Siegert [bitters manufacturer]	Ehlers [agent, Trinidad]	Cox 432	imitating Siegert's bottle wrappers
1874	Martell	Dear ["grocer"]	<i>Times</i> (March 23, 1874): 13	putting Martell cask (cheap) brandy in Martell cases
1875	Bulloch & Co [distiller]	Gray [distiller]	Cox 452; <i>Journal of Jurisprudence</i> 9 (1875): 218	infringing "Loch Katrine Whisky"

1875	Bass	O'Connell ["grocer," Dublin]	<i>Times</i> (Nov 18, 1875): 8	using Bass labels on other beer
1876	Banks [retailer]	Sheppard [hotelier]	<i>WTR</i> (Dec 15, 1876): 162	infringing "Bodega" trade mark
1876	Boule [sherry exporter]	Castells [Tarragona exporter]	<i>WTR</i> (March 15, 1876): 153	infringing Boule's "POyB" brand
1877	Allsopp [brewer]	Walker ["ale and porter merchant"]	Cox 545; <i>Times</i> (April 11, 1877): 3	infringing Allsopp's hand trademark
1877	Hennessy	Cooper [distributor]	Cox 549; <i>Times</i> (April; 28, 1877): 13; (May 30, 1877): 10 & 13	putting Hennessy cask (cheap) brandy in Hennessy bottles
1877	Hennessy	Joel [distributor]	<i>WTR</i> (March 15, 1877): 153	ditto
1877	Hennessy	Kennett ["grocer"]	Cox 556; <i>Times</i> (May 19, 1877): 12	ditto
1877	Hennessy	Lee [distributor]	<i>Times</i> (May 30, 1877): 10	ditto
1877	Hennessy	Rawlings [distributor]	<i>Times</i> (May 30, 1877): 10	ditto
1877	Hennessy	Rohman, Osborne [distributor]	Cox 531; <i>WTR</i> (Feb 15, 1877): 46	ditto
1877	Hennessy	Schwartz [distributor]	<i>Times</i> (May 30, 1877): 10	ditto
1877	Hennessy	White [distributor]	<i>Times</i> (May 30, 1877): 10	ditto
1877	Hennessy	Willett [distributor]	<i>Times</i> (May 30, 1877): 10	ditto
1877	Moët & Chandon	[Meadows &] Clybouw [distributor]	Cox 533; <i>WTR</i> (Feb 15, 1877): 46	infringing the "M&C" brand
1877-8	Moët & Chandon	Pickering [importer?]	Cox 567; <i>Times</i> (July 24, 1877): 11; (July 28, 1877): 11; (March 30, 1878): 11	selling bogus "Moët" champagne
1877	Ex parte Young [bankruptcy trustee];	Re Lemon & Hart ["wine merchant"]	Cox 537	ownership of the "LH&S" trademark
1878	Guinness	Heap ["dealer in stout"]	<i>Times</i> (May 31, 1878): 10	infringing Guinness's Harp trademark
1878	Siegert	Findlater	Cox 591; <i>LT</i> 38 (1878): 349-454; <i>Times</i> (Jan 16, 1878): 11	contesting the "Angostura" trademark
1878	Wolfe [distiller]	Hart [distributor, Australia]	Cox 653	imitating schnapps bottles and labels
1878-81	Martell	Groome ["wine and spirit merchant"]	<i>Times</i> (July 22, 1878): 4; (Jan 23, 1880): 4; (July 22, 1881): 4	putting adulterated brandy in Martell bottles
1879	In re Worthington & Co [brewer]		Cox 655; <i>Times</i> (Feb 25, 1879): 4	infringing Bass's triangle trademark

Where possible, participants in the trials are identified by their relevant business activity; identifications in quotation marks for unfamiliar names come from the court reports. The term *distributor* appears where it was not clear whether the participant was a wholesaler or retailer. Question marks indicate uncertain identifications. Defendants pursued outside England are marked with the relevant city or country where the case was heard.

Sources: *The Times*; Cox, *A Manual of Trade-Mark Cases* [numbers refer to Cox's case number, not the page]; *Ridley's*; Charles Beavan, *The Authorized Reports of Cases in Chancery, Argued and Determined in the Rolls Court* (London, 1865) [AR]; Frederick Pollock, ed., *The Revised Reports Being a Republication of Such Cases in the English Courts of Common Law and Equity, From the Year 1785* (London, 1917) [RR]; G.W. Hemming, ed., *The Law Reports: Equity Cases* (London, 1874) [LR]; *The Law Times Reports* [LT]; *Wine Trade Review* (WTR).

Table 3 suggests that the major brewers to be the early movers in legal fights over alcohol brands.⁴⁵ To control their brands, brewers pursued engravers, printers, bottlers, distributors, and retailers, with Guinness starting the trend and Allsopp and Bass following, though the litigious Duc de Montebello is also early to court to protect his champagne label.⁴⁶ By the 1860s, however, both spirits (Kinahan with Irish whisky, Martell and Hennessy with Cognac, and Hostetter with bitters) and other champagne houses (Ponsardin, the owner of the Clicquot brand, and Moët) had also gone to court, as had the sherry firm Rivero and the port producer Baron Seixo to protect the "CZ" and "Crown Seixo" brands respectively. The 1870s, building up to and responding to the Registration Act of 1875, do not change this profile much. The cognac firms, principally Hennessy but also Martell, are now the most litigious.

The final case on the list (Martell v. Groome) reminds us that these plaintiffs were not only aggrieved but also aggressive. Martell pursued the profits of Groome back to 1863, proving so indefatigable that Groome resorted to burning its books to hide those profits. Champagne companies pursued third parties, dragging wharfingers and warehousemen into court. Guinness managed to extract £65 damages from Hornblower, a printer who made seven shillings from selling imitation labels. Allsopp earned the defendants in Regina v. Gray and Gosling twelve years hard labour for mislabelling. Plaintiffs marked labels surreptitiously to track their use, deployed undercover agents to solicit fraudulent goods, and pursued defendants around the world. It is not surprising that some of these cases were thrown out for overstepping the bounds of entrapment and harassment.⁴⁷

Though reports are terse, the cases prompt some tentative conclusions about early contests over brands.⁴⁸ First, these firms, though deeply interested and implicated in trademarks and branding history, were not the vertically integrated "giant enterprise" of the late nineteenth century discussed in conventional accounts.⁴⁹

Baron Seixo, at one extreme, was a Portuguese landed aristocrat, and most of the other plaintiffs were producers or distributors whose business was, at this point, limited in both scale and scope. Second, flirting with technological determinism, several standard brand histories argue that producer's control over new packaging technology was critical to deploying modern brands.⁵⁰ In this sector during this period, most packaging was done by retailers. On the contrary, then, the legal cases suggest that producers first deployed their brands to control packaging, rather than the other way around. And so third, most were fights not between like rivals, but along the supply chain as people fought to control what was done in or with their name by suppliers or clients.⁵¹ Finally, the development of brands involved a shift in power in these supply chains away from retailers, whose names had previously dominated marketing, towards names of or owned by producers and intermediaries. Indeed, while there is only one retailer (Banks) among the plaintiffs, there are several among the defendants, some clearly in the wrong, but some justly fighting for the "downstream" end of the supply chain to resist the domination of producers and middlemen. Fraser fought both Allsopp's and Bass's attempts to hold distributors responsible for what happened to beer they sold in good faith. Findlater, Mackie, a large retail chain, became involved (albeit reluctantly) in resisting Siegert's claim to the geographical description "Angostura". And Dawber fought Bass's attempt to enjoin its "Spanish shield" for being too close to the producer's red triangle. (The judge could see no resemblance.)

Complaints voiced elsewhere indicate how retailers resented the increasing aggressiveness of producers and distributors towards brands. Southard had complained of this in 1871, well before his row with Sandeman:

There is another reason which causes depression in our Trade, and that is the smallness of possible profits, which certainly partake more of the nature of commission than of merchants' profits. We explain this by the fact that our merchants by limiting their purchases to known

brands, the names of which are circulated all over the kingdom, find there is actually no room for a profit.⁵²

The retailers evidently feared that as producer and distributor brands became more prominent, they were becoming correspondingly subordinate, and many resolved to fight back. Thus the writer and retailer Charles Tovey defied the aggressive cognac branders. "I have," he announced in the trade press, "come to the determination to purchase in Cognac only from those who will put my own brand upon the casks."⁵³ A decade later, a letter signed "Anti-Monopole" in the *Wine Trade Review* described a fight with champagne firms "to advertise my own brand instead of somebody else's." "I lately offered a well-known shipper an order for their best quality Champagne, to bear my own name on corks and labels; need I add the order was promptly declined?"⁵⁴ So, when the consignment came in, the writer continued, "the foreign corks were soon out, the foreign labels soon off, and my own in their places."⁵⁵ The *Wine Trade Review*, poised precariously between its advertisers, who were mostly producers and distributors, and its readers, who were mostly retailers, leant gently towards the retailer: "It is to the real merchant that whatever value which may attach to a brand should belong, as it is he who should be responsible to the consumer for the quality of the article supplied him."⁵⁶ But the trademark cases indicate that the courts were increasingly leaning the other way, as producers and, more contentiously, intermediaries received protection for their names and used this to dominate their supply chains.⁵⁷

Of course, protection was not much good on its own. To be efficacious, brands had to be projected. Hence the advertisements of the period also throw light on trends in brands, and here, too, we see similar tensions, with power shifting from retailers towards producers and distributors. But eventually, we also see retailers fighting back.

Newspaper advertising for alcoholic beverages has a long history. From 1708, wine and brandy advertisements appeared regularly. By 1711, with the effective end of the embargo on French wines, what must be one of the first advertising wars developed as port fought for ascendancy over claret.⁵⁸ The stamp and advertising taxes of 1713 numbed the sector's enthusiasm, and alcohol advertising recovered its boisterousness only towards the end of the century. Much of the early nineteenth century alcohol advertising was aimed at the retail trade not the public, but a distinct group of known in the trade as "advertisers," seeking retail customers through the newspapers, developed, encouraged in particular by the reduction in advertising tax in 1831.

At the beginning of the nineteenth century, beverages appeared in advertisements described generically by region: Burton, Edinburgh, and Preston ales; French cognac, Irish whisky, Jamaica rum; Bordeaux and Cape wines, champagne, sherry, or port, for example.⁵⁹ The principal trade names on display were those of retailers. There were exceptions, the most significant of which were in advertisements for auctions. Advertising mostly foreign products and directed principally at the trade, these usually provided the names of foreign producers or exporters. Very occasionally, a retailer's advertisement seeking cachet would drop one of these names too, but this was infrequent enough to suggest that outside the trade and the cognoscenti, such names meant much to the public. Moreover, when such names did appear, they were not always reliable. The trade press regularly protested advertisements for alcohol that, either through cupidity or stupidity, made false claims of origin.

Between the 1830s and 1850s, the period as we have seen of nascent trademark litigation, advertisements start look distinctly different. As brewers, precocious in the courts, pushed their names before the public, retailers' names, by

comparison, lose significance. In the 1830s, regional breweries (Hodgson and Abbott) appeared in the London papers, and by the 1840s the major national brands (Bass and Allsopp from Burton-on-Trent, Guinness from Dublin) followed. As if uncertain which carried the most force and experimenting to find out, advertisements for beer and for spirits mixed regional, producers', intermediaries', and retailers' names. In the more conservative wine sector, however, products remained mostly generic.⁶⁰ Sherry advertisements, also mixing retail and producer brands, were the exception. Henekey, a fervent advertiser and retailer of "economic wines," warned consumers against the fraud that would follow sherry's increasing popularity and then put his name forward as a reliable warrant.⁶¹ Fearon, another regular advertiser, also offered "Fearon's sherry."⁶² But names and brands of sherry exporters (Duff Gordon, Crawley's, CZ) appeared too, as if to test whether these offered better warrants.⁶³ (Whether these appeared with the consent or on the products of the named exporters is still hard to judge.) Outside auctions, in the very traditional port trade, advertisements continued to eschew the names of exporters or producers. Contrasting the declining and the ascendant, advertisements appeared at the end of this period offering sherry with shipper's brand names but port generically.⁶⁴ Indeed, one of the first clear cases of non-retail-branded port involved not a port firm, but, in what is today called "brand extension," a distributor from another sector: in the 1840s, the water company Schweppes, began to offer Schweppes port.⁶⁵

The 1850s--marked by the Great Exhibition (1851) at the beginning, reduction of advertising tax (1853) and the Paris Exhibition (with the classification of Bordeaux's *grandes crus*, 1855) in the middle, and the removal of tax privileges from Cape wines near the end--changed the character of advertising significantly. National brewers and distillers continued to assert their brands. Kinahan, for instance, expanded its ubiquitous "LL" whisky campaign.⁶⁶ The decade had more effect on

wines, launching unknown products from unfamiliar regions and reinforcing known producers in the wake of the Great Exhibition. The names of the great Bordelais chateaux of Lafitte, Latour, and Margaux achieved general currency in advertisements as did those of the major champagne houses Clicquot, Moët, and Mumm. Sherry exporters, too, continued to get their names in print. Finally there are signs that the embattled port trade galvanized itself: producers' and shippers' names started to appear, though again not necessarily with the owner's knowledge.⁶⁷ Overall, the pendulum continued to swing away from the wine merchants in this decade, though retailers themselves seem paradoxically to have provided some of the impetus. In search of a reliable name, it was often they who moved suppliers' names out of sale and stock rooms and into the public eye.

Retailers also pursued less-self-effacing strategies. Some still trusted, like "Messers Feltoe ... that their name is a sufficient guarantee for the quality."⁶⁸ Others opened new outlets, created new brands to stock them, and offered to send wine by rail to any station in the country. Hedges & Butler opened a branch in Brighton. Findlater, Mackie, a Dublin retailer, opened a London branch, the first link in a chain that would extend across the city and then the country.⁶⁹ Sherry retailers, meanwhile, continued to invent names for what they bottled and sold ("Onwhyn," "Nutty," and "Naked" sherry), and even port retailers produced "Criterion" and "Empress" brands. In the same period, merchants for the carriage trade (such as Hedges & Butler) increasingly joined the hitherto despised ranks of advertisers. In many ways, the transformation in wine retailing, generally attributed to Gladstone's changes of the 1860s, was already underway in the previous decade.

Undoubtedly, though, Gladstone's changes did amplify this transformation. Two firms that rose to prominence in the 1860s, Gilbeys and Victoria Wine, help reveal some of the branding strategies that followed. In the 1850s, the Gilbey

brothers had worked in Cape wines. When these lost their tax advantages, the firm reinvented itself to supply the new, small retailers with European wines, developing a chain of agents, much as beer producers had done in the 1840s, and offering its own national brand ("Castle") as a warrant.⁷⁰ The strategy proved dramatically successful. Before it was a decade old, the firm was importing more wine and spirits than its nearest rivals in both categories. Victoria Wines began similarly but its advertisements indicate a development less direct. Its founder William Hughes had been a wholesale merchant much like the Gilbeys. He sold wine on commission to the trade, using the names of shippers as warrants.⁷¹ But by 1865, he had established his "Victoria Wines" brand and by 1869 had extended this to "Victoria" ports, sherries, clarets, and sauternes, which, much like Gilbeys' brands, could "be obtained of all grocers." In the 1870s, however, Hughes moved from distribution into retail, developing his own chain of retail shops to sell the Victoria branded goods. Then in 1874, his brand strategy shifted again, advertising not the Victoria brand *per se*, but the names of the exporters who provided the products in Victoria shops and bottles. These strategic shifts in branding--from shipper's to distributor's to retailer's and back to shipper's names again--suggest, as does advertising across the century, a search in turbulent times for the most efficacious warrant--the name on the store, the name on the bottle, or the names of those "leading houses" whose "special contracts" with Victoria helped validate what it sold.⁷²

Finally, advertisements of the 1870s suggest similar experiments by retailers more generally. Feltoe, which had previously thought its own name "sufficient" but now with stores in London, Manchester, and Brighton, promoted its "Specialité" range.⁷³ Foster's, another retailer, advertised not only Foster's brandy, whisky, port, and sherry, but also its "own... Rodenau" champagne. This kind of retail branding seems particularly strongly developed in sherry, whose market share was slipping.

Stapleton advertised its "Star Brand," Ward its "Mayfair," Kinlock its "Virgin," "Perfection," and "Catalan" ("our registered trade mark"), and Bowen and McKenzie its "Royal Victoria." Hedges & Butler, having advertised Gordon's sherry since the early fifties, returned sherry to the generic category in the 1870s, allowing its own name to sell the wine.⁷⁴

The trends in advertising echo those in the courts. Having begun the century as the principal name associated with retail alcoholic beverages, retailers were forced to explore in different degrees (and with different degrees of success) the strategies shown by Victoria: some favoured their own trade name, some minted brand new brands, some promoted the increasingly well-known names of producers and suppliers, and some tried all three.⁷⁵ By 1880, the result of such experiments was essentially that strong retailers advertised their own names and brands, and in turn rendered those of their suppliers more or less invisible. Conversely, weak retailers, found their names increasingly insignificant beside those of strong producers and distributors, whose names dominated in particular markets and products. *Pace* Iago, in this trade losing your name and your purse were probably not independent. Products "to be obtained of all wine merchants" made the latter interchangeable in the customer's eye. Products branded by merchants or distributors, however, had much the same effect on suppliers. Anonymous suppliers could be switched at will--and were.⁷⁶

So far we have seen alcoholic beverage firms manage brands through courts and advertising. Both could lead to direct and costly clashes between producers, distributors, and retailers. An examination of the port shipper Sandeman's books suggests, however, that some firms managed their brands in less confrontational ways, exploring like the Gilbeys and Victoria different strategies and learning from such

explorations to segment the market, subordinating their name in niches where they were weak and asserting it where they were strong.

Branding, as the physical act of marking a container, came naturally to wine shippers, who had long forged iron brands to mark their casks, generally putting their own mark at one end and that of the recipient on the other. At least by the end of the eighteenth century, however, port shippers were aware that these marks were more than addresses on wooden envelopes. As Shaw noted (and retailers complained), such brands had "magical" properties: their addition could add fifty percent to the value of wine.⁷⁷ Consequently, shippers started to control of their brands with care, learning when and as importantly when not to use them. Buying out an old partner in 1793, a port exporter stipulated that they might have a share of the old partnership's wine but "they shall not make use of the *brand mark*."⁷⁸ Firms also took brands off their cheap wine, lest the association damage that magic. An exporter's trade circular of 1840 offered: "Good cheap wine without our brand mark, £26 and under."⁷⁹

The records of Sandeman, a name which appears early and then regularly in retail advertisements for port, show an exporter developing its brand tactics. The firm began exporting from Porto in 1814 using one mark. In the 1840s, it reserved this mark for quality wine, introducing another for its cheap wines. In the 1850s, it introduced a third brand for shipments to New York and used no brand on consignments to Russia. In the 1860s, it bought large amounts of Baron Seixo's best wine, subject of the much cited trademark case noted above. But famous, imitated, and advertised though this brand was, Sandeman do not appear to have alluded to it, sending the wine to England under its own brand instead. In the 1870s, aware no doubt that retailer advertisements had helped establish its name as a mark of quality, Sandeman began bottling wine under its brand in London.⁸⁰ By the 1880s, its own brand were significant enough that the firm advertised to clarify the "Style and Brands

of their various Houses" (which dealt in Lisbon, sherry, and Madeira as well as port) while it publicly disowned wine with which its name had been associated. And, as we have seen, it protested against actions like Southard's and Kopke's.⁸¹

Yet, more like Hughes than the Gilbeys, Sandeman did not follow a linear progress. During this period, the firm also experimented with others' names. Normally, it shipped wine under its own brand to merchants like Fearon and Hedges & Butler or to distributors like Schweppes. As we have seen, however, the retailers generally put their own name and not the shipper's on what they advertised and sold. In the 1850s, apparently accepting demands like those Tovey unsuccessfully made of brandy merchants (see above), Sandeman removed its own name entirely from consignments in favour of those of particularly important customers. In the following decade, Sandeman took this practice even further. From 1864, it began shipping consignments to the firm of Garrard with the brand "shipped by George Garrard, Oporto." That relationship ended in 1870, but soon after, Sandeman did the same for the Gilbeys, for whom it shipped relatively low-priced wine under the brand "Gilbey, Oporto."⁸² So just as the identity of a shipper was becoming a particularly useful warrant for the public, Sandeman's reaction appears to have been not to promote its own identity as such, but self-effacingly, to help create a competing identity for one of its customers.

While it is difficult to understand complex motives from the dry records of invoices, it may be that Sandeman discovered that, among the contending forces shaping a brand strategy, there was more than one possible equilibrium. On one side, lay powerful customers who wanted to promote their own name, not Sandeman's. On the other, lay Sandeman's interest in exploiting the immanent power of its own brand with consumers. The strategy that developed ultimately took advantage of both. With high-end retailers, Sandeman built a long relationship, selling high-priced, quality

wines. Although this was principally a self-effacing strategy, one benefit was that, when they looked for additional warrants, retailers like Hedges & Butler, Thomas Nunn, William Lee, and others began put Sandeman's name in their advertisements for quality wine. With its profile thus raised, Sandeman could begin bottling, labelling, and distributing high-quality wine in London under its own, now recognized name. From 1860 on, however, the new outlets offered another avenue for growth in the cheaper wine market. Association with "grocer's port," however, might have endangered Sandeman's developing reputation for quality. Here, after a brief experiment with Garrard, Gilbeys came to the rescue. By using its own name and erasing Sandeman's, Gilbey provided the exporter with relatively risk-free access to the new, unfamiliar, single-bottle retail outlets. In return, Sandeman helped Gilbeys lay claim to a valuable Oporto identity. By the 1880s, Sandeman appears to have had sufficient confidence in its own brands to assert those forcefully and shed the relationship with Gilbey. That, of course, is just when Southard and Kopke's actions threatened the integrity of exporters' port brands. Hence, no doubt, the aggression in Sandeman's response.

In developing a brand this way, Sandeman benefited as much from unintended consequences of Hedges & Butler's, Garrard's, and Gilbeys' actions as from its own foresight. Indeed, brands in alcohol, both generally and particularly, seem to have arisen from the interplay of different interests and pressures rather than the actions of individual entrepreneurs such as Josiah Wedgewood, Henry Heinz, or Marshall Field. "Entrepreneurial" accounts tend to overlook, in particular, the role of consumers, so often portrayed as only reacting to the purposeful actions of firms. Yet, in accounting for "consumer society," it seems odd to paint the consumer as passive. That seems particularly inappropriate with brand and trademarks, where the case law developed

not in defence of a brander's property right, but in defence of the consumer's right not to be deceived. What retailers could and could not do with their names and marks turned very much on what consumers made of them. In fact, the record suggests that in making sense of marks, consumers were very much making brands.

That brands develop out of such sense-making is evident, for example, in the wine supply chain, where importers regularly attributed meaning to brands applied by exporters for other purposes.⁸³ *Ridley's*, for instance, sought to decode Martinez Gassiot's marks for its readers, concluding that "'◇◇◇◇-grape,' [is] currently their 'highest mark', though the highest used to be '◇◇◇-grape,'" and on another occasion, that one company's "mark *B in a triangle* is well known to represent their commonest Wine." In a similar vein, the *Wine Trade Review*, discussing the case of *Rivero v. Norris & Chapline*, reported that Rivero "had been in the habit of shipping to his agents ... wines of a very superior quality, in casks branded CZ. Under this brand such wines had become well known in the market."⁸⁴

The almost accidental connection between the shipper's notation and its interpretation and use in the marketplace reflected in that phrase "had become well known"--suggesting that "reader response" was as important as "authorial intention" with these texts--also turns up in the court cases. Though it is reasonable to suppose that the plaintiffs in these cases were particularly aggressive and self-promotional, their own testimony suggests that the "first mover" in brand creation may have been their customers. Kinahan, for example, was a constant promoter of its "LL" brand. Yet when it went to court to prevent the grocer Bolton from infringing, it acknowledged that this mark initially arose when the Duke of Richmond, a customer and the Lord Lieutenant of Ireland, "gave directions that a vat [of Kinahan's whisky] should be set apart for him, with the letters 'LL' and a ducal coronet painted thereon." In the case of "Crown Seixo" (this one involving a Baronial crown), a larger customer

base is involved. Here the plea notes that Baron Seixo used to stamp "the side of the casks, at or near the bung, with his coronet [and] the word 'Seixo'." "The plaintiff's wine," the report goes on, "obtained celebrity in the London market [and] acquired the name of 'Crown Seixo wine'." So the very brand that the Baron defended in court was perhaps not his entrepreneurial coinage. The wine appears to have acquired its name in the market. The Baron's astute intervention was to respond to that coinage, not to initiate it. That the brand grew this way evidently did not damage the Baron's case in court.

That this inversion of standard accounts was unexceptional to the entrepreneurs of the day is further suggested in the cases of *Bulloch v. Gray* and *Siegert v. Findlater*. The former involves the name "Loch Katrine Whisky." Both parties claimed the right to the term. Bulloch rested its case on the claim that once it announced that it used Loch Katrine in production the whisky "was from that time frequently called ... 'Loch Katrine' by their travellers and customers . . . although it was not so called in their advertisement-books, invoices, or orders."⁸⁵ Though neither party prevailed, Bulloch clearly saw it as no impediment to its claim that the brand name was the product of its customers and not of the firm itself. Through the court, it sought to appropriate what was said in the marketplace, not to defend what was written in its books. Similarly, in *Siegert v. Findlater*, Siegert laid claim to the term "Angostura," because, after "the introduction [of the bitters] into England in 1863 the name 'Angostura Bitters' was used for many years as descriptive of them." Again, it is acknowledged that "the plaintiffs themselves never adopted the name," but only that "from the time of their introduction in 1863 down to the present time the popular name of the plaintiffs' bitters in this country has been 'Angostura bitters'" and again that this was the term "used by the public to describe the plaintiff's goods." Siegert had merely "adopted the name ... which the public had given the bitters before."⁸⁶

Indeed, all agreed that Meinhard, the rival manufacturer, had been the first of the two contestants to put "Angostura" on a product, but popular use (rather than Meinhard's entrepreneurial action) was allowed to trump such precedence. Indeed, even though Meinhard had entered the words "Angostura bitters" at Stationers' Hall before the plaintiff, the judge concluded, "so far as England is concerned, the term 'Angostura bitters' means a bitter of the kind that is made by the plaintiffs."⁸⁷

Rather than being the creation of entrepreneurs that are then thrust before the passive consumer, at least some brands appear, like "Crown Seixo" or "Angostura," in fact to be more the productions of consumers that are then appropriated and fought over by producers and distributors.⁸⁸ Once a term had acquired specific meaning in the marketplace (as the courts decided had not happened in the case of "Nutritious stout" but had with "seixo" [stony] port and with "Bodega" wine stores), then entrepreneurs might make claims of ownership and develop strategy, but in some significant early cases at least, the process did not begin with the entrepreneurs. If, then, we want to understand the development either of individual brands or of "modern branding" as a practice, we need to look not just at the part of the communication cycle that leads from producers to relatively passive consumers, but also at the less-noticed part that begins with active consumers and travels back in the other direction.

This essay has sought to extend the history of modern brands, which the literature generally assumes arose in the late nineteenth and early twentieth century as a result of entrepreneurial action by vertically integrated firms. Public debates, court reports, newspaper advertising, and business records suggest that even the conservative wine trade was deeply engaged in branding practices before this period. Moreover, the alcoholic beverage trade more generally suggests that it was not large, vertically

integrated firms, but relatively small disaggregated ones that played a critical, early part in this development (though several of the firms discussed here such as Bass, Guinness, Sandeman, Moët, and Hennessy, helped no doubt by the brands they had built, went on to become large, integrated firms). Moreover, this trade also suggests that consumers played an active part in developing brands.

Modifying the history of brands suggests modifying the theory. Standard theories portray brands as weapons brandished between similar firms, between Guinness and Bass, for example. Yet the fight with Southard described above suggests something rather different. As correspondents in the fracas noted, port firms that normally competed were collaborating with one another. Their competition, in this instance, was a broker, with whom, given its position in the supply chain, they would normally collaborate.⁸⁹ The court reports and advertising campaigns similarly suggest that firms used their brands to discipline partners in disaggregated supply chains more than to fight conventional rivals. Guinness did not go to court to restrain other brewers. It went to restrain printers, bottlers, wholesalers, and retailers.⁹⁰

The disaggregated supply lines of the nineteenth century, though predicated on cooperation, appear then to have been rife with tensions. Indeed, brands aside, contemporary oenologists suggested that even the brandy in port could be explained in terms of these tensions.⁹¹ Brandy, one account argued, made the wine more stable for transportation. This allowed producers, exporters, and distributors to shift not just the wine but more importantly the significant costs of storage and aging down the supply chain.⁹² Brands didn't so much shift cost as power. The firm that could brand the chain could control it (and then shift costs onto and extract rents from weaker links). Hence we see attempts from Seixo in the Douro, to Sandeman in Oporto, to Gilbey in London, to Hedges and Butler on the high street to make their name the name that counts.⁹³ In different chains, different positions--producer, intermediary, or

retailer--proved better at creating brands. Increasingly, exporters branded expensive alcohol products, distributors and retailers, cheaper ones. Today, something very similar happens. Producers and distributors find it makes sense to supply alcohol not only under their own name, but also anonymously to be bottled by retailers as "buyers own brands."⁹⁴

In sum, as well as asking "when and why" brands occur (Wilkins's questions), it can be illuminating to ask "by whom" and "where" in the supply chain. Tracing the "why," as Wilkins does, only to the era of the large Chandlerian firm makes these questions hard to understand, for vertical integration absorbs the chain. Locating brands in earlier, distributed chains, by contrast, bring the struggles and the question of "where" back to light and changes the account of "why." Recent work has suggested that similar struggles are evident in modern, disaggregated chains--struggles that have been aptly called "vertical competitions." Consequently, brands may come to play in the supply chains future a role similar to that they played in the past.⁹⁵

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¹I am very grateful to Jean Lave, Teresa da Silva Lopes, and James Simpson for commenting on versions of this argument and to the National Endowment for the Humanities and the Fundação Luso-Americana para o Desenvolvimento for grants used in the early stages of the research reported here.

Neil McKendrick, John Brewer and J.H. Plumb, *The Birth of a Consumer Society* (London, 1982).

² See, for example, Nicholas Alexander and Gary Akehurst, "The Emergence of Modern Retailing, 1750-1950," *Business History* 40 (1998): 1-15; Roy Church, "Advertising Consumer Goods in Nineteenth-Century Britain: Reinterpretations," *Economic History Review* 53 (2000): 621-645; Nancy Cox, *The Complete Tradesman: A Study of Retailing, 1550-1820* (Aldershot, 2000); Christina Fowler, "Changes in Provincial Retail Practice during the Eighteenth Century, with Particular Reference to Central-Southern England," *Business History* 40 (1998): 37-54; Hoh-Cheung Mui and Lorna H. Mui, *Shops and Shopkeeping in Eighteenth-Century England* (Kingston, Canada, 1989); Claire Walsh, "Shop Design and the Display of Goods in Eighteenth Century London," *Journal of Design History* 8 (1995): 157-176.

³ See, for example, Alfred D. Chandler, *Scale and Scope: The Dynamics of American Capitalism* (Cambridge, U.S., 1990); Roy Church, "New Perspectives on the History of Products, Firms, Marketing, and Consumers in Britain and the United States since the Mid-Nineteenth Century," *Economic History Review* 52 (1999): 405-435; Robert Fitzgerald, *Rowntree and the Marketing Revolution, 1862-1969* (Cambridge, U.K., 1995); G. Fullerton and Ronald A. Low, "Brands, Brand Management, and the Brand Manager System: A Critical-Historical Evaluation," *Journal of Marketing Research* 31 (1994): 173-190; Nancy Koehn, *Brand New: How Entrepreneurs Earned Consumers' Trust from Wedgwood to Dell* (Boston, 2001); Pamela Walker Laird, *Advertising in Progress: American Business and the Rise of Consumer Marketing* (Baltimore, U.S., 1998); Susan Strasser, *Satisfaction Guaranteed: The Making of the American Mass Market* (New York, 1989); Richard S. Tedlow, *New and Improved: The Story of Mass Marketing in America* (New York, 1990); Mira Wilkins, "The Neglected Intangible Asset: The Influence of the Trade Mark on the Rise of the Modern Corporation,"

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⁴ Wilkins, "When and Why," 37.

⁵ Wilkins acknowledges brands stretching back to ancient Greece, but separates these definitively from modern brands. See Wilkins, "Neglected Intangible Asset." She argues that producers and their customers met face to face and so had no need for modern brands until the late-nineteenth century when long-distance trade in food and drink began. Like the loss of community or the rise of the bourgeoisie, this particular dissociation of sociability has been associated with almost every modern historical period. Nevett traces it to twelfth century. See T.R. Nevett, *Advertising in Britain: A History* (London: 1979), 6. Wine has been traded over long distances since before Herodotus. See Tim Unwin, *Wine and the Vine: An Historical Geography of Viticulture and the Wine Trade* (London, 1991).

⁶ Koehn, *Brand New*; Neil McKendrick, "Josiah Wedgwood and the Commercialization of the Potteries," in McKendrick et al *Birth of a Consumer Society*, 100-145.

⁷ Neil McKendrick, "George Packwood and the Commercialization of Shaving," in McKendrick et al *Birth of a Consumer Society*, 146-194.

⁸ For the importance of the consumer, see Church, "New Perspectives"; Mary Douglas and Baron Isherwood, *The World of Goods* (London, 1981); Philip Scranton, "Manufacturing Diversity: Production Systems, Markets, and an American Consumer Society, 1870-1930," *Technology and Culture*, 35 (1994): 476-505; Walsh, "Shop Design."

⁹ Koehn, *Brand New*, 3

¹⁰ Southard had previously employed William Hughes, founder of Victoria Wines, and formed a partnership with Henry Gilbey. Consequently, he was closely connected to the distribution and retailing transformation involving Victoria Wines and Gilbeys described below. See Asa Briggs, *Wine for Sale: Victoria Wine and the Liquor Trade, 1860-1984* (London, 1985); [Southard and Co], *An Outline of the*

Foundation and Development of the House of Southard: With a Review of the Wine and Spirit Trade Since 1861 (London, 1945).

¹¹ "The Use of Wine Brands," *Ridley and Co.'s Wine and Spirit Trade Circular* [hereafter, *Ridley's*] (July 12, 1883): 198-203; *Morning Post*, (June 22, 1883): 3; *ibid*, (June 23, 1883): 6; *ibid*, (June 27, 1883): 3.

¹² Cockburn, Smithes and Co., Croft and Co., Hunt, Roope, Teage and Co., MacKenzie, Driscoll and Co, Offley, Forrester and Co, and Silva and Cosens defended Sandeman in a joint letter, *Morning Chronicle* (June 20, 1883): 2.

¹³ *Wine Trade Review* [hereafter, *WTR*] (July 15, 1883): 315.

¹⁴ Many of these topics are modern enough to feature in the debate between Casson and Wilkins about the ideology of brands. See Mark Casson, "Brands: Economic Ideology and Consumer Society," in *Adding Value: Brands and Marketing in Food and Drink*, ed. Geoffrey Jones and Nicholas Morgan (London, 1994): 41-58.

¹⁵ Mathew Freke Turner, "Wine and Wine Merchants," *New Quarterly Magazine* (April, 1874): 595-620, quotation at p. 595; André Simon, *Blood of the Grape: The Wine Trade Text Book* (London, 1920), 256.

¹⁶ According to the wine merchant Charles Tovey, that was when French brandy producers formed the United Vineyard Proprietors to counter the overbearing brand dominance of Martell and Hennessy. See Charles Tovey, *British and Foreign Spirits: Their History, Manufacture, Properties, etc.* (London, 1864), 206-210.

¹⁷ In general, this account of necessity steers around the intricate, distinct, and principally unbranded world of grog shops and cheap gin. Here the intoxicating character of alcohol was more important than the symbolic, so brands were less significant, although, following the moral panic over gin palaces in the late 1820s, firms like George Henekey's Grey's Inn Wine Establishment were praised for offering good quality, cheap, retail-branded wine by the glass as an alternative for the less affluent.

¹⁸ T.G Shaw, *Wine, the Vine, and the Cellar*. Second edition (London, 1864), table X. Port made up the bulk of Portuguese wine exports. It came from the Douro River valley in the north and was exported through the coastal entrepot of Oporto, whence its name.

¹⁹ See Jonathan Swift, "On the Irish Club," *The Poems of Jonathan Swift* 3 vols. ed. H. Williams (Oxford, 1937) II: 486-488. Symbolism changed north of the border, where claret was associated with the "auld alliance" and port with the Whig usurpation.

²⁰ Turner, "Wine and Wine Merchants," 598.

²¹ Shaw, *Wine*, 153; idem, table X; Conceição Andrade Martins, *A Memória do Vinho do Porto* (Lisbon, 1990), quadro 66.

²² George B. Wilson, *Alcohol and the Nation: A Contribution to the Study of the Liquor Problem in the United Kingdom from 1800 to 1935* (London, 1940), 41. Spanish wines collectively had overtaken Portuguese wines in 1851. Missing from this list are gin and Scotch whisky. From the evidence assembled for this paper, though both are present, both appear to have been less significant in the nineteenth century than they have since become among branded alcohols.

²³ Shaw, *Wine*, 21; Turner, "Wine and Wine Merchants," 595; Sandeman et al., *Morning Post* (June 20, 1883) 3; "Cognac Brands", *WTR* (Feb. 18, 1865): 23.

²⁴ See, for instance, Thomas Tomkin's advertisement in *Tatler* (June 17-20, 1710): 4.

²⁵ Indeed, it was on the strength of their blends that the port exporters claimed in 1883 to be legitimate branders and not, like Kopke, mere middlemen.

²⁶ See, for example, Arthur Hill Hassall, *Food and Its Adulterations: Comprising the Report of the Analytical and Sanitary Commission of 'The Lancet' for the Years 1851 to 1854* (London, 1855).

Hassall's name was later used to endorse Raggett's beer and Marshall's Hungarian *eau de vie*.

²⁷ A law of 1727 (1. G.2 st.2 c.17. §7.8) made it illegal to import most wine in containers holding less than 25 gallons. This restriction, lifted for some French wines in 1779 and 1786, was not entirely

revoked until Gladstone's reformation. Champagne and cognac producers were among the earliest to bottle overseas. One wine merchant suggested that the French did not trust English bottling (see James Denman, *The Vine and Its Fruit* (London, 1875)). Nevertheless, cognac *négociantes* continued to send both bottled and bulk brandy to Britain through the nineteenth century. Brewers shipped beer in bulk in this period, expecting retailers to bottle the beer and apply labels printed at the brewery and supplied with the beer.

²⁸ See Denman, *The Vine and Its Fruit*, 468. For "damaged" beer, see the case of *Allsopp v. Fraser* (1853, see table 3, below). For more on the adulteration of sherry, see James Simpson, "Blending, Mixing, and Adulteration: Responding to Changing Markets, Sherry, 1840-1880," *Business History*, forthcoming.

²⁹ Ingredients included alum, beetroot, bilberries, cardamom, cashews, cochineal, elderberries, gum-dragon, lead, lime flowers and tartar, with generous amounts of turnip juice, raisins, cider, and brandy, the whole sometimes fined with powdered concrete.

³⁰ Frederick Engels, *The Condition of the Working Class in England* (New York, 1958), 82; *Times* (July 28, 1869): 9. Anthony Trollope, "The Wine Merchant," in Anthony Trollope, *London Tradesmen* (London, 1927), 73-80, quotation at p. 80; among others *Ridley's* discussed a merchant who found a consignment of wine bought for £6,000 was barely worth £1,000 (*Ridley's* (June 6, 1856): 4).

³¹ Archives of A.A. Ferreira, Vila Nova de Gaia, Portugal. Incoming letters: Thomas Holdsworth Hunt to Hunt, Roope, Oporto. October 15, 1825; "A Practical Man," *The Innkeeper and Public Brewer*, London, [1845].

³² Money back guarantees appeared across the century. The cases of *Rummens v. Offley* (1850) and *Osborne v. Lemon and Hart* (1870) show how merchants could wriggle and, in the latter case, claim insolvency, when customers tried to get their money back. For *Rummens v. Offley*, see *Times* (April 2, 1850): 8. For *Osborne v. Lemon and Hart*, *Times* (June 28, 1870): 11.

³³ The indirect ways in which names, addresses, and dates in advertisements can provide subtle warrants make it hard to accept rigid distinctions between "informative" and persuasive or "emotional" advertising.

³⁴ Wilkins, "Neglected Intangible Asset," 68. Critical English statutes in this period were the Merchandize Marks Act of 1862, the Trade Marks Registration Act of 1875 (trademark lawyers and the Attorney General had strongly opposed the inclusion of a registry in the provisions of 1862), and the Patents, Designs, and Trade Marks Act of 1883. The first U.S. federal statute passed in 1870 but, ruled unconstitutional, it had to be rewritten and resubmitted in 1881.

³⁵ This claim may be particularly true in the case of trade marks. Contemporary legal commentators argued that the British Merchandize Marks Act was ineffectual, while the Supreme Court ruled the U.S. statute unconstitutional. See Edward Lloyd, *The Law of Trade Marks: With Some Account of Its History and Development in the Decisions of the Courts of Law and Equity*. Second Edition (London, 1865), xi; Wilkins, "Neglected Intangible Asset", 74.

³⁶ Like Wilkins, I elide brands, trade names, and trademarks unless distinction seems important.

³⁷ D.M. Kerly, *The Law of Trade Marks and Trade Name: With Chapters on Trade Secret and Trade Libel, and a Full Collection of Statutes, Rules, Forms, and Precedents*. Third Edition. (London, 1908), 5.

³⁸ F.M Adams, *A Treatise on the Law of Trade-Marks: With the Trade-Marks Registration Act of 1875 and the Lord Chancellor's Rules* (London, 1876), 3. Adams continues, "That a branch of law relating to the interests of the commercial part of the community should not be developed until after those interests had become an important subject for protection at common law, was of course perfectly natural."

³⁹ Rowland Cox, *A Manual of Trade-Mark Cases Comprising Sebastian's Digest of Trade-Mark Cases* (Boston, 1881).

⁴⁰ See Nevett, *Advertising in Britain*, 25 and Thomas Richards, *The Commodity Culture of Victorian England: Advertising as Spectacle, 1851-1914* (Stanford, 1990), chapter 4, for the precocity and resilience of this sector. Nevett argues, "medicine vendors may well be regarded as the pioneers of modern marketing" (*Advertising in Britain*, 24). Many patent medicines, of course, drew their effects from the alcohol they contained. The two products were certainly close: in the case of *Raggett v. Findlater* (see table 3 below), *Raggett* defended their right to the term "nourishing" by touting the medicinal properties of its special additive to beer. *Wolfe's Schnapps* was advertised both as medicine and as drink, while *Meinhard* (the manufacturer of rival schnapps in *Siegert v. Findlater*, see table 3) was subject to stamp duty on account of medicinal claims it made.

⁴¹ Koehn assumes Wedgwood is the first great brander and Browne argues Wedgwood used trademarks and not patents to promote his work. The court record does not wholeheartedly support these claims. Wedgwood only appears in one case (*Cox, A Manual*, case 96), reported or not, found in researching this paper. See Koehn, *Brand New*; William Henry Browne, *A Treatise on the Law of Trade-Marks and Analogous Subjects* (Boston, 1873).

⁴² *WTR* (June 15, 1877), 231.

⁴³ This claim does not imply that *Cox* is incomplete. *Reported* has a distinctive meaning in legal terminology. Not all cases were formally reported--and in England before the Incorporated Council of Law Reporting of 1866, reporting was particularly haphazard. Table 3 and the discussion that follows looks beyond the reports to cases appearing in the newspapers or discussed in the trade press of the period.

⁴⁴ Such a list, produced by looking for known brand names, is inevitably incomplete. Cases must have been fought over brands unknown to this author. And some cases by known brands could not be traced. Shaw, for example, lists three cases involving Moët that were not found elsewhere. It is also hard to say definitively what counts as a trademark case. The unreported cases included here were chosen for the similarity of the legal issues to the reported cases. Thus, for example, *Guinness v. Porteus* is similar

to Guinness v. Ulmer in the nature of the defendant and the behaviour enjoined.

⁴⁵ Gourvish and Wilson include "falsification of trademarks" in what they call "the familiar catalogue of complaints by British brewers." Table 3 shows brewers took their complaints to court. T.R. Gourvish and R.G. Wilson, *The British Brewing Industry, 1830-1980* (Cambridge, U.K., 1994), 173. Familiar names in table 3 also suggest that early movers created enduring brands. For the related notion of "eternal brands," see Teresa da Silva Lopes, "The Growth and Survival of Multinationals in the Global Alcoholic Beverages Industry," Ph.D. dissertation, University of Reading, May 2002.

⁴⁶ On the back of court victories both in the *Tribunal Correctionnel* in Le Havre and the court of Chancery in England (1849 v. Gemmer, see table 3), Montebello developed a campaign denouncing imitators. The campaign presumably scared other potential infringers, but it also carries the subtext that a champagne much imitated must be good. The advertisements run from the 1850s to the 1870s.

⁴⁷ See Hennessy v. Kennett (1877), Allsopp v. Fraser (1853), Bass v. Fraser (1853) (all in table 3) for examples.

⁴⁸ Space does not allow discussion of the international character of these cases. Contemporary commentaries suggest that the law of 1862 was made more with an eye to international markets than domestic ones. English firms were active in Foreign courts (Allsopp, for example, had cases in Belgium) and sought protection for foreigners in Britain so that the English could demand reciprocal protection overseas. See [Editorial] *Times* (Feb 19, 1862): 4.

⁴⁹ Wilkins, "Neglected Intangible Asset," 79.

⁵⁰ See Strasser, *Satisfaction Guaranteed*, for example.

⁵¹ Only seven of these fifty-nine cases are canonical fights between like rivals: Seixo v. Provesende, Bulloch v. Gray, Banks v. Sheppard, Boule v. Castells, In re Worthington (where Bass raised the protest); Raggett v. Findlater, and Siegert v. Findlater. (In the last case, Findlater appeared as the English agent for the bitters manufacturer, Meinhard.) Since early in the century, brewers had been developing tied houses and from the 1840s, larger brewers developed networks of agencies. See Peter

Mathias, *The Brewing Industry in England, 1700-1830* (Cambridge, U.K., 1959); Richard G. Wilson, "Selling Beer in Victorian Britain," in *Adding Value: Brands and Marketing in Food and Drink*, ed. Geoffrey Jones and Nicholas Morgan (London, 1994): 103-125. Table 3 suggests that brewers used the courts over this period to discipline such loose networks.

⁵² Southard's "Blue Circular", January 4th, 1871, reprinted in [Southard & Co], *An Outline*, 21.

⁵³ Letter to *WTR* (Jan 21, 1865): 10-11. For the significance of brands on casks, see the section on Sandeman's brands below.

⁵⁴ Brands on corks were particularly contentious. They prevented retailers from simply switching labels, but both retailers and judges felt that there was something odd in defending a mark that was invisible to the consumer.

⁵⁵ Letter, "*WTR* (Sept 15, 1877): 386. At least since *Blanchard v. Hill* (1742), people had worried that brands led to monopolies (see Kerly, *The Law of Trade Marks*, 2). Southard and the anti-brand faction saw their resistance to brands as a struggle against monopolization. Machlup and Penrose suggest that anti-monopoly feelings against patents were at their strongest in this period (1867-1877). See Fritz Machlup and Edith Penrose, "The Patent Controversy in the Nineteenth Century," *Journal of Economic History* x (1950): 1-29.

⁵⁶ "The True Value of Brands," *WTR* (July 15, 1883): 315.

⁵⁷ Part of the venom of the 1883 row arose because the port shippers were classic intermediaries, whom Southard's supporters portrayed as parasites. The *Wine Trade Review*, however, argued that "intermediate supply" had contributed to the expansion of the wine trade ([Editorial], *WTR* (Jan 15, 1864): 2). As the number of intermediaries grew, so did tensions between them and on one side producers and on the other, retailers.

⁵⁸ The main venue was the *Spectator*, but the *Daily Courant* was also involved.

⁵⁹ Surveying nineteenth century advertising is not easy. By the 1840s, *Times* was running around 500 advertisements per week and *The Morning Chronicle* about 200. Advertisements by alcoholic beverage

producers, brokers, and merchants for both the public and the trade are scattered serendipitously among these. Repetitions, minor alterations, mutating names, and changing partnerships make it hard to offer robust samples. Moreover, across the century, both national and regional papers burgeoned, as did the advertisements that supported them. Founded in 1855 (as the *Daily Telegraph and Courier*) and giving nearly two-thirds of its space to advertisements, the *Telegraph*, for example, increased the earlier figures for the *Times* and *Morning Chronicle* by an order of magnitude. By 1890, it carried nearly 6,000 advertisements per week. See Lucy Brown, *Victorian News and Newspapers* (Oxford, 1985). The following comments are based on a detailed sample of some 1,000 seemingly representative advertisements culled from major daily papers (*Times*, *Daily Telegraph*, *Morning Post*, *Morning Chronicle*, and *Manchester Guardian*), some weeklies (*London Illustrated News*, *Punch*, *Spectator*), and the trade press (*Ridley's*, *Wine Trade Review*, and *Morning Advertiser*), with a few examples taken from local papers. Most examples come from December issues, generally the heaviest month for alcohol advertising.

⁶⁰ Evidently the public knew some famous names: Stapleton, a major advertiser, boasted that his own retail brand champagne was superior to Moët's. But except as foils, wine merchants showed little enthusiasm for advertising others' names over their own. *Times* (Dec 19, 1845): 8.

⁶¹ *Morning Chronicle* (Oct 6, 1834): 1.

⁶² *ibid* (Dec 23, 1843): 1.

⁶³ *ibid* (Dec 17, 1834): 1; *Times* (Dec 3, 1850): 1.

⁶⁴ *ibid* (Dec 2, 1850): 3.

⁶⁵ *ibid* (Dec 1, 1843): 1.

⁶⁶ The campaign ran into the 1870s. Sampling makes it difficult to understand the frequency with which firms advertised. The case of *Kinahan v. Bolton*, however, provided some evidence, noting that "from 1853 down to 1862 [Bolton] had advertised LL whisky 105 times and whisky of LL flavour 259 times" ("Ireland," *Times* (May 28, 1863): 12). Three hundred and sixty-four advertisements over ten

years (one every ten days) does not seem extravagant, but Bolton was a Dublin grocer. Kinahan, marketing throughout Britain, certainly advertised more extensively and more frequently.

⁶⁷ As an indication that his brand had previously been used without permission, in 1850, J.V. Carvalho, owner of Bom Retiro perhaps the best-known and most widely advertised port brand in England at that time, announced in the *Morning Chronicle* that, "to put an efficient stop to all the impositions which have been practised of late years," in future his wine would be branded Carvalho Bom Retiro and no other "Bom Retiro" wines would be genuine. *Morning Chronicle* (Dec. 14, 1850): 1.

⁶⁸ *Times* (Dec 13, 1856): 1.

⁶⁹ The company would eventually register a stag's head on a bronze green label as its own brand. In this decade, Findlater also integrated backwards into brewing. See Alfred Barnard, *The Noted Breweries of Great Britain and Ireland*, 3 vols (London, 1889-91) II: 384-388. At the time of the court case Raggett v. Findlater (1873--see table 3), however, the beers at issue (both Raggett's and Findlater's) actually came from Truman's Brewery.

⁷⁰ With this, the Gilbeys would ultimately brand 200 different beverages (Nicholas Faith, *Victorian Vineyard: Chateau Loudenne and the Gilbeys* (London, 1983). Standardization, according to one historian of the firm, was particularly important: "A Gilbey claret bought at Reading should have the same look and taste as a claret bought in Wolverhampton ... a consumer in other words, could learn to rely on a Gilbey's label" (Alec Waugh, *Merchants of Wine: Being a Centenary Account of the Fortunes of the House of Gilbey* (London, 1957), 19.

⁷¹ See Hughes's circular in *WTR* (July 16, 1864): 13. It advertises Sandeman, Kopke, and Crown Seixo ports, among others.

⁷² See advertisements for Victoria Wines in the *Daily Telegraph* (Nov 1, 1869): 7; *ibid*, (Nov 10, 1874): 10; *ibid*, (Dec 13, 1884): 6. The "Wine Stock Account, Worshipful Company of Fishmongers, 1872-1882," (Guildhall Library, ms 21 603, vol. 1) suggests that the combination of both shipper and wine merchant was probably a particularly powerful warrant. See also Trollope's *The Prime Minister*, where

the uncertain parvenu Mr Dick doubly validates his champagne by saying "It came out of Madame Cliquot's cellars before the war, and I gave Sprott and Burlinghammer 110s for it." (Anthony Trollope, *The Prime Minister* (Oxford, 1975), 103.) Occasionally a broker would invoke the name of the bottler as well as the shipper to try to validate his stock, but this ploy could backfire: "The 1834's, 40's, and 42's were represented as 'bottled by Messrs. Peters, Hall and Co.' a palpable mis-representation," *Ridley's* fulminated, "as this first-class bottling house was only established in July, 1849." See *Ridley's* (March 6, 1862): 11.

⁷³ By the 1870s, Feltoe was advertising in the *Isle of White Herald*.

⁷⁴ *Times* (Dec 14, 1878): 13; *Times* (Dec 9, 1870) 11; *Daily Telegraph* (Dec 17, 1874): 16.

⁷⁵ The law of 1875 only protected existing brand coinages and did not protect new inventions. This anomaly was corrected in 1883. We might expect, therefore, that in the interim new brand words were not coined. The sample used here did not allow this point to be argued conclusively either way.

⁷⁶ Over the century, for example, Croft, Sandeman, Seixo, Silva Cosens, Smith Woodhouse and no doubt other port firms supplied what the customer saw as "Gilbey's Castle Port". See Alec Gold, *Four-In-Hand: A History of W. & A. Gilbey Ltd, 1857-1957*; "A Large Purchase of Port," *WTR* (July 15, 1870) 162; and the account of Sandeman and Gilbey below.

⁷⁷ Shaw, *Wine*, 19. Firms began to attend to the appearance of their brands with all the concern of modern corporate image departments dictating the use of a logo: "We shall attend to your directions about the Brand Mark—it might perhaps have been a little more in the style of these things to have put the letter underneath the C only instead of C.*o." (Archives of the House of Sandeman, Vila Nova de Gaia, Portugal: Sandeman and Co. [Oporto] letterbook, 1828-1834. To Sandeman, Gooden and Forster [London], May 5, 1829.)

⁷⁸ Archives of A.A. Ferreira, Vila Nova de Gaia, Portugal. Offley [London] letterbook, 1793-1796. To Campion, Offley, Hesketh [Oporto], February 6, 1793. Emphasis in original.

⁷⁹ Smith Bailey circular, Jan 16, 1840. "Trade Circulars," Guildhall Library ms 8651.

⁸⁰ See advertisements for Hedges & Butler, *Times* (Nov 5, 1856): 14; Nunn, *Times* (Dec 13, 1856): 15; Lee, *Times* (Dec 1, 1865): 11; Martin, *Daily Telegraph* (Dec 10, 1869): 9. Both Nunn and Lee regularly advertise Sandeman port in the sixties.

⁸¹ Archives of the House of Sandeman, Vila Nova de Gaia, Portugal: Invoices of wine shipped, 1830-1915 (invoices have two columns, showing the brand to be placed at each end of the cask); Ledgers, 1862-64, 1865-1867, 1868-1870. For clarifying its brands, see its advertisement, *WTR*, (Jan 15, 1883): xviii. For its protest, see "Confusion of Brands," *Ridley's* (Jan 12, 1883): 12. Others who bought Seixo wine were not so reticent. In an interesting piece of multiple warranting, Hughes's circular advertised "Crown Seixo 1858 Knowle's landed 1860." See *WTR* (July 16, 1864): 13.

⁸² Both of these arrangements look quite distinct from the joint ventures Sandeman set up or the agency role it played for Southard in the 1892--a partnership that ended unhappily. House of Sandeman, Vila Nova de Gaia, Portugal: Invoices of Wine Shipped, 1891-95.

⁸³ Port shippers branded a *marca* on their casks that allowed them to identify the blend inside and so, among other things, respond to complaints about the wine or to help produce a similar blend for a repeat order. As the symbols in the *marca* indexed private marks on stores of wine in the shipper's lodges, the meaning for the shipper was more or less inscrutable to outsiders, but that inscrutability clearly did not prevent importers, retailers, and customers from developing their own readings of the *marca*, as we see here.

⁸⁴ *Ridley's* (May 6, 1857): 7; *ibid* (July 5, 1856): 1; "Wine Brands," *WTR* (March 15, 1870): 54.

⁸⁵ *Bullock v. Gray* (see table 3), 219.

⁸⁶ The case of *Siegert v. Ehlers* (see table 3) indicates that in 1874, Siegert was still describing its product as "Aromatic Bitters."

⁸⁷ "*Siegert v. Findlater*" (see table 3) *LT* (38) 351 and 354.

⁸⁸ The oddities exercised the judge greatly, who granted Siegert the injunction it sought but hesitated to affirm Siegert's trademark on the convoluted grounds that "as long as the class consists of one species

only the name of the species and the name of the class will be the same." "Siegert v. Findlater," 353.

⁸⁹ Indeed, for all their disdain for Southard, Sandeman did collaborate with the broker both before and after their public fight. The firm employed Southard to sell the stock of the firm of David Sandeman, Glasgow (Announcement, *WTR* (March 15, 1870): 73), and it prepared port for Southard's shipping in 1892. (See note 54, above.)

⁹⁰ Lynch and Vaizey (p. 225) argue that by 1880 Guinness, which had previously worked along the beer supply chain, withdrew to Dublin, quoting its prices "fob Dublin." It may be that by this time the firm had forged such a strong brand and so widely advertised its legal resources that it no longer needed to wrestle with agents, bottlers, printers, and the like, but could sufficiently control the supply chain from a distance through the use of its brand. See Patrick Lynch and John Vaizey, *Guinness's Brewery In the Irish Economy, 1759-1876* (Cambridge, U.K., 1960).

⁹¹ J.L.W. Thudichum and August Dupré, *A Treatise on the Origin, Nature, and Varieties of Wine: Being a Complete Manual of Viticulture and Oenology* (London, 1872).

⁹² Again it was the retailers who got caught. The logical endpoint of these attempts to shift storage costs down the chain is the customer, but as Trollope noted, customers resisted: "The drinkers of wine now send to [the wine merchant] for six dozen, for three, or even for a dozen at a time, and wisely impose upon him the duty of keeping the wine,--and charging for the capital required." See Trollope. "Wine Merchant," 76.

⁹³ Several accounts of tobacco suggest that there, too, brands developed in supply-line struggles between producers and retailers. See B.W Alford, *W.D. and H.O. Wills and the Development of the U.K. Tobacco Industry, 1786-1965* (London, 1973); Ronald A Fullerton, "How Modern Is Modern Marketing?: Marketing's Evolution and the Myth of the "Production Era," *Journal of Marketing* 52 (1988): 108-125; Mathew Hilton, "Retailing History as Economic and Cultural History: Strategies of Survival by Specialist Tobacconists in the Mass Market," *Business History* 40 (1998): 115-137

⁹⁴ Buyers own brand strategies receive surprisingly little discussion in the branding literature.

⁹⁵ Timothy Bresnahan and John Richards, "Local and Global Competition in Information Technology," *Journal of the Japanese and International Economies* 13 (1999): 336-371; Paul Duguid, "In Vino Veritas: The Future and the Past of Global Supply Chains" in M. Kenney, ed., *Locating Global Advantage: Industry Dynamics in a Globalizing Economy* (Palo Alto, forthcoming 2003).