

Édouard Manet, *A Bar at the Folies-Bergère*, 1882.
Oil on canvas. 96 × 130 cm.
Courtauld Gallery, London.



The Manufacturer's Signature: Trademarks and Other Signs of Authenticity on Manet's *Bar at the Folies-Bergère*

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I.

Too much ink has been spilled on Édouard Manet's *A Bar at the Folies-Bergère* (1882)—but still not enough on the contents of the bar.¹ It is crowded with bottles—bottles in many ways far more distinctive than the blur of patrons reflected in the painting's paradoxical mirror. To the left on the bar, a half-dozen are crowded together: a clear glass bottle filled with reddish fluid, a brown glass bottle whose red-triangle label identifies it as Bass Ale, and a cluster of four dark-glass gold-foiled bottles of Champagne. One example of each of these bottle types is strategically reflected in the mirror, just to the left of the barmaid's black-clad right elbow. Exhibited at the 1882 Salon, the official annual exhibition of the French Academy of Fine Arts, Manet's *Bar* pressed labeled bottles and nascent intellectual property law into the highest echelons of official art. Read from left to right, the bottle labels instantiate—*represent* is too weak a word—the artist's signature (“Manet 1882”), the world's “first” registered trademark (Bass's red triangle), and the trade dress of the archetypal product protected as a geographic indication (Champagne). Three marks of authenticity so distinct that they remain immediately distinguishable to this day. Manet painted and signed his last great work against the backdrop of the Paris Convention for the Protection of Industrial Property, the first international treaty for the protection of intellectual property, including patents, trademarks, industrial designs, and geographic indications. Debated and ratified in Paris from 1878 to 1883, it is still in force and, with nearly 180 contracting member countries, is one of the most widely adopted treaties worldwide. Manet's judiciously chosen and distinctly rendered labels depict three types of intellectual property—artistic signatures, geographic indications, and trademarks—that would come to structure not only art's position in global trade but also the contours of global trade itself. These labels and their watershed significance have been hiding in plain sight for over 150 years, as their

decipherment necessitates hitherto distinct bodies of knowledge: the history of art and the history of intellectual property law. This article marshals both in an effort to retell the twinned births of international intellectual property law and modern art in early 1880s Paris.

The eponymous venue in the title of Manet's *A Bar at the Folies-Bergère* is perhaps the only unambiguous element in the work. The Folies-Bergère was one among many café concerts, music halls, and other popular venues known for their music, drinks, and festive atmosphere, along with vices like prostitution. Around 1881, the Folies-Bergère initiated an ultimately doomed effort to elevate its status to a *concert de grand musique*.² But it never entirely shed its seedy reputation: "The Folies Bergère in the Rue Richer and the Palace Theatre in the Rue Blanche are different from the music halls; these last named places may not always be quite irreproachable."³ As critics and scholars never fail to point out, the relationship between the barmaid and her customer was charged, a social fact rendered formally vertiginous by Manet in the deranged relationship between the scene before us and its reflection in the mirror. For good reason, critics and scholars have trained their attention overwhelmingly on the inscrutable barmaid, her phantom customer, and the incongruities of the mirror. For those new to the painting: take a close look. Despite numerous scholarly attempts at reconciliation, the individual elements and overall composition simply do not add up.⁴ Contemporaneous critics accused Manet of compositional ineptitude or incendiary antics. Had Manet not received a medal at the Salon of 1881—the decisive vote was cast, unexpectedly, by the academic artist Alexandre Cabanel—and been made a chevalier in the Legion of Honor—through the intervention of his friend and short-lived French minister of culture Antonin Proust—thereby receiving the privilege, for the first and only time in his life, to bypass the jury, there is reason to believe that his *Bar* would not have been accepted into the Salon. So distressing were the barmaid, the customer, and the mirror.

In contrast to both 1880s criticism and art-historical analyses from the past half-century, I displace this seemingly key triad to the conclusion of my essay and argue instead that the main figures *in* Manet's *Bar* are comprehensible only in relation to the labeled bottles *on* the bar. Rather than focus on the figures and the mirror, I follow the path forged by the nineteenth-century art historian and critic Ernest Chesneau in his review of the 1882 Salon and *A Bar at the Folies-Bergère*:



Those who, like us, dread the silliness and blandness to which the search for “distinguished subjects” in painting inevitably leads, are well served in this last painting by M. Manet. The creature installed by the artist behind the marble bar loaded with fruits and bottles is the quintessence of “girl.” It is not in this that we see the essential merit of his work. This merit is in the correct vision of things [*la juste vision des choses*], of their coloring, of their luminous vibration, of their undulating and passing appearance, so fleeting, so rapid.⁵

I will leave aside Chesneau’s implicit paean to impressionism and instead attend to “the correct vision of things”: *things* grasped from the perspective of political economy and intellectual property law. With this shift in perspective, I hope to seize the unfolding transformation of tangible things into intangible signs that undergirded both high capitalism and high modernism and that are the true subjects of Manet’s last big painting.⁶ As much as the bottles and their labels were designed and painted to be grasped instantaneously, we will have to approach them with the utmost fastidiousness and care. For they are not only forms meticulously painted on a canvas. They are also paradigmatic nodes in the ascendant global economy.

II. Deterritorialization and Reterritorialization in Nineteenth-Century Global Trade

On April 8, 1879, Manet sent identical letters to the newly installed republican (and thus potentially sympathetic) prefect of the Seine, Ferdinand Herold, and president of the Municipal Council of Paris, Jules Castagnary. Manet proposed new decorations for the Paris Hôtel de Ville (City Hall), burned down by Communards in 1871 and still under construction at the end of the decade. Manet wrote,

[I propose] to paint a series of compositions representing “The Belly of Paris,” to use the current phrase that best expresses my idea, that is, the various trades, bustling about in their proper settings, the public and commercial life of our time. I would have Paris markets, Paris railways, the Paris port, the underground of Paris, Paris races and gardens.⁷

Manet appropriated the phrase “The Belly of Paris” from the eponymous 1873 novel penned by his longtime champion Émile Zola. The setting and quite nearly the protagonist of Zola’s novel was Les Halles, the Second Empire iron-and-glass food market that remained an icon of Paris until its dismantling in the 1970s. In the words of Zola,

Florent watched Les Halles emerge slowly from the shadows, from the dreamland in which he had seen them, stretching out

like an endless series of open palaces. Greenish-grey in color, they looked more solid now, and even more gigantic, with their amazing mast-like columns supporting the great expanse of roofs. They rose up in geometrically shaped masses; and when all the inner lights had been extinguished and the square, uniform buildings were bathed in the light of dawn, they seemed like some vast modern machine, a steam engine or a cauldron supplying the digestive needs of a whole people, a huge metal belly, bolted and riveted, constructed of wood, glass, and iron, with the elegance and power of a machine working away with fiery furnaces and wildly turning wheels.⁸

Little historic imagination is required to envision the scenes Manet might have painted, something akin to his notorious 1873 painting *The Railway*, depicting his favorite model and a child in front of the Gare Saint-Lazare. But it was not be. The letters, which went unanswered, were prompted by a sympathetic audience with Eugène Viollet-le-Duc (architect, preservationist, and consultant on the reconstruction of the Hôtel de Ville) and a cruel one with Théodore Ballu, the lead architect, who “treated me as if I were a dog about to lift his leg against a municipal wall!”⁹ And yet Manet’s ambitions to capture “the public and commercial life of our time” would not die in the hands of French bureaucrats. Instead, as Ruth Iskin argues, *A Bar at the Folies-Bergère* “can be viewed as a substitute for his idea of *Le ventre de Paris* [*The Belly of Paris*] . . . the world order of glittering Parisian goods.”¹⁰

If Manet’s early 1880s painting channeled his ambitions for the “Belly of Paris,” it was a world apart from the “Belly of Paris” meticulously recounted by Zola. Published in 1873, Zola’s novel was set in the 1850s. Its loquacious descriptions of foodstuffs, stalls, and shops were firmly planted in an early nineteenth-century world of regional trade, with few hints of the industrial transformations to come.¹¹ Nearly all the produce was grown close enough to Paris to be carted in daily by horse or mule. The progress of the novel is halted incessantly with rhapsodic descriptions of cabbages, sausages, cheeses, beers, brandies, and wines, enough to satiate a glutton. Yet with the exception of a few famous cheeses, none of the products hail from outside France. What is more, every product—be it turnip, fish, porkchop, or beer—is weighed or cut or poured to order; nothing, save for a few bottles of wine, is prepackaged, let alone branded. Foodstuffs are known by their Edenic names—chicken, cabbage, brandy—and by traditional nomenclatures bound up with the regions and terroirs of their seemingly timeless manufacture: Bordeaux and Champagne wines, Brittany and Normandy butters, and the litany of names and descriptions constituting the so-called cheese symphony: Brie, Port du Salut, Mont d’Or, Pont l’Évêque, Gruyère, and so forth for pages on end.¹²

Emperor Napoleon III and Baron Haussmann may have successfully reorganized Paris in the name of capital, with Les Halles among their crowning achievements, but, even for reasonably affluent Parisians during the Second Empire, products were a decidedly local affair.¹³

By the time Zola published his novel, a seismic shift was underway. Around 1870, railroads, steamships, and telegraphs had helped spark new globalizations of goods, capital, and people. Just before the First World War, trade, finance, and migration achieved levels of globalization unequaled until the late 1970s.¹⁴ As political economist John Maynard Keynes recounted in his sober, 1919 assessment of the world economy: on the eve of the Great War, “The [prosperous] inhabitant of London could order by telephone, sipping his morning tea in bed, the various products of the whole earth, in such quantity as he see fit, and reasonably expect their early delivery upon his doorstep.”¹⁵ From roughly 1870 until 1914, commodities that were neither fragile nor spoilable underwent an uneven evolution from local products to global commodities to branded, packaged goods. Exemplary was American wheat. Transportation improvements, above all trains and steamships, led to dramatic convergence of wheat prices across the North Atlantic economy. From 1870 to 1910, the spread in wheat prices from New York City to Iowa, for example, fell from 69 percent to 19 percent. Trend estimates from available annual data show that wheat price spreads between Liverpool and Chicago fell from over 57 percent in 1870 to under 18 percent in 1895.¹⁶ Reduced transportation costs, however dramatic, were but one factor in the transformation of global trade. As perspicaciously argued by William Cronon, the mid-nineteenth-century introduction of grain elevators, grain grading systems, telegraphy, and other machine and managerial technologies, effected a fundamental transmogrification in the nature of traded wheat whereby wheat “futures”—contracts for the future delivery of grain not yet planted let alone harvested—could be traded in virtual volumes many times greater than that of the actual wheat: “Grain elevators and grading systems had helped transmute wheat and corn into monetary abstractions, but the futures contract extended the abstraction by liberating the grain trade itself from the very process which had once defined it: the exchange of physical grain.”¹⁷ Prices for wheat futures in Chicago could be relayed instantaneously via telegraphy to traders in New York, London, and other centers of finance (rather than grain production), such that “a new market geography [emerged] that had less to do with the soils or climate of a given locality than with the prices and information flows of the economy as a whole.”¹⁸

In the late nineteenth century, like today, globalization was unthinkable without deterritorialization, the deracination of products

from the labor and locales, cultural and environmental, of their production. But deterritorialization is only one half of a dialectic that has shaped capitalist modernity. Every wheat futures contract sold on the Chicago Board of Trade had its correlate in factory-sealed, trademark-protected, branded packages of products like Uneeda Biscuits, manufactured, advertised, and sold by the National Biscuit Company (now Nabisco). Where wheat was deterritorialized into a monetary abstraction, trademark law and advertising reterritorialized biscuits into brands. As announced by Richard Franken and Carroll Larrabee in their landmark 1928 marketing treatise,

The American of [the] day before yesterday asked for a pound of crackers. Today his grandson demands a box of Uneedas. Grandmother took the familiar family stone jug to the grocery and had the grocer fill it up with vinegar. Granddaughter consults her shopping lists and asks for a quart bottle of Heinz's vinegar. In the retail stores from Maine to California a whole vocabulary of names that were unheard of a generation or two ago has become common currency.

The consumer used to buy anonymous goods in bulk. His grandchildren demand the products by name and get them in packages. The packages are sealed, the weights are marked, and the quality is guaranteed by the manufacturer's name. The system has become so universal that every field of retailing has been affected to a greater or less extent.¹⁹

If global trade rested on unprecedented efficiencies in production, transportation, and communication technologies, then Franken and Larrabee's universal system was built on national trademark laws and international intellectual property treaties.²⁰ Anyone with capital could trade in wheat futures, but only Nabisco could sell Uneeda brand biscuits. In the coveted products of a celebrated artist, a renowned region, or a dominant corporation, capitalist abstraction, universalization, and deterritorialization were complemented by capitalist identities, differentiation, and reterritorialization.²¹

The progression from generic, bulk goods to packaged, branded products can be charted neatly in the late paintings of Manet. Beer drinkers figure regularly in Manet's works of the 1870s. The beer is always generic and always served in glasses, which were filled from large barrels or kegs kept out of sight;



no branding is visible.²² *A Bar at the Folies-Bergère* prominently features branded bottles of Bass Ale. Decades before Franken and Larrabee’s pioneering marketing treatise, Manet chronicled the shift from consumers who ordered a glass of beer to those who demanded a bottle of Bass. Signatures, geographic indications, and trademarks direct attention away from the generic products—painting, sparkling wine, and beer—and toward the specific producers—Manet, Champagne, Bass. It is these reterritorializing forces—signatures, geographic indications, and trademarks—that Manet brings to the surface of his *Bar*.

III. Circa 1882, an Intellectual Property Primer

Forged as Manet was completing his epic canvas, the first multilateral intellectual property treaty was the Paris Convention for the Protection of Industrial Property (1883), known thereafter as the Paris Convention.²³ “Industrial property law” has no direct equivalent in U.S. law. In French and, by extension, international law, it is one-half of intellectual property law—including patents, industrial designs, trademarks, and geographical indications. The other half, known in French as “literary and artistic property,” covering author’s rights, copyright, and moral rights, assumed its first comprehensive international form three years later in the Berne Convention for the Protection of Literary and Artistic Works (1886). Despite recent overlaps, *modern* copyrights and trademarks differ fundamentally.²⁴ Copyright is a type of intellectual property that protects original works of authorship as soon as an author fixes the work in a tangible form of expression. Today, “works” include paintings, photographs, illustrations, musical compositions, sound recordings, computer programs, books, poems, movies, architectural works, software, and more.²⁵ Copyright confers limited, exclusive rights for a determinate period of time, now generally the life of the author plus a hypertrophic seventy years. These rights include the rights to make, sell, or distribute copies; to prepare derivative works; to perform the work publicly; and to exhibit the work. Trademarks, by contrast, are source indicators. They identify Y manufacturer or Z merchant as the source for X product. And so long as they are properly renewed, registered trademarks never expire. In their initial formulations, copyrights protected art; trademarks supported commerce. Originality and authorship are at the core of copyright law. Trademarks signify commercial authenticity. In the realm of industrial property, a bag may be protected by design patents, its label by trademark law. Long after the design patents expire, the label, logo, and other identifying marks are protected as trademarks. To stretch the boundaries of precise legal definitions (and in anticipation of the next section): copyright inheres in an image that is given fixed and tangible form in a painting;

Édouard Manet, *Le Bon Bock*,
1873, oil on canvas, 94.6 × 83.3 cm.
Philadelphia Museum of Art.

something akin to trademark inheres in the signature. A copy of a painting may be an infringement of copyright; a deceptively *signed* copy is a counterfeit or forgery.

The distinction between copyright and trademark should be clear as day. Copyrights and trademarks are anchored in separate international treaties (the Paris and Berne Conventions), have distinct constitutional justifications in the United States, and belong to separate branches of intellectual property law in France (*propriété littéraire et artistique* and *propriété industrielle*).²⁶ But the once distinct legal regimes have begun to merge in recent years. More fundamentally, unlike literature or music (where the original artwork is understood to be immaterial and consumers purchase only copies), the juridical status of paintings (rather than prints, photographs, or other artworks that exist as multiples without originals) is equivocal. From the perspective of the law, the physical painting is known as a “copy”: copyright inheres in the *immaterial* image given material form in the painting or in any other materialization (including reproductive prints and photographs). The materializations, in turn, can be signed or stamped by any relevant party (artist, engraver, photographer, printer, foundry, etc.) as an indication of source, like a trademark. Crucially, the art market does not sell images; it sells objects authenticated by signatures and/or other source indicators. Accordingly, artworks hover between copyright and trademark law.²⁷ (To date, even art historians versed in intellectual property law focus almost exclusively on copyright and authorship rather than trademarks and commercial authenticity.)²⁸ Manet indubitably intuited the dangerous proximity of copyrights and trademarks. And he anchored his last great painting firmly in the realm of commercial authenticity. What is more, he may well have been attuned to the deliberations underway in Paris as he conceived and executed *A Bar at the Folies-Bergère*.

The groundwork for the 1883 convention was laid at the International Congress on Industrial Property, held at the Trocadéro in September 1878 in conjunction with the Paris Universal Exposition. Official delegations from nine European countries and the United States resolved to establish a union for the protection of industrial property. Two further diplomatic conferences in Paris in the years 1880 and 1883—led by the French delegation, with the support of the French government—hammered out the final convention. The Paris Convention was immediately signed by eleven nations from Europe and South America; the United Kingdom joined in 1884 and the United States in 1887; today, nearly every country on earth is a contracting party.

Not by chance did the French capital host the diplomatic conferences where the first major international treaty on intellectual property was debated, crafted, and adopted. Nor did the popular

and specialized presses in France fail to cover the conference.²⁹ Although Anglo-American histories of intellectual property law tend to prioritize English and American law, scholars, following Paul Duguid, now recognize that France was the undisputed leader of nineteenth-century industrial property law, especially trademarks.³⁰ Unfortunately, this recognition has yielded too little scholarship to date; a critical history of French trademark law has yet to be written.³¹ Nonetheless, the basic contours of this history are firmly established.³²

Article 1382 of the French Civil Code (1803) and the Law of 28 July 1824 laid the groundwork for the Law of 23 June 1857 (“Loi du 23 Juin 1857 sur les marques de fabrique et de commerce”), which inaugurated the modern era of trademark law.³³ Unlike its later English, American, and German counterparts, it was robust enough to survive overwhelmingly intact for over a century.³⁴ What is more, the international proliferation of trademark law was substantively a byproduct of French trademark law, for the 1857 law incentivized other nations toward trademark protection. Article VI §1 stipulates, “Foreigners and Frenchmen whose houses or places of manufacture are situate out of France also enjoy the protection of the present Law for the products thereof, *if, in the countries where such houses or factories are situate, diplomatic conventions have stipulated reciprocity for French trade-marks.*”³⁵ The law of reciprocity encouraged other nations to offer trademark protection to French goods (to gain protection for their own goods in France) and to pursue comprehensive domestic trademark laws. The geopolitical consequences were conspicuous. Beginning in 1857, France entered into a series of bilateral agreements that spawned domestic legislation: an 1860 agreement between France and the United Kingdom quickly led to the British Merchandise Marks Act (1862); an 1869 agreement with the United States provoked passage of the U.S. Trade Mark Act (1870).³⁶ Reciprocity also meant that many foreign products received their first trademark protection in France. For example, Bass Ale scored the first registered trademark in England on 1 January 1876, by which point it had already been registered in France for fifteen years. In the early 1880s, when most nations were still struggling to operate basic trademark laws, France had a quarter-century of experience. The French did not squander this advantage. Not only did they host and dominate the discussions that led to the Paris Convention for the Protection of Industrial Property; they secured language for the protection of geographic indications that would uniquely privilege their own wine industry—above all, regions like Champagne. In retrospect, the bottles of Champagne and Bass Ale on Manet’s 1882 *Bar* seem as inevitable as the location of Paris for the 1883 convention. But before Manet could turn to geographic indications, trade dress, or

trademarks, he interrogated the foundation of his own art, livelihood, and being. He anatomized his signature.

IV. Leaving His Mark

First published in 1879 and republished in five editions and numerous printings into the twentieth century, Eugène Pouillet's *Theoretical and Practical Treatise on Literary and Artistic Property and the Law of Representation* remained the authoritative French treatise on copyright and moral rights through the Second World War.³⁷ In his landmark volume, Pouillet asserted the “natural right” of artists to inscribe their names on their works, a right that had to be respected by owners.³⁸ And yet the status of the artist's signature was neither incontestable nor sacrosanct.³⁹ Pouillet recognized, for example, that a commissioner who purchased a sculpture with the express intent to sell copies in miniature (*réduction*) had the right to reproduce the signature in miniature as well, unless expressly stipulated otherwise.⁴⁰ That is, signatures were hardly inalienable traces of the artist. They were source indicators imbricated in complex market and legal frameworks, like trademarks. Fittingly, on the first page of the volume—where Pouillet surveys his intellectual property writings to date—he states that trademarks are “like the manufacturer's signature.”⁴¹ In signing his name to a wine bottle label, Manet collapsed the artist's signature and the manufacturer's signature more forcefully than anyone prior. But he was hardly the first to make the connection. Indeed, for most of their history, artists' signatures were functionally equivalent to trademarks.

The most famous and most litigated signature of the early modern period was Albrecht Dürer's celebrated monogram: a capital D nested inside a capital A. Two historical accounts—a somewhat dubious story penned by Giorgio Vasari and an incontestable 1512 decree issued by the Nuremberg city council—make the same incontrovertible point: the legal protections afforded by Dürer's monogram were nothing like modern copyright; instead, the monogram functioned like a trademark. In both cases, other artists—Marcantonio Raimondi in Vasari's account; an unnamed copyist in the Nuremberg decree—copied Dürer's prints, including his monogram. But as Joseph Leo Koerner argues, “The forger's crime did not lie in producing a copy, for indeed woodcuts and engravings were often purchased precisely to be copied as models by painters, illuminators, sculptors, jewelers, and the like.”⁴² Instead, the Nuremberg city

Albrecht Dürer, *The Glorification of the Virgin* (from “The Life of the Virgin”), ca. 1502, woodcut, 29.6 × 21.1 cm. Metropolitan Museum of Art. (Note Dürer's monogram in the center foreground.)



council deemed the monogram to be “*ain falsch*—a nebulous but important category of medieval law that encompassed counterfeit coins, falsified signatures, forged or altered documents, untrue weights and measures, and false or adulterated commodities.”⁴³ Similarly, the Signoria in Venice, according to Vasari, heard the suit and ruled that Dürer “could receive no other satisfaction but this, that Marcantonio should no longer use the name or the aforementioned signature [*segno*] of Albrecht in his works.”⁴⁴ Raimondi and others could continue to copy Dürer’s prints; they were prohibited only from usurping his mark. “The courts protected Dürer’s trademark but not his images.”⁴⁵

Something akin to modern signatures—cursive, consistent, atop the work (rather than within the image)—were not a standard feature of paintings until the eighteenth century, at which point they emerged as objects of scrutiny and play for artists such as Jean Siméon Chardin.⁴⁶ As Charlotte Guichard elucidates,

Two regimes of authenticity coexist and can enter into competition: one is based on autography, the artist’s inimitable execution and their physical presence in the painting; the other is a regime of names and trademarks [*la marque*]. Both are at the source of modern art: here, the myth of creative genius and the art market intersect; the authenticity of the work and that of merchandise. To write the history of the signature in painting in the years 1730–1820 is to show how the notions of authenticity, originality and autography test the very definition of the art of the painting and its manufacture.⁴⁷

The tensions between autography—traces of the hand of the artist—and signatures—artists’ commodified names or trademarks—reached a fever pitch in nineteenth-century France. Even as romanticism promulgated the cult of the genius and the uniqueness of the artwork, artists like Eugène Delacroix readily produced copies of their own work.⁴⁸ Delacroix’s neoclassical rival, Jean-Auguste-Dominique Ingres, (in)famously produced numerous variations on his favorite themes.⁴⁹ The multiplication of original artworks reached its peak among the academic French painters who dominated the Salon, the Academy, and much of the international market through the middle of the nineteenth century.⁵⁰ For artists such as Paul Delaroche, Alexandre Cabanel, William-Adolphe Bouguereau, and Jean-Léon Gérôme, there was little question that successful paintings would be replicated.

Marcantonio Raimondi after Albrecht Dürer, *The Glorification of the Virgin*, ca. 1506, engraving on paper, 29.8 × 21.6 cm. National Galleries Scotland. (Note: In addition to Dürer’s monogram [AD], Raimondi has inserted his own [MAF] as well as the device of the Venetian publishers [ND].)



The only questions were how many times and in what media? In the nineteenth century, engraving rights were often valued and sold for more than the original painting.⁵¹ In the absence of explicit contracts, disputes invariably arose. Today, no one would assert that artists sell their copyright (here best understood literally: the right to make copies) along with an original painting. The object of contemporary copyright is immaterial; a painting, from the perspective of copyright law, is merely the first copy. But matters were not so clear in the nineteenth century. High-quality engravings could not be created without access to high-quality paintings. Accordingly, no less a legal authority than Pouillet conceded that the matter remained unresolved by judges or theorists and was “less a question of law than a question of fact.”⁵² Engravings, in turn, could carry a range of authenticity marks: the signature of the original artist, the signature of the engraver, the chop of the printer. Reproductive media more amenable to painters, such as etching and lithography, introduced further options for the artist’s signature: signed on the plate or stone or, alternatively, signed on each individual print; trademark or autograph.

The convoluted world of print reproductions was nonetheless vastly clearer and less disconcerting to collectors than the reproduction of oil paintings as oil paintings. As Patricia Mainardi notes, “19th-century artists had an entire vocabulary to describe the phenomenon that we identify with the single word ‘copy.’”⁵³ In its lengthy entry for the term *copie*, the *Dictionnaire de l’académie des beaux-arts* (1884) distinguished between several kinds of reproductions of a work of art.⁵⁴ *Répétitions* were “executed or signed” by the authors of the original works and are often recognizable by “variations introduced into the design by the master himself.” Ideally, *répétitions* are akin to repeated performances by a great singer: no two are the same. But nearly identical copies were also commonplace. Furthermore, note the hedge in the definition: “executed *or* signed.”⁵⁵ Here, the signature is an ambiguous mark of authenticity.⁵⁶ Next in the hierarchy came *copies* produced by pupils and assistants under the watchful eye of the master, followed by copies produced outside the master’s immediate purview or after his death. The fourth rung down the ladder was occupied by reduced-format reproductions called *réductions*—though these frequently came from the master’s studio and were regularly signed by the author of the original (thus scrambling the neat hierarchy professed by the academic dictionary). (The most common form of *réductions* were sculptures; *réductions* of ancient or other sculptures in the public domain were eligible for their own copyright; mechanical reductions complicated matters even further.) Last were copies obtained through technological means or executed in a new medium. The problem for collectors and connoisseurs was

that all but the lowest type of copy could be executed in the same medium as the original (oil paint for oil paintings, etc.) and could potentially be signed by the master. Signatures wavered between their roles as direct traces of the artist's hand and something closer to trademarks. In numerous instances, the phrase "unique original" was no more applicable to a celebrated mid-nineteenth-century French academic painting than it was to a coveted mid-nineteenth-century bottle of Champagne.

Among numerous examples, consider Cabanel's painting *The Birth of Venus*, exhibited at the Salon of 1863 to great acclaim. The work's success earned him a promotion to officer of the Legion of Honor, election to the Academy, and appointment as professor at the *École des Beaux-Arts*.⁵⁷ Napoleon III, Emperor of the French, immediately acquired the work for the substantial sum of 20,000 francs. (Today, this version hangs in the Musée d'Orsay, Paris.) For context, Manet's major painting *Le déjeuner dans l'atelier* (*Luncheon in the Studio*, 1868) sold for 4,000 francs in 1873; *A Bar at the Folies-Bergère* sold at the 1884 posthumous auction for 5,850 francs.⁵⁸ But the imperial acquisition did nothing to stem the proliferation of multiples. Quite the contrary. Success at the Salon and at the Imperial Court all but guaranteed the production and sale of *copies* in every sense of the term. Cabanel sold the exclusive reproduction rights to Goupil, a powerhouse publisher and dealer. In 1870, Goupil produced an engraving by Alphonse François, sold at multiple price points: on white paper, 25 francs with a caption, 50 francs without a caption; on chine-collé, 30 francs with the caption, 60 without; artist proofs, 120 francs. Three years later, they issued a reduced-sized etching by Léopold Flameng, also variably priced.⁵⁹ To make the high-quality engraving, Goupil required a high-quality copy (the original having been sold to Napoleon III). Accordingly, Adolphe Goupil paid 1,500 francs to one of his in-house copyists, Adolphe Jourdan, to paint a *réduction*, which Cabanel retouched and signed per custom and contractual agreement; Cabanel received half the considerable profits from its eventual sale. Once it fulfilled its function as a reference for the engraving, Goupil sold it in 1870 for 20,000 francs—the same price paid for the full-size original purchased by Napoleon III—to American dealer and auctioneer Henry W. Derby, who immediately resold it to Philadelphia collector Henry C. Gibson. (This version now resides in the Dahesh Museum of Art, New York.) Success bred success, and in 1875 the New York banker John Wolfe commissioned Cabanel to paint an exact (though slightly smaller) replica or *répétition*, which now hangs in the Metropolitan Museum of Art in New York. The three nearly identical paintings, executed by a variety of hands over a dozen years, all bear the same signature: *Alex Cabanel*.

Three signed paintings—at least one of which could hardly

count as an autograph—along with hundreds of engravings and etchings. What is a collector to do? Neither judges nor legal theorists provided conclusive answers to a series of pesky questions. If not specified through contractual agreement, are the (print) reproduction rights transmitted to the buyer, or do they remain with the painter? Do painters always retain the right to produce *répétitions* and *réductions*? Can they copyright a *répétition*? Can artists sign their names on paintings executed largely by assistants?⁶⁰ These questions remained a significant source of anxiety in France and elsewhere. Their restive palpitations can be felt throughout the late-nineteenth-century legislative record in England, a major destination for French academic painting. Most prominently, the insistence on “originality” in the inaugural Fine Arts Copyright Act (1862) was less an affirmation of romantic genius than an assurance to collectors that artists could not surreptitiously copyright a repetition after selling the “original,” as legal historians Ronan Deazley and Elena Cooper show.⁶¹ From 1850 through the 1911 British Copyright Act, numerous efforts were made to protect collectors,

Top: Alexandre Cabanel, *Birth of Venus*, 1863, oil on canvas, 130 × 225 cm. Musée d’Orsay. Awarded to the national museums by judicial decision, 1879.

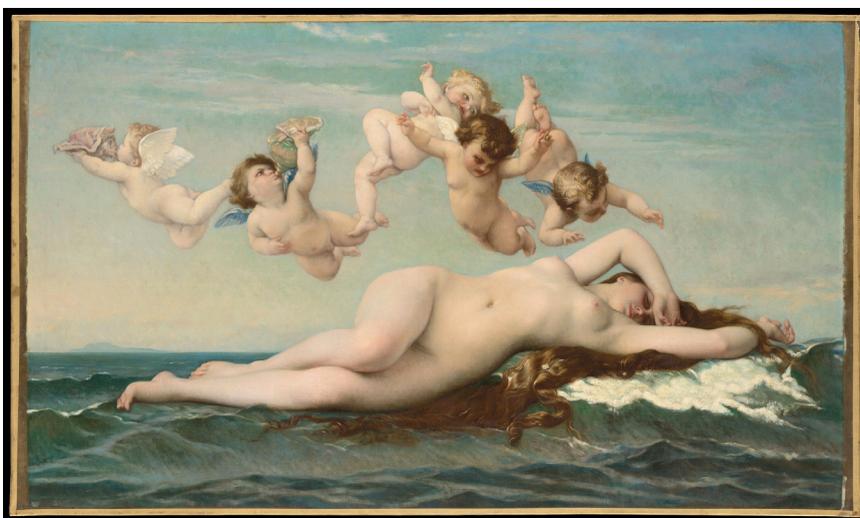
Bottom: Adolphe Jourdan after Alexandre Cabanel, *Birth of Venus*, 1864, oil on canvas, 85 × 136 cm. Dahesh Museum of Art, New York, 2002.37.

Opposite, top: Alexandre Cabanel, *Birth of Venus*, 1875, oil on canvas, 106 × 182.6 cm. Metropolitan Museum of Art. Gift of John Wolfe, 1893.



including provisions, never realized, to prohibit the production of “repetitions.” This effort was codified in Section 7, the only part of the 1862 act that remained in force well into the twentieth century, whereby “aggrieved persons” could recover penalties in the event that a person fraudulently sold, published, exhibited, or disposed of a painting bearing the name of a person “who did not execute or make such work.” This provision, Cooper argues, was aimed, at least in part, “against artists who affixed their name to a work that in fact had been produced by their studio assistants.”⁶²

Neither French courts nor the English Parliament put an end to the practice of *répétitions*. Indeed, the international proliferation of French art in the nineteenth century cannot be divorced from its endless reproduction in every conceivable form. No actor was more impactful than the printer, publisher, and art dealer subsumed under the name Maison Goupil.⁶³ Goupil was founded in Paris in 1829 as a printer and seller of fine art reproductions, specializing in engravings after pictures by leading neoclassical and academic painters. In the 1840s, the firm opened offices in London and



Alphonse François after
Alexandre Cabanel, *Birth of Venus*,
1870, etching and engraving,
47.9 × 64.3 cm (sheet).
Philadelphia Museum of Art:
The Muriel and Philip Berman
Gift, acquired from the John S.
Phillips bequest of 1876 to the
Pennsylvania Academy of the
Fine Arts, with funds contributed
by Muriel and Philip Berman,
gifts (by exchange) of Lisa Norris
Elkins, Bryant W. Langston,
Samuel S. White 3rd and Vera
White, with additional funds
contributed by John Howard
McFadden, Jr., Thomas Skelton
Harrison, and the Philip H. and
A.S.W. Rosenbach Foundation,
1985, 1985-52-43403.

New York—the latter became the venerable Knoedler Gallery, long America’s oldest active gallery—as nodes in a network that eventually crisscrossed Europe, the Americas, Africa, and Australia. To produce high-quality engravings, Goupil commissioned *réductions*. Soon, the sale of *répétitions* of all sizes grew into a business of its own. (The sale of unique originals came last.) Beginning in the 1850s, Goupil commissioned *répétitions* from the artists themselves; by the 1870s, *répétitions* were made to order at full-scale, half-scale, quarter-scale, and so on by a staff of professional copyists and priced accordingly. Artists would touch up the *répétitions*, or so they claimed, and sign them. Cabanel’s *Birth of Venus*, including its many *répétitions* and reproductions, is one such example. More striking still is the case of Gérôme, the academic painter who married into the firm. Through the reproduction of his work by Goupil, Gérôme became one of the most famous and lucrative artists of the nineteenth century. A total of 337 works by Gérôme were sold by Goupil, especially in the years 1865–1885.⁶⁴ The apex arrived in 1880: paintings sold quickly and at high prices: 11,000–25,000 francs each. *The Snake Charmer* (1879), now best known as the cover image of Edward Said’s *Orientalism*, fetched 75,000 francs—roughly the amount Manet earned from the sale of his art over the course of his entire life.⁶⁵ *Répétitions* sold for less but were still highly profitable (sometimes more profitable for the firm): Gérôme’s *Jerusalem* (1867), shown at the Salon of 1868, sold for 15,000 francs; a *réduction* sold for 5,000 francs. In 1892, Goupil paid Gérôme 11,250 francs for the full-size *Pygmalion and Galatée* and sold it for 17,250 francs; it paid 3,500 for the *réduction* and quickly sold it for 7,500 francs to the Russian czar. (Formulated differently: a reduced copy signed by Gérôme sold for nearly one-and-a-half times the price of Manet’s one and only *Bar at the Folies-Bergère*.) Manet largely steered clear of Maison Goupil, its global sales, and reproductions. But not entirely.

Around 1876, Manet was regularly associated with the impressionists, who successfully secured their own reputation, label, or brand, occasionally articulated in opposition to Goupil. In an 1877 review, Zola described the moniker “impressionist” as “a good label [*étiquette*], like all labels.”⁶⁶ That same year, Georges Rivière (a friend of Pierre-Auguste Renoir), writing in the house journal *L’impressionniste*, likened the name of the movement to a distinct and reputable brand: “the Impressionists are sufficiently well-known [*connus*] that no one is deceived [*trompé*] as to the quality [*qualité*] of the works exhibited”; impressionists did not trade in history paintings or orientalist paintings or genre paintings or other “small paintings from the Goupil agency that the inhabitants of the New World adore.”⁶⁷ With terms like *étiquette*, *connus*, *trompé*, *qualité*, and *agence Goupil*, Zola, Rivière, and the impressionists

homed in on precisely the qualities necessary to distinguish a trademark in a crowded field of mass-produced commodities.

And yet Manet could not seal himself hermetically from Goupil's sphere of influence. Theo van Gogh, brother of Vincent, followed an uncle (also named Vincent) into the firm. Eventually, Goupil sold works by all the major impressionists and also by Manet. For Manet, those sales came posthumously. Instead, he intersected with Goupil at the lower end of its market: photographic reproductions. Among its numerous photographic ventures, Goupil launched, in 1876, a luxury publication: *Galerie contemporaine, littéraire, artistique*. Each week, a titan of French arts and letters—Hugo, Baudelaire, Sand, Zola, Corot, Courbet, Garnier, Viollet-le-Duc, etc.—was celebrated with a short biography and a dramatic photograph taken by such leading lights as Nadar or Étienne Carjat and reproduced as a Woodburytype, a relatively luxurious form of photomechanical printing. When artists were featured, the folios included reproductions of their works in Woodburytype or line block, a form of relief printing well-suited to the reproduction of line drawings alongside typeset print.⁶⁸ Among the first artists featured was Manet.

In sharp contrast to an overwrought classical border allegorizing the arts, an immaculate Woodburytype print, from a photograph by Ferdinand Mulnier, transmits Manet's reality and contemporaneity: a crumpled jacket as loose as his silk tie, scraggly and asymmetrical beard, furrowed brow, and two dark eyes fixed on an unseen point in the distance. A short biography hits all the predictable notes: upbringing, training in the studio of Thomas Couture, the scandalous Salons of 1863 and 1865, a long quotation of Zola's spirited defense of *Olympia* (1863), an assertion of Manet's bourgeois bona fides (despite his bohemian reputation), and so on, only to conclude—inevitably, given the context—with a panegyric to Manet the copyist: “highly esteemed as an etcher [as evidenced by] copies he made at the Louvre. . . . He has, moreover, reproduced in etching a great number of his paintings.”⁶⁹ In a Goupil luxury folio produced for the reproduction of art, no feat was more esteemed than artistic reproduction. And, indeed, the image and biography of Manet are accompanied by three reproductions of his handiwork, all highly mediated yet signed. The text is preceded by a banal epigraph—“I always thought that first place is not given, it is taken”—rendered as a perfect facsimile of Manet's scrawl and signature. A Goupil Woodburytype reproduction of *Le bon bock* (1873), among Manet's few critical successes, reproduces faintly Manet's signature on the side of the table on which rests the beer drinker's hand and glass. And a line block reproduction of Manet's etching *Le Gamin* (*The Urchin*, 1861–1862) is signed via line block at the top left.

This final image encapsulates to the nth degree the final lines of the brief biography—Manet as self-copyist—for the line block

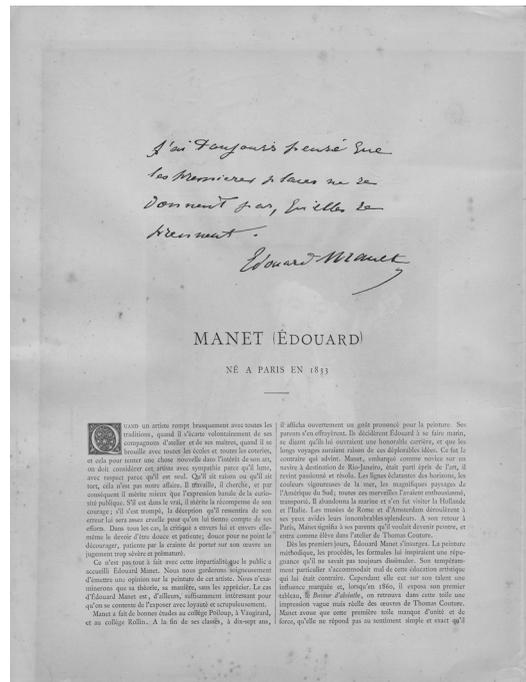
reproduction is the inconclusive last in a line of copies that pre-
 ceeded the original. Manet's painting *Le gamin au chien* (1860) was
 based on a painting, *Boy with a Dog* (1655–1660, Hermitage
 Museum), by Bartolomé Esteban Murillo.⁷⁰ A *réduction* of Manet's
 painting also survives, painted by another hand.⁷¹ Manet was a pio-
 neer painter-printmaker. He worked, at least once, in almost every
 genre of the printed image available to progressive artists in the
 nineteenth century: etchings, lithographs, line blocks, posters,
 music-sheet covers, multi-artist albums, single-artist albums, book
 covers, and text illustrations. His *Polichinelle* (1874) was the first
 instance of a French artist using color lithography to create an artis-
 tic print.⁷² He was also a sometimes-savvy opportunist, especially
 when in need of a quick cash infusion. Artist prints of *Le gamin*
 exist in many forms. Manet initially issued two states of the etching
 in 1861–1862. But other editions exist, including a limited-edition
 album produced by Cadart et Chevalier (1874) and various posthu-
 mous editions.⁷³ Short on funds, Manet made a lithograph version
 in 1868 that was published in an edition of one hundred by
 Lemerrier & Cie. in 1868–1874. Unlike many other painter-print-
 makers, Manet never signed his proofs by hand.⁷⁴ Accordingly, the
 Goupil folio reproduced in line block a signature that was origi-
 nally reproduced in etching. And unlike the images—all of which
 appear reversed vis-à-vis the original painting—the signatures
 were inscribed backward (so as to appear properly in the prints)
 and retain the awkwardness of a signature written in reverse. Most
 jarring of all: Manet's signature on the Goupil line block image was
 printed from a plate that was etched from a photograph taken of the
 etching that was printed from a plate that was etched and signed in
 reverse by Manet. Technically, this signature is closer to a signature
 printed on a bottle label as part of a logo. The artist's signature as

**"Édouard Manet," Galerie con-
 temporeine, littéraire, artistique
 no. 12 (Paris: Goupil, 1876)**

Left to right:

**Cover: Woodburytype portrait
 of Manet by Ferdinand Mulnier
 (ca. 1876) with decorative line
 block frame.**

**Epigraph: Facsimile of Manet's
 writing and signature, 1876.**



manufacturer's signature or trademark.

Manet's fastidious attention to the value of signatures remained steadfast through the end of his life. On September 16, 1881, just as he was working on *A Bar at the Folies-Bergère*, he sent his autograph to the daughter of Stéphane Mallarmé: "It is appropriate and will be a nice addition to her collection."⁷⁵ His last will and testament concludes, "Signed and written by my own hand this 30th day of September, 1882."⁷⁶ In the *Bar*, however, Manet was not concerned with autograph collections or legal wills. Instead, *A Bar at the Folies-Bergère* became a "pictorial testament" that thematized the signature itself.⁷⁷ By signing the painting and a label simultaneously, Manet performed the disquieting convergence of artists' signatures and manufacturers' signatures. This conjunction of art and commerce in the form of a signature remained nearly imperceptible in contemporaneous art, but it established itself as a commonplace in legal discourse:

Definition of the trademark [*marque*]: A trademark is any sign used to distinguish the products of a factory or the articles of trade. It is, in a word, the signature of the person who produces or sells them. We know the value of a signature when it comes to an object of art; the merchant's interest in taking a mark [*marque*] is no less great.⁷⁸

In *A Bar at the Folies-Bergère*, Manet inverted the formula: We know the value of a trademark when it comes to merchandise; the artist's interest in leaving a *marque* was no less great.

Left: Manet, *Le bon bock* (1873), Woodburytype reproduction by Goupil (Godet), 1876.

Right: Manet, *Le Gamin* (*The Urchin*, 1861–1862), line block reproduction (Goupil), 1876.

V. *Il n'est de champagne que de la Champagne?*

The bar in Manet's *A Bar at the Folies-Bergère* is a theater for an intellectual property war whose outcome remains unresolved. The



artist's signature slums among commodities and subjects itself to the superficial yet judgmental gaze of the consumer. Manet renders the label and bottle that bear his signature with brutal imprecision. Every other bottle on the bar divulges distinctive indicators as to its source. Brown bottles adorned with red triangles accompanied by illegible splotches and lines can point to only one manufacturer: Bass. Less recognizable globally or today but no doubt familiar to the consumers at the Folies-Bergère, the teardrop-shape green bottle of crème de menthe—with an octagonal neck, red faux-wax stamp, and a slanting emblazoned sash—can only be “Freezomint” from the distillery Cusenier. Gold foil and a comely form can refer to only one place: Champagne, whose bottles of sparkling wine were among the few details agreed upon by befuddled critics when the painting hung at the 1882 Salon. Trademarks and trade dress—the former refers to a name or logo, the latter to the design and shape of the materials in which a product is packaged, a distinction not especially operative in nineteenth-century French trademark law—indicate the sources of all the products. All but one. Manet signs the label of a bottle whose contents, geographic source, and manufacturer remain elusive. An aperitif? A rosé? French, one imagines, but can we be certain? Neither the shape of the bottle nor its label divulges its secrets. Manet presents the bottle from three sides, as if they were the Three Graces: nearly head on at the far left, the remainder of the label in the mirror, and the complete backside of the same type of bottle at the far right. This deconstructed, in-the-round presentation approximates how Leo Steinberg, in another context, describes the erotic display of a female nude: “the violent wrench of her simultaneities more than makes up for abstraction and flattening. It gives her pink flesh an aggressive immediacy, brought nearer still by the shameless impudence of the pose and the proximity of an implicated observer who knows every side of her.”⁷⁹ What is more, the glass bottle is transparent. We see right through it. And still it conceals every source but one: *Manet, 1882*. If Manet distilled his label to pure artist's signature, so, too, did he reduce the other bottles to their emergent intellectual property essences.

Champagne had long numbered among the most famous eponymous production regions on earth. As repeatedly argued, “Of all the protected geographical indications, Champagne's prominence is undeniable.”⁸⁰ But in the 1880s, its future as a protected geographical indication was far from secure. Indeed, its great fame was among its greatest liabilities. Cheddar cheese (originally from Cheddar, England), jalapeño peppers (literally: from “Xalapa” or “Jalapa,” Mexico), lima beans (initially cultivated near Lima, Peru), Dijon mustard (once the exclusive product of Dijon, France), and numerous other eponymous production regions failed to attain

exclusive property rights in their names or succumbed to genericide through widespread production. (Cheddar cheese, jalapeño peppers, lima beans, and Dijon mustard are all now considered generics; they can be produced anywhere from products grown anywhere. Already by the late nineteenth century, Canadian cheddar accounted for 70 percent of Britain's cheese imports.)⁸¹ The successful restriction of champagne sparkling wine to the specific region of Champagne is of a relatively recent vintage. For most of the nineteenth and twentieth centuries, champagne—note the lowercase spelling—was a type of wine, just as cheddar was a type of cheese. As late as 1981, French Champagne producers lost a lawsuit against Australian advertisers who dared to use the term *champagne* to describe sparkling wines imported from countries other than France.⁸² If genericide abrogates the “natural” link between places and names, then “the most influential articulation of this link is encapsulated in *terroir*, an expression associated with the French wine industry,” as Dev Gangjee argues in his landmark study of geographic indications.⁸³ As he and nearly every other relevant scholar note, it is no coincidence that the term *terroir* derives from the French wine industry.⁸⁴ Just as the French were pioneers of trademark law, so, too, did they champion the protection of geographic indications on a national and international level; above all, “products of the vine.”

The foundations for the protection of geographic indications were laid in the Law of 1824 on manufacturers' tradenames (*nom commercial*) and their places of production (*nom de localité* or *nom de lieu*).⁸⁵ The Law of 1824 prohibited the use of tradenames (which were generally derived from personal names) or placenames (which needed not coincide with official administrative geographies)—except on products produced by the named manufacturers or in the named places. French delegates to the International Congresses on Industrial Property (1880, 1883) attempted to codify protections for placenames in the Paris Convention. But opposition and compromise led to the watered-down provisions enumerated in Article 10. Robust protections for placenames would not arrive until the 1891 Madrid Agreement—sparsely adopted, in comparison to the Paris Convention—where France and its wine industry flexed their muscles and forced the adoption of a genericide exclusion for “products of the vine.” As stated in Article 4 of the Madrid Agreement, “The courts of each country shall decide what appellations, on account of their generic character, do not fall within the provisions of this Agreement, regional appellations concerning the source of products of the vine being, however, excluded from the reservation specified by this Article.”⁸⁶ Victorious at the end of World War I, the French imposed this model on Germany in a specific clause in the Treaty of Versailles, leading to the birth of

German *Sekt*.⁸⁷ Just as successful were the lawsuits in the early 1960s against “Spanish champagne” that led to the establishment of Cava as its own geographic indication.⁸⁸ The establishment of the Appellation d’origine contrôlée (AOC) system in the 1930s, which took Champagne as its model, as well as numerous legal and diplomatic efforts would, over the course of the twentieth century, secure protections for French wines, above all Champagne, and provide the blueprint for the more recent international proliferation of geographic indications (GIs).⁸⁹

The implementation of the blueprint initiated by Champagne producers and the French has yielded a rickety structure. Its champions argue that “*Terroir* stands in opposition to globalization and displacement.”⁹⁰ More precisely, they argue that GIs challenge the frictionless economy demanded by neoliberal economic theory, “where neither space nor time impedes the free flow of goods, labor and capital.” Instead, “as conceived in the European context, as a form of collective property anchored to specific places,” GIs ensure that “traditional, ‘typical’ products are enmeshed in both the place and history of their area of production.”⁹¹ Conceived in the European context, GIs have overwhelmingly benefited European producers as they monetize their traditions for local and global consumers.⁹² Furthermore, the “naturalness” of the legal protection has been called into question, especially in the emblematic case of Champagne: “nearly every aspect of Champagne now deemed ‘natural’ and ‘local’—including the rootstocks of the wines—was actually the result of ‘cultural’ interventions from ‘outside’ the region.”⁹³ Additionally, it was widely recognized that wine was not only a natural product of the soil but also the product of cultural techniques employed from the tilling of the soil to the cellaring of the bottle. This was especially true for Champagne and the *méthode champenoise*.⁹⁴ Today, even the phrase *méthode champenoise* is protected as a geographic indication: the method itself (bottle fermentation, disgorgement, etc.) is widely practiced; the phrase *méthode champenoise* is restricted to sparkling wines produced inside Champagne. But in the nineteenth century, phrases such as *méthode champenoise* commonly and reasonably adorned bottles of sparkling wine the world over. In the early 1880s, there were few indications that “Champagne”—recognized as the exclusive name of a specific *terroir* and *méthode*—would chart a successful course between the Scylla of genericide and the Charybdis of grand trademarks.

Much in Manet’s *A Bar at the Folies-Bergère*, its execution and reception, intimates the severe strain within Champagne as a commodity and intellectual property. Manet painted and exhibited his *Bar* against the backdrop of the foundation of the Syndicate of the Champagne Wine Trade (Syndicat du commerce des vins de

champagne). First promulgated in 1882, its motto remains, “Il n’est de champagne que de la Champagne” (If it’s not from Champagne, it’s not champagne).⁹⁵ The syndicate became a powerhouse for the interests of Champagne, French wine, and the protection of geographic indications. But it was born out of crisis. Champagne sales slumped in the 1870s as a result of the Franco-Prussian War and, specifically in the case of U.S. sales, competition from sparkling wine producers in California. Or so claimed the major producers of Champagne. The Chamber of Commerce, dominated by the textile industry, blamed “quality problems.” Infuriated Champagne producers left the Chamber of Commerce and founded their own syndicate. The year 1882 was shot through with promise and peril for the Champagne industry. Manet’s inscrutable blonde proved to be the industry’s perfect, if unsolicited, personification.

The seed for Manet’s portrayal of French Champagne was likely planted several years earlier, around the time of his failure to secure the commission to paint “The Belly of Paris” in the Paris town hall. Laced with sarcasm, as recounted by his friend and champion Proust, Manet laid out a “proper” allegorical scheme for the Hôtel de Ville: “If the city life of Paris is to be depicted in the Paris town hall, then what we obviously need is allegory. The wines of France, for example: Burgundy wine symbolized by brunette, Bordeaux by a redhead, Champagne by a blonde.”⁹⁶ As Iskin keenly observes,

[Manet’s *Bar*] can be viewed as a substitute for his idea of *Le ventre de Paris*. . . . explicitly depicting the bar as a large “still life” that featured a commercial display of alcoholic drinks, including quite a few bottles of champagne. It was a descendant of his ironic idea about a blonde next to the champagne.⁹⁷

Manet’s taciturn blonde was, among other things, an allegory of Champagne reduced to the status of *barmaid*. And herein lies a third facet of Manet’s critical engagement with French Champagne. Many critics accentuated the Englishness of the words *bar* and *barmaid*; a good number even translated the terms into French. In a hostile assessment, Henri Houssaye employed English to heap scorn upon disapprobation: “Should we really admire the flat and plaster face of the *Bar-girl* [*la Bar-girl*], her face without relief, her offensive color?”⁹⁸ Other reviews, often ambivalent or positive, translated the terms *bar* and *barmaid*: “‘*Bar-maid*,’ that is to say ‘*Vendeuse de Champagne au comptoir des Folies-Bergère*.’”⁹⁹ Or simply, “*bar—en français buffet*.”¹⁰⁰ According to the *Grand Robert Dictionary*, “In the 19th century, the word [*bar*] was only used when referring to Anglo-Saxon countries.”¹⁰¹ And although none of the reviewers recognized the Bass Ale logo, the bottles are misidentified

as “American drinks”; that is, as foreign.¹⁰² Against these numerous foreign intrusions, the critics’ inclination to focus their attention on the reliably French bottles of Champagne is not surprising.

Finally, to emphasize the Champagne bottle as a nascent geographic indication, Manet was obliged to exclude any mark that could be perceived as a name, logo, trademark, or even trade dress of a specific manufacturer of Champagne. And herein lies the tension between geographic indications, on the one hand, and trademarks, on the other—a tension manifest in economic and political battles as well as in legal courts and treatises. (The tension can be likened, however vaguely, to that between artistic movements and individual artists, such as impressionism and Manet.) On a juridical level, geographic indications differ from standard trademarks in two significant respects: first, the mark is invariably collective and bound to a specific location (unlike a traditional trademark, which is issued only to an individual or individual company and is not bound to any location). Second, nearly all geographic signs are descriptive (of a location) and are generally unavailable as an individual trademark: no one can trademark “New York bagels” or “French wine,” as the phrases must be available to all bakers of bagels in New York and all producers of wine in France. Each of these aspects made these signs effectively unregistrable as regular trademarks.¹⁰³ In addition to legal tensions between trademarks and placenames, Champagne in particular was riven between the collective interests of the region and the individual interests of the major brands. The Syndicate of the Champagne Wine Trade, for example, was founded by several dozen of the largest producers, each of whom immediately adopted the title of “grande marque” (“great brand” or, somewhat too literally, “grand trademark”). The individual interests of the *grandes marques* and the collective interests in Champagne did not always align for the various parties, including *grandes marques*, more modest *négociants* (producer-merchants), and numerous small-plot grape growers or *vignerons*. Protests, armed uprisings, and even military occupation are as much a part of the history of Champagne as are international treaties, let alone sumptuous revelries.¹⁰⁴ In 1890, René Lamarre, a radical—though not entirely socialist—peasant and Champagne *vigneron* published a pamphlet, *La révolution champenoise*. He called on his fellow grape growers to reclaim the name “Champagne”:

It is this name, Champagne, at this very moment, that they attempt to wrest from you. I cannot repeat it enough: with the way that [wine] lists are drawn up today, within ten years, people will no longer be acquainted with the name Champagne, but with those of Roederer, Planckaert, Bollinger, and it will not matter from which [grapes] these wines are produced.¹⁰⁵

His assessment proved wrong, but it was not without its merits. As James Simpson argues, the producers of fine wines were primarily concerned with protecting their own brands; a regional appellation was considered a largely irrelevant means to the solution of their own financial difficulties.¹⁰⁶ Yet even *grandes marques* such as Roederer, Bollinger, and Moët & Chandon attempted to strike a balance between geographic indication and trademark, territorial brand and proprietary brand.¹⁰⁷ Manet enforced a single instrument of intellectual property by painting bottles of Champagne without *marques*; that is, as pure geographic indications.

In Manet's *Bar*, the bottles are as large or larger than the figures in the mirror. Despite being overshadowed by *la bar-maid* and her scintillating clientele, they announce an inconspicuous world of things that remake the human world in their image. The artist's signature testifies to the insecurity of autograph paintings. Bottles of Champagne nearly burst as they assert geographic integrity against the antagonistic pressures of genericide and *grandes marques*. In the history of nineteenth-century trademarks, none looms larger than Bass Ale. Our final stop on the bar is Bass's red triangle.

VI. A Triangle Monopoly

If critics failed to inventory the Bass bottles on Manet's *Bar*, they cannot be faulted. The painting's provocative complexity left little room to dwell on details like bottle labels—even Manet's signature, a small but no less explosive provocation, went unmentioned. The critics' silence has been echoed by that of scholars, though artists like Pablo Picasso registered and dramatically expanded upon Manet's interrogation of consumer culture and trademarks, especially Bass Ale.¹⁰⁸ Bass was certainly available in Paris.¹⁰⁹ Normally, overseas business was conducted through hired agents, but by 1868 Bass had established its own agency in the French capital.¹¹⁰ Still, English beer constituted less than one-quarter of 1 percent of beer consumption in France at the time.¹¹¹ Manet must have sought out the bottles of Bass—or else fully embraced their presence on the real bar at the Folies-Bergère, which he reconstructed and modified in his studio. With near certainty, Bass was not on the bar by accident. Bass was on the bar for what it represented. And in the early 1880s, Bass Ale was more than a premium imported beer. It was the exemplification of registered trademarks.

The years in which Manet's *Bar* was conceived, executed, exhibited, and critically received coincide with the codification of modern trademark law in England.¹¹² The central event was the 1875 passage of the Trade Mark Act. And the first marks registered under the act belonged to Bass. From this fact grew the myth that Bass Ale's red triangle was the world's first registered trademark. In fact, Bass's triangle (no. 593) and diamond (no. 592) were registered in France

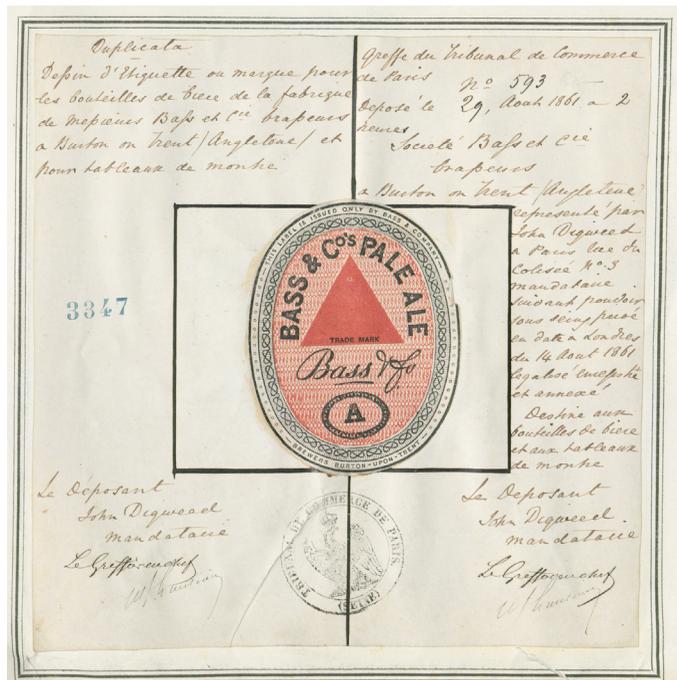
in 1861, fifteen years prior to their English registration, and shortly after the Anglo-French treaty of 1860, which ensured protection of French trademarks in England and enabled English manufacturers, like Bass, to secure trademarks in France.¹¹³ Just as Bass's presence in Manet's *Bar* was no coincidence, it was hardly happenstance that Bass secured England's first registered trademark and one of the first French trademarks available to English producers. Even prior to the passage of the 1875 Trade Mark Act, Bass anchored its business in its famous marks to an extent perhaps unequaled anywhere.

In the late nineteenth century, panegyrics to Bass and its trademarks were as numerous as they were insufferable.

Everyone has heard a thousand times that the "Queen's morning drum never ceases to beat, and that the sun never sets upon her dominions." Bass's Pale Ale is found in the remotest corner of these dominions, and the natty scarlet triangle that constitutes the trade-mark and indicates the genuine nature of the contents of the bottle, is ever hailed with welcome.¹¹⁴

"There is no geometrical figure so well known as the vermilion triangle which is the trademark on [Bass's] bottles."¹¹⁵ Not only was Bass's trademark famous, it was famous for being famous. Everyone had a right to trade under one's own name—unless one's name was identical to famous names like "Bass."¹¹⁶ When legal texts extolled the importance of trademarks, they often singled out Bass for commendation.¹¹⁷ Bass's success was tied as much to its marks as to its products.

Business historians David Higgins and Shradha Verma demonstrate that "Bass achieved a higher return on capital employed (ROCE) compared to the major London brewers [in the years ca. 1870–1914]" and argue that "this indicates the success of a business strategy based on rigorous defense of its unique intangible assets—its famous trademarks—and not large-scale production for a tied market."¹¹⁸ Unlike most other major breweries, Bass was not vertically integrated down to the pubs that sold the beer (the "tied market"). Instead, the company relied on numerous intermediaries—especially in its ever-increasing export markets to India, the United States, continental Europe, and elsewhere around the world. Those intermediaries, however, had to be controlled at a distance. As Duguid argues in a related context,



geographic distribution here indicates how the power inherent in a trademark can work along supply chains and over geographic distances, allowing some to dictate terms . . . to other links over which they have no formal control and from whom they are separated by large distances. The power of names to signal quality and exert authority across distances became particularly clear in the nineteenth century.¹¹⁹

Few names signaled greater quality or exerted more authority than Bass. But it came at a cost. During this same period, “trademark law and the associated case law were still evolving and this meant that Bass faced considerable uncertainty about the exclusiveness of its marks.”¹²⁰ Bass not only filed for numerous trademark registrations, the company was among the most litigious trademark holders in the nineteenth century—along with the *grandes marques* of Champagne—filing lawsuits in England, France, the United States, and elsewhere.¹²¹ Even before the 1875 Trade Mark Act, “the major brewers [including Bass] were the early movers in legal fights over alcohol brands.”¹²² And within the industry, “Bass pursued registration of its trademark and prosecuted infringers more aggressively than other firms.”¹²³ After securing the first registered trademark in 1876, “the firm gained—and its records show, used—the power to face down smaller companies that threatened its business.”¹²⁴ By the early 1880s, Bass’s competitors would regularly send potential trademarks to Bass for approval before even initiating the trademark registration process. “The threat of legal action was sufficiently credible that in the majority of cases where infringement occurred, no action was actually needed.”¹²⁵ On more than one occasion, Bass was rebuked and penalized by courts for its excessive litigiousness—even in victory.¹²⁶ For the firm, the defense of its trademarks became a Sisyphean task.

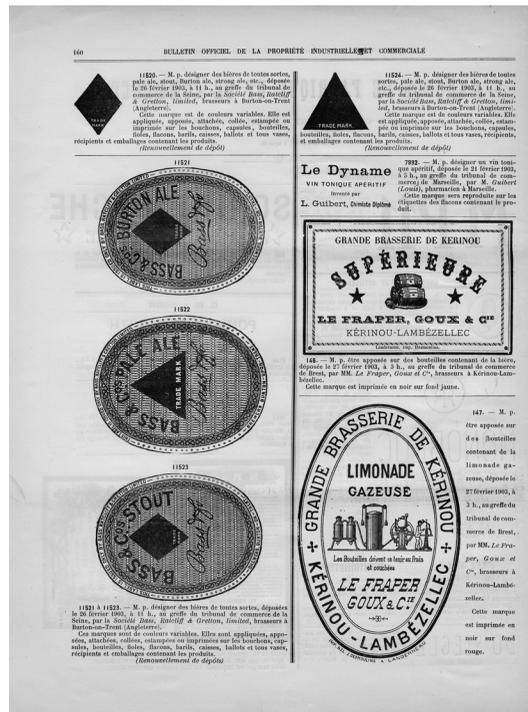
Bass bore multiple vulnerabilities vis-à-vis its trademarks. Its lack of vertical integration demanded that it exert authority over bottlers, distributors, bar owners, bartenders, and barmaids, up and down the supply chain, often at enormous distances from the brewery and headquarters in Burton-upon-Trent. Second—and, from a legal and visual perspective, even more important—were the trademarks themselves. The initial trademarks filed in England (1876) and France (1861) posited the whole label as the mark: “design of the label or trademark for the bottles of beer manufactured by Messieurs Bass and Company.” But Bass and its lawyers soon ventured far more ambitious, many would say audacious, trademarks: the triangle or the diamond as such, rendered in any color, solid or in outline, accompanied at the bottom by the words “Trade Mark.” The 1888 French registration (no. 4,320) is functionally equivalent to the 1889 U.S. trademark registration (no. 16,851), which reads,

**Bass Pale Ale Trademark
Registration, 1861. Source:
Archives Institut national de la
propriete industrielle (INPI).**

the trade-mark . . . consists of a triangle figure with the words “Trade Mark” at the base thereof. . . . The color is not essential and other colors may be substituted, and the triangle may be used in outline, if desired, without affecting the character of the trade-mark, the essential feature of which is the triangular figure.¹²⁷

For good reason, Bass’s opponents and even some judges accused the firm of endeavoring to secure a monopoly on a geometric form—an ambition Bass’s lawyers steadfastly denied even as they meticulously carried it out. Bass’s problem, of course, was that judges and legal theorists rejected, in principle, the registration of a trademark comprising nothing more than a geometric shape. As Ambrose Rendu explained in his 1881 treatise, “Geometric figures can also form trademarks, provided that they are not so simple that there is reason to say that they do not really constitute a characteristic sign. A circle or a square would hardly be accepted as distinctive marks.”¹²⁸ What was true for a circle and a square was no less true for a triangle and a diamond. And yet a series of cases won by Bass at the trial level or on appeal secured a functional monopoly on the triangle and diamond shapes for the sale of beer and spirits.¹²⁹

Among the first cases to test the 1860 trade treaty between France and England revolved around Bass Ale and its triangle. Convicted French forgers of Bass labels—sentenced to months or years of imprisonment on top of massive fines—ventured a less brazen scheme by changing the name of the brewery, along with a few details, while creating a label that, “as a whole, and in particular with the red triangle, which is the characteristic part, [is] an imitation likely to fool consumers [*tromper les acheteurs*].”¹³⁰ The defendants maintained that no such infringement or even imitation had occurred, since the names “Bass and Co” were not reproduced. The trial court and court of appeal declared that whether the name “Bass” was used mattered little so long as the defendants created “a label that almost completely resembled Bass’s in its general impression and details, in form, aspect, and color.”¹³¹ Nearly twenty years later, just before Manet commenced work on his *Bar*, a pair of English court cases—most notoriously a victory against Worthington beer—solidified Bass’s stranglehold on the triangle shape, especially when colored red.¹³² For several decades hence, and into the early twentieth century, Bass and its lawyers repeatedly asserted its monopoly on all triangle trademarks in the beer and spirits industries—and nearly always prevailed.¹³³



Courts would have arrived at the same conclusion for the bottles of Bass on Manet’s bar—bottles that similarly lacked the name “Bass.” All that was necessary for a hypothetical consumer to recognize Bass’s mark—and thus for a court to rule a rival trademark infringing—was a red triangle or diamond.

The seemingly endless reach of Bass’s trademark dovetailed perfectly with Manet’s (in)famous *tache*. As recounted by an American contemporary,

Another remarkable quality of Manet’s work was *la tache*. I know of no word in English that exactly conveys the meaning of *tache*. Literally translated, it means spot, but the language of the studio has somewhat changed its interpretation. *La tache* means a broad touch, a plane, one tone wherein the larger plane of local color predominates.¹³⁴

Even as the *tache* came to be understood as one of his great contributions to modern art, Manet was often dismissed as a painter of *taches*, perhaps best translated as “splotches” in this contemptuous context.¹³⁵ The most extreme legal rulings found that Bass’s red patch need not be anything more than a *tache*. And in the 1881 oil study for *A Bar*, Manet renders it so. Between the study and the final painting, Manet altered the model, the composition, and numerous details. But there, on the bar, is a brown bottle with an ovular label adorned indubitably with a red splotch that would soon point conclusively to Bass.

Today, after decades of decline, Bass is barely a shadow of its former glory. In the early twenty-first century, its breweries and trademarks were sold to two multinational beverage conglomerates. In 2013, InBev, owner of the trademarks, undertook a rebranding of Bass Pale Ale, once the mostly widely consumed ale on earth. The new name of this venerable beverage: *Bass Trademark No. 1*. This hyperbolic infatuation with intellectual property was anticipated by Bass in the nineteenth century. Bass strategically shifted the source of its value from its beers to its trademarks: from the distinctive qualities of the water in Burton-upon-Trent (in the 1870s, most major breweries outside of Burton produced their own pale ales by adding gypsum to their water, a chemical process soon dubbed “Burtonization”) and the distinctive qualities of British barley (by the 1890s, Bass imported much of its barley from France, Saale, Smyrna, Algeria, and California; by 1900, dependence on British barley had almost ceased) to the world’s most distinctive vermilion triangle.¹³⁶ Bass did not suffer from the deterritorialization of its production because it had already reterritorialized its authenticity in a mark. If Manet practiced “the correct vision of things [*la juste*

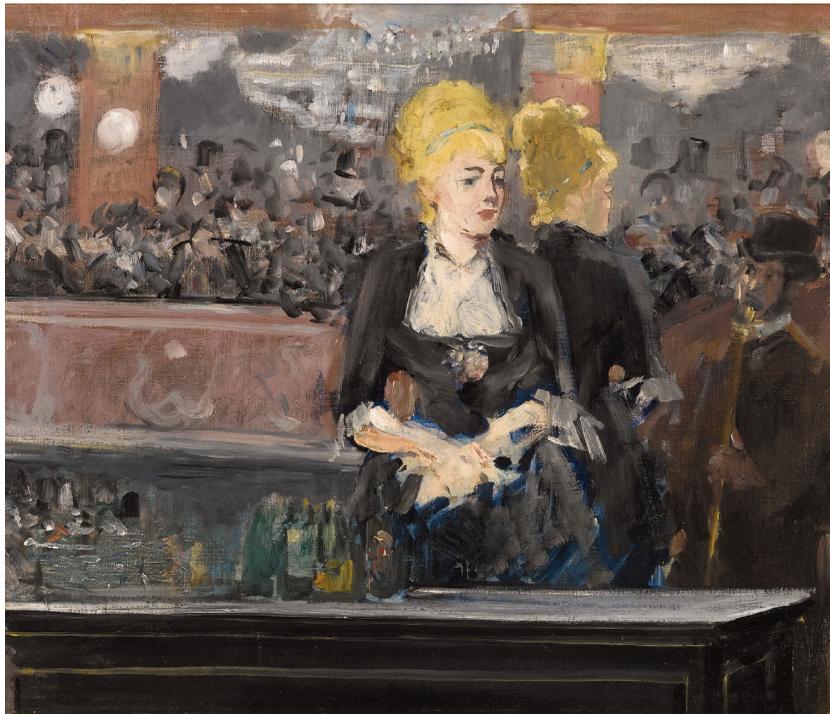
Opposite and below:
“Marques de fabrique et de
commerce: Bass Ale.” *Bulletin
officiel de la propriété industrielle
et commerciale*, no. 998
(19 March 1903): 160.



vision des choses], of their coloring, of their luminous vibration, of their undulating and passing appearance, so fleeting, so rapid,” then this correct vision was not limited to impressionistic perceptions.¹³⁷ In a series of red *taches*, Manet painted the perilous transmutation of a genuine product into an authenticated sign.

At stake for histories of modernism and modernity is much more than the reception of a single painting or the fate of a single English brewery and its marks. Bass exemplified, and Manet captured, the earliest intimations of the passage from what Karl Marx called “commodity fetishism” to what legal scholar Katya Assaf dubs “brand fetishism.”¹³⁸ Following Assaf, “The ‘source theory’ accorded with the commodity fetishism of Marx’s times: a trademark indicated the owner of the factory as the meaningful source of the products, obscuring and devaluating the labor of the workers that stood behind these products.”¹³⁹ And yet nineteenth-century “source theory” presumed that trademarks represented the physical source of their manufacture. The sale of a trademark independent of its underlying business—such as the recent independent sales of Bass’s breweries and its trademarks—was unconscionable. While no less capitalistic, geographic indications maintained even greater ties to products’ sources, understood both in terms of natural resources and traditional labor practices. Did the peasants of Champagne feel oppressed enough to rise up in revolt? Yes. Could their labor be outsourced to poorer countries? No. Although the bifurcation of source and mark arrived relatively late in Bass’s history, the proliferation and bellicose defense of its trademarks offered blueprints and legal precedents for even more successful global brands like Coca-Cola.¹⁴⁰

Over the course of the early twentieth century, as Assaf recounts,



U.S. and other courts introduced the “anonymous source theory,” whereby a trademark need not necessarily indicate the physical origin of the goods; “it should solely communicate the message that all goods carrying the mark are somehow linked with or sponsored by a single corporation.” This view was later complemented by the “quality theory”: beginning in the 1930s, “courts and legal scholars increasingly recognized that the most important function of a trademark is not its ability to denote the physical origin of goods, but its ability to indicate that all goods bearing the same mark have the same attributes and the same quality.”¹⁴¹ The U.S. Lanham Act (1946) codified into U.S. law the “anonymous source theory” and the “quality theory” and, as part of the Pax Americana, became the global standard. Assaf concludes,

It is important to note that absent the development of the “anonymous source theory” and the “quality theory” in trademark law, this high level of commodity fetishism would have been impossible. Thus, trademark law was an essential tool that allowed the public perception of a product as a commodity—an object in its own right, independent from the human labor that created it—to reach its epitome.¹⁴²

That Manet painted and signed *A Bar at the Folies-Bergère* is not in question. But what is the status of the *Urchin* prints reproduced in Goupil’s luxury magazine? Or the numerous *répétitions* and *réductions* sold by Goupil with the signatures of Gérôme? How much of the wine in the champagne bottles on Manet’s *Bar* was produced from grapes cultivated, harvested, and processed in Champagne? How much did consumers care, so long as the bottles were authenticated by the *grandes marques*? As made manifest on Manet’s *Bar*, capitalism and intellectual property law were effecting a fundamental transformation from things to signs. From the perspective of the consumer—the principal perspective for trademark and unfair competition law—what mattered more: the painting or the signature? the terroir or the label? the beer or the trademark? Over the course of the twentieth century, the balance of power shifted irrevocably from products to their marks of authentication. But in 1882, the question was unsettled and unsettling.

VI. The Birth of the Consumer

We return to the mirror. Something is clearly amiss. If Manet places the viewer directly before the bar, the barmaid, and the mirror—and most of the painting’s details indicate as much—then the barmaid’s reflection is wildly aberrant and the gentleman with the top hat should block the view or else has been subsumed into the viewer, whose reflection is necessarily absent. Despite multiple serious efforts at resolution, the inconsistencies cannot be explained

Édouard Manet, *Study for A Bar at the Folies-Bergère*, 1881.
Oil on canvas. 47 cm × 56 cm.
Private Collection c/o Sotheby’s.

away. Instead, we must follow T.J. Clark in his three indispensable observations about the painting and its mirror: (1) “What begins as a series of limited questions about relationships in space is likely to end as skepticism about relationship in general”; (2) “inconsistencies so carefully contrived must have been felt to be somehow appropriate to the social forms the painter had chosen to show”; (3) “things will not be allowed to appear too safely attached to the objects and persons whose likenesses they are.”¹⁴³ From its Salon reception through the twenty-first century, commentators have focused on the ambiguous sexual availability of the barmaid, an ambiguity often lent ponderous pathos by way of Walter Benjamin:

Ambiguity is the pictorial manifestation of dialectics, the law of dialectics at a standstill. This standstill is utopia and the dialectical image, therefore, dream image. Such an image is the commodity par excellence: as fetish. Such an image is the arcades, which are house no less than street. Such an image is the prostitute—seller and commodity in one.¹⁴⁴

Such a reading of the barmaid—variations of which are numerous and voluminous enough to fill bookshelves—is insufficient and inaccurate. As should now be obvious, the barmaid is hardly the sole unification of seller and commodity in *A Bar at the Folies-Bergère*. Unlike the glasses of beer interspersed throughout Manet’s 1870s bar scenes, each bottle on the bar carries its own advertisement, its own sales pitch, and acts as its own seller. As legal theorist Frank Schechter declared in the most impactful essay ever published on trademark law, “The mark actually *sells* the goods.”¹⁴⁵

Where the branded products on the bar declare their commercial availability, the barmaid merely insinuates a unity of merchant and merchandise. And unlike Manet’s painting or the bottles of Champagne and Bass, she carries no label, no signature, no indication of source, no mark of authenticity. (Her name, Suzon, and occupation, barmaid at the Folies-Bergère, are historical facts unobtainable from the painting alone.) More important, Suzon was likely *not* a prostitute and therefore *not* for sale.¹⁴⁶ Manet thus populates his painting not with commodities par excellence but with commercial agents rife with uncertainty, beginning with the barmaid. What more can be said about her enigmatic visage, her unfathomable yet emphatically present inner life, her command of the painting and refusal of its terms? Perhaps nothing. But even the most basic question amply suffices, as it initiates the central line of inquiry for the entire painting. Was the barmaid a prostitute or just a flirt or just a seller of drinks? Manet’s painting leaves viewers in limbo and rouses them to pose further questions. Did signatures certify products as autograph works by the artist? Not always. And the artist’s signature on an inscrutable label surely draws scrutiny.

Would Champagne survive the war between generic champagne and *grandes marques*? Impossible to say in 1882, but the question was unavoidable. Could Bass Ale maintain its monopoly on the red triangle? Ever more outrageous legal victories ensured increasing legal exposure. The global proliferation of source indicators—artists’ signatures, geographic indications, trademarks—was as much a sign of vulnerability as it was a projection of power. With its glittering surroundings, stylish clientele, upmarket alcohol, attractive barmaid, and chevalier of the Legion of Honor artist, *A Bar at the Folies-Bergère* gave pictorial form to the projection of power from a place of vulnerability. Relations that capitalism needed to be smooth were here rough, filled with promise and precarity.

In Manet’s painting, as in nineteenth-century trademark law, the status of products—paintings, champagne, beer, women—hinges on the status of the hypothetical consumer. Even as he is the source of endless confusion, without the phantom consumer, nothing in the painting makes sense. The painting is organized around the gaze of the consumer.¹⁴⁷ And he is the mythical foundation for all unfair competition and trademark infringement law. The 1857 law on trademarks prohibited counterfeiting trademarks (Article 7). This was effectively a prohibition against knockoffs: selling product X as product Y. Article 8 introduced the terms by which all ambiguous trademark infringement and unfair competition cases would be adjudicated. The penalties were only slightly less severe than for outright fraud—fines from fifty to two thousand francs, imprisonment from one month to one year—but the crime was far more equivocal. Article 8 applied to

1. Those who, without counterfeiting a trademark, have made a fraudulent imitation of it likely to fool the consumer [*tromper l’acheteur*], or have made use of a fraudulently imitated trademark;
2. Those who have made use of a trademark bearing indications likely to fool the consumer [*acheteur*] as to the nature of the product;
3. Those who have knowingly sold or put up for sale one or more products with a trademark that has been fraudulently imitated or bearing indications capable of fooling the consumer [*acheteur*] as to the nature of the product.¹⁴⁸

For most of the history of trademark infringement cases, including all the Bass Ale cases referenced herein, the offense of *tromper l’acheteur*—a criminal charge equivalent to “likelihood of confusion” in current U.S. law—relied on a phantom consumer conjured by the courts.¹⁴⁹ The *acheteur* was an everyman, always gendered male. He shopped in a state of distraction, did not read labels, and may have even been illiterate.¹⁵⁰ He was not a real person, yet he was the foundation on which trademark law was built: “The definition

of the trademark is . . . Every material means to guarantee the source of merchandise to the consumer [*acheteur*].”¹⁵¹ In a 1947 gallery guide for Manet’s *A Bar at the Folies-Bergère*—then, as now, in the collection of the Courtauld Gallery—the critic Raymond Mortimer openly scorned viewers who trained their attention on the bottles of Bass: “Most men . . . use their eyes with extreme parsimony; they see only enough of a bottle of Bass to be aware that it is a bottle (and that it is Bass not Worthington).”¹⁵² Bass lawyers rejoice! For trademark law asks nothing other than whether “most men” could reasonably mistake a competitor’s bottle for one of Bass’s. Despite his condescension, Mortimer captured an essential feature of Manet’s painting: one sees only enough of the bottle of Bass to be aware that it is a bottle (and that it is Bass not Worthington). Manet painted in anticipation of Mortimer’s “most men.” He painted from the perspective of the *acheteur*. How did he give form to this indispensable yet phantasmatic presence?

Among the comprehensive accounts of the 1882 Salon, few compared in girth to *L’Exposition des beaux-art*, with over three hundred pages of text and forty photogravures by—who else?—Goupil. The entry on Manet runs over three pages and was penned by Jules Fleurichamp, a financial reporter and lover (*amateur*) of art. He offered one of the few detailed descriptions of the top-hatted “customer.”¹⁵³ “And the gentleman who is only seen in the mirror, painted in a distempered manner, with his curdled-milk complexion, his deadpan look, his coffee-sand mustache and soul patch, is he not the best and cruelest joke?”¹⁵⁴ He is. Manet’s top-hatted customer at the far right is rendered nearly as imprecisely as the top-hatted customer at the far left, despite the enormous difference in scale. And that is the point. The customer at the right is functionally equivalent to all other consumers in and far beyond the Folies-Bergère. He is a man without qualities. The personification of “most men.” A phantasmatic surrogate for the viewer himself. For all the viewers. He is the phantom presence known to trademark law as the consumer, the *acheteur*.¹⁵⁵

Manet not only included the *acheteur* at the fulcrum of his painting; he painted the entire picture



from his perspective. The consumer is the *raison d'être* for the bar at the Folies-Bergère as well as for *A Bar at the Folies-Bergère*. Manet painted only enough of the bottle of Bass to indicate that it is a bottle of Bass. Functionally, he painted a trademark. He painted Champagne's telltale plump bottle and gold foil but no labels that would reveal a *grande marque*. Functionally, he painted a geographic indication. Lastly—for signatures always come last—he signed his name and dated his work on a nondescript white-and-gold label affixed to a bottle of indeterminate pink liquor. Manet not only slumped among the commodities; he subjected his name to their legal machinations. He had no choice. The birth of the consumer demanded the authentication of the artist.

Édouard Manet,
A Bar at the Folies-Bergère,
1882. Detail.

Notes

This article forms part of the first chapter of my current book project, *Art™: A History of Modern Art, Authenticity, and Trademarks*. I was fortunate to benefit from exchanges with many of the scholars most vital to this project, including Katya Assaf, Barton Beebe, Lionel Bently, Jonathan Crary, Paul Duguid, as well as my *Grey Room* colleagues, in particular Zeynep Çelik Alexander, Eric de Bruyn, and Byron Hamann. Thanks also to Yuma Terada for research assistance.

1. Among many studies, see especially T.J. Clark, *The Painting of Modern Life* (London: Thames and Hudson, 1985), 205–258; and Bradford R. Collins, ed., *12 Views of Manet's Bar* (Princeton, NJ: Princeton University Press, 1996). The only scholar who has offered sustained readings of consumerism, labels, and other neglected aspects of Manet's *Bar* is Ruth Iskin. Although she does not address intellectual property law per se, her studies are essential precedents to my own. See Ruth E. Iskin, "Selling, Seduction, and Soliciting the Eye: Manet's *Bar at the Folies-Bergère*," *Art Bulletin* 77, no. 1 (1995): 25–44; and Ruth E. Iskin, *Modern Women and Parisian Consumer Culture in Impressionist Painting* (Cambridge, UK: Cambridge University Press, 2007).

2. Charles Castle, *The Folies Bergère* (London: Methuen, 1982), 27. See also the account in J.K. Huysmans, "The Folies-Bergère in 1879," in *Parisian Sketches* (Sawtry, UK: Dedalus, 2004), 29–44.

3. Charles Dickens, *Dickens's Dictionary of Paris* (London: Macmillan, 1883), 255.

4. See especially Malcolm Park, "Ambiguity, and the Engagement of Spatial Illusion within the Surface of Manet's Paintings" (Ph.D. diss., University of New South Wales, Australia, 2001); Thierry de Duve, "How Manet's *A Bar at the Folies-Bergère* Is Constructed," *Critical Inquiry* 25, no. 1 (Autumn 1998); and Thierry de Duve, "Intentionality and Art Historical Methodology: A Case Study," *nonsite*, no. 6 (2012).

5. Ernest Chesneau, "Salon de 1882," in *Annuaire illustré des Beaux-Arts: 1882*, ed. F.G. Dumas (Paris: Librairie D'art, 1882), 223.

6. Recent art-historical and theoretical developments lay a crucial foundation for the analysis of things. See, for example, Bill Brown, "Thing Theory," *Critical Inquiry* 28, no. 1 (Autumn 2001): 1–22; and Laurence Bertrand Dorléac, ed., *Les Choses: Une histoire de la nature morte* (Paris: Musée du Louvre éditions, 2022). As will quickly become clear, my analysis of things tacks in a different direction. The bottles on Manet's bar are best understood not in parallel with, say, Vincent van Gogh's shoes—and their interpretations by Martin Heidegger, Meyer Schapiro, Jacques Derrida, and so on—but rather as the tangible manifestations of intangible intellectual property and its legal codes. I develop the relationship between the tangible and the intangible in the second chapter of *Art™*.

7. The letter is reprinted in original French and English translation in Scott Allan, Emily A. Beeny, and Gloria Groom, eds., *Manet and Modern Beauty: The Artist's Last Years* (Los Angeles: J. Paul Getty Museum, 2019), 166.

8. Émile Zola, *The Belly of Paris*, trans. Brian Nelson (New York: Oxford University Press, 2007), 24–25.

9. Manet, as recorded by Antonin Proust, in Juliet Wilson-Bareau, ed., *Manet by Himself* (Boston: Little, Brown, 1991), 185. At this time, Manet was generally treated harshly by jurors and critics; his sales were poor. See George Heard Hamilton, *Manet and His Critics* (New Haven: Yale University Press, 1954).

10. See Iskin, *Modern Women*, 182. "Parisian goods" must be understood as global goods sold—but not necessarily produced—in Paris.

11. See especially Alessandro Stanziani, *Rules of Exchange: French Capitalism in Comparative Perspective, Eighteenth to Early Twentieth Centuries* (Cambridge, UK: Cambridge University Press, 2012).

12. Zola, *The Belly of Paris*, 210–216.

13. See David Harvey, *Consciousness and the Urban Experience* (Baltimore: Johns Hopkins University Press, 1985), 63–220; Clark, *The Painting of Modern Life*; and Rosalind H. Williams, *Dream Worlds: Mass Consumption in Late Nineteenth-Century France* (Berkeley: University of California Press, 1982).

14. See Kevin H. O'Rourke and Jeffrey G. Williamson, *Globalization and History: The Evolution of a Nineteenth-Century Atlantic Economy* (Cambridge: MIT Press, 1999). See also Bradley Bowden, "Transformation: The First Global Economy, 1750–1914," in *The Palgrave Handbook of Management History*, ed. Bradley Bowden et al. (Cham, Switzerland: Springer, 2020), 271–306; and J. Bradford DeLong, *Slouching toward Utopia: An Economic History of the Long Twentieth Century* (New York: Basic Books, 2022), 27–58. All three facets of globalization are currently in retreat.

15. John Maynard Keynes, *The Economic Consequences of the Peace* (London: Macmillan, 1919), 9. "But," Keynes continues, "most important of all, [the inhabitant of London] regarded this state of affairs as normal, certain, and permanent, except in the direction of further improvement, and any deviation from it as aberrant scandalous and avoidable. The projects and politics of militarism and imperialism, of racial and cultural rivalries, of monopolies, restrictions, and exclusion, which were to play the serpent to this paradise, were little more than the amusements of his daily newspaper, and appeared to exercise almost no influence at all on the ordinary course of social and economic life, the internationalisation of which was nearly complete in practice" (10).

16. O'Rourke and Williamson, 41–43.

17. William Cronon, *Nature's Metropolis: Chicago and the Great West* (New York: W.W. Norton, 1991), 126.

18. Cronon, 121.

19. Richard B. Franken and Carroll B. Larrabee, *Packages That Sell* (New York: Harper and Brothers, 1928), 1. Much scholarship supports these claims. Alfred Chandler was among the first business historians to recognize the importance of branded packaged goods to the rise of industrial capitalism. In addition to extensive discussions of American consumer goods, he writes that "it was in branded, packaged products—food and drink, tobacco, and consumer chemicals—that the British industrialists of the Victorian era made their mark." Alfred D. Chandler, *Scale and Scope: The Dynamics of Industrial Capitalism* (Cambridge, MA: Belknap Press, 1994), 267. See also the empirical case study Patricia van den Eeckhout and Peter Scholliers, "The Proliferation of Brands: The Case of Food in Belgium, 1890–1940," *Enterprise and Society* 13, no. 1 (March 2012): 53–84. I further develop the importance of packaging in my book.

20. "The economic good will value of the trade-mark as a distinctive business device, and the fact that it plays a very important part in commerce, are widely recognized today." Franken and Larrabee, 119. See also Stefan Schwarzkopf, "Turning Trademarks into Brands: How Advertising Agencies Practiced and Conceptualized Branding, 1890–1930," in *Trademarks, Brands, and Competitiveness*, ed. Teresa da Silva Lopes and Paul Duguid (New York: Routledge, 2010), 165–193; Ross D. Petty, "The Codevelopment of Trademark Law and the Concept of Brand Marketing in the United States before 1946," *Journal of Macromarketing* 31, no. 1 (2011): 85–99; and Ross D. Petty, "From Label to Trademark: The Legal Origins of the Concept of Brand Identity in Nineteenth Century America," *Journal of Historical Research in Marketing* 4, no. 1 (2012): 129–153.

21. As Mahmood Mamdani eloquently argues, the definition and management of difference had been a cornerstone of indirect rule and colonial governance since the nineteenth century: "The shift from a homogenizing impulse to a preoc-

cupation with defining and managing difference is most evident in the transition from direct to indirect rule.” Mahmood Mamdani, *Define and Rule: Native as Political Identity* (Cambridge: Harvard University Press, 2012), 2. For salient analyses of recent developments, see Arjun Appadurai, “Disjuncture and Difference in the Global Cultural Economy,” *Theory, Culture and Society* 7 (1990): 295–310; and Luc Boltanski and Arnaud Esquerre, *Enrichment: A Critique of Commodities*, trans. Catherine Porter (Cambridge, UK: Polity, 2020). As Boltanski and Esquerre argue, “enrichment economies have as their principal resource the creation and shaping of *differences* and *identities*” (45). The theorization of deterritorialization and reterritorialization is indebted to Deleuze and Guattari. See especially Gilles Deleuze and Félix Guattari, *A Thousand Plateaus*, trans. Brian Massumi (Minneapolis: University of Minnesota Press, 1987).

22. Among the major paintings (there are also pastels, etc.) are *Le bon bock* (*A Good Glass of Beer*, 1873), *In the Café: Cabaret von Reichshoffen* (1878), *The Café-Concert* (ca. 1879), *Corner of a Café-Concert* (ca. 1878–1880), and *La serveuse de Bocks* (*The Waitress*, 1879). *Bock* is also the name of a dark German beer. In Manet’s paintings, *boc* and *bock* refer to the size of the glass rather than the type of beer. See Karl Baedeker, *Paris and Its Environs* (Leipzig: Karl Baedeker, 1878), 20.

23. For an authoritative account, see Sam Ricketson, *The Paris Convention for the Protection of Industrial Property: A Commentary* (Oxford, UK: Oxford University Press, 2015).

24. On recent overlaps, see, for example, Jane C. Ginsburg, “Licensing Commercial Value: From Copyright to Trademarks and Back,” in *The Law and Practice of Trademark Transactions: Perspectives and Challenges in a Global Marketplace*, ed. Irene Calboli and Jacques de Werra (Cheltenham, UK: Edward Elgar, 2016), 53–81; and Jane C. Ginsburg and Irene Calboli, “Overlapping Copyright and Trademark Protection in the United States: More Protection and More Fair Use?,” in *The Cambridge Handbook of International and Comparative Trademark Law*, ed. Irene Calboli and Jane C. Ginsburg (Cambridge, UK: Cambridge University Press, 2020), 436–450. Many scholars are apprehensive or hostile to the recent confusion of copyright and trademark; notorious examples include the shift from copyright to trademark protections for Mickey Mouse, which will ensure that Mickey Mouse never enters the public domain. The ostensible antiquity of trademarks and/or branding is a mainstay of business-friendly accounts. See, for example, Frank Schechter, *The Historical Foundations of the Law Relating to Trademarks* (New York: Columbia University Press, 1925); Sidney A. Diamond, “The Historical Development of Trademarks,” *Trademark Reporter* 65, no. 4 (July–August 1975): 265–290; and Karl Moore and Susan Reid, “The Birth of Brand: 4000 Years of Branding,” *Business History* 50, no. 4 (July 2008): 419–432.

For more critical and historical accounts of the rise of *modern* intellectual property law in the nineteenth century, see the essential texts: Brad Sherman and Lionel Bently, *The Making of Modern Intellectual Property Law: The British Experience, 1760–1911* (Cambridge, UK: Cambridge University Press, 1999); Lionel Bently, “Art and the Making of Modern Copyright Law,” in *Dear Images: Art, Copyright and Culture*, ed. Daniel McClean and Karsten Schubert (London: Ridinghouse and ICA, 2002), 331–351; and Lionel Bently, “The Making of Modern Trade Mark Law: The Construction of the Legal Concept of Trade Mark (1860–1880),” in *Trade Marks and Brands: An Interdisciplinary Critique*, ed. Lionel Bently, Jennifer Davis, and Jane C. Ginsburg (New York: Cambridge University Press, 2008), 3–41.

25. See “What Is Copyright?,” U.S. Copyright Office, <http://www.copyright.gov/what-is-copyright>.

26. On the U.S. constitutional justifications, see Zvi S. Rosen, “In Search of

the *Trade-Mark Cases*: The Nascent Treaty Power and the Turbulent Origins of Federal Trademark Law,” *St. John’s Law Review* 83, no. 3 (Summer 2009): 827–904.

27. On the implications of this claim in contemporary U.S. law, see Jane C. Ginsburg, “The Author’s Name as a Trademark: A Perverse Perspective on the Moral Right of Paternity,” *Cardozo Arts and Entertainment Law Journal* 23, no. 2 (2005): 379–390; and Xiyin Tang, “The Artist as Brand: Toward a Trademark Conception of Moral Rights,” *Yale Law Journal* 122, no. 1 (October 2012): 218–257.

28. Art authentication is big business and much litigated; but is generally kept at arm’s length from art history proper. On its importance to art history and law, see Daniel McClean, ed., *Artist, Authorship & Legacy: A Reader* (London: Ridinghouse, 2018). On the problematic role of copyright for art, see Amy Adler, “Why Art Does Not Need Copyright,” *George Washington Law Review* 86, no. 2 (2018): 313–375. Art historians engaged in the history of design or fashion have been more attentive to trademark. See, for example, Nancy Troy, *Couture Culture* (Cambridge: MIT Press, 2003), esp. 192–265; Carma Gorman, “The Role of Trademark Law in the History of US Visual Identity Design, c.1860–1960,” *Journal of Design History* 30, no. 4 (2017): 371–388; and Carma Gorman, “The Arts and Crafts Knock-Off and U.S. Intellectual Property Law,” in *The Rise of Everyday Design: The Arts and Crafts Movement in Britain and America*, ed. Monica Penick and Christopher Long (Austin: Harry Ransom Center, University of Texas at Austin, 2019), 139–155. Some art critics, especially Blake Gopnik, are highly attuned to the intersections of contemporary art and trademark. Among the many important recent publications on art and copyright in the eighteenth and nineteenth centuries, see Katie Scott, *Becoming Property: Art, Theory and Law in Early Modern France* (New Haven: Yale University Press, 2018); and Marie-Stéphanie Delamaire and Will Slauter, eds., *Circulation and Control: Artistic Culture and Intellectual Property in the Nineteenth Century* (Cambridge, UK: Open Book Publishers, 2021). For historical overviews of copyright law in France, see David Lefranc, “The Metamorphosis of Contrefaçon in French Copyright Law,” in *Copyright and Piracy: An Interdisciplinary Critique*, ed. Lionel Bently, Jennifer Davis, and Jane C. Ginsburg (Cambridge, UK: Cambridge University Press, 2010), 55–79; and Frédéric Rideau, “Nineteenth Century Controversies Relating to the Protection of Artistic Property in France,” in *Privilege and Property*, ed. Ronan Deazley, Martin Kretschmer, and Lionel Bently (Cambridge, UK: Open Book Publishers, 2010), 241–254.

29. The 1880 conference took place November 4–20, 1880, and received press coverage in, for example, *Le Voltaire*, *L’union libérale*, *L’univers*, *Le peuple Français*, *La presse*, *Le midi*, and *Le messager de Paris*, as well as specialized legal publications.

30. As Paul Duguid wrote in 2009, “The history of modern brands depends to a significant degree on the history of trademark law, but there are reasons to doubt how comprehensive standard versions of the latter history are. Business, economic, and even legal historians tend to accentuate the importance of the Anglo-Saxon common-law tradition and assume that the continental, civil law tradition followed in its wake. Yet the historical sequence of events suggests that almost exactly the opposite is true. Not only did the French have robust trademark law long before Great Britain and the United States, but the latter two countries only adopted trademark law after signing trademark clauses in diplomatic treaties with France.” Paul Duguid, “French Connections: The International Propagation of Trademarks in the Nineteenth Century,” *Enterprise and Society* 10, no. 1 (March 2009): 3. See also Paul Duguid, Teresa da Silva Lopes, and John Mercer, “Reading Registrations: An Overview of 100 Years of Trademark Registrations in France, the United Kingdom, and the United States,” in *Trademarks, Brands, and*

Competitiveness, 9–30.

31. For introductory histories and overviews, see Alain Beltran, Sophie Chauveau, and Gabriel Galvez-Behar, *Des brevets et des marques: Une histoire de la propriété industrielle* (Paris: Fayard, 2001); and Gérard Emptoz and Valérie Marchal, *Aux sources de la propriété industrielle* (Paris: Institut national de la propriété industrielle, 2002). See also Wendelin Brühwiler, *Zeichenform und Warenverkehr: Eine Formatgeschichte der Marke, 1840–1891* (Konstanz: Konstanz University Press, 2020).

32. Numerous French and Anglo-American historical treatises recount this history. See, for example, Charles E. Coddington, *A Digest of the Law of Trademarks* (New York: Ward and Peloubet, 1878); Michel Pelletier and Henry Defert, *Procédure en matière de contrefaçon industrielle, littéraire et artistique avec formules* (Paris: A. Rousseau, 1879); Thomas Barclay, *The Law of France Relating to Industrial Property, Patents, Trade Marks, Merchandise Marks, Trade Names, Models, [etc.]* (London: Sweet and Maxwell Limited, 1889); and Eugène Pouillet, *Traité des marques de fabrique et de la concurrence déloyale en tous genres*, 3rd ed. (Paris: Marchal et Billard, 1892).

33. A preliminary step toward the control of source indicators in France—after the ineffectual (because excessively severe) Law of 22 Germinal Year XI (12 April 1803)—was Article 1382 of the French Civil Code—also known as the Napoleonic Code (1804)—which continues to serve as the basis for the jurisprudence of unfair competition (*commerce déloyale*). But, like other unfair competition laws (civil or common), it did not specify the role of trademarks or other source indicators. On its historical and continued influence, see Tim W. Dornis, *Trademark and Unfair Competition Conflicts: Historical-Comparative, Doctrinal, and Economic Perspectives* (Cambridge, UK: Cambridge University Press, 2017), 15–17; and Walter J. Derenberg, “The Influence of the French Code Civil on the Modern Law of Unfair Competition,” *American Journal of Comparative Law* 4, no. 1 (Winter 1955): 1–34. The Law of 28 July 1824 established criminal penalties for the false indication of the origin of goods, specifically false indications of personal and geographic names. Like Article 1382, the Law of 28 July 1824 is still in force. But its emphasis on names proved difficult for modern trademark law; its primary legacy is in geographic indications.

34. German trademark law is beyond the scope of this study. For an excellent overview in English, see Dornis, *Trademark and Unfair Competition Conflicts*.

35. “Law of June 23, 1857,” in *The Law of France Relating to Industrial Property [etc.]*, ed. Thomas Barclay (London: Sweet and Maxwell, 1889), 76; emphasis added. The complete text was widely reproduced in original French and local translations throughout the nineteenth century. See, for example, “Art. 271: Loi du 23 Juin 1857 sur les marques de fabrique et de commerce,” *Annales de la propriété industrielle, artistique et littéraire* 4 (1858): 5–9.

36. Unlike the robust French trademark act, both the British and American acts proved deficient. The first practicable British trademark law was passed in 1875 and required multiple revisions. The 1870 U.S. Trade Mark Act was declared unconstitutional in 1879, after which the United States was without a fully functional trademark law until 1905.

37. Eugène Pouillet, *Traité théorique et pratique de la propriété littéraire et artistique et du droit de représentation* (Paris: Marchal, Billard et Ce, 1879). On the treatise’s authoritative position, see Stina Teilmann-Lock, *The Object of Copyright: A Conceptual History of Originals and Copies in Literature, Art and Design* (London: Routledge, 2016), 82. Pouillet’s treatise on trademarks was issued in six editions and numerous reprintings into the twentieth century, beginning in 1875: Eugène Pouillet, *Traité des marques de fabrique et de la concurrence*

déloyale en tous genres (Paris: Marchal et Billard, 1875). Pouillet was also a principal member of the French committee that organized the Congresses on Industrial Property, which led to the Paris Convention, and was the author of a seminal treatise on trademarks. See “Art. 2576: Congés de la propriété littéraire, industrielle et artistique (1878),” *Annales de la propriété industrielle, artistique et littéraire* 25 (1880): 47 and passim.

38. Pouillet, *Traité théorique et pratique*, 361.

39. Other legal scholars argued that, as long as owners had the right to destroy a work of art, they certainly had the right to remove a signature. See, for example, Gustave Huard, *Traité de la propriété intellectuelle* (Paris: Marchal et Billard, 1903), 297. See also Alex Weintraub, “Wrongful Convictions: The Nineteenth-Century Droit d’Auteur and Anti-authorial Criticism,” *nonsite*, no. 25 (2018).

40. Pouillet, *Traité théorique et pratique*, 269.

41. Pouillet, *Traité théorique et pratique*, v. The trademark as the “manufacturer’s signature” is a leitmotif through the nineteenth-century literature on trademarks in France, England, and the United States.

42. Joseph Leo Koerner, *The Moment of Self-Portraiture in German Renaissance Art* (Chicago: University of Chicago Press, 1993), 209. See also Lisa Pon, *Raphael, Durer, and Marcantonio Raimondi: Copying and the Italian Renaissance Print* (New Haven: Yale University Press, 2004), 39–41, 62–63, 139–142.

43. Koerner, *The Moment of Self-Portraiture*, 209. See also Peter Parshall, “Imago Contrafacta: Images and Facts in the Northern Renaissance,” *Art History* 16, no. 4 (1993): 554–579.

44. Vasari, quoted in Joseph Leo Koerner, “Albrecht Dürer: A Sixteenth-Century Influenza,” in *Albrecht Durer and His Legacy: The Graphic Work of a Renaissance Artist*, ed. Giulia Bartrum (Princeton, NJ: Princeton University Press, 2002), 25.

45. Koerner, “Albrecht Dürer,” 25.

46. See Charlotte Guichard, “La signature dans le tableau aux XVIIe et XVIIIe siècles: Identité, réputation et marché de l’art,” *Sociétés et représentations* 25, no. 11 (2008): 49–77; Charlotte Guichard, ed., *De l’authenticité: Une histoire des valeurs de l’art: XVIIe–XXe siècle* (Paris: Publications de la Sorbonne, 2014); and Charlotte Guichard, *La griffe du peintre: La valeur de l’art (1730–1820)* (Paris: Éditions du Seuil, 2018). For an overview of the scholarship, especially on early modern signatures, see also Karin Gludovatz, *Fährten legen, Spuren lesen: die Künstlersignatur als poetische Referenz* (Munich: Wilhelm Fink, 2011), 9–26.

47. Guichard, *La griffe du peintre*, 21. Goodman’s distinction between autographic and allographic works remains pertinent but the distinction breaks down profoundly with French nineteenth-century academic painting. See Nelson Goodman, *Languages of Art: An Approach to a Theory of Symbols* (Indianapolis: Bobbs-Merrill, 1968), 112–115.

48. See Patricia Mainardi, “Copies, Variations, Replicas: Nineteenth-Century Studio Practice,” *Visual Resources* 15, no. 2 (1999): 123–147.

49. See, for example, Rosalind Krauss, “Retaining the Original? The State of the Question,” and “You Irreplaceable You,” in *Retaining the Original: Multiple Originals, Copies, and Reproductions* (Washington, DC: National Gallery of Art, 1989), 8–9; 151–159.

50. See Eik Kahng, ed., *The Repeating Image: Multiples in French Painting from David to Matisse* (Baltimore: Walters Art Museum, 2007).

51. See Stephen Bann, *Parallel Lines: Printmakers, Painters and Photographers in Nineteenth-Century France* (New Haven: Yale University Press, 2001).

52. Pouillet, *Traité théorique et pratique*, 362.

53. Patricia Mainardi, “The 19th-Century Art Trade: Copies, Variations, Replicas,” *Van Gogh Museum Journal*, 2000, 63.

54. “Copie,” in *Dictionnaire de l'Académie des Beaux-Arts* (Paris: Firmin Didot et Cie, 1884), 262–265. See also Mainardi, “The 19th-Century Art Trade,” 65–68.
55. “Copie,” 262.
56. Some art historians have gone so far as to argue that, already in the early Renaissance, signatures were often added to studio works to assuage potential buyers and thus were signs of inauthenticity. See Livio Pestilli, “The Artist’s Signature as a Sign of Inauthenticity,” *Source* 32, no. 3 (Spring 2013): 5–16.
57. The analysis that follows derives largely from Hélène Lafont-Couturier, “La maison Goupil ou la notion d’oeuvre originale remise en question,” *Revue de l’art*, no. 112 (1996): 66–67.
58. Pierre Courthion and Pierre Cailler, eds., *Portrait of Manet by Himself and His Contemporaries* (New York: Roy Publishers, 1960), 181. See also Harrison C. White and Cynthia A. White, *Canvases and Careers: Institutional Change in the French Painting World* (Chicago: University of Chicago Press, 1993), 130–133.
59. Prices for the Flameng etching: six francs on white paper with a caption; twelve francs on white paper without a caption; twenty-four francs for artist proofs. My thanks to Régine Bigorne, Musée Goupil, Bordeaux, for details on the edition and its pricing. The *Gazette des beaux-arts* appears to have also issued an etching by Flameng in 1863.
60. Among numerous sources, see Pouillet’s initial and refined positions in Pouillet, *Traité théorique et pratique*, 294–295; and Eugène Pouillet, *Traité théorique et pratique de la propriété littéraire et artistique et du droit de représentation*, 2nd ed. (Paris, 1894), 367. In the second edition, Pouillet explicitly opines that “an artist does not have the right to sell a pure and simple repetition of a work previously sold,” even as he recognizes that opinions were justly divided.
61. Ronan Deazley, “Breaking the Mould? The Radical Nature of the Fine Arts Copyright Bill 1862,” in *Privilege and Property*, 289–320; Elena Cooper, “How Art Was Different: Researching the History of Artistic Copyright,” in *Research Handbook on the History of Copyright Law*, ed. Isabella Alexander and H. Tomás Gómez-Arostegui (Cheltenham, UK: Edward Elgar, 2016), 158–173; and Elena Cooper, *Art and Modern Copyright* (Cambridge, UK: Cambridge University Press, 2018), esp. 107–156.
62. Cooper, *Art and Modern Copyright*, 162.
63. In addition to the sources cited above, see Hélène Lafont-Couturier, ed., *Gerome et Goupil: Art and Enterprise* (Pittsburgh: Frick Art and Historical Center, 2000); Alain Bonnet, *La maison Goupil: Galerie d’art internationale au XIXe siècle* (Paris: Mare et Martin, 2017); and Geraldine David, Kim Oosterlinck, and Christian Huemer, “Art Dealers’ Inventory Strategy: The Case of *Goupil, Boussod et Valadon* from 1860 to 1914,” *Business History* 65 (2023): 24–55.
64. The statistics on Gérôme’s sales cited in this paragraph comes from Hélène Lafont-Couturier, “Mr Gérôme Works for Goupil,” in *Gerome et Goupil*, 13–29.
65. White and White, 133.
66. Émile Zola, *Le bon combat: De Courbet aux Impressionnistes: anthologie d’écrits sur l’art*, ed. Jean-Paul Bouillon (Paris: Hermann, 1974), 187. See also Iskin, *Modern Women*, 20–21.
67. Georges Rivière, “Explications,” *L’impressionniste*, no. 3 (21 April 1877): 3.
68. I am grateful to Erika Mosier, paper conservator at the Museum of Modern Art, for discerning the reproductive technology employed.
69. *Galerie contemporaine, littéraire, artistique: Édouard Manet* (Paris: Goupil et Cie, 1876), n.p.
70. Adolphe Tabarant, *Manet et ses oeuvres*, 3rd ed. (Paris: Gallimard, 1947), 37–38.
71. Tabarant, 37–38. Normally, a *réduction* by a copyist would be used as the

basis for a reproduction, but Manet executed his own etchings and lithographs. The existence of this *réduction* is difficult to account for.

72. Phillip Dennis Cate, *Prints Abound: Paris in the 1890s* (Washington, DC: National Gallery of Art, 2000), 15. On the importance of specific reproductive technologies in the art of Manet, especially as represented in his 1868 portrait of Zola, see Anne Higonnet, “Manet and the Multiple,” *Grey Room*, no. 48 (Summer 2012): 102–116.

73. Théodore Duret, *Histoire d'Edouard Manet et de son œuvre* (Paris: H. Floury, 1902), 125.

74. Nevertheless, he nurtured the values set on them by collectors through the selection of different papers for different clients. Michel Melot, *The Impressionist Print*, trans. Caroline Beamish (New Haven: Yale University Press, 1996), 58.

75. Wilson-Bareau, 263.

76. Manet, quoted in Courthion and Cailler, 218.

77. Duve, “Intentionality and Art Historical Methodology.”

78. Ambroise Rendu, *Marques de fabrique et de commerce* (Paris: A. Durand et Pedone-Lauriel, 1881), 24. For one of numerous nearly identical accounts of the trademark as the signature of the producer, manufacturer, or seller, see Frédéric R. Coudert, *Marques de fabrique, leur protection aux États-Unis et en France* (New York: Banks, 1879), 4.

79. Leo Steinberg, “The Algerian Women and Picasso at Large,” in *Other Criteria* (London: Oxford University Press, 1972), 172.

80. Dev S. Gangjee, “Champagne,” in *A History of Intellectual Property in 50 Objects*, ed. Claudy Op den Kamp and Dan Hunter (Cambridge, UK: Cambridge University Press, 2019), 161.

81. D.M. Higgins, *Brands, Geographical Origin, and the Global Economy* (Cambridge, UK: Cambridge University Press, 2018), 59.

82. Australia did not pass a law limiting the use of “champagne” until 2010 and then only in exchange for greater access to European markets for its own wines.

83. Dev S. Gangjee, *Relocating the Law of Geographical Indications* (Cambridge, UK: Cambridge University Press, 2012), 2.

84. See especially Gangjee, *Relocating the Law*; Dev S. Gangjee, ed., *Research Handbook on Intellectual Property and Geographical Indications* (Cheltenham, UK: Edward Elgar, 2016); Higgins, *Brands, Geographical Origin*; Anke Moerland, *Why Jamaica Wants to Protect Champagne: Intellectual Property Protection in EU Bilateral Trade Agreements* (Oisterwijk, The Netherlands: Wolf Legal Publishers, 2013); Alessandro Stanziani, “Wine Reputation and Quality Controls: The Origins of the AOC in Nineteenth Century France,” *European Journal of Law and Economics* 18, no. 2 (2004): 149–167; and Stanziani, *Rules of Exchange*. Gangjee’s important account observes, “it has been noted that certain archetypes, or perhaps ideal types, provide much of the scaffolding for the subject matter categories of modern IP [intellectual property] law. Mechanical and chemical inventions have historically formed the kernel for the patent system, which raises all sorts of awkward conceptual questions when the system encounters computer software or biotechnological inventions. Similarly, for trademarks registration, visual signs consisting of words and figurative devices have formed the paradigmatic subject matter. Attempts to register scents, sounds, tastes, textures and movements as trademarks have given rise to both adjectival and substantive law concerns. . . . In the case of the AO [Appellation d’Origine], wine has long been considered the archetypal subject matter and legislative experiments in France influenced wine regulation in its Southern European neighbors, went on to shape the European Union’s wine labelling system, would serve as a foil to the geographical demarcation of wine regions in the New World and gradually extended to other product categories

such as cheese. Teachings from French national experiences have informed EU GI [geographic indication] policy for agricultural products and foodstuffs, while reinforcing arguments for enhancing the scope of GI protection at international debates.” Gangjee, *Relocating the Law*, 78–79. Gangjee here develops insights on the long-term influence of subject matter models, first articulated by Sherman and Bentley, 142.

85. See Gangjee, *Relocating the Law*, 34–36.

86. Quoted and discussed in Gangjee, *Relocating the Law*, 68. He argues further, “It is therefore on 8 April 1890 that *terroir* makes its appearance in multilateral IGO [indications of geographic origin] negotiations. This term encapsulates the epistemic shift from the IS [indication of source] to the AO [appellation of origin] suggesting that certain products are uniquely, or at least distinctively, linked to specific regions” (69).

87. See *The Treaty of Versailles*, Part X: Economic Clauses, Section I: Commercial Relations, Chapter III: Unfair Competition, Article 275.

88. See Dev S. Gangjee, “Spanish Champagne? An Unfair Competition Approach to GI Protection,” in *Intellectual Property at the Edge: The Contested Contours of IP*, ed. Rochelle Cooper Dreyfuss and Jane C. Ginsburg (Cambridge, UK: Cambridge University Press, 2014), 105–129.

89. Even as geographic indications have proliferated widely, the European and French wine industries at their source have faltered. See Brian Rose, “No More Whining about Geographical Indications: Assessing the 2005 Agreement between the United States and the European Community on the Trade in Wine,” *Houston Journal of International Law* 29, no. 3 (2007): 731–770.

90. Laurence Bérard, “Terroir and the Sense of Place,” in *Research Handbook on Intellectual Property*, 72.

91. Elizabeth Barham, “‘Translating *Terroir*’ Revisited: The Global Challenge of French AOC Labeling,” in *Research Handbook on Intellectual Property*, 53.

92. See Boltanski and Esquerre, *Enrichment*. Boltanski and Esquerre prefer “enrichment economy” to the “symbolic economy” diagnosed by Pierre Bourdieu and Jean Baudrillard, who, in the authors’ opinion, erroneously prioritize “immaterial” over “material” entities. If Bourdieu and Baudrillard fail to account for transformations in material entities (a debatable claim), then Boltanski and Esquerre certainly fail to account for the “immaterial” legal underpinnings of the enrichment economy; namely, trademarks, geographic indications, and related intellectual property laws. See especially Boltanski and Esquerre, 44. Various scholars and policy analysts have pursued geographic indications as a mechanism to secure and enhance indigenous rights. However, as many of those scholars argue, geographic indications and other forms of Western-dominated intellectual property all-too-rarely serve the interests of indigenous or postcolonial populations. See Susy Frankel, “Trademarks and Traditional Knowledge and Cultural Intellectual Property Rights,” in *Trademark Law and Theory: A Handbook of Contemporary Research*, ed. Graeme B. Dinwoodie and Mark D. Janis (Cheltenham, UK: Edward Elgar, 2008), 433–463; Susy Frankel, “The Mismatch of Geographical Indications and Innovative Traditional Knowledge,” *Victoria University of Wellington Legal Research Papers* 1, no. 6 (2011): 1–20; Boatema Boateng, *The Copyright Thing Doesn’t Work Here: Adinkra and Kente Cloth and Intellectual Property in Ghana* (Minneapolis: University of Minnesota Press, 2011), esp. 62, 152; Boatema Boateng, “Cultures of Property: African Cultures in Intellectual and Cultural Property Regimes,” in *The Routledge Companion to Cultural Property*, ed. Jane Anderson and Haidy Geismar (London: Routledge, 2017), 305–306; Dwijen Rangnekar, “Remaking Place: The Social Construction of a Geographical Indication for *Feni*,” *Environment and Planning A* 43 (2011): 2043–2059; Jane

Anderson, *Law, Knowledge, Culture: The Production of Indigenous Knowledge in Intellectual Property Law* (Cheltenham, UK: Edward Elgar, 2009); and Jane Anderson and Haidy Geismar, eds., *The Routledge Companion to Cultural Property* (London: Routledge, 2017). Even when “successfully” deployed on behalf of indigenous or postcolonial populations, GIs run the risk of ossifying living traditions and turning products and producers into living museums or amusement parks. See esp. John L. Comaroff and Jean Comaroff, *Ethnicity, Inc.* (Chicago: University of Chicago Press, 2009).

93. Bronwyn Parry, “Geographical Indications: Not All ‘Champagne and Roses,’” in *Trade Marks and Brands*, 361–380. Gangjee argues that, although the essentialism criticized by Parry is evident in rhetoric, in practice GIs and the AOC system are not nearly as essentialist as she claims. Dev S. Gangjee, “(Re)Locating Geographical Indications: A Response to Bronwyn Parry,” in *Trade Marks and Brands*, 381–397. Most acute at the time was a phylloxera outbreak so severe that all French grape vines eventually had to be replanted with American rootstocks. The wine blight would not reach Champagne until the late 1880s, but, as evidenced by the 1881 Bordeaux conference on the scourge, winegrowers recognized that the links between the grapes and the terroir—literally, the roots—were fundamentally at risk. See Kolleen Guy, *When Champagne Became French* (Baltimore: Johns Hopkins University Press, 2003), 96–114.

94. “Art. 3027,” *Annales de la propriété industrielle, artistique et littéraire* 30 (1885): 346–350. As Gangjee astutely argues, the concept of terroir shifts from an exclusively natural category to a combination of nature and culture embedded in tradition. Gangjee, *Relocating the Law*, esp. 70–72.

95. Graham Harding, *Champagne in Britain, 1800–1914: How the British Transformed a French Luxury* (London: Bloomsbury, 2021), 176 and passim.

96. Antonin Proust, *Souvenirs* (1897), trans. in Wilson-Bareau, 185.

97. Iskin, *Modern Women*, 182–183. On the contents of the bar as a still life, see Carol Armstrong, “Counter, Mirror, Maid: Some Infra-thin Notes on *A Bar at the Folies-Bergère*,” in *12 Views of Manet’s Bar*, 27.

98. Henri Houssaye, “Le salon de 1882: I. La grande peinture et les grands tableaux,” *Revue des deux mondes* 51, no. 3 (1882): 584. Immediately prior, the word *bar* is italicized, apparently to signify its disreputable foreignness (583).

99. Emile Blémont, “Le salon de 1882,” *Le réveil*, 13 May 1882, 2. The oscillations between French and English do not allow for a clean translation. Rendered entirely in English (with original English italicized and crucial French words preserved in brackets), the phrase reads, “His ‘*Bar*’ with its ‘*Bar-maid*,’ that is, its ‘Seller [*Vendeuse*] of Champagne at the bar [*comptoir*] of the Folies-Bergère.”

100. Tamerlan, “Le salon comique,” *Le clairon*, no. 434 (1882): 1. “Bar—in French: buffet.”

101. *Grand Robert de la langue française*, s.v. “bar.”

102. Anonymous, “Salon de 1882,” *La République Française*, 1 May 1882, 4.

103. Gangjee, *Relocating the Law*, 40. On the tensions between traditional trademarks and geographic indications, see also Dev S. Gangjee, “Quibbling Siblings: Conflicts between Trademarks and Geographical Indications,” *Chicago-Kent Law Review* 82, no. 3 (2007): 1253–1294; and Alessandro Stanziani, “Marques, marques collectives,” in *Dictionnaire historique de l’économie-droit, XVIIIe–XXe siècles*, ed. Alessandro Stanziani (Paris: L.G.D.J., 2007), 229–238.

104. See especially Guy, *When Champagne Became French*.

105. Quoted in Guy, 40 (see also 82–85).

106. James Simpson, “Cooperation and Conflicts: Institutional Innovation in France’s Wine Markets, 1870–1911,” *Business History Review* 79, no. 3 (2005): 551. Further: “Of all the wine-producing regions, the champagne producers (négociants-

éleveurs) were the most successful in establishing brand names and informing consumers of wine quality” (552). The large houses of Cognac were also highly successful in this regard. See Thomas Mollanger, “The Effects of Producers’ Trademark Strategies on the Structure of the Cognac Brandy Supply Chain during the Second Half of the 19th Century,” *Business History* 60, no. 8 (2018): 1255–1276.

107. See Harding, 180–182.

108. The second chapter of my book focuses on Picasso and cubism, where Bass’s red triangle and diamond play outsized roles. A few scholars of English literature have recognized the importance of Bass in cubism, by way of James Joyce’s *Ulysses* and Robert Rosenblum. See John Rocco, “Drinking *Ulysses*: Joyce, Bass Ale, and the Typography of Cubism,” *James Joyce Quarterly*, no. 33 (1996): 399–409; Jonathan Goldman, “The Logos of Trademark: Joyce, Bass Ale, and Brand Insignias,” in *Joyce and the Law*, ed. Jonathan Goldman (Gainesville: University Press of Florida, 2017), 193–210; and Robert Rosenblum, “Picasso and the Typography of Cubism,” in *Picasso 1881/1973*, ed. Roland Penrose and John Golding (London: Paul Elek, 1973), 49–75.

109. According to one contemporary guidebook, “English beer may be procured in Paris as in London, though its cost is naturally somewhat greater. Bottled beer, generally either Bass’s or Allsopp’s, can be had in most of the better-class restaurants, and in the *établissements de bouillon*.” Dickens, 23.

110. Colin C. Owen, “*The Greatest Brewery in the World*”: A History of Bass, Ratcliff and Gretton (Chesterfield, UK: Derbyshire Record Society, 1992).

111. John House, “In Front of Manet’s Bar: Subverting the ‘Natural,’” in *12 Views of Manet’s Bar*, 248 n. 9.

112. In a section titled “Towards a ‘modern’ definition of trademarks: 1875–1888,” Bently argues, “The key developments were: the consolidation of various definitions of ‘trademark’; the clarification of the relationship between protection based on registration and that available despite the absence of registration; the extension of registration to word marks; the exclusion from registrability of descriptive and geographical marks; and the development of a multi-lateral arrangement for the mutual protection of marks overseas.” Bently, “The Making of Modern Trade Mark Law,” 33.

113. Thanks to Steeve Gallizia, Archives Department, Institut national de la propriété industrielle, France, for generous assistance with archival documents.

114. The text continues, “In any case detected of pale or other ale being sold as from Messrs. Bass & Co that is not their genuine brew . . . and if an action will lie for imposition on the public or for infringement of trade mark, the action will be raised and prosecuted,—and most properly so, say Honour and Honesty.” *Wyman’s Commercial Encyclopædia of Leading Manufacturers of Great Britain* (London: Wyman and Sons, 1888), 185.

115. *Fortunes Made in Business*, vol. 2 (London: Sampson, Low, Marston, Low, and Searle, 1884), 409.

116. Duncan Mackenzie Kerly, *The Law of Trade Marks and Trade Name*, 3rd ed. (London: F.G. Underhay, 1908), 15–16.

117. See, for example, James Law Stuart, “Trade Marks and Unfair Competition,” *Law Student’s Helper* 13, no. 5 (May 1905): 146; and Edward S. Rogers, *Good Will, Trade-Marks and Unfair Trading* (Chicago: A.W. Shaw, 1914), 254–255.

118. D.M. Higgins and Shraddha Verma, “The Business of Protection: Bass & Co. and Trade Mark Defence, c. 1870–1914,” *Accounting, Business and Financial History* 19, no. 1 (2009): 2. Scholarship on Bass is plentiful and often robust. For general background, see T.R. Gourvish and R.G. Wilson, *The British Brewing Industry 1830–1980* (Cambridge, UK: Cambridge University Press, 1994); and Owen, “*The Greatest Brewery in the World*.” The Bass corporate archives remain

an enormously productive resource. My thanks to Vanessa Winstone, formerly at the National Brewery Centre Archives, for archival assistance.

119. Paul Duguid, "Brands in Chains," in *Trademarks, Brands, and Competitiveness*, 150. Duguid's important analysis overstates one factor crucial to my analysis; namely, the degree to which Bass and other trademark holders initiated lawsuits against rivals (such as Guinness and Allsopp) rather than parties within their own supply chain. See Higgins and Verma, 15.

120. Higgins and Verma, 15.

121. On Bass's lawsuits, see D.M. Higgins, "The Making of Modern Trade Mark Law: The UK, 1860–1914: A Business History Perspective," in *Trade Marks and Brands*, 52; and Teresa da Silva Lopes and Paulo Guimaraes, "Trademarks and British Dominance in Consumer Goods, 1876–1914," *Economic History Review* 67, no. 3 (August 2014): 793–817. On the *grands marques*, see Paul Duguid, "Developing the Brand: The Case of Alcohol, 1800–1880," *Enterprise and Society* 4, no. 3 (2003): 418.

122. Duguid, "Developing the Brand," 420–423.

123. Teresa da Silva Lopes and Mark Casson, "Brand Protection and the Globalization of British Business," *Business History Review* 86, no. 2 (Summer 2012): 302. See also Rowland Cox, *A Manual of Trade-Mark Cases*, 2nd ed. (Boston: Houghton Mifflin, 1892), 176, 381.

124. Paul Duguid, "Information in the Mark and the Marketplace: A Multivocal Account," *Enterprise and Society* 15, no. 1 (March 2014): 22.

125. Higgins and Verma, 15.

126. See, for example, *Bass, Ratcliff & Gretton v. Guggenheimer et al.*, 69 Fed. 271 (C.C.D. Md., 1895).

127. "Marques de fabrique et de commerce: Deposées conformément a la loi du 23 Juin 1857 (Année 1888): Bass Ale," *Bulletin officiel de la propriété industrielle et commerciale*, no. 234 (1888): 345–346.

128. Rendu, 62.

129. Important exceptions were beverage firms that made use of triangle or diamond trademarks prior to 1875 and duly registered those marks after the passage of the Trade Mark Act. Firms like Foucauld Cognac and Apollinaris water successfully rebuffed Bass's hegemonic tendencies.

130. "Art. 1313: Marque de fabrique étrangères.—Contrefaçon et imitation en France.—Sociétés.—Droit d'action.—Nom du fabricant," *Annales de la propriété industrielle, artistique et littéraire* 12 (1866): 163.

131. "Art. 1313," 168.

132. Technically, color was not part of a registered trademark in England in the 1880s. For complex reasons that cannot be enumerated here, this fact worked wonders in Bass's favor. On *Worthington* (1879–1880), by far the more famous of the two cases, see George W. Hemming, *The Law Reports* (London: Incorporated Council of Law Reporting for England and Wales, 1880), 8–18. On *Hodson and Tessier* (1881), see the brief summary, with reference to *Worthington*, in "A Trade Mark Case," *Brewers' Guardian*, 22 November 1881, 272.

133. These successes were often met by utter disbelief on the part of opposing parties, legal theorists, and even judges. See, for example, "In the Matter of Turney and Sons' Trade Mark," *Reports of Patent, Design and Trade Mark Cases* 11, no. 4 (1894): 37–45; "Bass Ratcliff & Gretton v. John Davenport & Sons' Brewery, and in the Matter of the Registered Trade Marks of Bass Ratcliff & Gretton," *Reports of Patent, Design and Trade Mark Cases* 19, no. 9 (1902): 129–147; and "In the Matter of the Registered Trade Marks of Bass Ratcliff & Gretton," *Reports of Patent, Design and Trade Mark Cases* 19, no. 27 (1902): 529–545. For a rejection of the reasoning in *Worthington*, see, for example, Duncan Mackenzie Kerly, *The Law of*

Trade-marks and Trade Name, and Merchandise Marks (London: Sweet and Maxwell, 1894), 195–196.

134. James Carroll Beckwith, “Édouard Manet,” in *Modern French Masters*, ed. John C. Van Dyke (London: T. Fisher Unwin, 1896), 217.

135. Reviewers of Manet’s *Bar* did not fail to evoke the infamous *tache*: “he is a colorist, not of colors, but of blotches [*taches*].” Anonymous, “Dialogue sur quelques tableaux du salon de 1882,” *La nouvelle revue* (Paris), 1882, 690. See also Blémont, 2; and Houssaye, “Le salon de 1882,” 563.

136. For more on the making of English beers, see Egbert Grant Hooper, *The Manual of Brewing: Scientific and Technical*, 4th ed. (London: Sheppard and St. John, 1891), 120–124; Richard G. Wilson, “Selling Beer in Victorian England,” in *Adding Value*, ed. Geoffrey Jones and Nicholas J. Morgan (London: Routledge, 1994), 112; and Mitch Steele, *IPA: Brewing Techniques, Recipes and the Evolution of India Pale Ale* (Boulder, CO: Brewers Publications, 2012), 88. “In fact today Burton Brewers themselves ‘Burtonize’ their water, as farming and modern life have made it too impure to use naturally.” Peter Haydon, *The English Pub: A History* (London: Robert Hale, 1994), 256. For more on British barley, see Gourvish and Wilson, 183–184. By sourcing its barley worldwide, Bass participated fully in the “new market geography that had less to do with the soils or climate of a given locality than with the prices and information flows of the economy as a whole.” Cronon, 121.

137. Chesneau, “Salon de 1882,” 223.

138. Katya Assaf, “Brand Fetishism,” *Connecticut Law Review* 43, no. 1 (November 2010): 83–148. See also the pioneering analysis, which I address at length in chapter 2 of *Art™*, Barton Beebe, “The Semiotic Analysis of Trademark Law,” *UCLA Law Review* 51, no. 3 (February 2004): 621–704.

139. Assaf, “Brand Fetishism,” 90.

140. I interrogate the history of Coca-Cola and modern art in chapter 3 of *Art™*.

141. Assaf, “Brand Fetishism,” 90–91.

142. Assaf, “Brand Fetishism,” 91.

143. Clark, 251, 52, 53. See also Helen Molesworth’s striking analysis of Marcel Duchamp’s use and abuse of trademarks, where “The consumer’s difficulty in distinguishing among things mutates into an inability to make distinctions between persons.” Helen Molesworth, “Rose Sélavy Goes Shopping,” in *The Dada Seminars*, ed. Leah Dickerman and Matthew S. Witkovsky (Washington, DC: National Gallery of Art, 2005), 182.

144. Walter Benjamin, *Paris, Capital of the Nineteenth Century (1935)*, trans. Howard Eiland and Kevin McLaughlin (Cambridge: Harvard University Press, 1999), 10; and Walter Benjamin, “Paris, die Hauptstadt des XIX. Jahrhunderts,” in *Gesammelte Schriften*, ed. Rolf Tiedermann and Hermann Schweppenhäuser (Frankfurt am Main: Suhrkamp, 1991), 5:1:55; translation modified. Benjamin is an early and astute theorist of trademarks, but his analysis is too convoluted to be addressed here.

145. Frank Schechter, “The Rational Basis of Trademark Protection,” *Harvard Law Review* 40, no. 6 (1927): 819; emphasis in original. The literature on Schechter is vast. I address it in chapter 2 of *Art™*.

146. Insofar as she insisted that she be accompanied by her boyfriend for modeling sessions, her sexual unavailability would have been clear to Manet. See Iskin, “Selling, Seduction, and Soliciting,” 25 n. 3; and Sarah Gutsche-Miller, *Parisian Music-Hall Ballet, 1871–1913* (Rochester, NY: University of Rochester Press, 2015), 11–12, 288 n. 21.

147. See Iskin, “Selling, Seduction, and Soliciting,” esp. 41. On consumer culture in late-nineteenth century France, see Aaron Jeffrey Segal, “The Republic

of Goods: Advertising and National Identity in France, 1875–1918” (Ph.D. University of California, Los Angeles, 1995); and Williams, *Dream Worlds*.

148. “Art. 271,” 6.

149. The 1905 Trademark Act hews even closer to the French: “likely to cause confusion or mistake in the mind of the public, or to deceive purchasers.” U.S. Congress, “An Act to Authorize the Registration of Trade-Marks Used in Commerce with Foreign Nations or Among the Several States or with Indian Tribes, and to Protect the Same,” in *Statutes at Large of the United States* (Washington, DC: Government Printing Office, 1905), 725–726. For a period, U.S. courts required empirical evidence of consumer confusion. This does not appear to have been the case in nineteenth-century French or English courts. As many scholars have rigorously argued, the “likelihood of confusion” test in the United States was and remains dysfunctional and has led to an enormous expansion of trademark protection. See especially Katya Assaf, “The Dilution of Culture and the Law of Trademarks,” *IDEA: The Intellectual Property Review* 49, no. 1 (2008): 29–42; Robert G. Bone, “Taking the Confusion Out of ‘Likelihood of Confusion’: Toward a More Sensible Approach to Trademark Infringement,” *Northwestern University Law Review* 106, no. 3 (2012): 1307–1378; and Jeremy N. Sheff, “Veblen Brands,” *Minnesota Law Review* 96, no. 3 (2012): 769–832. For an analogous test vis-à-vis copyright infringement in nineteenth England, see Cooper, *Art and Modern Copyright*, esp. 110–111.

150. “Art. 1894,” *Annales de la propriété industrielle, artistique et littéraire* 18 (1873): 29–30.

151. Cour de Paris, 1868, quoted in Comte de Maillard de Marafy, *Grand dictionnaire international de la propriété industrielle, au point de vue du nom commercial, des marques de fabrique et de commerce et de la concurrence déloyale*, 6 vols. (Paris: Chevallier-Marescq et cie, 1890–1892), 205.

152. Raymond Mortimer, “Manet’s *Un bar aux Folies-Bergère*,” in *Un bar aux Folies-Bergère in the National Gallery, London* (London: Percy Lund Humphries, 1947), 3.

153. In French: “client.” Jules Fleurichamp, “Manet,” in *L’exposition des beaux-arts: Troisième année (Salon de 1882)* (Paris, 1882), 124. See also Paul Alexis, “Avant le salon,” *Le réveil*, 1 April 1882, 1; and Armand Silvestre, “Le monde des arts: Salon de 1882,” *La vie moderne*, 3 June 1882, 342.

154. Fleurichamp, “Manet,” 126. Houssaye provide an even more reductive description but seems to have missed the joke: “It seems that this painting represents a *bar* at the Folies-Bergère . . . that this mannequin with indecisive forms and a face slashed with three strokes of the brush represents a man; and that this stump holding a cane represents a hand.” Houssaye, “Le salon de 1882,” 583–584.

155. Compare Iskin, “Selling, Seduction, and Soliciting,” 41.