

Authors aren't dead, they are with Child

Dan Anthony

THE RELATIONSHIP BETWEEN AUTHORS AND THEIR TRADE MARKS

The news that the author known as Lee Child is to hand over responsibilities for writing Jack Reacher novels to his brother, who will be described as Andrew Child, foregrounds an often overlooked aspect of authorship – it is a commercial practice.

'For years I thought about different ways of killing Reacher off. First of all, I thought he would go out in a blaze of bullets, something like the end of Butch Cassidy and the Sundance Kid. It would take an army to bring him down [but] Reacher had to have an afterlife after I was done.' (Sanderson D., and Martin, A., 2020)

Authorship is a form of labelling. In this case, future 'Reacher' novels will be branded : 'Lee Child with Andrew Child', indicating that Andrew Grant, not James Grant, creator of Lee Child, is the true author of the text. Here, the name of the author takes the form of successful brand. Although the author's relationship with intellectual property, copyright in particular, is well known, it is perhaps surprising that one of the most important influences on creative decision making in the world of fiction is the trade mark, the title deed of a brand. Although 'Lee Child' is not a registered trade mark, many authors' titles and names are also registrations.

Although a copyright and a trade mark are both forms of intellectual property, they should not be confused. A trade mark is a symbol which, through its function as a badge of trade origin, encapsulates and protects an unspecific, time-unlimited brand narrative; copyright protects a specific work of art (in this case literature) for a

certain amount of time (70 years after the author's death) against a particular kind of commercial infringement – copying. The registration as trade marks of authors' names, their noms de plumes and their characters and creations is a relatively new phenomenon. The practice developed in the UK after 1994, and it is really only in this century that it has gathered momentum. However, the realisation of IP rights has been 'authorial' since Cervantes created the first modern novel.

Almost as soon as the technology for producing large numbers of printed stories became widely available, the idea of writing fiction as a commercial activity was born. After having achieved success with the first volume of Don Quixote in 1604, Miguel de Cervantes was 'inspired' to complete the second part after a writer using the pen name Alonso Fernández de Avellaneda created his own continuation of the story in 1614 (Judge 2009). The important point for writers today to remember is that arguably Cervantes, who died the year after finishing his version of the second volume, may not have completed part two of the story if someone hadn't trespassed on his fictional enclosure – the world of Don Quixote. Protection of intellectual property and securing a place in the market was as significant an inspirational factor in the early seventeenth-century as it is today.

By the nineteenth-century, copyright law and a publishing industry, coupled with steam printing presses and a railway system that could circulate books and information across the country overnight, transformed fiction production from the preoccupation of a metropolitan elite into big business. The realm of trade marks, however – the signs that embodied the narratives

of goods exchanged in trade – was still being codified.

For example, in 1859, (seventeen years before the register of trade marks was created) Charles Dickens engaged in a dispute about the use of his former publication's name – Household Words – as he sought to set up a new publication called *All the Year Round*. During the case he described the new publication as follows: 'The task of my new journal is set, and it will steadily try to work the task out. Its pages shall show to what good purpose their motto [*All the Year Round*] is remembered in them, and with how much fidelity and earnestness they tell the story of our lives from year to year' (Bradbury and Evans v Dickens and Wills, 1859). This attention to detail regarding the 'motto' and the way in which it both describes and distinguishes itself is characteristic of the relationship between a trade mark and brand. At the time no official register of trade marks existed and there was no means of securing trade marks as property rights (Bently 2008).

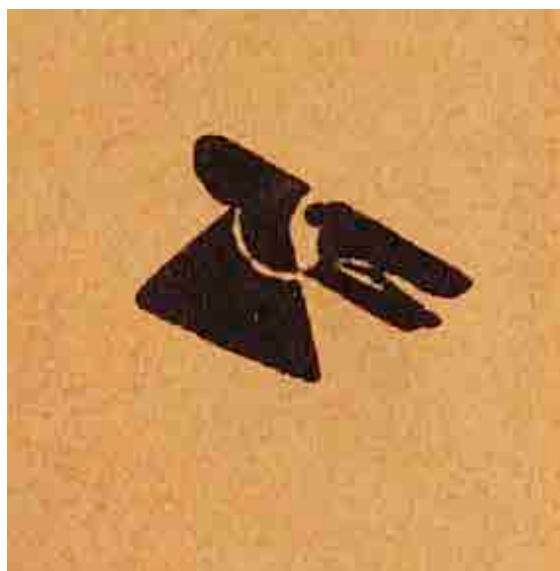
Dickens wrote a great deal about trade marks. He also explored bureaucracy in general and the Patent Office specifically in *Little Dorrit* (Dickens 1850). Moreover, as a novelist, perhaps more than any other at the time, he named people and publications with trade mark inventiveness. Dickens's portrayal of the 'Office for Circumlocution' perhaps says more about his dislike of lawyers who disagreed with him than his view of intellectual property. Dickens opposed and satirised bureaucracy. He had no problem with the value of intellectual property. He wanted better access to it.

On the question of trade marks as property rights, referring specifically to the Merchandise Marks Act of 1862, he wrote:

'The law rightly recognises a commercial value as attached to marks, brands, stamps, or symbols such as these. But although the law gives this recognition, the defining of its limits is often very puzzling. A trade mark properly so called, a good will, a title, a style, a designation, the labels of a house of business, a particular wrapper, all have special value to the proper owner; but the law leaves judge and jury sometimes rather at a loss. It is, however, certain, that any mark by which a manufacturer identifies himself with any product creditable to his skill and enterprise, is morally in the nature of property, and ought to be protected.' (Dickens, C. 1867).

The link between market and literary creative practice became more subtle as markets developed. Virginia Woolf, with the help of her husband Leonard, and with support from Roger Fry, another creative practitioner who experimented with trade marks, circulated the first publication from a different 'new' commercial venture (Patent Office 1913). Curiously, Virginia Woolf's contribution to the Hogarth Press' first volume was a short story called *A Mark on the Wall*, which can be read as a meditation on the psychoactive potential of a 'a mark' (Woolf 1917). By the time of Woolf's death in 1941, the press had published over four hundred titles.

A key factor in the aesthetic quality of the Hogarth Press' output was its branding. Vanessa Bell and Virginia Woolf established a visual and literary style which was applied to Woolf's publications. Woolf did not conform to the predilections of a literary establishment. It could be argued that, through branding, she created a new one (Simpson 2008, 2012). Image was important to the Hogarth Press, as Elizabeth Wilson Gordon points out, the Hogarth Press trade mark logo was reworked between 1928 and 1929 by designer E. McKnight Kauffer as he developed its relationship with the market (Gordon 2010).



E. McKnight Kauffer's logo for Hogarth Press (Bruce Peel Special Collections, University of Alberta)

The combination of writer and image maker, working together over a long period of time, in association with trade mark branded products, is connected with both populist fiction and 'niche' literary fiction. More recently, in the realm of children's fiction, Jacqueline Wilson and Nic Sharratt were linked by their publisher David Fickling in 1991. The three achieved great success. The trade marks, Jacqueline Wilson (2361632) and Tracy Beaker (2361634) were registered in 2004. This technique mirrors that of Roald Dahl whose brand was solidified when Tom Maschler of Jonathan Cape teamed Dahl with Quentin Blake to create *The Enormous Crocodile* in 1979. Dahl's output, possibly as a result of this rebranding, increased: *The Twits* (1980), *George's Marvellous Medicine* (1981), *The Big Friendly Giant* (1982) and *The Witches* (1983) following in rapid succession. Roald Dahl became a registered trade mark in 2001 (2273780). Today, despite the fact that Dahl worked with many illustrators during a long career, his work is presented as if it were a single, coherent structure, vivified through continuous partnership with Blake.

The registration of an author's name as a trade mark transforms a name into property. Registration is contingent on the author's undertaking that he or she will use the name as a trade mark. With registration come responsibility; as well as benefiting from the value added to a brand by objectifying its worth through the mark (which may be bought or sold or licensed or used as collateral), failure to act to protect a registration by taking

action against infringers can leave an owner vulnerable to cancellation. To maintain a registered trade mark the owner must adapt his or her behaviour.

The extent to which trade marks are involved in literary production today can be seen still more clearly if we consider writers whose identities are registered as trade mark, for example: Stephen Hawking (UK TM 3097042, 2015), J. K. Rowling (UK TM 2218081, 1999) and Dylan Thomas (UK TM 2607666, 2012). Perhaps of equal significance are characters who are registered as trade marks, whose writers (or descendants) must perpetuate their existences in fictional worlds, for example: Sherlock Holmes (EU TM 1263342, 1999); Jack Reacher (EU TM 1041397, 2011) and James Bond (EU TM 251981, 1996) (Patent Office 1967). Other aspects of the strong relationship between trade marks and the creation of fiction can be found in the vectors of communication, for example The Booker Prize (UK TM 2143404, 1997), encapsulating the narratives that win it.

The registration of the author may have its origins in a creative industrial application of commercial/legal strategies but its effect in the 'real world' is unusual. It is not only possible to revitalise dead authors as effective legal entities and brands, it is also possible to infuse a spark of being into authors who never existed. Similarly, although copyright protection for literature expires seventy years after an author dies, trade marks are potentially infinitely extendable IP rights. Ironically, one threat to these indelible marks may stem from their success. If a trade mark becomes merely famous, so that, in the eyes of the relevant public, it loses its association with trade origin, it may be invalidated. This is why the potency of the word Tarzan to conjure up images and stories resulted a landmark legal decision. In a case dating from 1970, Lord Justice Salmon decided that the name Tarzan had become too famous, that it pointed only at the stories, not at the makers of the stories, that it had been transmuted from private property to public property because of its universal popularity. Tarzan belonged to everyone.

'In the present case, there is nothing at all in the word TARZAN which would suggest to the public or to the trade that a film or magnetic tape recording had anything to do with the applicant or anyone else. The word TARZAN when used in connection with a film suggests - and suggests only - that the film has something to do with the well-known fictional person TARZAN, a man of great strength and agility' (Tarzan 1970).

In short, by becoming such an obvious means of identifying story content, Tarzan's name had (as his character would have appreciated) freed himself from the bonds forged for him by his commercially minded creator, Edgar Rice Burroughs, and escaped. The word for this process is 'genocide': the death of a trade mark.

A trade mark is a clearly defined legal entity with its own hinterland of case law, bureaucracy, convention and precedent. In 1876, when the first UK registrations were filed, a signature was regarded as the obvious proof

of individuality. A signature was not merely a name; it illustrated literacy and social class and, through its flourishes and idiosyncrasies, perhaps even a little about the character of the one who wrote it. A signature can look beautiful or ugly. It can even be a status symbol. Until digital technology replaced it with the password, a signature was a pre-requisite for bourgeois respectability.

The first trade marks recorded in the UK often included signatures – an obvious way of showing that the goods the marks were applied to came from a trader of quality and an easy way of displaying the uniqueness of the brand. The signature of the first British registered trade mark owner, that of the brewer William Bass, still appears on Bass beer.



The signature of William Bass was first used to identify his beer in 1777

Without its wobbly hand, its leaky pen, its flourish, a name isn't particularly distinctive of goods or services used in trade. Fear of infringing on the natural rights of citizens to trade honestly using their own names meant that registration of surnames and full names in plain typeface required argument and justification for most of the twentieth-century.

When, in the 1980s, the Thatcher government agreed to harmonise its trade mark laws with the EU, an invisible force was unleashed. One apparently trivial change that the 1994 Trade Marks Act made possible was the registration of names in plain typeface. Individuals could become trade marks more easily, indeed, generally speaking, the restrictions on what could not be registered as a trade mark were weakened by the 1994 Trade Marks Act, which was harmonized with European trade mark law. Or, to put it another way, access to trade marks and the definition of what they might be was broadened.

Trade marks have also multiplied. During the year 1957, when Roland Barthes published his *Mythologies*, exploring, amongst other tokens of consumerism, the connotations provoked by the Citroën DS 19 brand, the UK Trade Marks Registry processed 11,000 registrations per annum - approximately the same number as it did at the end of the nineteenth century. Today over 100,000 applications for UK-valid trade marks are made every year (IPO 2017 and EUIPO 2020).

There are many ways in which the exploration of the relationship between trade mark and author can be incorporated effectively into the teaching of creative writing. Firstly, there are what could be termed 'utilitarian' applications. Publishers and agents understand authors as brands, and an awareness of this equips creative writing students who want to participate in markets for fiction with a deep understanding of the processes involved in marketing, branding, fiction making and their places in creative industry.

At least two closely related strands of research and workshop practice emerge: one explores the author as entrepreneur in which pitching, synopsising and story development in relation to genre, coupled with branding (even of authors) is considered as a dynamic process with a long history; the second explores the author in context and enables students to understand that 'trade mark' writing is not limited to 'content', pulp fiction and 'Tarzan'. Literary fiction can be viewed as the product of a highly personal interaction between creative writer and market in which the author is required to make strategic decisions not just about fictional characters, but also about their own processes, identities and intentions for the work.

Students who want to examine these issues more deeply will find that they are orbiting a potentially dangerous black hole, one that powers our universe, one that can suck us in, destroying our ability to write intelligently about anything. On the one hand, a philosophical tradition of the left, uncompromisingly represented by Slavoj Žižek, for example, suggests that the predictability imposed on creativity by markets for fiction effectively erases any spark of inherent authorial inventiveness (Žižek 2008). On the other hand, the populist, anarchistic and dynamic possibilities of individual, authorial, trade marks registration and publication through a multiplicity of media seem to offer the writers of tomorrow a plethora of new opportunities to create and explore. By characterising this dichotomy through the exploration of the trade mark, whose hinterland hides in plain sight, students may explore the opposing forces that power creativity today without, at the outset at least, the imposition of assumed political predilections.

The writer as trade mark shows that the author can become immortal in the commercial realm. Trade mark registration is something all consumers can access. It objectifies and rewards inventiveness, guaranteeing everyone the chance to make something from nothing. And it doesn't forbid entry into the cultural realm on the grounds of taste. It is taste-less. Prior to the 1990s there were no trade mark authors (with registrations). Today increasing numbers of writers are adding their names to the list, along with their characters, their titles and, in tow, the stories they signify.

It could be argued that trade marks are so embedded in our creative culture that we don't create anything without them. That with the 'unconsciousness of the predestined' - as Robert Louis Stevenson put it - we may work from a trade mark towards the text, creating brands almost without consideration (Stevenson 1894). Perhaps, regardless of whether or not it has been registered, most

narrative fiction today is defined by 'accidental' trade marks - the titles of stories, the names of authors, the logos of publishers. These apparently peripheral signs may be significant landing lights in the route between ethereal contemplation and market reality. There are two ways of looking at them: they are either helpful guides, aiding writers so that they arrive safely at their destinations; or they are wreckers' lanterns, defining well-worn routes so that all fiction that follows them takes the reader on the circuitous journey to the same old rocks.

The relationship between fiction writer and trade mark is well established. It crosses genres, media and transcends boundaries between literary and popular fiction and between cultures (Joon-ho 2020). Authorship is and always has been a commercial activity. Everything we write is mediated by the market. Trade marks both delineating fiction for consumers in the market and they sharpen the focus of writers creating work for it (or against it, or despite it). Trade marks are vehicles for creative expression and symbols for generic boundaries which writers may or may not wish to cross. They can be inspirational or claustrophobic. They may be supported or subverted. The extent to which writers see themselves as trade marks and how they react when they consider this issue is a defining aspect of their creative processes.

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Joon-ho, B, (2020) at Alamo Drafthouse screening of 'Parasite' 'Essentially we all live in the same country, called Capitalism'

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