

Litigating Personal Brand: Intellectual Property & the Construction of Self

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The idea of “personal brand” is over half a century old but has gained additional traction with the rise of social media. Companies, coaches, and career counselors encourage everyone from celebrities to college students to cultivate their personal brand. The idea of individual as brand encompasses every aspect of self-presentation, from core attributes to “packaging,” and can shape everything from how people characterize their skillset and work experience to their choice of clothing, hairstyle, and makeup to their selection and deployment of catchphrases and logos.

Increasingly, the concept of personal brand has found its way into lawsuits, legal scholarship, and court decisions. Individuals allege that their personal brand has been infringed, misappropriated, or directly harmed by someone else’s actions. Complainants shoehorn the idea of personal brand into existing legal regimes such as right of publicity, trademark, trade dress, and copyright. Several courts have held that allegations of “harm to personal brand” sufficed to support a claim for some form of tort or breach. But like the glass slipper on Cinderella’s stepsisters’ feet, the claims ill fit the facts.

This project explores how the cultural concept of personal brand has shaped, and been shaped by, the law. It begins by tracing the evolution of “personal brand” and its stronghold on pop culture. It then considers attempts to cast impingements on personal brand as infringements on intellectual property. Finally, it draws conclusions about when, if ever, these doctrines ought to provide redress for the wrongs articulated.