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# INTELLECTUAL PROPERTY LAW

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MATTHEW  BENDER

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# *Dedications*

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*To the many students over the years  
who have shown a passion for learning*

—John

*To Mom, Dad, and Karen*

—Doris

*To my parents and my six siblings*

—Greg

*To my parents*

—Peter



# *Preface*

---

This book owed its origin to a visit Leslie Levin, the former Executive Acquisitions Manager at LexisNexis, paid to Michigan State University College of Law. At that time, one of us directed the Intellectual Property and Communications Law Program at the Law College, while another visited there from the historic intellectual property law program at John Marshall Law School in Chicago. The two of us shared equal frustration about the challenge of including a survey course in the intellectual property law curriculum. Because most survey courses tended to focus on the “Big Three” of intellectual property law—and sometimes the Big Three and a smaller fourth—professors who taught copyright, patent, and trademark courses often had to re-teach materials that a survey course had already covered. Like it or not, many students also had to re-learn materials from not only the previous semesters, but often also the same semester.

We quickly realized, if a book in this area were to be successful, it had to cover a wider variety of intellectual property rights, given the increasingly expansive views on intellectual assets, the attorneys’ growing need to understand the global business environment, and the large number of foreign students studying intellectual property law in the United States. So, we assembled a team of authors who not only had experience in planning intellectual property curriculum at their respective law schools, but also had frequently taught international intellectual property law classes. Although this book was not intended for those classes, having a global focus and understanding would make the project unique, timely, and attractive.

During an initial workshop discussing the casebook, one of us introduced to the group the “ten percent rule,” which is commonly taught in M.B.A. programs to suggest the ideal amount of improvement or innovation that a new product should have if it were to succeed on the market. Taking this rule to heart, this casebook has included a balanced coverage of the “old chestnuts” in intellectual property law as well as the recent cases and “hot topics” covered in mainstream media. Apart from trade secret, patent, copyright, and trademark laws, which Parts I to IV will cover, the book has also devoted significant lengths to other issues that tend to get short shrift in an intellectual property survey course, such as the right of publicity, protection of product design, and the limits on intellectual property protection. Parts V and VI will examine these issues in turn.

This casebook includes several unique features. First, each section starts with a box question that enables students to stay focused when reviewing materials before class. Second, statutory provisions are included in separate boxes to make it easier for instructors to cover the materials. Although these provisions are available online or in statutory supplements, students in a survey course rarely need to study them in great detail and depth. Third, where available and relevant, historical or contextual background information has been provided alongside the case excerpts. Such information will enable students to better understand the included appellate cases, which often briefly recite the facts or have been edited down to enhance teaching effectiveness. Fourth, the book includes a wide variety of notes, questions, and problems to make it suitable for different pedagogical approaches and assessment needs. Finally, the materials seek to highlight the unique features of U.S. intellectual property laws. The study of these features will pave the way for more advanced coursework in the intellectual property area.

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## *Preface*

While we came to this project with similar interests, perspectives, and approaches, we inevitably share some differences. Thus, we have tried our best to “harmonize” our views to provide an integrated whole. Principal responsibility was divided as follows: John authored Parts I, V, and VI, Greg authored Part II, Peter authored Part III, and Doris authored Part IV. We nonetheless reviewed the manuscript several times to ensure that all the parts talk to each other.

To enhance readability, we edited down the materials and deleted, without indication, virtually all the footnotes or citations in the excerpted texts. Where appropriate, we also removed the headings or section numbers in cases and secondary sources. When edits were made, we used ellipses to indicate deletion of text and brackets to provide additional explanation or to improve the flow of the material. We took liberty in fixing minor typographical and grammatical errors. The original numbering of the footnotes was retained in brackets, and some citations were updated in full, abbreviated, or corrected to enhance referential value.

We hope you will find the materials useful, interesting, and engaging. We welcome comments and suggestions for improvements in future editions.

JOHN T. CROSS  
DORIS ESTELLE LONG  
GREG R. VETTER  
PETER K. YU  
2015



# *Acknowledgments*

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A first edition book of this size requires a lot of assistance, support, and inspiration. Over the years, we have accumulated a mountain of debt. We all thank Leslie Levin and her colleagues for trusting us with this project and convincing us that LexisNexis is the right home. We are grateful to Sarah Burstein, Shontavia Johnson, Patricia Judd, and Jason Rantanen—our “readers” in a casebook workshop held at Drake University Law School, which closely examined an earlier draft of the manuscript. We are also indebted to William Ford and Daryl Lim for conducting test-runs of the book in the classroom; and Christine Frost, Cristina Gegenschatz, and their colleagues at LexisNexis for making our ideas and expressions available in a tangible medium.

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Doris owes a debt of gratitude to every one of her classes whose insights have served a critical role in the development of these materials. She must also thank Lisa Carroll, Bernadette Savarese, Jeff Gaster, Ross Hersemann, Monalee Shah, Katie Pimentel, and Allison Schneider, research assistants extraordinaires who contributed to the development of these materials. Special thanks go to William Ford, Daryl Lim, Patricia Judd, Shontavia Johnson, and Sharon Sandeen, whose practical suggestions regarding the teaching of these materials were invaluable. She could not ask for better collaborators than Peter Yu, John Cross, and Greg Vetter, who made this text truly a joint effort and a joy to create together. As always, special thanks go to her sister Karen for putting up with the mess and the countless hours of chaos that are the result of any attempt to create new learning materials; to her Mom for teaching her the value of creativity; and to her Dad, the first great teacher in her life.

Greg thanks his students first and foremost. Even after he has visited at three other law schools during his 13 years as a law professor, his students at the University of Houston Law Center (UHLC) remain the basis for these materials and hold a special place in his heart. He also thanks his deans and colleagues at UHLC, in particular his colleagues within the Institute for Intellectual Property & Information Law: Paul Janicke, Craig Joyce, Ray Nimmer, Sapna Kumar, and Jacqui Lipton. Colleagues outside of UHLC who have been particularly supportive include his three esteemed and cherished co-authors—Peter Yu, John Cross, and Doris Long—and, more generally, the wonderfully supportive community of scholars within the academy studying intellectual property and information law. In addition, he thanks Paul Janicke for reviewing several of the patent law chapters. Finally, several research assistants provided incredibly valuable help: Craig Walter, Christi Guerrini, Seth Jaffee, and Seth Cockrum. Their professional and effective assistance and good humor are greatly appreciated.

Peter thanks his deans, colleagues, and students at Drake University Law School for their support, insights, and camaraderie. He is also grateful to Wayne and Donna Kern for

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creating the endowed chair that enabled him to devote a large part of his time in the past eight years to research and writing. This book was at the proofs stage when he was making transition to join Texas A&M University School of Law, but the materials could not have been written without the generous support from Drake as well as the constant interactions he had with his students there, who taught him as much as they learned from him. Finally, he would like to thank Patricia Judd for going beyond the call of duty to provide very detailed and helpful comments on an earlier draft of the copyright law chapters; and Cory McAnelly for his excellent research and editorial assistance as well as for his generous offer to review these chapters even after he has graduated.

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# Table of Contents

---

<b>Part I</b>	<b>INTRODUCTION AND OVERVIEW</b>	<b>1</b>
<b>Chapter 1</b>	<b>INTELLECTUAL PROPERTY AND COMPETITION</b>	<b>3</b>
§ 1.01	THE PROBLEM OF COPYING	3
	<i>International News Service v. Associated Press</i>	3
	Notes and Questions	6
§ 1.02	THE PUBLIC DOMAIN	7
§ 1.03	AN OVERVIEW OF INTELLECTUAL PROPERTY	8
§ 1.04	THE GENERAL TORT OF MISAPPROPRIATION	14
[A]	Misappropriation Today	15
	<i>U.S. Sporting Products, Inc. v. Johnny Stewart Game Calls, Inc.</i>	15
	Notes and Questions	19
[B]	Misappropriation of Ideas	19
	<i>Alevizos v. John D. and Catherine R. MacArthur Foundation</i>	20
	Notes and Questions	23
§ 1.05	FEDERALISM ISSUES IN U.S. INTELLECTUAL PROPERTY LAW	23
[A]	Allocating Legislative Power	24
[1]	Limits on Congress’s Power to Enact Intellectual Property Laws	25
[2]	Limits on State Legislative Authority in Light of Federal Law	26
	<i>Bonito Boats, Inc. v. Thunder Craft Boats, Inc.</i>	26
	Notes and Questions	31
[B]	Allocating Judicial Authority in Intellectual Property Cases	32
[1]	Trial Court Jurisdiction	32
	Notes and Questions	33
[2]	Federal Appellate Jurisdiction	34
	Notes and Questions	35
<b>Chapter 2</b>	<b>TRADE SECRET LAW: THE ELEMENTS OF A CLAIM</b>	<b>37</b>
§ 2.01	SUBJECT MATTER OF TRADE SECRET LAW	38
[A]	Information That Qualifies as a Trade Secret	38
	<i>Stenstrom Petroleum Services Group, Inc. v. Mesch</i>	38
	Notes and Questions	44
[B]	Reasonable Efforts to Preserve Secrecy	47
[C]	Whose Knowledge Is It?	48
	<i>McClain v. State</i>	48
	Notes and Questions	52
	<i>SI Handling Systems, Inc. v. Heisley</i>	52

---

## Table of Contents

	Notes and Questions . . . . .	55
	Problems . . . . .	55
§ 2.02	MISAPPROPRIATION OF A TRADE SECRET . . . . .	56
[A]	Accident or Mistake . . . . .	58
[B]	Breach of a Duty . . . . .	58
	<i>Ed Nowogroski Insurance, Inc. v. Rucker</i> . . . . .	58
	Notes and Questions . . . . .	62
[C]	Improper Means . . . . .	62
	<i>BondPro Corp. v. Siemens Power Generation, Inc.</i> . . . . .	63
	<i>E.I. duPont de Nemours &amp; Co. v. Christopher</i> . . . . .	64
	Notes and Questions . . . . .	68
[D]	Proving Misappropriation . . . . .	70
	Problems . . . . .	70
<b>Chapter 3</b>	<b>ADDITIONAL ISSUES IN TRADE SECRET LAW . . . . .</b>	<b>73</b>
§ 3.01	REMEDIES . . . . .	73
	Notes and Questions . . . . .	74
§ 3.02	PROTECTING TRADE SECRETS BY CONTRACT . . . . .	75
	<i>Victoria’s Secret Stores, Inc. v. Mays Department Stores Co.</i> . . . . .	76
	Notes and Questions . . . . .	80
§ 3.03	MISAPPROPRIATION OF NON-TRADE SECRET CONFIDENTIAL INFORMATION . . . . .	81
	<i>Pestco, Inc. v. Associated Products, Inc.</i> . . . . .	81
	Notes and Questions . . . . .	83
§ 3.04	TRADE SECRETS AND CRIMINAL LAW . . . . .	84
	Notes and Questions . . . . .	85
§ 3.05	PREEMPTION . . . . .	86
[A]	UTSA Displacement of Other Claims . . . . .	86
	<i>Hecny Transportation, Inc. v. Chu</i> . . . . .	87
	Notes and Questions . . . . .	88
[B]	Federal Preemption . . . . .	89
	<i>Kewanee Oil Co. v. Bicron Corp.</i> . . . . .	89
	Notes and Questions . . . . .	98
<b>Part II</b>	<b>THE PROTECTION OF USEFUL INVENTIONS . . . . .</b>	<b>99</b>
<b>Chapter 4</b>	<b>INTRODUCTION TO THE PROTECTION OF INVENTIONS AND THE PATENT SYSTEM . . . . .</b>	<b>101</b>
§ 4.01	REQUIREMENTS FOR PROTECTION—STATUTORY SUBJECT MATTER . . . . .	104
	<i>Diamond v. Chakrabarty</i> . . . . .	105

---

## Table of Contents

	Notes and Questions . . . . .	111
§ 4.02	INFRINGING ACTS AND IMPLICATIONS FOR RESEARCH . . . . .	113
	<i>Madey v. Duke University</i> . . . . .	115
	Notes and Questions . . . . .	121
	Problems . . . . .	123
§ 4.03	REMEDIES AND COMMERCIAL IMPACT . . . . .	124
	<i>eBay Inc. v. MercExchange, L.L.C.</i> . . . . .	124
	Notes and Questions . . . . .	128
§ 4.04	OTHER TYPES OF PATENTS . . . . .	132
<b>Chapter 5</b>	<b>THE PATENT INSTRUMENT . . . . .</b>	<b>135</b>
§ 5.01	CLAIMS AND CLAIM SCOPE . . . . .	136
§ 5.02	THE PATENT DOCUMENT . . . . .	143
	Notes and Questions . . . . .	148
§ 5.03	CLAIM INTERPRETATION . . . . .	151
	<i>Phillips v. AWH Corp.</i> . . . . .	151
	Notes and Questions . . . . .	163
	Problems . . . . .	165
<b>Chapter 6</b>	<b>DISCLOSURE SUFFICIENCY DOCTRINES . . . . .</b>	<b>167</b>
§ 6.01	DEFINITENESS . . . . .	170
	<i>Nautilus, Inc. v. Biosig Instruments, Inc.</i> . . . . .	170
	Notes and Questions . . . . .	176
§ 6.02	ENABLEMENT . . . . .	177
	<i>CFMT, Inc. v. Yieldup International Corp.</i> . . . . .	178
	Notes and Questions . . . . .	182
§ 6.03	WRITTEN DESCRIPTION . . . . .	184
	<i>Atlantic Research Marketing Systems, Inc. v. Troy</i> . . . . .	185
	Notes and Questions . . . . .	191
§ 6.04	ADIEU BEST MODE? . . . . .	193
	Problems . . . . .	194
<b>Chapter 7</b>	<b>STATUTORY SUBJECT MATTER AND UTILITY . . . . .</b>	<b>195</b>
§ 7.01	STATUTORY SUBJECT MATTER . . . . .	195
[A]	“Product” Claims . . . . .	196
	<i>Association for Molecular Pathology v. Myriad Genetics</i> . . . . .	196
	Notes and Questions . . . . .	204
[B]	Process Claims . . . . .	205
	<i>Alice Corp. v. CLS Bank International</i> . . . . .	207
	Notes and Questions . . . . .	215

---

## Table of Contents

§ 7.02	UTILITY	216
	<i>Juicy Whip, Inc. v. Orange Bang, Inc.</i>	218
	Notes and Questions	222
	Problems	224
<b>Chapter 8</b>	<b>NOVELTY</b>	<b>227</b>
§ 8.01	PRIOR ART REFERENCES AND THE ANTICIPATION RULE	229
	<i>In re Hall</i>	232
	Notes and Questions	235
§ 8.02	NOVELTY DEFEATING DISCLOSURES AND PRIORITY	237
§ 8.03	PUBLIC USE NOVELTY DEFEATING EVENTS	242
[A]	Public Use of a Non-Informing Technology	242
	<i>Egbert v. Lippmann</i>	244
	Notes and Questions	247
[B]	The Experimental Use Negation of Public Use	249
	<i>City of Elizabeth v. American Nicholson Pavement Co.</i>	250
	Notes and Questions	253
§ 8.04	ON-SALE NOVELTY DEFEATING EVENTS	254
	<i>Pfaff v. Wells Electronics, Inc.</i>	255
	Notes and Questions	258
	Problems	259
§ 8.05	REMARKS ON THE OLD LAW—PRE-AIA § 102	260
<b>Chapter 9</b>	<b>NONOBVIOUSNESS</b>	<b>267</b>
§ 9.01	USE OF MULTIPLE PRIOR ART REFERENCES	268
§ 9.02	THE <i>GRAHAM</i> ANALYSIS	269
[A]	The § 103 Statutory Standard	269
	<i>Graham v. John Deere Co.</i>	269
	Notes and Questions	276
[B]	Revisiting the § 103 Standard	277
	<i>KSR International Co. v. Teleflex Inc.</i>	278
	Notes and Questions	291
§ 9.03	“SECONDARY” CONSIDERATIONS	291
§ 9.04	ANALOGOUS ART	292
	<i>In re Bigio</i>	293
	Notes and Questions	295
	Problems	295

---

## Table of Contents

<b>Chapter 10</b>	<b>INFRINGEMENT</b> .....	<b>299</b>
§ 10.01	LITERAL INFRINGEMENT .....	299
	<i>Larami Corp. v. Amron</i> .....	300
	Notes and Questions .....	303
§ 10.02	INFRINGEMENT UNDER THE DOCTRINE OF EQUIVALENTS ...	304
	<i>Warner-Jenkinson Co. v. Hilton Davis Chemical Co.</i> .....	305
	Notes and Questions .....	312
§ 10.03	SOME LIMITATIONS ON THE DOCTRINE OF EQUIVALENTS ...	314
[A]	Dedication of Disclosed but Unclaimed Embodiments .....	314
	<i>Johnson &amp; Johnston Associates Inc. v. R.E. Service Co.</i> .....	316
	Notes and Questions .....	319
[B]	Estoppel Limitations Based on Prosecution History .....	320
	<i>Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.</i> .....	321
	Notes and Questions .....	328
	Problems .....	330
[C]	Other Limitations on the Doctrine of Equivalents .....	331
§ 10.04	SECONDARY LIABILITY AND EXTRATERRITORIAL ENFORCEMENT .....	332
§ 10.05	DEFENSES AND REMEDIES .....	334
[A]	Inequitable Conduct .....	334
[B]	Other Defenses .....	336
[C]	Injunctions .....	336
[D]	Damages .....	337
<b>Part III</b>	<b>THE PROTECTION OF CREATIVE EXPRESSIONS</b> ..	<b>339</b>
<b>Chapter 11</b>	<b>INTRODUCTION TO COPYRIGHT LAW</b> .....	<b>341</b>
§ 11.01	HISTORICAL DEVELOPMENTS .....	342
	Peter K. Yu, <i>The Copyright Divide</i> .....	342
	Notes and Questions .....	346
§ 11.02	JUSTIFICATIONS .....	346
	<i>Mazer v. Stein</i> .....	347
	Notes and Questions .....	351
§ 11.03	TECHNOLOGICAL CHALLENGE .....	353
	<i>A&amp;M Records, Inc. v. Napster, Inc.</i> .....	354
	Notes and Questions .....	360
§ 11.04	DURATION .....	362
	<i>Eldred v. Ashcroft</i> .....	363
	Notes and Questions .....	371

---

## Table of Contents

---

### Chapter 12 STATUTORY SUBJECT MATTER ..... 373

---

<i>Burrow-Giles Lithographic Co. v. Sarony</i> .....	374
Notes and Questions .....	378
<i>Bleistein v. Donaldson Lithographing Co.</i> .....	380
Notes and Questions .....	382
<i>Feist Publications, Inc. v. Rural Telephone Service Co.</i> .....	384
Notes and Questions .....	393
<i>Baker v. Selden</i> .....	395
Notes and Questions .....	399

### Chapter 13 AUTHORSHIP AND COPYRIGHT OWNERSHIP ..... 401

---

§ 13.01 AUTHORSHIP .....	401
James D.A. Boyle, <i>The Search for an Author: Shakespeare and the Framers</i> .....	402
Notes and Questions .....	406
§ 13.02 JOINT WORKS .....	407
<i>Thomson v. Larson</i> .....	408
Notes and Questions .....	414
§ 13.03 WORKS MADE FOR HIRE .....	415
<i>Hays v. Sony Corp. of America</i> .....	417
Notes and Questions .....	419
§ 13.04 COLLECTIVE WORKS .....	421
<i>New York Times Co. v. Tasini</i> .....	422
Notes and Questions .....	432

### Chapter 14 FORMALITIES AND OTHER REQUIREMENTS ..... 435

---

§ 14.01 FIXATION .....	435
Problems .....	435
§ 14.02 FORMALITIES .....	436
<i>Hasbro Bradley, Inc. v. Sparkle Toys, Inc.</i> .....	438
Notes and Questions .....	442
§ 14.03 PUBLICATION .....	443

### Chapter 15 THE SCOPE OF COPYRIGHT ..... 445

---

§ 15.01 THE REPRODUCTION RIGHT .....	446
<i>Grand Upright Music Ltd. v. Warner Bros. Records, Inc.</i> .....	446
Notes and Questions .....	448
§ 15.02 THE DERIVATIVE WORK RIGHT .....	449
<i>Castle Rock Entertainment, Inc. v. Carol Publishing Group, Inc.</i> .....	450
Notes and Questions .....	455



---

## Table of Contents

§ 15.03	THE DISTRIBUTION RIGHT	456
	<i>Bobbs-Merrill Co. v. Straus</i>	456
	Notes and Questions	458
§ 15.04	THE PUBLIC PERFORMANCE RIGHT	459
	<i>Twentieth Century Music Corp. v. Aiken</i>	459
	Notes and Questions	463
	Problems	465
§ 15.05	THE PUBLIC DISPLAY RIGHT	466
	Notes and Questions	466
§ 15.06	THE DIGITAL TRANSMISSION RIGHT	466
§ 15.07	MORAL RIGHTS	467
	<i>Gilliam v. American Broadcasting Companies</i>	467
	Notes and Questions	475
<b>Chapter 16</b>	<b>FAIR USE AND OTHER DEFENSES</b>	<b>479</b>
	<i>Sony Corp. of America v. Universal City Studios, Inc.</i>	480
	Notes and Questions	489
	<i>Harper &amp; Row Publishers, Inc. v. Nation Enterprises</i>	491
	Notes and Questions	501
	<i>Campbell v. Acuff-Rose Music, Inc.</i>	503
	Notes and Questions	511
<b>Chapter 17</b>	<b>COPYRIGHT INFRINGEMENT</b>	<b>513</b>
§ 17.01	DIRECT INFRINGEMENT	513
	<i>Sid &amp; Marty Krofft Television Productions, Inc. v. McDonald's Corp.</i>	513
	Notes and Questions	520
	<i>Three Boys Music Corp. v. Bolton</i>	520
	Notes and Questions	526
§ 17.02	INDIRECT INFRINGEMENT	527
[A]	Contributory and Vicarious Infringement	527
	<i>Fonovisa, Inc. v. Cherry Auction, Inc.</i>	527
[B]	Inducement	531
	<i>Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.</i>	531
	Notes and Questions	540
§ 17.03	INTERNET SERVICE PROVIDER SAFE HARBOR	541
	Jennifer M. Urban & Laura Quilter, <i>Efficient Process or “Chilling Effects”?</i> <i>Takedown Notices Under Section 512 of the Digital Millennium Copyright Act</i>	542
	Notes and Questions	548

---

## Table of Contents

---

### Chapter 18            **CONTRACTS AND TECHNOLOGICAL ADJUNCTS . . . 551**

---

§ 18.01	CONTRACTS . . . . .	551
	<i>ProCD, Inc. v. Zeidenberg</i> . . . . .	551
	Notes and Questions . . . . .	558
§ 18.02	TECHNOLOGICAL MEASURES . . . . .	560
	Stefan Bechtold, <i>Digital Rights Management in the United States</i> <i>and Europe</i> . . . . .	561
	<i>Universal City Studios, Inc. v. Reimerdes</i> . . . . .	563
	Notes and Questions . . . . .	574
	<i>Chamberlain Group, Inc. v. Skylink Technologies, Inc.</i> . . . . .	576
	Notes and Questions . . . . .	588

---

### Part IV                **THE PROTECTION OF MARKS, BRANDS, AND OTHER COMMERCIAL INDICIA . . . . . 591**

### Chapter 19            **THE NATURE, POLICIES, AND HISTORICAL FOUNDATIONS OF TRADEMARK PROTECTION . . . 593**

---

§ 19.01	TRADEMARKS TODAY . . . . .	593
[A]	Terminology . . . . .	593
[B]	Sounding Like a Practitioner . . . . .	594
[C]	The Function of Trademarks: Symbols, Psychology, and Information . . . . .	594
	<i>Mishawaka Rubber &amp; Woolen Manufacturing Co. v. S.S.</i> <i>Kresge Co.</i> . . . . .	596
	Notes and Questions . . . . .	598
	Doris Estelle Long, <i>Is Fame All There Is?: Beating Global</i> <i>Monopolists at Their Own Marketing Game</i> . . . . .	599
	Notes and Questions . . . . .	601
	<i>David B. Findlay, Inc. v. Findlay</i> . . . . .	602
	Notes and Questions . . . . .	605
	Problem . . . . .	606
	<i>Mattel, Inc. v. Walking Mountain Productions</i> . . . . .	606
	Notes and Questions . . . . .	608
	<i>In re Morton Norwich Products, Inc.</i> . . . . .	610
	Notes and Questions . . . . .	615
§ 19.02	THE HISTORY OF TRADEMARKS: CONSUMERS, AUTHENTICATION, AND PROPERTY . . . . .	616
[A]	The Philosophical Basis for Protection: Property Rights or Unfair Competition . . . . .	616
[B]	Trademarks and the Commerce Clause . . . . .	618
[C]	A Brief Introduction to the Lanham (Federal Trademark) Act . . . . .	619
[D]	The Federal–State Dichotomy and Federal Preemption . . . . .	620

---

## Table of Contents

[E]	Administrative Procedures and Regulations Governing Trademark Registration . . . . .	621
§ 19.03	PROTECTABLE TRADEMARKS UNDER U.S. LAW . . . . .	623
[A]	Trademarks and Other Protectable Commercial Symbols . . . . .	623
[B]	The Special Nature of Service Marks . . . . .	624
[C]	Certification Marks . . . . .	625
[D]	Collective Marks . . . . .	626
	Problems . . . . .	626
<b>Chapter 20</b>	<b>STATUTORY BASES FOR TRADEMARK PROTECTION . . . . .</b>	<b>629</b>
§ 20.01	THE CRITICAL ROLE OF DISTINCTIVENESS AND SOURCE DESIGNATING FUNCTION . . . . .	629
[A]	Picking a Mark That Matters . . . . .	629
[B]	Categorizing Levels of Distinctiveness . . . . .	630
	<i>Abercrombie &amp; Fitch Co. v. Hunting World, Inc.</i> . . . . .	631
	Notes and Questions . . . . .	634
§ 20.02	DISTINCTIVENESS IN MOTION, FRAGRANCE, SOUNDS, AND OTHER “DEVICES” . . . . .	639
	<i>The Rock and Roll Hall of Fame and Museum, Inc. v. Gentile Productions</i> . . . . .	641
	Notes and Questions . . . . .	646
	Problem . . . . .	647
§ 20.03	ACQUIRED DISTINCTIVENESS AND SECONDARY MEANING . . . . .	648
[A]	The Market Impact of Acquired Distinctiveness . . . . .	648
[B]	The Growing Impact of Secondary Meaning in Protecting Trademarks . . . . .	649
[C]	Proving Secondary Meaning . . . . .	649
	Notes and Questions . . . . .	650
	Problem . . . . .	651
§ 20.04	GENERICIDE . . . . .	651
	<i>A.J. Canfield Co. v. Honickman</i> . . . . .	652
	Notes and Questions . . . . .	660
	Problems . . . . .	663
<b>Chapter 21</b>	<b>SCANDAL, DECEPTION, AND OTHER BASES FOR REFUSING PROTECTION . . . . .</b>	<b>665</b>
§ 21.01	DECEPTIVE MARKS . . . . .	665
	<i>In re Budge Manufacturing Co.</i> . . . . .	666
	Notes and Questions . . . . .	668
	Problem . . . . .	669

---

## Table of Contents

§ 21.02	SCANDALOUS AND DISPARAGING MARKS . . . . .	669
	<i>In re Old Glory Condom Corp.</i> . . . . .	669
	Notes and Questions . . . . .	673
	<i>Harjo v. Pro-Football, Inc.</i> . . . . .	674
	Notes and Questions . . . . .	681
	Problems . . . . .	685
§ 21.03	THE SPECIAL PROBLEM OF GEOGRAPHIC MARKS AND THE GLOBAL ECONOMY . . . . .	685
[A]	The Special Role of Geography in Today’s Market . . . . .	686
	<i>In re California Innovations, Inc.</i> . . . . .	688
	Notes and Questions . . . . .	694
	Problem . . . . .	695
§ 21.04	SURNAMES, CONFUSION, AND OTHER GROUNDS FOR REFUSAL . . . . .	695
	Notes and Questions . . . . .	697
	Problems . . . . .	697
<b>Chapter 22</b>	<b>THE REQUIREMENT OF USE . . . . .</b>	<b>699</b>
§ 22.01	USE IN COMMERCE AND THE REGISTRATION “GAME” . . . . .	699
[A]	The Critical Role of Use Versus Creation/Appropriation . . . . .	699
	<i>Maryland Stadium Authority v. Becker</i> . . . . .	700
	Notes and Questions . . . . .	704
	Problem . . . . .	705
[B]	Geography and Prior Use Rights . . . . .	705
	<i>Thrifty Rent-a-Car System, Inc. v. Thrift Cars, Inc.</i> . . . . .	706
	Notes and Questions . . . . .	711
	Problems . . . . .	713
§ 22.02	ABANDONMENT, RESIDUAL GOODWILL, AND OTHER “USE-BASED” CHALLENGES . . . . .	713
[A]	Abandonment and Residual Goodwill . . . . .	713
	<i>Exxon Corp. v. Humble Exploration Co.</i> . . . . .	715
	Notes and Questions . . . . .	719
[B]	Naked Licenses, Assignments in Gross, and Other Exploitation Problems . . . . .	721
	<i>Barcamerica International USA Trust v. Tyfield Importers, Inc.</i> . . . .	721
	Notes and Questions . . . . .	725
	Problems . . . . .	726
§ 22.03	TRADEMARK VIOLATIONS . . . . .	727
	Doris Estelle Long, <i>Rebooting Trademarks for the Twenty-First     Century</i> . . . . .	729
	Notes and Questions . . . . .	730

---

## Table of Contents

§ 22.04	CONFUSION-BASED REMEDIES . . . . .	730
[A]	Defining the “Public” to Be Protected Against Likely Confusion . . . . .	731
[B]	Mapping the Limitations of Likely Confusion . . . . .	733
	<i>McGregor-Doniger Inc. v. Drizzle Inc.</i> . . . . .	733
	Notes and Questions . . . . .	739
[C]	Reverse Confusion . . . . .	740
	<i>Harlem Wizards Entertainment Basketball, Inc. v. NBA</i>	
	<i>Properties, Inc.</i> . . . . .	741
	Notes and Questions . . . . .	753
	Problems . . . . .	754
[D]	The Critical Role of Surveys in Protecting Trademarks . . . . .	754
	DORIS ESTELLE LONG, UNFAIR COMPETITION AND THE	
	LANHAM ACT . . . . .	755
	Notes and Questions . . . . .	757
	Problem . . . . .	758
§ 22.05	COUNTERFEITING: THE OTHER “CONFUSION” . . . . .	759
	Notes and Questions . . . . .	761
	Problem . . . . .	762
§ 22.06	THE PROTECTION OF FAMOUS MARKS: REDEFINING THE	
	PUBLIC INTEREST? . . . . .	762
[A]	Dilution . . . . .	763
	<i>Visa International Service Association v. JSL Corp.</i> . . . . .	764
	Notes and Questions . . . . .	770
[B]	The “Famous Marks” Doctrine . . . . .	772
	<i>ITC Ltd. v. Punchgini, Inc.</i> . . . . .	772
	Notes and Questions . . . . .	780
	Problems . . . . .	781
§ 22.07	THE REMEDIES PROBLEM . . . . .	782
	Problems . . . . .	783
§ 22.08	THE LIMITS OF REPUTATIONAL CLAIMS . . . . .	783
	<i>Dastar Corp. v. Twentieth Century Fox Film Corp.</i> . . . . .	784
	Notes and Questions . . . . .	789
<b>Chapter 23</b>	<b>LIMITATIONS AND EXCEPTIONS . . . . .</b>	<b>791</b>
§ 23.01	FAIR USE . . . . .	791
[A]	Classic Fair Use . . . . .	792
	<i>KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.</i> . . . . .	792
	Notes and Questions . . . . .	796
	Problems . . . . .	797
[B]	Nominative Fair Use . . . . .	798
	<i>New Kids on the Block v. News America Publishing, Inc.</i> . . . . .	798

---

## Table of Contents

	Notes and Questions	803
	Problems	804
§ 23.02	GRAY MARKET AND PARALLEL GOODS	805
	<i>Lever Bros. Co. v. United States</i>	805
	Notes and Questions	808
	Problem	810
§ 23.03	FREE SPEECH AND PARODIES	810
	<i>Coca-Cola Co. v. Gemini Rising, Inc.</i>	811
	Notes and Questions	814
	Problems	816

---

### Chapter 24 TRADEMARKS IN THE DIGITAL ENVIRONMENT . . . 817

§ 24.01	NEW COMPETITIVE SPACES ON THE INTERNET	817
§ 24.02	THE INTERNET	818
[A]	Use Revisited	818
	<i>Rescuecom Corp. v. Google Inc.</i>	820
	Notes and Questions	826
	Problems	829
[B]	Domain Names	829
	<i>Harrods Ltd. v. Sixty Internet Domain Names</i>	830
	Notes and Questions	835
	Problems	837
	<i>Planned Parenthood, Inc. v. Bucci</i>	837
	Notes and Questions	843
	Problems	846
§ 24.03	FUTURE DIRECTIONS	846
	Doris Estelle Long, <i>Rebooting Trademarks for the Twenty-First Century</i>	846
	Notes and Questions	850

---

### Part V THE PROTECTION OF OTHER INTELLECTUAL ASSETS . . . 853

---

#### Chapter 25 THE RIGHT OF PUBLICITY . . . 855

§ 25.01	OVERVIEW OF THE RIGHT OF PUBLICITY	855
	<i>Allison v. Vintage Sports Plaques</i>	856
	Notes and Questions	861
§ 25.02	ADDITIONAL ISSUES IN THE RIGHT OF PUBLICITY	862
[A]	Personality Attributes Protected by the Right	862
	<i>Wendt v. Host International, Inc.</i>	862
	<i>Wendt v. Host International, Inc.</i>	864

---

## Table of Contents

	Notes and Questions . . . . .	866
[B]	Federal Protection of a Person’s Name, Likeness, and Persona . . . . .	867
	<i>Waits v. Frito-Lay, Inc.</i> . . . . .	868
	Notes and Questions . . . . .	872
[C]	Descendability of the Right of Publicity . . . . .	873
	<i>Herman Miller, Inc. v. Palazzetti Imports and Exports, Inc.</i> . . . . .	873
	Notes and Questions . . . . .	877
§ 25.03	CONSTITUTIONAL LIMITATIONS ON THE RIGHT OF PUBLICITY . . . . .	879
[A]	Federal Preemption . . . . .	879
	<i>Laws v. Sony Music Entertainment, Inc.</i> . . . . .	879
	Notes and Questions . . . . .	885
[B]	Free Speech Issues . . . . .	886
	<i>Toffolini v. LFP Publishing Group, LLC</i> . . . . .	887
	<i>Winter v. DC Comics</i> . . . . .	892
	Notes and Questions . . . . .	896
<b>Chapter 26</b>	<b>PROTECTING PRODUCT DESIGN UNDER THE PATENT ACT . . . . .</b>	<b>899</b>
§ 26.01	BASIC DIFFERENCES BETWEEN DESIGN AND UTILITY PATENTS . . . . .	899
§ 26.02	ORNAMENTALITY VS. FUNCTIONALITY . . . . .	902
	<i>High Point Design LLC v. Meijer, Inc.</i> . . . . .	902
	Notes and Questions . . . . .	907
§ 26.03	DETERMINING NOVELTY AND NONOBVIOUSNESS OF DESIGNS . . . . .	907
	<i>In re Nalbandian</i> . . . . .	908
	Notes and Questions . . . . .	912
§ 26.04	DESIGN PATENT INFRINGEMENT . . . . .	913
	<i>Egyptian Goddess, Inc. v. Swisa, Inc.</i> . . . . .	913
	Notes and Questions . . . . .	921
§ 26.05	DESIGN PATENTS: CLOSING THOUGHTS . . . . .	922
<b>Chapter 27</b>	<b>OTHER MEANS OF PROTECTING PRODUCT DESIGN . . . . .</b>	<b>925</b>
§ 27.01	DESIGN PROTECTION UNDER COPYRIGHT LAW . . . . .	925
	<i>Mazer v. Stein</i> . . . . .	926
	<i>Galiano v. Harrah’s Operating Co.</i> . . . . .	926
	Notes and Questions . . . . .	931
§ 27.02	DESIGN PROTECTION UNDER TRADEMARK LAW . . . . .	932
	<i>Qualitex Co. v. Jacobson Products Co.</i> . . . . .	933

---

*Table of Contents*

	Notes and Questions . . . . .	936
	<i>Wal-Mart Stores, Inc. v. Samara Bros., Inc.</i> . . . . .	937
	Notes and Questions . . . . .	941
	<i>TrafFix Devices, Inc. v. Marketing Displays, Inc.</i> . . . . .	942
	Notes and Questions . . . . .	946
§ 27.03	<i>SUI GENERIS</i> DESIGN PROTECTION . . . . .	947
[A]	The Push for a <i>Sui Generis</i> System . . . . .	947
[B]	A Case Study in Design: Fashion . . . . .	951
<hr/>		
<b>Part VI</b>	<b>LIMITS ON INTELLECTUAL PROPERTY PROTECTION . . . . .</b>	<b>953</b>
<hr/>		
<b>Chapter 28</b>	<b>COMPETITION LAW RESTRICTIONS ON INTELLECTUAL PROPERTY RIGHTS . . . . .</b>	<b>955</b>
<hr/>		
§ 28.01	ANTITRUST LAW AND INTELLECTUAL PROPERTY . . . . .	955
	U.S. DEP'T OF JUSTICE & FEDERAL TRADE COMMISSION, ANTITRUST GUIDELINES FOR THE LICENSING OF INTELLECTUAL PROPERTY . . . . .	956
	Notes and Questions . . . . .	961
§ 28.02	PATENT AND COPYRIGHT MISUSE . . . . .	962
	<i>Lasercomb America, Inc. v. Reynolds</i> . . . . .	963
	Notes and Questions . . . . .	969
<hr/>		
	<b>TABLE OF CASES . . . . .</b>	<b>TC-1</b>
<hr/>		
	<b>INDEX . . . . .</b>	<b>I-1</b>

---