

Trademarks and Unfair Competition

Trademarks and Unfair Competition

TWELFTH EDITION

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Preface

The Internet has sparked phenomenal growth in the importance and scope of trademark and unfair competition law. Effective branding—creating and maintaining a strong commercial identity that cuts through the noise and connects with consumers—is more important than ever. At the same time, constitutional issues—pertaining to the Commerce Clause, the Patent and Copyright Clause, the Supremacy Clause, and the First Amendment—are reshaping modern trademark and unfair competition law, have been outcome-determinative in many high-profile cases, and are fueling influential debates in the academic literature. There continues to be an overall sense of excitement as the law responds to new technologies and increasingly sophisticated forms of communication. The Supreme Court is regularly deciding important intellectual property issues, as evidenced by the several recent decisions discussed in this new edition.

Law schools now routinely provide a broad and sophisticated curriculum for the study of all aspects of intellectual property law. Law firms and corporate legal departments across the United States and abroad aggressively expand their intellectual property resources. This growth has resulted in intense intellectual ferment within academia, the courts and the practicing bar. Like patent and copyright law, trademark and unfair competition law are in a state of rapid evolution. Many hitherto unquestioned principles are being rethought, foundational changes in the policy rationales and the doctrinal and constitutional dimensions of this ancient body of law are being considered and implemented, and false leads are being weeded out (or, sometimes, newly introduced).

We have sought in this textbook to provide for students an organized guide to the opinions, treatises, and commentary, a delineation of the principal questions and problems to be expected, and a synthesis of the current and developing law under each of the subdivisions of our Table of Contents. The explosion in e-commerce and Internet litigation affects every chapter. Throughout the casebook, we focus on examining trademark and unfair competition law's place in the constitutional scheme. We pay great attention to the relationship of trademark and unfair competition law with the other areas of intellectual property law.

This book is a product of our decades of law school teaching. It has evolved to its present state with the benefit of enlightening criticism from law students at Northwestern University, the University of Chicago, and other law schools, as well as from the many practicing lawyers to whom it has been exposed. Acknowledgment is most

appreciatively expressed to our colleagues, Sarah Wohlford and Kristine Bergman for their scholarly contributions to this edition. We also express our warmest thanks and appreciation to Cathy Spiller for her preeminent work in readying the manuscript for publication. Finally, we dedicate this newest volume to Beverly W. Patishall (1916–2002), a great colleague, scholar and friend.

D.C.H.

J.N.W.

U.W.