

TRADEMARKS AND UNFAIR COMPETITION

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TRADEMARKS AND UNFAIR COMPETITION

TENTH EDITION

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MATTHEW  BENDER

Preface

The phenomenal growth in the importance and scope of trademark and unfair competition law in recent years has largely been sparked by the Internet. Internet-related questions continue to force the intellectual property bar and the judiciary to reassess seemingly settled principles, develop new ones, or revive ancient doctrines in radically new factual contexts. 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. 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 now 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). E-commerce and technological developments have raised new questions about the relationship of trademark and unfair competition law to other bodies of intellectual property law. The U.S. Supreme Court's selection of cases to be heard reflects these trends, and the recent decisions of that court are featured in this edition of the textbook.

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 was initially prepared to meet the needs of teaching a law school course. It has evolved to its present state with the benefit of enlightening criticism from law students at Northwestern University and the University of Chicago, as well as from the many practicing lawyers to whom it has been exposed. Acknowledgment is most appreciatively expressed to our colleague, Sarah Wohlford, for her scholarly contributions to this edition. We also express our warmest thanks and appreciation to Laura Ruzycski for her preeminent work in readying the manuscript for publication. Finally, we dedicate this newest volume to Beverly W. Pattishall (1916–2002), a great colleague, scholar and friend.

D.C.H.
J.N.W.
U.W.

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