
PREFACE TO SECOND EDITION

In the time since the first edition of this book, trademark and unfair competition law has continued to grow at a furious pace. Many of the trends that we highlighted three years ago still dominate debates in courts and legislatures, both in the United States and abroad. Indeed, these trends may even have become more pronounced. International issues (such as the extra-territorial enforcement of trademark rights, the protection of well-known marks, international registration mechanisms, and the relevance of international instruments in domestic trademark law), and issues surrounding use of trademarks on the Internet (such as the cause of action for initial interest confusion, the protection of domain names as marks, and the relevance of online activity to the establishment of rights) remain at the forefront of contemporary trademark disputes. Litigation over the protection of nonverbal marks has been unrelenting, notwithstanding cautionary signals from the United States Supreme Court. (Indeed, reflecting the continued interest in trade dress and design claims, we will soon be publishing a book on *Trade Dress and Design Law* as part of Aspen's new Electives Series.)

In addition, new policy and doctrinal challenges have arisen, in part from an expansion in the uses to which trademarks are put by consumers, producers, online intermediaries and advertisers. For example, a growing consumer preference for the delivery of information online has sparked a large but uncertain body of case law about the use of trademarks to trigger online advertising. Recent legislative activity has also given rise to new iterations of long-standing questions. In particular, although the dilution cause of action received a major congressional overhaul in late 2006, loose legislative drafting is likely to cause courts some difficulty in reconciling new statutory language with the basic purposes of trademark protection. And, as trademark law has become more controversial and more contested, doctrines enabling permissible unauthorized uses have occupied the courts, including the United States Supreme Court, without any clear resolution in sight. The Second Edition tackles each of these diverse developments in some detail, while adhering to the basic approach of the First Edition in seeking to place them within a coherent conceptual framework.

Although trademark and unfair competition law remains largely a product of judicial development, legislative text is becoming more significant (or at least more voluminous). The Lanham Act has grown in size with the addition of provisions implementing the Madrid Protocol, and the detailed language of provisions reforming dilution law in 2006 is likely to be the focus of substantial litigation. Thus, we have compiled a separately-bound Statutory Supplement including (of course) the Lanham Act and related federal statutes, along with relevant regulatory materials, selected state right-of-publicity statutes, and some international materials. (International instruments are likewise intruding in domestic trademark litigation with far greater frequency than in the past.)

Many instructors who have taught from the book have been generous in offering their comments, which we sincerely appreciate. We thanked several colleagues for their advice in connection with the First Edition, and that advice continues to inform the Second Edition. In addition, we would like to thank Graeme Austin, Barton Beebe, Lillian BeVier, Tony DeGidio, Laura Heymann, Tim Holbrook, Marshall Leaffer, Ed Lee, Mark McKenna, Tony

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