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DOCTRINES**

**CASES AND MATERIALS ON THE LAW
OF INTELLECTUAL PROPERTY**

REVISED SIXTH EDITION

PAUL GOLDSTEIN

R. ANTHONY REESE

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OF
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REVISED SIXTH EDITION

by

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To
My Mother

∞

To
My Mother, My Father, & Christopher

PREFACE

At a meeting of the American Bar Association's Section on Patents, Trademarks and Copyrights, a seasoned copyright practitioner introduced his remarks with the observation that section members "are exposed to many occupational hazards One of the less serious ones—but still an obstacle faced almost daily—is the fact that most people do not understand the difference between patents, trademarks and copyrights. This applies to clients, other lawyers and at times even judges. When I tell a general practitioner that I am a copyright lawyer, he immediately corrects me: 'You mean patents!' He then says: 'Well, anyway, as a patent lawyer, you can copyright a name for me can't you?'"* (The inside joke was that trademark law, not copyright law, protects names.)

Why the confusion between copyright, patent and trademark law? One reason is that these federal laws occupy a common ground, each seeking to stimulate investment in information through the award of property rights. The information produced, and the specific intellectual property rights that attach, are sometimes hard to separate. Adding to the confusion is the fact that state laws—principally trade secret law, unfair competition law and the right of publicity—also qualify as intellectual property.

Because these laws occupy a common field, they invite comparison. How, and how efficiently, does each law allocate costs and benefits among producers, distributors and consumers of information? The field also invites less theoretical inquiry. A lawyer must be prepared to pick out not only a single thread of protection for a client's project (one consisting, say, of trade secret and patent protection), but possibly a more ample fabric (a combination of trade secret, patent, copyright and trademark). And, although the lawyer will move easily from state to federal law, the lines between, like so many other lines in a federal system, bristle with conflict—often of a constitutional dimension.

In the years since publication of the Fifth Edition, the perceived importance of intellectual property continues to grow dramatically—in Congress and in the courts, in boardrooms and in law firms, and increasingly among the public. Congress has repeatedly amended the copyright, patent and trademark acts in important respects, and cases arising under these acts increasingly crowd the

* Alan Latman, Preliminary Injunctions in Patent, Trademark and Copyright Cases, 60 Trademark Rep. 506 (1970).

judicial docket. The question of intellectual property on the Internet, of increasing interest at the time of the Fifth Edition, has remained one of the legal system's hottest topics. Also, as the importance of intellectual property to the nation's balance of trade has come into clearer focus, Congress has moved to bring U.S. law into line with international treaty requirements and has employed trade measures to stimulate world-wide protection for intellectual goods originating in the United States.

The Sixth Edition reflects suggestions made by many teachers and students who used the preceding editions. For their good advice, we are grateful to Joseph P. Bauer, Joseph J. Beard, Andrew Beckerman-Rodau, Michael H. Davis, Graeme B. Dinwoodie, William T. Fryer, III, David Allen Hall, I. Trotter Hardy, Robert A. Kreiss, Mark P. McKenna, Edward B. Samuels, Jeffrey M. Samuels, Edmund J. Sease and Geri J. Yonover. We are also grateful to our colleagues in the intellectual property practice at Morrison & Foerster for continually challenging us with questions at the law's cutting edge.

Colin Cameron, a law student at The University of Texas at Austin, rendered extraordinary assistance in the preparation of the manuscript for the Sixth Edition. We are indebted to the staff of the Robert Crown Law Library at Stanford, particularly Paul Lomio, Sonia Moss, Kate Wilko, George Wilson, and Erika Wayne, and to Jane O'Connell of Tarlton Law Library at The University of Texas at Austin, for helping so many times in so many ways. And we owe thanks to our assistants, Lynne Anderson, Peter Freedberger, and Angel Leffingwell, for their work on the manuscript.

Note on Style. The articles and many of the cases appearing in these pages have been edited. The deletion of sentences and paragraphs is indicated by ellipses. The deletion of string citations is not indicated. Most footnotes have been excised. Those that remain have not been renumbered: Parallel citation to federal, state and regional reporters and to the United States Patent Quarterly has been employed where appropriate.

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Stanford, California

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June, 2010

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