

TRADEMARK AND UNFAIR COMPETITION LAW

CASES AND MATERIALS

FOURTH EDITION

JANE C. GINSBURG

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MARY L. KEVLIN

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by

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*We dedicate the Fourth Edition to the Memory of David
Goldberg, Esq.*

*

PREFACE TO THE FOURTH EDITION

In the six years since we published the third edition of Trademark and Unfair Competition Law, the law of trademarks and unfair competition has become more international and more digital. That expansion, across borders and onto the Internet, has forced Congress and the courts to reexamine classic trademark doctrines and concepts. The increased permeability of national borders, the ubiquity of the Internet, and the emergence of new forms of product advertising have compelled reconsideration of the nature of “use in commerce” and caused some courts to question whether an effective trademark law can avoid extraterritorial impact. The Supreme Court decided three important cases: *Moseley v. V Secret Catalogue* (2003) sought to clarify the scope of the federal anti-dilution law. Congress at the end of 2006 responded to the Supreme Court’s decision by enacting a significant amendment to the law’s anti-dilution provisions. *Dastar Corp. v. Twentieth Century Fox Film Corp.* (2003) limited the use of the Lanham Act’s false designation of origin provisions in cases seeking to vindicate interests in attribution. *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.* (2004) clarified the scope of the statutory trademark fair use defense.

Internet-related trademark disputes have now arisen in every corner of trademark practice, and show up in nearly every chapter of the book. As we did in the 3d edition, however, we have taken up the special problems posed by trademarks and domain names in a chapter of their own. The issues in this chapter are largely the same as the issues raised in the 3d edition, but most of the cases and domain name dispute decisions are new.

We have integrated the international and comparative materials that once occupied their own chapter into the rest of the book. We have separated our treatment of “use in commerce;” we now take up the use in commerce issues surrounding establishing rights in a mark in Chapter 3, and the use in commerce issues arising in connection with infringement in chapter 6. We have reorganized the material in chapter 6 in response to its increasing complexity. We have completely revised our treatment of dilution to respond to the new anti-dilution law. We have, reluctantly, decided to eliminate the use of a single case as a “Prelude;” the law has grown sufficiently complex that no single case seemed to us to capture a large enough slice of it to qualify as a Prelude.

We have retained many of the successful features of earlier editions. The Casebook begins with introductory case law and secondary material on the concepts and policies underlying trademark law, and incorporates trade-

mark policy concerns throughout the book. We have continued to include in-depth coverage of important advanced topics in the second half of the Casebook.

We wish to express appreciation to Professors Barton Beebe, Rob Denicola, Graeme Dinwoodie, Stacy Dogan, Rochelle Dreyfuss, Justin Hughes, Mark Janis, Mark Lemley, Sara Stadler, Rebecca Tushnet, and Jonathan Weinberg, and to Judge Alex Kozinski and William M. Borchard, Esq., for consenting to the use of excerpts of their work. We also thank Eric Schwartz, Esq., and Professor Coenraad Visser for their assistance with some of the international materials, and Richard Lehv, Esq. for signaling a variety of recent developments. Finally, we are especially grateful to Kevin Burdette, Columbia Law School class of 2007 (and New York City Opera 2005-06 and 2006-07 seasons), for extensive help with research and production.

June 2007

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