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Copyright, Patent, Trademark and Related State Doctrines: Cases And Materials. By Paul Goldstein.

John A. Kidwell
University of Wisconsin Law School at Madison

BOOK REVIEWS

COPYRIGHT, PATENT, TRADEMARK AND RELATED STATE DOCTRINES: CASES AND MATERIALS. By PAUL GOLDSTEIN. Chicago, Illinois: Callaghan and Company. 938+xii pages+Supp. $18.50.

JOHN A. KIDWELL*

Paul Goldstein's recently published book, *Copyright, Patent, Trademark and Related State Doctrines: Cases and Materials* is the best book available for use in an introductory course dealing with intellectual property. Such a course, which introduces students to the field in general, has advantages over the individual course which deals exclusively with patents, copyrights or trademarks and unfair competition. There is a real need to give students general exposure to the driving principles in these areas, and to the underlying premises upon which laws protecting intellectual property are founded. The availability of a "survey" course, and a book appropriate for such a course, will have the salutary effect of increasing the number of students who are familiar with problems of intellectual property.

In addition to its broad scope, the Goldstein text has other attractive features. One is thoughtful organization. Part One raises fundamental questions with respect to the policies underlying patent, copyright and trademark protection. One cannot overemphasize the importance of a constant evaluation of developing doctrine in light of underlying policy. Because of the predominantly technical rules involved in each substantive area, there is a danger that a student will drift gradually into a search for understanding based on sterile doctrinal consistency at the expense of an understanding of underlying purposes. By beginning the text with an extract from his article on the centality of the mandate for competition in coordinating state and federal laws,[1] Mr. Goldstein sets the tone for the entire book. This gives the book a theme—a quality which many law books lack. One is never allowed to ignore the fundamental question of how the rule in question, be it common law copyright, trade secret or federal

* Assistant Professor of Law, University of Wisconsin Law School at Madison. B.A., University of Iowa, 1967; J.D., Harvard Law School, 1970.

1. Goldstein, *The Competitive Mandate: From Sears to Lear,* 59 CALIF. L. REV. 873 (1971).

patent protection, relates to our societal commitment to a competitive economy.

Part Two, the principle section of the text, contains material on the substantive law bases for the state laws of common law copyright, trade secrets and unfair competition, and federal statutory protection for patents, trademarks and copyright. Part Three exposes the student to some of the transactional limitations—issues of antitrust and taxation. Part Four contains materials relating to international protection for intellectual property.

This is one of the few casebooks which seems to accomplish most of the objectives it sets for itself. For example, the introduction informs the reader that the problems of conflict between state and federal law will be continually encountered; the inclusion of preemption cases throughout the text fulfills this prophecy. Another casebook[2] sets aside a chapter for the preemption question, rather than treating it in the substantive law context in which it arose. Goldstein's approach is preferable for two reasons. First, repeated encounter with the problem reinforces one's recognition that the problem is pervasive, and that it has been one of the most troublesome questions of the last two decades. Secondly, treatment of the problem within the substantive law context illuminates the fact that the problem of preemption is not one problem, but many. Just as the policies of patent protection are not necessarily congruent with the policies of copyright protection, so the question of preemption is not monolithic. *Goldstein v. California*[3] stands as recent evidence of that difference. The organization of Mr. Goldstein's book is to some extent mute testimony of the author's prescience in recognizing this difference.[4]

Besides being substantively sound, the book represents an encouraging trend educationally. Legal education, for many years, seemed committed to what might be called the "hidden ball technique." That is, students were required to digest raw appellate cases unaided by the work of scholars, with little overt assistance from the teacher. Few chapters were broken down to reveal to the student the point the author was pursuing. To the extent that the book contained anything but cases, it posed strings of unanswerable questions which

2. R. CHOATE, PATENT LAW (1973).
3. 412 U.S. 546 (1973).
4. *See* Goldstein, *"Inconsistent Premises" and the "Acceptable Middle Ground": A Comment on Goldstein v. California*, 21 BULL. COPYRIGHT SOC. 25 (1973).

seemed designed to remind the reader of his ignorance. (The implication was often that the author of the casebook knew the answers. As a student I was taken in; as a teacher I know better.) Law review articles were conspicuous by their absence. While this approach has a place in legal education, it should be the exception rather than the rule in second and third year courses. The design of Goldstein's book indicates an appreciation of this problem. The book is filled with helpful notes, excerpts from law review articles, citations to other cases and is organized by use of numerous topic headings indicating the theme to follow. Another useful educational approach is publication of a supplement which includes the text of relevant statutes and a series of problems. Thus, the book is in line with recent trends in the direction of increased emphasis on problem solving in law school.

The materials of the text provide a rich but not excessive treatment of the issues. Mr. Goldstein refuses to succumb to the temptation to include more of the admittedly intellectually satisfying historical materials. The book might conceivably frustrate some scholars because of the omission, for example, of the cases which deal with the "Great Question of Literary Property."[5] Too few casebook editors appreciate that what is fascinating to them may merely muddy the waters for the students whose goals are understandably different from the scholars.

The Goldstein book is also an admirable example of a law school materials book which should prove to be a fruitful research tool for practitioners. The frequent notes attempt to deal with, rather than merely raise, issues suggested by the principal cases. The notes also contain references to cases and articles which will assist the reader in further understanding the questions presented.

This is not to say that there is nothing wrong with the text. It is not the "ultimate" textbook. The chapter headings, printed at the top of each page, could have been put to better use. More of the footnotes which have been omitted should have been retained. The omission of footnotes is particularly annoying when one has, in the body of the text, references to cases which omit the identification of the court and the date. In a similar vein, the detailed table of

5. *See* Wheaton v. Peters, 33 U.S. (8 Pet.) 591 (1934); Donaldson v. Becket, 4 Burr. 2408 (H.L. 1774). Goldstein does provide references to this material. P. GOLDSTEIN, COPYRIGHT, PATENT, TRADEMARK AND RELATED STATE DOCTRINES: CASES AND MATERIALS 204 n.2 (1973).

contents could have included case names as well as subject headings; generally, no more concise and helpful study aid can be found than a well done table of contents. But notwithstanding these caveats, no substantial risk is taken in commending the book to others as an excellent teaching tool, as well as a worthwhile text for someone who wishes to teach him or herself about problems of intellectual property.

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In the decade since the watershed Supreme Court decisions of *Sears, Roebuck & Co. v. Stiffel Co.*,[1] *Compco Corp. v. Day-Brite Lighting, Inc.*,[2] and *Brulotte v. Thys Co.*,[3] two casebooks have been published which include cases, materials and notes on copyright, patent and trademark. The first, *Legal Regulation of the Competitive Process*,[4] attempts to encompass all legal controls on the practices of competing businessmen beyond the antitrust doctrines which merely assure competition. One reason given by Professors Kitch and Perlman for the inclusion of copyright and patent with the many other aspects of competition is that they "now define by negative implication the outer boundaries of state policies."[5] Thus copyright, patent, and trademark, though dealt with at length, are not central to the work.

The second casebook, by Professor Paul Goldstein of the State University of New York at Buffalo, treats copyright, patent and trademark with greater emphasis. Three goals set out in the preface determine the structure of the book.

Mr. Goldstein's first goal is to prepare the attorney for adjusting protection for a client's project as it develops from an ill-defined idea protectible under contract theory to a concrete money-making venture protectible under federal statutes. Part Two of the book deals with the state laws of unfair competition, trade secrets, and common law copyright, and with the federal laws of trademark, patent and copy-

1. 376 U.S. 225 (1964).
2. 376 U.S. 234 (1964).
3. 379 U.S. 29 (1964).
4. E. KITCH & H. PERLMAN, LEGAL REGULATION OF THE COMPETITIVE PROCESS (1972).
5. *Id.* at xvii.