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

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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.

COPYRIGHT, PATENT, TRADEMARK AND RELATED STATE DOCTRINES: CASES AND MATERIALS. By PAUL GOLDSTEIN. Chicago, Illinois: Callaghan and Company. 1973. 938+xii pages+Supp. \$18.50.

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.

right. This is consistent with the twin choices that Goldstein believes are preliminary for the lawyer. The lawyer first must decide whether the idea has matured sufficiently so that federal protection can and should be acquired. Then, whether under state or federal law, he must place the idea on the "writing" copyright track, the "invention" patent track or the "mark" trademark track. Mr. Goldstein structures the casebook so as to use the form, as well as the content, to suggest the options open to a lawyer for protection of his client. However, this structure creates problems for the student reader. By discussing all three state doctrines before discussing the federal doctrines, each state law is separated from its federal law counterpart. Rather than deprive his own students of an integrated knowledge of each of the three areas, Professor Goldstein assigns consecutively the state and federal component of each area.

The text is also structured to encourage system comparison. First, each federal statutory system can be compared with the others to assess mechanical and policy malfunctions.⁶ Professor Goldstein includes a number of law review articles which criticize and make suggestions for the systems. Students tend to slight this comparative material because of the unlikelihood of being tested on it or of being placed in a position to correct the malfunctions. Secondly, "the state law system, largely judge-made, can be compared with their more refined federal statutory counterparts"⁷ so as to fill the interstices of the state law. The student is frustrated in his attempts to do this because he studies the state law first and the federal statutes second. The chance of remembering an interstice is much less than that of remembering the often recited statutory provisions. The two subdivisions of this second goal provide justification for the structure if the reader is studying comparisons but not if he or she is simply studying "pure law."

Professor Goldstein's third goal is to analyze the broad constitutional conflict between the three forms of state protection and the three forms of federal protection. Before the bombshell dropped by *Sears and Compco*, casebook writers saw no need to deal with the ill-defined boundary between the two sets of laws. Professors Kitch and Perlman place their chapter addressing the new problems, "Federal Preemption of State Created Rights," just before the halfway point in

6. P. GOLDSTEIN, *COPYRIGHT, PATENT, TRADEMARK AND RELATED STATE DOCTRINES: CASES AND MATERIALS* v (1973).

7. *Id.* at vi, vii.

the work. Professor Goldstein begins Part One with "A Constitutional View." This section introduces the reader to the preemption problem in *Sears, Brulotte*, and *Lear, Inc. v. Adkins*.⁸ He notes that "in each case the Court's concern was whether the state law in question interfered with competitive needs generally and with either of two federal law monopolies, patent and copyright, specifically."⁹ Professor Goldstein prepares us for the economic interpretation current in the Supreme Court rather than for the outdated circular reasoning of property theories. Something is intellectual property only if the law recognizes it as such. Ideally, the law will recognize it as such when to do so would promote creation but will not recognize it as such when the granting of a monopoly would endanger competition.

After "A Constitutional View" initiates the reader to the preemption problem, the following section entitled "Some Functional Views" focuses the reader's attention on economic realities. Various materials debate the empirical accuracy of the assumptions made by courts and legislatures as to the economic effects of granting limited monopolies, through such devices as copyright and patent, to reward creativity. Taken together, the two sections of Part One offer the reader a uniform, accepted approach for the diverse areas of law covered in Part Two. In short, "the federal [and state] law monopolies are implements designed to assist in meeting"¹⁰ "the constitutional mandate for . . . a competitive economy."¹¹ The state laws may copy, but not interfere with, the more refined federal laws.

Professor Goldstein has informed his classes that this casebook is also intended as an introduction for the already practicing lawyer. It is hard to imagine these abstract fields, with their dearth of black letter law, communicating themselves through a casebook that evolved under Goldstein's Socratic method. The book makes few concessions to the practicing lawyer. A subsection in Part Two typically begins with three contrasting cases and ends with several pages of numbered notes by Goldstein. These notes would frustrate any person who attempted to use the book as a reference work or a quick guide for specific problems. Each note deals with an easily identifiable aspect of the

8. 395 U.S. 653 (1969).

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

10. *Id.* at 875.

11. *Id.* at 874.

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subsection but is neither titled nor indexed as such except in isolated instances.¹² Further, because the notes addressed to the first case in a subsection follow the last case, it is necessary to do bothersome page flipping.

Yet, the notes are essential if one is to afford proper weight to the often irreconcilable decisions that result from judicial reactions to outright copying. Where the principal case marks an advance for free competition at the expense of granting of monopolies, the notes describe how moralistic judges have circumvented authority to punish "piracy."

Notes are also devoted to areas of curiosity like architectural plans,¹³ to lengthy historical cases like *Wheaton v. Peters*,¹⁴ and even to Judge Learned Hand's influential theories on common law copyright.¹⁵

There is really nothing with which to compare Professor Goldstein's casebook. The pre-1964 survey casebooks are obsolete; the casebook by Professors Kitch and Perlman is much larger in scope. Until another casebook is written, Professor Goldstein's work is without competition. In this monopolistic situation the buying public will do quite well.

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12. Cf. B. KAPLAN & R. BROWN, *CASES ON COPYRIGHT, UNFAIR COMPETITION, AND OTHER TOPICS BEARING ON THE PROTECTION OF LITERARY, MUSICAL, AND ARTISTIC WORKS* (1960).

13. Goldstein, *supra* note 6, at 206.

14. 33 U.S. 591 (1834).

15. Goldstein, *supra* note 6, at 239.

