

**A TREATISE ON THE LAW OF
TRADE MARKS, WITH A DIGEST
AND REVIEW OF THE ENGLISH
AND AMERICAN AUTHORITIES**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649015658

A treatise on the law of trade marks, with a digest and review of the English and American authorities by Francis H. Upton

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

FRANCIS H. UPTON

**A TREATISE ON THE LAW OF
TRADE MARKS, WITH A DIGEST
AND REVIEW OF THE ENGLISH
AND AMERICAN AUTHORITIES**

A TREATISE
ON THE
LAW OF TRADE MARKS,
WITH A
DIGEST AND REVIEW
OF THE
ENGLISH AND AMERICAN AUTHORITIES.

BY

FRANCIS H. UPTON, L. L. B.

Justitia est constans et perpetua voluntas ius eorum cuique tribuendi.
JUR. ISTR. L. I. T. 1.

ALBANY:
WEARE C. LITTLE, LAW BOOKSELLER,
1860.

Entered according to act of Congress, in the year 1890, by

WEARE C. LITTLE,

In the clerk's office of the District Court of the United States, for the Northern
District of New York.

1890

WEED, PARSONS & COMPANY,
PRINTERS AND STEREOTYPERS.

RJF 1573.5

P R E F A C E .

THE subject of this Treatise has assumed an interest and importance, within the past quarter of a century, not inferior to that attached to any branch of the law connected with the affairs of trade and commerce.

The instruments by which the manufacturer or the merchant, is enabled to designate the merchandise that he makes, or sells, so that its identity in the marts of commerce shall be faithfully preserved, are often valuable beyond estimation, for the reason that the merchandise itself, without these, would become comparatively valueless.

The manner in which property in these instruments may be acquired; by whom it may be possessed; of what such instruments must consist in order to entitle him who adopts and uses them, to protection in their exclusive use as property; what is in law, a violation of such exclusive right; and what are the remedies by which such violation may be prevented or redressed; are questions, the answers to which constitute the law of Trade Marks.

These answers are only to be found distributed through the books of reports of judicial decisions of the courts of

Domin 12119/52

England and the United States, and no attempt has ever yet been made to collate or digest them.

The great inconvenience arising from the want of a work in which has been performed the labor of gathering together these scattered authorities, and extracting from them the principles, and doctrines, and rules, which they are found to establish, has been often and seriously felt by the author, in the performance of his professional duties, and is made a subject of complaint by his brethren, both of the bench and bar, whenever a trade mark controversy arises for investigation, discussion or determination.

These considerations, to which may be added the very vague and imperfect notions which confessedly exist in relation to this interesting branch of the law, as well in the profession itself, as among laymen, and those whose business interests require some familiarity with its principles, have induced the present undertaking.

If it shall be found to have been performed in a manner sufficient to remove, or even to diminish, the inconveniences heretofore experienced—especially, if it have the effect, however partial and limited, of causing juster ideas to prevail concerning the peculiar character of property of which it treats, and of inducing a more extended familiarity with the principles upon which its recognition and protection are based, the author will have the satisfaction of having discharged a portion, small though it be, of that debt which my Lord Bacon justly holds to be due, from every man to his profession.

NEW YORK, *June*, 1860.

LIST

OF

CASES CITED IN THIS TREATISE.

	PAGE.
ANGSKEAG MANUFACTURING COMPANY <i>vs.</i> SPEAR, 2 Sand. S. C. R., 608,	85-126
AMES <i>vs.</i> KING, 2 Gray, 379,	185
BAILEY <i>vs.</i> TAYLOR, 1 Rus. & M., 73,	234
BELL <i>vs.</i> LOCKE, 8 Paige, 74,	93
BLANCHARD <i>vs.</i> HILL, 2 Atkins, 284,	12
BLOFIELD <i>vs.</i> PAINE, 4 Barb. & Adolph., 410,	122
BRAMWELL <i>vs.</i> HALCOMB, 3 Myl. & Cr., 737,	234
BURGESS <i>vs.</i> BURGESS, 17 Eng. Law and Eq. R., 257,	107
BURNETT <i>vs.</i> PHALON, N. Y. S. C. (not yet reported),	171
CANTWELL <i>vs.</i> LYE, 17 Ves., 335,	61
CANHAM <i>vs.</i> JONES, 2 Ves. & Bea., 218,	25-117
CHESSAM <i>vs.</i> DEWES, 5 Rus. R., 29,	61
CHRISTY <i>vs.</i> MURPHY, 12 How. Pr. R., 77,	93
CLARK <i>vs.</i> CLARK, 25 Barb., 76,	145
CLINTON <i>vs.</i> DOUGLASS, 1 H. R. V. Johns., 176,	61
COATES <i>vs.</i> HOLBROOK, 2 Sand. Ch. R., 586,	124
COFFEEN <i>vs.</i> BRUNTON, 4 McLean, 516,	159
COOK <i>vs.</i> COLLINGRIDGE, Jacob's R., 62,	61
CORMICK <i>vs.</i> MCCUBBEN, 1 Shaw & Ballantyne, 510,	61
CRAWSHAY <i>vs.</i> THOMPSON, 4 Mad. & Gr., 357,	122
CRAWSHAY <i>vs.</i> COLLINS, 15 Ves., 227,	60
CROFT, <i>vs.</i> DAY, 7 Brv., 84,	81
CLEMENT <i>vs.</i> MADDICKS, 22 Law R., 428,	122-234
COMPÈRE <i>vs.</i> BAJOU, Case 8, Vol. 149, of Paris Court of Appeals,	72
CORWIN <i>vs.</i> DALY (not yet reported),	187

	PAGE.
DAVIES <i>vs.</i> HODGSON, 25 <i>Beav.</i> , 177,	61
DAY <i>vs.</i> BINNING, 1 <i>Coop. Ch. R.</i> , 489,	120
DELONGUE <i>vs.</i> SHAW, 2 <i>Simons</i> , 237,	21
DOUGHTY <i>vs.</i> VAN NOSTRAND, 1 <i>Hoff. Ch. R.</i> , 68,	61
DOUGLAS <i>vs.</i> HAMMOND, 5 <i>Ves.</i> , 539,	60
EDLESTONE <i>vs.</i> VICK, 23 <i>Eng. Law and Eq. R.</i> , 51,	83
EYVES <i>vs.</i> CROFTS, 10 <i>Com. Bench R.</i> , 241,	61
FACINA <i>vs.</i> SILVERLOCK, 4 <i>Kay & Johns.</i> , 659,	229
FETRIDGE <i>vs.</i> WELLS, 4 <i>Abb. Pr. R.</i> , 144; 13 <i>How. Pr. R.</i> , 385,	36-151
FETRIDGE <i>vs.</i> MERCHANT, 4 <i>Abb. R.</i> , 136,	41-49-156
FLAVEL <i>vs.</i> HARRISON, 19 <i>Eng. Law and Eq. R.</i> , 15,	33
GOYT <i>vs.</i> ALLEGRE, 6 <i>Beav.</i> , 69; 1 <i>Clitty's Gen. Pr.</i> , 701,	120
HINE <i>vs.</i> LART, 10 <i>Lord. Jur. R.</i> , n. s., 161,	82-122
HOGG <i>vs.</i> KERBY, 2 <i>Ves.</i> , 226,	93
HOLLOWAY <i>vs.</i> HOLLOWAY, 12 <i>Beav.</i> , 213,	32
HOWARD <i>vs.</i> HENRIQUES, 13 <i>Sanc. S. C. R.</i> , 325,	90
HOWE <i>vs.</i> SEARING, 10 <i>Abb. Pr. R.</i> , 261,	55
HITCHCOCK <i>vs.</i> COHEN, 1 <i>Adol. & El.</i> , 438,	61
KNOTT <i>vs.</i> MORGAN, 2 <i>Keene</i> , 213,	94
LEWIS <i>vs.</i> LANGDON, 7 <i>Simons</i> , 421,	61
MARSH <i>vs.</i> BILLINGS, 7 <i>Cosh.</i> , 322,	91
MCDONALD <i>vs.</i> RICHARDSON, 1 <i>Goff. R.</i> , 81,	61
MILLINGTON <i>vs.</i> FOX, 3 <i>Myl. & Cr.</i> , 338,	119
MOTLEY <i>vs.</i> DOWNSMAN, 3 <i>Myl. & Cr.</i> , 1,	27
MORRISON <i>vs.</i> SALMON, 2 <i>Man. & Gr.</i> , 385,	119
PARTRIDGE <i>vs.</i> MENCK, 2 <i>Sand. Ct. R.</i> , 622,	218
PARTRIDGE <i>vs.</i> MENCK, <i>How.</i> , typical cases,	34
PERRY <i>vs.</i> TRUFFY, 6 <i>Bery.</i> , 66,	32-118-160
PETERSON <i>vs.</i> HUMPHREY, 4 <i>Abb. Pr. R.</i> , 394,	62
PIERCE <i>vs.</i> FRANKS, 10 <i>Lord. Jur. R.</i> , 25,	122
PIREING <i>vs.</i> HOWE, 8 <i>Simons</i> , 477,	31
RANSOME <i>vs.</i> BENTNALL, 3 <i>Law Jour. R.</i> , n. s., 161,	121
RODGERS <i>vs.</i> NOWELL, 5 <i>Man. Gr. & Sc.</i> , 109,	105
SAMUEL <i>vs.</i> BURGER, 4 <i>Abb. Pr. R.</i> , 88,	52
SINGLETON <i>vs.</i> BOLTON, 3 <i>Doug.</i> , 293,	24-116
SNOWDEN <i>vs.</i> NOAH, <i>Hopkins</i> , 347,	93
SOUTHERN <i>vs.</i> HOW, <i>Popkna</i> , 144,	11
SPOTTISWOODE <i>vs.</i> CLARK, 10 <i>Lord. Jur. R.</i> , 1643,	94-235
STERN <i>vs.</i> CARLAN, 13 <i>Law R.</i> , 360,	234
STEWART <i>vs.</i> SMITHSON, 1 <i>Hilloc</i> , 119,	41
STOKES <i>vs.</i> LANDGRAFF, 17 <i>Bach.</i> , 608,	86-140

LIST OF CASES.

7

	PAGE.
SYKES vs. SYKES, 3 B. & C., 54,.....	103
TAYLOR vs. CARPENTER, 2 Sess. Ch. R., 611,.....	234
TAYLOR vs. CARPENTER, 3 Story R., 450,.....	20
TAYLOR vs. CARPENTER, 2 Woodbury & Minot, 1,.....	20
TAYLOR vs. CARPENTER, 4 Barb. Ab. of Chancellors' Decisions, 68,.....	20
THE MERRIMACK MAN. CO. vs. GARNER, 2 E. D. Smith, 387,...	220
THE COLLINS COMPANY vs. CEWEN, 3 Kay & Johns, 423,.....	21-26
THE COLLINS COMPANY vs. BROWN, 3 Kay & Johns, 428,	21-122
THE BROOKLYN WHITE LEAD CO. vs. MASURY, 25 Barb., 216, ..	148
THOMSON vs. WINCHESTER, 19 Pick., 214,.....	109
WELCH vs. KNOTT, 4 Kay & Johns., 747,.....	122-218
WILLIAMS vs. JOHNSON, 1 Bosworth, 1,.....	161
WILLIAMS vs. WILSON, 4 Sess. Ch. R., 379,.....	61
WHITTINGHAM vs. WOOLER, 2 Swaust, 428,.....	234
WOLFE vs. GOCLARD, 18 How. Pr. R., 64,.....	168