Index

ACQUIESCENCE
- Equitable defense, **9:19**
- Jurisdiction and procedure, **9:19**

ADVERTISING
- Generally, **6:1 to 6:12**
- Allowable plaintiffs, false advertising, **6:2**
- Comparative advertising, **6:10**
- Establishment claims, **6:9**
- Factual statements, **6:4**
- False advertising, prohibiting use of
  - actionable commercial advertising or promotion, **6:3**
  - allowable plaintiffs, **6:2**
  - comparative advertising, **6:10**
  - establishment claims, **6:9**
  - factual statements, **6:4**
  - interpreting accused matter, **6:5**
  - literally false advertising, **6:6, 6:7**
  - litigated claims, examples, **6:12**
  - materiality, **6:11**
  - misleading, **6:8**
- Literally false advertising, **6:6, 6:7**
- Misleading, **6:8**
- Surveys regarding the meaning of an advertisement, **8:6**

AMENDMENTS
- First amendment, **1:7**
- Section 43(a), amendments and additions to, **1:4**

APPEAL
- Jurisdiction and procedure, **9:26**

APPELLATE REVIEW
- Leading cases in Court of Appeals, generally, **2:12 to 2:24**

ARBITRARY OR FANCIFUL MARKS
- Trademarks and tradenames, protectability, **3:7**

AUDIENCE
- Trademarks, likelihood of confusion, **3:22**

BACKGROUND AND HISTORY OF SECTION 43(a)
- Generally, **1:1 to 1:7**
- Amendments and additions to Section 43(a), **1:4**
- Commerce, **1:5**
- Copyright, limitations, **1:6**
- Current version, **1:2**
- Early versions, **1:3**
- First Amendment, **1:7**
- Limitations, **1:5, 1:6**
- Patent, limitations, **1:6**

BOXES
- Color, **3:9**
- Trade dress, **3:9**

CELEBRITIES AND THE MEDIA
- False endorsement, **7:6**
- Limitations, **7:2**
- Merchandising, **7:4**
- Overview of available claims, **7:1**
- Performing groups and entertainment services, **7:5**
- Specific celebrities, **7:7**
- Trademarks and service marks, **7:3**

CHANNELS OF TRADE
- Trademarks and tradenames, protectability, **3:21**

CIRCUITS
- First Circuit, leading cases from, **2:13**
- Second Circuit, leading cases from, **2:14**
- Third Circuit, leading cases from, **2:15**
- Fourth Circuit, leading cases from, **2:16**
- Fifth Circuit, leading cases from, **2:17**
- Sixth Circuit, leading cases from, **2:18**
- Seventh Circuit, leading cases from, **2:19**
- Eighth Circuit, leading cases from, **2:20**
- Ninth Circuit, leading cases from, **2:21**
- Tenth Circuit, leading cases from, **2:22**
- Eleventh Circuit, leading cases from, **2:23**

CLAIM PRECLUSION
Jurisdiction and procedure, **9:20**

COMMUNICATIVE WORKS
Trademarks and tradenames, protectability and infringement, indicia of commercial origin, **3:26**

CONCEPTUAL STRENGTH
Protection of trade dress, **4:4**

CONFUSION OF TRADEMARKS
Generally, **3:14 to 3:27**
Actual confusion, **3:23**
Channels of trade, **3:21**
Intent, role of, generally, **3:24**
Post-sale confusion, **3:17**
Proof. Evidence (this index)
Proximity of products or services, **3:20**
Reverse confusion, **3:15**
Similarity of marks, **3:18**

CONTRACTS
Forum non conveniens, **9:6**
Regarding venue or arbitration, **9:6**

CONTRACTUAL DISPUTES
Nonredressable injuries, **2:5**

CONTRIBUTORY INFRINGEMENT
Trademarks and tradenames, protectability, **3:40**

COURT OF APPEALS
Leading cases in, generally, **2:12 to 2:24**

DEFAULT
Jurisdiction and procedure, **9:24**

DEFENDANTS
Jurisdiction and procedure, **9:11**
Sovereign immunity, **9:11**

DEFENSES
Statute of limitations, **9:8**

DELAY
Equitable defense, **9:15**

DISCLAIMERS
Protection of trade dress, **4:6**
Trade dress, **4:6**

DISTRICT OF COLUMBIA
Leading cases from, **2:24**

EIGHTH CIRCUIT
Leading cases from, **2:20**

ELEVENTH CIRCUIT
Leading cases from, **2:23**

EQUITABLE DEFENSES
Generally, **9:13 to 9:19**
Acquiescence, **9:19**
Delay, **9:15**
Estoppel, **9:19**
Laches, **9:14**
Progressive encroachment, **9:16**
Unclean hands, **9:13**
Waiver, **9:19**

ESTABLISHMENT CLAIMS
Advertising, **6:9**

ESTOPPEL
Equitable defense, **9:19**
Jurisdiction and procedure, **9:19**

EVIDENCE
Survey Evidence (this index)

FACTUAL STATEMENTS
False advertising, prohibiting use of, **6:4**

FAIR USE
Trademarks, **3:34, 3:35**

FALSE ADVERTISING
Actionable commercial advertising or promotion, **6:3**
Cause of action, **6:1**
Comparative advertising, **6:10**
Establishment claims, **6:9**
Interpreting accused matter, **6:5**
Literally false advertising, **6:6**
Litigated claims, examples, **6:12**
Materiality, **6:11**
Misleading, **6:8**

FALSE ENDORSEMENT
Celebrities and media, **7:6**

FANCIFUL MARKS
Trademarks and tradenames, protectability, **3:7**

FEDERAL AND STATE LAW
Legislative History (this index)
Nonredressable injuries and complaints under Section 43(a), other federal laws, **2:7**

FIFTH CIRCUIT
Leading cases from, **2:17**

FIRST AMENDMENT
Background and history of section 43(a), **1:7**

FIRST CIRCUIT
Leading cases from, **2:13**

FOURTH CIRCUIT
Leading cases from, **2:16**

FUNCTIONALITY
Product configurations, protection as trade dress
Generally, **5:7 to 5:15**
aesthetic functionality, **5:13 to 5:15**
definition, **5:8**
evidence, **5:9**
relationship, types of matter, **5:10**
specific matter, utilitarian functionality, **5:11, 5:12**

GENERIC
Surveys regarding genericism, **8:3**

GENERIC TERMS
Trademarks and tradenames, protectability, **3:3**

GEOGRAPHIC DESIGNATIONS
Trademarks and tradenames, protectability, **3:8**

GRAY MARKET GOODS
Trademarks and tradenames, protectability, **3:32**

INFRINGEMENT
Trade Dress (this index)
Trademarks and tradenames, protectability, **3:40**

INITIAL INTEREST CONFUSION
Trademarks, **3:16**

INTENT
Trademarks and tradenames, protectability, **3:24**

INTERNET
Trademark use, **3:36**

ISSUE PRECLUSION
Preclusion
jurisdiction and procedure, **9:20 to 9:22**

JURISDICTION AND PROCEDURE
Generally, **9:1 to 9:26**
Acquiescence, equitable defense, **9:19**
Appeal, **9:26**
Claim preclusion, **9:20**
Contracts regarding venue or arbitration, **9:6**
Declaratory judgment act, **9:2 to 9:5**
Default, **9:24**
Defendants
sovereign immunity, **9:11**
Defendants; sovereign immunity, **9:11**
Defenses
statute of limitations, **9:8**
Delay, equitable defense, **9:15**
Effect, **9:18**
Equitable defenses
generally, **9:13 to 9:19**
acquiescence, **9:19**
delay, **9:15**
estoppel, **9:19**
laches, **9:14**
progressive encroachment, **9:16**
unclean hands, **9:13**
Estoppel, equitable defense, **9:19**
Forum non conveniens, **9:6**
Laches, equitable defense, **9:14**
Motions, **9:23**
pretrial motions, **9:23**
pretrial motions, generally, **9:23 to 9:26**
Personal jurisdiction, **9:3**
Plaintiffs, **9:10**
Pleading, **9:9**
Preclusion, **9:20**
Prejudice, **9:17**
Pretrial motions, **9:23 to 9:26**
Progressive encroachment, **9:16**
Removal and remand, **9:7**
Statute of limitations, defense, **9:8**
Transfer, among federal district courts, **9:5**
Trial, **9:25**
Unclean hands, equitable defense, **9:13**

JURISDICTION AND PROCEDURE —Cont'd
Use in commerce
extraterritorial use, **9:12**
Use in commerce; extraterritorial use, **9:12**
Venue, **9:4**
Waiver, **9:19**

LACHES
Equitable defense, **9:14**

LEADING CASES
Generally, **2:12 to 2:24**

LEGISLATIVE HISTORY
Generally, **1:2**
Trademark Law Revision Act of 1988, **App B**
Trademark Remedy Clarification Act, **App D**
Trademark Revision Act of 1987, **App E**
Trademark Revision Act of 1988, generally, **App F**

LIBEL
Nonredressable injuries, **2:8**

LITERALLY FALSE ADVERTISING
Generally, **6:6**
Necessary implication, **6:7**

LOGOS AND DESIGNS
Trademarks and tradenames, protectability, **3:9**

MARKETING SCHEMES AND IDEAS
Nonredressable injuries, **2:6**

MATERIALITY
False advertising, **6:11**

MERCHANDISING
Celebrities and media, **7:4**

MOTIONS
Pretrial motions, **9:23**
Pretrial motions, generally, **9:23 to 9:26**

MOVIES
Nonredressable injuries and complaints under Section 43(a), **2:9**

NINTH CIRCUIT
Leading cases from, **2:21**

NONREDRESSABLE INJURIES AND COMPLAINTS UNDER SECTION 43(a)
Generally, **2:4 to 2:11**
Contractual disputes, **2:5**
Libel, **2:8**
Marketing schemes and ideas, **2:6**
Miscellaneous, **2:11**
Movie rating, **2:9**
Other federal laws, **2:7**
Trade disparagement, **2:8**
Trademark exclusivity, efforts to gain, **2:10**
Video rating, **2:9**

NON-WORD MARKS, LOGOS AND DESIGNS
Trademarks and tradenames, protectability, **3:9**

NUMBER DESIGNATORS
Trademarks and tradenames, protectability, **3:10**

OVERVIEW OF SECTION 43(a)
First Circuit, leading cases from, **2:13**
Second Circuit, leading cases from, **2:14**
Third Circuit, leading cases from, **2:15**
Fourth Circuit, leading cases from, **2:16**
Fifth Circuit, leading cases from, **2:17**
Sixth Circuit, leading cases from, **2:18**
Seventh Circuit, leading cases from, **2:19**
Eighth Circuit, leading cases from, **2:20**
Ninth Circuit, leading cases from, **2:21**
Tenth Circuit, leading cases from, **2:22**
Eleventh Circuit, leading cases from, **2:23**
Generally, **2:1 to 2:24**
Contractual disputes, nonredressable injuries, **2:5**
Court of Appeals cases, generally, **2:12 to 2:24**
District of Columbia, leading cases from, **2:24**
Leading cases, generally, **2:12 to 2:24**
Libel, nonredressable injuries, **2:8**
Marketing schemes and ideas, nonredressable injuries, **2:6**
Misappropriation, **2:3**

OVERVIEW OF SECTION 43(a) —Cont'd
Movie rating, nonredressable injuries and complaints under Section 43(a), **2:9**
Nonredressable injuries and complaints under Section 43(a)
contractual disputes, **2:5**
libel, **2:8**
marketing schemes and ideas, **2:6**
miscellaneous, **2:11**
movie rating, **2:9**
other federal laws, **2:7**
trade disparagement, **2:8**
trademark exclusivity, efforts to gain, **2:10**
video rating, **2:9**
Other federal laws, nonredressable injuries and complaints under, **2:7**
Prongs, **2:2**
Supreme Court cases, generally, **2:12**
Trade disparagement, nonredressable injuries and complaints under Section 43(a), **2:8**
Trademark exclusivity, efforts to gain, **2:10**
Video rating, nonredressable injuries and complaints under Section 43(a), **2:9**

PACKAGING
Product configurations, **5:2**

PALMING OFF
Trademarks, **3:28**

PARALLEL IMPORTS
Trademarks and tradenames, protectability, **3:32**

PARODY
Trademarks, **3:27**

PASSING OFF
Trademarks, **3:28**

PERMANENT INJUNCTION
Generally, **10:5**
advertising, **10:7**
destruction of infringing material, **10:6**

PERSONAL JURISDICTION
Jurisdiction and procedure, **9:3**

PLAINTIFFS
False advertising, **6:2**
Jurisdiction and procedure, **9:10**

PLEADING
Jurisdiction and procedure, **9:9**

POST JUDGMENT INTEREST
Generally, **10:14**

POST-SALE CONFUSION
Trademarks and tradenames, protectability, **3:17**

PRECLUSION
Issue preclusion, **9:21**
Jurisdiction and procedure, **9:20 to 9:22**
Related doctrines, **9:22**

PREJUDGMENT INTEREST
Generally, **10:13**

PRETRIAL MOTIONS
Jurisdiction and procedure, **9:23 to 9:26**

PRODUCT CONFIGURATIONS
Protection as trade dress
Generally, **5:1 to 5:16**
functionality
Generally, **5:7 to 5:15**
aesthetic functionality, **5:13 to 5:15**
definition, **5:8**
evidence, **5:9**
relationship, types of matter, **5:10**
specific matter, utilitarian functionality, **5:11, 5:12**
motion, protection on, **5:3**
packaging, **5:2**
post trial, **5:5**
specific cases
Generally, **5:3 to 5:6**
post trial, **5:5, 5:6**

PROOF
Evidence (this index)

PROTECTION OF TRADE DRESS
Generally, **4:1 et seq.**
Acquired distinctiveness, **4:4**
Boxes
color, **3:9**
Conceptual strength, **4:4**
Confusion, dispelling, **4:6**
Definition, **4:1**

PROTECTION OF TRADE DRESS —Cont'd
Disclaimers, **4:6**
Infringement, **4:3**
Specificity, **4:5**

PROXIMITY OF PRODUCTS OR SERVICES
Trademarks and tradenames, protectability, **3:20**

REGIONAL AND GEOGRAPHIC DESIGNATIONS
Trademarks and tradenames, protectability, **3:8**

RELIABLE SURVEYS
Survey evidence, requirements for reliable surveys, **8:2**

RELIEF
Generally, **10:1 to 10:16**
Attorney's fees, **10:12**
Contempt, **10:8**
Costs, **10:11**
Damages, **10:9**
Innocent infringers, **10:4**
Introduction, **10:1**
Permanent injunction, **10:5**
advertising, **10:7**
destruction of infringing material, **10:6**
Post judgment interest, **10:14**
Prejudgment interest, **10:13**
Preliminary relief, **10:3**
Profits, **10:10**
Statutory language, **10:2**

REMOVAL AND REMAND
Jurisdiction and procedure, **9:7**

REPACKAGING OR RELABELING OF GOODS
Trademarks and tradenames, protectability, **3:30**

RETRANSMISSION OF TELEVISION PROGRAM
Trademarks and tradenames, protectability, **3:33**

REVERSE CONFUSION
Trademarks and tradenames, protectability, **3:15**

SECONDARY MARKS AND NUMBER DESIGNATORS
Trademarks and tradenames, protectability, **3:10**

SECONDARY MEANING
Trademarks and tradenames, protectability, **3:5**

SECOND CIRCUIT
Leading cases from, **2:14**

SEVENTH CIRCUIT
Leading cases from, **2:19**

SIMILARITY OF MARKS
Trademarks and tradenames, protectability, **3:18**

SIXTH CIRCUIT
Leading cases from, **2:18**

STATUTE OF LIMITATIONS
Defense, **9:8**

STATUTORY LANGUAGE, 10:2

SUGGESTIVE MARKS
Trademarks and tradenames, protectability, **3:6**

SUPREME COURT
Leading cases, generally, **2:12**

SURVEY EVIDENCE
Generally, **8:1 to 8:6**
Overview of survey use, **8:1**
Requirements for reliable surveys, **8:2**
Surveys regarding genericism, **8:3**
Surveys regarding likelihood-of-confusion, **8:5**
Surveys regarding public awareness of matter, **8:4**
Surveys regarding the meaning of an advertisement, **8:6**

TELEVISION PROGRAMS
Trademarks and tradenames, protectability, **3:33**

TENTH CIRCUIT
Leading cases from, **2:22**

THIRD CIRCUIT
Leading cases from, **2:15**

TRADE DISPARAGEMENT
Nonredressable injuries and complaints under Section 43(a), **2:8**

TRADE DRESS
Definition of trade dress, **4:1**
Disclaimers, **4:6**
Functionality, tests of. Functionality (this index)
Infringement of trade dress, **4:3**
Product configurations, protection as trade dress
Generally, **5:1 to 5:16**
functionality
Generally, **5:7 to 5:15**
aesthetic functionality, **5:13 to 5:15**
definition, **5:8**
evidence, **5:9**
relationship, types of matter, **5:10**
specific matter, utilitarian functionality, **5:11, 5:12**
motion, protection on, **5:3**
packaging, **5:2**
post trial, **5:5**
specific cases
Generally, **5:3 to 5:6**
post trial, **5:5, 5:6**
Protection
Generally, **4:1 et seq.**
acquired distinctiveness, **4:4**
boxes
color, **3:9**
conceptual strength, **4:4**
confusion, dispelling, **4:6**
definition, **4:1**
disclaimers, **4:6**
infringement, **4:3**
specificity, **4:5**
Protection of Trade Dress (this index)
Trial (this index)

TRADEMARKS AND SERVICE MARKS
Celebrities and media, **7:3**

TRADEMARKS AND TRADENAMES, PROTECTABILITY AND INFRINGEMENT, INDICIA OF COMMERCIAL ORIGIN
Generally, **3:1 to 3:41**
Arbitrary or fanciful marks, **3:7**
Audience, confusion, likelihood of, **3:22**

TRADEMARKS AND TRADENAMES, PROTECTABILITY AND INFRINGEMENT, INDICIA OF COMMERCIAL ORIGIN—Cont'd
Channels of trade, **3:21**
Communicative works, **3:26**
Confusion, likelihood of
generally, **3:14 to 3:27**
audience, **3:22**
channels of trade, **3:21**
communicative works, **3:26**
implied equivalence, additions to avoid likelihood of confusion, **3:25**
initial interest confusion, **3:16**
intent, role of, generally, **3:24**
parody, **3:27**
post-sale confusion, **3:17**
proximity of products or services, **3:20**
reverse confusion, **3:15**
similarity of marks, **3:18**
strength of marks, **3:19**
Contributory infringement, **3:40**
Descriptive terms, **3:4**
Direct infringement, **3:38**
Exclusivity, efforts to gain, **2:10**
Fair use, **3:34, 3:35**
Fanciful marks, **3:7**
Generic terms, **3:3**
Geographic designations, **3:8**
Geographic scope, mark rights, **3:12**
Gray market goods, **3:32**
Implied equivalence, additions to avoid likelihood of confusion, **3:25**
Infringement, **3:40**
Infringing and non-infringing actions
generally, **3:28 to 3:37**
fair use, **3:34, 3:35**
internet use, **3:36**
mark used in distribution chain, **3:29 to 3:33**
generally, **3:29 to 3:33**
altered goods, **3:31**
genuine goods and related services, **3:29**
gray market goods, **3:32**
parallel imports, **3:32**
refurbished goods, **3:31**
relabeling goods, **3:30**

TRADEMARKS AND TRADENAMES, PROTECTABILITY AND INFRINGEMENT, INDICIA OF COMMERCIAL ORIGIN—Cont'd
Infringing and non-infringing actions —Cont'd
mark used in distribution chain, **3:29 to 3:33**—Cont'd
repackaging goods, **3:30**
television program, retransmission, **3:33**
used goods, **3:31**
non-infringing use, **3:37**
palming off, **3:28**
passing off, **3:28**
Initial interest confusion, **3:16**
Intent, role of, generally, **3:24**
Internet use, **3:36**
Legislative history
Trademark Law Revision Act of 1988, **App B**
Trademark Remedy Clarification Act, **App D**
Trademark Revision Act of 1987, **App E**
Trademark Revision Act of 1988, generally, **App F**
Logos and designs, **3:9**
Loss of trademark rights, **3:13**
Non-word marks, logos and designs, **3:9**
Number designators, **3:10**
Palming off, **3:28**
Parallel imports, **3:32**
Parody, **3:27**
Passing off, **3:28**
Persons liable
generally, **3:38 to 3:41**
contributory infringement, **3:40**
direct infringement, **3:38**
employees, **3:41**
officers, **3:41**
vicarious infringement, **3:39**
Post-sale confusion, **3:17**
Proximity of products or services, **3:20**
Regional and geographic designations, **3:8**
Repackaging or relabeling of goods, **3:30**
Retransmission of television program, **3:33**
Reverse confusion, **3:15**

TRADEMARKS AND TRADENAMES, PROTECTABILITY AND INFRINGEMENT, INDICIA OF COMMERCIAL ORIGIN—Cont'd
Secondary marks, **3:11**
Secondary marks and number designators, **3:10**
Secondary meaning, **3:5**
Section 43(a), generally, **3:1**
Similarity of marks, **3:18**
Strength of marks, **3:19**
Suggestive marks, **3:6**
Television program, retransmission, **3:33**
Trade indicia
generally, **3:1 to 3:13**
generic terms, **3:3**
Trademark Law Revision Act of 1988, generally, **App A, App B**
Trademark Remedy Clarification Act, **App C, App D**
Trademark Revision Act of 1987, **App E**
Trademark Revision Act of 1988, generally, **App F**
Used, refurbished, and altered goods, generally, **3:31**
Vicarious infringement, **3:39**

TRANSFER
Jurisdiction and procedure, **9:5**

TRIAL
Jurisdiction and procedure, **9:25**

UNCLEAN HANDS
Equitable defense, **9:13**

USED, REFURBISHED, AND ALTERED GOODS
Trademarks and tradenames, protectability, **3:31**

USE IN COMMERCE
Extraterritorial use, **9:12**
Jurisdiction and procedure, **9:12**

VENUE
Jurisdiction and procedure, **9:4**

VIDEOS
Nonredressable injuries and complaints under Section 43(a), **2:9**

WAIVER
Equitable defense, **9:19**

WAIVER—Cont'd
Jurisdiction and procedure, **9:19**