

# Michigan Law Review

---

Volume 29 | Issue 4

---

1931

## THE LAW OF UNFAIR COMPETITION AND TRADEMARKS

Milton Handler  
*Columbia Law School*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Antitrust and Trade Regulation Commons](#), and the [Intellectual Property Law Commons](#)

---

### Recommended Citation

Milton Handler, *THE LAW OF UNFAIR COMPETITION AND TRADEMARKS*, 29 MICH. L. REV. 533 (1931).  
Available at: <https://repository.law.umich.edu/mlr/vol29/iss4/42>

This Recent Important Decisions is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

## BOOK REVIEWS

THE LAW OF UNFAIR COMPETITION AND TRADEMARKS. By Harry D. Nims.  
New York: Baker, Voorhis & Co. 1929. Pp. cliv, 1293.

It is rather significant that Mr. Nims should call his book *Unfair Competition and Trademarks* rather than *Trademarks and Unfair Competition* as is customary. While it has not been unusual for courts to say that the law of trademarks is but a part of the law of unfair competition, they have nevertheless treated unfair competition as a mere appendage to the more important tort of trademark infringement, supplementing and filling the gaps in that branch of the law. The essential similarity of the two actions has rarely been perceived. Mr. Nims's precedence to unfair competition is thus a step in the right direction, since it enables the reader to take up the subject unencumbered by the preconceptions of trademark law which have proved in the past to be such an obstacle to clear thought and true analysis in this field. The full significance of this arrangement, however, is lost, chiefly because of Mr. Nims's reticence in stating his own views. Scattered throughout the book are his reflections upon the cases and the subject as a whole, thrown out at random, but never fully developed. There is enough to indicate that he appreciates the limitations of the doctrines laid down by the courts, their fundamental inconsistencies, and their unfortunate implications. But these ideas are held in leash; they are not given free play; they are not allowed to roam about, to interact with the cases. Only by piecing together these passing remarks can the reader ascertain the author's views; there is no searching criticism, very little commentary and practically no synthesis.

It may perhaps be unfair to criticize a book for what it might have been rather than for what it is; but Mr. Nims's preeminence in this field and the high accomplishments of his previous editions had led us to expect a better book than he has given us. Twenty years have passed since the first edition appeared. What sufficed in the pioneering days of the first edition when the law was still quite amorphous and in a formative stage is no longer adequate today. It is no longer sufficient to lay out broad divisions of the field for treatment, to collect cases and assort and file them into the proper pigeon holes. The materials must be integrated and correlated, their basic identity perceived, their interrelations worked out, their implications carefully noted and checked in the light of what the courts are doing as contrasted with what they are saying. In a third edition one may well expect a treatise rather than a lawyer's manual, a critical commentary rather than a collection of digests, a serious attempt at analysis and synthesis rather than a corpus juris statement of the law.

I do not mean to imply that the third edition is entirely deficient in these respects. It undoubtedly marks a tremendous advance over the previous editions. Nor do I mean to suggest that the materials collected in this work "have not passed through" Mr. Nims's very critical and scholarly mind. Students of this subject will generally agree that there are not many new ideas that have been advanced in the last twenty years that are not in some way derived from his pioneering work. More's the pity then that he did not give

more of himself to his readers, that his excessive modesty did not permit him to develop his views at length. Wherever he has done so, he has made a signal contribution to the thought in this field.

The stuff out of which a great treatise could be written is thus within the covers of this book. There are no serious omissions. All the important topics in the law of unfair competition and trademarks are discussed. All the important cases are collected and digested. The treatment of unfair competition is not confined to the passing-off cases. Such unfair competitive practices as disparagement, appropriation of trade secrets, interference with a competitor's business or contracts, commercial bribery, unfair price practices, etc., are included. The chief defect of the present work, accepting its basic assumptions of scope and approach, is that of arrangement. The chapter divisions are traditional, but the internal order is illogical and chaotic and difficult to follow and to understand. The index is singularly unhelpful. It consequently is rather difficult to locate the place in the book where the particular topics are treated.

It is to be hoped that in a subsequent edition these defects in arrangement will be remedied and that Mr. Nims will put out the treatise which he is so preeminently equipped to write and which can so easily be written by him now that his preliminary and routine labors have been completed. Such a book, it seems to me, should be broader in scope and approach than his previous editions; it should not stop with the mere statement of what courts have said and done; it should be more critical in tone, be more concise and contain fewer quotations and digests of cases; it should consider the law of trademarks and unfair competition as a part of the broader field of regulation of the marketing and the distribution of goods; the economic as well as the logical implications of legal doctrine should be treated and the economic functions of trademarks and trade names should be constantly kept in mind; and finally, the other social sciences should be drawn upon for assistance in the evaluation and criticism of the rules laid down by the courts. There can be little dispute as to the need of such a work.

MILTON HANDLER  
*Columbia Law School*

---