Index

900 numbers, 283

A
Abandonment, 206
Abuse of product, 374–375
Acceptance, 317, 327
Access plus similarity test, 44
Accounting of profits, 212
Actual breach, 331
Actual damages, 206, 211, 214
Adhesion, contracts of, 324
Administrative agency rules and regulations, 6
Adversary system, 7
Advertisements, as offers, 320, 337–341
Advertising
agreements to restrict, 119, 123
bait-and-switch, 247
correlative, 249
corrective, 243
of credit, 293
deceptive, 264–271
electronic retailing, 278–280
false, 237–241, 259–264
international issues, 252
Internet and, 250–251
online banner, 214–215
regulation of, 231–274
substantiation of, 246
Advertising and Marketing on the Internet: Rules of the Road (FTC), 251
Affirm the decision, 8
Agent, 163, 165

Agriculture, Department of (USDA), 288
Alcohol, Tobacco, Firearms and Explosives (ATF), 288
Amended Sentencing Guidelines, 118
American Inventors Protection Act of 1999, 27, 31, 35
American Law Institute (ALI), 6, 316
American legal system, 7–10
court structure, 8–10
equity, 7–8
jurisdiction. See Jurisdiction
Anglo-American law, 7
Anticipatory breach, 331
Anticipatory repudiation, 331
Anticybersquatting Consumer Protection Act (ACPA), 213
Antitrust Guidelines for Collaborations Among Competitors (FTC), 124
Antitrust Guidelines for International Operations (FTC), 136
Antitrust law, 109–154
cases, 137–150
Clayton Act, 112–113, 116, 124, 127, 132
common law contracts in restraint of trade, 110–111
concerted refusals to deal, 122–123
federal statutes, 111–118
franchising and, 165–168, 182–184
group boycotts, 119, 122–123
horizontal market allocations, 119, 123, 137–138
horizontal restraints among competitors, 118–124
Antitrust law (continued)
  international issues, 136–137
  Internet and, 135
  monetary damages, 111
  monopolization, 128–131
  overview of, 109–110
  price-fixing, 119, 121–122
  remedies for violations, 116–118
  Robinson-Patman Act, 114, 131–132, 133
  rule of reason vs. *per se* violations, 115–116, 118
  Sherman Act, 111–112, 120, 122, 124,
    127–128, 133
  state enforcement, 135–136
  statistics, 117
  vertical restraints against competition, 124–128
See also Federal Trade Commission Act
Apparent agent theory, 165
Appeal of right, 9
Appellant, 8
Appellate court of last resort, 9
Appellate jurisdiction, 8
Arbitrary marks, 193
Attempted monopolization, 131, 145–147,
  148–150
Attorney fees, 35, 49, 78, 206, 212, 237
Attribution, right of, 40
Automobile Dealers’ Franchise Act, 160

B
Bait-and-switch advertising, 247
Banner advertising, 214–215
Bargained-for exchange, 322
Battle of the Forms, and counteroffers, 320–322,
  341–344
BBBOnLine, 252
Berne Convention, 37, 40, 41–42, 50
Beyond a reasonable doubt, 8
Bidding, predatory, 130
Bid-rigging, 119, 122
Bilateral contracts, 319–320
Blocking patent, 32
Blurring, 211
Bond, 243
Boycotts, 119, 122–123
Breach, absence of, 330
Breach, actual, 331
Breach, anticipatory, 331
Breach of contract, 234, 330
Broker’s discount, 114
Business format franchise, 156
Business methods, 27
Business opportunity statutes, 162
Business strategies
  contractual agreements, 82–86
  intellectual property audits, 86–88
  Internet and, 215–216
Buyer, performance by, 327–328
Buyer’s obligations, 363

C
Capacity, and contracts, 324
*Caveat emptor*, 355
*Caveat venditor*, 356
Cease-and-desist order, 243
Centers for Disease Control and Prevention
  (CDC), 288
Certification mark, 193
Children’s Advertising Unit (CARU), 246
Children’s Online Privacy Protection Act
  (COPPA), 251
Circumstantial evidence, 119
Civil law, 4, 7
Civil penalties, 243
Claim, implied, 246
Claims, 30
Clayton Act, 112–113, 116, 124, 127, 132
Co-branding, 168
Cofranchise, 168
Collective mark, 193
Collective membership mark, 193
Collective service mark, 193
Collective trademark, 193
Commerce, Department of, 288
“Commercial” damages, 364
Commercial disparagement, 241
Commercial free speech. See Commercial speech
Commercial speech, 231–274
  cases, 253–271
  commercial disparagement, 241
  common law causes of action, 234–236
  false advertising, 237–241, 259–264
  Federal Trade Commission Act, 241–243
  FTC regulation, general principles of, 243–247
  overview of, 231–234
  right of publicity, 234–236
  statutory causes of action, 236–250
Common law, 6–8, 316
Common law causes of action, and
  commercial speech, 234–236
Company’s perspective, unsolicited ideas, 81–82
Comparative advertising, 249
Comparative negligence, 374
Compensatory damages, 332
Competition, meeting, 133
Competition, meeting in good faith defense, 135
Competitive intelligence activities, 77
Complying with the Environmental Marketing Guide (FTC), 285
Concerted refusals to deal, 119, 122–123
Concurrent jurisdiction, 11
Confidentiality, duty of, 75–76
Conflict of laws rules, 12
Confusion, likelihood, 203–204
Conscious parallelism, 120
Consent order, 242
Consequential damages, 332, 333, 363
Consideration, 322–323
Constitution, state, 6
Constitution, U.S., 5
Consumer credit protection, 293–296
Consumer expectations test, 369, 386–389
Consumer Leasing Act, 294
Consumer Product Safety Act (CPSA), 287, 292
Consumer Product Safety Commission (CPSC), 287, 291–293
Consumer Product Safety Improvement Act of 2008, 292
Consumer protection law, 275–312
cases, 296–309
consumer credit protection, 293–296
direct marketing activities, 275–283
health and safety regulation, 287–293
labeling and packaging regulation, 283–287
overview of, 275
Consumer redress, 243
Contests, 249–250
Contracts and sales of goods law, 315–353
bilateral contracts, 319–320
breach of contract, 234, 330–332
capacity and, 324
cases, 337–349
common law, 316
death and, 318
definiteness, 326
destination contracts, 328, 330
e-commerce and, 335
elements of a contract, 317–324
incapacity, 318
international issues, 336–337
interpretation of, 326
legality of, 323–324
overview of, 315
parol evidence rule, 325–326
performance of, 326–328
privity of, 359–360
promissory estoppel, 324, 345–347
public policy and, 323–324
remedies for breach, 331–335, 345–347
in restraint of trade, 110–111
sources of contract law, 315–317
special UCC rules, 326
statute of frauds, 325, 337–341
unconscionable contracts, 324
unenforceability, 323–324
unilateral contracts, 319–320
unreasonable contracts, 110
Contracts of adhesion, 324
Contractual agreements, 82–86
Contributory infringement, 33, 44, 204
Contributory negligence, 374
Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM), 280, 300–303
Convention filing, 36
Convention for the Protection of Industrial Property, 36
Cooling-off Rule (FTC), 280–281
Copying, 43
Copyright Act of 1976, 38, 88
Copyright law, 37–51
cases, 55–65
creation of copyright, 41
defenses to infringement, 45–47
deposit and registration, 42–43
duration of copyright, 43
infringement, 43–45, 58–61
international issues, 50–51
on the Internet, 49–50
overview of, 88
ownership of, 41
procedures, 41–43
remedies for infringement, 47–49
rights provided by, 40–41
sources of, 37–38
subject matter of, 38–40, 58–61
Copyright notice, 41–42
Corrective advertising, 243
Cosmetics, 291
Cosmetics laws, 287–291
Cost justification, 133
Council of Better Business Bureaus (CBBB), 246
Counterfeiting, 209
Counteroffer, 318, 320–322, 341–344
Course of dealing, 326
Course of performance, 326
Court structure, 8–10
Courts of Appeal, U.S., 10
Covenant not to compete, 75, 82–83, 96–100
Covenants, naked, 110
Credit, advertising of, 293
Credit cards, 293–294
Criminal law, 3–4
Criminal penalties, 49
Criminal prosecution, 78–79
Criminal sanctions, 117
Cure, 327
Currency of payment clause, 337
Customs Service, U.S., 202–203
Cybersquatting, 171–172, 213–214

D
Damages, 116
actual, 206, 212, 214
commercial, 364
commercial speech and, 237
compensatory, 332
consequential, 332, 333, 363
double, 78
incidental, 333–334, 363
punitive, 236, 237
statutory, 214
treble, 35, 206, 237
See also Monetary damages
Database Directive, 40
Dealing, course of, 326
Death, and contracts, 318
Deceit, 234
Deception, 245–247
Deceptive advertising, 264–271
Deceptive marks, 197
Deceptive pricing, 247–248
Deep linking, 215
Defective product recall, 377
Defendant, 8
Defenses
for copyright infringement, 45–47
fair use, 45, 61–65, 204
for patent infringement, 34
price discrimination, 133–135
for product liability, 373–378
state-of-the-art, 375–377
for trademark infringement, 204–206, 211, 221–224
warranties and product liability, 363–364
Definiteness, and contracts, 326
Deposit and registration, of copyright, 42–43
Descriptive marks, 194
Design patents, 26, 29, 88
Destination contract, 328, 330
Dietary Supplement and Nonprescription Drug Consumer Act, 290
Dietary Supplement Health and Education Act of 1994 (DSHEA), 290
Dietary supplements, 289–290
Dilution, 203, 209–212, 221–224
Direct evidence, 119
Direct franchising, 172
Direct infringement, 33, 43–44
Direct marketing activities, 275–283
900 numbers, 283
electronic retailing and advertising, 278–280
home solicitation, 280–282, 303–306
merchandise on approval, 282
negative option plans, 282
telemarketing, 276–278
unsolicited merchandise, 282
warranties and guarantees, 283
Direct Marketing Association, The, 252
Disclaimer, 246, 361–363, 382–384
Disclosure, 246, 293
Disclosure rules, for franchises, 161–162
Discriminatory pricing, 114
Disparagement, commercial, 241
Distinctiveness, 193
District Courts, U.S., 10
Diversity cases, 11
“Dolphin-safe” label, 286
Do-Not-Call registry. See National Do Not Call Registry
Dot Com Disclosures: Information about Online Advertising (FTC), 251
Double damages, 78
Drug laws, 287–291

E
Eco-labeling, 286–287
E-commerce, 335
Economic Espionage Act, 77, 78–79, 88
Economic rights, 40
Electronic retailing and advertising, 278–280
Electronic Signatures in Global and National Commerce Act (E-SIGN Act), 335
Employees, trade secrets and, 74–75
En banc, 10
Encroachment, 168–170
Endorsements, 248
Environmental Protection Agency (EPA), 285
Equal Credit Opportunity Act (ECOA), 294
Equitable relief, 116
Equitable remedies, 331
Equity, 7–8
Espionage, industrial, 76
Essential facilities doctrine, 131, 148–150
European Commission’s Consumer Affairs website, 252
European Patent Convention, 36
European Union, 40
European Union Persona Data Directive, 252
Exclusive dealing agreements, 127
Exculpatory clauses, 323, 332
Experimental use defense, 34
Express claim, 246
Express warranties, 357–359, 361

F
Fair and Accurate Credit Transaction Act, 296
Fair Credit Reporting Act (FRCA), 252, 294–295
Fair Debt Collections Practices Act (FDCPA), 294, 306–309
Fair Packaging and Labeling Act, 283
Fair use defense, 45, 61–65, 204
False advertising, 237–241, 259–264
Fanciful marks, 193
Federal Cigarette Labeling and Advertising Act, 283
Federal Communications Commission (FCC), 277
Federal court structure, 9–10
Federal disclosure rules, 161–162
Federal government, 4–5
Federal Hazardous Substances Act, 292
Federal law, primary sources of, 5–6
Federal question, 8, 11
Federal Reserve Board, 293
Federal Trade Commission Act antitrust law, 113–114
cases, 264–271
commercial speech, 241–243
false advertising, 237
overview of, 249
regulation, general principles of, 243–247
Federal Trade Commission (FTC), 364–365
Federal Trademark Dilution Act of 1995, 210
Financial Privacy Rules (FTC), 252
Firm offers, 320
First Amendment, 221–224, 231, 296–300
First to invent, 29
Fixation, 40
Flammable Fabrics Act, 283, 292
Food, Drug and Cosmetic Act (FDCA), 287
Food, drug, and cosmetic laws, 287–291
Food and Drug Administration (FDA), 287, 291
Food and Drug Administration Modernization Act of 1997 (FDAMA), 290–291
Force majeure clause, 337
Foreign patents, 35–37
Foreseeable risks, 366
Forms, and counteroffers, 320–322
Forum clause, 337
Framing, 215
Franchise, 155
business format, 156
cofranchise, 168
creation of, 159–160
definition of, 156–158
direct, 172
international issues, 172–173
Internet and, 170–172
location restrictions, 173–175
offering on the Internet, 171
types of, 156
See also Franchisor-Franchisee relationship
Franchise Disclosure Document (FDD), 161
Franchise Disclosure Rule, 157, 161–162, 170
Franchisor-Franchisee relationship, 155–188
antitrust issues, 165–168, 182–184
cases, 173–184
co-branding, 168
control of Internet activities, 171–172
disclosure, 161–162
encroachment, 168–170
existence of, 163, 175–179
legal issues arising from, 162–170
multi-level marketing, 170
overview of, 155–156
regulation of, 160–162
termination issues, 170
vicarious liability of franchisor, 163–165, 179–182
See also Franchise
Fraud, 234
Fraudulent misrepresentation, 234
Full warranty, 364
Fundamental term, 321

G
Gap-filler rules, 326
General Agreement on Tariffs and Trade (GATT), 286
Generic terms, and marks, 194
Geographic markets, 118, 129
Geographic terms, and marks, 194
Goodwill, 192
Governing law clause, 337
Government standards, compliance with, 377–378
Gray markets, 207–209
“Green” marketing, 285–286
Group boycotts, 119, 122–123
Guides Against Bait Advertising (FTC), 247
Guides Against Deceptive Pricing (FTC), 247
Guides concerning use of Endorsements and Testimonials in Advertising (FTC), 248
Guides for the Use of Environmental Marketing Claims (FTC), 285

H
Health and safety regulation, 287–293
Home solicitation, 280–282, 303–306
Horizontal market allocations, 119, 123, 137–138
Horizontal price-fixing, 121, 137–138
Horizontal restraints among competitors, 118–124
Hybrid contracts, 317
Hyperlinking, 215

I
Identification, 329
Illegal conduct, 76
Illinois Franchise Disclosure Act, 156
Immoral marks, 197
Implied claim, 246
Implied covenant of good faith, 169
Implied warranty of fitness for particular purpose, 359, 361–362
Implied warranty of merchantability, 358–359, 361
Importation, parallel, 207–209
Impoundment, 47
In rem jurisdiction, 12, 214
Incacity, and contracts, 318
Incidental damages, 333–334, 363
Indemnification clauses, 165
Inducement to infringement, 33
Industrial espionage, 76
Inequitable conduct, 34
Inevitable disclosure rule, 75
Infringement
  contributory, 33, 44, 204
  on copyright, 43–45, 58–61
  direct, 33, 43–44
  on patent, 32–35
  on trademark, 203–209, 221–227
Inherently distinctive marks, 193
Injunctions
  antitrust law, 111
  breach of contract, 331
  commercial speech and, 237
  copyright infringement and, 47
  covenants not to compete and, 83
  definition of, 7
  false advertising, 239
  under Lanham Act, 214
  patent infringement and, 34
  preliminary, 34, 116, 206, 236, 237
  trade secret misappropriation and, 77–78
Inquisitorial system, 7
Inspection, 327
Insurable interest, 331
Integrity, right of, 40
Intellectual property assets, protection of. See Business strategies; Contractual agreements; Copyright law; Patent law; Trade secret law
Intellectual property audits, 86–88
Intellectual property law, categories of, 23–25
Intent to use application, 201
Interbrand competition, 127
Intermediate appellate courts, 9
International issues
  antitrust law, 136–137
  contracts and, 336–337
  copyright law and, 50–51
  franchising and, 172–173
  labeling and packaging regulation, 286–287
  trade secret law, 80
International products liability laws, 379
International Trade Commission (ITC), 51
Internet
  advertising and, 250–251
  antitrust law, 135
  copyright law and, 49–50
  covenants not to compete and, 83
encroachment issues, 172
franchising and, 170–172
junk e-mail, 278
offers on, 171
strategies for business, 215–216
trademarks on, 213–216
Internet, jurisdiction on, 12–13
Internet Corporation for Assigned Names and
Numbers (ICANN), 213
Interpretation, of contracts, 326
Intrabrand competition, 127
Invention, ownership of, 29
Invention assignment agreement, 75, 86, 87
Inventor, 29
Inventor’s perspective, unsolicited ideas, 80–81

J
Joint ventures, 119, 123–124, 172
Judicial review, 6
Junior user, 200
Junk e-mail, 278
Jurisdiction, 11–13
appeal, 8
cases, 13–20
concurrent, 11
on the Internet, 12–13
original, 8
over the parties, 12
permanent, 34, 206, 212, 236, 237
personal, 12
personam, 12
in rem, 12, 214
subject matter, 11–12

L
Labeling and packaging regulation, 283–287
“Green” marketing, 285–286
international issues, 286–287
“Made in USA” labeling, 284–285
Language clause, 337
Lanham Act
cases, 259–264
commercial speech and, 237–241
Internet and, 214
overview of, 249
trademark law and, 88, 192, 200, 202, 203, 206
Lapse of time, 318
Latent defects, 371–372

Law
classifications of, 3–5
primary sources of, 5–6
secondary sources of, 6–7
sources of, 5–7
Learned intermediaries rule, 378
Legal environment of marketing activities, 3–20
American legal system, 7–10
classifications of the law, 3–5
introduction to, 3
jurisdiction. See Jurisdiction
sources of the law, 5–7
Legal system, American, 7–10
common law, 6–8
court structure, 8–10
equity, 7–8
jurisdiction. See Jurisdiction
Legality, of contracts, 323–324
Lever Rule, 208
Liability, strict, 367–379, 384–389
Likelihood of confusion, 203–204
Limited warranty, 364
Linking issues, 215
Liquidated damages clause, 332
Local governments, 5
Location restrictions, and franchises, 173–175
Long-arm statutes, 12
Loss, risk of, 329–330
Lost profits, 35, 78
Lost sales, 49

M
“Made in USA” labeling, 284–285
Madrid Protocol, 212
Magnuson-Moss Federal Warranty Act, 364–365, 382–384
Mail or Telephone Order Merchandise Rule (FTC), 278
Mailbox rule, 318
Market conditions defense, 135
Market conditions, response to, 133
Market power, 128
Market share liability, 372–373
Marketing
green marketing, 285–286
See also Legal environment of marketing activities
Marks. See Trademark law
Master franchise agreement, 172
Matrix marketing, 170
Maximum price, 125
Network marketing, 170
Noncompete agreement, 75, 82–83, 92–96
Nondisclosure agreement (NDA), 75, 83–85
Nonobviousness standard, 28
Nonprice agreements between manufacturer and dealer, 125, 127
Notice clause, 337
Notice to the public, 35
Novelty, 28, 53–55

**O**

Offer, 317
Offeree, 318
Offeror, 317

Offers
- acceptance of, 317, 327
- advertisements as, 320, 337–341
- consideration and, 322–323
- counteroffer, 318, 320–322, 341–344
- firm, 320
- forms, 320–322
- rejection of, 320–321
- revocation of, 318
- revocation of acceptance, 327–328

Office of Harmonization of the Internal Market, 212
*Official Gazette*, 31, 200–201

Off-label use of drugs or devices, 291
On-line advertising, 250–251
Online Privacy Alliance, The, 252
On-sale bar, 53–55
Option contracts, 320
Organization for Economic Co-operation and Development (OECD), 209

Original jurisdiction, 8
Originality, 38–40
Ornamental features, 29
Output contracts, 326

**N**

Naked covenants, 110
National Advertising Division (NAD), 250
National Conference of Commissioners on Uniform State Laws (NCCUSL), 6, 316
National Cooperative Research Act, 123
National Do Not Call Registry, 278, 296–300
Negative option plans, 282
Negligence, 163–164, 364–367, 384–386
- comparative, 374
- contributory, 374

Monopoly power, 128, 131
Monopsony power, 128, 131
Moral rights, 40
Mortgage Disclosure Improvement Act, 293
Multi-level marketing, 170
Multiple brand product market, 129–130
Mutual assent, 317–322

Package design, 197
Packaging regulation. See Labeling and packaging regulation
Palming off, 237
Parallel importation, 207–209
Parallelism, conscious, 120
Paris Convention, 36
Parodies, 45, 47
Parol evidence rule, 325–326
Passing off, 237
Patent, definition of, 25
Patent Act, 25, 33, 88
Patent and Trademark Office (PTO), 25
Patent Cooperation Treaty, 36–37
Patent invalidity, 34
Patent law, 25–37
application procedures, 30–31
blocking patents, 32
cases, 51–55
foreign patents, 35–37
infringement, 32–34
overview of, 88
ownership, 29–30
prosecution procedure, 32
rights granted by, 31–32
standards for issuance, 26–29
statistics, 26
v. trade secret law, 73–74
Patent misuse, 34
Patents, types of, 26–29, 88
Per se rule, 128
Per se violations, 115–116, 118
Perfect tender rule, 327
Performance
by buyer, 327–328
of contracts, 326–328
course of, 326
Permanent injunction, 34, 206, 212, 236, 237
Personal jurisdiction, 12
Personal names, and marks, 194
Personam jurisdiction, 12
Petitioner, 8
Petroleum Marketing Practices Act, 160
Plaintiff, 8
Plant patents, 26
Plus factors, 120
Poison Prevention Packaging Act, 292
Policy Statement on Deception (FTC), 245
Policy Statement on Unfairness (FTC), 244, 275
Policy Statement Regarding Advertising Substantiation (FTC), 247
Ponzi schemes, 170
Portals, 214–215
Postal Lottery Statute, 170
Post-sale duties to warn, 375–377
Precedent, doctrine of, 7
Predatory bidding, 130
Predatory pricing, 130
Preliminary injunction, 34, 116, 206, 236, 237
Prenotification Negative Option Rule (FTC), 282
Preponderance of evidence, 8
Presumption of validity, 31
Price, maximum, 125
Price, minimum, 124
Price discrimination, 114, 131–135
defenses to, 133–135
elements of, 132–133
Price-fixing, 119, 121–122, 137–138, 167
Pricing
deceptive, 247–248
discriminatory, 114
predatory, 130
Primary-line price discrimination, 132
Principal Register, 192
Prior art search, 30
Prioritizing Resources and Organization for Intellectual Property Act of 2008 (PRO-IP), 49, 209
Privacy issues, 251–252
Private law, 4
Privity of contract, 359–360
Procedural law, 4
Process, in infringement, 33
Product, abuse of, 374–375
Product, appearance of, 197
Product, misuse of, 374–375
Product and trade name franchise, 156
Product demonstrations, 248–249
Product design, 197
Product disparagement, 241
Product liability law. See Warranties and product liability
Product liability reform, 378–379
Product markets, 118, 129
Products, in infringement, 33
Profits, 206, 212
PRO-IP Act of 2008, 49, 209
Promissory estoppel, 324, 345–347
Proprietary information agreement, 83
Prosecution, 30, 78–79
Prosecutor, 8
Protocol Relating to the Madrid Agreement Concerning the International Registration of Trademarks, 212
Public law, 4
Public policy, and contracts, 323–324
Publicity, right of, 234–236
Puffing, 241
Punitive damages, 236, 237
Pure comparative fault system, 374
Pyramid schemes, 170

R
Reason, rule of, 115–116, 138–144
Reasonable alternative design (RAD), 371
Reasonable royalty, 35, 49, 78
Recall of defective products, 377
Record, 8
Refrigerator Safety Act, 292
Refuse to deal, 131
Rejection, 328
Rejection of offer, 320–321
Remand cases, 8
Remedies
  for antitrust law violations, 116–118
  attorney fees, 35, 49, 78, 206, 212, 237
  for breach of contract, 331–335,
    345–347
  for copyright infringement, 47–49
  for misappropriation, 77–79
  for patent infringement, 34–35
  sales contracts, 332–335
  for trademark dilution, 211–212
  for trademark infringement, 206,
    224–227
  warranties and product liability, 363–364, 373
Reply doctrine, 325
Reporting requirements, 292
Requirements contracts, 326
Resale price maintenance agreements, 124–126
Rescission, 332
Respondent, 8
Restatement (Second) of Contracts, 37, 110, 169,
  316, 324
Restatement (Second) of Torts, 367–369
Restatement (Third) of Torts, 367,
  369–371
Restatements of the Law, 6
Restitution, 332
Restraint of trade, 110–111
Reverse passing off, 237
Reverse the decision, 8
Reverse-engineering, 72
Revocation, of offer, 318
Revocation of acceptance, 327–328
Rio Earth Summit, 286
Risks, foreseeable, 366
Risk-utility test, 369, 386–389
Robinson-Patman Act, 114, 131–132, 133
Rockefeller, John D., 111
Rule of reason, 115–116, 138–144
Rule on Pre-Sale Availability of Written Warranty
  Terms (FTC), 283

S
Sales contracts, remedies in, 332–335
Scandalous marks, 197
Scientific evidence, 247
Secondary liability, 44
Secondary meaning, 194
Secondary-line price discrimination, 133
Seller, performance by, 327
Senior user, 200
Service mark, 192
Sherman Act, 111–112, 120, 122, 124, 127,
  128, 133
Shipment contract, 328, 330
Shop rights, 75
Signaling behavior, 119
Small claims court, 9
Smokeless Tobacco Health Education
  Act, 284
Sonny Bono Copyright Term Extension
  Act, 43
Sophisticated purchaser rule, 378
Sorting Out “Green” Advertising Claims (FTC), 285
Sovereign immunity doctrine, 136
Spam e-mail, 278
Specialty tribunals, 10
Specific performance, 7, 331
Standard Oil Trust, 111
Stare decisis, 7
State court structure, 8–9
State disclosure rules, 162
State governments, 5
State law, primary sources of, 6
Statement of Policy Regarding Comparative Advertising
  (FTC), 249
State-of-the-art defense, 375–377
Statute of frauds, 325, 337–341
Statutes, 6
Statutes of limitation, 378
Statutes of repose, 378
Statutory causes of action, commercial speech and,
  236–250
Statutory damages, 214
<table>
<thead>
<tr>
<th>Term</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Strict liability</td>
<td>367–379, 384–389</td>
</tr>
<tr>
<td>Strict products liability</td>
<td>367–379</td>
</tr>
<tr>
<td>Subfranchise</td>
<td>168</td>
</tr>
<tr>
<td>Subject matter jurisdiction</td>
<td>11–12</td>
</tr>
<tr>
<td>Subsequent remedial design</td>
<td>371</td>
</tr>
<tr>
<td>Substantial injury</td>
<td>244</td>
</tr>
<tr>
<td>Substantiation of advertising</td>
<td>246</td>
</tr>
<tr>
<td>Substantive law</td>
<td>4</td>
</tr>
<tr>
<td>Successor liability</td>
<td>373</td>
</tr>
<tr>
<td>Suggested retail prices</td>
<td>125</td>
</tr>
<tr>
<td>Suggestive marks</td>
<td>193–194</td>
</tr>
<tr>
<td>Supplemental Register</td>
<td>202</td>
</tr>
<tr>
<td>Supreme Court, U.S.</td>
<td>10</td>
</tr>
<tr>
<td>Sweepstakes</td>
<td>249–250</td>
</tr>
<tr>
<td>Tarnishment</td>
<td>211</td>
</tr>
<tr>
<td>Telemarketing</td>
<td>276–278</td>
</tr>
<tr>
<td>Telemarketing and Consumer Fraud and Abuse Prevention Act</td>
<td>277</td>
</tr>
<tr>
<td>Telemarketing Sales Rule (FTC)</td>
<td>277</td>
</tr>
<tr>
<td>Telephone Consumer Protection Act (TCPA)</td>
<td>277</td>
</tr>
<tr>
<td>Tender of delivery</td>
<td>327</td>
</tr>
<tr>
<td>Termination issues, franchise</td>
<td>170</td>
</tr>
<tr>
<td>Tertiary-line price discrimination</td>
<td>133</td>
</tr>
<tr>
<td>Testimonials</td>
<td>248</td>
</tr>
<tr>
<td>Ticketmaster</td>
<td>215</td>
</tr>
<tr>
<td>Tie-in sales</td>
<td>127</td>
</tr>
<tr>
<td>Time, lapse of</td>
<td>318</td>
</tr>
<tr>
<td>Title, document of</td>
<td>329</td>
</tr>
<tr>
<td>Title, transfer of</td>
<td>328–329</td>
</tr>
<tr>
<td>Title passage clause</td>
<td>337</td>
</tr>
<tr>
<td>Trade dress</td>
<td>194–195</td>
</tr>
<tr>
<td>Trade secret law</td>
<td>71–80</td>
</tr>
<tr>
<td>acquisition of competitor’s cases, 76</td>
<td>89–96</td>
</tr>
<tr>
<td>definition of, 71–73</td>
<td>80</td>
</tr>
<tr>
<td>international issues, 80</td>
<td>75–77</td>
</tr>
<tr>
<td>misappropriation of, 75–77</td>
<td>88</td>
</tr>
<tr>
<td>ownership of, 74–75</td>
<td>73–74</td>
</tr>
<tr>
<td>patent protection vs., 73–74</td>
<td>79–80</td>
</tr>
<tr>
<td>protection of, 79–80</td>
<td>77–79</td>
</tr>
<tr>
<td>remedies for misappropriation, 77–79</td>
<td></td>
</tr>
<tr>
<td>Trademark</td>
<td>191</td>
</tr>
<tr>
<td>arbitrary marks</td>
<td>193</td>
</tr>
<tr>
<td>cancellation of, 201–202</td>
<td>201–202</td>
</tr>
<tr>
<td>color as, 216–217</td>
<td>216–217</td>
</tr>
<tr>
<td>creation and ownership of, 199–202</td>
<td>199–202</td>
</tr>
<tr>
<td>distinctiveness of, 193–194</td>
<td></td>
</tr>
<tr>
<td>overview of, 88</td>
<td></td>
</tr>
<tr>
<td>protection of, 218–220</td>
<td></td>
</tr>
<tr>
<td>registration of, 200–201</td>
<td></td>
</tr>
<tr>
<td>searches, 197–199</td>
<td></td>
</tr>
<tr>
<td>U.S. Customs Service assistance, 202–203</td>
<td></td>
</tr>
<tr>
<td>what may constitute, 194–197</td>
<td></td>
</tr>
<tr>
<td>See also Trademark law</td>
<td></td>
</tr>
<tr>
<td>Trademark Dilution Revision Act (TDRA)</td>
<td>210</td>
</tr>
<tr>
<td>Trademark law</td>
<td>191–229</td>
</tr>
<tr>
<td>blurring, 211</td>
<td></td>
</tr>
<tr>
<td>cases, 216–227</td>
<td></td>
</tr>
<tr>
<td>counterfeiting, 209</td>
<td></td>
</tr>
<tr>
<td>creating and protecting a mark, 193–203</td>
<td></td>
</tr>
<tr>
<td>deceptive trademarks, 197</td>
<td></td>
</tr>
<tr>
<td>defenses to infringement, 204–206, 221–224</td>
<td></td>
</tr>
<tr>
<td>dilution, 203, 209–212, 221–224</td>
<td></td>
</tr>
<tr>
<td>gray markets, 207–209</td>
<td></td>
</tr>
<tr>
<td>infringement, 203–209, 221–227</td>
<td></td>
</tr>
<tr>
<td>international issues, 212</td>
<td></td>
</tr>
<tr>
<td>Internet, 213–216</td>
<td></td>
</tr>
<tr>
<td>origins of, 192</td>
<td></td>
</tr>
<tr>
<td>overview of, 191–192</td>
<td></td>
</tr>
<tr>
<td>parallel importation, 207–209</td>
<td></td>
</tr>
<tr>
<td>remedies for infringement, 206, 224–227</td>
<td></td>
</tr>
<tr>
<td>remedies under Dilution Act, 211–212</td>
<td></td>
</tr>
<tr>
<td>tarnishment, 211</td>
<td></td>
</tr>
<tr>
<td>types of, 192–193</td>
<td></td>
</tr>
<tr>
<td>Trade-Related Aspects of Intellectual Property Rights (TRIPS), 37, 80</td>
<td></td>
</tr>
<tr>
<td>Treaty, 5–6</td>
<td></td>
</tr>
<tr>
<td>Treble damages</td>
<td>35, 206, 237</td>
</tr>
<tr>
<td>Trials courts</td>
<td>9–10</td>
</tr>
<tr>
<td>TRUSTe, 252</td>
<td></td>
</tr>
<tr>
<td>Truth-in-Lending Act (TILA), 293–296</td>
<td></td>
</tr>
<tr>
<td>Tying arrangements, 125, 127–128, 165–167</td>
<td></td>
</tr>
<tr>
<td>Typopiracy</td>
<td>214</td>
</tr>
<tr>
<td>Typosquatting</td>
<td>214</td>
</tr>
<tr>
<td>Unavoidably unsafe</td>
<td>369</td>
</tr>
<tr>
<td>Unconscionable contracts</td>
<td>324</td>
</tr>
<tr>
<td>Unenforceability, of contracts, 323–324</td>
<td></td>
</tr>
<tr>
<td>Unfair competition</td>
<td>234</td>
</tr>
<tr>
<td>Unfairness</td>
<td>244–245</td>
</tr>
<tr>
<td>Uniform Commercial Code (UCC), 7, 236, 316–317, 326, 356</td>
<td></td>
</tr>
<tr>
<td>Uniform Deceptive Trade Practices Act (UDTPA), 238, 241</td>
<td></td>
</tr>
</tbody>
</table>
Uniform Domain Name Dispute Resolution Policy (UDRP), 214
Unilateral contracts, 319–320
United States Trade Representative (USTR), 51
Universal Copyright Convention of 1952 (UCC), 50
Unjust enrichment damages, 78
Unreasonable contracts, 110
Unsolicited ideas, law of, 80–82, 100–103
Unsolicited merchandise, 282
Usage of trade, 326
Usefulness standard, 29
Utility patents, 26–29, 88

V
Valid cost justification, 133, 135
Vertical minimum price restraints, 168
Vertical restraints, 118
Vertical restraints against competition, 124–128
Vicarious liability, 44
Voluntary assumption of risk, 374

W
Warranties and product liability, 355–392
“as is,” 362–363
breach of warranty, 335
buyer’s obligations, 363
cases, 379–389
defenses to product liability, 373–378
direct marketing and, 283
disclaimers, 246, 361–363, 382–384
express warranties, 357–359, 361
full warranty, 364
implied warranty of fitness for particular purpose, 359, 361–362
implied warranty of merchantability, 358–359, 361
limited warranty, 364
Magnuson-Moss Federal Warranty Act, 364–365, 382–384
negligence, 364–367, 384–386
overview of, 355–356
privity of contract, 359–360
products liability law, 365–379
remedies and defenses, 363–364
remedies for product liability, 373
strict product liability, 367–379
warranty of title, 356–357, 361
Wholesaler’s discount, 114
Wool Products Labeling Act, 284
Works for hire, 41, 55–58
World Intellectual Property Organization (WIPO), 50
World Trade Organization (WTO), 51
Writ of certiorari, 10

X
Xerox Corporation, 196