Preface to the 2013 Supplement

The Second Edition of this treatise chronicled the many changes that trademark dilution has undergone over the years, especially since the passage of the first trademark dilution statute in 1995. If the Federal Trademark Dilution Act of 1995 produced a revolution in federal trademark practice, the Trademark Dilution Revision Act of 2006 is producing a more evolutionary practice. This first Supplement to the Second Edition reflects that evolution. Perhaps the most significant event in dilution this past year was the litigation between Apple, Inc. and Samsung Electronics. Although the lawsuit was primarily about patents, there was also a significant trade dress dilution claim, resulting in a jury verdict for Apple worth a considerable sum of money. Chapter 9 in particular contains discussions of this litigation, but there are aspects of the litigation that are relevant to other issues as well, particularly remedies (see Chapter 11). Because trade dress dilution claims are relatively unusual, this case represents an important development, one worth watching as it proceeds to the appellate level. There are also relatively few jury trials of dilution cases. Therefore, I have reproduced the dilution-specific portions of the jury instructions in the Apple v. Samsung litigation as Appendix I to this Supplement. (Perhaps the most instructive aspect is how little they depart from the text of the statute.)

The other interesting development is the continuing effect of the Supreme Court’s opinion in eBay v. MercExchange on the availability of injunctive relief. As indicated in Chapter 11, courts have not yet settled on a uniform interpretation of this case in the dilution context.

But there are updates in every chapter. The many state dilution laws are beginning to receive additional attention. (See Chapters 2–5.) In the international chapter (Chapter 15) you will find updates and citations to dilution statutes around the world and some new case law in Europe and Canada. The Trademark Trial and Appeal Board continues to issue interesting opinions in the area, although most are non-precedential (see especially Chapter 13). I have also added material in Chapters 1 and 13 highlighting pre-FTDA dilution arguments in the TTAB. As chronicled in the Second Edition main volume the TDRA was amended in October 2012 to correct a drafting error that resulted in an interesting change in the statute. In Appendix H to this Supplement, I have reproduced the amendment.
As always, my editors at BNA Bloomberg, Jim Fattibene and Wendy Leibowitz, have been very supportive and helpful. I invite readers to email me with suggestions and comments so that I can improve the content and make the treatise a more useful resource. In this Supplement, every effort has been made to include major developments that occurred before June 1, 2013.

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