

PUBLICATION UPDATE

Route to: _____ _____ _____ _____
 _____ _____ _____ _____

Dorsaneo, Texas Litigation Guide

Publication 719 Release 106 August 2012

HIGHLIGHTS

- **NEW Chapter on Trade Secrets Added.** New Ch. 200B discusses liability for misappropriation of trade secrets under Texas law.
- **Trademarks Chapter Completely Revised.** Ch. 200 has been completely revised to reflect the newly overhauled Texas Trademark Act and other recent developments.
- **Divorce Chapter Completely Revised.** Ch. 362 has been thoroughly revised, updated and reorganized to provide updated and expanded coverage of several topics including agreements incident to divorce and alternative dispute resolution in family law.

GUIDE, 136 Carlin Rd., Conklin, N.Y. 13748-1531.

Trademarks Chapter Completely Revised to Reflect Major Amendments to Texas Trademark Act. Ch. 200, *Trademarks*, has been completely revised to reflect the major changes to Texas trademark law made by Acts 2011, 82nd Leg., ch. 563 (HB 3141), which amends the Texas Trademark Act, as set forth in Chapter 16 of the Texas Business and Commerce Code. (Coverage of trade secrets has been moved to the new Ch. 200B, *Trade Secrets*, as described below.)

The changes to the Texas Trademark Act are effective September 1, 2012, and are intended conform Texas trademark law to the most recent version of the model state trademark legislation. The revised Texas Trademark Act also brings Texas trademark law into alignment with federal trademark infringement and dilution laws. Significant provisions of the newly revised Act include:

- An expanded definition of “service mark” [Tex. Bus. & Com.

DORSANEO, TEXAS LITIGATION GUIDE (USPS 018-383) is published quarterly for \$3,256 by Matthew Bender & Co., Inc. 1275 Broadway, Albany, N.Y. 12204-2694. Periodical postage is paid at Albany, N.Y. and at additional mailing offices. POSTMASTER: Send address changes to DORSANEO, TEXAS LITIGATION

Code § 16.001(8); *see* § 200.01[3]].

- A provision specifying that registration under the Texas Trademark Act does not adversely affect common law rights acquired before registration [Tex. Bus. & Com. Code § 16.108; *see* § 200.04[4]].
- Procedures for recording the assignment of a registered trademark [Tex. Bus. & Com. Code § 16.061; *see* § 200.12[2]].
- Procedures for registration of trademarks and service marks [Tex. Bus. & Com. Code §§ 16.051–16.059; *see* § 200.21[2]].
- Provisions regarding dilution by blurring or tarnishment [Tex. Bus. & Com. Code § 16.001(2)–(4)] and dilution of a famous mark [Tex. Bus. & Com. Code § 16.103; *see* § 200.51].
- Expanded remedies provisions [Tex. Bus. & Com. Code §§ 16.101–16.104; *see* §§ 200.60[3], 200.61[1], 200.64[2], 200.76].

The chapter also incorporates recent case law concerning federal and state trademark law, including:

- **When Designation Is Trade Name.** A designation is not a trade name until it has in fact become in the market the name for a particular business [Funes v. Villatoro, 352 S.W.3d 200 (Tex. App.—Houston [14th Dist.] 2011, no pet. h.); *see* § 200.01[4]].
- **Distinctiveness of Trade Dress.** In determining whether a trade dress is inherently distinctive, courts may consider whether it is a common basic shape or design,

whether it is unique or unusual in its particular field, and whether it is capable of creating a commercial impression distinct from any accompanying words [Shell Trademark Mgmt. B.V. v. Warren Unilube, Inc., 765 F. Supp. 2d 884 (S.D. Tex. 2011); *see* § 200.03[1]].

- **Attorney’s Fees in Infringement Action.** In Lanham Act cases, courts may award attorney’s fees to the prevailing party if the case is “exceptional,” irrespective of whether the plaintiff or the defendant is the prevailing party [Poly-America, L.P. v. Stego Industries, L.L.C., 790 F. Supp. 2d 546 (N.D. Tex. 2011); *see* § 200.64[1]].

New Chapter on Trade Secrets Added.

This release includes a new Ch. 200B, *Trade Secrets*, which replaces the coverage of this topic formerly included in Ch. 200. The new chapter contains reorganized and expanded coverage and is updated to include recent case law on topics including the following:

- **Effect of Patent Law on Trade Secrets.** A published patent application destroys the secrecy of its contents for trade secret purposes, because a published application, like a patent, is readily available; however, the applicant may have a protectable interest in unique combinations of technologies or processes disclosed in the application [Tewari De-Ox Systems v. Mountain States/Rosen, 637 F.3d 604 (5th Cir. [Tex.] 2011); *see* § 200B.02[2][b][ii]].
- **Scope of Texas Theft Liability Act.** The information, design, process, formula, or improvement that is the subject of a claim for

theft of trade secrets under the Act must not only be a secret, but must be generally unavailable to the public, and must give the person who uses it an advantage over competitors that do not know of or use the trade secret [Downing v. Burns, 348 S.W.3d 415 (Tex. App.—Houston [14th Dist.] 2011, no pet. h.); see § 200B.21[8]].

Divorce Chapter Completely Revised. Ch. 362, *Divorce*, has been revised in its entirety to reflect the increasingly important role of agreements incident to divorce and alternative dispute resolution in family law. The chapter now includes a discussion of divorce based on an informal or common-law marriage. The coverage of spousal support has been expanded to include both spousal maintenance and contractual alimony. The general principles applicable to all agreements incident to divorce are discussed. The expanded coverage of alternative dispute resolution now includes more in-depth discussion of mediated settlement agreements and the collab-

orative family law process. (This release also contains conforming revisions to Ch. 360A, *Temporary Orders*, Ch. 361, *Annulment and Suit to Declare Marriage Void*, and Ch. 363, *Division of Property*).

Maritime Injuries Chapter Revised to Reflect Recent Case Law. Ch. 351, *Injuries to Seamen* has been updated to reflect recent federal case law, including *Pac. Operators Offshore, LLP v. Valladolid*, ___ U.S. ___, 132 S. Ct. 680, 181 L. Ed. 2d 675 (2012), clarifying the causation standard for establishing liability for injuries to employees under the Outer Continental Shelf Lands Act (OCSLA), and *Manderson v. Chet Morrison Contractors, Inc.*, 666 F.3d 373 (5th Cir. [La.] 2012) discussing the scope of a ship owner’s liability to maritime employees for “maintenance and cure” under federal maritime law.

Completely Revised Index. This release also contains a complete revision of the subject matter index to reflect the revisions to *Texas Litigation Guide* made in this release and in Releases 103 to 105.

Matthew Bender provides continuing customer support for all its products:

- Editorial assistance—please consult the “Questions About This Publication” directory printed on the copyright page;

- Customer Service—missing pages, shipments, billing or other customer service matters (1-800-833-9844).
- Outside the United States and Canada, (518) 487-3000, or fax (518) 487-3584;
- Toll-free ordering (1-800-223-1940).



www.lexis.com

Copyright © 2012 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
Publication 719, Release 106, August 2012

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.

FILING INSTRUCTIONS

DORSANEO, TEXAS LITIGATION GUIDE

Publication 719 Release 106

August 2012

Check As Done

- 1. Check the Title page in the front of your present Volume 1. It should indicate that your set is filed through Release Number 105. If the set is current, proceed with the filing of this release. If your set is not filed through Release Number 105, DO NOT file this release. Please call Customer Services at 1-800-833-9844 for assistance in bringing your set up to date.
- 2. Separate this Release Number 106 package into the following groups of material:
 - White Tab Cards
 - White Publication Table of Contents
 - White Revision pages
- Arrange these groups of material next to each other so that you can take material from each group as required and proceed with the filing of this release.
- 3. Circulate the "Publication Update" among those individuals interested in the contents of this release.

**Check
As
Done** Remove Old
Pages Numbered

Insert New
Pages Numbered

For faster and easier filing, all references are to right-hand pages only.

VOLUME 1

Publication Table of Contents

- Publication Table of Contents pages 1 thru 11. Publication Table of Contents pages 1 thru 11

Revision

- Title page. Title page

VOLUME 13

Revision

- Title page thru iii Title page thru iii

Tab Card

- 200 – UNFAIR COMPETITION Tab Card . 200 – TRADEMARKS Tab Card (file preceding 200-1)

Revision

- 200-1 thru 200-197 200-1 thru 200-119

Tab Card

- No Material removed 200B-TRADE SECRETS Tab Card (file preceding 201. COVENANTS NOT TO COMPETE Tab Card)

Revision

- No Material removed 200B-1 thru 200B-79 (file preceding 201. COVENANTS NOT TO COMPETE Tab Card)

VOLUME 21

Revision

- Title page. Title page
- 350-29 thru 350-31 350-29 thru 350-31
- 350-47 350-47
- 351-9 thru 351-17 351-9 thru 351-18.1
- 351-29 thru 351-31 351-29 thru 351-31
- 351-44.1 351-44.1
- 351-58.5 thru 351-58.7 351-58.5 thru 351-58.7

Check
As
Done

*Remove Old
Pages Numbered*

*Insert New
Pages Numbered*

VOLUME 22

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	360A-1 thru 360A-5.	360A-1 thru 360A-5
<input type="checkbox"/>	360A-33 thru 360A-41	360A-33 thru 360A-42.1
<input type="checkbox"/>	361-5 thru 361-10.1	361-5 thru 361-7
<input type="checkbox"/>	362-1 thru 362-135	362-1 thru 362-155
<input type="checkbox"/>	363-3 thru 363-6.1	363-3 thru 363-6.1
<input type="checkbox"/>	363-63 thru 363-75	363-63 thru 363-65
<input type="checkbox"/>	363-127	363-127 thru 363-128.1

VOLUME 26

Revision

<input type="checkbox"/>	Title page.	Title page
<input type="checkbox"/>	I-1 thru I-1035	I-1 thru I-1043

FILE IN THE FRONT OF THE FIRST VOLUME
OF YOUR SET

To order missing pages log on to our self service center, www.lexisnexis.com/printcdsc or call Customer Services at 1 (800) 833-9844 and have the following information ready:

- (1) the publication title;
- (2) specific volume, chapter and page numbers; and
- (3) your name, phone number, and Matthew Bender account number.

Please recycle removed pages.

MISSING FILING INSTRUCTIONS?
FIND THEM AT www.lexisnexis.com/printcdsc

Use the search tool provided to find and download missing filing instructions, or sign on to the Print & CD Service Center to order missing pages or replacement materials. Visit us soon to see what else the Print & CD Service Center can do for you!



www.lexis.com

Copyright © 2012 Matthew Bender & Company, Inc., a member of the LexisNexis Group.
Publication 719, Release 106, August 2012

LexisNexis, the knowledge burst logo, and Michie are trademarks of Reed Elsevier Properties Inc., used under license. Matthew Bender is a registered trademark of Matthew Bender Properties Inc.