

The Trademark Reporter®



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Dedicated to Jerre B. Swann 1939–2025

In Memoriam: Jerre B. Swann (1939–2025)

William H. Brewster, Theodore H. Davis Jr., and R. Charles Henn

Should We Worry About Color Depletion? An Empirical Study of USPTO Single-Color Trademark Registrations

Dr. Xiaoren Wang

Multiculturalism, Minority Language Rights, and Trademark Law: Protecting the Less-than-Average Consumer

Ilanah Fhima

Keeping Promises: Enforcement Strategies for Certification Marks in the United States

B. Brett Heavner and Caroline Segers

Commentary: Oh, Snap! A Shift in Consumer Perception Surveys in Genericness Litigations After *Snap Inc. v. Vidal*

David H. Bernstein, Jared I. Kagan, and Daniel N. Cohen

Book Review: *Les grands arrêts du droit vitivinicole*. Sous la direction de Théodore Georgopoulos

Mathilde P. Florenson

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IN MEMORIAM

Jerre B. Swann

*By William H. Brewster, Theodore H. Davis Jr., and
R. Charles Henn**



The Trademark Reporter (“TMR”) dedicates this issue to our friend and colleague, Jerre B. Swann (1939–2025), who served as the TMR’s Editor-in-Chief from May 1988 through April 1990 and who remains one of the most prolific contributors to the TMR in its history.

Jerre’s accomplishments during his 58-year career at Kilpatrick Townsend & Stockton were many, but, consistent with his long-standing relationship with the TMR, perhaps the greatest was his extraordinary writing, which continues to have a substantial influence on United States trademark law and the way cases are litigated.¹ That output was not limited purely to the basics of

* The authors each practiced with Jerre Swann for multiple decades at Kilpatrick Townsend & Stockton (Member, International Trademark Association) and its predecessor firms. Mr. Brewster’s contribution to this dedication is posthumous and drawn from his comments on the occasion of Jerre’s receipt of a 2024 IP Legends Award from the Georgia Intellectual Property Alliance.

¹ For representative (and not exhaustive) examples of courts citing favorably to representative (and not exhaustive) examples of Jerre’s scholarship, see, e.g., *Elevate Fed. Credit Union v. Elevations Credit Union*, 67 F.4th 1058, 1068 (10th Cir. 2023) (citing Jerre B. Swann & R. Charles Henn Jr., *Likelihood of Confusion Surveys: The Ever-Constant Eveready Format; the Ever-Evolving Squirt Format*, 109 Trademark Rep.

trademark, copyright, and unfair competition litigation; instead, his scholarship went back and forth with judges, academics, and expert witnesses alike, and he always seemed to have the upper hand in those arguments. Indeed, Jerre's body of work on survey evidence in particular is so respected that even survey experts routinely rely on it.² It therefore was no surprise when one of his many scholarly articles in this publication received the 2000 Ladas Memorial Award.³

But the significance of Jerre's written output was not limited to its substantive quality. Anyone working with—or, better yet, *writing* with—Jerre quickly became familiar with his extreme economy of words. His breviloquence in allocating responsibility for particular portions of briefs and articles could (and often did) inadvertently result in competing versions of what otherwise was the same work product. On those occasions, comparisons of the two versions always led to the same conclusion: Jerre had accomplished far more in far fewer words than anyone else possibly could have. And that pithiness extended to his speaking style as well: Because he was not one for small talk, working on cases with Jerre meant that you got to the point, and he got to the point, whether inside or outside the courtroom.

Dr. Shari Diamond, with whom Jerre co-edited the leading treatise on trademark and false advertising surveys,⁴ recently noted that he “was always filled with curiosity, a true scholar as well as an exceptional trial attorney, with high standards and a rare combination of incisive and accessible writing ability—and he was the most generous collaborator one could imagine In the course of [our] work, I experienced one additional sterling—and rare—

671, 680–81 (2019)); *Parks LLC v. Tyson Foods, Inc.*, 863 F.3d 220, 232 (3d Cir. 2017) (citing Jerre B. Swann, *Likelihood of Confusion Studies and the Strained Scope of Squirrt*, 98 Trademark Rep. 739, 746 (2008)); *Maker's Mark Distillery, PBC v. Spalding Grp.*, No. 319CV00014GNSLLK, 2024 WL 947475, at *3 (W.D. Ky. Mar. 5, 2024) (citing Jerre B. Swann, *A “Reading” Test or A “Memory” Test: Which Survey Methodology Is Correct?*, 95 Trademark Rep. 876, 876–77, 880 (2005)); *Hypnotic Hats, Ltd. v. Wintermantel Enters.*, 335 F. Supp. 3d 566, 596 (S.D.N.Y. 2018) (citing Shari Seidman Diamond & Jerre B. Swann, *Trademark and Deceptive Advertising Surveys: Law, Science, and Design* 54, 67–68 (2012)); *Bodum USA, Inc. v. A Top New Casting, Inc.*, No. 16 C 2916, 2017 WL 6626018, at *6 (N.D. Ill. Dec. 28, 2017) (citing Jerre B. Swann, *Eveready and Squirrt-Cognitively Updated*, 106 Trademark Rep. 727, 727–28 (2016)), *aff'd*, 927 F.3d 486 (7th Cir. 2019); *Pharmacia Corp. v. Alcon Lab's*, 201 F. Supp. 2d 335, 381 (D.N.J. 2002) (citing Jerre B. Swann, *Dilution Redefined for the Year 2000*, 90 Trademark Rep. 823, 860 n.237 (2000)).

² See *In-N-Out Burgers v. Doll n' Burgers LLC*, No. 20-11911, 2022 WL 791924, at *13 (E.D. Mich. Mar. 14, 2022) (noting that “Jerre Swann [is] an expert in trademark survey design who is cited extensively in both parties' expert reports”).

³ Of almost certainly lesser significance to Jerre personally, he also served on INTA's Board of Directors (1989–1991) and received INTA's 2009 President's Award and 2002 Volunteer Service Award for the Advancement of Trademark Law.

⁴ See Shari Seidman Diamond & Jerre B. Swann, *Trademark and Deceptive Advertising Surveys: Law, Science, and Design* (2022 ed.).

quality in Jerre: he was a master at disagreeing agreeably. His charm and his intellect were ever-present in every exchange.”

As Dr. Diamond’s comments suggest, Jerre was as formidable a trial and appellate lawyer as he was a writer. Success in litigation often turns on the management of the surprises that occur in every case, and Jerre was an accomplished master of that skill. Whatever happened in adversarial disputes, Jerre simply adjusted to the new playing field and carried on. His apparent serenity in the face of evolving facts and sometimes dubious behavior by opposing counsel allowed him to filter out all distractions and therefore always to prioritize his clients’ interests. Those clients were his friends, people with whom he did things outside of work and had very close relationships. And that tenacious loyalty extended as well to his law firm, in the best interests of which he always acted, just as he did where trademark and unfair competition law were concerned. He is greatly missed by all who knew and practiced with him.
