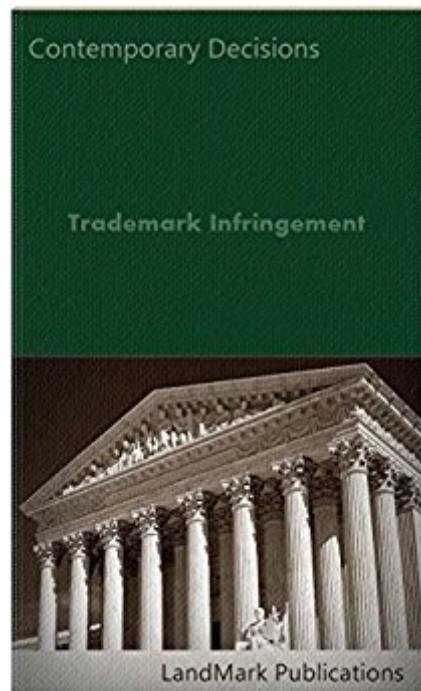


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# Trademark Infringement (Intellectual Property Law Series)



## Synopsis

THIS CASEBOOK contains a selection of 202 U. S. Court of Appeals decisions that analyze and discuss issues surrounding claims of trademark infringement. The selection of decisions spans from 2004 to the date of publication."A word or phrase functions as a trademark when it is used by a source of a product to identify itself to the public as the source of its product and to create in the public consciousness an awareness of the uniqueness of the source and of its products." *Sands, Taylor & Wood Co. v. Quaker Oats Co.*, 978 F.2d 947, 953 (7th Cir. 1992) (internal quotation marks omitted). *Sorensen v. WD-40 Company*, (7th Cir. 2015). The Lanham Act defines a trademark as "any word, name, symbol, or device, or any combination thereof" that is used or intended to be used in commerce "to identify and distinguish... goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown." 15 U.S.C. Â§ 1127. . . . *NetJETS Inc. v. IntelliJET Group, LLC*, (6th Cir. 2015). A *prima facie* trademark infringement case is made out by proof of two elements: that the plaintiff owns a legally protected mark, and there is a likelihood of confusion between her mark and the defendant's mark. Even then, the defendant may escape full liability if she can establish an equitable defense, such as laches or, [ ] acquiescence. [Footnotes omitted.] *Pennzoil-Quaker v. Miller Oil and Gas Operations*, 779 F. 3d 290 (5th Cir. 2015). . . . To prevail on a fair use defense, a defendant must show that: (1) it did not use the mark as a trademark; (2) the use is descriptive of its goods or services; and (3) it used the mark fairly and in good faith. [*Packman v. Chi. Tribune Co.*, 267 F.3d 628, 639 (7th Cir. 2001).] The fair use defense is available even against federally registered trademarks that are incontestable[.] *Sunmark, Inc. v. Ocean Spray Cranberries, Inc.*, 64 F.3d 1055, 1058 (7th Cir. 1995). *Sorensen v. WD-40 Company*, *ibid.* [I]t is important to remember that "trademark infringement protects only against mistaken purchasing decisions and not against confusion generally." *Lang v. Ret. Living Publ'g Co.*, 949 F.2d 576, 583 (2d Cir. 1991) (quotation marks omitted); see also *Bosley*, 403 F.3d at 677. That is because a trademark "only gives the right to prohibit the use of it so far as to protect the owner's good will against the sale of another's product as his." *Prestonettes, Inc. v. Coty*, 264 U.S. 359, 368 (1924) (emphasis added). *Radiance Foundation, Inc. v. NAACP*, (4th Cir. 2015). . . .

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