Likelihood of Confusion in Trademark Law

Second Edition

by Richard L. Kirkpatrick

Pillsbury Winthrop Shaw Pittman LLP
San Francisco

In this release to Likelihood of Confusion in Trademark Law, Richard Kirkpatrick updates and expands the treatise, including a new addition to the color illustrations in the appendix and new case law integrated into the text throughout. Among the topics addressed are the following:

Actionable confusion: According to the Seventh Circuit in Fortres Grand Corp. v. Warner Brothers Entertainment Inc., “general confusion ‘in the air’ is not actionable. Rather, only confusion about origin, sponsorship, or approval of . . . goods,” meaning “the tangible product sold in the marketplace,” supports a trademark claim. See § 1:4, at note 81.2.

Applying the multiple factor test: The consideration of the factors relevant to likelihood of confusion is a “holistic endeavor,” in the view of the Sixth Circuit (Innovation Ventures, LLC v. N2G Distributing, Inc.). See § 2:5, at note 88.1.

How marks sound: The Federal Circuit held that it was error to ignore “the weight of the evidence” on how “potential consumers would pronounce the mark” (StonCor Group, Inc. v. Specialty Coatings, Inc.). See § 4:3.2, at note 42.

Channels of trade: Where the products are the same, it is easy to assume the channels and purchasers are the same, as indicated in the Federal Circuit’s Stone Lion Capital Partners, L.P. v. Lion Capital LLP. See § 5:12.1, at note 157.1.

Degree of care—impulse purchases: The Sixth Circuit’s Innovation Ventures, LLC v. N2G Distributing, Inc. provides a description of impulse purchasing, relevant to the principle that in some circumstances consumers exercise less care and there is greater risk of confusion. See § 6:4, at note 45.1.
Actual confusion—quantum of evidence: According to the Sixth Circuit, “a single instance of actual confusion can, in some cases, increase the likelihood of confusion, even if stronger evidence of actual confusion can come in the form of robust consumer surveys” (Innovation Ventures, LLC v. N2G Distributing, Inc.). See § 7:3, at note 16.

Defendant’s intent: The Ninth Circuit, in La Quinta Worldwide LLC v. Q.R.T.M., S.A. de C.V., has noted that “courts presume that the defendant can accomplish his purpose: that is, that the public will be deceived.” See § 8:1, at note 8.1.

Color illustration: Added to the Color Illustrations of Trademark and Trade Dress Infringement Cases is a side-by-side comparison of two energy drink bottles, from Innovation Ventures, LLC v. N2G Distributing, Inc., where the jury’s verdict of infringement was affirmed by the Sixth Circuit. See Appendix A26.

For this release, the Table of Authorities and Index have been updated.
FILING INSTRUCTIONS

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