2. Trademarks

Key Terms

**Abandonment:** When a mark owner stops using the mark and does not intend to resume using it.

**Arbitrary:** An arbitrarymark is one used in a way that is unrelated to the product or service represented.

**Blurring:** When the defendant’s use of the mark impairs the distinctiveness of the famous mark.

**Certification marks:** Marks used to certify the quality of third-party products or services.

**Click fraud:** When competitors or others intentionally click on a link for a purpose other than an interest in viewing the result.

**Collective marks:** Marksthat areused by members of an association or organization, such as the Boy Scouts of America.

**Contributory liability:** A type of secondary liability that results when a party (1) intentionally induces the primary infringer to commit infringement or (2) continues to provide a product or service to a buyer knowing that the buyer is engaging in trademark infringement.

**Cybersquatting:** Registering domain names before others appreciate their value, in order to later sell them for a profit.

**Deep linking:** Linkingto a subsidiary page of the trademark owner’s site rather than to its homepage.

**Descriptive:** A descriptive mark describes a product or its qualities but is not the generic term for it.

**Dilution:** An extension of the ordinary trademark infringement standard to cases where there is no likelihood of confusion; includes blurring and tarnishment.

**Distinctive:** A characteristic by whichconsumers viewing (or hearing) the trademark are able to distinguish it from other trademarks.

**Enjoin:** A legal order prohibiting certain conduct.

**Fanciful mark:** A fanciful markis one that is coined or created and that at the time of creation would not be found in a dictionary.

**Federal Trademark Dilution Act of 1995 (FTDA):** A federal law that provides a right of action for trademark dilution even in the absence of confusion.

**Framing:** When one website presents the content of another website as an integrated portion of the first website.

**Generic:** A generic term is the word for a given product or service, which can never be registered as a trademark.

**Genericide:** When a mark becomes commonly used to denote a product or service rather than a particular manufacturer or provider of that product or service, and trademark rights are then lost.

**Inherently distinctive:** Suggestive, arbitrary or fanciful marks are inherently distinctive and therefore can be registered without the need to show secondary meaning.

**Initial interest confusion:**  A “bait and switch” tactic that permits a competitor to lure consumers at an early phase of the decision-making process.

**In-line linking:** Where material from one website appears within the context of another website.

**Intellectual property (IP):** A “negative right” that allows the owner to prevent others from doing something. Categories of IP include patents, copyrights, trademarks, and trade secrets.

**Keyed:** When a search engine sells a term as part of pay-per-click advertising, the advertisement is said to be “keyed” to the search term.

**Lanham Act:** The principal federal trademark law.

**Likelihood of confusion:** The touchstone of a trademark infringement action; exists when consumers are likely to be unsure of the origin, sponsorship, or approval of the defendant’s product or services.

**Linking:** Use of a hyperlink that leads to another’s content on the Internet.

**Metatags:** Invisible text embedded within websites which can be read by search engines.

**Nonrival:** A quality of the ideas underlying IPthat allows multiple individuals to use the IP at the same time without diminishing the ability of others to use those ideas.

**Organic results:** Unpaid or “natural” Internet search results.

**Pay-per-click advertising:** Where businesses pay search engines in order to achieve more prominent placement on certain sections of the search results page.

**Product design:** The design or configuration of the product itself, as distinct from its packaging.

**Product packaging:** Thecontainer or packaging within which a product is sold.

**Search engine optimization:** Techniques used by website owners to try to ensure that their website appears at the top of Internet search results.

**Secondary liability:** Liability imposed on third parties who encourage direct infringement or who have an ability to control the primary infringer’s activities.

**Service marks:** Marks that are used to distinguish services rather than products.

**Suggestive:** Asuggestive mark hints at the qualities of a product, but does not describe it directly.

**Tarnishment:** When the defendant’s use of the mark harms the reputation of a famous mark.

**Top-level domain (TLD):** The portion of the domain name furthest to the right (e.g., “.com”)

**Trade dress:** A product’s design, packaging, or overall look and feel.

**Trademarks:** Any word, name, symbol or device used to distinguish the goods or services of one company from those of another.

**Typosquatting:** The speculative purchase of an Internet domain name that incorporates an intentional misspelling (“typo”) of a trademark.

**United States Patent & Trademark Office (USPTO):** A government agency located just outside of Washington, D.C., that registers federal trademarks.

**vicarious liability:** A type of secondary liability where a defendant exercises control over the infringing product or service.

**Web 2.0:** A term used to refer to online activities involving large numbers of users that both produce and consume content.