

BBA IP Year in Review - Trademarks in 2007
Lisa M. Tittlemore, Esq., Bromberg & Sunstein LLP*

Selected Federal Court Reported Decisions
Organized by Subject Matter
(within subject, organized by Circuit then District Court Decisions)

**With special thanks to James McGrane and Marisa Kredlow of Bromberg & Sunstein for their assistance*

Abandonment

Grocery Outlet Inc. v. Albertson's Inc., 497 F.3d 949 (9th Cir., Aug. 9, 2007) (affirming district court decision granting preliminary injunction, holding that defendant offered sufficient evidence of intent to resume use during short period of alleged non-use; applies clear and convincing evidence standard because plaintiff waived issue by adopting standard in briefing before district court; concurring opinions disagree regarding whether burden of proof for abandonment is "clear and convincing" or "preponderance")

ITC Ltd. v. Punchgini, Inc., 482 F.3d 135 (2d Cir., Mar. 28, 2007) (non-use of mark for 3 years is prima facie evidence of abandonment, rebuttable presumption; need to show intent to resume use within reasonable foreseeable future; intent to resume must exist during 3 year period of non-use, not later)

Communications Decency Act Immunity

Universal Commc'n Sys., Inc. v. Lycos, Inc., 478 F.3d 413 (1st Cir., Feb. 23, 2007) (plaintiffs' claims barred by §230 immunity; defendant is provider of interactive computer services, e.g., websites, message boards; injury alleged is not trademark injury and immune from liability for allegedly false and defamatory postings by third parties; no dilution under Florida statute)

Counterfeit Goods

Lorillard Tobacco Co. v. A&E Oil, Inc., 503 F.3d 588 (5th Cir., Sept. 21, 2007) (counterfeit cigarettes; attorneys fee award upheld)

United States v. Lozano, 490 F.3d 1317 (11th Cir., July 9, 2007) (criminal sentences of 72 months were reasonable)

Dilution

General Motors Corp. v. Urban Gorilla, LLC, 500 F.3d 1222 (10th Cir., Sept. 12, 2007) (GM failed to make strong showing on preliminary injunction that likely to succeed on merits with respect to actual dilution relating to claim based on aftermarket kits alleged to infringe)

HUMMER trade dress; GM failed to address change in standard under TDRA in appeal brief so court does not address)

Horphag Research Ltd. v. Garcia, 475 F.3d 1029 (9th Cir., Jan. 9, 2007) (affirming district court summary judgment on dilution claim; sufficient circumstantial evidence of actual dilution, i.e., blurring; decided under FTDA/*Moseley*)

Jada Toys, Inc. v. Mattel, Inc., 496 F.3d 974 (9th Cir., Aug. 2, 2007) (reverses grant of summary judgment; sufficient evidence to establish actual dilution of HOT WHEELS by defendant's HOT RIGZ; plaintiff submitted two surveys showing respondents thought HOT RIGZ made by same company that made HOT WHEELS; court applies pre-2006 FTDA amendment standards, including actual dilution standard)

Louis Vuitton Malletier S. A. v. Haute Diggity Dog, LLC, 2007 WL 3348013 (4th Cir., Nov. 13, 2007) (plaintiff sued defendant based on sale of pet products alleged to infringe trademarks and trade dress for luxury products; chew toys created to appear as small imitations of hand bags were parody; no dilution by blurring or tarnishment found; "in this case, Haute Diggity Dog mimicked the famous marks; it did not come so close to them as to destroy the success of the parody and, more importantly, to diminish the LVM marks' capacity to identify a single source; applies TDRA)

Perfumebay.com Inc. v. eBay, Inc., 2007 WL 3243998 (9th Cir., Nov. 5, 2007) (affirms in part and reverses in part district court judgment in bench trial; district court erred in not fully considering strength of eBay's mark, erred in holding that Perfumebay's marks did not produce a likelihood of dilution and in finding that eBay acted with unclean hands in its advertising; California dilution statute analyzed same as under federal statute)

Starbucks Corp. v. Wolfe's Borough Coffee, Inc., 477 F.3d 765 (2d Cir., Feb. 15, 2007) (plaintiff alleges that name "Mister Charbucks" infringes and dilutes STARBUCKS mark for coffee; court vacates lower court's judgment after bench trial; court to apply "likely to cause dilution" standard rather than "actual dilution" standard on remand; amended statute applies to extent that plaintiff sought injunctive relief, namely, prospective relief, on issue of dilution)

Top Tobacco, L.P. v. North Atlantic Operating Comp., 2007 WL 4234454 (7th Cir., Dec. 4, 2007) (affirms district court grant of summary judgment for defendants; Judge Easterbook decision states "this case illustrates the power of pictures. One glance is enough to decide the appeal."; TOP mark not sufficiently distinctive; "next to impossible to believe that any consumer, however careless, would confuse these products")

Arkansas Trophy Hunters Ass'n v. Texas Trophy Hunters Ass'n, 506 F.Supp.2d 277 (W.D. Ark., Feb. 5, 2007) (marks merely descriptive without secondary meaning, not famous)

Bay State Savings Bank v. Baystate Financial Services, LLC, 484 F.Supp.2d 205 (D. Mass., Mar. 23, 2007) (plaintiff well known in banking, but no secondary meaning in connection with

insurance and investment services so no infringement; similarly not sufficiently famous in defendant's field for dilution claim to stand)

Burnett v. Twentieth Century Fox Film, 491 F.Supp.2d 962 (C.D. Cal., June 4, 2007) (dispute regarding parody of plaintiff's "charwoman" character; court holds that defendant's artistic and parodic work is non-commercial speech therefore not subject to trademark dilution claim; motion to dismiss granted without leave to amend)

Century 21 Real Estate LLC v. Century Ins. Group, 2007 WL 484555 (D. Ariz., Feb. 9, 2007) (granting defendant's motion for summary judgment; no likelihood of confusion or dilution as CENTURY 21 marks not identical or substantially similar to CENTURY marks without number; applies TDRA)

Harris Research, Inc. v. Lydon, 505 F.Supp. 2d 1161 (D. Utah, Apr. 5, 2007) (grants motion for preliminary injunction; CHEM-DRY famous for carpet cleaning; court says applying FTDA, but cites revised TDRA standard; defendant did not answer or respond to motion for preliminary injunction)

Milbank Tweed Hadley & McCloy LLP v. Milbank Holding Corp., 82 U.S.P.Q.2d 1583 (C.D. Cal., Feb. 23, 2007) (niche fame does not equal famousness required under amended statute; TDRA applies because injunctive relief sought)

PepsiCo, Inc. v. #1 Wholesale, LLC, 2007 WL 2142294 (N.D. Ga, July 20, 2007) (likelihood of confusion and dilution found where defendant sold "bottle safes" made using plaintiff's trade dress/marks)

S & L Vitamins, Inc. v. Australian Gold, Inc., 2007 WL 2932778 (E.D.N.Y., Sept. 30, 2007) (AG seeks declaratory relief; AG's claims arose prior to October 2006 and sought only monetary damages so FTDA, not TDRA applies; even under earlier standard, fame must exist in general marketplace, not limited to particular channel of trade, segment of industry or service, or geographic region; 50-60% of tanning salons in U.S. carry product but no evidence of significant expenditures on advertising, extent of advertising or annual revenues; contrast with *Savin Corp. v. Savin Group*, 391 F.3d 439 (2d Cir. 2004) (\$20 mm on ads; \$675 mm on annual revenues; print ads, tradeshow, Newsweek, Time))

Tennessee Walkinghorse Breeders' & Exhibitors' Ass'n v. National Walkinghorse Ass'n., 2007 WL 4365784 (M.D.Tenn., Dec. 12, 2007) (notes implementation of TDRA but plaintiff does not contend applies to this case; no actual dilution caused by defendant's alleged sloppy business practices or otherwise)

Vista India v. Raaga, LLC, 501 F. Supp. 2d 605 (D. N.J., Aug. 7, 2007) (RAAGA mark generic, not famous)

Fair Use

Tennessee Walkinghorse Breeders' & Exhibitors' Ass'n v. National Walkinghorse Ass'n, 2007 WL 4365784 (M.D.Tenn., Dec. 12, 2007) (no trademark infringement because careful, sophisticated consumers would not be confused about source or affiliation; fair use of trademarks)

Famous Marks Doctrine

ITC Ltd. v. Punchgini, Inc., 482 F.3d 135 (2d Cir., Mar. 28, 2007) (plaintiff claimed rights including based on continued international use of mark BUKHARA for restaurant services under famous marks doctrine; 2d Circuit notes that 9th Circuit is the only federal court of appeals to have recognized famous marks doctrine as matter of federal law, district courts in 2d Circuit have reached varying conclusions; 2d Circuit concludes that in light of comprehensive and frequently modified federal statutory scheme set out in Lanham Act, any policy arguments in favor of famous marks doctrine are for Congress to decide and absent Congressional action, 2d Circuit declines to grant judicial recognition to doctrine)

First Sale Doctrine/Quality Control Standards

Brilliance Audio, Inc. v. Hights Cross Commc'n, Inc., 474 F.3d 365 (6th Cir., Jan. 26, 2007) (exceptions to first sale doctrine adequately plead; district court erred in dismissing complaint)

Matrix Essentials v. Quality King Distributors, Inc., 2007 WL 4105397 (E.D.N.Y., Nov. 14, 2007) (1990 injunction set aside; plaintiff no longer meaningfully seeking to terminate diverted sales; diverted sales market large and defendant now has many competitors in diverted sales market; at time injunction entered, facts were different; plaintiff's conduct in attempting to involve federal law enforcement authorities was "at best, disingenuous")

S & L Vitamins, Inc. v. Australian Gold, Inc., 2007 WL 2932778 (E.D.N.Y., Sept. 30, 2007) (first sale doctrine inapplicable and quality control argument unavailing; customers who buy over internet do not expect individualized instruction; AG's argument that S & L not selling "genuine" products unavailing)

Generic Terms

Colt Defense LLC v. Bushmaster Firearms, Inc., 486 F.3d 701 (1st Cir., May 18, 2007) (affirms district court grant of summary judgment; M4 held generic for guns; registration creates rebuttable presumption of validity only, which may be overcome where alleged infringer demonstrates genericness by preponderance of evidence; plaintiff presented "no more than a scintilla of evidence to show that the relevant public has come to understand M4 as an identifier of a Colt-made product")

H-D Michigan, Inc. v. Top Quality Serv., Inc., 496 F.3d 755 (7th Cir., Aug. 2, 2007) (HOG generic for motorcycles; not motorcycle riders clubs)

Rudolph Intern, Inc. v. Realys, Inc., 482 F.3d 1195 (9th Cir., Apr. 12, 2007) (generic adjective; “disinfectable” generic for nail files)

Welding Services, Inc. v. Forman, 2007 WL 4374191 (11th Cir., Dec. 17, 2007) (WSI mark used for welding services; abbreviation of generic words may be protected as trademark if it has meaning distinct from generic words; insufficient evidence of record to show sufficiently distinctive; judgment of district court on motion for summary judgment affirmed)

Initial Interest and Post sale confusion

Abercrombie & Fitch Co. v. Moose Creek, Inc., 486 F.3d 629 (9th Cir., May 22, 2007) (district court erred by estopping arguments on post-purchase confusion (and other arguments); denial of plaintiff’s motion for preliminary injunction vacated and case remanded)

Custom Mfg. & Engineering, Inc. v. Midway Services, Inc., 2007 WL 4165634 (11th Cir., Nov. 21, 2007) (no likelihood of confusion where relevant consumers would not have seen mark on subcomponents)

General Motors Corp. v. Urban Gorilla, LLC, 500 F.3d 1222 (10th Cir., Sept. 12, 2007) (post-sale confusion by others on road seeing completed car kit relevant but not sufficient for preliminary injunction; genuine question regarding strength of HUMMER trade dress).

McNeil Nutritionals, LLC v. Heartland Sweeteners, LLC, 512 F.Supp. 2d 217 (E.D.Pa., May 21, 2007) (reaffirm holding that initial interest confusion is an independently sufficient theory that may be used to prove likelihood of confusion)

Jurisdiction

Extra Storage Space, LLC v. Maisel-Hollins Dev., Co., 2007 WL 4462601 (D. Md., Dec. 20, 2007) (defendant failed to show claims in state and federal parallel actions were sufficiently similar or that extraordinary circumstances existed such that federal court should abstain from hearing case)

Laches

Fitzpatrick v. Sony-BMG Music Entm’t, Inc., 2007 WL 4358471 (S.D.N.Y., Dec. 12, 2007) (presumption of laches applies because plaintiff failed to file suit within 6 years but rebutted; long history of dispute between parties over ARTEMIS RECORDS mark; parties were engaged in TTAB proceedings from 2004-06; filing of opposition proceeding generally constitutes sufficient reason to wait to file suit in federal court; motion to dismiss denied)

Personal Name

Lewis v. Marriott Int'l, Inc., 2007 WL 4442785 (E.D.Pa., Dec. 19, 2007) (Chef Carl Lewis; complaint sufficiently alleged secondary meaning for personal name protected as trademark to survive Rule 12(b)(6) motion to dismiss)

Punitive Damages

JCW Investments, Inc. v. Novelty, Inc., 482 F.3d 910 (7th Cir., Mar. 20, 2007) (plaintiff sued defendant claiming PULL MY FINGER line of products infringed PULL MY FINGER FRED mark; court upholds district court award of punitive damages under Illinois State unfair competition claim; state law providing for punitive damages not pre-empted by Lanham Act)

Registration/Presumption of Validity

Applied Information Sciences Corp. v. eBay, Inc., 2007 WL 4553999 (9th Cir., Dec. 28, 2007) (registration is prima facie evidence of validity with respect to goods/services claimed in registration; district court erred as scope of relief is not limited to those goods, may be broader, that is, likelihood of confusion may be found as to broader range of defendant's goods than those listed in plaintiff's registration; nevertheless, no likelihood of confusion where plaintiff registered SMARTSEARCH for computer software and eBay using as hyperlink for web-based trading service; summary judgment affirmed)

Registration/Presumption of likelihood of confusion

Community of Christ Copyright Corp. v. Miller, 2007 WL 4333192 (W.D.Mo., Dec. 7, 2007) ("Reorganized Church of Jesus Christ of Latter Day Saints" and RLDS trademarks registered and RLDS mark incontestable; marks identical used in same geographic location for identical services, plaintiffs entitled to presumption of likelihood of confusion; motion for PI granted)

Removal

In re Hot-Hed Inc., 477 F.3d 320 (5th Cir., Jan. 30, 2007) (request for attorneys fees, arguably sought under Lanham Act, not a basis for removal to federal court)

Reverse Confusion

Instant Media, Inc. v. MicroSoft Corp., 2007 WL 2318948 (N.D.Cal., Aug. 13, 2007) (preliminary injunction sought by owner of "I'M" mark against defendant's use of "i'm;" mark denied; crowded field; differences in marks and differences in goods/services make confusion unlikely)

Secondary Liability for Trademark Infringement

Optimum Tech., Inc. v. Henkel Consumer Adhesives, Inc., 496 F.3d 1231 (11th Cir., Aug. 22, 2007) (court declines to convert claim for direct infringement to one for contributory infringement; use by retailer does not equal use by distributor; affirms district court grant of summary judgment and JMOL)

Perfect 10, Inc. v. Visa Int'l Serv. Ass'n., 494 F.3d 788 (9th Cir., July 3, 2007) (“tests for secondary trademark infringement are even more difficult to satisfy than those required to find secondary copyright liability;” no allegations suggesting that third parties infringe plaintiff’s mark, much less that defendants induce them to do so; no “direct control;” affirms district court’s dismissal with prejudice for failure to state a claim; lengthy dissent by Judge Kozinski)

Secondary Meaning/Descriptive mark

Custom Vehicles, Inc. v. Forest River, Inc., 476 F.3d 481 (7th Cir., Feb. 7, 2007) (affirms district court grant of summary judgment for defendant; no likelihood of confusion; WORK-N-PLAY descriptive for dual-use van; plaintiff did not prove secondary meaning for descriptive mark; use of mark not sufficient to be considered use “in ordinary course of trade” as only limited number of sales; presumption of validity for registered mark “easily rebuttable” for descriptive mark without significant sales)

Leelanau Wine Cellars, Ltd. v. Black & Red, Inc., 502 F.3d 504 (6th Cir., Sept. 20, 2007) (presumption of validity for registered mark, but mark including geographic term was weak and no likelihood of confusion found)

Sponsored link/keyword cases

Perfumebay.com Inc. v. eBay, Inc., 2007 WL 3243998 (9th Cir., Nov. 5, 2007) (while use of third party brand names in advertisements via Google, and advertisements for Perfumebay on eBay’s site, may be “questionable” conduct, it is not clear from record whether eBay acted with requisite “bad intent” for unclean hands finding)

Boston Duck Tours, LP v. Super Duck Tours, LLC, C.A. No. 07-11222-NMG (D.Mass., Dec. 5, 2007) (unreported) (use of mark in sponsored link advertising constitutes use as required under the Lanham Act, but sponsored links at issue in motion do not violate the preliminary injunction currently in force)

J.G. Wentworth, S.S.C., Ltd. Partnership v. Settlement Funding LLC, 2007 WL 30115 (E.D.Pa., Jan. 4, 2007) (defendant’s use of plaintiff’s marks as keywords for sponsored links through Google’s AdWords program and metatags in website is not use as required under the Lanham Act; motion to dismiss granted because no likelihood of confusion, including initial interest confusion, because due to “the separate and distinct nature of the links created” on search results pages “potential consumers have no opportunity to confuse” parties’ goods/services)

S & L Vitamins, Inc. v. Australian Gold, Inc., 2007 WL 2932778 (E.D.N.Y., Sept. 30, 2007) (keywords/sponsored links and use of marks in metadata is not use as required under Lanham Act)

Standing

Phoenix of Broward, Inc. v. McDonald's Corp., 489 F.3d 1156 (11th Cir., June 22, 2007) (Lanham Act does not abrogate prudential standing doctrine; no standing for competitor suing for false advertising)

Statutory Amendment

The Last Best Beef, LLC v. Dudas, 506 F.3d 333 (4th Cir., Oct. 24, 2007) (Congress could amend Lanham Act to prevent registration of phrase “The Last Best Place” as part of appropriations bill)

Statutory Damages

K & N Engineering, Inc. v. Bulat, 2007 WL 4394416 (9th Cir., Dec. 18, 2007) (election of statutory damages under sec. 1117(c) precludes award of attorneys fees under 1117(b); reverse district court award of \$100,000 in attorneys fees; affirm summary judgment against defendants for counterfeit marks and \$20,000 statutory damages award in separate decision)

Subject Matter Jurisdiction/Declaratory Judgment

Rhoades v. Avon Products, Inc., 504 F.3d 1151 (9th Cir., Oct. 15, 2007) (reasonable apprehension of suit based on statements made during 4 years of settlement discussions supports declaratory judgment action; “primary jurisdiction” grounds do not justify deferral to TTAB; deference to TTAB not justified where issue is likelihood of confusion, rather than, *e.g.* validity mark)

Subpoena

Rosenruist-Gestao E Servicos LDA v. Virgin Enterprises Ltd., 2007 WL 4535323 (4th Cir., Dec. 27, 2007) (foreign corporation required to produce Rule 30(b)(6) designee for deposition in United States for TTAB opposition proceeding pursuant to subpoena issued by E.D.Va. under 15 U.S.C. §24; foreign corporation’s only contact with E.D.Va. was activities related to filing of federal trademark application; strong dissent by Judge Wilkinson)

Trade Dress

General Motors Corp. v. Urban Gorilla, LLC, 500 F.3d 1222 (10th Cir., Sept. 12, 2007) (GM failed to make strong showing on preliminary injunction that likely to succeed on merits; claim based on aftermarket kits alleged to infringe HUMMER trade dress; Court notes genuine question as to strength of trade dress)

Louis Vuitton Malletier S. A. v. Haute Diggity Dog, LLC, 2007 WL 3348013 (4th Cir., Nov. 13, 2007) (plaintiff sued defendant based on sale of pet products alleged to infringe trademarks and trade dress for luxury products; chew toys created to appear as small imitations of hand bags were parody)

McNeil Nutritionals, LLC v. Heartland Sweeteners, LLC, 512 F.Supp. 2d 217 (E.D.Pa., May 21, 2007), *aff'd in part, reversed in part and remanded*, 2007 WL 4478981 (3d. Cir., Dec. 24, 2007) (store brand sugar substitute products alleged to infringe Splenda trade dress; denial of preliminary injunction upheld for products where sufficient differences in trade dress and store name and/or logo prominently displayed; denial of preliminary injunction reversed for other products where store name and/or logo not prominently displayed; fact that consumers are highly aware of existence of store-brands is not enough to justify finding of no likelihood of confusion where numerous other factors, including similarity of trade dress, weigh in favor of finding likelihood of confusion)

Top Tobacco, L.P. v. North Atlantic Operating Comp., 2007 WL 4234454 (7th Cir., Dec. 4, 2007) (affirms district court grant of summary judgment for defendants; Judge Easterbook decision states “this case illustrates the power of pictures. One glance is enough to decide the appeal.”; TOP mark not sufficiently distinctive; “next to impossible to believe that any consumer, however careless, would confuse these products”)

Baden Sports, Inc. v. Molten., 2007 WL 2058673 (W.D. Wash., July 16, 2007) (interprets *Dastar* and concludes false advertising claims survive; dismisses claims related to inventorship but not as to alleged misrepresentation regarding nature and quality of goods, i.e., claim that basketball is “innovative”; claims regarding failure to label country of origin on balls sold by French distributor are out of jurisdictional reach of Lanham Act)

Blue Nile, Inc. v. Ice.com, Inc., 478 F.Supp.2d 1240 (W.D.Wash., Jan. 18, 2007) (denies defendant’s motion to dismiss with respect to Lanham Act claim for trade dress infringement; “factual development of plaintiff’s novel trade dress theory” necessary where plaintiff is seeking protection of “look and feel” of website)

California Board Sports, Inc. v. Vans, Inc., 2007 WL 3276289 (S.D.Cal., Nov. 6, 2007) (functionality; plaintiff brought action alleging checkerboard pattern on shoes generic or merely decorative and asking for declaration of non-infringement and non-dilution; court denies plaintiff’s motion for summary judgment; defendant came forward with survey in which 45% of respondents misidentified a competitor's shoe as coming from defendant; genuine issue of material fact as to whether protection of checkerboard pattern on shoes as trademark would impose significant non-reputation related competitive disadvantage; at trial plaintiff free to present evidence that consumers who buy shoes with checkerboard pattern do so for reasons unrelated to desire to own defendant's product)

Clark Tile Co. v. Red Devil, Inc., 2007 WL 4335436 (N.D.Ill., Dec. 7, 2007) (functionality; utility patent has strong evidence of functionality, but presumption overridden when language of patent states features in question as not essential; defendants' summary judgment motion denied)

Imig, Inc. v. Electrolux Home Care Products, Ltd., 2007 WL 900310 (E.D.N.Y., March 22, 2007) (disputed facts regarding distinctiveness/secondary meaning for trade dress of vacuum cleaners)

PepsiCo, Inc. v. #1 Wholesale, LLC, 2007 WL 2142294 (N.D. Ga, July 20, 2007) (likelihood of confusion and dilution found where defendant sold "bottle safes" made using plaintiff's trade dress/marks)

Utah Lighthouse Ministry, Inc. v. Discovery Computing, Inc., 506 F.Supp.2d 889 (D.Utah, March 26, 2007) (defendants' website was non-infringing parody of plaintiff's website "critically analyzing the history and doctrines associated with the Church of Jesus Christ of Latter-day Saints;" grants defendants' motions for summary judgment)

Trademark Disparagement

Freecycle Network, Inc. v. Oey, 505 F.3d 898 (9th Cir., Sept. 26, 2007) (vacating district court order enjoining defendant and remanding; defendant made statements that plaintiff's mark was generic and not valid, and plaintiff sued for "trademark disparagement"; no such claim under Lanham Act)

Use in Commerce

Central Mfg., Inc. v. Brett, 492 F.3d 876 (7th Cir., July 9, 2007) (no use in commerce of STEALTH mark; Leo Stoller company plaintiff, George Brett company defendant; fun description of "Pine Tar incident")

CreAgri, Inc. v. USANA Health Sciences, Inc., 474 F.3d 626 (9th Cir., Jan. 16, 2007) (affirming district court entry of summary judgment for defendant; no priority based on plaintiff's unlawful use; supplements mislabeled, plaintiff failed to seek proper FDA exemption)

Utah Lighthouse Ministry, Inc. v. Discovery Computing, Inc., 506 F.Supp.2d 889 (D.Utah, March 26, 2007) (use of plaintiff's mark in domain name was not "commercial use" under Lanham Act where website contained no commercial links but rather linked to a website which in turn contained advertising/had commercial purpose; grants defendants' motions for summary judgment)

Universal Tube & Rollform Equip. Corp. v. YouTube, Inc., 504 F.Supp.2d 260 (N.D. Ohio, June 4, 2007) (denying motion to dismiss unfair competition, dilution under Ohio state law, deceptive trade practices claims; granting motion as to other claims)

Willful Deception/Entitlement to Infringers Profits

Life Services Supplements, Inc. v. Natural Organics, Inc., 2007 WL 4437168 (S.D.N.Y., Dec. 17, 2007) (1999 amendments to Lanham Act do not abrogate Second Circuit's requirement of "willful deception" in false designation of origin suits before infringer's profits are recoverable; contrary to holdings of 3rd and 5th Circuits; disagreement between district courts in 2d Circuit)

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