

Trademark – Likelihood of Confusion

“(1) Any person who shall, without the consent of the registrant—

(a) use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is **likely to cause confusion**, or to cause mistake, or to deceive .

.. shall be liable in a civil action by the registrant for the remedies hereinafter provided.” Lanham Act §

Trademark – Likelihood of Confusion

“(a) Civil action (1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—
(A) **is likely to cause confusion** . . . shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.”

Lanham Act § 43

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Kellogg v. Toucan Golf



For: CEREAL BREAKFAST FOODS, in CLASS 46.
First use July 24, 1963; in commerce July 24, 1963.



Kellogg Company (Delaware corporation)
235 Porter St.
Battle Creek, Mich. 49016

For: CEREAL-DERIVED FOOD PRODUCT
TO BE USED AS A BREAKFAST FOOD,
SNACK FOOD OR INGREDIENT FOR MAK-
ING FOOD, in CLASS 30 (U.S. Cl. 46).

First use Aug. 1964; in commerce Aug. 1964.
Owner of U.S. Reg. No. 775,496.

Kellogg v. Toucan Golf

1. Strength of Mark
2. Relatedness of the Goods or Services

Kellogg v. Toucan Golf

- Relatedness of the Goods or Services
 - compare goods/services at issue
 - If compete for sales, just look at similarity
 - If related, but not competitive, look at all factors
 - If completely unrelated, no LOC
- Normally, in any case, look at all factors

Kellogg v. Toucan Golf

1. Strength of Mark
2. Relatedness of the Goods or Services
3. Similarity of Marks
 - Appearance, Sound, and Meaning
4. Evidence of Actual Confusion
5. Marketing channels used
6. Degree of Purchaser Care and Sophistication
7. Alleged Infringer's Intent
8. Likelihood of Expansion