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.” Lahnam Act § 32
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.”

Lahnam Act § 43
Trademark – Use Requirement?

- *Rescuecom v. Google*
- Mark is “Rescuecom” for on-site computer services and sales
- Search for “rescuecom” results in ads from competitors
- [How Adwords Works](#)
Trademark – Use Requirement?

Google search results for 'ipad' show:

- Apple® iPad® 2 on AT&T™ - Thinner, Lighter, Faster | att.com
  - iPad® 2 Data Plans As Low As $14.99/mo.
  - Show map of 2180 Shattuck Ave, Berkeley, CA and nearby att.com locations

- Official iPad 2 Store - iPad 2 in stock and available now.
  - store.apple.com/ipad - ★★★★★ 352 seller reviews
  - Free shipping and free engraving.
  - Free Personal Engraving - Free Shipping - 10-hour battery - 3G or Wi-Fi models

- Apple - iPad 2 - Now with iOS 5 and iCloud.
  - www.apple.com/ipad/
  - Thin, light design. Fast A5 chip. FaceTime video calling. 10-hour battery. It’s not a tablet, it’s iPad 2. Starts at $499.

- Buy iPad 2 Now
  - The thinner, lighter, and faster iPad 2 with new features such ...

- Features
  - Two cameras for video calling and HD video. A fast, dual ...

- iPad with Wi-Fi + 3G
  - iPad 2 with Wi-Fi + 3G is perfect when a Wi-Fi network isn’t ...

- Videos
  - Watch the videos see all the amazing iPad apps in action ...

- Overstock iPads: $43.20
  - www.nomorerack.com/ipad
  - Get 32GB Apple iPads for $43.20. Limit 1/Customer. 30 Sold Per Month

  - www.verizonwireless.com/ipad
  - Magic of iPad. Power of Verizon. Free Shipping With Online Orders 3990 Hollis St, Emeryville, CA

- Amazon Tablet – Only $199
  - www.amazon.com/kindlefire
  - amazon.com is rated ★★★★★
  - Movies, Apps, Web, Reading & More.
  - All the content, half the price.

- Top 5 Tablet Pcs
  - www.pricereuters.net
  - Deals On Tablet Pcs.
  - Compare Prices & Save Big Today!
Trademark – Use Requirement?

- *Rescuecom v. Google*
- Both § 32 and § 43 require infringer to “use in commerce”
- Is this a “use in commerce” of Rescuecom’s Mark?
- Is this harmful?
Trademark – Likelihood of Confusion

- AMF v. Sleekcraft
Trademark – Likelihood of Confusion

- AMF v. Sleekcraft
Trademark – Likelihood of Confusion

• **AMF v. Sleekcraft**
• Gateway questions:
  • 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
Trademark – Likelihood of Confusion

• AMF v. Sleekcraft
1. Strength of Mark
2. Proximity of Goods
3. Similarity of Marks
4. Evidence of Actual Confusion
5. Marketing Channels Used
6. Type of Goods/Degree of Purchaser Care
7. Alleged Infringer’s Intent
8. Likelihood of Expansion
Trademark – Likelihood of Confusion

- Confusion as to Sponsorship
- Initial Interest Confusion
- Post-Sale Confusion
- Reverse Confusion