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Trademarks Notes

**Trademark**

A device that can identify a certain good or service. A trademark can take any form so long as it can distinguish said good or service.

**Forms**

* Letters or words- The most common type of trademark.
* Logo- a design used in close association with goods and services.
* Pictures or drawings
* Combination of letters and design
* Slogans
* Color marks
* Product Shape
* Sound marks

**Strength of Trademarks**

A device can only be a trademark if it is distinctive. This means that it is capable of distinguishing the goods or service from other goods or services.

* Fanciful marks: have no other purpose that to act as a mark (EXXON, KODAK, XEROX)
* Arbitrary marks: has common meaning and has no relations to goods and services in question (APPLE for computers, LOTUS for software, SUN for computers)
* Suggestive marks: suggest the quality or characteristic of a specific good or service. Different from descriptive mark, this requires some imagination (MICROSOFT for microcomputers)
* Descriptive marks- device that merely describes goods or service ( LIGHT for portable computer’s weight)

**Trademark Infringement Criteria**

* Plaintiff has to prove that defendant’s use of mark created a likelihood-of- confusion of origin.
* Plaintiff must show that a protectable trademark right in a trademark has been developed
* Plaintiff must show that defendant is using a similar mark that causes sonfusion.

**Likelihood of confusion factors**

* Similarity in overall impression of two marks
* Similarity of good and/or services involved
* Strength of plaintiff’s mark
* Evidence of actual consumer confusion
* Intent of defendant in adopting mark
* Physical proximity of good in retail marketplace
* Degree of care that might come from consumer
* Likelihood of expansion of product lines

**Remedy for trademark infringement**

Injunction from further infringement, attorney fees if mark was federally registered, monetary damages