**Kellogg vs. Exxon Mobile**

**Case facts:**

Kellogg has a tiger spokesperson names tony the tiger. He has been their spokesperson/mascot since 1952 and is a huge part of their branding and was trademarked. They had named him Tony the Tiger and registered the mascot/cartoon with the United States Patent and Trademark Office (PTO). Over the years Kellogg has filed many trademarks over the tiger and things he says.

Kellogg filed a suit against Exxon Mobile for having a similar graphic of a tiger that was used to brand the companies.

In 1959 Exxon started to implement a cartoon tiger that would embody the company and be the face of the company. Exxon used this tiger but then later wanted to implement more of a live tiger to gain a more conservative feeling for the environment because of the gas shortages in 1981.

Exxon discontinued the tiger as the point of sale in 1982 and slowing stop advertising it.

In 1993 10% of the Exxon gas stations still used the cartoon tiger as advertisement. In 1985 Exxon renewed its trademark for the tiger that would last for 20 years. Many of the Gas stations would have people in tiger suits resembling the cartoon during grand openings. In 1996 Kellogg filed a lawsuit against Exxon mobiles use of the tiger.

**Issue:**

The issue between Kellogg and Exxon is that Exxon’s tiger resembled Kellogg’s trademarked tiger “Tony the Tiger”. Both companies had a trademarked tiger that would resemble each other.

**Rule:**

Trademark law governs the use of a device (including a word, phrase, symbol, product shape, or logo) by a manufacturer or merchant to identify its goods and to distinguish those goods from those made or sold by another. Service marks, which are used on services rather than goods, are also governed by 'Trademark law.' In the United States, certain common law trademark rights stem merely from the use of a mark. However, to obtain the greatest protection for a mark, it is almost always advisable to register the mark, either with the federal government, if possible, or with a state government. A mark which is registered with federal government should be marked with the ® symbol. Unregistered trademarks should be marked with a "tm", while unregistered service marks should be marked with a "sm".

1. strength of the senior mark;

2. relatedness of the goods or services;

3. similarity of the marks;

4. evidence of actual confusion;

5. marketing channels used;

6. likely degree of purchaser care;

7. the intent of defendant in selecting the mark;  and

8. likelihood of expansion of the product lines. Found at: https://www.bitlaw.com/trademark/index.html

**Application:**

Under the trade mark law that Govern images the two images of the tigers were to similar. More than 60%. The Tigers weren’t under the same products that were sold until Exxon started to put the tiger into the grocery store part of the gas stations giving some confusion to products that would seem similar to the average consumer. The marks were similar in the sense that they were a tiger. They would both use television to enhance people to come and use their products which could be seen as confusion.

**Conclusion:**

Five out of the eight things that need to be satisfied for them to have crossed the trademark rule would allow for someone to be confused when seeing “Tony the Tiger” and Exxon mobiles cartoon tiger. Under normal circumstances this would be a close battle, but Kellogg should win the suit because of the things that are satisfied for confusion.