



Trademark Infringement

Identity & Origin
Trademark

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Konomark
Most rights sharable

source

Elements of trademark infringement

(regular passing-off theory)

1. The plaintiff owns
2. a valid trademark, and
3. that mark or a similar symbol was used by the defendant in commerce in connection with the sale, offering for sale, distribution or advertising of any goods or services
4. resulting in a **likelihood of confusion**

Likelihood of confusion factors

- Fed: the DuPont factors
- 1st: the Pignons factors
- 2d: the Polaroid factors
- 3d: the Lapp factors
- 4th: the Pizzeria Uno factors
- 6th: the Frisch factors
- 8th: the SquirtCo factors
- 9th: the Sleekcraft factors

Different circuits have different lists of factors ...

but substantively, it's all essentially the same analysis.

[shown-in-class images of
Polaroid and Polarad
products omitted from this
print-out]

[shown-in-
class image of
Squirt soda
can omitted
from this
print-out]

“Squirt”
“Quist”



AMF Slickcraft.
For those who know the difference.

Some boaters, particularly beginners, regard all boats as pretty much alike. The only differences, they think, are how they are run. Differentiate them. Buy Right. Price Right.

But once you own a Slickcraft, you know better. Whenever pleasure you want in a Slickcraft, you quickly discover that almost all of the details, especially the hull, are in an unshakable confidence in the craft that gets you here. And back.

Slickcraft quality starts with the hull. With floor glass has a thick layer by layer in coat of sprayed into the hull is covered with fiberglass for the better protection and rigidity. Impact-resistant fiberglass construction through the deck. Solid hull. And it tracks up with a cam smooth gel coat that provides a surface that keeps your Slickcraft looking new longer, and worth more for longer too.

There's gotten larger and only looks. Now make a clean getaway in a Slickcraft.

First stop, speed for your boat's operation. We're at AMF Slickcraft, 600 East 32nd Street, Holland, Michigan 49420.

AMF Slickcraft
 Since 1911 making boats.

*Slickcraft is a registered trademark of AMF, Inc. © 1992

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Notwithstanding the circuits' slightly different lists, here's a synthesized list you can use ...

Likelihood of confusion factors (synthesized list)

- the strength of plaintiff's mark
- similarity between plaintiff's and defendant's marks
- the proximity of the products in the marketplace
- the likelihood that the senior user will bridge the gap by beginning to sell in the market of the defendant's product
- evidence of actual confusion
- the sophistication of consumers in the relevant market
- defendant's good faith (or lack thereof) in adopting its own mark
- the quality of the defendant's product

inherently distinctive	fanciful arbitrary suggestive		misdescriptive	inherently distinctive product packaging	
can acquire distinctiveness	merely descriptive	primarily geographically descriptive	deceptively misdescriptive	non-inherently distinctive product packaging product design color	primarily a surname
unprotectable	generic	primarily geographically deceptively misdescriptive	deceptive	functional	names/likenesses of living people without consent gov't symbols

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SONY

- sells consumer electronics
- the brand familiar to you

PONY

- for an electronic 3-D terrain navigation and horse-health monitoring device for horse riders that costs \$9,000 per unit