

What Factors Do Courts Consider in Trademark Disputes?

Article By:

Business and Corporate Law Practice Group

In our last post, we wrote about a trademark infringement case out in California involving a small business owner who is up against a large corporation in protecting a marketing slogan she trademarked. In such David vs. Goliath cases, it is important to work with an experienced attorney to protect one's business interests.

For small businesses, it is just as important to understand how to avoid infringement as it is to protect one's business from infringement. [Trademark infringement](#), speaking generally, occurs anytime there is an unauthorized use of a trademark on a good or service in such a way that consumers are likely to be confused or mistaken about the source of the good or service. Of course, accusations of trademark infringement are not always deemed to be such in court, which is what ultimately matters.

According to the United States Patent and Trademark Office, a plaintiff in a trademark infringement dispute has the burden of proving that there is a valid trademark and that its rights to the mark have priority over those of the defendant. A plaintiff must also be able to show that consumers are likely to be confused as to what company offers the goods or services under the disputed mark.

In addition to the degree of similarity between marks and the likelihood of confusion among consumers, courts also consider the parties' means of advertising; the defendant's intent in utilizing the disputed mark; the means of purchasing the products, and various other factors. In some cases, courts may rule in favor of a trademark holder based on the likelihood that the competing mark will dilute or weaken the trademark.

Small business owners need to be aware of how they are marketing their products in relation to how their competitors are marketing their products. Protecting themselves from **trademark disputes** can save significant time and money.

© 2025 by McBrayer, McGinnis, Leslie & Kirkland, PLLC. All rights reserved.

National Law Review, Volume V, Number 139

Source URL: <https://natlawreview.com/article/what-factors-do-courts-consider-trademark-disputes>