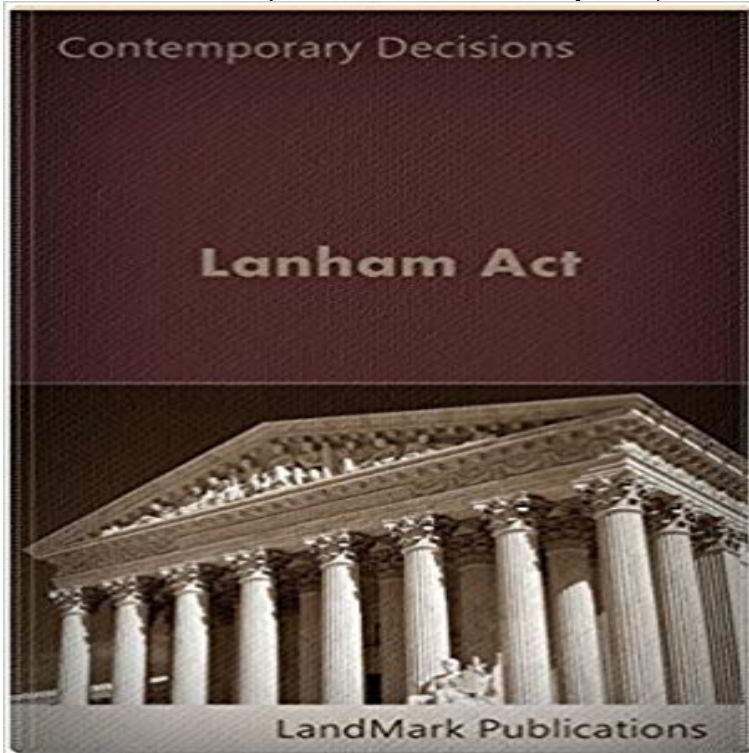


## Lanham Act (Intellectual Property Law Series)



THIS CASEBOOK contains a selection of 209 U. S. Court of Appeals decisions that interpret, discuss and apply provisions of the Lanham Act. The selection of decisions spans from 2005 to the date of publication. Trademark infringement claims are governed by the Lanham Act, 15 U.S.C. 1051 et seq. Th[e] Act defines trademark, [ ] as: any word, name, symbol, or device, or any combination thereof ... used by a person ... to identify and distinguish his or her goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown. *Nola Spice Designs, LLC v. Haydel Enterprises, Incorporated*, (5th Cir. 2015). The Lanham Act contains two provisions by which a trademark owner can enforce its rights. Section 32 of the Act, 15 U.S.C. 1114, provides remedies for those marks that have been registered. Section 43(a), 15 U.S.C. 1125(a), protects against unfair competition by passing off a good or service as having been produced by another; it therefore protects registered marks, unregistered marks, and other aspects of a good or service. *Tumblebus v. Cranmer*, 399 F.3d 754, 760-61 (6th Cir. 2005). *NetJETS Inc. v. IntelliJET Group, LLC*, (6th Cir. 2015). To state a claim for trademark infringement under the Lanham Act, a plaintiff must allege facts establishing that: (1) it owns the registered trademark; (2) the defendant used the mark in commerce; and (3) the use was likely to cause confusion. *Hensley Mfg. v. ProPride, Inc.*, 579 F.3d 603, 609 (6th Cir. 2009). *NetJETS Inc. v. IntelliJET Group, LLC*, *ibid.* To apply for registration under Lanham Act 1(a), a mark must be used in commerce. 15 U.S.C. 1051(a)(1). *Couture v. Playdom, Inc.*, (Fed. Cir. 2015). The statute [ ] defines use in commerce as: the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For purposes of

this chapter, a mark shall be deemed to be in use in commerce (1) on goods when

(A) it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and (B) the goods are sold or transported in commerce, and (2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce, or the services are rendered in more than one State or in the United States and a foreign country and the person rendering the services is engaged in commerce in connection with the services. *Id.* *NetJETS Inc. v. IntelliJET Group, LLC*, *ibid.* Use in commerce must be as of the application filing date. 37 C.F.R. 2.34(a)(1)(i). The registration of a mark that does not meet the use [in commerce] requirement is void ab initio. *Aycock*, 560 F.3d at 1357 (citations omitted). *Couture v. Playdom, Inc.*, *ibid.* The term use in commerce means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. 15 U.S.C. 1127; see *Aycock*, 560 F.3d at 1357. [A]n applicants preparations to use a mark in commerce are insufficient to constitute use in commerce. Rather, the mark must be actually used in conjunction with the services described in the application for the mark. *Aycock*, 560 F.3d at 1360. Without question, advertising or publicizing a service that the applicant intends to perform in the future will not support registration; the advertising must instead relate to an existing service which has already been offered to the public. *Id.* at 1358 (internal quotation marks and citations omitted) (emphasis added). *Couture v. Playdom, Inc.*, *ibid.*

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