Class 15: Trademark Infringement: The Actionable Use Requirement
Class Outline

• Use in Commerce

• Use “in Connection with the Sale...of any Goods or Services”
To make a successful claim for trademark infringement, you must show:

1. D is using the protected mark in commerce; and
2. There exists a “likelihood of confusion”
“Use in Commerce”

Lanham Act § 32: imposes liability for unpermitted “use in commerce” of another’s mark which is “likely to cause confusion, or to cause mistake, or to deceive…”

Lanham Act § 45: “a mark shall be deemed to be in use in commerce…(2) on services when it is used or displayed in the sale or advertising of services and the services are rendered in commerce.”
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In a recent national blind taste test, more Americans preferred the taste of Dunkin' Donuts coffee over Starbucks.
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DUNKIN’ DONUTS

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STARBUCKS COFFEE
NAACP: National Association for the Abortion of Colored People

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LA § 32(1)(a)

Establishes liability for “[a]ny person who shall use in commerce” the plaintiff’s mark “in connection with the sale, offering for sale, distribution, or advertising of any goods or services” in a manner that is confusing.

LA § 43(a)(1)

Establishes liability for “[a]ny person who, on or in connection with any goods or services, or any container for goods, uses in commerce” the plaintiff’s mark in a manner that is confusing.