

Lanham Act § 34 (15 U.S.C. § 1116)

(a) The several courts vested with jurisdiction of civil actions arising under this chapter shall have power to grant injunctions, according to the principles of equity and upon such terms as the court may deem reasonable, to prevent the violation of any right of the **registrant** of a mark registered in the Patent and Trademark Office or to prevent a violation under subsection (a), (c), or (d) of section 1125 of this title. . . .

Lanham Act § 43 (15 U.S.C. § 1125)

(c) Dilution by Blurring; Dilution by Tarnishment.—

(1) Injunctive relief.--Subject to the principles of equity, the owner of a famous mark that is distinctive, inherently or through acquired distinctiveness, shall be entitled to an injunction against another person who, at any time after the owner's mark has become famous, commences use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.

..

(5) Additional remedies.--In an action brought under this subsection, the owner of the famous mark shall be entitled to injunctive relief as set forth in section 34. . . .

The Basic Factors:

- (1) Plaintiff has a likelihood of success on the merits;
 - a. Or actual success in the case of a permanent injunction.
- (2) Will suffer irreparable harm without the injunction;
- (3) The balance of hardships or harm tips in the plaintiff's favor;
- (4) The injunction is not adverse to the public interest.

Ninth Circuit Approach:

Under the traditional test, a plaintiff must show:

- (1) A strong likelihood of success on the merits,
- (2) the possibility of irreparable injury to plaintiff if preliminary relief is not granted,
- (3) a balance of hardships favoring the plaintiff, and
- (4) advancement of the public interest.

The alternative test requires that a plaintiff demonstrate *either*:

- (1) a combination of probable success on the merits and the possibility of irreparable injury *or*
- (2) that serious questions are raised and the balance of hardships tips sharply in his favor.

Lanham Act § 35 (15 U.S.C. § 1117)

(a) When a violation of any right of the registrant of a mark registered in the Patent and Trademark Office, a violation under section 1125(a) or (d) of this title or a willful violation under section 1125(c) of this title, shall have been established in any civil action arising under this Act, **the plaintiff shall be entitled, . . . subject to the principles of equity, to recover (1) defendant's profits, (2) any damages sustained by the plaintiff, and (3) the costs of the action.**

The court shall assess such profits and damages or cause the same to be assessed under its direction. In assessing profits the plaintiff shall be required to prove defendant's sale only; defendant must prove all elements of cost or deduction claimed.

In assessing damages the court may enter judgment, according to the circumstances of the case, for any sum above the amount found as actual damages, not exceeding three times such amount. If the court shall find that the amount of the recovery based on profits is either inadequate or excessive the court may in its discretion enter judgment for such sum as the court shall find to be just, according to the circumstances of the case. Such sum in either of the above circumstances shall constitute compensation and not a penalty.

The court in **exceptional cases** may award **reasonable attorney fees to the prevailing party.**