

## What's New in the November 2025 Edition

This November 2025 edition contains two volumes and replaces the two-volume April 2025 edition. Highlights in the November 2025 edition include:

- Section 43(a) is not violated by leaving a franchised-mark visible on the sign appurtenant to a burnt-out building which is no longer operating as a motel. See *Days Inn Worldwide, Inc. v. Shri Ganesai LLC*, 2025 WL 1931989 (D.N.J. July 14, 2025); § 2:11.
- Despite the rule of *Dawn Donut*, geographically distant businesses may be direct competitors for purposes of likelihood of confusion when their advertising successfully targets overlapping populations. See *Westmont Living, Inc. v. Retirement Unlimited, Inc.*, 2025 WL 838395 (4th Cir. March 18, 2025); § 3:12.
- The voices of voice actors constitute actors' products, not indicia of the commercial origin of such actors' products. Since no mark is involved, "cloning" such voices and offering the cloned voices for sale as an alternative to hiring the voice actors does not constitute false association for purposes of Lanham Act § 43(a)(1)(A). See *Lehrman v. Lovo, Inc.*, 2025 WL 1902547 (S.D.N.Y. July 10, 2025); § 5:1. Furthermore, claiming the legal right to license use of the cloned voices does not constitute false advertising for purposes of § 43(a)(1)(B) because the statement concerns the licensing status of the cloned voices rather than such voices' material attributes or geographic origins; § 6:1.
- The false advertising prong of Lanham Act § 43(a) does not provide a cause of action for a misstatement that a shortage of a key product ingredient exists because such a statement is about the nature of the market, not about either parties' product. See *Nexus Pharmaceuticals, LLC v. Long Grove Pharmaceuticals, LLC*, 2025 WL 81877 (D. Mass. Jan. 13, 2025); § 6:1.
- An article in a peer-reviewed scientific journal may be commercial advertising for purposes of § 43(a)(1)(B) where the authors use a study to show their value and availability to testify as expert witnesses in tort cases. The authors' "customers" at issue would be members of the bar who routinely represent plaintiffs in tort cases. However, the claim being advertised would be that the authors are available as expert witnesses. If the authors are available, the claim would be dismissed for failure to target a falsehood. See *LLT Management LLC v. Emory*, 2025 WL 438100 (E.D. Va. Feb. 7, 2025); § 6:3.
- The defendant's ownership of federal trademark registrations and its having sued to enforce United States rights in trademarks strongly support the fairness of allowing Fed. R. Civ. P.

4(k)(2) personal jurisdiction over such alien defendant. See *Jekyll Island-State Park Authority v. Polygroup Macau Limited*, 2025 WL 1637952 (11th Cir. June 10, 2025); § 9:3.

- While the Lanham Act has no extraterritorial application, infringement is within the Lanham Act if a defendant (United States distribution firm) persuades a United States parent company to arrange for the parent’s foreign subsidiaries to purchase goods even if such goods are manufactured, distributed, and used entirely abroad. See *Shenzhen Kinwong Elec. Co., Ltd. v. Kukreja*, 2025 WL 1009008 (S.D. Fla. April 4, 2025); § 9:12.
- While the Lanham Act has no extraterritorial application, when a federal court has jurisdiction over a settlement agreement, the court may order the parties to take actions outside the United States if the agreement so provides. See *Wudi Industrial (Shanghai) Co., Ltd. v. Wong*, 2025 WL 1909373 (4th Cir. July 11, 2025); § 9:12.
- Because the Lanham Act has no extraterritorial application, if a mark is used in commerce domestically only by being transported within the United States, the mark is infringed only if the domestic transportation is likely to cause confusion. See *Doctor’s Best, Inc. v. Nature’s Way Products LLC*, 2025 WL 1934166 (9th Cir. July 25, 2025); § 9:12.
- The Lanham Act’s language allowing disgorgement of “the defendant’s” profits does not support disgorgement of profits passed through to related, legally separate juristic entities based solely on the economic reality that the only entity named in the lawsuit has been structured to camouflage profits. However, other language in the Lanham Act arguably might allow these profits to be included in the calculation after an appropriate analysis. See *Dewberry Group, Inc. v. Dewberry Engineers Inc.*, 145 S. Ct. 681 (2025); § 10:10.