

Highlights

McCarthy on Trademarks and Unfair Competition 5th is now delivered in pamphlet form. The set updates your treatise with the latest developments. If you are a subscriber to this set, this third release of the year replaces the first and fifth volumes of the softcover set. To file, remove and recycle your current volumes one and five. Place the new volumes one and five in order on your shelf.

Highlights of the September 2026 update (Release 2026-3) to *McCarthy on Trademarks and Unfair Competition 5th*

- **Third Party Registrations and Strength of the Mark.** The Fifth Circuit emphasized that while third party uses can weaken a mark, third party registrations are not evidence as to whether the mark is strong and well-recognized by customers in the marketplace. Ordinary buyers neither know nor should care about whether the mark appears in the files of the USPTO. *Trojan Battery Co. v Golf Carts of Cypress, LLC*, § 11:89.
- **The Lexmark Test of Statutory Standing for Trademark Infringement under Lanham Act § 43(a)(1)(A).** In a new section, the author discusses how in the typical case of alleged infringement of an unregistered trademark or trade dress, the plaintiff can meet the test of statutory standing. District courts so far have uniformly held that such a plaintiff can generally meet the Lexmark test of standing. § 32:12.50.
- **Email Service on Alleged Counterfeiters in China.** Creating a split of authority among the circuits, the Second Circuit held that the Hague Convention prohibits email service on Chinese defendants in IP infringement cases. *Smart Study Co., Ltd, v. enzhenshixindajixieyouxiangongsi*, § 32:44.
- **Personal Jurisdiction over Internet Retailer.** The Seventh Circuit ruled that there can be no personal jurisdiction in Illinois over an internet store offering infringing goods unless Illinois residents have actually purchased the goods. Merely offering on-line sales with shipping to the U.S. is not enough. *Liu, v. Monthly*, § 32:45.50.