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False Advertising and the Lanham Act: Litigating Section 43(a)(1)(B)

Thomas M. Williams

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Section 43 of the Lanham Act is an invaluable tool for intellectual property and commercial litigators. It includes causes of action for trademark infringement-type "passing off" claims, false advertising, trademark dilution, and domain-name cyberpiracy. It is the cornerstone for civil litigants seeking redress for competition-related torts in federal courts. However, Section 43(a) is not a general catch-all for commercial grievances, and is arguably the most misinterpreted and misapplied subsection in the Lanham Act, despite having an extensive body of case law delineating specific causes of action and proofs. Practitioners are well-advised to grasp its nuances before proceeding under the banner of "unfair competition."

In ***False Advertising and the Lanham Act: Litigating Section 43(a)(1)(B)***, Thomas Williams addresses false advertising claims under Section 43(a)(1)(B) of the Lanham Act. The book covers established precedent and Section 43(a) false advertising case law, including key decisions where courts have developed essential analytical tools to flesh out sparse statutory language.

The book is organized by topic. Chapter One describes actionable claims under Section 43(a)(1)(B), and includes an analysis of the Supreme Court's *Dastar* opinion, which sets important boundaries for Section 43(a) claims. Chapter Two identifies various tests for Section 43(a)(1)(B) standing, including the circuit split on whether antitrust-based standing rules are applicable to false advertising claims. Chapter Three analyzes each of the requisite *Skil* factors for establishing a false advertising claim. Chapter Four addresses Section 43(a)(1)(B) pleadings, including the impact of the Supreme Court's *Twombly* and *Iqbal* decisions on notice pleading rules. Chapter Five examines defenses to false advertising claims. Chapter Six reviews injunctive relief requirements and Chapter Seven outlines monetary relief available to prevailing parties.

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