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Reconsidering the Willful Blindness Doctrine in Contributory Trademark Infringement

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The Lanham Act provides for a cause of action of direct trademark infringement. In 1982 the Supreme Court effectively expanded that cause of action by allowing for traditional tort secondary liability in the context of manufacture and distribution of goods. Since that decision, the lower courts have adapted the doctrine of contributory trademark infringement to the modern world. One of those adaptations was the importation of the willful blindness doctrine from criminal law to trademark infringement law. The circuits have divergent standards for what knowledge is required for liability under willful blindness, and the Second Circuit appears to have multiple conflict standards. The confusion causes extreme uncertainty and inefficiency in the marketplace. This Note examines those divergent standards, evaluates several attempts to fix the problem, and argues that the willful blindness standards should be significantly constrained in this context.

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