

15.21 Derivative Liability—Inducing Infringement

A person is liable for trademark infringement by another if the person intentionally induced another to infringe the trademark.

The plaintiff [name] has the burden of proving each of the following by a preponderance of the evidence:

First, [name of direct infringer] infringed the plaintiff [name]'s trademark;

Second, the defendant [name] intentionally induced [name of direct infringer] to infringe plaintiff [name]'s trademark; and

Third, the plaintiff [name] was damaged by the infringement.

If you find that the plaintiff [name] has proved all these elements, your verdict should be for the plaintiff [name]. If, on the other hand, the plaintiff [name] has failed to prove any of these elements, your verdict should be for the defendant [name].

Comment

Regarding liability for inducing another to infringe a trademark, see *Inwood Labs., Inc. v. Ives Labs., Inc.*, 456 U.S. 844, 853-54 (1982) (“[I]f a manufacturer or distributor intentionally induces another to infringe a trademark, or if it continues to supply its product to one whom it knows or has reason to know is engaging in trademark infringement, the manufacturer is contributorily responsible for any harm done as a result of the deceit [by the direct infringer].”). See also *Lockheed Martin Corp. v. Network Sols., Inc.*, 194 F.3d 980, 983-84 (9th Cir. 1999) (noting that one branch of contributory infringement occurs when defendant “intentionally induces a third party to infringe the plaintiff’s mark”).

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