

LIKELIHOOD OF CONFUSION®

Ron Coleman's blog on trademark, copyright, Internet law and free speech

Home	Contact	Publications	Other pages	Video
------	---------	--------------	-------------	-------

February 21, 2012 | 3 Comments

When brands let us down

Submit • Email

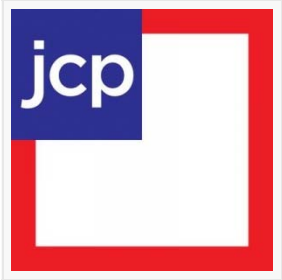
Like Sign Up to see what your friends like.

This was—I thought—my kind of [blog post](#): a guest post on [Duets Blog](#) by graphic designer [Ellie Drotning](#):

“When I hear a well-known brand has redesigned its mark, I’m like a kid on Christmas morning. For a graphic designer with a particular penchant for logos and branding, a new logo is like a gift I can’t wait to tear open. But when I got my first look at J. C. Penney Corp., Inc.’s new logo, I was disappointed. If I had been a four-year-old, I’d have been wearing a big ol’ pouty face.

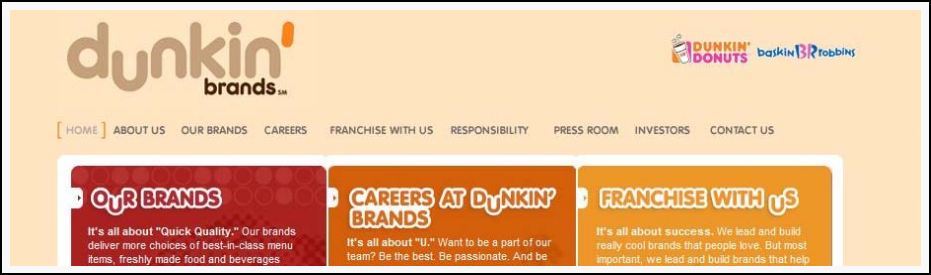


I don’t understand why the friendly, familiar name of JCPenney



is gone, replaced by a set of cold, impersonal initials: jcp. Nor do I understand the American-flag imagery. Nothing about this brand, its products or services is any more patriotic than any other American company, but this logo screams “America!” With the new CEO, Ron Johnson (a former Apple Inc. and Target executive) and the new president, Michael Francis (fresh from his last position as CMO of Target) at the helm, I was hoping for a little more cleverness and sophistication. My designer-y prejudices took over and I decided the reinvented jcpenney (or should I call it jcp?) had not won me over.

Ah. So, this I like, especially because, while I had not been aware of the J.C. Penny makeover, I had had similar thoughts very recently about a couple of related minimalist repackagings. One is the [now-old-news](#) “KFC,” the rebranding of the fast-food greasatorium formerly known as Kentucky Fried Chicken, now trying to make us forget about the fried, the chicken and probably the Kentucky, too. The second one is the rebranding of Dunkin’ Donuts, evidently — I say this based on the radio ads I am hearing — into something stupidly called “Dunkin’.”



Now it turns out, on investigation, that Dunkin’ has been at work on a rebranding strategy (remember, we want to forget anything fried!) for [quite some time](#). They’ve only recently pushed the campaign into the implausible-sounding radio spots in which we are supposed to believe that real people are calling Dunkin’ Donuts “Dunkin’,” which is simply

The question of whether consumers are *likely to be confused* is the signal *inquiry* that determines if a trademark infringement claim is valid. This blog is about trademark law, copyright law, free speech (mostly as it relates to the Internet) and legal issues related to blogging.



As for me, I’m Ron Coleman, a commercial litigator, business attorney and, some say, “IP maven” with a special interest in copyright and trademark infringement involving the Internet—including advising clients how to avoid them. I am also a writer and national general counsel of the national Media Bloggers Association.



For more information, or to learn more about retaining my services, please [click here](#).

LIKELIHOOD OF CONFUSION® is a registered trademark for blogs, and [it’s mine](#). And this is my very special [privacy policy](#).

I’M HIGH-RANKED AND I KNOW IT.

Is LIKELIHOOD OF CONFUSION® really all that? Rankings-wise? Is it really one of the top law blogs in the galaxy?

It is, for what that’s worth.

As of right now, here are the latest rankings via:

- all legal blogs on [Avvo.com](#)
- most popular law blogs this month on [Justia](#) (sometimes)
- all IP law blogs, by popularity, on [Justia](#)

preposterous. I can see “KFC,” see; people like abbreviations. But “Dunkin’,” while shorter than Dunkin’ Donuts, sounds — what was that word again? — stupid.

And how’s that rebranding going? Well, [this article](#) in UK *The Economist* actually answers that question unintentionally by mentioning Dunkin’ Donuts in the process of ignoring its rebranding while criticizing the ham-fisted rebranding efforts of tonier shops:

“Why do people get so upset about such changes? An obvious reason is that so many logos and names are either pig ugly or linguistically challenged. Think of BT’s “piper” logo, which looked like someone drinking a yard of ale and disfigured all things BT-related for 12 years (admittedly, Britain’s incumbent telecoms firm was not too popular to begin with); or the SciFi channel’s decision to call itself SyFy—a name that raises the spectre of syphilis. . . .

The debate about logos reveals something interesting about power as well as passion. Much of the rage in the blogosphere is driven by a sense that “they” (the corporate stiff) have changed something without consulting “us” (the people who really matter). This partly reflects a hunch that consumers have more power in an increasingly crowded market for goods. But it also reflects the sense that brands belong to everyone, not just to the corporations that nominally control them.

They want your opinion, as long as it’s positive

Companies have gone out of their way to encourage these attitudes. They not only work hard to create emotional bonds with consumers . . . They involve them in what used to be regarded as internal corporate operations. Snapple asks Snapple-drinkers to come up with ideas for new drinks. Threadless encourages people to compete to design T-shirts.

Starbucks has been in the forefront of this consumer revolution. It consults consumers on everything from the ambience of its stores to its environmental policies. It emphasises that it is not just in the business of selling coffee. It sells entry to a community of like-minded people (who are so very different from the types who get their coffee from Dunkin’ Donuts or McDonald’s) gathered in a “third place” that is neither home nor work.

Oh, yeah... Dunkin’ Donuts. That clipping-service find (forgive me the anachronism) must have warmed the cockles of the Dunkin’ Brands hearts: rebranding penetration, zero and counting.

But anyway, yes, there’s the substance of that *Economist* quote, and what I thought was a similar argument in Ellie Drotning’s post. I’m not against rebranding, mind you. I’m against [dumb-branding](#).

But that wasn’t the point (and admittedly, it would have been almost banal if it had been) of the blog post at all. And now: The rest of the story:

“Then Ellen Degeneres made her appearance. As you’ve probably heard, jcpenny chose Ellen as spokesperson for their reinvented brand. Shortly after, a group called One Million Moms began demanding the company fire Ellen because she’s a lesbian. One Million Moms is a fairly small advocacy group, so I did not expect jcpenny to cave to that demand. But I did expect them to try downplay the controversy. That’s not what happened.

Instead, Johnson went on the CBS Morning News and unapologetically stood by Ellen and jcpenny’s decision to hire her, [saying that keeping her was a “no-brainer”](#).

[I]n this case, a business decision was also a values-based decision that, personally, I support, I don’t think I’m alone when I say that I can’t help but feel a connection to a brand when it stands up for values I share. So even though that new logo makes the designer inside me pout, jcpenny’s conduct makes the citizen inside me smile.

Designers like me can self-importantly imagine that the logo is the most important part of a brand. And while it is a critical piece of the brand-puzzle, this chain of events reminded me that the most important piece of a brand is, in fact, the company itself. Duh, Ellie. Sometimes we all need reminders.

Jcpenny’s new logo might not have won me over, but their actions sure did.

So, if you’ll excuse me, I’m going to head over to jcpenny and pick up a new pair of slippers.

In other words, when it comes to logos, branding and graphic design, all is forgiven if a company makes the right politically-correct public noises when a “controversy” — so predictable and down-the-middle it almost looks concocted, which would make that the real “rebranding” story here — “erupts.”

all copyright law blogs, by popularity on Justia (whoa!)

Alltop’s law blogs and

Cision.com’s Top 50 Law Blogs

Then there’s [this](#) kind of odd thing. It’s easy it is to game almost any ranking system, not that I’ve tried to. As such, These are just what they are/ps

SECONDARY
TRADEMARK
INFRINGEMENT

Online treatise by Jane Coleman

BLOGROLL

Want posts by email? Enter yours here

Preview | Powered by FeedBlitz



@BlitheMDJD @bradleyshear Right you are! I think I said the same thing right here just last week. I stand corrected. 2 minutes ago

RT @bradleyshear: Are your constitutional rights being violated by a social media monitoring company? <http://t.co/7qiTFgy0> 4 minutes ago

Oh, yeah: #tmscams: The hash tag. Why not just #trademarkia? Classic fair use. But to be fair, they aren’t the only ones... 41 minutes ago

RT @Trademarkia: You may send suggestions to customer.service@trademarkia.com | I have suggestions for you all right... 43 minutes ago

@Trademarkia @LeasonEllis @RajAbhyankerPC Is there a subject in that sentence? Or did you use them all up sending deceptive mailings? 52 minutes ago

Follow @roncoleman on Twitter

I mean — seriously? [Ad Age](#):

“ **Consumers Rally Around JC Penney, Ellen in Face of Anti-Gay Group’s Hate Campaign**
One Million Moms Succeeds Mostly in Creating More Fans for Retailer

The hate campaign launched last week by One Million Moms against [JC Penney](#) for its pick of Ellen DeGeneres as the brand’s new spokeswoman seems to have backfired. The retailer is winning support from consumers who are taking to the social web to pledge that they’ll shop at JC Penney stores more than they ever have before.

What’s more, the comedian and talk-show host addressed One Million Moms’ campaign on her national TV show, poking fun at the activist group in a video that’s now viral.

Got “hate”? I wonder what it cost J.C. Penney to set up One Million Moms.

Well, look, Ellie Drotning can buy her slippers anywhere she wants to, and for any reason she wants to shop there. But I assume that when she’s advising clients about a new branding approach, she doesn’t tell them to cook up whatever pops into their head and just go ahead and do “the right thing” by cashing in on some low-hanging-fruit “controversy” that will turn pouts into smiles. She’s too good at what she does to do that.

Certainly Ms. Drotning’s comments about how the effect of a company’s values, at least as played out in marketing space, raise a very legitimate point.

But the new branding really does still stink, doesn’t it?

People who looked at this item also looked at...

- [Best of 2011: The entrepreneurship of trademark bullying](#)
- [Drive-by infringement](#)
- [Jews for Jesus v. Google and Brodsky – update and analysis](#)
- [Big Green’s Ethiopian trademark problem](#)
- [Iconography](#)

Related items

- [This is for you, Bud](#)
- [Drive-by infringement](#)
- [Absolutely not a Verizon Dealer](#)
- [Char’ed, I’m sure \(updated, January 2012\)](#)
- [SUPER BOWL® trademark post XI: Consumer Reports and the super-duper exemption](#)

🏷️ Tags: [J.C. Penney](#); [Rebranding](#); [Ellen](#)



AUTHOR:

Ron Coleman

I write this blog.

[View all posts by Ron Coleman →](#)

Subscribe

Subscribe to our e-mail newsletter to receive updates.





Related Posts:

- No related posts found


← No, really do trust us. Eventually. [Defamation and Bloggers, Once and For All](#) →

Trackbacks/Pingbacks





DISCLAIMER

THIS BLOG IS ONLY A BLOG, NOT LEGAL ADVICE. IT IS IN PART AN ADVERTISEMENT FOR LEGAL SERVICES BY ME, LAWYER RONALD D. COLEMAN, BUT I AM NOT YOUR LAWYER. YOU ARE NOT MY CLIENT. JUST WALK BESIDE ME AND BE MY FRIEND.



The term of an [maven](#) is used to mean “wise guy” here and is not meant to suggest that I have certified or other “expertise” in any particular field of legal practice. But try me.



CATEGORIES (A WORK IN PROGRESS)

1. **Brian Farkas** - *February 21, 2012*
Branding JCPenny RT @roncoleman: When brands let us down <http://t.co/mDgOimrH>
2. **The Br@nd Ranch** - *February 22, 2012*
RT @roncoleman: When brands let us down <http://t.co/CJG4H0Zz>
3. **Likelihood TM Blog** - *February 23, 2012*
When brands let us down — or just play us <http://t.co/zQF0bSzA> | LIKELIHOOD OF CONFUSION®

Leave a Reply

Name (Required)

Mail (will not be published) (Required)

Website

Notify me of followup comments via e-mail

Spam Protection by WP-SpamFree

Notify me of new posts by email.