

# ***Mind the Gap: How Brand Gimmicks Have Made Infinite the Zone of Expansion***

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A young woman is getting ready for an evening out. She paints her nails with red McDonald's®-branded nail polish, brushes Cheetos®-branded eyeshadow across her eyelids, and finishes her look with a swipe of Papa Johns® paprika-scented Chorizo lipstick.

Later, across the bar she spots Doritos® alcohol, and tries a shot. It tastes like nacho cheese and grain alcohol. The bartender assures her that it's fine in a Bloody Mary. Home at the end of the night, she kicks off her In-N-Out® sneakers and makes her way to her kitchen. For a late-night snack, she boils up some Dolce&Gabbana® pasta, which she tops with Heinz® x Absolut® vodka pasta sauce. As a sweet treat, she indulges in a few bites of Hidden Valley® Ranch-flavored ice cream.

These are all real products. And their existence – among hundreds of other strange and unusual collaborations or in-house product launches – creates a new problem in the traditional analysis of “bridging the gap” or the “zone of expansion” for trademark infringement. Customers are becoming accustomed to see their favorite ice cream brand making sneakers, or tinned fish company selling beer. The proliferation of national brand collaborations with brands far outside their niche has primed those reasonable consumers to expect the unexpected in brand expansion. If this is taken into consideration by the courts, national marks that do not qualify as famous marks could suddenly be granted an almost infinite zone of expansion equal to that afforded to famous marks.

This Article argues that this phenomenon, and its impact on reasonable consumers, cannot be ignored by courts in their attempts to analyze and assess true consumer impressions. Nevertheless, this infinite zone of expansion would unreasonably strengthen the protections granted to national but not famous marks. Accordingly, this Article proposes that, while courts must take this new environment of brand activity (and its impression on consumers) into consideration, it should provide balance in cases where infringement is alleged by use of a mark on goods far afield from the national brand's core products, by requiring heightened similarity (or near-identicalness) between the national brand and the allegedly infringing mark.