

## MEASURING SPONSORSHIP MATERIALITY

*Matthew B. Kugler\**

*The problem of sponsorship confusion is one of the most vexing in trademark law. Mark owners often claim that the use of their marks in movies or on merchandise will lead consumers to believe that their companies have approved these other products, and that they therefore must be able to control these uses lest consumers be misled. But overzealous enforcement of sponsorship rights can chill valuable speech and unnecessarily prevent competition in merchandising domains. In an effort to rein in overzealous trademark owners, several scholars have proposed adding a materiality requirement to the sponsorship confusion analysis. They want to require mark owners to show not only that consumers assume a particular product is sponsored by the mark holder, but also that this assumption materially affects consumer behavior. This paper presents an empirical survey that uses a variety of sponsorship materiality measures to determine how such a materiality requirement would affect the shape of trademark law in the merchandising context. The data show that requiring materiality would alter the treatment of several classes of products, but would not have nearly as broad an effect as many would have expected. The implications of these findings for other proposed limiting doctrines are discussed.*

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\* Law Clerk to the Honorable Richard Posner, U.S. Court of Appeals, Seventh Circuit, 2015-2016; JD University of Chicago Law School, 2015; PhD in Psychology, Princeton University, 2010.

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