

# *Trademark Law and the Strategic Consumer*

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Trademark law has a conception of the consumer that, as many have noted, may not reflect the realities of the marketplace. One way in which this conception fall short is in failing to take account of strategies employed by consumers to navigate the commercial world in light of certain constraints. For example, consumers with limited financial resources who buy a box of Fruity-O's cereal at the local Dollar Store may be engaging in an attempt to provide their children with a "good enough" product that fits into their limited budget. Consumers who are not literate in English likewise may develop strategies to enable them to purchase the products they want that don't rely on the ability to read English. In neither case are such consumers "confused" in the trademark law sense even if their decision-making processes are different from those of other consumers. Trademark law's likelihood of confusion doctrine takes into account "the sophistication of the consumer," but the use of the word "sophistication" may lead observers to conclude that these activities are not well-developed strategies. At the same time, recognizing the market sophistication of these customers should not obscure the ways in which brand marketing takes advantage of consumer constraints. Drawing both on previous legal scholarship and on the marketing and sociological literature, this paper is an attempt to provide a more complete picture of trademark's strategic consumer and to suggest how trademark law should take such consumers into account.