



PROGRAM MATERIALS

Program #36182

June 25, 2026

Brand Rent and 4 Other Realities Trademark Law Hasn't Caught Up To

Copyright ©2026 by

- **Allen Adamson - Brand Simple Consulting**
- **Michael J DeBlis III, Esq. - DeBlis & DeBlis Law Firm**

**All Rights Reserved.
Licensed to Celesq®, Inc.**

Celesq® AttorneysEd Center
www.celesq.com

5301 North Federal Highway, Suite 150, Boca Raton, FL 33487
Phone 561-241-1919

Brand Rent and 4 Other Realities Trademark Law Hasn't Caught Up To

Presentation by:
Allen Adamson
Co-Founder Metaforce

June 25th 2026

The Special Forces of Marketing





Allen Adamson

Co-Founder Metaforce

Allen Adamson is a noted industry expert in all disciplines of branding. He's worked with a broad spectrum of clients in industries ranging from packaged goods and technology, to health care and financial services, to hospitality and entertainment, as well as brands in the non-profit sector. Given his perspective and depth of experience, Allen has helped his clients understand and put into play strategies that enable them to shift ahead of the market and the competition, generating long-term value and increased brand equity.

Allen's newest book, *Seeing the How: Achieving Market Advantage by Transforming the Stuff We Do, Not the Stuff We Buy*, published in May 2023, focuses on the consumer experience as a competitive advantage and how this change in perspective has allowed companies to achieve dramatic growth and categorical leadership. The book's driving idea was sparked by Allen's recognition that experience transformation has been fast outpacing product transformation as a winning and sustainable marketing strategy. His previous books, *BrandSimple*, *BrandDigital*, *The Edge: 50 Tips from Brands that Lead* and *Shift Ahead*, are used as textbooks in higher education business programs across the country.

Prior to Metaforce, Allen was Chairman, North America of Landor Associates, a global branding firm. Under his leadership, the company partnered with a wide array of iconic brands, including Accenture, GE, Johnson & Johnson, FedEx, HBO, Marriott, MetLife, P&G, Sony, and Verizon. Before Landor, Allen was an executive at Unilever, responsible for leading marketing for a number of major packaged goods brands. Previously, he held senior management positions at Ogilvy & Mather and DMB&B.

Allen received his BS from the S.I. Newhouse School of Public Communications at Syracuse University, and an MBA from New York University's Stern School of Business.

A cross-section of the brands I have worked with...

accenture

amazon



audible

BlackBerry

Bloomberg



Goldman Sachs

Google

hibü



IBM

intel

Johnson & Johnson



lenovo



Microsoft

nationalgrid

nest



P&G



SAMSUNG

SoftBank

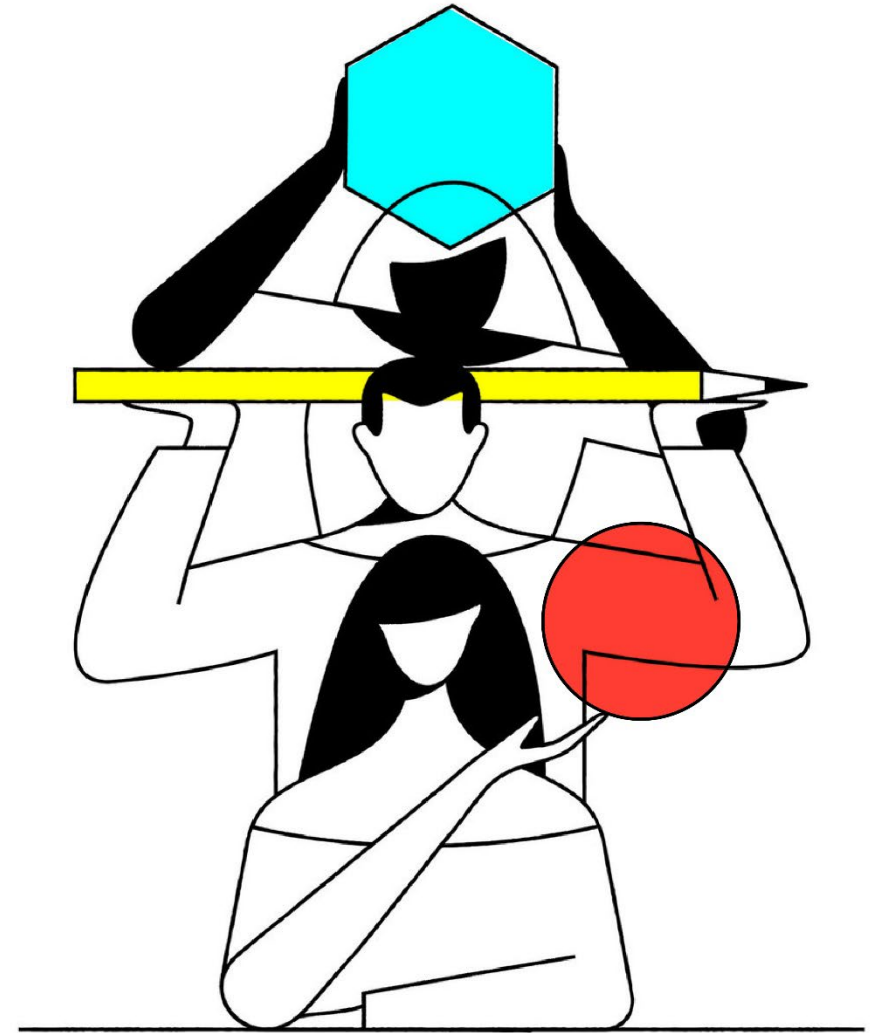


verizon

Today we will cover

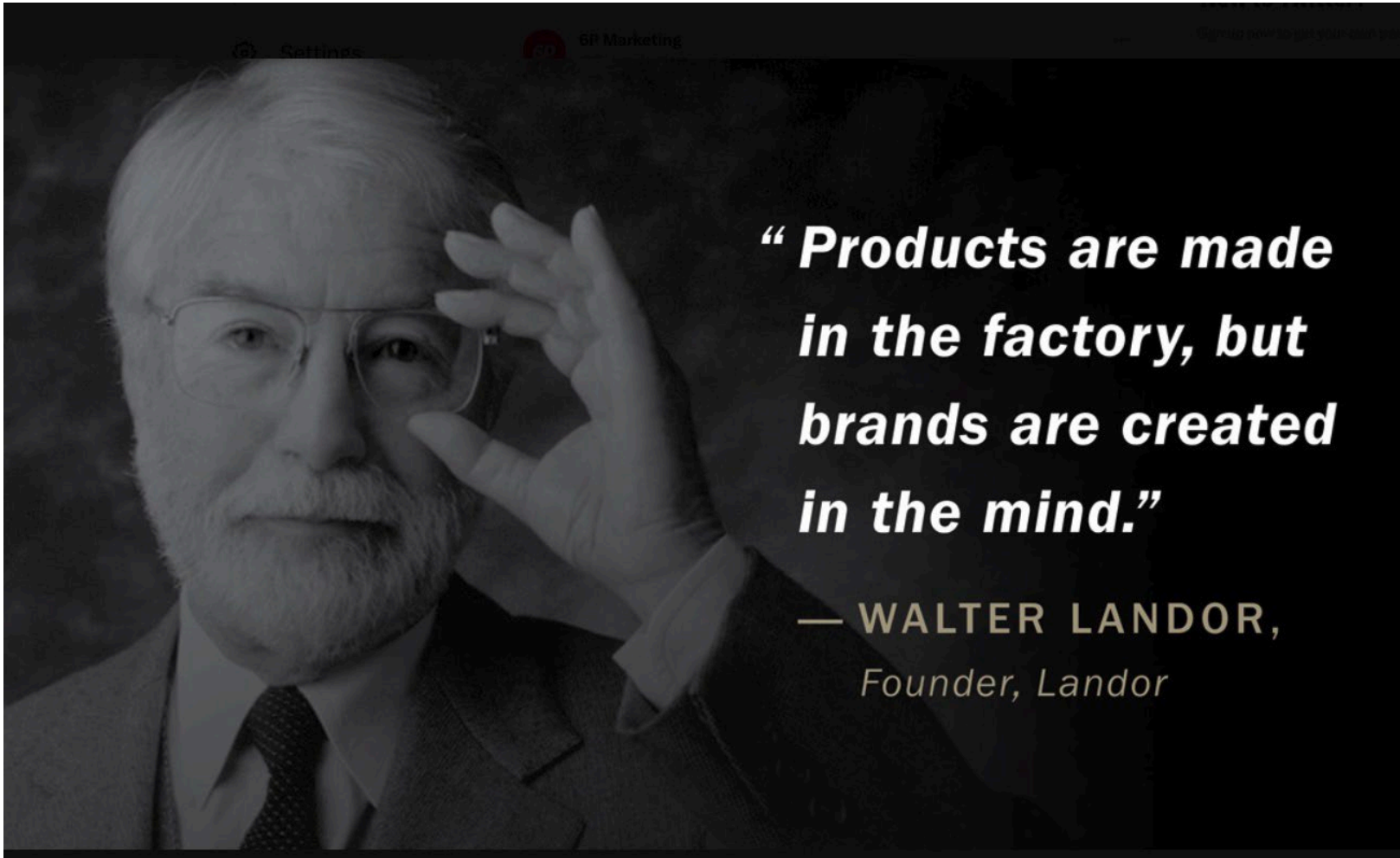
1. Level Setting
2. The Case: Lululemon and Mondelez vs Aldi
3. The Case: Hermès and Jack Daniel's Brand Rent
4. The Case: AI and the Distinctiveness Trap
5. Summary Key takeaways

(1) Level Setting



(1) Level Setting

What is a brand? Ask Walter



Brands help companies, products and people stand out...a simple idea



branding

STORY

SIGNALS

Strong brand stories are driven by

Do I care?



Relevant differentiation



What stands out?

Social Media has changed everything. The Most Powerful Marketing Tool. But Brands Can't Control It.

The Shift:

- Then: Companies created ads, controlled messaging, mass media reached millions
- Now: Social media dominates, consumers control narratives, AI tools let anyone create "ad quality" content

Why This Matters for Brand Damage:

- Word of mouth + word of eye work together virally on social platforms
- Brands can't control what consumers share
- Can't repair with traditional media (fragmented, lacks credibility)
- Can't repair with social media either (don't control what gets shared)
- Marketing power has shifted from companies to consumers



All branding touch point work together to support overall brand strength



(2) The Case: Lululemon and Mondelez vs Aldi

Lululemon Branding



Lululemon Branding

The image shows a screenshot of the Lululemon website. At the top right, there are links for 'Store Locator', 'Gift Cards', 'Get Help', and 'USA'. The main navigation bar includes the Lululemon logo, 'Women', 'Men', 'Bags', 'Accessories', 'What's New', and 'Summer Scores'. A search bar is located on the right side of the navigation bar. Below the navigation bar, there is a hero section featuring a woman in a red athletic outfit and a white cap. On the left side of the hero section, there is a white box with the Lululemon logo and a list of links: 'Women's What's New', 'Men's What's New', 'All Women's', 'All Men's', and 'All Accessories'. On the right side of the hero section, there is a 'SHOP WHAT'S NEW' button.

Store Locator Gift Cards Get Help USA

lululemon Women Men Bags Accessories What's New Summer Scores

Search

lululemon

- Women's What's New
- Men's What's New
- All Women's
- All Men's
- All Accessories

SHOP WHAT'S NEW

Lululemon Branding



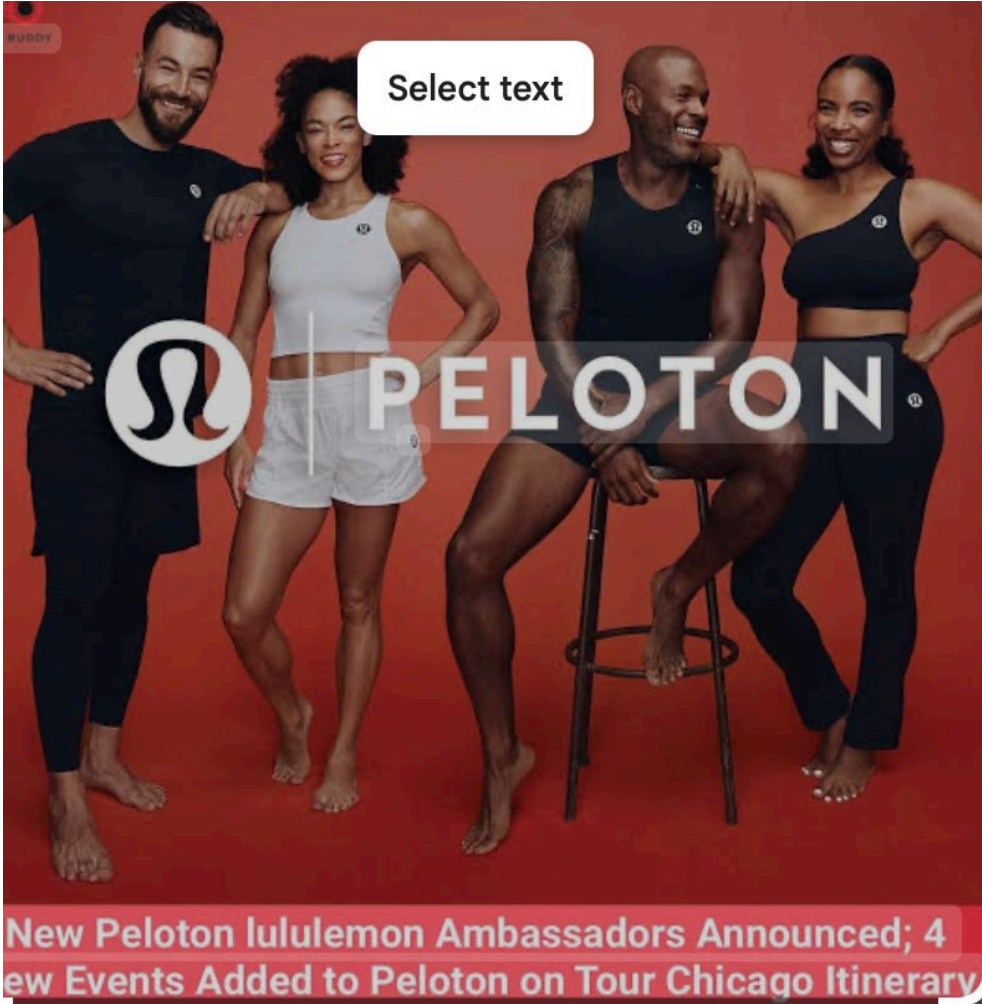
Lululemon Branding



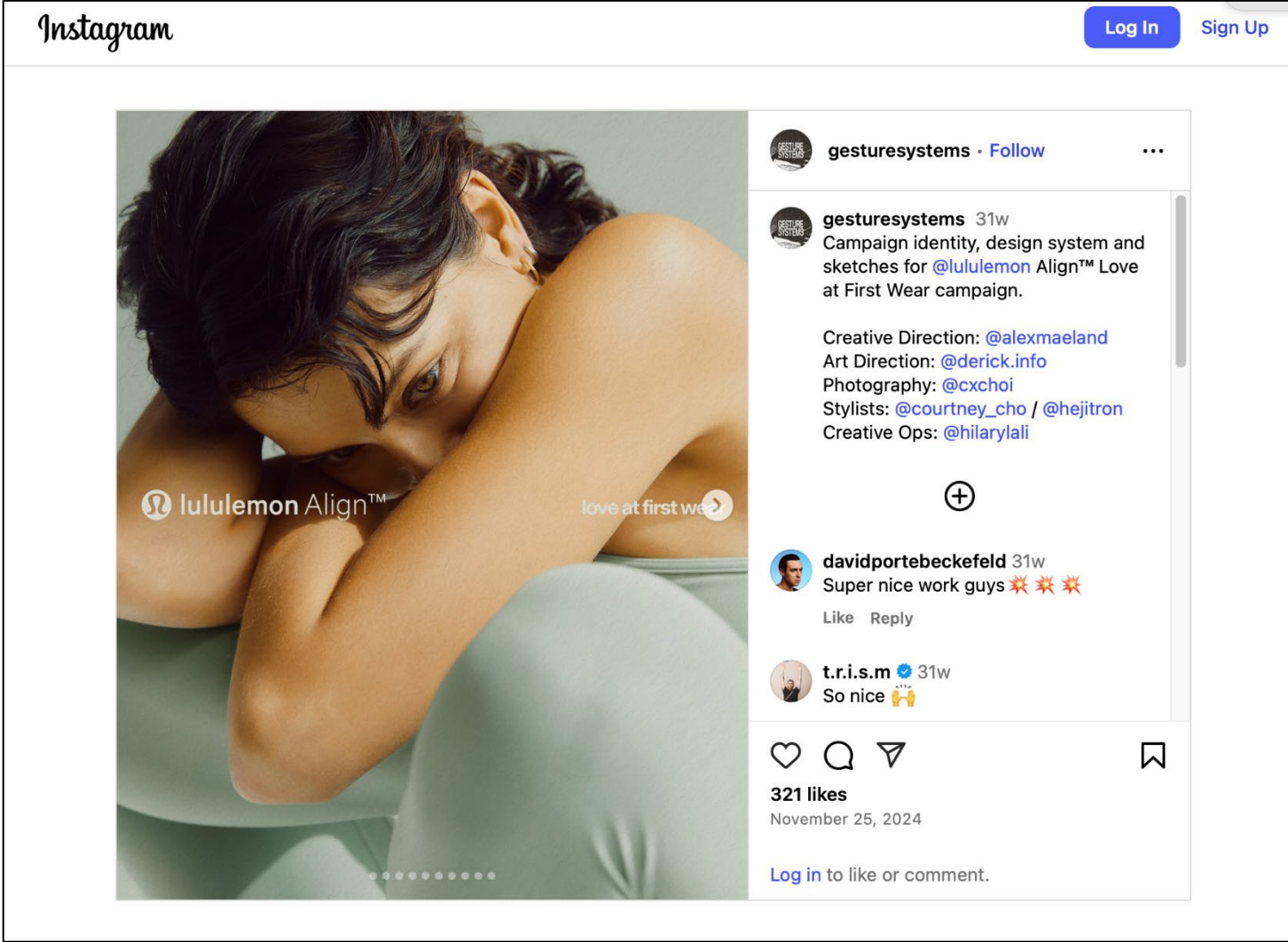
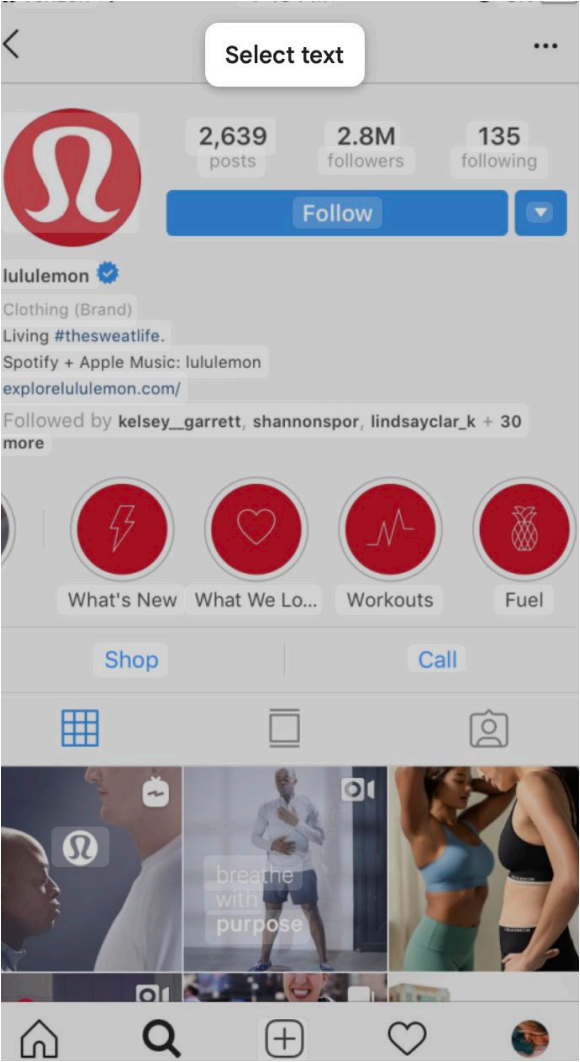
Lululemon Branding



Lululemon Branding



Lululemon Branding



It takes 20 years to build a reputation...


and five minutes to ruin it



Costco "Same materials, same factory"



Costco "Same materials, same factory"



NEW Lululemon Dupes at Costco???

costcohype • Follow
Ariana Grande • December

costcohype 26w
NEW Lululemon Dupes at Costco???

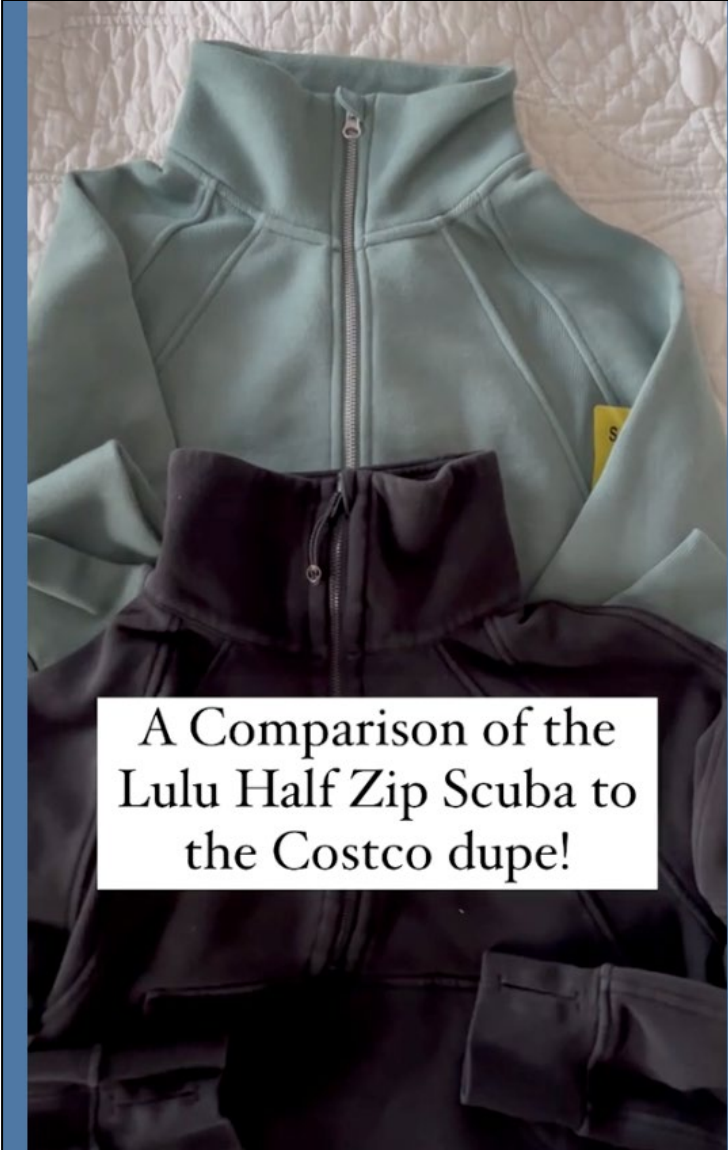
These yoga jackets and pants look very similar to the popular Lululemon Define Jackets and High Rise Flared Pants! Plus they're both on sale under \$13! What do you think of these??

#costco #costcohype #costcodeals #costcohaul #costcofinds #costconew #costcobuys #shopping #shop #new #deal #clothes #costcoclothes #lululemon #lululemondupe #dupe #yoga #yogajacket #yogapants #ladies #gym #fitness #workout #sale #jacket #leggings #activewear #fashion #ootd #reels

la_ yes_si 26w

Liked by rainacleanholed and others
December 28, 2024

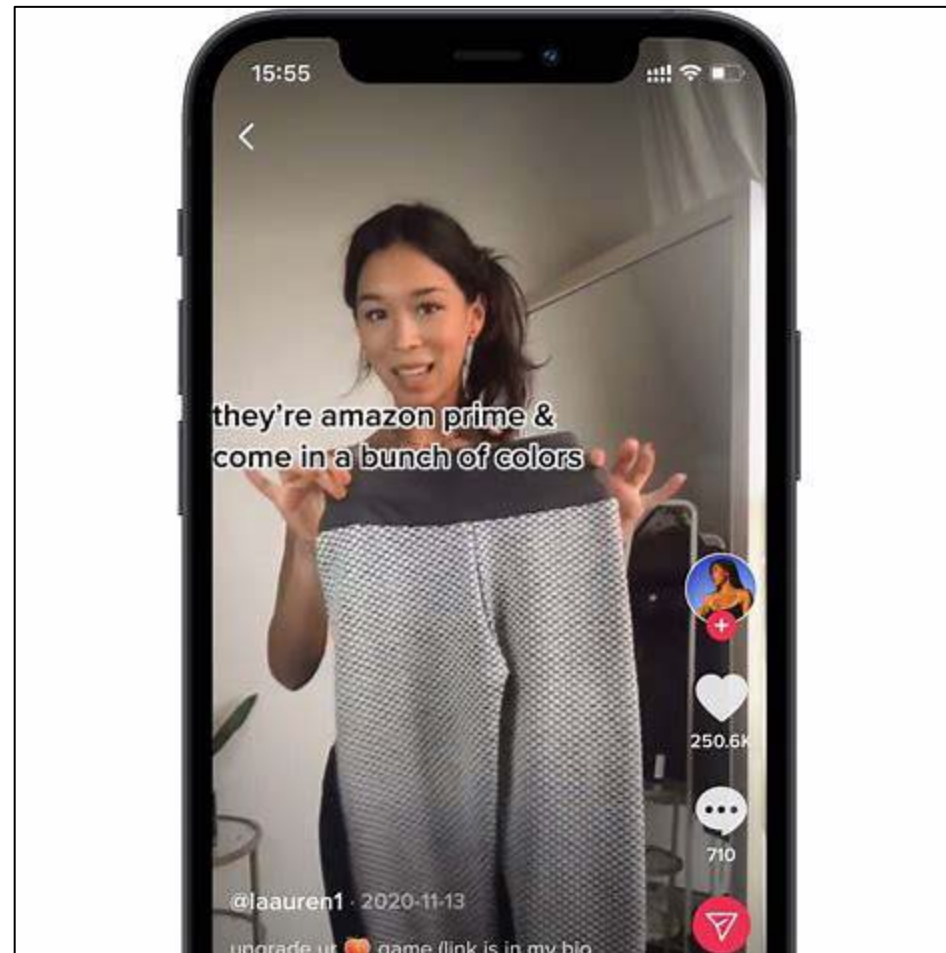
Add a comment...



A Comparison of the Lulu Half Zip Scuba to the Costco dupe!

607
17
78
395

Viral Tik Tok Videos : “Same materials, same factory—for \$5, why pay \$100?”



“Same materials, same factory—for \$5, why pay \$100?”

A creator compares \$5 to Lululemon’s \$100+ leggings focused on emotional framing, not quality: 'you’re just paying for the name.

The video goes viral, not over design or quality, but because it questions Lululemon’s **price narrative** and **emotional value**.

The video became a catalyst for viral commentary, with many viewers reinforcing the idea that Lululemon’s price is unjustified.

The hashtag #Lululemon Dupes continues to gain traction, showing the normalization of brand devaluation through peer-shared content

This undermines Lululemon’s value narrative. Its premium brand equity built over years through branding, not just performance.

The premium narrative is the cable that broke.

Stopping the knockoff is not repair. The revised value sits in millions of heads.



The morning after. Morbi pedestrian deck collapsed after suspension cable gave way.

The value Costco did not build

Costco did not make an \$8 hoodie and happen to sell it near a Lululemon.

Costco made an \$8 hoodie that is only worth buying because it looks like Lululemon.

Remove Lululemon from the equation and the Kirkland hoodie is just another fleece.

Costco even used Lululemon's own color name, Tidewater Teal, in the product description.

That is not private label strategy. That is borrowing identity with the serial number still attached.

Lululemon Costco legal action

On **June 27, 2025**, Lululemon filed suit in federal court (California) against Costco's Kirkland and affiliated labels (Danskin, Jockey, Spyder, Hi-Tec), alleging infringement of **trade dress** and **design patents** for its Scuba hoodies, Define jackets, and ABC pants.

The complaint claims these knockoffs some priced as low as \$10–\$20 vs. Lululemon's \$118–\$128 cause **consumer confusion**, misleading buyers to believe they share brand origin.

Lululemon specifically accuses Costco of trading on its **brand reputation, goodwill, and “sweat equity”** arguing that cheap products dilute its brand value.

Evidence includes side-by-side comparisons in a detailed 49-page filing and public confusion captured through hashtags like **#LululemonDupes** and influencer posts.

Point 2: A new wrinkle — Dupe Culture

The Lanham Act asks one question: is the consumer likely to be confused?

Dupe culture works the other way. Shoppers are not confused. They are informed.

They know exactly what they are buying. The appeal is the gap, not the deception.

“Same materials, same factory. For \$5, why pay \$100?”

A transaction the legal framework was not built to address.

The hashtag that works against you

Lululemon's complaint cites #LuluDupes as evidence of consumer confusion and brand harm.

That same hashtag is arguably Costco's strongest defense.

Every post tagged #LuluDupes is a consumer acknowledging the product is not Lululemon.

They are not confused about the source. They are celebrating the gap.

Lululemon's evidence of harm is also evidence that no one was deceived.

The first moment of truth at the shelf

Years at Landor designing packaging for P&G, Kraft, Pepperidge Farm, Mars.

The job: find what makes a brand different and build it into the package.

Win the three to seven seconds at the shelf — P&G's First Moment of Truth.

Brands spend decades engineering the look that does it.



Another example of Dupe Culture. Aldi says the quiet part out loud.

Aldi's own slogan: "Like brands, only cheaper"

Nobody buys Aldi by mistake.

The shopper is not deceived. The shopper is borrowing.

The harm is real. The confusion is not.

This is the test the doctrine was built for, missing the harm in front of it.



Aldi / Amazon

Change every element. Keep the brand.

Mondelez v. Aldi, filed May 27, 2025

Cookies and crackers copying the look of Oreo, Chips Ahoy, Nutter Butter, Wheat Thins, Ritz.

Different name. Different shade of color. Different typeface.

Even the cookie shot at a different angle.

Every individual element has been changed.

The package still reads, instantly, as the original.

That is not an accident. It is a craft.

A brand does not live in any single element. It lives in the whole.



Trade dress is the whole the eye reads

Trade dress is the total feel of a package set apart from the words printed on it. Color, shape, layout, photograph, combined into one impression the eye takes in long before the mind reads a word.

Change the parts and keep the pattern, and you keep the brand. This is the thing that made packaging design valuable in the first place. It is also the heart of Mondelez's problem.

If you protect the name, Aldi changed the name. If you protect the color, Aldi shifted the shade. Each strand, examined alone, looks defensible. The cable, taken whole, is unmistakable. The buyer only ever sees the cable.

Oreo's blue, its lettering, its tilted cookie and the curl of cream were designed, tested, and reinforced across generations until the sight of them meant one thing. That meaning is an asset. A blue box is not a recipe. It is property.

Can the law protect the pattern?

When every measurable part has been changed just enough.

Other brands are watching for the answer.

The companies that still treat their packaging as decoration rather than property are the ones with the most to lose.

Summary

The Case: Lululemon, Mondelez, and Dupe Culture

No confusion. Real harm. The two have come apart.

Costco priced the Kirkland hoodie at eight dollars and used Lululemon's own color name, Tidewater Teal, in the product description. Aldi puts the strategy on the front page with the slogan "like brands, only cheaper." The shopper is not deceived. The shopper is borrowing on purpose.

The harm sits on the far side of confusion. Every viral side-by-side is a small re-pricing event in millions of shoppers' minds, and the premium is revised downward before the case is filed. The doctrine was built to catch deception. Dupe culture is demonstration, and the standard confusion question keeps coming up short.

Key Takeaway for Counsel:

Build the record around the integrated brand system, not isolated marks. Reach for instruments that already price what was borrowed. The pattern is the property.

(3) The Case: Hermès and Jack Daniel's Brand Rent

Hermès v. MetaBirkins

Hermès, the Paris house behind the Birkin bag.

Artist Mason Rothschild minted 100 MetaBirkins NFTs, fur-covered Birkin images.

Listed and sold on OpenSea starting late 2021. Some traded for tens of thousands.

The defense: First Amendment. The NFTs are art.

Hermès sued: Trademark infringement, dilution, and cybersquatting.



Hermès won. They recovered about \$133,000.

February 2023: SDNY jury found for Hermès on every count.

Rothschild barred from selling or promoting the MetaBirkins collection.

Damages: about \$133,000.

The asset Hermès was protecting: Birkin bags retailing from \$10,000 to over \$500,000.

The premium took a century to build. The check did not cover the rent.

The New York Times

***Hermès Wins MetaBirkins Lawsuit;
Jurors Not Convinced NFTs Are Art***

The verdict means First Amendment protections did not apply to a digital project blurring the line between art and business.

Jack Daniel's v. VIP Products

VIP Products sold a squeaky dog toy called Bad Spaniels.

The toy mimicked the Jack Daniel's bottle shape and label.

“The Old No. 2 on Your Tennessee Carpet” instead of “Old No. 7.”

“43% Poo by Vol.” instead of “40% Alc. by Vol.”

VIP's defense: the Rogers test, parody, First Amendment..

The question reached the Supreme Court

The toy that has Jack Daniel's so doggone mad mimics the square shape of its whisky bottle as well as its black-and-white label and amber-colored liquor.



WISN.COM

Justices asked to hear dog toy dispute. Will they bite?

Jack Daniel's won 9 to 0. They recovered zero.

June 2023: the Supreme Court ruled unanimously for Jack Daniel's.

The Rogers test does not apply when a mark is used to designate the source of the alleged infringer's own goods.

Sent back to the lower courts for ordinary Lanham Act analysis.

On remand, the Ninth Circuit again found for VIP Products.

The recovery for Jack Daniel's: zero.

POLITICS • 7 MIN READ

Supreme Court humors itself as it considers whether Jack Daniel's can stop a dog toy company from parodying its brand

UPDATED MAR 23, 2023 ▾

They won their cases. The damages math was still wrong.

Hermès beat MetaBirkins.
Recovery: about \$133,000.

Jack Daniel's won 9 to 0 at the Supreme Court. Recovery:
zero.

Both remedies addressed the transaction in front of the
court.

Neither addressed what had actually been taken.

Both companies won the legal argument.

Neither was made whole.

Brand Rent

A strong brand commands a price above the commodity. Call that premium rent.

The brand owner is the landlord. They built the building. They own the land.

The infringer collects the rent and never pays the landlord.

The stakes are scaling

Private label sales hit a record \$282.8 billion last year.

Growing at nearly three times the rate of national brands.

The look of the market leader is the most valuable thing a follower can borrow. Brand Rent is the bill nobody is sending.

Summary

Reality 2: Brand Rent and the Damages Math

They won their cases. They walked away under-paid.

Hermès beat MetaBirkins and recovered about \$133,000. Jack Daniel's won 9 to 0 at the Supreme Court and recovered nothing. In each, the remedy addressed the transaction in front of the court. It did not address what had actually been taken.

A strong brand commands a price above the bare commodity. Call that premium rent. The brand owner is the landlord. The infringer collects the rent and never pays. Private label sales hit \$282.8 billion last year, growing nearly three times the rate of national brands. The look of the market leader has become the most valuable thing the followers can borrow.

Key Takeaway for Counsel:

Reach for the instrument that already prices rent, the reasonable royalty, anchored to comparable licensing deals. Win or lose, the damage owed has a name and a number.

(4) The Case: AI and the Distinctiveness Trap

When AI mimics strategy and style

Everyone's talking about how AI can now make ads. And yes it's fast, cheap, and often clever.

But here's the real issue: making ads isn't where most of the value lies for a creative agency.

The true value is upstream in the research and strategy work that uncovers the insight behind the ad.

That unseen insight is what makes the execution work. And now, AI is getting good at reverse-engineering that too.

When AI mimics strategy and style

Like a codebreaker, it reverse-engineers why something worked then makes a new version based on those same insights

Suddenly, the thinking that gave one agency an edge is available to everyone, flattening competitive advantage.



Strategic and legal response

This is the Reality 3 problem at machine speed. Distinctiveness and trade dress are the hardest assets to protect when examined strand by strand, and the easiest to erode at scale.

It is a brand dilution issue. Your distinct approach to problem-solving is part of your brand equity, and AI now makes it copyable without copying any single protectable element.

Hybrid strategies are needed: confidentiality frameworks, proprietary process documentation, brand-specific tone guidance, and contractual restrictions on AI training and redistribution.

The legal team needs to be in the room when the marketing team writes what the AI does, because the word on the box can move you from platform to publisher.

When AI makes professional service brands indistinguishable

Now, that distinctiveness is under siege from AI. Generative models trained on public and pirated data can mimic both the tone and structure of thought leadership content.

When your insights and frameworks become training data, your firm's intellectual edge becomes everyone's baseline. You become indistinguishable.

When AI makes professional service brands indistinguishable

The Brand Consequences

In professional services, the brand is the thinking. Unlike a product, which can be patented or physically protected, intellectual differentiation is often intangible.

AI can now recreate diagnostic models, presentation formats, and white paper logic with alarming fluency.

Clients are inundated with similar-sounding insights. The uniqueness of your firm's perspective, the foundation of its brand equity, gets flattened into sameness.

When AI makes professional service brands indistinguishable

Strategic Vulnerability

When your thinking becomes generic, so do your margins. The perceived value declines.

The commoditization effect kicks in: clients begin to treat your services like interchangeable vendors rather than trusted advisors.

This is especially dangerous for mid-tier firms that are not big enough to be a global brand but are heavily reliant on intellectual differentiation.

When AI makes professional service brands

What Firms and Counsel Can Do

Treat thought leadership not just as marketing, but as brand IP. Document your frameworks, methodologies, and signature logic.

Use contracts to assert proprietary rights in your thinking, including provisions that limit AI training or redistribution of deliverables.

Educate clients on the source of your value: not the blog post, but the decades of insight that produced it.

Join collective action where possible, support legislation or coalitions pushing back against unfair data scraping practices.

Summary

Reality 5: AI and the Distinctiveness Trap

AI is sanding the edges off distinctiveness, at machine speed.

Two failure modes. First, the codebreaker effect. Generative models reverse-engineer why something worked and recreate the insight without copying any single protectable element. Second, the platform-to-publisher trap. The word “intelligent” on the box moves a company from carrying content to vouching for it, and the brand promise becomes legal exposure.

This is the Reality 3 problem at machine speed. Distinctiveness and trade dress are the hardest assets to protect when examined strand by strand. They are now the easiest to erode at scale. When your thinking becomes generic, so do your margins.

Key Takeaway for Counsel:

Bring brand strategy into the room before damage shows. Use contracts to limit AI training and redistribution. Read marketing copy with one eye on the publisher liability the words create.

Summary and Key Takeaways

Summary

The New Reality: Brand Risk Is Evolving Faster Than Legal Protection

The battlefield for brand equity has shifted.

Today's threats AI mimicry, virality, and digital duplication don't just damage reputation; they erode the *distinctiveness* at the core of trademark protection.

These threats don't come through the front door (traditional infringement); they slip in through viral content, synthetic media, and algorithmic imitation.

Key Takeaway for Counsel:

Trademark lawyers must now think like brand stewards, anticipating threats to perception and distinctiveness, not just legal use.

Summary

The Distinctiveness Dilemma: How AI and Viral Culture Blur Brand Identity

What makes a brand *ownable* is harder to define and defend.

It's no longer just logos, taglines, and names that define a brand but also *voice, style, strategy, and narrative*.

Generative AI can replicate tone and logic. Viral platforms can distort a brand's emotional value in days. Invisible harms like pricing power erosion, lost referrals, or strategy theft may never show up in court but they hollow out a brand's trademark value.

Key Takeaway for Counsel:

Attorneys must work more closely with marketers to understand what elements truly make a brand distinctive—and explore hybrid protections (contracts, confidentiality, surveillance).

Summary

A Call for Collaboration: Why Brand Experts and Legal Teams Need Each Other

Protecting brand equity now requires creative and legal fluency.

As brand value becomes increasingly tied to perception, storytelling, and unique thinking, legal frameworks must evolve or, at the very least, be supplemented.

Trademark counsel are uniquely positioned to become proactive brand defenders, but only if they understand the full spectrum of threats.

Key Takeaway for Counsel:

Invite brand strategy into the room early. Proactively align on how to monitor, measure, and defend trademark distinctiveness before damage is visible or irreversible.

Monday morning

What to do with this on Monday

Ask what was borrowed, not only whether anyone was fooled. The most valuable harm now lives on the far side of confusion.

Treat the brand as a system. Build the record around the whole, not one strand.

Move at the speed of the narrative, not the speed of the docket.

Price the harm as rent. Reach for the reasonable royalty and comparable licensing deals.

Thank you