Brand Spillovers

Eric Goldman
Santa Clara University School of Law
http://www.ericgoldman.org
egoldman@gmail.com

Brand Spillovers

- Retailers “use” third party trademarks to increase their profits
  - Retailers aren’t liable for doing so
- Online intermediaries “use” trademarks to create temporal/“physical” adjacencies
  - Liability picture unclear
- Why the difference?

Economics of Brand Spillovers

- Argument: TM owners create positive externalities for retailers
  - Retailers should be liable for capitalizing on brand spillovers
- Counterargument: No externalities
- Counterargument: retailers reduce consumer search costs
  - Lower transaction costs increase social welfare
  - Retailers are best positioned to reduce search costs
- Online intermediaries also reduce consumer search costs when capitalizing on brand spillovers
  - Therefore, online intermediaries should not be liable for doing so