

No. 24-1016

IN THE
Supreme Court of the United States

RISEANDSHINE CORPORATION, DBA RISE BREWING,
Petitioner,
v.
PEPSICO, INC.,
Respondent.

**On Writ of Certiorari to the
United States Court of Appeals
for the Second Circuit**

**BRIEF OF *AMICUS CURIAE*
THOMAS A. REICHERT
IN SUPPORT OF NEITHER PARTY**

SHEILA J. SIMON
Counsel of Record
SIMMONS LAW SCHOOL
SOUTHERN ILLINOIS UNIVERSITY
1150 Douglas Drive
Carbondale, Illinois 62901
(618) 967-2062
ssimon@siu.edu
Counsel for Amicus Curiae

July 20, 2026

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTEREST OF AMICUS CURIAE.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	5
I. The question presented cannot be answered one factor at a time	5
II. How the confusion test actually operates	10
III. Assessment is fact; composition is law	15
IV. The objections to composition as law fail.	24
V. Either disposition can carry the composition holding	27
CONCLUSION	29
APPENDIX	
Appendix A: The composition rule in schematic form	1a

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Abitron Austria GmbH</i> <i>v. Hetronic International, Inc.</i> , 600 U.S. 412 (2023).....	6
<i>AMF Inc. v. Sleekcraft Boats</i> , 599 F.2d 341 (9th Cir. 1979).....	11
<i>Anderson v. Liberty Lobby, Inc.</i> , 477 U.S. 242 (1986).....	26, 27
<i>B&B Hardware, Inc.</i> <i>v. Hargis Industries, Inc.</i> , 575 U.S. 138 (2015).....	6, 7, 22
<i>Dewberry Group, Inc. v. Dewberry</i> <i>Engineers Inc.</i> , 604 U.S. 321 (2025).....	6
<i>Google LLC v. Oracle America, Inc.</i> , 593 U.S. 1 (2021).....	25
<i>Hana Financial, Inc. v. Hana Bank</i> , 574 U.S. 418 (2015)....	3, 6, 17, 18, 22, 23, 25-27
<i>In re E.I. DuPont DeNemours & Co.</i> , 476 F.2d 1357 (C.C.P.A. 1973)	7, 9, 11
<i>Interpace Corp. v. Lapp, Inc.</i> , 721 F.2d 460 (3d Cir. 1983)	11
<i>Jack Daniel’s Properties, Inc.</i> <i>v. VIP Products LLC</i> , 599 U.S. 140 (2023).....	6
<i>James Burrough Ltd.</i> <i>v. Sign of the Beefeater, Inc.</i> , 540 F.2d 266 (7th Cir. 1976).....	17

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>KP Permanent Make-Up, Inc.</i> <i>v. Lasting Impression I, Inc.</i> , 543 U.S. 111 (2004).....	7
<i>Markman v. Westview Instruments, Inc.</i> , 517 U.S. 370 (1996).....	16, 24, 25
<i>Miller v. Fenton</i> , 474 U.S. 104 (1985).....	15, 23
<i>Ohio v. Robinette</i> , 519 U.S. 33 (1996).....	9
<i>Ornelas v. United States</i> , 517 U.S. 690 (1996).....	3, 19, 22
<i>Patsy’s Brand, Inc. v. I.O.B. Realty, Inc.</i> , 317 F.3d 209 (2d Cir. 2003), <i>abrogated</i> <i>on other grounds by 4 Pillar Dynasty</i> <i>LLC v. New York & Co.</i> , 933 F.3d 202 (2d Cir. 2019)	8
<i>Polaroid Corp.</i> <i>v. Polarad Electronics Corp.</i> , 287 F.2d 492 (2d Cir. 1961)	7-9, 11, 22
<i>Pullman-Standard v. Swint</i> , 456 U.S. 273 (1982).....	16, 23, 26
<i>RiseandShine Corp. v. PepsiCo, Inc.</i> , 41 F.4th 112 (2d Cir. 2022).....	8, 12, 18, 19, 22
<i>Romag Fasteners, Inc.</i> <i>v. Fossil Group, Inc.</i> , 590 U.S. 212 (2020).....	6

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Two Pesos, Inc. v. Taco Cabana, Inc.</i> , 505 U.S. 763 (1992).....	6
<i>U.S. Bank N.A.</i> <i>v. Village at Lakeridge, LLC</i> , 583 U.S. 387 (2018)..	3, 15-17, 19, 21, 23, 26, 27
<i>United States Patent & Trademark Office</i> <i>v. Booking.com B.V.</i> , 591 U.S. 549 (2020).....	6
<i>Vidal v. Elster</i> , 602 U.S. 286 (2024).....	6
<i>Wal-Mart Stores, Inc.</i> <i>v. Samara Brothers, Inc.</i> , 529 U.S. 205 (2000).....	6
 Constitution	
U.S. Const. amend. VII	24, 25
 Statutes	
15 U.S.C. § 1052(d)	8
15 U.S.C. § 1114	7
15 U.S.C. § 1114(1).....	8
15 U.S.C. § 1125(a)(1)(A).....	8
 Rules	
Fed. R. Civ. P. 52(a).....	16
Fed. R. Civ. P. 56	26
Sup. Ct. R. 14.1(a)	9
Sup. Ct. R. 37.6.....	1

TABLE OF AUTHORITIES—Continued

Other Authorities	Page(s)
Admin. Off. of the U.S. Cts., <i>Judicial Business of the United States Courts</i> (2025).....	13
Barton Beebe, <i>An Empirical Study of the Multifactor Tests for Trademark Infringement</i> , 94 Calif. L. Rev. 1581 (2006).....	8, 14-15
Kevin Blum et al., <i>Consistency of Confusion? A Fifteen-Year Revisiting of Barton Beebe’s Empirical Analysis of Multifactor Tests for Trademark Infringement</i> , 2010 Stan. Tech. L. Rev. 3	15
Richard A. Dilgren III, Note, <i>As a Matter of Fact, It’s a Question of Law: A Case for De Novo Review of Likelihood of Confusion in Trademark Cases</i> , 28 Hastings Comm. & Ent. L.J. 109 (2005)	23
Patricia J. Kaeding, Comment, <i>Clearly Erroneous Review of Mixed Questions of Law and Fact: The Likelihood of Confusion Determination in Trademark Law</i> , 59 U. Chi. L. Rev. 1291 (1992)	23, 26

TABLE OF AUTHORITIES—Continued

	Page(s)
Daryl Lim, <i>Trademark Confusion Revealed: An Empirical Analysis</i> , 71 Am. U. L. Rev. 1285 (2022).....	15
1 J. Thomas McCarthy, <i>McCarthy on Trademarks and Unfair Competition</i> (5th ed. 2026)	17
Thomas A. Reichert, <i>The Anatomy of Confusion</i> (2026), https://ssrn.com/abstract=7043741	1, 10
Thomas A. Reichert, <i>Decoding DuPont</i> , J. Empirical Legal Stud. (forthcoming 2027)	1
Thomas A. Reichert, <i>Doctrine, Data, and the Death of DuPont</i> , 36 Fordham Intell. Prop. Media & Ent. L.J. 678 (2026)	1, 10
Thomas A. Reichert, <i>Factors and Fictions</i> (2026), https://ssrn.com/abstract=6329638	1, 10
Thomas A. Reichert, <i>The Missing Jury</i> (2026), https://ssrn.com/abstract=7045278	2, 10
Thomas A. Reichert, <i>On Confusion</i> (2026), https://ssrn.com/abstract=7045119	1, 21

INTEREST OF AMICUS CURIAE

Amicus curiae Thomas A. Reichert is an Assistant Professor of Law at Simmons Law School, Southern Illinois University Carbondale.¹ His research program is the empirical study of likelihood-of-confusion adjudication: how courts and the Trademark Trial and Appeal Board actually decide the multifactor question this case presents, measured across the full written record. The program's premise is that a doctrine administered hundreds of times a year leaves a record, and that the record, coded systematically, can answer questions about the doctrine's operation. He is the author of the two largest studies yet assembled on that question: an analysis of 4,003 inter partes decisions of the Board, *Doctrine, Data, and the Death of DuPont*, 36 Fordham Intell. Prop. Media & Ent. L.J. 678 (2026), and its federal extension, *Factors and Fictions* (2026), <https://ssrn.com/abstract=6329638>, which codes 10,977 federal likelihood-of-confusion opinions spanning 1970 through 2025, factor by factor and outcome by outcome. His companion work presents the Board corpus analysis in peer-reviewed form, *Decoding DuPont*, J. Empirical Legal Stud. (forthcoming 2027); dissects the statistical mechanisms inside those corpora, *The Anatomy of Confusion* (2026), <https://ssrn.com/abstract=7043741>; translates the findings into black-letter doctrine, *On Confusion* (2026), <https://ssrn.com/abstract=7045119>; and measures this case's specific allocation question against the full

¹ Pursuant to Rule 37.6, amicus states that no counsel for any party authored this brief in whole or in part, and no person other than amicus and his counsel made a monetary contribution intended to fund the preparation or submission of this brief. Amicus curiae authored this brief in its entirety.

federal record, *The Missing Jury* (2026), <https://ssrn.com/abstract=7045278>.

Amicus takes no position on which party should prevail, and this brief serves no client. Both merits teams can use the data. The Court is about to regulate the internal machinery of the likelihood-of-confusion test for the first time; the record of how that machinery runs, five decades of adjudication, independently replicated across twenty years of study, should be before the Court for that decision.

SUMMARY OF ARGUMENT

The parties will argue about who grades a mark's strength. Twelve circuits treat strength as a question of fact, ordinarily for a jury; the Second Circuit lets the court resolve it as law. Pet. 10. Both positions rest on an assumption neither side examines: that each confusion factor is a separate question with its own decider, and that the answers then enter a weighing no formulation of the test has ever specified. The case turns on that assumption. If each factor really is a separate question, each requires its own allocation, the split is real, and the Court must pick a side. If the factors are instead evidence on the single factual question of likelihood of confusion, combined by courts that never say how the combination works, then the split is a pair of half-truths about a structure the parties never reach.

Twenty years of empirical study support the second description. The two largest corpora ever assembled on the question contain 14,980 adjudications; among comparisons analyzing both factors, mark similarity and competitive proximity predict the confusion outcome with accuracy exceeding 93 percent. The remaining factors operate as narrow, structured

overrides: they flip the two-factor prediction in fewer than 7 percent of comparisons. Strength, the factor this case would allocate, moves with the verdict more than it moves the verdict. And the jury the parties are fighting over barely appears in these cases. It decides about two percent of them: judges made 97.96 percent of merits confusion determinations in the federal corpus, and the entire federal system terminated twenty-seven trademark cases during or after jury trial in fiscal 2025. The allocation fight, as framed, assigns custody of a factor that does little, to a decider who is almost never there, under a weighing whose structure no court has ever stated.

This Court has already said how to allocate a mixed question: “the standard of review for a mixed question all depends—on whether answering it entails primarily legal or factual work.” *U.S. Bank N.A. v. Village at Lakeridge, LLC*, 583 U.S. 387, 396 (2018). Apply that inquiry to how the confusion test actually works, and it draws a line both parties miss. *Assessing* a factor is factual work: how strong the mark is, how similar the marks are, how related the goods are. Those are consumer-perception questions, the territory this Court mapped in *Hana Financial, Inc. v. Hana Bank*, 574 U.S. 418, 422 (2015). *Composing* factor findings into an outcome is legal work: what a weak grade may do against high similarity and overlapping markets, whether commercial strength can substitute for inherent strength, what happens when the factors divide. Those are standard-content questions, the territory this Court mapped in *Ornelas v. United States*, 517 U.S. 690, 697 (1996).

The assessment-composition line answers the question presented without choosing between the

parties. The twelve circuits are right that grading is factfinding. The Second Circuit is right that something in the strength inquiry is legal. Both mislabel the legal work. The legal work is composition: the rule that connects graded factors to a judgment, the rule courts have applied for five decades without stating it. The decisions themselves supply the rule's content, and the rule is short enough to state in full in this Summary. Similarity and proximity operate as predicate factors; a finding that both favor confusion raises a rebuttable presumption, a stated default that shifts no burden of proof. For ease of reference, this brief and the underlying studies name that mechanism the two-factor gate. The secondary factors then operate as structured overrides that can rebut the presumption; the studies call them defeaters. Appendix A sets out the rule in schematic form.

The Court has two available holdings. The narrow one, drawing the assessment-composition line, decides this case. The full one, adopting the rule proposed here, repairs the doctrine. Even the narrow holding resolves this case's split, the older standard-of-review debate beneath it, and the summary-judgment incoherence beneath both. The full holding meets a need the narrow one cannot: a national registration system should carry a national confusion standard. And adoption supplies one.

Either holding takes nothing from juries, and neither changes how courts already decide these cases. Amicus asks that the Court adopt the rule proposed here or, at the least, resolve the allocation question at the composition level.

ARGUMENT

I. The question presented cannot be answered one factor at a time

Invited to express its views at the certiorari stage, the United States told the Court that the Second Circuit had mischaracterized the strength inquiry, and urged denial anyway: examining one sub-factor in isolation “would not meaningfully clarify the proper analytic approach in trademark-infringement cases.” U.S. Br. 21. The Court granted certiorari. The government’s diagnosis was correct.

The government’s harmlessness theory depended on the same missing combination rule. Strength, it explained, sits inside the overall likelihood-of-confusion inquiry: “the inherent-strength inquiry is simply one component of the overall strength-of-the-mark assessment, which itself is one factor to be weighed along with other criteria in a multi-factor, likelihood-of-confusion analysis.” A mistake about one factor’s label was therefore “unlikely to affect the resolution” of the ultimate question. U.S. Br. 12. The argument’s engine is the phrase “to be weighed along with other criteria”: it treats the weighing as a black box that absorbs and neutralizes errors about any single input. If the weighing were specified, the argument would fail on its own terms: a stated combination rule would tell everyone exactly when a strength error changes outcomes. The vehicle objection and the no-clarification sentence rest on the same defect: no formulation of the test says what any labeled factor may do. The weighing is unspecified, so a wrong grade has no known cost and a right label has no known benefit. The cure for factor-local incoherence is composition-level guidance, and the grant has made the need for it unavoidable.

The grant is a first. Likelihood of confusion is the “keystone” of infringement litigation, *Jack Daniel’s Properties, Inc. v. VIP Products LLC*, 599 U.S. 140, 147 (2023), the most litigated question in trademark law and among the most litigated in all of intellectual property. Yet the Court’s modern trademark docket has circled the test without regulating its internal machinery: protectability of trade dress, *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763 (1992); product-design distinctiveness, *Wal-Mart Stores, Inc. v. Samara Brothers, Inc.*, 529 U.S. 205 (2000); tacking, *Hana Financial*, 574 U.S. 418; preclusion, *B&B Hardware, Inc. v. Hargis Industries, Inc.*, 575 U.S. 138 (2015); profits, *Romag Fasteners, Inc. v. Fossil Group, Inc.*, 590 U.S. 212 (2020); genericness and registration, *United States Patent & Trademark Office v. Booking.com B.V.*, 591 U.S. 549 (2020); extraterritoriality, *Abitron Austria GmbH v. Hetronic International, Inc.*, 600 U.S. 412 (2023); the Rogers test, *Jack Daniel’s*, 599 U.S. 140; the names clause, *Vidal v. Elster*, 602 U.S. 286 (2024); and the scope of “defendant’s profits,” *Dewberry Group, Inc. v. Dewberry Engineers Inc.*, 604 U.S. 321 (2025). Every prior case asked whether something could be a mark, who owned a procedural consequence of the test’s output, or what a winner collects. This case asks how the confusion test itself is to be operated, factor by factor, and by whom. A ruling on that question will govern a body of litigation that reaches beyond the strength factor and this record.

The three closest approaches mark the edge of what this Court has decided. *Hana Financial* held that tacking, a question turning on an ordinary consumer’s understanding of two marks’ commercial impression, goes to the jury. 574 U.S. at 422. It allocated an assessment, and its method is instruct-

ive for Part III: the Court asked what work the determination required, found consumer-perception work, and assigned it accordingly. It said nothing about how any factor combines with any other, because tacking presents no combination problem. *B&B Hardware* construed the preclusive reach of a Board confusion finding, compared the two tribunals' factor lists along the way, and found the tests materially the same, 575 U.S. at 154; it took each tribunal's output as given and asked only what the output was worth elsewhere. *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 124 (2004), construed the fair-use defense's relationship to the test's output, held that a defendant need not negate confusion, and regulated the test's perimeter. Each case construes what goes into the test's jurisdiction or what comes out of its verdict. None grades a factor or specifies what a grade does. The machinery inside the test has never been before this Court, and the circuits, left alone with it for more than six decades, have never opened the box either.

Meanwhile the split the petition presents is one thing on paper and another in operation. "Twelve circuits agree that, in determining the likelihood of confusion under 15 U.S.C. § 1114, the conceptual strength of a plaintiff's trademark should be determined as a question of fact—typically by a jury. Only the Second Circuit holds that the issue is a legal question for a judge." Pet. 10; *see id.* at 11–12 (collecting the twelve circuits' decisions). But the thirteen formulations those circuits administer, running from the Second Circuit's eight *Polaroid* factors to the Federal Circuit's thirteen *DuPont* factors, share a common silence: none states an operational rule of combination. None says whether a factor is necessary, whether any is sufficient, what

happens when they divide, or what any single grading may contribute to the conclusion. See Barton Beebe, *An Empirical Study of the Multifactor Tests for Trademark Infringement*, 94 Calif. L. Rev. 1581, 1582–84 (2006). Every circuit tells its factfinders to weigh or balance the factors, and no circuit’s formulation says what any factor is worth against another. The panel below, pressed against that silence, located only this: “[T]here is a considerable component of law in the determination whether a mark has the degree of strength necessary to weigh in favor of the party claiming infringement.” *RiseandShine Corp. v. PepsiCo, Inc.*, 41 F.4th 112, 121 (2d Cir. 2022) (quoting *Patsy’s Brand, Inc. v. I.O.B. Realty, Inc.*, 317 F.3d 209, 216 (2d Cir. 2003), *abrogated on other grounds by 4 Pillar Dynasty LLC v. New York & Co.*, 933 F.3d 202 (2d Cir. 2019)). Read closely, the degree-of-strength phrase gives the game away: it describes a property of the combination rather than of the mark. The claim here is reverse confusion, and the panel encountered the silence again: it was “aware of no court decisions” on whether acquired strength favors or disfavors such a claim. *RiseandShine*, 41 F.4th at 124. The parties are arguing over one input to a combination no court has ever described. Assign the input either way, and the combination stays undescribed.

The statute confirms the diagnosis. Section 1114(1) asks one question: whether the accused use is “likely to cause confusion,” 15 U.S.C. § 1114(1). The unregistered-mark provision asks it in the same words, § 1125(a)(1)(A), and the registration bar asks it in nearly the same words, § 1052(d); Congress used the phrase throughout the Act and enacted no factors anywhere. The lists are twentieth-century judicial glosses, the Second Circuit’s dating to *Polaroid*

Corp. v. Polarad Electronics Corp., 287 F.2d 492 (2d Cir. 1961), the Federal Circuit's to *In re E.I. DuPont DeNemours & Co.*, 476 F.2d 1357 (C.C.P.A. 1973), and the rest to their generation. There is, accordingly, no statutory basis for treating each factor as a freestanding question with its own decider; the factors are evidentiary aids the courts built for themselves, and how the aids combine is a question about the management of judge-made doctrine. Courts made the lists, and stating the rule the lists follow is equally theirs. A stated composition rule returns the doctrine to the statute's terms: one factual question, with the factors positioned as organized evidence bearing on it.

Amicus asks the Court to stay within the question presented. The composition question is “fairly included” in the question presented, Sup. Ct. R. 14.1(a), because composition is antecedent to allocation: whether strength is a question of fact in a likelihood-of-confusion analysis cannot be answered without saying what the analysis is, any more than a court could allocate an element without knowing the offense. *See Ohio v. Robinette*, 519 U.S. 33, 38 (1996) (a question that is a “predicate to an intelligent resolution” of the question presented is “fairly included therein”). Respondent's supplemental brief recognizes as much: it reads the decision below as treating “ultimate likelihood of confusion as a question of law,” an allocation it notes petitioner “unsuccessfully challenged below but did not raise in its petition.” Supp. Br. of Resp. 2 (June 8, 2026); *see* U.S. Br. 20–21. The parties will brief whether strength is fact or law, the smaller of the two questions here. What a strength finding is allowed to do to the outcome is the question on which this case, and the thousands of cases the ruling will govern, actually turns.

II. How the confusion test actually operates

The evidence base is the largest assembled on the question: 4,003 inter partes decisions of the Trademark Trial and Appeal Board, and 10,977 federal court likelihood-of-confusion opinions spanning 1970 through 2025, each coded factor by factor and outcome by outcome.² Coverage runs across every circuit, every posture from preliminary injunction through appeal, and every era of the modern test; the Board corpus supplies a second, independent tribunal deciding the same statutory question under materially the same test. The structure was identified in the Board corpus first and replicated, unchanged, in the federal courts; nothing in the two-factor rule was tuned to the judges whose behavior it now describes. The figures are counts over the studies' full eligible record rather than estimates from a sample or outputs of a statistical model.

The test runs on two factors. Mark similarity and competitive proximity predict the bottom-line confusion finding with accuracy exceeding 93 percent, in both tribunals, across five decades. A reader who knows only those two gradings can call the outcome of a likelihood-of-confusion dispute more than nine

² The corpora, coding design, and validation protocols are set out in Reichert, *Factors and Fictions*, *supra* (federal corpus), and Reichert, *Death of DuPont*, *supra*, at 705–33 (Board corpus). The mechanism-level analyses summarized in Part II, including the verdict-tracking behavior of the strength factor, appear in Reichert, *Anatomy of Confusion*, *supra*, and the allocation-specific counts appear in Reichert, *Missing Jury*, *supra*. The coding extracts each factor's directional finding separately from the bottom-line outcome, anchors findings to quoted opinion text, and was validated against 1,002 human-reviewed codings at 97.11 percent strict directional agreement; docket-level data confirm the allocation counts from outside the written opinions.

times in ten; a reader who also knows the strength grading, the intent finding, the actual-confusion evidence, and the rest of the list improves on that call only at the margin. Across every cut of the data, the relationship holds. It holds at the Board and in the district courts; it holds in the 1970s and in the 2020s; it holds in preliminary-injunction postures and at trial; it holds circuit by circuit, under the Second Circuit's *Polaroid* factors; the Ninth's *Sleekcraft* factors, *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 348–49 (9th Cir. 1979); the Third's *Lapp* factors, *Interpace Corp. v. Lapp, Inc.*, 721 F.2d 460, 463 (3d Cir. 1983); and the Federal Circuit's *DuPont* factors, lists that share no common length, ordering, or phrasing. When doctrinal formulations are that different and outcome structures that uniform, the rule lies outside the formulations themselves. And whether the gradings drive the dispositions or narrate them, the structure they follow is the same two-factor rule, and it holds in both tribunals, including the Board's clinical opinion format, where narrative harmonization measurably weakens.

Secondary factors, strength among them, function as structured exceptions: narrow, asymmetric overrides that flip the two-factor prediction in fewer than 7 percent of comparisons. Asymmetry is as informative as the rate. Overrides operate far more often to defeat a confusion finding the core factors would support than to create one they would not: a crowded field or a weak designation can rescue a defendant from similar marks on related goods, but a famous mark almost never carries a case that fails on similarity and proximity. Fame is the exception's exception, the one secondary pathway that substitutes toward liability with any regularity, and even fame operates within visible bounds. Circuit lists describe

an open-ended balance in which any factor might, in principle, decide any case. Actual decisions describe a two-factor engine with a bounded set of overrides, running under thirteen different circuit names.

Strength moves with the verdict more than it moves the verdict. Strength is the factor this case would allocate, so its observed behavior matters. Across 3,383 strength-graded comparisons in the federal corpus, confusion-found rates climb steeply with graded strength, from nearly vanishing at the most negative gradings to approaching certainty at the most favorable. Read as a dial, that curve is what petitioner wants the Court to see: if strength gradings drove outcomes, allocating the grader would matter enormously. The herding evidence reads the same curve the other way. Factor findings herd: opinions report gradings that align with the bottom line at rates far exceeding what independent assessment of ten separate questions could produce, and strength herds with the rest, so the grade may be recorded after the fact, matched to a conclusion the predicate factors had already selected. What the corpus can measure is strength’s independent contribution once the predicate factors are known, and that contribution is real but marginal: the largest any secondary factor adds to the core, and still small beside what similarity and proximity supply by themselves. The panel below graded RISE “inherently weak” on its way to vacating a preliminary injunction the district court had rested particularly on similarity, proximity, and actual-confusion testimony. *RiseandShine*, 41 F.4th at 121–24; Pet. App. 91a. Whether that grade drove the reversal or narrated it, nothing in the current doctrine permits anyone to say, because an unstated combination cannot distinguish inputs from explanations.

Juries almost never decide these cases. The petition frames the split as a dispute about juries: in twelve circuits, strength “should be determined as a question of fact—typically by a jury.” Pet. 10. One outlier circuit reserves the question for judges. Adjudication records show how seldom that premise applies. Judges made 97.96 percent of merits likelihood-of-confusion determinations in the federal corpus; juries made 2.04 percent. Only 69 of 3,383 strength gradings reached a jury. Written opinions might understate jury activity, since jury verdicts generate fewer published opinions than bench rulings and summary judgments; docket-level data answer the concern from outside the opinions. The Administrative Office reports twenty-seven trademark cases terminated during or after jury trial in the entire federal system in fiscal year 2025, against the thousands of trademark cases the system terminates each year. Admin. Off. of the U.S. Cts., *Judicial Business of the United States Courts* tbl. C-4 (2025), <https://www.uscourts.gov/data-news/data-tables/2025/06/30/statistical-tables-federal-judiciary/c-4>. Two independent measurement routes, one from what courts wrote and one from what clerks docketed, converge on the same conclusion. This case is itself the illustration: a preliminary-injunction ruling, an appellate reversal, summary judgment on remand, and a summary affirmance, four merits determinations of likelihood of confusion across five years of litigation, with no jury at any stage and none in prospect. Whatever the Court allocates in this case, it allocates, in practice, to summary judgment: the arena where a district judge decides whether a reasonable jury could find confusion, almost always without any jury ever appearing. Read literally, the question presented is a

jury-rights question; in operation, it is a summary-judgment question.

The one circuit that grades strength as law decides cases like the other twelve. The split itself supplies the comparison, and amicus measured it. The Second Circuit has administered its outlier rule for years; if grading strength as law did substantive work, its outcomes should show a strength-specific signature. The corpus contains none. The Second Circuit does decide confusion more harshly than the field, but the harshness runs across its entire slate: ranked by divergence from the other circuits, strength comes sixth of eight shared factors, behind intent, goods similarity, mark similarity, and actual confusion, factors every circuit grades as fact. And the two-factor engine predicts Second Circuit results with the same accuracy it achieves everywhere else. As litigation data go, the comparison puts the question presented to as direct a test as the record allows: one jurisdiction adopted the rule petitioner fears, and the factor it reclassified behaves less distinctively there than the factors it left alone. At the level of appellate vocabulary and standard of review, the divergence the split describes is real; at the level of the factor's observed behavior, the strength-as-law rule leaves no trace. A ruling that does no more than choose between fact and law can expect the same fate, which is the empirical restatement of the government's vehicle objection: the allocation choice, made one factor at a time, is a choice with no observable consequences. What has observable consequences is composition.

Current figures are the newest and highest-resolution entries in a twenty-year replication arc. Beebe coded 331 opinions in 2006 and found the multifactor

test collapsing toward a core, with similarity dominant, several factors doing little independent work, and judges tending to “stampede” the remaining factors toward the announced outcome. Beebe, *supra*, at 1581–82. Blum and coauthors extended the design to a second period in 2010 and confirmed the structure. Kevin Blum et al., *Consistency of Confusion? A Fifteen-Year Revisiting of Barton Beebe’s Empirical Analysis of Multifactor Tests for Trademark Infringement*, 2010 Stan. Tech. L. Rev. 3. Daryl Lim replicated and refined the design in 2022 in a contemporary 188-case study, again finding a small set of factors doing the work, *Trademark Confusion Revealed: An Empirical Analysis*, 71 Am. U. L. Rev. 1285 (2022). Together, the corpora described above carry the same basic design to the full federal record and to the Board, with samples more than an order of magnitude larger than any predecessor’s. The Court rarely gets to allocate a doctrine with the doctrine’s behavior already measured. Here it can: four separate efforts, different coders and different decades, agree on what the strength factor does.

III. Assessment is fact; composition is law

This Court has already answered how to allocate mixed questions, and the government has invoked that answer here: “the standard of review for a mixed question all depends—on whether answering it entails primarily legal or factual work.” *Lakeridge*, 583 U.S. at 396; *see* U.S. Br. 14–15. The inquiry did not begin with *Lakeridge*. Where an issue “falls somewhere between a pristine legal standard and a simple historical fact,” allocation turns on which “judicial actor is better positioned than another to decide the issue in question.” *Miller v. Fenton*, 474 U.S. 104, 114 (1985). The same functional inquiry sent patent claim

construction to judges, who are “better suited to find the acquired meaning of patent terms,” *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 388 (1996), and it operates against a background rule that resists labels for their own sake: Rule 52(a) “does not divide facts into categories” and gives “ultimate” facts no special status. *Pullman-Standard v. Swint*, 456 U.S. 273, 287 (1982). The allocation cases speak sometimes in standard-of-review terms and sometimes in jury terms; all of them answer one functional question, who states the governing standard and who applies it to marketplace facts, and that question reads the same at trial, at summary judgment, and on appeal. The line amicus proposes is not new; only its application to the factor structure is.

A threshold objection rests on *Lakeridge* itself. *Lakeridge* held that a bankruptcy court’s multifactor, totality-based determination received clear-error review, because applying a settled standard to case-specific facts is primarily factual work. 583 U.S. at 396–99. If the likelihood-of-confusion balance similarly applies a settled standard, the argument runs, the whole determination belongs on the deferential, factual side, and the twelve circuits win outright. The argument overlooks what *Lakeridge* took as given. The Court there reviewed the application of an *assumed* standard, and said so expressly: it did “not address the correctness” of the Ninth Circuit’s legal test and instead took that test “as a given.” *Id.* at 393–94. Deference attached to standard-application precisely because standard-content was settled and unchallenged. The confusion test presents the opposite situation. The operational content of the combining standard has never been stated by any court, so there is no settled standard whose application could earn *Lakeridge* deference; and specifying that content

is the work *Lakeridge* assigns to the de novo side, “amplifying or elaborating on a broad legal standard” and “developing auxiliary legal principles of use in other cases.” *Id.* at 396. Once the composition rule is stated, its application to graded facts can take all the deference *Lakeridge* prescribes. That deference would attach to applying an existing standard, whose content remains reviewable de novo; today’s regime defers to a judgment no stated standard governs. Stating the rule comes first, and stating it is law.

The confusion test separates along a seam outside both parties’ positions.

Assessment is factual work. Grading a mark’s strength means determining, as Chief Judge Markey put it, the “effect of such marks upon the mind of the consuming public.” *James Burrough Ltd. v. Sign of the Beefeater, Inc.*, 540 F.2d 266, 276 (7th Cir. 1976); accord 1 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 11:73 (5th ed. 2026). It is the same consumer-perception inquiry this Court described in *Hana Financial*: “Application of a test that relies upon an ordinary consumer’s understanding of the impression that a mark conveys falls comfortably within the ken of a jury.” 574 U.S. at 422. What holds for tacking holds for grading strength, similarity, and proximity: each asks how a market perceives something, each is answered by evidence, survey, and marketplace context, and each is a mixed question that can “immerse courts in case-specific factual issues” under *Lakeridge*, 583 U.S. at 396. The United States reached the same conclusion at the certiorari stage: the strength inquiry is a mixed question “in which the factual component predominates.” U.S. Br. 12. On the factual nature of grading, the twelve circuits are right, and amicus’s

data give their position a record-based foundation. The grading work courts actually perform is saturated with record-specific marketplace judgment: how crowded the field is, what third-party uses exist, what the buying conditions are. None of it is “purely legal.” See U.S. Br. 12. Handing gradings to appellate benches replaces questions of proof with questions of phrasing.

The conceptual-strength inquiry at issue here separates the same way. The definitions of the categories, what makes a term descriptive, suggestive, arbitrary, or fanciful, are law, stated by courts the way any standard is stated. Placing RISE within them is application: a record-specific judgment about how consumers meet the term in context, the factual component the United States identified as predominant. U.S. Br. 12. And the consequence of the placement, what an inherently weak grade may do against high similarity and overlapping markets, is composition: the question the panel actually decided when it vacated the injunction. *RiseandShine*, 41 F.4th at 121–24.

Hana Financial itself named the other half. Having sent the perception question to the jury, the Court added that the trial court should “craft careful jury instructions that make that standard clear.” 574 U.S. at 424. The sentence allocates in both directions: the assessment to the factfinder, the statement of the governing standard to the court. Tacking needed only a one-question instruction, so the second half of the allocation drew no attention. The confusion test needs a combination rule, and *Hana*’s second allocation already assigns that rule to the court.

Composition is legal work. The other half of the inquiry, what a given grade may do, has none of

those properties. Whether inherent weakness can defeat a confusion showing built on high similarity and identical goods; whether commercial strength can substitute for inherent strength; whether a strength grade can ever carry a case that fails on the core factors: these questions are identical in every case, benefit from appellate specification, and cannot be resolved by any quantum of evidence in any single record. No survey, no expert, no consumer witness can testify to what weakness *may do*; a witness can only address what the mark *is*. Under *Lakeridge*, answering the may-do questions is legal work: it elaborates the governing standard and supplies principles for later cases. 583 U.S. at 396; see *Ornelas*, 517 U.S. at 697 (legal rules “acquire content only through application,” and independent review lets appellate courts “maintain control of, and to clarify, the legal principles”). Composition is to the confusion test what instruction-drafting is to any jury question: the statement of the rule the factfinder applies, and it has always belonged to courts.

At the preliminary-injunction stage, RISE was graded inherently weak; the district court treated the marks as similar; the goods occupied sufficiently similar areas of commerce. *RiseandShine*, 41 F.4th at 118–25; Pet. App. 91a. On those gradings, what follows? Under the twelve-circuit formulation, weakness merely weighs against confusion in an unspecified balance; the same three gradings could support judgment for either side. Both regimes leave unstated the rule connecting the gradings to the judgment. This record presents a legal composition question: whether inherent weakness may defeat a showing of high similarity where the goods occupy sufficiently similar areas of commerce. The litigation turned on that composition question.

The empirical evidence identifies what the doctrine has lacked: the composition rule courts already follow without stating it. Part II's findings reduce to a structure. Similarity and proximity, the predicate factors, operate as a gate: where both are found, confusion follows in the run of cases, and where either fails, confusion almost never survives. Satisfied together, the core factors generate what functions in the decisions as a rebuttable presumption of confusion. The secondary factors then operate as structured overrides, each with an observable domain: mark weakness and crowded fields defeat the presumption where the shared elements are ones consumers meet everywhere; sophisticated-purchaser findings defeat it where deliberation is documented; and fame runs the other direction, the principal substitute pathway by which a plaintiff who cannot fully satisfy the gate may still reach the presumption. Stated as a rule, in one sentence: where the factfinder finds the marks similar and the goods or services proximate, a rebuttable presumption of confusion arises, and the presumption is ordinarily rebutted when the secondary factors the record addresses, strength, trade channels, actual confusion, intent, and consumer care, on balance disfavor confusion; a famous mark may reach the presumption without full proximity. The presumption shifts no burden of proof and is no evidentiary presumption in the technical sense; it is the stated default, and it identifies the party with the practical incentive to displace it. The override analysis gives operational content to the collective judgment the circuits now call weighing: factors found to disfavor confusion count against the presumption, factors found to favor it count in support, and factors the record does not address count for neither side. That counting rule is

the black letter of *On Confusion*, and it is the calibrated specification under which the structure's accuracy was measured: across the 3,461 federal comparisons whose opinions analyzed both predicate factors, the gate, the fame substitute, and the override count together classify 96.50 percent of outcomes correctly, against 93.50 percent for the gate alone. *Hana's* second allocation covers refinement too: the court that states the combining instruction can sharpen it as decided cases teach. The rule covers reverse confusion through established adjustments: strength compares the senior mark's conceptual strength against the junior mark's commercial strength, and the senior mark's commercial weakness favors confusion; intent asks culpable disregard of the risk; and a conspicuous junior house mark may aggravate confusion. See Reichert, *On Confusion*, *supra*, § 10.

A full black-letter restatement of the composition structure, with comments and case-derived illustrations, appears in *On Confusion*; Appendix A presents its schematic form. The structure restates observed practice, so a court may adopt the composition structure without overruling any precedent; the black letter describes what the 14,980 decisions already do, and the parts that go beyond current practice are labeled as extensions. The structure is, in that sense, the circuits' own jurisprudence, stated; what adoption adds is authority. It draws the fact/law line at exactly the joint the *Lakeridge* inquiry identifies: every box a factfinder fills, how similar, how proximate, how strong, how sophisticated, is assessment; every arrow between boxes, what a filled box may do to the outcome, is composition. And adoption carries a housekeeping dividend no narrower holding can: it ends the thirteen-

formulation split at the root, sets one national composition rule over the circuits' evidentiary lists, and reaches the Trademark Trial and Appeal Board as well, because this Court has already held that the Board and the district courts apply the same likelihood-of-confusion standard. *B&B Hardware*, 575 U.S. at 154. Registration is federal and unitary: a mark registers once, on a single national register, and the rights that follow are nationwide. The scope of those rights, though, currently depends on where the infringement suit lands, because the question that fixes their scope is administered under thirteen regional formulations. A nationwide right calls for a test that reads the same in every courtroom that enforces it, and adoption supplies that test. *See Ornelas*, 517 U.S. at 697 (varied results turning on which judge draws the conclusion "would be inconsistent with the idea of a unitary system of law"). Sixty-five years after *Polaroid*, the Court can state the rule once, for every tribunal that administers the Act. The Court should adopt the composition rule. And the rule favors neither side of the trademark bar: the gate presumption runs toward mark holders, the overrides toward accused users, and the Second Circuit comparison in Part II shows the rule's content does not systematically favor either side; the change is reviewability.

The distinction also explains this case's split as two half-truths. The twelve circuits correctly treat grading as factfinding, and mistakenly extend the label to everything the factor touches. The Second Circuit correctly senses a considerable component of law, *RiseandShine*, 41 F.4th at 121, and polices that legal component with the wrong tool: relabeling the whole factor converts marketplace questions into appellate ones, which is *Hana Financial's* territory done back-

ward. The legal component is composition; relabeling assessments cannot supply a composition rule.

Prior scholarship glimpsed pieces of this line without the mechanism. One commentator argued two decades ago that the ultimate confusion conclusion should be reviewed de novo as law while factor findings stay factual. Richard A. Dilgren III, Note, *As a Matter of Fact, It's a Question of Law: A Case for De Novo Review of Likelihood of Confusion in Trademark Cases*, 28 Hastings Comm. & Ent. L.J. 109 (2005). The law label anticipated a piece of the line, but the proposal addressed appellate deference only, never reached the jury-allocation and summary-judgment questions this case presents, offered no account of *what makes* the ultimate conclusion legal, and predates both *Lakeridge* and *Hana Financial*, the decisions that supply the account. Another commentator argued the opposite, that the whole determination receive clear-error review as a fact-dominated mixed question. Patricia J. Kaeding, Comment, *Clearly Erroneous Review of Mixed Questions of Law and Fact: The Likelihood of Confusion Determination in Trademark Law*, 59 U. Chi. L. Rev. 1291 (1992). Each position captured what was true of one half of the determination and extended it to the whole, and the debate was unresolvable while both sides treated the determination as one thing. The determination has two parts. The composition line dissolves the old debate and the circuit split together: the graded inputs get the deference *Pullman-Standard* commands for facts; the combination rule gets the de novo treatment *Lakeridge* prescribes for standard-elaborating work; and the allocation follows the work, as *Miller* requires. What neither commentator had, and what the intervening twenty years of empirical study

supply, is the demonstration that assessment and composition really do come apart in practice: courts grade case by case, and combine by a rule that is stable across thousands of cases and never stated in any of them.

IV. The objections to composition as law fail

Adopting composition as law invites several objections, four of which deserve discussion: that it offends the Seventh Amendment, that it extends *Markman*, that weighing is inherently factual, and that the line is unadministrable. None survives, and two run backward: the constitutional and administrability concerns both indict the current regime, and the current regime is the alternative.

The Seventh Amendment. Adopting the rule proposed here preserves every jury function that instructions already leave to juries. The ultimate likelihood-of-confusion question remains factual and remains jury-triable whenever material assessment disputes exist; a plaintiff with a genuine dispute over similarity, proximity, or strength gets the jury the twelve circuits promise, and gets it with instructions that state the combination rule instead of reciting a list. Composition-as-law governs what the factfinder is told. Instructions have never been anything else. History fits. The Amendment preserves the jury right as it stood in 1791. *See Markman*, 517 U.S. at 376–77. The factor lists would not exist for another century and a half; a rule for combining them touches nothing the founding-era jury possessed, and the founding-era question, deception of the buying public, stays exactly where it was. The Court need not settle that history to rule here: even on the reading most generous to juries, that the ultimate deception question was theirs from the beginning, a rule for

combining factor lists that did not yet exist cannot have been among the incidents the Amendment preserved. *Markman* divided a jury-tried patent claim along the same functional seam without constitutional difficulty, 517 U.S. at 377–91, and the division proposed here is more modest than *Markman*’s: it moves no assessment anywhere. This Court’s recent practice confirms that reviewing the legal component of a jury-decided question de novo does not offend the Amendment. *Google LLC v. Oracle America, Inc.*, 593 U.S. 1, 24–25 (2021). And the practical effect runs toward juries, not away from them. Under the current regime, unstated composition keeps the question from juries in all but a sliver of cases: judges made 97.96 percent of merits confusion determinations under a doctrine that nominally sends the question to juries. Under a stated rule, a genuine grading dispute is visibly material or visibly immaterial, and the visibly material ones go to trial. Stated composition raises the jury’s share of these cases, or at the least gives the two percent a principled boundary. The constitutional argument runs against the status quo: the current regime promises the jury in its instructions and removes it in its dispositions.

Markman creep. This proposal, the objection runs, continues *Markman*’s migration of jury questions to the bench. The objection inverts the precedent. *Markman* reallocated an interpretive task, the meaning of a written instrument, from jury to judge because judges are “better suited” to construction. 517 U.S. at 388. Amicus reallocates no assessment: every consumer-perception question stays exactly where *Hana Financial* put it. That allocation currently sits largely idle; a stated composition activates it, because grading disputes finally become outcome-determin-

ative. *Hana Financial*, 574 U.S. at 422. Courts are allocated only the rule of combination, which no jury has ever been asked to invent, which no witness can address, and which the current regime assigns to no one at all.

Composition is just weighing, and weighing is fact-bound discretion. This objection carried the deference debate for decades. See Kaeding, *supra*, at 1297–99. But *Pullman-Standard* forecloses resolving the question by label, 456 U.S. at 287, and *Lakeridge* turns the answer on whether the work involved is primarily legal or factual. 583 U.S. at 396. Part II shows what the weighing is in operation: a stable two-factor rule with bounded exceptions across five decades, thirteen formulations, and two tribunals. That consistency supplies the content of a rule the doctrine has never stated. The choice before the Court: leave the rule as its own source of confusion, unstated, unreviewable, and officially nonexistent, or make it stated law, reviewable like any other.

Administrability at summary judgment. The objection is that a new fact/law line complicates summary judgment, the posture where the allocation question does its work. The line requires no new procedure; the existing rules already implement it. Assessment disputes are Rule 56 disputes: where a reasonable jury could grade the factors differently and the difference is material under the composition rule, trial follows. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Composition disputes never reach a jury because they are never factual; they are resolved on the briefs, as legal questions are. The materiality screen gains content: under a stated composition rule, a district court can say which grading disputes matter. Preliminary relief follows

the same division, as this case's own history shows: the court states the composition rule and estimates the assessments on the preliminary record, and the preliminary uncertainty attaches to the assessments, never to the rule. Today's regime gives district courts thirteen unweighted lists and no reviewable structure, produces the 97.96 percent figure of Part II, and resolves the resulting appeals by relabeling. The administrability concern favors stating the rule.

V. Either disposition can carry the composition holding

Amicus takes no position on the judgment. Either disposition can carry the composition holding, and neither disposition is complete without it. The ordinary reasons to decide narrowly and let doctrine percolate have no purchase here: the circuits have had the composition question for more than six decades and have not addressed it, because current doctrine gives no litigant occasion to present it; a party argues its gradings, and the balance absorbs the rest. Percolation cannot produce what the structure keeps anyone from asking.

If the Court reverses, the natural ground is that grading strength is factual work under *Hana Financial* and *Lakeridge*, and the Second Circuit erred in resolving a consumer-perception question as its own. The government has already sketched a reversal opinion by treating the strength inquiry as fact-dominated. U.S. Br. 12. At summary judgment, the reasonable-jury question controlled. See *Anderson*, 477 U.S. at 248. But a reversal limited to grading is incomplete. Such a reversal reinstates the twelve-circuit rule as stated: jury-facing language for a decider present in two percent of cases, with the operative arena, summary-judgment composition,

exactly as unspecified as the panel found it. On remand and in the next thousand cases, district courts would again grade factors into an unstated balance, and appellate courts would again police the balance by regrading. A useful reversal adds one paragraph: the combination rule is the legal component, and here is the rule.

If the Court affirms, the natural ground is that the panel was policing something genuinely legal in the strength inquiry; whether this record sustains that ground is the parties' dispute, and amicus takes no side of it. The legal work lies in composition, and Part II shows that grading strength as law adds no measurable effect. A useful affirmance locates the legal work in composition and states the rule.

One paragraph of guidance would serve either opinion. The day after, practice barely changes, whatever the disposition, because the holding states what courts already do. Litigants argue the same factors they argued the day before; the circuit lists survive as the evidentiary taxonomy they have always functionally been; treatises gain a composition rule to state where they now describe a balance. What changes is the charge and the order: district courts apply a stated structure at summary judgment instead of thirteen unweighted lists and name the predicate factor findings and any override; appellate courts can review those rulings as applications of law. Pattern-instruction committees can lift the composition rule directly into the charge. Appellate courts review composition for legal error and leave factor labels alone, and the split this case presents cannot regrow, because the fact/law dispute was always a proxy for unstated composition. Juries keep every genuine perception dispute they currently

have, with instructions that finally state the rule they are applying; if stated composition makes more grading disputes material, their share grows. What this case actually allocates is everything else, the everyday run of confusion cases that judges decide on paper records, and a composition-level ruling is worth more to that docket than any answer to the question as the parties have framed it.

CONCLUSION

The Court should resolve the question presented by holding that assessment of the likelihood-of-confusion factors, including a mark's strength, presents questions of fact, that composition presents a question of law, and that similarity and proximity operate as predicate factors, with the secondary factors as structured overrides, supplying the combining rule. Appendix A sets out, in schematic form, the rule the record of adjudication supports. At a minimum, the Court should draw the assessment-composition line and hold that the circuits' factor lists guide a single factual question whose answer belongs to the assigned factfinder; even that narrower holding decides this case coherently and ends the allocation fight. Amicus suggests neither affirmance nor reversal.

Respectfully submitted,

SHEILA J. SIMON

Counsel of Record

SIMMONS LAW SCHOOL

SOUTHERN ILLINOIS UNIVERSITY

1150 Douglas Drive

Carbondale, Illinois 62901

(618) 967-2062

ssimon@siu.edu

Counsel for Amicus Curiae

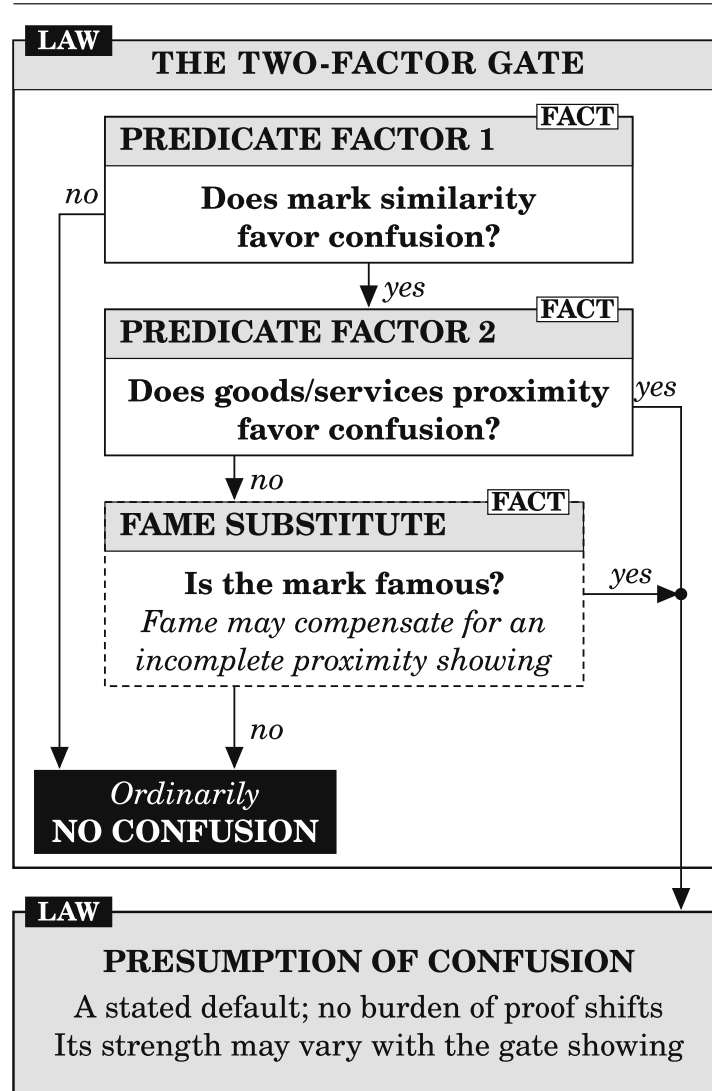
APPENDIX

APPENDIX TABLE OF CONTENTS

	Page
Appendix A: The likelihood-of-confusion composition rule, in schematic form (source: Reichert, <i>On Confusion</i> (2026))	1a

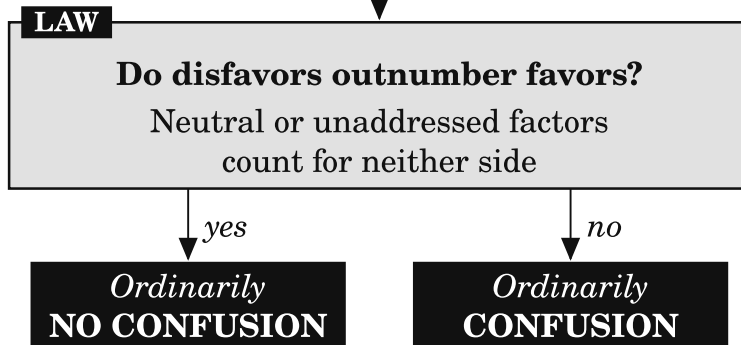
APPENDIX A

LIKELIHOOD OF CONFUSION

Assessment is fact; composition is law.

2a

LAW OVERRIDE ANALYSIS				
In reverse confusion the rows recalibrate (§ 10)				
Factor		Favors	Neutral	Disfavors
Mark strength	FACT	☐	☐	☐
Trade channels	FACT	☐	☐	☐
Actual confusion	FACT	☐	☐	☐
Intent	FACT	☐	☐	☐
Consumer care	FACT	☐	☐	☐
Override count	LAW	_____	_____	_____



FACT

assessments: the factfinder
grades them on the record

LAW

composition: rule content stated
by the court, reviewed de novo

Source: On Confusion (2026)