Brand Spillovers

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- 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