This chapter explores the tort of passing off which protects the goodwill of a trader from misrepresentation. In the United Kingdom, there is no obligation to register a trade mark. Protection has always been available at common law for marks in use, by means of the action for passing off. There are three elements of passing off. First, a trader must establish that the trader has a goodwill or reputation attached to the goods or services which the trader supplies. Second, the trader must demonstrate that the defendant has made a misrepresentation leading or likely to lead the public to believe that the goods or services offered by the defendant are the goods or services of the claimant. Lastly, the trader must demonstrate that the trader has suffered or is likely to suffer damage by reason of the erroneous belief caused by the defendant’s misrepresentation. These three elements are interdependent.
8. Passing off

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