This chapter focuses on the tort of passing off as a legal regime for the protection of trade marks. It considers three elements that are required in order to succeed in an action for passing off: the claimant has 'goodwill'; the defendant made a 'misrepresentation' that is likely to deceive the public; and the misrepresentation damages the goodwill of the claimant. It also surveys the law in relation to goodwill. This chapter discusses manifestations of goodwill and describes goodwill associated with packaging, get-up, and trade dress as well as advertising style. It concludes by analysing the scope and ownership of goodwill, together with goodwill as a form of property.
32. Passing off

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