Actual Dilution, Actual Economic Harm, Likelihood of Harm, or Likelihood of Dilution??:
Determining the Appropriate Standard for Establishing Trademark Dilution

I. THE STATUTE
   i. legislative history/intent of statute
   ii. general policy discussion
      1. article: questioning whether a federal dilution statute is appropriate
      2. death of common sense article

II. THE SPLIT
A. Actual Harm Necessary (minority view)
   i. Fourth Circuit
   ii. Fifth Circuit
      1. Westchester Media v. PRL USA Holdings, Inc., 214 F.3d 658 (5th Cir. 2000)
B. Likelihood of Harm Sufficient I (majority view) (all but focus case)
   i. Second Circuit
      1. Nabisco, Inc. v. PF Brands, Inc., 191 F.3d 208 (2d Cir. 1999)
   ii. Seventh Circuit
      1. Eli Lilly & Co. v. Natural Answers, Inc., 233 F.3d 456 (7th Cir. 2000)
   iii. Third Circuit
   iv. Other Cases
C. Likelihood of Harm Sufficient II (majority view) (focus case)
   i. Sixth Circuit
      1. analysis of the district court & Sixth Circuit opinions

b. Affirming District Court: V Secret Catalogue, Inc. v. Moseley, 259 F.3d 464 (6th Cir. 2001)

D. Moseley v. V Secret Catalogue: Taking it to the Supreme Court
   i. Supreme Court Materials
      1. Citation: Victor Moseley v. V Secret Catalogue, No. 01-1015 (Oral argument scheduled for November 12, 2002)
      2. Discuss opposing arguments from filed briefs and various amicus curiae briefs

   ii. How will it end?
      1. Washington University Supreme Court Forecasting Project:
         http://wusct.wustl.edu/cases/moseleysecret.html
      2. My prediction (not all the way there yet, so cannot state my final guess for the moment)
      3. Will Congress be satisfied with the result? If not, is Congress likely to amend the law to clarify language?

E. Conclusion/Final Thoughts