false or misleading representations of fact, which...in commercial advertising or promotion, misrepresents the nature, characteristics, qualities or geographic origin of his or her or another person’s goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act. (Act of Nov. 16, 1988, codified as amendment at 15 U.S.C. @ 1125, emphasis added)

Thus, to prevail in a case of false advertising under section 43 (a), the plaintiff must first prove that the defendant made a false or misleading statement regarding its own or the defendant’s products. Specifically, the plaintiff must demonstrate that the advertisement is either literally false, or if literally true is likely to mislead or confuse a substantial portion of the intended audience. The plaintiff must also demonstrate damages (or their likelihood). This can be accomplished by showing that sales have been diverted from the plaintiff to the defendant, or by showing the corresponding loss of market share. A loss of goodwill towards the plaintiff or the plaintiffs’ product also constitutes damages (Lanham Trademark Act 1982).

The primary objective of most complaints filed under section 43 (a) the Lanham act is to obtain a preliminary injunction to prevent a competitor from continuing an offending marketing practice. At this point, the plaintiff must demonstrate that it is likely to succeed on the merits if its case, that it does not have adequate remedy at law, and will suffer irreparable harm if a preliminary injunction is denied. The court makes a decision after weighing the irreparable harm that the defendant will suffer if preliminary relief is granted against the irreparable harm to the plaintiff if relief is denied. How the public interest will be served by granting or denying the preliminary injunction is also