making trade dress confusion less likely. It is also assumed that when *degree of care* is high, consumers will base their decisions on information beyond that provided by a trademark.

If *degree of care* were applied to an advertising context, it would refer to the level of focused attention consumers devote to processing an advertising message. That is, consumers are expected to attend closely to advertising information (process with high *degree of care*) when personal relevance is high (Petty and Cacioppo 1986). They are also more likely to search for additional information rather than base a purchase decision solely on information from advertisements (cf. Beatty and Smith 1987; Lee, Herr, Kardes and Chankon 1999).

A significant difference between *degree of care* in the context of trademarks versus that of advertising is that consumers have all necessary information available for direct comparison when looking at packages. They can evaluate trade dress and other package information in the actual purchase setting. In the context of advertising this is rarely the case. Consumers do not have available advertising information at the time of purchase. Considerable time usually elapses between exposure to advertising and a purchase decision, so consumers may have to rely on their memory for information not available at that time (Lynch, Marmorstein and Weigold 1988).

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15 AMF Incorporated v. Sleekcraft Boats, 599 F2d. 341; 1979 U.S. App.; 204 U.S.P.Q. (BNA) 808. Degree of care is mentioned as one of 8 factors the courts consider when determining the likelihood of confusion between related goods. Subsequent cases have cited "the Sleekcraft factors" when determining the likelihood of confusion (see Brookfield Communications Inc., v. West Coast Entertainment Corporation, 174 F. 3d 1036; 1999 U.S. App.; 50 U.S.P.Q. 2D (BNA) 1545).