

EXAM -- INTELLECTUAL PROPERTY LAW
FALL, 2004

RULES AND INSTRUCTIONS

1. You must answer question 1. You must answer one of questions 2, 3, 4, and 5. Your answers must not exceed the page limit given. Failure to comply with this requirement will result in the deduction of a full letter grade. If you wish to include a title page or a page showing your outline, that page will count as a page of your answer. Work is to be double-spaced in a font reasonably sized to allow me to read it. Start each answer or sub-part on a new piece of paper.

The page limit for question I defines the total page limit for all three sub parts. I anticipate that you will write answers that terminate in the middle of a page for some or all of the sub-parts. You may divide the page generally into fourths for purposes of determining a page length. For example, you might write answers where part (a) is 3.25 pages, part (b) is 5.5 pages, and part (c) is 4.25 pages. This would total 12 pages. Note that these are NOT suggested page lengths. The entire question as a whole will be worth 12 points.

The grade will be weighted based on the page limit of the answers. I appreciate that you could write 20 pages on some of the topics, but you should just hit the high points.

2. You may not discuss these questions or your answers with anyone else. Subject to this limitation, the exam is unlimited time, open book, open notes, open internet. You may do additional research to complete these answers. However, I do not believe any such research is necessary. Students are encouraged to rely only on the materials presented in class.

3. When you turn in your work, you should put your exam number, the question number you are answering (including subpart letter), and the page number at the top of **each** page of your exam. Your name should appear nowhere on the paper. Staple together all the pages of each answer separately. Please also staple together all the pages of each sub-part of question 1 separately. Enclose all the pages in a large 9x12 (or similarly sized) envelope.

4. Organization is very important. Even if you have good content, unless it is well organized, it will be difficult to read and is likely to receive a lower grade than one that is well organized.

5. Please proofread your work carefully for errors in spelling and grammar. More than two spelling or grammar errors in an answer will result in a loss of 2/3 grade.

6. You need not use Bluebook form citation for cases we studied this semester. For example, you might state that “Moseley v. V Secret Catalogue, Inc. stands for the proposition that actual dilution must be shown.” In such a case, no specific citation need be given. If you quote from a case in the casebook, a citation such as “Moseley, casebook page X” would be helpful. If you cite to a case we did not study this semester, please provide a complete citation so that I can look it up. As noted, I do not believe any additional research or case citations other than to cases we have already studied will be helpful; students are encouraged to rely only on the materials presented in class.

7. The exam is due by 5:00 pm on December 17. I prefer that you place it in my mailbox on the 5th floor for me to pick up. If you are uncomfortable with leaving the exam in my box, you may use any other method available for getting the exam to me prior to that time, as long as your method of getting it to me does not require the use of identifying characteristics. For example, you can hand-carry it to my office. The address for me at my office is Christen Millard, Principal Counsel, Legal Department, Honda R & D Americas, 21001 State Route 739, Raymond, OH 43067. Note that I must receive the exam by the deadline. The mailbox rule does not apply.

If you need to reach me to resolve an issue which may be confusing within a problem, please contact me at (614) 898-4974(h), (937) 645-1973(w) or via e-mail at cmillard@oh.hra.com.

1. (12 pages total) (a). Mr. Client has a store in Columbus, Ohio which sells a particular type of DVD player. The DVD player plays movies as usual, but with a twist. Software is incorporated into the DVD player and scans the movie for swear words, “undue” violence, nudity, or sexual situations. If the player detects these types of items, it skips that portion of the DVD. A user can, by using this system, prevent the viewing of material that is offensive to them, and can also prevent their children from seeing problematic things if they inadvertently put the “wrong” DVD in the player. Mr. Client wants to call his player “Clean and Clear”. Mr. Client asks you what kinds of intellectual property protection would be appropriate or desirable for his business. Write him a letter summarizing your recommendations. Assume you wrote this letter before the events referred to in parts (b) and (c) occurred and before you performed the work in parts (b) and (c).

(b) Mr. Client requests that you perform a trademark search on his Clean and Clear mark. You have discovered the following marks:

(1) CLEAN & CLEAR used by Johnson & Johnson for a line of cleansers and moisturizers. The mark is also used in connection with skin care consultations and information relating to skin care. The CLEAN & CLEAR mark is also used on a web page in association with interactive, web-based software

which asks questions regarding skin condition and recommends products from the Johnson & Johnson product line in accordance with the responses. The CLEAN & CLEAR mark is registered in the U.S. Patent and Trademark Office for use with these goods and services. The date of registration is January 25, 1994.

2) CLEAR MOVIE is the name of a store in Seattle, Washington. This store sells movies that have been altered to eliminate all swear words and scenes with nudity, undue violence, and sexual situations. These movies are altered by employees who remove the scenes and put the remaining part of the movie together to be seen. The CLEAR MOVIE mark has not been registered.

3) CLEAN FILM is used by Clean Film Company in Atlanta, GA who sells special DVD players and DVDs. Employees watch movies and hide codes within the DVD data to code for such things as violence, swear words, nudity, and the like. CLEAN FILM sells the specially coded DVDs and also DVD players that can read the codes. A user programs the DVD player to select which sorts of programming that he or she wants to omit. The remainder of the DVD is put together to be seen. For example, a user can select to eliminate all instances of sexual situations, but to view violence and simple nudity and hear swear words. The CLEAN FILM mark has been registered in the state of Georgia for use with these goods. The date of registration is July 12, 2001.

Prepare a letter to Mr. Client that discusses (1) any cautions you have about his use of the mark generally, (2) an evaluation of whether he has a high, medium, or low degree of risk of being sued for trademark infringement or unfair competition by each of these trademark owners, (3) whether you believe he would prevail in such a suit, and (4) a recommendation of whether he should use the mark in connection with his goods.

(c) Mr. Client begins selling his DVD player. He is sued by Clean Film Company for patent infringement. Claim I of its patent is as follows:

1. A method for altering a DVD, comprising:
 - (a) viewing a DVD;
 - (b) identifying subject matter on the DVD;
 - (c) determining whether the subject matter falls within one of a number of categories;
 - (d) determining whether the subject matter falls within a user-defined set of categories of undesirable material; and
 - (e) displaying all subject matter on the DVD except material that falls within the categories of undesirable material.

The specification of the patent discloses the system described in connection with part (b) above.

Write a letter to Mr. Client summarizing his best arguments for succeeding in his patent infringement case. Include an explanation of any additional information or material that would be helpful in making this evaluation.

2. (3 pages) Briefly describe the Fair Use Doctrine as described by the Court in Sony. Are Sony and Grokster consistent with one another?

3. (3 pages) Explain why one of the cases we studied this semester was wrongly decided from a legal and/or policy perspective.

4. (3 pages) Describe the differences between a cause of action under trademark infringement and a cause of action relating to a domain name and explain why these differences exist.

5. (3 pages) Explain the source of each of the four areas of intellectual property (trade secret, trademark, copyright, and patent) and why they are protected from a legal and policy perspective.