



Advertising and Marketing Law (Law 712) Final Exam
Eric Goldman • Spring 2011

This exam consists of two questions. If you chose Grading Options 2 or 3, answer only Q1. If you chose Grading Option 4, answer both questions; each question will be weighted equally in your exam grade. Although your answer isn't subject to a word count cap, you should be able to fully answer the questions in 1,200 words per question. Please don't mass cut-and-paste course material into your answer.

This is an "open book" exam, so you may use any written material you want. However, during the exam, you may not communicate about the exam or your answer with anyone (orally, electronically or otherwise).

Type your answer. Include page numbers and your 4 digit blind grade ID number (not your Access card number) on every page of your answer, but do not otherwise include any information that would identify yourself in the answer. At the beginning of your answer, tell me the number of words in your answer.

This is a take-home exam. Return your answer to the Faculty Support Office (FSO) in Bergin 214 during its regular office hours. It is due no later than May 9, 4 pm PT. The FSO time-stamp is the dispositive record of your check-in time. **IF THE TIME STAMP IS LATER THAN THE DUE DATE, EVEN BY ONE MINUTE, YOU WILL FAIL THE EXAM. THERE IS NO EXTRA GRACE PERIOD. NO EXCUSES!**

Some additional thoughts for you:

- All relevant parties are, and all relevant actions take place, in the United States, and all parties are over the age of majority. Do not discuss any statutes of limitation.
- Prioritize your discussion. How you prioritize and emphasize issues in your answer may affect your grade.
- Read the questions very carefully. Answer the questions actually asked. Do not answer questions that I did not ask.
- Some potential efficiency techniques:
 - Bullet points, short citation forms and unambiguous abbreviations are OK.
 - Please quote statutes or cases only as necessary to make your point.
 - If any additional information would be useful in your analysis, indicate what information would be helpful (and why it would help) and then state your assumptions in order to proceed with your analysis.
 - While generally your answer should be based on legal principles, you are also welcome to address other perspectives and concerns.

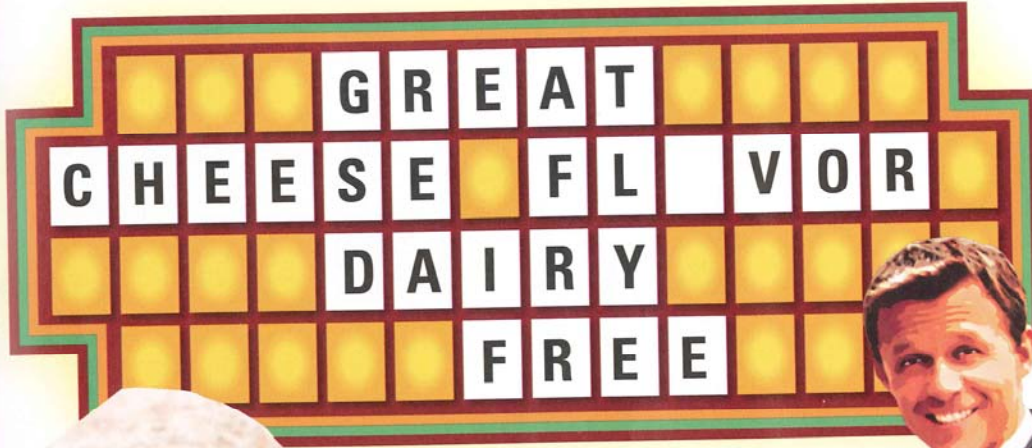
Good luck and have a great summer!

Question 1 (answer if you chose Grading Options 2, 3 or 4)

Assume you represent Galaxy Nutritional Foods. Review the print advertisement on the next page, which ran in [VegNews magazine](#), December 2010. Write a memo to me listing the issues you think the ad raises and briefly explain the applicable legal doctrine(s) and how the ad might be analyzed under those doctrines. Feel free to pose issues as questions you would like to ask Galaxy's marketing or product team; just explain to me what issue/legal doctrine prompts the question and how you would handle both yes and no answers to your question. Remember that every bit of information in the advertisement can have legal implications, so review the ad carefully. You are welcome to investigate the referenced URL, but please don't critique that website except as it affects your assessment of the print ad.

Note: the FDA has incredibly specific definitions of different "cheese" types. (If you're curious, see [21 CFR 133](#)). We didn't discuss those definitions in class, so please don't discuss the FDA regulations or how they may preempt other legal doctrines. Even so, it may be fair game to discuss other implications of the ad's references to "cheese."

Hey Vegan—C'mon down!



Cheesy? Without a doubt! Rice Vegan and Vegan slices are the casein free, cholesterol free and trans fat free cheese alternatives that you can feel free to fall in love with! So place Vegan or Rice Vegan slices on your favorite foods and turn up the heat—with these made-to-melt vegan slices, everyone's a winner!



You have the freedom to be cheesy! Go to cheesechooser.com, find your perfect cheesy match and get a free coupon!



Question 2 (answer only if you chose Grading Option 4)

Consumer electronics manufacturer Napple set up a website allowing consumers to upload self-made videos explaining why they like Napple products. Napple doesn't prescreen those videos before they are downloadable by others. Napple's agreement with uploading users gives Napple the right to publish the video on its website.

A Napple consumer, Jane Smith, uploaded a self-made video to Napple's website regarding Napple's MP6 music player, "Dopi." The video showed Jane talking directly to the camera while prominently holding the MP6 player. Jane gave a "mixed" review, both praising and criticizing the Dopi.

Macroshift makes a competitive MP6 music player called Zene. A Macroshift employee downloaded Jane's video from Napple's website. Napple's website doesn't have a contract restricting video downloads, and please don't address any legal issues raised solely by downloading a video via the Internet.

The Macroshift employee then excerpted a segment from Jane's video showing Jane using her Napple MP6 player and making the following statements:

I had two problems with my Dopi's battery. First, it felt like after playing just one or two albums, the Dopi needed a recharge. With the Zene, the music played on and on. Second, the Dopi's battery runs really hot. That's great if you want to fry an egg, but not so great if you stick the Dopi in your pants pocket.

Macroshift incorporated the clip from Jane's video (excerpted but otherwise unmodified) into its own video. Macroshift then posted the video to its own Zene website. Macroshift also announced that, starting in 2 weeks, it will run a \$2 million month-long national TV ad campaign featuring the video.

Note that battery-related gripes are a common consumer complaint about MP6 players, and the major industry participants frequently advertise the relative advantages of their MP6 players' batteries compared to their competition.

Evaluate Napple's possible responses to Macroshift's video, including Napple's procedural options (such as different fora for adversarial proceedings or alternatives to such proceedings) and, if it pursues adversarial proceedings, its substantive legal arguments. Don't discuss copyright or any causes of action where Napple isn't the appropriate plaintiff.