



Advertising & Marketing Law (Law 712)

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1. INTRODUCTION. This is an experimental course. As far as I know, it is the first time this course has been offered at Santa Clara University, and it will be my first time teaching the course. We will use a draft version of a new casebook I am co-authoring. Also, I am offering you an unusual degree of flexibility about grading. Because of these moving parts, the course may have more rough edges than other courses. Please tell me what isn't working for you so I can try to fix it.

All of this is a long way of saying that this course will work best for adventurous students who are willing to gamble on a work-in-progress course. If that doesn't describe you, I encourage you to carefully consider if this is the right course for you. Furthermore, we will be helping each other more than in most courses. If you aren't excited about a collaborative learning experience, this may not be the right course for you.

2. SESSIONS. The course meets Mondays 4:10 to 5:50 from January 10 through April 25, excluding January 17 (MLK Day), February 21 (in observance of President's Day, that session will meet on Tuesday at 4:10), and March 7 (Spring Break).

On March 4, 2011, we are hosting a major academic conference on 47 U.S.C. 230, an important statute to online advertising. I encourage you to attend this special event. Register at <http://law.scu.edu/hightech/47-usc-230-a-15-year-retrospective.cfm>.

3. INFORMATION SHEET. At your earliest convenience, but no later than January 7, 2011, please email me your resume and your answers to the following questions:

- Why are you taking this course?
- What one or two advertising law issues are you're most interested in learning about?
- What type of job are you seeking after graduation, and how is your job search going?
- Your preliminary grading option preference.
- If you choose to write a paper, are you considering starting with an existing paper draft?

4. GRADING.

You may choose among the following four options for your grade:

Option #1: 20% attendance/participation, 80% Supervised Analytical Writing Requirement (SAWR) paper and presentation to the class

Option #2: 20% attendance/participation, 40% wiki entry and reflection paper, 40% exam

Option #3: 20% attendance/participation, 40% practitioner paper, 40% exam

Option #4: 20% attendance/participation, 80% exam

You must email me your definitive and irrevocable grading option choice before January 14, 2011, 5 pm. Otherwise, I will slot you for Option #4.

More details about the grading components:

Attendance/Participation

I expect you to attend every class, so every unexcused absence may affect your participation grade. I excuse absences very sparingly, usually only for health issues, family emergencies or extraordinary opportunities to learn more about the course topic. You don't need to tell me in advance that you will be absent *unless* you are asking that I excuse the absence. I may, at my option, drop or fail you if you have 3 or more unexcused absences.

For participation, I will subjectively evaluate your contributions to the course, including:

- Your thoughtful contributions to class discussions.
- Your engaged attention during class. I'm not opposed to computer/Internet usage in class, especially when it enriches the discussion. However, in a small class like ours, unrelated multi-tasking may degrade the experience for everyone. Therefore, I may reduce your participation grade if your computer/Internet usage interferes with your participation. I expect you to pay especially close attention when your peers present their research.
- Your constructive feedback to your peers when commenting on their papers. I will especially reward helpful substantive suggestions to your peers (editing suggestions are also valuable, but less so). I may downgrade unconstructive or untimely feedback.
- Your constructive feedback on the draft casebook. Each week, please email me one comment on the week's reading materials—something you liked, something you didn't like, something that confused you, something where you wanted more information.

Global Thoughts About Papers

I have high standards for student papers. I explain more about my expectations at http://blog.ericgoldman.org/personal/archives/2007/06/my_requirements.html. If you are writing a paper, I strongly encourage you to read Eugene Volokh, *Academic Legal Writing* (4th edition 2010; ISBN 978-1599417509) as soon as you can, preferably before Spring semester starts. You can check it out from the library or purchase your own copy. [Amazon affiliate link to the book](#).

In particular, I will challenge you to pick a good topic. No matter how hard you work and how well you write it, a poor topic will produce an uninteresting paper. The sooner we agree on a topic, the better your paper will be. If you pick Option #1, I encourage to start thinking about topics before you leave for Winter break.

Please talk with me if you would like to continue writing a paper you have previously authored, such as in another course. I'm willing to consider this if we can agree upon your deliverables.

I do not require students to submit drafts on a schedule I specify. I will look at your drafts whenever you think I can offer helpful comments (please give me adequate time to review and provide feedback). My laissez-faire attitude can pose challenges for students who expect teachers to harangue them about deadlines. Unfortunately, that's not my approach. As a professional service provider, you will be responsible for independently setting and managing interim deadlines. We will practice that skill in this course.

By submitting a paper draft to me (this applies to exams too), you confirm that your work complies with the law school's academic integrity policy, including the restrictions on plagiarism. Please review the policy at http://www.scu.edu/bulletin/law/prof_responsibility.cfm. I don't plan to use Turnitin but I retain the option to do so, in which case you will need to agree to their requirements to complete the assignment.

SAWR Paper

If you choose Option #1, you will have three paper-related deliverables:

- 1) A paper that satisfies the SAWR on a topic subject to my approval.
- 2) Feedback on your peers' SAWR papers (graded as participation).
- 3) A presentation of your research to the class.

If you would like to tackle an ambitious paper topic, we can arrange a supplemental 1 credit supervised research to give you a total of 3 units for the course. All three units will receive the same grade. If you stay with the 2 unit option, I will be more flexible about paper topics that don't attempt to break new ground.

It's your responsibility to comply with all of the SAW requirements, including the SAWR paperwork. See the rules at <http://law.scu.edu/blog/officialannouncements/details-of-the-analytical-writing-graduation-requirement.cfm>.

Wiki Entry

If you choose Option #2, you have four paper-related deliverables:

- 1) A wiki entry that meets the specifications discussed below.
- 2) Review of your published wiki entry to see the wiki community's reactions and to respond appropriately.
- 3) Feedback on your peers' wiki entries (graded as participation).
- 4) A short paper (500-1,000 words) reflecting on your experiences drafting, publishing and monitoring the wiki entry.

You can write a wiki entry on any topic related to advertising and marketing law (subject to my approval). You can draft an entry for any wiki you want. If you choose Wikipedia, please review the resources at <http://en.wikipedia.org/wiki/Wikipedia:Ambassadors/Resources>. To coordinate our Wikipedia efforts, we will use

[http://en.wikipedia.org/wiki/Wikipedia:WikiProject_United_States_Public_Policy/Courses/Advertising_and_Marketing_Law_spring_2011_\(Goldman\)](http://en.wikipedia.org/wiki/Wikipedia:WikiProject_United_States_Public_Policy/Courses/Advertising_and_Marketing_Law_spring_2011_(Goldman)).

You can either create a new entry or substantially revise an existing entry. My target length for your wiki entry is 1,000-1,500 words, although you should go as long (or short) as your topic requires. In the unlikely event we think the entry might approach 5,000 words, we can discuss qualifying the wiki entry for the SAWR.

Wiki entries are a little different than other types of law school writing. You are writing for general-interest readers instead of lawyers, your goal is to provide readers with an encyclopedic and neutral (not persuasive) explanation of the subject, and if you are building on an existing entry, it is OK to reuse that material in your entry. Your entry should include appropriate links to related materials and source documents.

I expect you to publish your entry no later than April 15, 2011. This should give you several weeks to watch the community's response to your entry. Before you publish it, you need to get comments from your peers on your draft wiki entry. Note: when you publish your entry to a wiki, you may be required to disclaim or license your copyright interests in the entry.

Practitioner Paper

If you choose Option #3, you will have two paper-related deliverables. First, you will write a paper targeting a lawyer or general audience on an advertising or marketing law topic (subject to my approval). I anticipate this paper will be around 1,000 words. Your goal is to educate your audience about something they don't already know. This requires you to understand your audience, determine what they already know, and then explain a new interesting observation. If your paper gets an acceptance for publication prior to May 10, 2011 from a publication I have approved, I will award you 100% of the paper-related points.

Your second deliverable is to review and provide feedback on the practitioner paper drafts your peers are writing (graded as participation).

Exam

If you choose options #2 or #3, your exam will be a take home exam consisting of sample ad copy. I will ask you to assess the issues raised by the ad copy and make recommendations to your client. This will be a skills-oriented/issue spotting question. I anticipate the exam will take about 2-3 hours of work. If you choose option #4, your exam will consist of that question plus at least one doctrinal question. In all cases, I anticipate imposing a word cap on each answer.

Currently, I plan to make the exam available on May 2 and you will have up to 7 days to submit your answer. I may impose draconian penalties—up to a failing grade—for late exams. If you prefer, instead of writing your answer, you may schedule an oral exam where you may answer the question(s) in an in-person interactive conference with me.

5. **READER.** We will be using a draft casebook, Rebecca Tushnet and Eric Goldman, Advertising and Marketing Law. Throughout the semester, I will post PDF files of chapters to Claranet.
6. **OFFICE HOURS.** I can schedule a time to speak with you at your convenience. Please email me to make an appointment. I'm also happy to talk by email.
7. **COURSE RECORDINGS.** I plan to record class lectures using a digital voice recorder, which may also pick up your in-class contributions. If you have any concerns about this, please let me know. You can download lecture recordings from iTunesU (iTunes client software required).
8. **APPROXIMATE SCHEDULE** (subject to change).

Week 1: Overview

Week 2: What is an Ad?

Week 3: False Advertising Overview

Week 4: False Advertising—What is Truth?

Week 5: False Advertising Practice

Week 6: False Advertising Remedies

Week 7: Copyrights

Week 8: Competitive Restrictions

Week 9: Brand Protection and Usage

Week 10: Featuring People in Ads

Week 11: Privacy

Week 12: The Advertising Industry Ecosystem

Week 13: Student Presentations/Guest Lecture

Week 14: Wrap-up/Exam Prep by reviewing sample ad copy

9. CONTACT INFORMATION.

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In all emails to me related to this course, please put the words “Advertising Law” in the subject line to avoid unintentional deletion as spam.

If you want to see some of the issues I'm tracking, feel free to read [my blog](#) or follow me at [Twitter](#). More course-related materials, including an electronic copy of this syllabus, are available at [my personal website](#).