



Intellectual Property (Law 388) Final Exam

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Question 1 is worth 2/3 of the total grade, and Question 2 is worth 1/3. You should allocate your time accordingly.

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 blind grade ID 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 each question’s answer, tell me the number of words in your answer. **I DO NOT INTEND TO GRADE AN ANSWER THAT EXCEEDS THE WORD LIMIT BY EVEN ONE WORD. OMITTING OR INACCURATELY REPORTING A WORD COUNT MAY LEAD TO SIGNIFICANT PENALTIES.**

This is a take-home exam. Your answer must be turned into the Faculty Support Office (Bergin 214-A) no later than 4:00 pm Pacific, May 1, 2009, as measured by the Faculty Support Office timestamp. This is the only clock that matters! **IF YOUR ANSWER IS LATE, YOU WILL FAIL THE COURSE. THERE IS NO GRACE PERIOD. NO EXCUSES!**

Some additional thoughts for you:

- All relevant parties are, and all relevant actions take place, in California.
- Spend adequate time reading the question and outlining a response.
- Prioritize your discussion. Extensive discussion of irrelevant issues may hurt your score.
- Read each question 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.
- The word count cap is a maximum, not a target!

GOOD LUCK AND HAVE A GREAT SUMMER!

Question #1 (maximum of 2,000 words)

Mary-Kate and Ashley Olsen rose to fame playing youngest daughter Michelle on the popular 1980-90s sitcom series Full House (they shared the role). They now run a major clothing enterprise, and tabloid magazines routinely cover their daily activities.

The animal rights activist group PETA does not like that the Olsens wear animal fur clothing, and therefore it targeted their fashion choices via the “Trollsen Twins” website at <http://www.peta2.com/trollsens/index.asp>. Please take a few moments to browse the site.

The website includes a 6½ minute video entitled “Full House of Horrors,” available at <http://www.youtube.com/watch?v=AxD6QvtA5Gg>.¹ (In case it is not obvious from the video, PETA has created and edited all of the Futureman material into portions of an original Full House episode). The Trollsen Twins website also sells clothing and other merchandise displaying the Trollsen Twins logo. See <http://www.cafepress.com/peta2/4247953>.

WARNING! This video contains about 18 seconds of graphic and potentially offensive depictions of animals being raised and slaughtered for their fur. If you have any concerns about watching this footage, at 3:13 of the video, jump ahead to 3:31 of the video. Your ability to successfully answer this question will not be diminished by skipping ahead.

Based on the video and the merchandise sales, please identify and briefly assess PETA’s potential copyright, trademark and publicity rights liability to (1) the Olsen twins, and (2) the IP owners of the Full House TV show. Do not discuss any secondary liability issues (for example, do not discuss any liability of YouTube or CaféPress). Assume that:

- Mary-Kate and Ashley do not own any IP rights in the Full House TV show.
- PETA did not obtain any licenses/permissions from any third party IP owners in conjunction with the video or the website, but PETA employees created the Futureman material.
- The Olsens have valid and protectable trademarks in their names when associated with clothing and related goods, and those trademarks have achieved secondary meaning.

END OF QUESTION 1

¹ If you have a problem accessing this URL, try http://www.peta2.com/swf/trollsen_twins.swf or search for “Full House of Horrors” at your favorite search engine.

Question #2 (maximum of 1,000 words)

Fleetwood Corp. is a conglomerate that owns a number of hotel chains. Fleetwood is developing a new hotel chain for travelers seeking upscale accommodations with a modern flair, codenamed “Project Chic.” Developing a new hotel chain requires significant research into fashion and social trends, fabrics, room lighting, building costs and food choices.

Fleetwood distills its research conclusions into “blueprints” for launching the new chain. The blueprints also teach other project employees how to negotiate with hotel building developers, train the new chain’s employees and conduct the marketing campaign.

Smith, a Fleetwood employee, managed Project Chic for two years. He signed Fleetwood’s standard nondisclosure agreement restricting his use and disclosure of Fleetwood’s trade secrets. Prior to Fleetwood’s new hotel public launch, Chitlin—a hotel chain owner that competes with Fleetwood—hired Smith to lead Chitlin’s development of its own modern and upscale hotel chain. Unbeknownst to Chitlin, Smith took the Project Chic blueprints with him when he left Fleetwood. With the blueprints and his experience, Smith can avoid the inevitable errors associated with developing a new hotel chain, significantly reducing the time it will take for Chitlin to launch a new competing chain. To further accelerate the process, Smith has approached 7 of his former Fleetwood subordinate employees, trying to convince them to leave Fleetwood and become Chitlin employees.

Discuss (1) Chitlin’s potential exposure for trade secret misappropriation, and (2) specific ways (if at all) that Fleetwood could have used patent protection to improve its ability to thwart Chitlin’s competition with Project Chic. (Please don’t just recite the general advantages of patents over trade secrets; explore if those advantages might apply to this circumstance). Do not discuss any copyright or trade dress issues.

END OF QUESTION 2
END OF EXAM