

FINAL EXAMINATION

TRADEMARK LAW

P.N. Davis

Tuesday, December 6, 2011

1:30 - 4:30 PM

THIS IS A THREE (3) HOUR EXAMINATION.

THIS EXAMINATION CONTAINS SIX (6) PAGES.

THIS EXAMINATION CONTAINS SIX (6) QUESTIONS.

I = 60 min. II = 30 min. III = 15 min. IV = 15 min. V = 30 min. VI = 30
min.

FILL IN YOUR EXAMINATION NUMBER ON THE BLUEBOOK STICKER.

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YOU MAY BRING IN YOUR CASEBOOK, AND CASE/STATUTORY SUPPLEMENT, BUT NOTHING ELSE.

You may write/print anything in the margins and on the blank pages of the supplement. You may add tabs to the supplement. You may not cover up any printing in the supplement.

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Instructions:

1. These questions will be graded on the basis of the times indicated with each questions. The indicated time for the questions total 3 hours. You will be given 3 hours to write the examination. Budget your time carefully or you may not finish.
2. Be sure to state a result whenever a question asks for one. Merely stating the arguments on both sides of a legal issue will result in only partial credit because you will not have completed the analysis required by that type of question.
3. If you find it necessary to make factual assumptions in order to answer a question, be sure to state the assumption.
4. Do not assume additional facts for the purpose of avoiding a legal issue or making its resolution easier.

5. Comment briefly on each legal issue reasonably raised by the questions and on each reason for your answer, even when you decide that one legal issue or reason controls the result.
6. The difference between triumph and disaster may lie in a **careful** reading of the questions.

I.

(60 minutes)

In 1946, cartoonist Milton Caniff began his long-running comic strip “Steve Canyon”, which continued until Caniff’s death in 1988. Steve Canyon started out as an adventurer involved in international intrigue and later became an Air Force officer. One of Caniff’s colorful characters was “Miss Mizzou”, based on Marilyn Monroe.

The University of Missouri-Columbia has been known as “Mizzou” for decades, a fact memorialized in the football cheer “M-I-Z—Z-O-U”. The University of Missouri registered “Mizzou” as a trademark in 2004 for various items of wearing apparel, and entertainment and education services.

Let us hypothetically move the starting date of Milton Caniff’s “Steve Canyon” comic strip to 2000, and that Milton Caniff is still alive and continuing to draw and publish it. The graphics, cast of characters and story lines remain the same. . Every year, a few of the comic strip episodes feature “Miss Mizzou”

Let us suppose also that a visual resemblance between “Miss Mizzou” and Marilyn Monroe clearly can be seen, because of such things as facial appearance, figure, hair styling, and clothing. Furthermore, let us suppose that Marilyn Monroe has lived to old age and is alive today.

Under these facts, with the dates hypothetically moved forward as mentioned above:

- (1) Does the University of Missouri have a cause of action against Milton Caniff?
- (2) Does Marilyn Monroe have a cause of action against Milton Caniff?
- (3) Would it make a difference whether Marilyn Monroe posed for Milton Caniff (as Ilona Massey actually did for the character “Madame Egelichi”, the *femme fatale* spy).

For each of the three questions above, discuss all relevant legal issues, and state a result.

END OF QUESTION I.

II.

(30 minutes)

Christian Chevalier is a designer of women's high-end shoes, all featuring lacquered yellow soles. In 2009, PTO granted Chevalier a trademark registration because no other brand of shoes had yellow soles, and, therefore, his shoes were unique. (Assume that this conclusion is factually correct.) PTO did not cite any evidence that women recognized yellow-soled shoes as coming from a single source. Chevalier sold 200,000 pairs of yellow-soled shoes during the next two years.

In 2011, Brown Shoe introduced a line of yellow soled high-end women's shoes, consisting of four shoe styles.

Brown Shoe refused to stop selling those shoes after receiving a cease and desist letter from Chevalier. So, Chevalier sued Brown Shoe for trademark infringement and unfair competition, and sought a preliminary injunction.

Should the court grant Chevalier the requested preliminary injunction? Discuss all relevant legal issues. State a result.

END OF QUESTION II.

III.

(15 minutes)

Can a city council be sued successfully for trademark infringement when it prohibits “Jello wrestling” (wrestling in a pit full of gelatin)?

Note: *Jell-O*®, a flavored colored gelatin, has been marketed since 1903 and is the registered trademark of Kraft Foods.

Discuss all relevant legal issues. State a result.

END OF QUESTION III.

IV.

(15 minutes)

Sharon Smythe makes crafts for herself and for sale at charity events. In 2010, she made two gift baskets decorated with Disney cartoon figures cut out of Disney-published books, pasted those images on pieces of plastic for stiffening, and attached them to the sides of the baskets. She also affixed her own “Made by Sharon Smythe” label to the baskets. Smythe kept one basket for herself and sold one at a church craft auction.

The images Smythe used consisted of “Minnie Mouse”, “Daisy Duck”, “Snow White”, and “Bambi”, each of which had been registered as trademarks by Walt Disney Productions about 1948. Disney has used those cartoon characters in various movie and TV cartoons, books, posters, drinking glasses, and other collectibles over the years since.

Disney sued Smythe for trademark infringement. How should the court rule? Discuss all relevant legal issues. State a result. [Do not discuss any copyright issues that may be present in this question.]

END OF QUESTION IV.

V.

(30 minutes)

Ronald Richards, a computer salesman, opened a “Granny” computer store in 2010 decorated almost identically to the many *Apple Store[s]* owned or licensed by *Apple* computers. Richards selected the name “Granny” because it is Granny Smith a variety of apple sold in grocery stores and at orchards. (*Apple’s* “Macintosh” computer was named for another variety of apple.) His logo is a green apple (green is the color of a Granny Smith apple) almost identical in outline to the multi-colored apple logo of *Apple*. His logo is displayed on the store front, throughout the store, and on his non-*Apple* cheap knock-off PC’s from Asia. (The source or type of operating system on those computers is not known, but will run PC-type programs; they will not run *Apple*-type software.)

Apple, Inc., sued Richards. What causes of action are involved in this case? Discuss all relevant legal issues. State a result.

END OF QUESTION V.

VI.

(30 minutes)

Briefly define the following terms:

- (1) supplemental register
- (2) suggestive term.
- (3) geographically deceptively misdescriptive term.
- (4) secondary meaning
- (5) reverse confusion.
- (6) incontestability.
- (7) use in commerce.
- (8) famous name.
- (9) trade dress.
- (10) concurrent use.

END OF QUESTION VI.