



Intellectual Property (Law 388) Final Exam

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Spring 2007

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 4 digit 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, April 27, 2007 (as measured by time.gov). **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 the United States.
- 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). On a timed exam, I would set a time limit of 2½ hours.

Fatkins is a company in the weight reduction industry. Fatkins' weight reduction system gives Fatkins customers a maximum daily budget of "points." In a booklet provided to each customer, Fatkins publishes point values for many food items. The booklet also publishes a formula (based on the food's calories, grams of fat and grams of fiber) so customers can compute point values themselves for any foods not listed in the booklet. With the booklet and the formula, customers can tally their points throughout the day to keep their consumption below their daily budget.

Busway is a national restaurant chain positioning itself as a healthy choice for diners. To appeal to the large number of Fatkins dieters, Busway's ads indicate the Fatkins points of each promoted item. For example, Busway's ads promoting its new "Chick-i-nummy Club" sandwich say "only 6 Fatkins points!" Busway's in-restaurant menus also list the Fatkins points for every menu item.

Q1A: Does Busway need a trademark license from Fatkins? Assume that all of Busway's ads are accurate, so don't discuss false advertising.

Q1B: You are Fatkins' counsel. Can you think of ways that Fatkins might proactively use trade secret, patent and copyright rights to inhibit other restaurants and food manufacturers from engaging in promotions like Busway's? If so, discuss the pros and cons of each option. Tip: Although you probably will have something to say about copyright here, note that Q2 addresses copyright more extensively.

Question #2 (maximum of 1,000 words). On a timed exam, I would set a time limit of 1½ hours.

Several vendors offer customers the ability to create personalized postage stamps. A customer can upload a digital photo or other digital image to the vendor, and the vendor then will print legally valid postage stamps displaying the uploaded image. You can see a service description and conduct your own test at <http://www.zazzle.com/custom/stamps> (you don't need to pay to see a demo, so please don't order anything!).

Many customers will uphold their own photos to the stamp vendor, but some customers may intentionally or unwittingly provide other photos or digital images. See, e.g., http://thesmokinggun.com/archive/0831041_photostamps_1.html.

Discuss the copyright and California right of publicity implications of these vendors' offerings.

Tips:

- If you think it would affect your analysis, you're welcome to consider a vendor's "content restrictions" at http://photo.stamps.com/Store/image_upload/ (click on "content restrictions" link). Do not discuss any other user agreements or similar documents.
- Do not discuss trademark, trade secret or privacy law, 17 U.S.C. §512 or 47 U.S.C. §230.