

Introduction to Intellectual Property
Spring 2006
Professor Ohm

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Model Exam Questions

Introduction from Professor Ohm: Here are five model exam questions I obtained from various sources: sample questions provided with our case book; sample exams from the web; and Professor Weiser. I have selected these five questions because they reflect the format, tone, and substance of the questions you are likely to see on the final exam.

We will discuss questions one and two (One from Professor Goldman at Marquette and one from the casebook's sample questions) **at the first review session** (to be scheduled). We will not discuss questions three through five as a class unless specific questions are raised at a review session. Feel free to ask me about any of the five questions in person, on the phone, or via e-mail at any time.

1. From Professor Eric Goldman, Marquette, 2004:

Legoland is an amusement park containing depictions of people, places and things made entirely of Lego bricks, such as a scale replica of the Taj Mahal.

Legoland has a mechanical boat ride entitled "Fairy Tale Brook" which it describes as: "This whimsical ride can be enjoyed by the whole family. Leaf-shaped boats sail gently through different fairy tale scenes created from LEGO® brick characters. Look for comical twists on childhood stories, such as the Three Little Pigs and the Three Billy Goats Gruff. Come see your fairy tale favorites come to life through LEGO Magic."

Assume Legoland wants to add new scenes to the Fairy Tale Brook ride based on the "Jack and the Beanstalk" story. The "comical twist" will be that Shrek will be the giant and Donkey (instead of a hen) will lay golden eggs. To implement this rendition of the story, Legoland will build some scenes that include Lego-brick depictions of Shrek and Donkey.

- 1) If Legoland depicts Shrek/Donkey as described above, discuss Legoland's potential liability under copyright and trademark law to the owners of the IP rights of Shrek/Donkey.
- 2) What would you advise Legoland to do?

2. From casebook sample questions

The "Java Jacket" is a cheap cup holder designed to insulate hot drinks contained in paper cups. It consists of a band of cardboard approximately two inches high and 1/16 inch wide which wraps around the middle of a paper cup, and which can be slid over the cup. The cardboard has a series of depressions in it which reduce the surface area touching both the cup

and the hand of the person holding it, thus reducing the rate of heat transfer to the hand. The manufacturer of the Java Jacket obtains a patent whose broadest claim reads:

1. A holder for encircling a liquid-containing cup to reduce the rate of heat transfer between the liquid contained in the cup and a hand gripping the holder encircling the cup, comprising a band of material formed with an open top and an open bottom through which the cup can extend and an inner surface immediately adjacent the cup, the band including a plurality of discrete, spaced-apart, approximately semi-spherically shaped depressions distributed on substantially the entire inner surface of the band so that each depression defines a non-contacting region of the band creating an air gap between the band and the cup, thereby reducing the rate of heat transfer through the holder.

This patent was obtained over prior art which showed ring-shaped cup holders, and cup holders composed of thick (1/2 inch or more) foam rubber insulating material. Among the advantages of the Java Jacket over the prior art are the cheap materials and the ease of storage and use.

The patentee brings suit against the manufacturer of an insulating cup holder that consists of a thin band of Styrofoam of exactly the same shape as the Java Jacket. The Styrofoam is approximately 1/32 of an inch wide. It does have natural “depressions” on the surface and throughout the material that reduce the surface area in contact with the cup, though they are caused by air pockets produced automatically when the Styrofoam is made, and are of all different shapes.

Does the styrofoam cup holder infringe the patent claim, either literally or under the doctrine of equivalents?

3. From casebook sample questions

ProTour, Inc., owns the ProTour golf course outside the Berstrom airfield in Austin. The designers of ProTour decided to appeal to “low-budget but serious” golfers by creating an 18-hole “fantasy” golf course, in which each hole is a replica of a hole from a famous golf course elsewhere in the country. To accomplish this, ProTour visited 16 famous golf courses, including Pebble Beach, Augusta, and Pinehurst. They took video cameras and photographed the courses, rented helicopters and flew over the courses, and purchased original blueprints of the courses. However, there are some inherent differences between the original holes and the ProTour holes. For example, the hole copied from Pebble Beach does not have an ocean nearby, and airplanes from Berstrom regularly fly over the course.

ProTour markets its golf course as “the cheapest way to tour with the masters,” and places signs at each hole describing the location and significance of the original hole that is copied. However, ProTour also places disclaimer signs along the course, indicating that none of the original golf courses “endorse, sponsor, or are affiliated with ProTour in any way.”

A group of golf courses whose holes have been copied by ProTour files a lawsuit claiming that ProTour has infringed their trade dress, diluted their distinctive marks, and infringed their copyrights. Are the plaintiffs likely to prevail?

4. From Professor Farley (American University) 2000 Exam:

You are in-house counsel for X-City, Inc., a clothing and footwear company that specializes in hip, urban gear for younger adults. One of the chief designers has come to you with a new design for a shoe.

The shoe is actually a combination shoe and in-line skate. It is ankle high and has a one and half inch platform which houses the skate wheels. The design allows the wearer to pop out the wheels when they want to skate and then pop them back in when they want to walk. The company thinks the shoe will fit a strong consumer need to skate to places that don't allow the wearing of skates. (There are currently no shoes on the market that have this feature.) They also think that consumers will want to wear these shoes more generally as they predict they will be seen as very stylish by their target market. The shoe is made of a shiny nylon type fabric and comes in metallic and neon colors (all solid colors). The shoe fastens with velcro strips rather than laces or buckles. The platform is solid black rubber.

Because of the thick platform look of the shoe, the company would like to call it the "Herman Munster" and use this name as the brand name. The designer has also brought along some draft ads for the new product for you to consider as well. In the ad, the text reads: "Think roller-blading is uncool? Think again." The ad does not indicate that "Roller Blade" is a registered trademark of their competitor.

What is your advice? Does the product, the brand name or the ad pose any problems? If so, please evaluate them and suggest solutions. What possible IP protection exists for this product? Explain your analysis. What would you recommend as being most effective? What would your client have to prove to achieve protection?

5. From Professor Weiser's 2002 Exam:

[Note from Prof. Ohm: This is an example of a policy question similar to one of the three questions you will be asked to answer on your final exam. Professor Weiser's class covered different policy questions than we have, so do not be alarmed if you do not have a lot to say in response to this question. I am giving it to you to give you an idea for the form and tone of the question you are likely to see.]

You take a job as the Counsel to the Senate Judiciary Committee. When you start, the Chairman of the Committee asks you the following question: "I keep hearing about the threats to the public domain and some supposedly ominous trends in the law of intellectual property. Could you explain to me what this complaint is all about?"