

FINAL EXAMINATION
INTRODUCTION TO INTELLECTUAL PROPERTY
Paul Ohm
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Instructions:

Please read these instructions carefully before proceeding.

1. The examination consists of three (3) pages, including this one. You will find three questions. Please make sure that your copy is complete and that you answer all three questions.
2. You have three hours (180 minutes) to complete the exam, and the exam is worth 180 total points. You should devote approximately one hour to each question. **Each question is worth 60 points or one-third of the total score.**
3. Answers will be graded based on content, clarity of expression, and organization. I suggest that you spend time outlining your response before you start to write. Where information is not provided that would be relevant to the analysis, feel free to explain how different facts would lead to different outcomes.
4. Assume that all cases that were pending when we discussed them in class are still undecided. If any cases have been decided or statutes have been changed during the course of the semester, you are not responsible for knowing the final rule, result or reasoning, and you will gain nothing by talking about the new decision or statute.
5. Since this is a class about entertainment and invention, some of the fact patterns may be based on real creative content, technology, and products. You will not be rewarded or penalized for facts about the actual content, technology, and products that are not presented in the exam questions. Feel free to add these types of details if you think they improve the readability of your answer.
6. In answering these questions, you may consult any written materials you wish.
7. Please type your answers or write them neatly. Mark your answers with your exam number, not your name. If you are handwriting the exam, please write on only one side of each page.
8. You must turn in these questions with your answers.
9. Good luck!

PROBLEM ONE (One Hour; 60 Points)

Penelope Prentice owns Penelope's Café in the large city of Metropolis. Twenty years ago, she began selling sugar cookies shaped like coffee mugs at the café. To make the cookies, she takes ordinary cookie dough, forms it into a flat, rectangular shape representing the mug's body, and to the body connects both ends of a curved, thin strip of dough representing the mug's handle. After the cookies are baked, she decorates them with three thin, horizontal lines of blue frosting across the center of the mug.

Over the years, people have come to associate these coffee mug cookies with Penelope's Café, and by the late 1990's, people began to come to Penelope's for the cookies. Around that time, Penelope ran a print advertisement in the local newspaper that featured a picture of a hand grasping one of the coffee mug cookies by its "handle," poised to dunk it into a cup of coffee. Above the photo it read, "Penelope's Café: Dunk some coffee in your coffee!" The ad ran five times.

A few months ago, Doug Davis opened up a cookie shop on the Emerald Street Mall in Gotham City, a large city thirty miles from Metropolis. His store specializes in sugar cookies of various shapes and sizes. He carries cookies that look like coffee mugs, along with twenty other designs. They are similar to Penelope's cookies with flat bodies and curved handles, but there are also some differences: first, Doug's cookies have three horizontal lines of *green* frosting across the center of the mug; second, Doug rounds the corners of the rectangle used as the mug's body while Penelope's cookie's corners are squared; finally, Doug's cookies are about twice as tall and twice as wide as Penelope's. Doug has never run advertising for his store, relying instead on passersby who can see the glass case full of cookies from Emerald Street, a popular, pedestrian-friendly, outdoor shopping center.

When Penelope learned about Doug's cookies, she complained that Doug had stolen her design. A local TV news reporter did a short segment about her complaints. The story included on-camera interviews with three people on Emerald Street who misidentified Doug's cookies as the cookies sold at Penelope's Café.

You are an associate in a law firm. Penelope has asked you whether she has a good case against Doug for violating her Intellectual Property rights. Write a memo to her with a detailed response.

PROBLEM TWO (One Hour, 60 Points)

Perry and Maggie are arch-rival, traveling, vacuum-cleaner saleswomen. Beginning about four years ago, Maggie's sales have sky-rocketed while Perry's sales have slumped.

The name of the game for traveling salespeople is deciding what towns to visit. Most salespeople, Perry included, simply look at a map and decide where to go next. Maggie has developed a better method, and being a hopeless braggart, four years ago she published an article about the method in the leading trade magazine. Although she omitted many of the details, in the article she disclosed that she had developed a mathematical formula to decide what city to visit next. She also revealed that the formula depends on only a single set of data: the cities she has visited in the past. Evidently, the formula can calculate, based on a list of past cities visited, the best city to visit next.

Desperate to reverse her fortunes, Perry hires a mathematician named Anna. After studying the article and the problem, Anna speculates that she could derive Maggie's formula if she could see one of Maggie's itineraries. Perry can think of two potential sources for this information: First, she could hire a private investigator to follow Maggie for a few months. Second, she could rifle through the trash outside Maggie's travel agent's office.

Perry hires you for legal advice. She has two questions. First, can she legally obtain Maggie's itinerary using one of the two methods described? Second, rumor has it that Maggie has recently hired a patent attorney, and Perry is worried that Maggie is about to file a patent application. Is Maggie likely to be able to patent her mathematical formula? Write a memo to Perry answering both questions.

PROBLEM THREE (One Hour, 60 Points)

“Our intellectual property regime unduly favors huge corporations over individual inventors and creators.”

Do you agree with this statement? Write a short essay in support of or opposition to this statement, and point to at least three examples of specific IP rules in your discussion. Whether or not you agree or disagree, identify reforms that could shift the balance between corporations and individuals one way or the other.