Introduction and Overview

The communications and information technology revolution(s) of the past several decades have transformed intellectual property law, once a rather tranquil and uninteresting legal backwater, into a major international battleground. An ever-increasing fraction of the world’s wealth is now embodied in intangible things – e.g., the sequence of the rice genome, the search algorithm for finding web content, the chemical formulas of Prilosec™, Viagra™, or Prozac™, the names “Prilosec,” “Viagra,” and “Prozac,” the Harry Potter plot line and characters, the best way to run an online auction, the words “Just do it” . . . – rather than the tangible things (like land, or factories, or paper clips, or airplanes, or automobiles) with which the law has been dealing for a long time.

Intellectual property law consists of the doctrines through which the legal system controls (and/or allows private parties to control) these intangible things: how they can (or cannot) be “owned,” how they are (or are not) protected against duplication or appropriation by others, the rights that owners do (or do not) have with respect to them, the ways that they can (or cannot) be transferred to others, and the like.

This course will survey three of the major bodies of law – copyright, patent, and trademark law – traditionally grouped together under the rubric of “intellectual property.” We will focus on the major doctrinal underpinnings of each of these sub-fields, the similarities and differences among them, and the similarities and differences in the way the law treats “intellectual,” as opposed to tangible, property. Because all three bodies of law are governed by federal statutes (the Copyright Act, the Patent Act, and the Lanham Act, respectively), we will use our exploration of these legal domains as an opportunity to discuss techniques of statutory construction -- the way(s) that courts (and lawyers) extract meaning from complex and often obscure statutory texts.

We will keep technological details to a minimum; although no IP class can completely eliminate all technological matters, if only because some of the cases (particularly in the patent area) cannot be completely understood without some understanding of the technology involved, I can assure you that no special technological expertise is required to understand this material.
Housekeeping Details

My office number is 204-4539. I much prefer communicating by email; my address is David.Post@temple.edu. Feel free to email me with any questions or comments you have concerning the course (or intellectual property generally); when you do so, put the words “IP course” in the subject line of your message; I get several hundred emails a day, and I am much more likely to read and to respond to one expeditiously if I know that it comes from a student in this class.

My office is in room 622 (Klein), and my office hours are Tuesday 10-12 or Wed. 1-2. If you see me in my office at other times, feel free to drop in if you’d like to talk about something relating to the class (or something else); and I’m always happy to set up an appointment to meet with you at other times if these are not convenient, and.

Exam and Other Requirements

There will be a 3 ½ HOUR OPEN BOOK IN-CLASS EXAMINATION, consisting of around 6 – 12 short essay questions (one or two paragraphs each. I have posted a great deal of material from prior exams (including sample answers, actual student answers (good and bad), and the like) on Blackboard, and we will have ample opportunity this semester to discuss, in great detail, the makings of a good (and a not-so-good) exam answer.

I expect all students to attend all classes. Our class meeting is a professional obligation of yours (and of mine). I understand that there may be occasions when you can’t make it to class for one reason or another, just as there may be occasions when I can’t make it to class for one reason or another. If I am unable to make it to class, I will do my best to let you know, as far in advance as possible; if you are unable to make it to class, please do me the reciprocal courtesy and try to let me know, as far in advance as possible, that you won’t be in class. You don’t need to give me an excuse – just let me know that you won’t be there.

I also expect all of you, obviously, to do the reading for each class. You will get very little (often nothing at all) out of the class discussion if you do not. Much of what we focus on in class concerns the techniques that the courts are using to make sense of statutory language, and if you haven’t read the opinions in question the discussion will not make any sense to you at all. In addition, we move through this material at a pretty rapid pace; if you fall behind, it will take considerable effort to catch up. The best strategy is to not to fall behind. I will call on people, at random, throughout the semester. Class participation from everyone is enthusiastically encouraged, but will have no effect on your final grade in the course.
Books and Readings

We do not use a Casebook in this class. All readings are available on Blackboard. The readings consist of (a) full-text (i.e., unedited) opinions in the cases listed below, (b) some short explanatory memos that I’ve prepared, and (c) portions of the relevant federal statutes. Regarding (a) and (b), most students find it convenient to download and/or print the material as they need it throughout the semester, and they also find it useful to have the material in electronic form on their computers. If, however, you would like to buy a complete printout of the entire semester’s readings, I have posted the entire package of readings on Blackboard, which you can download and print out (or bring to a local copy shop for printing and binding or what-have-you).

You must obtain a copy of the current version of the Copyright Act (17 USC §§101 et seq.), the Patent Act (35 USC §§1 et seq.), and the Lanham Act (15 USC chap. 22, §§1051 – 1127). The statutory material is not optional. Do not come to class without it. Get in the habit of having the statutory text in front of you at all times when reading and discussing these cases.

I have placed copies of these statutes on Blackboard as well. I have found that many students find it convenient to have all of the statutory material gathered together and bound in one place; if you would like that, any commercially-available IP statutory supplement (from 2010 or later) will do the trick; I have asked the Bookstore to obtain some copies of Goldstein’s “Selected Statutes & International Agreements,” which has all of the statutory material we’ll need.

This course, like all courses at the law school, is governed by Temple’s policy on Student and Faculty Academic Rights and Responsibilities (Policy # 3.70.02), which can be accessed through the following link:
http://policies.temple.edu/getdoc.asp?policy_no=03.70.02.

Readings for each class are listed below, followed, usually, by some questions. Spend at least some time before class thinking about your answers to each of the questions; you should be able to compose a brief answer (or at least a thoughtful response) to each of them. We will structure at least part of our discussion in class around them, and I’ll expect each of you to be prepared at least to say something about them if called upon to do so.
**READINGS**

**PART I: INTRODUCTION & COPYRIGHT LAW**

**Class 1**

A. Memo: Reading Cases  
B. US Constitution, Art 1 section 8  
C. Copyright Act, §§ 302(a), (b), and (c)  

**Note:** To make sense of §302, you must refer to the “Definitions” in Sec. 101 for (at a minimum) the following terms:

- create  
- fixed  
- copy  
- phonorecord  
- joint work  
- works made for hire  

**Questions**

1. What was Eldred’s claim?  
2. When does copyright protection begin? How long does it last?  
3. What does “fixed in any tangible medium of expression” mean?  
4. Why do we have copyright? What does the Eldred opinion say about that?

**Class 2**

A. Copyright Act §§ 102(a), 102(b), 103(a) & 103(b) [*and, as always, the relevant definitions in § 101*]  
B. *Bell v. Catalda*, 74 F. Supp. 973 (SDNY 1947) [*excerpt* with facts];  
C. *Bell v. Catalda*, 191 F.2d 99 (2d Cir. 1951)  
   You may find the display posted at  
   [http://www.coolcopyright.com/cases/chp2/bellcatalda.htm](http://www.coolcopyright.com/cases/chp2/bellcatalda.htm)  
   helpful for understanding the *Bell v. Catalda* case.  
D. Memo – A Note on *Burrow-Giles v. Sarony*  
E. *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53 (1884)  

**Questions**

1. How could Bell’s mezzotints possibly be “original,” given that they were “copies” of Old Master paintings?  
2. What about Catalda’s lithographs – were they “original”? What does the court have to say about that question?
3. Read §103 again, very carefully. The court holds that Bell has copyright – but in what? What part(s) of his mezzotints are protected by copyright and what part(s) aren’t?

4. Abraham Zapruder, on November 22, 1963, made a home movie of President Kennedy’s motorcade as it passed through Dallas; as it happened, he captured the only images of the moment when Kennedy was shot. Did he have copyright protection in his movie? What does he need to show in order to have the movie protected by copyright?

Class 3

A. Copyright Act, §§ 102(b) (again)
D. *Morrissey v Proctor and Gamble*, 379 F.2d 675 (1st Cir. 1967)

Questions

1. What could Rural Telephone Co. have done to make its white pages directory an “original” work of authorship?
2. Suppose it had done those things, and that the directory was an original work, protected by copyright; would it be infringing for Feist copy the names and phone numbers listed there?
3. Was Charles Selden’s bookkeeping system “novel”? Was it “original”? Was it protected by copyright?
4. What’s the holding of *Baker v. Selden*?

Class 4

A. Copyright Act, §§ 201, 202, 204
B. *Andrien v. Southern Ocean County Chamber of Commerce*, 927 F.2d 132 (3d Cir. 1991)
D. Memo: Issue-Spotting

Questions

1. Who’s Carolyn Haines, and why is the court concerned with her actions? Is she a party to the lawsuit?
2. Was Andrien’s map a “work made for hire”?
3. I wrote and published a book a year ago about Internet law – is Temple University the “author” of that book under §201 and the “work made for hire” provisions?
4. Who owns the “Third World America” sculpture itself – the physical, tangible, 3-dimensional thing?
5. Suppose the Third World America sculpture had been commissioned by CCNV as part of a motion picture that CCNV was producing about the plight of
homeless Americans – would that have made it a “work for hire” under the statutory definition?

Class 5

A. Memo: Some Questions About *CCNV v. Reid.*
B. *Childress v. Taylor,* 945 F.2d 500 (2d Cir. 1991)
C. Memo: Joint Authorship
D. Memo, The Copyright Regulations

Read the first subsection (37 CFR §202.1 – “Material not subject to copyright”) of the regulations included with that memo carefully; just skim the remainder.

Questions

1. The *Childress* opinion talks about both an “intention to merge their contributions into inseparable or interdependent parts of a unitary whole,” and the “intent of both participants in the venture to regard themselves as joint authors.” Are these separate requirements for a finding of joint authorship, or is the court just using different language to describe the same thing?

2. Could Carolyn Haines claim joint authorship regarding the map in the *Andrien* case?

3. How would you answer the following question (taken from the Spring 2011 exam):

   *********

   Teresa Glennon and Barry McCarthy are a world-famous songwriting team, whose songs have sold hundreds of millions of copies, worldwide, since they began writing songs together in the mid 1980s. Initially, they wrote all their songs together, trading ideas and suggestions back and forth about both the lyrics and the music for each song. Starting around 2000, they fell into a pattern whereby Glennon would write the lyrics, and McCarthy the music, to create their songs. That continued until 2005; since then, each of them has been writing songs completely independently, i.e., composing the lyrics and the music without any input from the other.

   When any of their songs (including the most recent ones) is published (in sheet music or book form) or released on a recording, the listing always says “By T. Glennon and B. McCarthy.” They have also continued the practice, begun when their partnership began, of designating themselves as “joint authors” for all of their songs when they register their copyrights.

   Renzo Clarido is a documentary film-maker employed by YouTube. He is working on a movie about the mayoral election in New York in 1998, and he would like to use one of the Glennon-McCarthy songs – “I’ll Get You, You S.O.B.,” written (by McCarthy alone) in 2008 – as background music in the movie. He writes to both Glennon and McCarthy, requesting their permission to use the song in the film (and offering to pay each of them $250). Glennon writes back and says that she accepts those terms. McCarthy, though, doesn’t; in his letter back to Clarido, he writes: “I expressly
forbid you to use the song *I'll Get You, You S.O.B.*, in any film, movie, motion picture, audiovisual work, or the like.”

(a) Clarido has asked for your advice. What do you tell him? Can he use the song in his film?

(b) Would your answer be different if Clarido wanted to use a different song by Glennon & McCarthy, “What’s the Use?,” written in 1988? Why (or why not)?

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Class 6

A. Memo: Copyright Registration

We will spend this class reviewing the material we have covered up to this point. Please prepare an answer (or at the very least the outline of an answer) to Questions 1 and 2 from “Review Questions – Copyright Law (Part One)” You do not need to hand these in – however, if you would like to do so and get my reactions to your answer/outline, feel free to do so.

Class 7

A. Memo: The Copyright Claim
B. Copyright Act, §§ 501(a) & 501(b)
C. Copyright Act, §§106, 109(a) and 109(c)
D. Memo: The First Sale Doctrine(s)

Section 106 is in many ways the heart of the Copyright Act, inasmuch as it sets forth the “bundle of rights” belonging to the owner of the copyright. As you might expect, there has been a great deal of case law dealing with the precise meaning of each of the § 106 rights, and we will only have a chance to look at a few of those cases. This excerpt from the House Report, prepared by the House Judiciary Committee to accompany the Copyright Act of 1976, provides a good overview of the entire bundle, and has been quite influential in subsequent judicial decisions interpreting the meaning of its various terms.

F. Columbia Pictures v. Redd Horne, 749 F.2d 154 (3d Cir. 1984)

Note: You may skip the discussion of “liability of co-defendants,” and “the defendant’s counterclaims” at the end of this opinion.

Questions
1. Suppose the Court had found that the sculpture “Third World America” was a work for hire. What would the consequences of such a finding have been for the parties? Would CCNV have been able to make changes to the sculpture? Take it on tour?

2. Who was Redd Horne, Inc.? What role did it play in the infringements of Columbia Pictures’ copyright-protected motion pictures?

3. Suppose the patrons of Maxwell’s Video Showcase were actually given the videocassettes, which they would then take into the viewing rooms, place into a VCR located there, and “play.” Would they be “performing” the copyrighted works? Would they be performing those works “publicly”?

4. Many of you, I’m sure, have been in hotels which allow you to choose movies to watch on the television located in your room. Are you “publicly performing” those copyrighted works when you watch a movie in your room? Is the hotel “publicly performing” those works when you watch a movie in your room?

Class 8

A. Memo: Section 106 Hypotheticals

B. *Selle v. Gibb*, 741 F.2d 896 (7th Cir. 1984)

In regard to the *Selle v. Gibb* opinion, you might find this website, which contains recordings of the songs at issue in the case, of interest:

http://cip.law.ucla.edu/cases/case_sellegibb.html

C. *Nichols v. Universal Pictures Corp.*, 45 F. 2d 119 (2d Cir. 1930)

Questions

1. Suppose the first 16 bars of Selle’s song (“Let it End”) and the BeeGees song (“How Deep is Your Love”) are identical – absolutely indistinguishable from one another. Would that demonstrate that the BeeGees “copied” from Selle’s work? Why (or why not)?

2. In *Nichols*, pay particular attention to what has come to be known as Judge Hand’s “abstractions test” (on page 2 of the opinion, beginning “Upon any work, and especially upon a play, . . .”). How does he apply that “test” to the facts of this case?

3. How would you answer the following question (taken from the Spring 2011 Exam)?

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An old friend of yours, Eric, sends you an email.

**Here is the complete text of Eric’s email:**

“Hey there! How’s my favorite law student doin’ these days? I hope all is well. . . . I’m writing you because I’ve run into a little problem, and I thought, given your legal knowledge, you could help me out. Remember Jasmine, from high school? Well, here’s an email I got from her yesterday:
‘From: Jasmine

To: Eric

Hi, Eric. I’ve seen this quote a few times on the Internet the last couple of weeks. “Freedom is best spoken of by people who are not free; they know it in its absence in a way we who have it cannot really know it. We are wise to listen to them.” I thought it looked familiar, and then I realized that it’s from your book, right? People are stealing it like crazy! You might want to look into this. xoxo Jasmine’

Jasmine is right – those exact sentences appear on page 134 of my book. I started looking around on the Internet, and I found dozens and dozens of blogs that are using the same quote. And then this weekend, it appeared in several “op-Ed” articles in some newspapers (the New York Times and the Philadelphia Daily News, along with a couple of others). Is there anything I can do?

Your old friend,

Eric”

End of text of Eric’s email

What do you tell him? In particular, does Eric have a copyright infringement claim (or claims) here?

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Class 9

A. Steinberg v. Columbia Pictures, 663 F.Supp. 706 (SDNY 1987)
   See “Memo: The Steinberg Posters,” which has reproductions of the two works at issue in the Steinberg case

B. Nash v. CBS, 899 F.2d 1537 (CA 7 1990)

Note: Reading (C) is a short excerpt from the district court opinion that was reviewed by the Seventh Circuit in (B). It contains the district court’s formulation of the “substantial similarity” inquiry in copyright law.

Questions

1. Consider the Saul Steinberg poster “New York from the Air,” and the infringing poster created by Columbia Pictures for its film “Moscow on the Hudson.” Suppose that you’re the lawyer for Columbia Pictures. Ridgeview Printing, Inc., a publishing company in Philadelphia, has made 1,000 reproductions of the “Moscow on the Hudson” poster and distributed them by sale to the public. Your client wants to know whether it has a cause of action against Ridgeview for infringing its copyright in the poster. Does it?
2. Remember Bell v. Catalda? What if Bell’s mezzotints had been made not by copying Old Master paintings (which were clearly not protected by copyright) but from modern works that were protected by copyright – the paintings of Jackson Pollock, say, or Salvador Dali. Would the result have been different in the case? [Read §103 again, and apply to these new facts].

Class 10 Copyright Defenses, I

A. Memo: Licenses, Exclusive Licenses, and Copyright Ownership
B. Effects Assoc. v. Cohen, 908 F.2d 555 (CA 9 1990)
   See http://www.youtube.com/watch?v=uE6Z1nBqLwo for a video of the clip at issue in the Effects Associates case
C. Copyright Act §107; Skim §§108 & 110

For a truly astonishing introduction to the topic of “fair use” in copyright law, see http://www.youtube.com/watch?v=CJn_jC4FNDo

Questions

1. After the court’s judgment in the Effects Assoc. case has been entered, who owns the copyright in the video clip? If that copy of the clip that is posted on YouTube was unauthorized by the copyright owner, who can bring an infringement claim?
2. What was the “purpose” of 2 Live Crew’s use of the copyright-protected material from “Pretty Woman”?

Class 11 Copyright Defenses, II

B. Obama “Hope” Poster Problem.

Class 12

A. Skim Copyright Act, §§ 502 – 507
B. Memo – Homer’s Fallacy: The Logic of Facts
C. Memo – Exam-Taking Mistakes

COPYRIGHT REVIEW

We will spend this class reviewing the copyright material. Please prepare an answer (or outline of an answer) to Questions 1, 4, and 5 from “Review Questions – Copyright Law (Part Two).” Again, you do not need to hand these in, though you should feel free to do so if you would like to get my reactions to your answer/outline.
Class 13

A. *Metallurgical Industries v. Fourtek*, 790 F.2d 1195 (5th Cir. 1986) – **SKIP Parts VII and VIII dealing with Evidentiary and Remedial Matters**

B. *Lueddecke v. Chevrolet Motors*, 70 F.2d 345 (8th Cir. 1934)

Questions:

1. Who is Smith? What did he do that embroiled him in this lawsuit? What is the court’s disposition of Metallurgical’s claim against Smith?

2. What are the elements of the cause of action for misappropriation of trade secrets?

Class 14

A. Memo – Introduction to Patents
B. Memo – The New Patent Statute
C. Patent Act §§ 100, 101, and 102 (especially 102(a) and 102(b))
D. **SKIM** Patent Number 6,328,163 (Morphing Candy Holding Device)

Class 15

A. Memo: A Note on *Pennock v. Dialogue*

Questions

1. Why does Pennock lose his right to patent his new hose? Wasn’t it a “novel” invention?

Class 16

A. *In re Lyle Borst*, 345 F.2d 851 (CCPA, 1965)
B. *Rosaire v. National Lead Co.*, 218 F.2d 72 (5th Cir. 1955)
C. Memo: A Note on the Patent Process
Questions

1. If the Atomic Energy Act had never been passed, what result in *Borst*?

2. In *Rosaire*, who gets the patent to the new method of prospecting for hydrocarbons?

3. Rosaire conceded that Teplitz-Gulf work was done (and therefore that the process he sought to patent was “known” and “used” by others) *before* he (and Horvitz) had even conceived of the prospecting method. How, then, could he possibly argue that he is entitled to a patent?

Class 17

A. Memo: The Language of Invention
B. *In re Hall* 781 F.2d 897 (Fed. Cir. 1986)
C. *In re Cronyn*, 890 F.2d 1158 (Fed. Cir. 1989)
D. *Egbert v. Lippmann*, 104 US 333 (1881)

**IMPORTANT:** There is a **TYPOGRAPHICAL ERROR** in the *Hall* opinion. On the second page of the opinion, in the paragraph beginning “The examiner made a final rejection . . .” the court writes:

“The examiner made a final rejection of the application claims. He said: "On the basis of the instant record it is reasonable to assume that the Foldi thesis was available (accessible) prior to February 27, 1979."

That date is incorrect. Do you see why? Can you tell me what the correct date is?

Questions

1. What accounts for the difference in result between *Hall* and *Cronyn*?

2. At what precise moment was the corset spring invention that was at issue in the *Egbert* case first in “public use”?

Class 18

A. *In re Paulsen*, 30 F.3d 1475 (Fed. Cir. 1994)
   Read only through page 4 (dealing with Claims 1 and 18)
B. *Metallizing Engineering Co v. Kenyon Bearing & Auto Parts*, 153 F.2d 516 (2d Cir. 1946)
Class 19

A. *Lough v Brunswick*, 86 F.3d 1113 (Fed. Cir. 1996)
C. Memo – Patent Ownership
D. Memo – The “All-Elements Rule”
E. *In re Swartz*, 232 F.3d 862 (Fed. Cir. 2000)

Class 20

A. Patent Act §103(a)
C. *In re Paulsen*, supra – Read the remaining sections of this opinion, dealing with the rejection for “obviousness”

Questions

1. Read 103(a) carefully. Fill in the blanks below:

   IF the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious to a person of ordinary skill at the time the invention was made, THEN ___________ even though ____________.

2. The KSR case is one where it is especially difficult to see what the legal issues involved are without some level of detail about the relevant technology. To help get us to those legal issues, here’s my understanding of the various automobile pedal innovations the Court is discussing. The Teleflex patent is for an adjustable pedal with a “fixed pivot point” and an electronic sensor mounted on the pivot point. The prior art already contained adjustable pedals with fixed pivot points (that’s in the Asano patent), AND pedals with electronic sensors located at the fixed pivot points (the ‘936 patent and the Smith patent). The question in the case, therefore, is whether it would have been obvious to a POSITA to combine the two – to make an adjustable pedal with a fixed pivot to which the sensor was attached. See page 13 (“The . . . legal question, then, is whether a pedal designer of ordinary skill starting with Asano would have found it obvious to put the sensor on a fixed pivot point.”). The District Court found that it would have been obvious, the Court of Appeals that it would not have been obvious, and the Supreme Court that it would have been obvious.

3. Why wasn’t the patent at issue in *KSR* invalid under the novelty provisions of sec. 102(a)?
Class 21

A. Patent Act §§ 154(a) and 271(a) – 271(c)
B. *Larami Corp. v. Amron*, 27 USPQ 2d 1280 (ED Pa 1993)

Read only the discussion of “literal infringement” in the *Larami* case; you may skip the discussion of infringement under the “doctrine of equivalents.”

D. Memo – *Graver Tank v. Linde*, Earlier Litigation

Questions

1. Assume the following:

   A has received a patent for invention X.
   Device Y is infringing the patent under the doctrine of equivalents – it has all the elements (or their equivalents) listed in A’s claim.
   Information becomes available showing that device Y was in the publicly-accessible “prior art” in this country one month before A invented X.

   Is A’s patent invalid? If so, why?

2. The *Warner-Jenkinson* opinion has a particularly helpful summary of its holdings at the end of the opinion. Make sure you read and understand each of the points the Court lists there.

Class 22

Patent Review


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INTRODUCTION TO INTELLECTUAL PROPERTY
FALL 2011
PROF. DAVID POST

PART IV – TRADEMARK LAW

CLASS 23 – NOVEMBER 18

A. Memo – Introduction to Trademarks

Questions:

1. What was Eli Lilly trying to stop Warner from doing, exactly?
2. Why does the Court hold that Lilly has no trademark protection for the name “Coco-Quinine”?
3. In order for Qualitex’s green-gold color to have protection as a trademark, the Court holds that it must have developed “secondary meaning”; what does that mean?

CLASS 24 – NOVEMBER 21

A. Blue Bell, Inc. v. Farah Manufacturing Co., 508 F.2d. 1260 (5th Cir. 1975)
B. Zatarain’s Inc. v. Oak Grove Smokehouse, Inc. 698 F.2d 786 (5th Cir. 1983)
C. Zazu Designs v. L’Oreal, 979 F.2d 499 (CA 7 1992)

NOTE: You should skip Part II of Judge Easterbrook’s opinion in Zazu Designs (dealing with the question of trademark damages); do read Judge Cudahy’s dissenting opinion, however.

Questions

1. Why do you think that Farah Manufacturing Co. sent a single pair of “Time Out” pants to each of its regional sales managers (and charged them for the privilege)?
2. Does Zatarain’s have any trademark protection for “Fish-Fri” or “Chick-Fri”? Everywhere? Or just in New Orleans?

CLASS 25 – NOVEMBER 28
A. Lanham Act, §2 (17 USC §1052) – see especially subsections (e) and (f)
B. In re Budge Manufacturing Co., 857 F.2d 773 (CAFC 1988)
C. In re Nantucket, 677 F.2d 95 (CCPA 1981)

Class 26 – November 30

A. McGregor-Doniger, Inc. v. Drizzle, Inc., 599 F.2d 1126 (2d Cir. 1979)
B. Volkswagenwerk Aktiengesellschaft v. Church, 411 F.2d 350 (9th Cir. 1969)

1. Isn’t Church using VW’s trademark without their authorization? Does the court allow him to continue doing that? Why?

Classes 27 and 28 – Dec. 5 and 7

Because our exam this semester is scheduled for Friday, December 9 – i.e., at the end of the week during which we have our last two classes – and because I firmly believe that you would all benefit enormously from spending the entire week prior to the exam reviewing and outlining the material we’ve covered up to this point in preparation for the exam, I haven’t assigned any additional cases for this last week of classes. On Dec. 5 I’ll summarize the trademark law material that we’ve covered, and we will use the Dec. 7 class to talk about the upcoming exam.

Please read the “Memo on Exam-Taking Mistakes” for that last class, and look over the Fall 2009 exam (appended to that memo). We’ll go over at least a few of these questions in our last class.

A few words about the review process. In addition to my usual office hours, I’ll have special office hours for exam review during the final week of classes:

Tuesday 12-2
Wednesday 12-2
Wednesday 4-6
Thursday 9 – 2

If you have prepared sample answers to any of the exam review questions and would like me to take a look at them, I’m happy to do so. If I am to have sufficient time to read them and get back to you, you need to get them to me by noon on Monday, Dec. 5. (You are welcome (encouraged) to try your hand at preparing answers after that point, and you may send them to me – I can’t promise, however, to respond if I receive them later than Monday at noon). When you send me something, please do the following:

Attach your answer(s) in a file attached to your email
Name the file “IPExamLastNameFirstname” (e.g., “IPExamSmithJohn” if your name happens to be John Smith”)

Be sure to put your name on your answer, and indicate clearly which question, from which exam, you are answering. If possible, copy the text of the question you are answering and include it with your answer.