

**George Mason University School of Law**  
**Trademark Law, 327-001**  
**Summer 2009 Tuesday and Thursday**  
**6 to 8:50 p.m., Hazel Hall, Rm. 221**

Instructor: Brian Banner  
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Required Text: Hilliard, D.C. et al., *Trademarks and Unfair Competition* (7<sup>th</sup> ed. 2008), including Supplement.

Additional: Cases and materials as distributed and/or assigned.

***Class:***

This class is for 3 credit hours. Therefore, expect to read a great deal so that you will gain a complete understanding of this area of the law. You will be required to think and demonstrate your knowledge of the case law. If you have an “event” planned between May 21 and July 9, 2009 that will require your absence, you should not sign up for this class. The syllabus lists fourteen (14) three hour evenings [actually 170 minute classes broken into two (2) 84 minute sessions per evening running from 6 to 7:25 for session A and 7: 35 to 8:50 for session B] There will be a 10 minute break between session A and B.

***Class Participation:***

Class attendance and participation is required. Be on time and come prepared for each class as you will be called upon to answer questions at every session. I reserve the right to grant up to 9 points to a student’s final numerical grade for class participation, and to subtract up to 9 points for poor participation. Eat dinner before or after class as *No Eating* will be permitted during the class. Guest speakers may be invited to the class to add their unique knowledge and perspective.

***Grading:*** Final (letter) grades are determined from numerical grades, on a distribution curve according to GMUSL curve policy. The final numerical grade is determined by a final (closed book) exam performance, plus class participation performance. The final will have one (1) essay question worth 40 points; ten (10) true/false questions worth 30 points; five (5) multiple choice questions worth 30 points. The final will test your comprehension of the materials and will be from the assigned reading materials. *My specific practice comments in class will also be tested.* The final will gauge your application of the law and principles covered in class. Answer only the question(s) asked and answer all sixteen (16) questions. 40% of your exam time should be dedicated to your essay while the remaining 60% of your time should be dedicated to your true false and multiple choice answers.

<b>Class</b>	<b>Class Date</b>	<b>Class Topic</b>	<b>Assigned Reading</b> <b>Skim all “notes” unless otherwise directed</b>
1 (TH) A	May 21	Chapter 1 and 2 Principles of Lanham and Unfair Competition Law Creation of Rights Spectrum of Strength Adoption & Use, Priority	<b>Chapter 1, 2</b> Lanham Act §§ 1, 2, 45 <i>Mishawaka</i> <i>College Savings</i> <i>T&amp;T Manufacturing</i> <i>U.S. Printing</i> <i>Zazu Design</i> <i>In Re Canada Pacific</i> <i>Warnervision</i>

			<i>Union Carbide</i> <i>Investacorp</i> <i>Marilyn Miglan Model</i>
1(TH) B		Searching and Opinions  Distinctive, Descriptive & Geographical Terms, Surnames, Color	Material to be provided <i>American Waltham</i> <i>Community of Roquefort</i> <i>In re Les Halles De Paris</i> <i>L.E. Waterman</i> <i>Wyatt Earp Enterprises</i> <i>Peaceable Planet</i> <i>Qualitex</i> Lanham Act §§ 2, 43(a)
2 (T) A	May 26	Chapter 3 and 4 TM Registration Loss of Rights	<b>Chapter 3, 4</b> <i>Park'N Fly</i> <i>Bayer</i> <i>Kellogg</i> <i>Filipino Yellow Pates</i> <i>Exxon Corp</i> <i>Ambrist</i> <i>Pepsico</i> <i>Marshak</i> <i>Dawn Donut</i> <i>Stanfield</i>
2 (T) B		Chapter 5 Trade Dress Protection	<i>The Original Great American Cho</i> <b>Chapter 5</b> <i>Sears Roebuck v. Stiffel</i> <i>Compco v. Day-Bright</i> <i>Bonita Boats</i> <i>In Re Morton-Norwich</i> <i>Traffix Devices</i> <i>Two Pesos</i> <i>Wal-Mart v. Samara</i>
3 (TH) A	May 28	FRAUD Chapter 1-5 Catch Up Discussion on Availability & Questions	<i>Grand Canyon West Ranch, LLC v. Hualapai Tribe,</i> <i>88 USPQ2d 1501 (TTAB 2008)</i>
3 (TH) B		Chapter 6 Infringement of Trademark Rights	<b>Chapter 6</b> <i>Champagne Louis Roederer</i> <i>Beer Nuts I, II, III</i> <i>Apple</i> <i>Mobil Oil v Pegasus</i> Lanham Act §§ 2(d), 32, 43(a)

4 (T) A	June 2	Similarity for Infringement	<i>California Fruit</i> <i>In re Martin's Famous Pastry</i> <i>DreemWorks</i> <i>GoTo.com v Disney</i> <b>Read Notes on similarity of goods and services</b> <i>Boston Professional</i> <i>Grotrian, Helfferich</i> <i>Brookfield Comm</i> <i>Entertainment Corp</i> <b>Read notes on actual confusion</b>
4 B			<i>Playboy E v Netscape</i> <i>Ferrari S.p.A.</i> <i>Big O Tire</i> <i>Beacon Mutual</i> <b>Review notes on actual confusion</b> <b>Read Pattishall article</b> <i>My-T-Fine Corp</i> <i>Kemp v Bumble Bee</i> <b>Read notes on Intent</b> <i>Louis Vuitton v Lee</i> <b>Read notes on Counterfeiting</b> <i>Perfect 10 v Visa</i> <i>Scotch Whiskey Ass'N</i> <i>Indianapolis Colts</i>
5 (TH) A	June 4	Chapter 7 Defenses and Limitations	<b>Chapter 7 and all Notes</b> <i>SunAmerica v. Sun Life</i> <i>COCA-COLA v. Koke</i> <i>Haagen-Dazs v. Frusen Gladje</i> <i>United Drug v Rectanus</i> <i>Dawn Donut</i> <i>Weiner King</i>
5 B		Gray Market Goods Permitted Uses	<i>Dawn Donut</i> <i>Weiner King</i> <i>A. Bourjois v. Katzel</i> <i>Prestonettes v Coty</i> <i>Osawa v B&amp;H Photo</i> <i>Lever Bros v US</i> <i>Champion Spark Plug</i> <i>Société Comptoir de L'Ind</i> <i>Cosmetically Sealed</i> <i>New Kids on the Block</i> <i>KP Permanent Make-Up</i>
6 (T) A	June 9	Chapter 7	<i>Champion Spark Plug</i> <i>Société Comptoir de L'Ind</i> <i>Cosmetically Sealed</i> <i>New Kids on the Block</i> <i>KP Permanent Make-Up</i>

6 B		Commercial Use in Commerce?  Doctrine of Foreign Equivalents	<i>06-4881-cv Rescuecom v. Google United States Court Of Appeals For The Second Circuit(April 2009) In re Spirits International N.V., 86 USPQ2d 1078 (TTAB 2008) and the April 29, 2009 Opinion from the US Court of Appeals for the Federal Circuit (2008-1369)</i>
7 (TH) A	June 11	Chapter 8 Unfair Competition Law Dilution Domain Name Misuse	<b>Chapter 8 and read all notes</b> <i>Sporty's Farm Mead Data v. Toyota Deere v. MTD</i>
7 B		Misrepresentations and Section 43(a)(b)	<i>Gilliam Fashion Boutique Vidal Sassoon Time Warner Dastar v 20<sup>th</sup> Century Fox</i>
8 (T) A	June 16	Discussion of Notes on Misrepresentation, False Ads, Misleading Ads Chapter 6-8 Catch Up Discussion and questions	<i>National Basketball Association v Motorola Decosta v CBS</i>
8 B		Misappropriation Distinctive Advertising Right of Publicity False Endorsement	<i>Eveready Battery Co v. Coors White v Samsung Yaeger v. Cingular Wireless, LLC., 88 U.S.P.Q. 2<sup>nd</sup> 1372 (E.D. Cal. 2008)</i>
9 (TH) A	June 18	Chapter 9 Freedom of Speech & Trademarks - Part I	<b>Chapter 9 and read all notes</b> <i>Dallas Cowboys v Pussycat Cliffs Notes v Bantam United We Stand America</i>
9 B		Freedom of Speech & Trademarks - Part II	<i>Mattel v MCA Parks v LaFace Records Coca-Cola v Purdy Louis Vuitton Malletier v. Haute</i>
10 (T) A	June 23	Chapter 10 Jurisdiction	<b>Chapter 10 and read all notes</b> <i>Coca-Cola v Stewart John Walker v DeMert</i>
10 B		Remedies	<i>Perfect Fit Ind. Meridian Mutual Insurance Aladdin Mfg v. Mantle Lamp Big O Tire Hamilton-Brown Shoe Alpo Petfoods v Ralston Intl Star Class v Tommy Hilfinger</i>

11 (TH) A	June 25	Chapter 11 Federal Trade Commission	<b>Chapter 11</b> <i>Mainstream Marketing v FTC</i> <i>Andrews Mortuary v FTC</i> <i>FTC v Colgate</i> <i>Kraft v FTC</i>
11 B			<i>FTC v QT, Inc</i> <i>Orkin v FTC</i> <i>Warner-Lambert v FTC</i> <i>FTC v Figgie Intl</i>
12 (T) A	June 30	Other Government Regulators	<b>Chapter 11</b> , pages 665-683 Food, Drug and Cosmetic Act
12 B			Fair Packaging & Labeling Act; Consumer Product Safety Act
13 (TH) A	July 2	Domain Names UDRP	Trademark Act §§ 32(2)(D), 43(d) Review the Uniform Dispute Resolution Policy and Rules: <a href="http://www.icann.org/dndr/udrp/policy.htm">http://www.icann.org/dndr/udrp/policy.htm</a> <a href="http://www.icann.org/dndr/udrp/uniform-rules.htm">http://www.icann.org/dndr/udrp/uniform-rules.htm</a>
13 B		ZZOUNDS.COM Case to be discussed Chapter 9-11 Catch Up Discussion and questions	
14 (T) A & B	July 7	Review for Exam July 9 Chapters 1 -11	Types of essay questions Types of True False questions Types of Multiple Choice questions
15 (TH)	July 9	<b>3 Hour Exam</b>	