Classroom: Hazel 329  
Meeting Times: Mons., Weds. 10 – 11:15 a.m.  
Exam: Tues., May 7, at noon

Office hours and whereabouts

My office is on the fourth floor, in the faculty suite, Room 420. My phone number is (703) 993-8247. My email address is eclaeys@gmu.edu. The course also has a TWEN site, and I am reachable on the discussion board of that site.

This semester, I will hold office hours Mon. and Wed. afternoons, 1 – 2 p.m. These are “walk-by” hours, meaning that I do not have any other appointments during them and you are free to come in to my office without appointment. However, I am happy to schedule appointments if you have a conflict during office hours or if you prefer for other reasons.

Cancellations and make-up classes

At this time, I do not anticipate canceling any classes. If I need to cancel class suddenly due to illness or some emergency, I will have my secretary post notices in the atrium and on the door of Hazel 329, and I will send an email to the class.

Class reading

I have tried to keep the readings to 22 pages of reading per class session. To help you read ahead, this syllabus forecasts the reading I anticipate covering for the entirety of the course. However, this forecast is not a promise but a projection. I reserve the right to change the projected reading schedule depending on how fast or slow we are going. If you read more than a class ahead, you assume the risk of reading material I decide to leave on the cutting room floor.

Class expectations

I expect you to be prepared for class. For any case excerpted at any length longer than a page, I expect you to understand the facts, the lawsuit, the theories of the case adopted in the majority and any separate opinions.

When I or the casebook presents a “squib” case—that is, a case consolidated into a paragraph or so, I expect you to know the facts, the holding, the rationale, and the contribution to the general line of doctrine covered in class.
When the casebook or excerpted cases refer to statutes, I expect you to read them in the supplement well enough to answer questions about them.

I expect you to attend class on a regular basis, and the ABA makes it a general condition of accreditation that students not miss more than 2 weeks of class. I keep attendance by having you sign in each day.

If you miss more than 6 class hours (the equivalent of 4 classes), I will not seat you for the examination and to give you a “forced withdraw” grade for the course.

With two exceptions, this is a “strict liability” policy: I do not waive this requirement because you are sick, have a job interview, personal emergency, &c. Except as specified below, you do not need to let me know in advance that you will be absent (and I prefer not to be notified), but by the same token I will not excuse absences in general.

Exception 1: I do not enforce the attendance policy when I need to reschedule class because I am canceling class due to non-GMU commitments.

Exception 2: I also do not enforce the attendance policy if the GMU Provost’s office designates the day a day of observance for a religion and you certify to me that you are a member of that religion. Consistent with the GMU Provost’s Guidelines: “It is the obligation of students to provide faculty, within the first two weeks of the semester, with the dates of major religious holidays on which they will be absent, and the dates for which they are requesting an excused absence for participation in any university-sponsored activity scheduled prior to the start of the semester, and as soon as possible otherwise.”

Otherwise, I expect you to self-regulate interviews, personal emergencies, illnesses, religious observances and other such commitments, so that you do not miss more than 4 classes or 6 class hours’ worth of time.

I expect you to prepare for class. I call on students during class, to discuss material that a lawyer should have been able to digest from the reading without much assistance. If I call on you and you are unprepared, that counts as an absence for 45 minutes (i.e., ½ of one of your 4 class absences, or 1/8 of the total time you may be absent without going over the maximum time limit). If you are unprepared and wish to avoid getting called on, please notify me before the beginning of class and I will mark you for a 22-minute absence (1/4 of a class, or 1/16 of the total time allowable).

During class, I expect you to be generally respectful to me and your classmates. Imagine the standards of comportment you would use if you were a lawyer, sitting in front of a judge, watching as the judge engages another lawyer in the proceeding. Please treat me and any of your colleagues with whom I am conversing with the same professional courtesy.
Grading

The grade for this class will be based solely on a 3 hour examination. The only resource you may bring into the examination is your statutory supplement – if it does not contain any markings, edits, margin notes, or other handwritings in it.

Course materials

For this course, you will need copies of


and


and

a printed supplement of cases I’ve assembled. This supplement is available in the entryway to the faculty suite on the 4th floor, just inside the room sign for room 407. The supplement is on the desk opposite the desk of administrative assistant Susan Birchler.

Course reading

Note: Unless otherwise indicated, when the reading instructs you to read statutes as part of the statutory supplement, I require you to do so as well. I will lecture about the relevant statutes, and I expect you to be prepared to answer questions about them.

When the reading refers to “G&R pp. 600-10 {590-600},” it refers to pages 600-10 of the rev. 6th ed. (2010), and pp. 590-600 of the 6th ed. (2008).

G&R pp. 65-67 (stop before the Board of Trade case). Background on unfair competition.


Goldstein & Reese pp. 65-67 (introduction to unfair competition law).


Any left-over discussion of NBA.

Goldstein & Reese pp. 67-76. Chicago Board of Trade v. Dow Jones; review of other recent ‘hot news’ misappropriation cases.

5. Wednesday, January 25. State Law: Publicity


Read the Uniform Trade Secrets Act § 1 (in the statutory supplement).

Goldstein & Reese pp. 77-91 end n. 5, 94-98, 100 n.3. Fourtek; Christopher; case notes providing an overview of trade secrecy.


We’ll finish any material left over from class 5.

Read Uniform Trade Secrets Act §§ 2-3 (in the statutory supplement).

Goldstein & Reese pp. 91-93 nn. 6-7. Notes on remedies for trade secret misappropriation.


G&R pp. 105-14. Redmond, carried forward from class 6 on 2/1.

Goldstein & Reese, pp. 167-70. (Overview.)


Pp. 175-82. (BlueBell, and use.)


G&R pp. 175-82. (BlueBell, and use.)

G&R p. 206-08 (abandonment);

pp. 190-97 (Security Center and the common law test of distinctiveness);

pp. 197-206 (King Seeley Thermos and section 2’s distinctiveness test);


G&R pp. 233-42. *(In re Advertising & Marketing, Midwest Plastic Fabricators, and types of marks)*;

and pp. 246-57 *(Qualitex, and content)*


G&R pp. 287-97 *(Mosely and federal-law dilution)*.

G&R pp. 332-37 nn. 1-10. *(Overview of remedies)*.


Review sec. 32(1) of the Lanham Act, 15 USC § 1114(1). What counts as ‘likelihood of confusion’ under these provisions? *(See McGregor-Doniger.)* Do these provisions make a third party liable for providing a forum in which a second party infringes a registrant’s mark? *(See eBay.)*

G&R pp. 337-49. *Tiffany, Inc. v. eBay Inc.*, 600 F.3d 93 (CA2, 2010). *(Replica copy on TWEN.)*

G&R pp. 357-67. *(pp. 351-60.)* *(McGregor-Doniger, Inc.)*.

G&R pp. 370-73. *(pp. 364-67.)* *(Case notes on infringement)*.


G&R pp. 429-33, nn. 2-7. *(Case notes on patentable subject matter.)* *(pp. 418-23 nn. 1-7, skipping n.6.)*

Any material left over from class 15. I will lecture about Pfaff and Smith briefly and field questions on these cases.
G&R pp. 484-88. {pp. 474-78. } Read nn. 2-7 after Stratoflex (but not Stratoflex).

G&R pp. 458-64. { pp. 448-54.} Paulik.

G&R pp. 546-68. { pp. 536-58. } Magna Graphics, Wilbur-Ellis, Whittemore & Savin (548 n.3), § 271(c) & contributory infringement (551-53 n.8).


(We’ll cover any material left over from class 18.)


G&R pp. 669-70 {659-60} nn. 1-4. Formalities related to registration.


G&R pp. 684-703. {pp. 674-93.} Sheldon, Bleistein, and Feist, and the materials on directories, research, maps, and case reports pp. 698-701 {688-91} nn.2-5.

G&R pp. 735-739. {pp. 725-29.} Discussion of copyright’s term. On p. 736 {726}, the casebook cross-refers you to excerpts from Eldred; you’re not responsible for reading that case.


G&R pp. 703-23 {pp. 693-713}. Reid, Erickson & initial ownership, works for hire, and joint works.


pp. 759-71 {739-51} Mirage Editions, Lee, Columbia Pictures.

pp. 779-80 {753-54}. Note on BMI, ASCAP, and collecting societies.


Read 17 U.S.C. § 501. Read § 501(a) closely, skim the rest.


G&R pp. 850-67 {824-40} end n.4. Overview of remedies, Stevens Linen, and Andreas.

G&R pp. 868-69 {841-42} n.7. Note on permanent injunctions.


G&R pp. 781-808 {754-82} end n.7. Harper & Row, Acuff-Rose, Suntrust Bank (p. 803-04 {777} n.1), Williams & Wilkins Co. (779} n.4).

27. Wednesday, April 18. Preemption (class 1).


G&R pp. 628-41 {618-31}. Kewanee Oil. Federal patent law v. state trade secrecy. Discussion of Kewanee Oil will almost certainly continue to the next class.

Continue discussion of Kewanee Oil from class 27.


G&R pp. 918-927 \{891-900.\} Copyright preemption.