INTELLECTUAL PROPERTY SURVEY
LAW 7065-001

SYLLABUS

Fall 2012
Wednesdays and Thursdays
1:40 p.m. to 3:05 p.m.
Room 107

Contact Information:

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Course Objectives: This survey course intends to introduce you to intellectual property (IP)—to give you a lay of the IP land instead of in depth coverage of any one particular topic. Over the semester, we will address trademarks, copyrights, patents and trade secrets, exploring the principal policy goals and law of each IP regime. The goal is to provide enough material such that students not seeking to take further IP courses will be able to recognize intellectual property issues in practice and know where to turn for help. Students interested in a career in IP should find this course useful as a jumping off point for subject-specific courses. No technical background is required.


Course Requirements and Grades: The course will be graded on the College of Law’s standard 4.0 scale and in adherence to its mean requirement for a class of this size (between 3.10 and 3.30). The final examination will comprise 95% of your grade. The final examination will be 4 hours and closed book. You may use your laptop to take the exam in accordance with applicable College of Law rules and procedures. Your exam may be handwritten, if you prefer. I expect you to come to class prepared to participate in class discussions. Class participation will comprise 5% of your grade. I welcome and encourage questions and comments from you in class. I also expect you to be courteous to your fellow students who may have questions or comments. Internet surfing, computer games and other electronic distractions (including ringing cell phones) are prohibited unless related to the course.

Academic Conduct Policy: All students at the College of Law must adhere to the University of Utah’s Student Code of Rights and Responsibilities (“Student Code”), available at http://www.regulations.utah.edu/academics/6-400.html. You are bound by the Student Code in all of your academic work. The Student Code outlines the University and College of Law’s expectations for the integrity of your academic work, the procedures for resolving alleged
violations of those expectations, and the rights and responsibilities of students and faculty members throughout the process.

**ADA Statement:** The University of Utah seeks to provide equal access to its programs, services and activities for people with disabilities. If you will need accommodations in this class, reasonable prior notice needs to be given to Barbara Dickey, Associate Dean for Student Affairs, and to the Center for Disability Services (CDS) to make arrangements for accommodations. CDS is located at 200 S. Central Campus Drive, (Union Building), Room 162 or you can call 801 581 5020. All written information in this course can be made available in alternative format with prior notification.

**Attendance Policy:** Class attendance is mandatory. Please be aware that the College of Law requires that you attend a minimum of 80% of your classes to receive credit for a course (per American Bar Association accreditation requirements). Any student not attending at least 80% of our classes will not be allowed to take the final examination. Please also be on time for class; punctuality is demanded of lawyers and your training begins here.

**Office Hours and General Administration:** I will hold official office hours from 3:05 p.m. to 5 p.m. on Wednesdays. In addition to office hours, you are welcome to stop by my office anytime that I am physically there (usually, normal business hours when I am not teaching). You may also email me to set up an appointment time that better accommodates your schedule. If you prefer, questions or comments are also welcome by email. (You may find that the exercise of writing out your questions helps with your misunderstanding or confusion.)

**TWEN:** The class TWEN site can be found on Westlaw. To join our site, log in to Westlaw and click on the TWEN tab on the top of the home page. You can then select “Add Course” and click on INTELLECTUAL PROPERTY SURVEY 7065-001. TWEN provides an online extension of our classroom with calendar, readings and forums where you can post messages or email the entire class. I will also occasionally post optional readings and other things of interest to our class.

**Schedule:** Each assignment listed on the schedule that follows is tentative. I may provide you with updates or changes periodically during the semester.

**I. INTRODUCTION**

Read pp. 1-18.


Watch *EVERYTHING IS A REMIX* (Kirby Ferguson 2011), Parts 1-4 (available at Vimeo and TWEN).

Read blog post http://brokenpianoforpresident.com/2012/07/19/jack-daniels-lawsuit-the-full-scoop/ and view images of the cease and desist letter, book cover and Jack Daniels logo (available at TWEN).
II. TRADEMARK LAW
   a. Distinctiveness
Read pp. 769-802: Abercrombie & Fitch Co. v. Hunting World, Inc.; Zatarain’s, Inc. v. Oak
   Grove Smokehouse, Inc.; Horizon Mills Corp. v. QVC, Inc.

   b. Trade Dress and Non-Word Marks
Read pp. 802-819, 835-841: Two Pesos, Inc. v. Taco Cabana, Inc.; Qualitex Co. v. Jacobsen
   Displays, Inc.

   c. Acquisition, Use and Priority
   Programming Res., Inc.; United Drug Co. v. Theodore Rectanus Co.; Nat’ Assoc. for Healthcare
   Commc’ns, Inc. v. Cent. Arkansas Area Agency on Aging, Inc.

Skim pp. 907-919, 922-928.

   d. Trademark Infringement
Read pp. 943-963, 977-986: Virgin Enters. Ltd. V. Nawab; Playboy Enters., Inc. v. Netscape
   Commc’ns, Corp.

   e. Secondary Liability and Dilution

   f. Cybersquatting and Unfair Competition
Read pp. 1030-1049: Coca-Cola Co. v. Ed E. Dorris; Smith v. Montoro; Dastar Corp. v.
   Twentieth Century Fox Film Corp.

   g. Trademark Defenses
Read pp. 1071-1079, 1089-1090, 1103-1114, 1136-1146: Rescuecom Corp. v. Google, Inc.; KP
   Permanent Make-Up, Inc. v. Lasting Impression I, Inc.; Sunmark, Inc. v. Ocean Spray

III. COPYRIGHT LAW
   a. Originality and Authorship

   b. Expression, Merger and Scenes a Faire
   Mkt. Reports, Inc.
c. Classifying Copyrightable Works

d. Ownership
Read pp. 461-481: *Aalmuhammed v. Lee;Cnty. For Creative Non-Violence v. Reid.*
Skim pp. 481-485 (Duration, Renewal, Transfers, Termination)

e. Copying and Misappropriation

f. Derivative Works, Distribution, Public Display and Performance

g. Secondary Liability

h. Copyright Defense of Fair Use

IV. PATENT LAW

a. Introduction and Claiming the Invention

b. Disclosing the Invention

c. Statutory Subject Matter


d. Old Section 102 – Novelty, Priority

e. Old Section 102 – Statutory Bars; New Section 102 – First Inventor to File
Read pp. 181-209: *Space Sys./Loral, Inc. v. Lockheed Martin Corp.; Egbert v. Lippmann; Lough*
v. Brunswick Corp.; In Re Klopfenstein.

Read *Update, America Invents Act* (supplement to Nard et al., available at TWEN).

f. Non-Obviousness


g. Literal and Equivalent Infringement


h. Patent Defenses of Misuse and Exhaustion


V. TRADE SECRET LAW


VI. REVIEW (or overflow)