Trademark quickFACTS

- Something that identifies the goods of one manufacture or seller from another
  - Symbol, word, design, or something else
  - Trade Dress: involves the look and feel of a product or its packaging
- Test looks for distinctiveness, attributes of arbitrary or fanciful are important.

Trademark quickFACTS cont’d

- Similar IP: the Service mark, ids a service
- Trademarks are indicated by TM or (R) symbols
  - Illegal to use without the registration process
- Having a trademark can help you enforce against the importation of infringing goods
- Trademarks require renewal (10 yr)
- Protection until mark becomes generic
Factors in a Dilution case

- If your trademark become generic, it can no longer be registered.
- "Blurring"
- "Tarnishment"
- 15 USC § 1127 defines dilution as “lessening of the capacity of a famous mark to identify or distinguish goods or services”
- The idea is to bring a cause of action to protect your distinctiveness

Factors a court examines in trademark infringement cases

15 U.S.C. § 1114
1. Ownership of valid, registered mark
2. Alleged infringer used
3. In commerce
4. The mark or similar symbol
5. In connection with offering for sale, distribution, advertising goods or services
6. The use caused likelihood of confusion, mistake or deception.

Case study for trademark: King’s Candy Crush
Do you think King should be able to stop people from using their game images on leggings?
A. Yes
B. No

0%
0%

Case study for trademark: King’s Candy Crush

• In January 2014, King has filed for a trademark on the use of the words “Candy” and “Saga” in games (and on clothing).

• 01/27/14 letter from CEO:

Do you think King should be able to trademark the word Candy as it relates to games and clothing?
A. Yes
B. No

0%
0%
Do you think King should be able to trademark the word Candy as it relates to clothing?
A. Yes
B. No

Do you think King should be able to trademark the word Saga as it relates to games?
A. Yes
B. No

The Banner Saga – A Stoic Studios game

King trademark cont’d

• In a January 2014 Forbes magazine article, Anthony W. Kosner asks if this is going to bring about a “land grab for words”

• King has now abandoned trademark attempt.

Trademark cases

• Teacher example hypothetical: PINK panties
• The Daniel Moore case v. UA:
• UA v. Houndstooth Mafia:

A kind of Trademark infringement: Cybersquatting

• 1999 Anti-cybersquatting Consumer Protection Act
  • Creates a cause of action for mark owners against those who in bad faith:
    • "register, traffics in, or uses a domain name”
    • that is the same as or confusingly similar
    • to a trademark.
  • Examples:
    • The Body Shop – thebodyshop.ws
    • Petronas oil company – petronastowers.net
Which of the following is likely cybersquatting?
A. johnnymanziel-is-a-punk.com
B. walmartsucks.com
C. juliaroberts.com
D. myverizonwireless.com
E. All of the above
F. C and D

When can you use someone else’s trademark on your web page
• Key is to avoid confusion of brand or affiliation.
• Can use when
  • There is a former relationship
    • Playboy v. Weber (1999)
  • To identify goods offered for sale
    • Ty, Inc. v. Perryman (2001)
  • To criticize or critique
    • Bally Total Fitness v. Faber (1998)
  • To compare products, comparative advertising

Trade Secret Protection
• Info that gives a competitive advantage
• Applies to formulas, recipes, designs, processes
• For trade secret protection there are requirements that you have taken measures to protect information.
  • Once information is out (in public domain) it is no longer eligible for trade secret protection.
• The purpose of many non-disclosure agreements is aimed at maintaining trade secrets.
What trade secrets can protect:

- Related to software:
  - “graphics, source code, object code, algorithms, programs or other technical descriptions, data flow charts, logic flow charts, user manuals, data structures, and database contents.”
  - examples from David Himelstein
- Trade secret status offers indefinite protection as long as secret is kept
- What if your trade secret has been "reverse engineered"?
- Understanding the difference between reverse engineering & misappropriation

Suppose you figure out how to make chicken that tastes just like KFCs. Can you legally sell your chicken?

A. Yes
B. No

Trade Secrets in the news

- 04/01/2014, Former Microsoft employee pleads guilty to trade secret theft
- Stop and smell the trade secrets:
  - http://www.mondaq.com/unitedstates/y/302594/Trade+Secrets/Stop+and+Smell+the+Trade+Secrets
Patents

- **Exclusive** grant of property rights to the holder from the US government
- Prohibits others from making, using or selling the invention in the US
  - Right to exclude others; holder has exclusive rights to make, sell, use invention
- In exchange for patent, enough information must be given so that at end of the patent term others may be able to use/create the invention
  - Quid pro quo: something for something

Patent test

- **United States Patent and Trademark Office (USPTO):** verify inventions are patentable and meet two criteria:
  - **Novelty** (new): An invention is novel only if it has not previously been invented by someone else
  - **Non-obviousness:** A solution to a problem that is obvious to another specialist in the appropriate area cannot be patented

Some of the Patent Types & Timeframes

1. Design - ornamental - grant is for 14 years from date of patent grant
2. Plant – 20 years since filing request
3. Utility - for processes - 20 years since filing
4. Defensive Publication – to prevent others from filing

- Eligibility of software, change to allow patent of software, *Diamond v. Diehr* [1981]
  - Original process involving computer calculations includable in patent.
Business method patent

- Coupling a process with software
  - Amazon 1 click business method patent, p. 132
  - Priceline reverse auctions

Software patent examples

Touchless Gesture Controls
- Apple and Microsoft filing patents for touch-less gestures controls.
  - Details:

Looking at a tech patent

- Other physical gestures that have been patented:
  - http://io9.com/5808604/10-physical-gestures-that-have-been-patented

Tech patents in the news

- US Supreme Court heard arguments on March 31, 2014 in the Alice Corp v. CLS Bank case
  - Patent trolls: a patent troll holds a patent only to be able to sue someone who might develop a similar system

- Cell phone wars:
Which IP looks for distinctiveness?
A. Copyright
B. Trademark
C. Patent
D. Trade Secret
E. All of the above

Quid pro quo happens with
A. Trade secrets
B. Copyright
C. Patent
D. Trademark
E. A and C

Which IP can have the longest or shortest length of protection?
A. Trade secrets
B. Copyright
C. Patent
D. Trademark