

INTELLECTUAL PROPERTY

In this subject, CALI has Lessons, Podcasts and eLangdell Press Texts. There are also Casebook Correlations and CALI Topic Grids available on the CALI website to aid you in assigning lessons.

COPYRIGHT

CALI Lessons:

A Copyright Primer

Copyright Law may seem shrouded in mystery: how can you create, transfer, and protect property interests in something intangible? This lesson provides an overview of how it is done, focusing on copyright protection for music. This focus takes advantage of the multimedia capacity of the program; for example, you can listen to two musical works to determine whether one infringes the other, and you can listen to the parody version of "Pretty Woman" that figured in a decision of the United States Supreme Court. Students familiar with copyright law will find many resources beyond those they studied in class. Hypertext links take you to cases and statutes, and addresses are provided for web sites where you can obtain additional information.

Lesson Completion Time: 1-2 hours

Author: Scott Burnham, Curley Professor of Commercial Law, Gonzaga University School of Law

A Primer on Copyright Infringement

This lesson is an introduction to the principles governing copyright infringement. After completing this lesson, you will be familiar with the standard used to determine liability for copyright infringement. Specifically, the lesson will introduce the elements necessary to support a claim of copyright infringement, which include assessments of copying, access, probative resemblance, striking similarity, improper appropriation, and substantial similarity.

Lesson Completion Time: 30-45 minutes

Author: Danielle Conway, Professor of Law, University of Hawaii at Manoa William S. Richardson School of Law

Architectural Works

This lesson explores the protection of architectural works (building designs) both under the 1976 Copyright Act and after adoption of the Architectural Works Copyright Protection Act of 1990. It assumes familiarity with the rules applicable to useful articles, the idea-expression dichotomy, and basic copyright infringement analysis, including its application to selection and arrangement compilations. It can be used either as a stand-alone treatment or to supplement in-class discussion when constrained by time.

Lesson Completion Time: 45 minutes plus essay (20 minutes)

Author: Vincent Chiappetta, Professor of Law, Willamette University College of Law

Compilations

This lesson addresses the protection afforded to compilations (including collective works) under United States copyright law. It deals with the issues of what constitutes sufficient originality (including special focus on factual compilations) and the extent and ownership of the resulting copyright (in particular, as regards collective works). It assumes a general understanding of the originality requirement and basic copyright infringement analysis. The lesson can be used either as supplemental, more detailed coverage when class time permits only passing treatment of the topic or as a follow up to in-class discussion to confirm and reinforce understanding.

Lesson Completion Time: 1 to 1.5 hours

Author: Vincent Chiappetta, Professor of Law, Willamette University College of Law

Contributory and Vicarious Liability

This lesson examines the two types of secondary liability in copyright law -- contributory infringement and vicarious liability. Before attempting this lesson, students should be familiar with the exclusive rights that belong to a copyright owner, and should understand the concept of direct infringement. Note: This lesson was written while the Supreme

Court was still considering *MGM Studios, Inc. v. Grokster, Ltd.*, cert. granted, 125 S. Ct. 686 (2004), the outcome of which may alter the standard for contributory infringement.

Lesson Completion Time: 30 minutes plus 15-minute essay

Author: Mary LaFrance, William S. Boyd Professor of Law, University of Nevada
William S. Boyd School of Law

Copyright and the Open Source Movement

This lesson will introduce you to the GNU/Linux operating system and its interaction with Copyright Law.

You can complete this lesson without any exposure to the law of copyrights, but the other CALI lessons on copyright will explore basic copyright concepts. This lesson will be helpful to students studying concepts of ownership in the copyright context. After this lesson and the model answers to the essay questions, you will understand the interaction between current copyright and licensing law and the open source movement's freedom.

Lesson Completion Time: 45 minutes

Author: Danielle Conway, Professor of Law, University of Hawaii at Manoa William S. Richardson School of Law

Copyright Duration

This lesson deals with copyright duration, an arcane, technical and somewhat laborious subject that is not always covered in depth in copyright law or intellectual property law courses. Therefore, it is assumed that this is the student's initial exposure to the subject matter. Nevertheless, copyright duration is one of the few areas of copyright law that is filled with certitude. After divining the relevant background information concerning the creation of a work, including manner of authorship responsible for creating the work, the specific date on which copyright protection for a work has or will end can be determined. Only copyright duration under United States copyright law is addressed.

Lesson Completion Time: 1 hour

Author: Robert Lind, Paul E. Treusch Professor of Law, Southwestern Law School

Copyright Formalities: Notice and Registration

This lesson covers some of the basic formalities of copyright: notice, registration, and deposit. Attention is given to changes wrought by the 1976 Act and the Berne Convention Implementation Act.

Lesson Completion Time: 50 minutes

Author: David Welkowitz, Professor of Law, Whittier College School of Law

Copyrights in Sound Recordings

This lesson introduces the user to the copyright issues that pertain to sound recordings. The lesson illustrates the difference between sound recordings and other works, the nature of the exclusive rights granted to the owners of sound recording copyrights, some of the problems resulting from the interaction of sound recording copyrights with other copyrights, and key limitations on sound recording copyrights. Users should have knowledge of basic copyright principles before using this program.

Lesson Completion Time: 1 hour

Author: David Welkowitz, Professor of Law, Whittier College School of Law

Fair Use and Parody

This lesson explores the application of the fair use doctrine, a defense to copyright infringement, in the special context of parody, based on the guidance provided by the Supreme Court in *Campbell v. Acuff-Rose Music*, 510 U.S. 569 (1994). The lesson builds on the foundation established in CALI Lesson CPY08, Fundamentals of Fair Use, using a series of hypotheticals and a final essay.

Lesson Completion Time: 30 minutes plus 15-minute essay

Author: Mary LaFrance, William S. Boyd Professor of Law, University of Nevada
William S. Boyd School of Law

Fixation Requirement

This lesson discusses the requirement that a work be "fixed in a tangible medium of expression" as a condition to obtaining copyright protection. Although it assumes a basic familiarity with copyright law and terminology, it is designed to stand alone. It can, therefore, be used either as an introduction to the fixation requirement or as a review of those concepts after a class discussion.

NOTE: This lesson is intended as an overview of this topic; it does not cover all the details related to live performances or the recently decided cases declaring unconstitutional sec. 1101.

Lesson Completion Time: 45 minutes, plus 3 essays (approx. 15 minutes each)

Author: Vincent Chiappetta, Professor of Law, Willamette University College of Law

Fundamentals of Fair Use

Because copyright creates ownership rights in original expression, the private property interests of copyright owners sometimes come into conflict with the public's interest in disseminating knowledge, expressing ideas, or simply enjoying, sharing, and building upon the protected expression. This lesson introduces the basic concept of fair use in

copyright law, and offers numerous examples to test the student's ability to apply the balancing test of 17 U.S.C. § 107.

Lesson Completion Time: 45 minutes

Author: Mary LaFrance, William S. Boyd Professor of Law, University of Nevada
William S. Boyd School of Law

Joint Works

This lesson explores the concept of a "joint work" in copyright law, including the legal standards which determine whether a work has been jointly authored as well as the legal consequences that attach to this characterization.

Lesson Completion Time: 35 minutes plus 20 minute essay

Author: Mary LaFrance, William S. Boyd Professor of Law, University of Nevada
William S. Boyd School of Law

Limitations on the Distribution Right

This lesson follows the Distribution Right lesson, CPY16. This lesson can best be characterized as the Limitation on the Distribution Right. Colloquially referred to as the First Sale Doctrine, 17 U.S.C. section 109 provides that the copyright owner's exclusive right of distribution and consent to that distribution effects the transfer of the rights in that copy or phonorecord, so long as the the transfer was of a lawful copy or phonorecord embodying the copyrighted work.

This lesson will explore the rationale for the First Sale Doctrine, the elements that must be proved in order to use the Doctrine as a defense against a claim of infringement, and the limitations that are placed on the application of the defense. Two of the limitations on the application of the defense include recognition of copyright in restored works and the prohibition against the rental of a particular sound recording phonorecord or a particular copy of a computer program. The goal of this lesson is to provide a general introduction to the First Sale Doctrine as a defense to an alleged violation of the the exclusive right of distribution as opposed to any other violation of the copyright owner's exclusive rights.

Lesson Completion Time: 45 minutes

Author: Danielle Conway, Professor of Law, University of Hawaii at Manoa William S. Richardson School of Law

Ownership of Copyright: Works Made for Hire

This lesson reviews the threshold principles of ownership by analyzing the "works made for hire" doctrine codified in the Copyright Act of 1976. In addition to an analysis of the current Copyright Act, this lesson will review the rules and doctrine of "works made for hire" under the Copyright Act of 1909. The review of both Acts is crucial to a proper

determination of copyright ownership for original works of authorship created before January 1, 1978 and for those copyrighted works created on or after January 1, 1978. Depending on the date of creation, a court will be required to analyze differing rules of law to resolve the issue of copyright ownership. The purpose of this lesson is to augment the readings and study you have already done with your professor.

Again, as this lesson is meant as a review of materials you have covered in your class with your professor, you should become familiar with the 1909 Copyright Act and the 1976 Copyright Act as amended by the Berne Convention. In particular, you should have some knowledge of the interest and expense test for determining a "work made for hire" under the 1909 Act and the Reid multifactor test for determining a "work made for hire" under the 1976 Act.

If you do not have this background, do the lesson anyway to acquaint yourself with the rules and doctrine of "works made for hire" but do not concentrate on scoring. After your initial exposure to the material, revisit the lesson at some later point to confirm your understanding of the "work made for hire" doctrine.

Lesson Completion Time: 30 minutes

Author: Danielle Conway, Professor of Law, University of Hawaii at Manoa William S. Richardson School of Law

Rights of Public Performance and Display

This lesson explores a copyright holder's right to control the performance and display of the related work of authorship. The lesson provides a broad overview of the rights with the exception of sound recordings, which are the subject of CALI lesson "Copyrights in Sound Recordings, CPY14." It can be used (1) as stand alone coverage of the topic, or (2) to expand or reinforce in-class discussion. The lesson requires only general familiarity with copyright law principles, in particular (1) the distinction between a work of authorship and copies of that work, and (2) basic infringement analysis.

Lesson Completion Time: Performance section - 1 hour plus essay; Display section 30 additional minutes, 1 hour stand alone with references back

Author: Vincent Chiappetta, Professor of Law, Willamette University College of Law

Statutory Interpretation

This lesson introduces the student to the doctrine and processes involved in interpreting state and federal statutes. Statutes are a critical part of every substantive area of the law, so this is important background for every law student, lawyer and judge.

Lesson Completion Time: 30 minutes

Author: Ronald Brown, Professor of Law, Nova Southeastern University Shepard Broad Law Center

The Adaptation Right

This lesson examines the scope of one of the exclusive rights belonging to a copyright owner -- the right to create derivative works based on the copyrighted work, under 17 U.S.C. § 106(2).

Lesson Completion Time: 20 minutes plus 10-minute essay

Author: Mary LaFrance, William S. Boyd Professor of Law, University of Nevada
William S. Boyd School of Law

The Distribution Right

This lesson provides an introduction to one of the Copyright Act's section 106 exclusive rights, the distribution right. As you will glean from the lesson, the distribution right covers the copyright owner's exclusive right to distribute copies or phonorecords of copyrighted works by means of sale, transfer of ownership, or by rental. In addition, the distribution right creates a statutory right called the right of first publication. This lesson is intended as an introduction to the distribution right; its approach is to review the statutory basis for the distribution right and to review the basis for the right of first publication. This lesson is useful as both an introduction to the exclusive right of distribution, as well as a review.

Lesson Completion Time: 45 minutes

Author: Danielle Conway, Professor of Law, University of Hawaii at Manoa William S. Richardson School of Law

Useful Articles

This lesson deals with the "useful article" limitation on protection of pictorial, graphic and sculptural works under copyright law. It assumes a general understanding of the policy objectives of intellectual property law, works of authorship, the test for determining if a work of authorship is protectable and the basic rights afforded. The lesson can be used either as an introduction to the exclusion or to supplement or reinforce in-class coverage.

Lesson Completion Time: 1 hour, including essay (approx. 15 minutes)

Author: Vincent Chiappetta, Professor of Law, Willamette University College of Law

Podcasts

What is a "song" and protection for live performances PodCast

Prof. Lind teaches Copyright, Trademark, Entertainment Law, Mass Media law, and Museum and Art Law at Southwestern. He is also the author of several CALI lessons on copyright and trademark law. In this podcast, he explains the confusion that arises from the use of the term "song." Prof. Lind also discusses the terms "author" and "sound recording" and their implications for protection under the U.S. Copyright Act. In this podcast Prof. Lind analyzes several performances (a vocalist and comedy improv troupe) and discusses whether their performances are protected by Copyright Law and the role of the Bootlegging statutes.

Run Time: 20:15 minutes

Author: Robert Lind, Paul E. Treusch Professor of Law, Southwestern Law School

eLangdell Press Texts

Intellectual Property Supplement Volume I - Copyright (2013)

Compiled by the Editorial Staff of eLangdell Press

This Intellectual Property Supplement from eLangdell Press contains the text of federal laws and regulations in the area of copyright, trademarks and patents. The editors have endeavored to gather all relevant laws, rules and regulations. This collection is intended to be used primarily as a statutory supplement for law students and legal scholars in academic settings, although practitioners in this area of law will also find it useful.

This volume, Volume 1: Copyright Statutory Law contains the text of Title 17 of the United States Code as it appears on the most current edition available on the U.S. Government website FDSYS. Updates to the U.S. Code not yet found in the FDSYS published editions can be found in the United States House of Representatives Office of Law Revision Counsel's Classification Tables. They can be found at <http://uscode.house.gov/classification/tables.shtml>. Some formatting modification has been performed to better accommodate electronic readers.

Patent Law

Basic Concepts of Non-Obviousness

This lesson reviews some of the concepts needed to understand the patent law doctrine of "nonobviousness" (Section 103 of the Patent Act). Before completing this lesson students should be familiar with the doctrine of novelty under Section 102 of the Act.

Lesson Completion Time: 45 minutes

Author: Katherine Strandburg, Professor of Law, New York University School of Law

Infringement Beyond the Borders: 271 (f)

This lesson covers one type of patent infringement involving activity beyond the borders of the United States. In particular, what constitutes infringement under 271(f)(1) and (f)(2) is addressed, including the US Supreme Court decision, *AT&T v. Microsoft*. Students may use this lesson to review material already covered in a course, or to learn this material on their own. Students should at least have prior knowledge and understanding of direct and indirect infringement under 271(a)-(c).

Lesson Completion Time: 35 minutes

Author: Cynthia Ho, Associate Professor of Law, Loyola University Chicago School of Law

Introduction to TRIPS - Patent

This lesson is an introduction to patent issues under TRIPS, an important international agreement that impacts the national patent laws of all member countries of the World Trade Organization. This includes over 170 countries, including not only industrialized countries, but all developing and least developed countries. Because TRIPS imposes restrictions on national law in all countries, understanding TRIPS is important to understanding what changes to patent law is possible - in the United States and beyond. Some familiarity of US patent law is required, but a full patent law course is certainly not necessary.

Lesson Completion Time: 45 minutes

Author: Cynthia Ho, Associate Professor of Law, Loyola University Chicago School of Law

Literal Infringement

This lesson defines and applies the concept of literal infringement in patent law. It also examines the process through which the patentee establishes a prima facie case of literal infringement.

Lesson Completion Time: 40 minutes

Author: Mary LaFrance, William S. Boyd Professor of Law, University of Nevada
William S. Boyd School of Law

Nonobviousness: The Scope and Content of the Prior Art

This lesson focuses on one of the factual inquiries underlying the legal determination of nonobviousness: the scope and content of the prior art. It assumes that you are familiar with the patentability requirement of novelty under 35 U.S.C. §102 and with the basic framework of the obviousness analysis. If you would like a review of the basic framework for determining obviousness, you may want to do the lesson on "Basic Concepts of Nonobviousness" before you complete this lesson. After completing this lesson you should have a better understanding of how to determine the scope and content of the prior art so as to assess obviousness.

Lesson Completion Time: 30 minutes

Author: Katherine Strandburg, Professor of Law, New York University School of Law

Novelty (Section 102(a))

This lesson works through the details of patent law's novelty requirement as set out in Section 102(a) of the Patent Act. It also briefly covers Section 102(e) and inventorship. It does not deal with Section 102(b) statutory bars.

A general understanding of the nature of claims and the application process is assumed background context. The lesson can be used as supplemental preparation for class, to confirm your understanding afterwards or as a final self-test before the exam.

The Contents listing is broken down into sub-topics allowing direct access if only a specific issue is of interest. The final "Putting It All Together" section contains a number of review problems. As indicated in the "Approximate Completion Time" the various sections can also be done as stand-alone exercises

Lesson Completion Time: Policy & Basic Structure - approximately 30 minutes; Details - approximately 45 minutes; Problems - approximately 30 minutes (including the essay)

Author: Vincent Chiappetta, Professor of Law, Willamette University College of Law

Obviousness: Secondary Considerations

This lesson can serve as an introduction or review of the way in which "secondary considerations" are used in assessing the nonobviousness requirement in patent law. The lesson assumes a basic familiarity with the nonobviousness doctrine. Before doing this lesson, students may wish to review the lesson dealing with Basic Concepts of Nonobviousness. Other aspects of the nonobviousness doctrine are covered in the lesson dealing with Scope and Content of the Prior Art. Students may do this lesson either before or after that lesson.

Lesson Completion Time: 45 minutes

Author: Katherine Strandburg, Professor of Law, New York University School of Law

Patentable Subject Matter

This lesson covers the kinds of inventions that can be patented. The first section discusses how the Constitution and the federal Patent Act (specifically Section 101) define and limit those categories of innovations, including the open issues in that on-going debate. The second section offers a variety of problems ranging from the straight-forward to the more complex, permitting confirmation of understanding and practice in application. Although the two sections build on one another, they are sufficiently independent that either can be done as a stand-alone exercise.

A general familiarity with basic patent law policy and doctrine would provide helpful background context, but neither is assumed or essential.

Lesson Completion Time: Section 1 - 30-40 minutes; Section 2 - 20 minutes

Author: Vincent Chiappetta, Professor of Law, Willamette University College of Law

Policy and Patentable Subject Matter

This lesson examines the public policy objectives driving and defining United States patent law. The first section explores the nature and logic of the regime's generally accepted core purpose - providing optimum incentives to invest in useful arts innovation. The next section discusses how that goal generates the basic doctrinal requirements for patentability (novelty, nonobviousness, utility, enablement/disclosure - patentable subject matter is covered separately in lessons on Patentable Subject Matter and Non-Obviousness). The lesson's final section concludes with a brief look at how other normative views of property entitlements affect patent public policy debate as well as client expectations.

Although some general familiarity with patent law may provide helpful background context, the lesson assumes no prior knowledge. The lesson can be used before class to prepare, afterwards to clarify/supplement class discussion or as a self-test for the final exam. And, who knows, it might even prove interesting for its own sake.

Lesson Completion Time: 45 minutes

Author: Vincent Chiappetta, Professor of Law, Willamette University College of Law

Statutory Interpretation

This lesson introduces the student to the doctrine and processes involved in interpreting state and federal statutes. Statutes are a critical part of every substantive area of the law, so this is important background for every law student, lawyer and judge.

Lesson Completion Time: 30 minutes

Author: Ronald Brown, Professor of Law, Nova Southeastern University Shepard Broad Law Center

The Doctrine of Equivalents

This lesson introduces the doctrine of equivalents, which permits a finding of patent infringement where the accused structure or process does not literally infringe, but differs only insubstantially from the claimed structure or process.

Lesson Completion Time: 40 minutes

Author: Mary LaFrance, William S. Boyd Professor of Law, University of Nevada William S. Boyd School of Law

TRIPS - Advanced Topics

This lesson provides an advanced exploration of patent issues under TRIPS, an important international agreement that binds most countries, including developed and developing countries. This lesson aims to provide students with information concerning pressing issues. It is appropriate for students who have completed the Introduction to TRIPS lesson, as well as students who have some prior exposure to TRIPS, such as students who have studied the agreement in a class on International IP.

Lesson Completion Time: 45 minutes

Author: Cynthia Ho, Associate Professor of Law, Loyola University Chicago School of Law

Utility

This lesson explores the concept of utility as a condition for patentability under 35 U.S.C. § 101. The lesson can serve either as an introduction to the topic or as a review after

covering the material in class. Although the fundamental concepts in this lesson are not difficult, the optional essay explores a particularly challenging topic.

Lesson Completion Time: 30 minutes (45 min. with optional essay)

Author: Mary LaFrance, William S. Boyd Professor of Law, University of Nevada
William S. Boyd School of Law

eLangdell Press Texts:

Intellectual Property Supplement Volume II – Patent Statutes (2013)

Compiled by: The Editorial Staff of eLangdell Press

This Intellectual Property Supplement from eLangdell Press contains the text of federal laws and regulations in the area of copyright, trademarks and patents. The editors have endeavored to gather all relevant laws, rules and regulations. This collection is intended to be used primarily as a statutory supplement for law students and legal scholars in academic settings, although practitioners in this area of law will also find it useful.

This volume, Volume 2: Patent Statutory Law contains the text of Title 35 of the United States Code as it appears on the most current edition available on the U.S. Government website FDSYS. Updates to the U.S. Code not yet found in the FDSYS published editions can be found in the United States House of Representatives Office of Law Revision Counsel's Classification Tables. They can be found at <http://uscode.house.gov/classification/tables.shtml>. Some formatting modification has been performed to better accommodate electronic readers.

Trademark

Abandonment

This lesson deals with how trademark protection may be lost by abandonment, i.e. the discontinued use of a mark, the licensing of a mark in gross or an assignment of a mark in gross. This lesson is intended to be used as a supplement to the student's course material. It analyzes several issues that arise from the non-use or limited use of a mark, the licensing or assignment of a mark, as well as the considerations that follow the resumption of use of an abandoned mark.

Lesson Completion Time: 30-45 minutes

Author: Robert Lind, Paul E. Treusch Professor of Law, Southwestern Law School

Acquired Secondary Meaning

This lesson builds on the concepts that you may have been introduced to in Professor Robert Lind's lesson on the classification of marks, e.g., generic marks, descriptive marks, suggestive marks, arbitrary marks, and fanciful marks. Specifically, this lesson will concentrate on the validity of a mark for trademark protection purposes when the trademark or trade dress is not inherently distinctive. So, after completing this lesson, you should be able to identify and then analyze when a trademark or trade dress may receive trademark protection even though the mark or dress is not inherently distinctive. For your information, in most respects trademarks and trade dress are treated similarly, if not the same, by the Lanham Act. In only a few evidentiary situations will trademarks and trade dress be distinguished; for example, when determining whether a source identifier is inherently distinctive or not. This principle will be explained fully in the Trade Dress lesson.

Lesson Completion Time: 40 minutes

Author: Danielle Conway, Professor of Law, University of Hawaii at Manoa William S. Richardson School of Law

Collective Marks and Certification Marks

This lesson explores the Lanham Act provisions governing federal registration of collective marks and certification marks.

Lesson Completion Time: 30 minutes

Author: Mary LaFrance, William S. Boyd Professor of Law, University of Nevada William S. Boyd School of Law

Distinctiveness

This lesson provides an analysis of the levels of distinctiveness and the requirements for the determination of whether a term chosen as a mark is inherently distinctive, must yet acquire distinctiveness, or is incapable of trademark protection regardless of distinctiveness. The lesson is intended as a review of material that is covered early in a Trademark Law course.

Lesson Completion Time: 40 minutes

Author: Robert Lind, Paul E. Treusch Professor of Law, Southwestern Law School

European Union Trademark Basics

This lesson gives an overview of the basics of the European Union's trademark system. The emphasis is on issues of registration and infringement. It often uses a comparative approach, with the U.S. system as a foil. It takes users through both the national systems

(via the Trademark Harmonization Directive) and the Community Trademark system. Familiarity with U.S. trademark law is assumed.

Lesson Completion Time: 1 hour

Author: David Welkowitz, Professor of Law, Whittier College School of Law

Federal Trademark Registration: Bars to Registration

This lesson explores section 2 of the Lanham Act, 15 U.S.C. § 1052, which prohibits certain types of trademarks from being registered on the Principal Register of the PTO, regardless of whether those marks are protectible under state law or under section 43 of the Lanham Act, 15 U.S.C. § 1125.

Lesson Completion Time: 45 minutes

Author: Mary LaFrance, William S. Boyd Professor of Law, University of Nevada
William S. Boyd School of Law

Foreign Words and Personal Names as Trademarks

This lesson explores how trademark law deals with two specific categories of marks: foreign (non-English) words and people's names. It addresses their ability to function as marks as well as how they should be assessed when determining infringement. The lesson assumes a working familiarity with the "distinctiveness" requirement, the fair use doctrine, and the likelihood of confusion test for infringement. The lesson can be used to (1) provide an overview of one or both of these specialized areas of trademark law or (2) as a means to confirm understanding of the core principles after a class on the subject.

Lesson Completion Time: 50 minutes

Author: Vincent Chiappetta, Professor of Law, Willamette University College of Law

Functionality

This lesson offers an introduction to the doctrine of functionality, which operates as a defense prohibiting anyone from claiming an exclusive right in functional shapes, elements, or aspects of a product or product packaging. The protectability or registrability of a trademark depends on a factual determination of a design's functionality. The functionality doctrine attempts to weigh the public and private interest in copying design features against a trademark owner's inherently anticompetitive objective to avoid consumer confusion. After completing this lesson, you should be able to analyze when the interest in avoiding confusion will outweigh the interest of free competition and vice versa.

Lesson Completion Time: 35 minutes

Author: Danielle Conway, Professor of Law, University of Hawaii at Manoa William S. Richardson School of Law

Incontestability

This lesson teaches about the concept of incontestability: what it is, and what benefits it confers on trademark owners. This lesson can be used either for teaching the subject or for review.

Lesson Completion Time: 30 minutes

Author: David Welkowitz, Professor of Law, Whittier College School of Law

Initial Trademark Ownership

This lesson concerns the initial ownership of trademarks. It does not address the assignment or licensing of trademarks, nor the transfer of trademark registrations. This lesson is intended as a review of material covered in the trademark law course.

Lesson Completion Time: 40 minutes

Author: Robert Lind, Paul E. Treusch Professor of Law, Southwestern Law School

Injunctive Relief for Trademark Infringement

This lesson introduces you to the rules governing the award of injunctive relief in actions for trademark infringement. In trademark infringement cases, the harm or loss suffered by a plaintiff is often difficult to prove because of the lack of evidence of a causal connection between the harm and the defendant's wrongful conduct. To account for this evidentiary shortfall, the judicial preference in awarding relief in trademark infringement cases is injunctive relief. Despite this judicial preference, monetary remedies remain available for trademark infringement. For a more detailed analysis of monetary remedies for trademark infringement, refer to lesson "Recovery of Damages for Trademark Infringement."

Lesson Completion Time: 35 minutes

Author: Danielle Conway, Professor of Law, University of Hawaii at Manoa William S. Richardson School of Law

Introduction to Trade Dress Law

The purpose of this lesson is to serve as an introduction to the rapidly growing area of trade dress law. Several new developments have occurred in this area of the law just in the past five years. Most of these developments deal with the correct balance between protecting the freedom of competitors to copy packaging or design features on the one hand and protecting the appearance or physical features of a product when these packaging or design features operate as indications of source on the other. This lesson will go through the definition of trade dress, review protection requirements for registered trade dress, and conclude with protection requirements for unregistered trade dress.

Lesson Completion Time: 45 minutes

Author: Danielle Conway, Professor of Law, University of Hawaii at Manoa William S. Richardson School of Law

Lanham Act Section 43(d): Cybersquatting

This lesson covers the "cybersquatting" provisions of the Lanham Act, 15 U.S.C. sec. 1125(d), which grant a cause of action to trademark owners against persons who, with a bad faith intent to profit, register, traffic in, or use domain names that infringe the rights of those trademark owners.

Lesson Completion Time: 30 minutes

Author: Mary LaFrance, William S. Boyd Professor of Law, University of Nevada William S. Boyd School of Law

Likelihood of Confusion

Likelihood of confusion is a core concept in trademark law. This lesson is designed to teach the basics of confusion, as well as some more advanced aspects of the topic. It requires students to work through the multifactor analysis used by courts with specific problems. It also includes a discussion of the different forms of confusion.

Lesson Completion Time: 45 minutes (not including 30 minute essay)

Author: David Welkowitz, Professor of Law, Whittier College School of Law

Recovery of Damages for Trademark Infringement

The purpose of this lesson is to supplement your study of money damage recoveries permitted by The Lanham Act. Damage awards for trademark infringement may receive coverage in either your Remedies course or in your Trademark or Intellectual Property courses. This lesson will serve to introduce, review, and refine the principles you have studied in these respective courses to assist you in determining when damage awards for trademark infringement will be allowed.

Lesson Completion Time: 35 minutes

Author: Danielle Conway, Professor of Law, University of Hawaii at Manoa William S. Richardson School of Law

Registration and Section 44

This lesson deals with the basics of trademark registration under Section 44 of the Lanham Act. It includes discussions of eligibility under this provision, the value of foreign registrations, issues of priority, and the necessity for use prior to and after registration. It can be used either to learn the subject or for review, but does presume general knowledge of the bases for registration under Section 1 of the Lanham Act.

Lesson Completion Time: 45 minutes

Author: David Welkowitz, Professor of Law, Whittier College School of Law

Related Goods

This lesson is designed to help the student determine the scope of protection given to a trademark. It is designed to supplement material that has been covered in the trademark law course. The determination of the scope of a mark's protection is helpful in the initial selection of a trademark, the trademark registration process, and the enforcement of the trademark. The student will review the concept of related goods by investigating the scope of trademark protection in several scenarios. Students should be familiar with how to select a trademark, register a trademark, and apply the likelihood of confusion test.

Lesson Completion Time: 30 minutes

Author: Robert Lind, Paul E. Treusch Professor of Law, Southwestern Law School

Service Marks

This lesson explores the concept of service marks, and the similarities and differences between service marks and trademarks.

This lesson assumes that you have already acquired a basic familiarity with the rules that apply to marks that are used on or in connection with the offering of goods. Specifically, you should be familiar with the types of subject matter that may qualify as marks, the spectrum of distinctiveness, and the standard for determining whether a mark has been used in trade (or, for protection under the Lanham Act, in interstate commerce).

Lesson Completion Time: 30 minutes

Author: Mary LaFrance, William S. Boyd Professor of Law, University of Nevada
William S. Boyd School of Law

Statutory Interpretation

This lesson introduces the student to the doctrine and processes involved in interpreting state and federal statutes. Statutes are a critical part of every substantive area of the law, so this is important background for every law student, lawyer and judge.

Lesson Completion Time: 30 minutes

Author: Ronald Brown, Professor of Law, Nova Southeastern University Shepard Broad Law Center

The Geographic Scope of Trademark Protection

This program takes the student through the basics of a particular area of trademark law — the geographic scope of trademark protection. It includes the general common law principles as enunciated in early Supreme Court cases (Hanover, Rectanus) as well as zone of natural expansion. The program also contains complete coverage of Lanham Act principles including constructive notice, constructive use, section 33 and the limited area defense, concurrent use, and the need for confusion (Dawn Donut). The lesson uses a generally interactive format; the student frequently must answer questions requiring the use of relevant statutory language (which is included in the program) as well as major cases. Graphics, such as maps, pictures and time lines are used throughout the lesson to illustrate and enhance the understanding of the issues presented. This program can be used to teach the basic principles, and can provide a comprehensive review of the area. It is not tied to any particular book.

Lesson Completion Time: 1 hour

Author: David Welkowitz, Professor of Law, Whittier College School of Law

The Role of 'Use' in Trademark Law: An Overview

This lesson provides an overview of the central role of "use" in United States trademark law. It examines how the policy justifications driving trademark law (1) justify generally requiring use to obtain and maintain trademark rights and related infringement considerations and (2) define sufficient use for those trademark law purposes. It also addresses and explains the few specific exceptions to the use requirement. The lesson assumes a basic knowledge of trademark policy, the distinctiveness classification system and infringement. The lesson can be used as an overview summary at the end of a course or foundationally before a more detailed discussion of (1) acquisition of trademark rights and the related limitations, (2) loss of those rights, or (3) the role of use in federal registration.

Lesson Completion Time: 1 hour

Author: Vincent Chiappetta, Professor of Law, Willamette University College of Law

Trademark Assignments and Licenses

This lesson introduces the rules governing trademark assignments and licenses under common law and the Lanham Act. It may be used either as review or as the initial introduction to the topic.

Lesson Completion Time: 30 minutes

Author: Mary LaFrance, William S. Boyd Professor of Law, University of Nevada
William S. Boyd School of Law

Trademark Basics

This lesson is designed to reinforce and test students' knowledge of trademark law. The lesson covers the basic issues involved in advising a client on the selection of a trademark, federally registering the mark and maintaining protection of that mark. It also reviews the heart of trademark issues: the analysis of "likelihood of confusion." Students who have not taken a course in trademark law, but are highly motivated to teach themselves, may also benefit from using this lesson. By thoroughly reviewing all pop-up screens, such students can gain a beginning understanding of trademark law.

Lesson Completion Time: 1.5 - 3 hours

Author: Lydia Loren, Professor of Law, Lewis and Clark Northwestern School of Law

Trademark Dilution: Defenses and Remedies

This lesson reviews the various defenses to and remedies for dilution available under federal and state law. It can be used either to learn the material for the first time, or to

review material already learned in class. The lesson assumes familiarity with several trademark concepts, including dilution (and the prerequisites for dilution protection) and fair use.

Lesson Completion Time: 1 hour

Author: David Welkowitz, Professor of Law, Whittier College School of Law

Trademark Dilution: Defining Dilution and its Elements

This lesson has been removed for revisions due to changes in the law.

This lesson explores the definition of trademark dilution, from its origins in the early 20th century, through the current Federal Trademark Dilution Act. Attention is given to both state and federal laws on dilution, and the elements of a claim under both state and federal law.

Lesson Completion Time: 45 minutes

Author: David Welkowitz, Professor of Law, Whittier College School of Law

Trademark Dilution: What Marks are Eligible for Protection

This lesson covers the types of marks that are deemed eligible for protection under federal and state dilution laws. Although the focus is on eligibility under the Federal Trademark Dilution Act (Lanham Act section 43(c)), there is coverage of the different types of state dilution statutes--those based on the earlier (1964) Model State Trademark Bill (such as Massachusetts), and those based on the federal statute. The lesson also covers the significance of the term "distinctive" in the statutory scheme.

Lesson Completion Time: 45 minutes

Author: David Welkowitz, Professor of Law, Whittier College School of Law

Trademark Exhaustion/First Sale

This lesson addresses the trademark doctrine of "exhaustion/first sale." The doctrine governs the trademark owner's continuing rights regarding authentic goods bearing the mark put into the marketplace. The lesson assumes familiarity with trademark's policy objectives, the basic "likelihood of confusion" test for infringement and "fair use," in particular nominative fair use and the problems associated with implied sponsorship. The lesson can be used (1) as an introductory exposure prior to a detailed class on the subject, (2) to reinforce understanding of basic concepts as discussed in class, or (3) as a stand-alone overview of the doctrine's core concerns and rules.

Lesson Completion Time: 1 hour

Author: Vincent Chiappetta, Professor of Law, Willamette University College of Law

Trademark Fair use

This lesson covers the fair use and related "nominative" fair use defenses to claims of trademark infringement. It assumes basic familiarity with trademark policy, the "generic to fanciful" spectrum of distinctiveness trademark classification system, and the likelihood of confusion test for infringement. It can be used (1) as a stand-alone introduction, (2) as a supplement when time restrictions limit in-class coverage, or (3) to reinforce points made during class.

Lesson Completion Time: 1 hour

Author: Vincent Chiappetta, Professor of Law, Willamette University College of Law

Trademark Policy

This lesson discusses the social policy justifications for the legal protection of trademarks. It provides a general understanding of how those policy objectives derive from market economic principles as well as how they drive the core elements of trademark law. This lesson may be useful preparation for a first class on trademark law or to reinforce points made during a class on trademark policy.

Lesson Completion Time: 30-45 minutes

Author: Vincent Chiappetta, Professor of Law, Willamette University College of Law

Trademarks in the European Union: Advanced Topics

This lesson is a follow up to the European Union-Trademark Basics lesson. It presents additional information concerning two topics: "Unusual" marks and Exhaustion of trademark rights (with regard to the latter, there is a comparison with U.S. law in the lesson). At a minimum, users should be familiar with U.S. trademark law and should either review the Basics lesson or be generally familiar with EU trademark law. This lesson may be best used for review and additional learning.

Lesson Completion Time: 45 minutes

Author: David Welkowitz, Professor of Law, Whittier College School of Law

eLangdell Press Texts:

Intellectual Property Supplement Volume III – Trademark Statutes (2013)

Compiled by the Editorial Staff of eLangdell Press

This Intellectual Property Supplement from eLangdell Press contains the text of federal laws and regulations in the area of copyright, trademarks and patents. The editors have endeavored to gather all relevant laws, rules and regulations. This collection is intended to be used primarily as a statutory supplement for law students and legal scholars in academic settings, although practitioners in this area of law will also find it useful.

This volume, Volume III: Trademark Statutory Law contains Chapter 22 of Title 15 of the United States Code as it appears on the most current edition available on the U.S. Government website FDSYS. Updates to the U.S. Code not yet found in the FDSYS published editions can be found in the United States House of Representatives Office of Law Revision Counsel's Classification Tables. They can be found at <http://uscode.house.gov/classification/tables.shtml>. Some formatting modification has been performed to better accommodate electronic readers.