

Final Examination
Trademark Law of the U.S.
Professor Anolik
Spring 2008

1. You have **three (3) hours** to complete this exam. There are **two (2)** essay questions in this exam, and **twenty (20)** multiple-choice questions. Recommended (but not required) time allotments for each section are indicated at the beginning of each section.
2. This exam is an **open-book** examination. You may use your book, the statutes, and any printed, typed, photocopied, or handwritten materials, but you **may not connect** to the Internet, email, Lexis, or any other database, **nor may you communicate with anyone else (other than your proctor) in completing this exam.**
3. This exam consists of two parts.
 - **Section I** consists of **two (2)** essay questions. Please write your responses in the blue books provided. Please write clearly. Write on every other line and every other page to permit instructor comments. Number your blue books on the front cover of each blue book (for example, if you use three blue books, mark them as: 1 of 3; 2 of 3; 3 of 3). If you are set up to use ExamSoft, then you may use that for **Section I** instead of the blue books.
 - For **Section I**, it is recommended that you spend one-third of the time on each question creating an outline, and the remainder of your time writing the answer. For example, if you spend 60 minutes on a question, it is recommended (but not required) that you devote twenty minutes to the outline, and forty minutes to writing the answer.
 - **Section II** consists of **twenty (20)** multiple-choice questions. Please mark your responses to the multiple choice questions on the separate “ParSCORE TEST FORM” using pen or pencil and following the instructions on that form. If you change your answer, place a clear **X** through the wrong answer and mark the correct answer. A machine will score the exam and any ambiguities will be counted as a wrong answer. It is recommended (but not required) that you spend 40 minutes on **Section II.**

4. Write your exam number on your exam envelope. Put your correct student exam # at the top of this page, each page of exam questions, each blue book, and the "ParSCORE TEST FORM." **Do not** use your name, student ID number or Social Security Number on any exam materials.
5. At the conclusion of the exam, return all test materials, including blue books, ParScore answer sheet, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

GOOD LUCK!

SECTION I: ESSAY QUESTIONS

Question 1

(Question 1 is worth 50 points. Recommended time: 1 hour and 25 minutes.)

Fattkins is a company in the weight reduction industry. Fattkins' weight reduction system gives Fattkins customers a maximum daily budget of "points." In a booklet provided to each customer, Fattkins publishes point values for many food items. The booklet also publishes a formula (based on the food's calories, grams of fat and grams of fiber) so customers can compute point values themselves for any foods not listed in the booklet. With the booklet and the formula, customers can tally their points throughout the day to keep their consumption below their daily budget.

Busway is an inexpensive national restaurant chain positioning itself as a healthy choice for diners. To appeal to the large number of Fattkins' dieters, Busway's ads indicate the Fattkins points of each promoted item. For example, Busway's ads promoting its new "Chick-i-yum-yum Club" sandwich say "only 6 Fattkins points!" Busway's in-restaurant menus also list the Fattkins points for every menu item.

You are an associate in the law firm that represents Fattkins, and Fattkins' CEO is not happy about Busway's ads and menus because, although Busway is a very profitable, successful chain, she doesn't like the food there. She has directed your law firm to "make them stop, dammit!" You have been asked to write a comprehensive memo for the senior partner at your law firm evaluating the claims that Fattkins might make against Busway in a federal district court under the Lanham Act. The memo should also identify both the defenses you believe that Busway will likely raise to Fattkins' claims, and how Fattkins will try to overcome those defenses.

Note: Assume that all of Busway's ads are accurate, so do not discuss false advertising.

Question 2

(Question 2 is worth 30 points. Recommended time: 55 minutes.)

Your client is a California-based video production company that has done business since 2002 under the name “Lights, Camera, Action! Inc.” (LCA). LCA produces training videos under contract with large organizations. For example, it recently produced “Give Our Customers the Red Carpet Treatment!” for the American Carpet Company. It charges around \$50,000 per video production.

Thanks largely to word-of-mouth among corporate training departments, LCA’s business has expanded in recent years to include clients throughout the Western United States. In conversation, LCA’s customers typically refer to the business as simply “Lights,” saying for example, “Lights has done a great job training our employees—you should try them.”

LCA’s success has over the last year attracted several acquisition attempts by Corporate Training & Communications, Inc. (CTC), which prepares employee education manuals for organizations throughout the U.S. Despite long and often heated negotiations, and days of poring over LCA’s materials and past productions, CTC has yet to offer LCA enough money to close a deal.

Last March, however, CTC did succeed in striking a deal with “Lieght’s Computer Training.” Its owner and operator, Bob Lieght (pronounced like “light”), has since 1990 traveled throughout the Southeast United States providing in-person computer training to the employees of his corporate clients. As part of its deal with Lieght, CTC taped his classes and began selling “Lieght’s Computer Training” videos, at \$20 each, to its corporate clients across the U.S.

Your client, LCA, is not happy. LCA feels like something improper occurred, and worries that its customers will confuse “Lights” with “Lieght’s.” Neither CTC, nor Bob Lieght, nor LCA have registered any marks. LCA’s management is pretty mild mannered, and winces at the idea of the expense and public nature of litigation, but they feel they’ve been wronged. Prepare a letter to your client describing LCA’s related rights and remedies against CTC and Bob Lieght, their defenses, and a recommended course of action for LCA.

(NOTE: Only discuss topics and advice in the context of the subject matter of this Trademark Law class, i.e. do not discuss any copyright or contract issues that may be implicated.)

END OF ESSAY QUESTIONS