

FINAL EXAMINATION
Trademark Law of the U.S. (LAW §891-LS1)
Professor Anolik
Spring 2005

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. For Section 1 (the essay portion), 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.
4. Please write your responses to Section 1 in the blue books provided to you. Write only on one side of the page and double-space your work, written or typed. Please write legibly. 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 1 instead of the blue books.
5. For Section 2, record your answers 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.
6. Write your exam number on your exam envelope. Put your correct class section and 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.
7. 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 1: ESSAY QUESTIONS

Question 1 (Worth: 40 points. Recommended time: 70 minutes)

Sandland is an amusement park containing depictions of people, places and things made entirely from sand. For example, there are scale replicas of the White House, the Taj Mahal, Marilyn Monroe and the space shuttle – all made from different colored sand.

Sandland has a mechanical boat ride entitled “Fairy Tale Boat Tour” which it describes on its website as: “This whimsical ride can be enjoyed by the whole family. Leaf-shaped boats sail gently on water through different fairy tale scenes created solely from sand. Look for comical twists on childhood stories, such as the Three Little Pigs and the Billy Goats Gruff. Come see your favorite fairy tales come to life through SandMagic.”

Assume Sandland wants to add new scenes to the Fairy Tale Boat Tour based on the Hansel and Gretel story.* The “comical twist” on this story is that Nemo and Dory (see picture to the right), the two leading fish from Pixar Animation Studio’s very successful “Finding Nemo” movie, will play Hansel and Gretel in the scene. To implement this rendition of the story, Sandland will build some scenes that include SandMagic depictions of Nemo and Dory.

Sandland has another attraction called the “Walk of Fame,” which it describes as: “A fun and educational, 3-dimensional art gallery lined with classic works of art and busts of historical figures and pop icons, made entirely of sand.” Excited by Britney Spears’ recent announcement that she is pregnant, Sandland has decided it wants to add a new bust of Ms. Spears to its Walk of Fame.

Please answer the following questions:

- 1) If Sandland builds the new scenes and depicts Nemo and Dory as described above, describe Sandland’s potential liability under trademark law to Pixar. (NOTE: Do not address any copyright issues; only address the trademark-related issues.)
- 2) If Sandland depicts Britney Spears in sand as part of its Walk of Fame as described above, discuss Sandland’s potential liability under right of publicity laws to Ms. Spears.

When answering both questions, be specific about what you, as Sandland’s attorney, would advise Sandland to do, and what precedent you would rely on.

Question 2 (Worth: 40 points. Recommended time: 70 minutes)

During the televised October 2004 U.S. Vice Presidential debate between Dick Cheney and John Edwards, Dick Cheney told viewers that they could verify his statements at www.factcheck.com. But he misspoke; he meant to say www.factcheck.org, a University of Pennsylvania non-partisan website that “monitor[s] the factual accuracy of [statements made] by major U.S. political players in [their] TV ads, debates, speeches, interviews, and news releases.”

www.factcheck.com was registered in February 2004 by NameCo Inc. (“NI”), a Cayman islands company. Prior to the October 2004 debate, visitors to www.factcheck.com would find a web page containing only advertising; no “editorial” content. After Cheney’s announcement in the debate, NI “redirected” www.factcheck.com visitors to www.georgesoros.com. George Soros is a well-known billionaire who opposed the re-election of Bush/Cheney, so debate-watchers acting on Cheney’s suggestion arrived at a webpage titled “Why We Must Not Re-Elect George Bush.” NI redirected the traffic to www.georgesoros.com for two reasons: (1) the unexpected volume of visitors to www.factcheck.com caused NI to incur expensive bandwidth charges to its Internet access provider, so it wanted to shift some of the cost; (2) to annoy Cheney, and (3) to bring attention to the fact that NI owned www.factcheck.com, in case anyone who heard the story was interested in buying it. NI did not make any money from the redirection and did not speak with the owners or operators of www.georgesoros.com prior to implementing the redirection of traffic.

The senior partner at the law firm where you are an associate has seen this story on TV, and she (a strong Bush/Cheney supporter), is both upset and is looking for business opportunities for the firm. She has asked you for a memo that identifies potential plaintiffs against NI (along with their associated causes of actions), and NI’s potential liability to those plaintiffs.

NOTE: Do not address any copyright issues; only address the trademark-related issues.
CAUTION: This question implicates numerous applicable doctrines. When outlining your answer, prioritize your analysis in order to avoid running out of time.

END OF ESSAY QUESTIONS

*A very brief summary of the classic fairy tale/now public domain story: Siblings Hansel and Gretel wander away from their parents’ home into the woods, and leave a trail of bread crumbs to find their way home. Their plan backfires when birds eat their crumbs, and Hansel and Gretel are lured into the gingerbread house of a wicked witch.