

Intellectual Property
Professor Lape

Tuesday, December 12, 1995
1:30 p.m.
Three (3) hours

SPECIAL INSTRUCTIONS

1. Answer all questions. Explain your conclusions and discuss fully the arguments on each side of every issue.
2. You may bring to this examination your statutory supplement, your casebook, your class notes, your outline and any other written or printed material.
3. Please write only on the right hand pages in the bluebook[s] and skip every other line.
4. Suggested time allocations for each of the questions are as follows:

Question I	50 minutes
Question II	35 minutes
Question III	45 minutes
Question IV	50 minutes
	<u>180</u> minutes

EXAMINATION CONTINUES

Concern had been developing for several years about the safety of the drawstrings used to tighten the hoods of children's coats because of a number of fatal accidents in which the drawstrings caught on slides or escalators. Then, in January of 1992 Paula devised and constructed a hood with a drawstring pulled short enough to keep the hood on the head but long enough to permit the hood to be pulled over the head, with the drawstring sewn in that position to the edge of the hood and the excess drawstring cut off so none of the drawstring extended beyond the edge of the hood. In January of 1992 Paula sold for a nominal price 30 coats employing her hood device to mothers of small children. In the written contract of sale the mothers promised to complete a questionnaire after two months. The questionnaire asked the following questions:

1. Did the hood remain on the child's head when the child engaged in active play?
2. Was the child able to pull the hood over her/his head without difficulty?
3. Would you be willing to purchase a coat with a hood of this design?

The responses on the 30 completed questionnaires were:

1. 90% of respondents answered affirmatively.
2. 85% of respondents answered affirmatively.
3. 85% of respondents answered affirmatively.

In July of 1993 Paula filed an application with the Patent and Trademark Office for a patent for the hood device described

above. A patent for the hood device was issued to Paula in January of 1995.

Paula began marketing children's coats employing her hood device in retail stores in September of 1995, shortly after a highly publicized television special about children killed in fatal accidents involving drawstrings on coat hoods. For the months of September, October and the first half of November coats employing Paula's hood device marketed by Paula constituted 30% of the children's coats sold nationwide.

The day after learning of the hood device on coats marketed by Paula, Devon Corp. came up, during a one-hour meeting, with the idea of using a drawstring cut short in the same fashion as Paula's device, but fastening the drawstring with a button instead of sewing it to the hood. Devon Corp. began marketing children's coats employing its hood device in November of 1995.

Paula has brought suit against Devon Corp. for patent infringement. What are her chances of success?

EXAMINATION CONTINUES

II

Bill 1389 was introduced in the California Assembly on February 24, 1995. The proposers of the bill explained that:

"The proprietors of restaurants, bars, retail establishments, and similar places of business where members of the public may assemble for the public performance of nondramatic musical works are frequently subject to arbitrary and capricious enforcement and collection practices by the owners of copyrights or their agents, who may question employees without identifying themselves; collect fees on an irregular basis; arbitrarily increase and charge fees greater than those agreed to by the proprietors; or charge similar businesses vastly differing fees for essentially the same use of nondramatic musical copyrighted works."

Bill 1389 provides as follows:

"§ 1. For purposes of this chapter, the following definitions apply:

(a) "Area" means a geographical region having a 25-mile radius surrounding the business location of a proprietor.

(b) "Copyright owner" means the owner of a copyright of a nondramatic musical work recognized under the copyright laws of the United States pursuant to Title 17 of the United States Code.

(c) "Performing rights society" means an association that licenses the public performance of nondramatic musical works on behalf of copyright owners.

(d) "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, or any other similar place of business in which nondramatic musical works may be performed.

§ 2. No copyright owner or performing rights society may enter into a contract for the payment of royalties by a proprietor unless at least 72 hours prior to the execution of that contract, it provides to the proprietor, in writing, the following, provided that, the failure to provide the following information is a violation of, and may render a contract unenforceable under, the provisions of this chapter:

(a) A schedule of the rates and terms of royalties under the contract.

(b) A schedule of the rates and terms of royalties under agreements executed by the copyright owner or performing rights society with proprietors of comparable businesses in the area.

(c) In the case of a performing rights society, the most current available list of the copyright owners represented by the performing rights society and the most current available list of the performed works that the society licenses.

§ 3. A contract for the payment of royalties shall be in writing and be signed by the parties.

§ 4. No copyright owner or performing rights society, or any agent or employee thereof, may do any of the following:

(a) On the premises of the proprietor's business, discuss with the proprietor or the proprietor's

EXAMINATION CONTINUES

employee, a contract for payment of royalties by a proprietor or the use of copyrighted works by the proprietor, without first identifying himself or herself to the proprietor or the proprietor's employees.

(b) Threaten to commence legal proceedings in connection with an alleged copyright violation with the intent of coercing the proprietor to negotiate or enter into a contract for the payment of royalties.

§ 5. A person who violates any of the provisions of this act is liable for a civil penalty of not less than \$500 and not more than \$15,000.

You are counsel to the legislative committee of the California Assembly charged with review of Bill 1389. What is your advice to the committee regarding Bill 1389?

EXAMINATION CONTINUES

III

In January of 1993 Equine Technologies, Inc., a Kentucky corporation, began widespread marketing of high tech horse hoof pads through feed stores in Kentucky and the southeast at a retail price of \$20. On all packaging for the hoof pads Equine Technologies placed the words EQUINE TECHNOLOGIES with the U in Equine inverted: EQ INE TECHNOLOGIES. The hoof pads proved popular with equine veterinarians.

In December of 1993 Equitechnologies Corp., a New York corporation, began marketing horse hoof care products through feed stores in New York. Equitechnologies Corp. selected the term Equitechnologies after consultation with an attorney who performed a search of the records of the Patent and Trademark Office and did not discover Equine Technologies. Equitechnologies Corp. placed the word EQUITECHNOLOGIES prominently on all packaging for the horse hoof care products.

In January of 1994 Equine Technologies, Inc. filed an application with the Patent and Trademark Office to register on the principal register EQ INE TECHNOLOGIES for use in connection with the sale of high tech horse hoof pads. The certificate of registration was issued to Equine Technologies, Inc. in July of 1995.

Now both Equine Technologies, Inc. and Equitechnologies Corp. plan to begin marketing their products nationwide. What are the rights of Equine Technologies, Inc. and Equitechnologies Corp.?

EXAMINATION CONTINUES

IV

Playclothes, Inc.'s ("Playclothes") design division manager asked Penny to design a children's sweater for the fall. Penny, a salaried designer at Playclothes, designed the children's sweater labeled (A) on the next page in June of 1995 in the Playclothes design offices. The Playclothes sweater is made of cotton yarn. The stripes are brown, yellow and red, and the leaves are brown, yellow and red. Appropriate copyright notice was placed on each sweater manufactured by Playclothes.

Dapper Corp. ("Dapper") designed the children's sweater labeled (B) on the next page in June of 1995. The Dapper sweater is made of cotton yarn. The stripes are blue, green and purple and the leaves are blue, green and purple. Appropriate copyright notice was placed on each sweater manufactured by Dapper.

Playclothes and Dapper put their sweaters on the market in children's clothing stores the first week of August of 1995. Playclothes registered a claim of copyright in its sweater with the Copyright Office in September of 1995. Dapper registered a claim of copyright in its sweater with the Copyright Office in September of 1995.

In October of 1995 Playclothes brought suit against Dapper for infringement of the copyright in its sweater, seeking an injunction and damages. The facts above are all of the facts that have been established at trial. What are Playclothes' chances of success?

EXAMINATION CONTINUES

(A)

(B)

EXAMINATION ENDS