

Intellectual Property  
Professor Lape

Wednesday, December 14, 1994  
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	60 minutes
Question II 1)	20 minutes
2)	15 minutes
3)	10 minutes
4)	15 minutes
Question III	60 minutes
	<u>180</u> minutes

IMPORTANT

1. This jurisdiction has adopted the Uniform Trade Secrets Act.

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EXAMINATION CONTINUES

In April of 1993 the engineers at Ace Athletic, Inc. (Ace) decided, after studying techniques used to cast iron in sand, that athletic rubberized track surfaces might be more durable if the track surface were poured into a 3-foot deep trench lined with sand. The engineers conveyed this information to the legal department of Ace so that the legal department could file a patent application for the technique.

In June of 1993 Better Athletic Corp. (Better) entered into a contract with State University to install an athletic rubberized track surface. By the terms of the contract State University agreed, for a 2% reduction in the sales price, to permit Better to inspect the track for two years. Better installed the track at State University in June of 1993 using the technique described above for pouring the track surface into a 3-foot deep trench lined with sand, which technique Better's engineers developed as they installed the State University track.

In July of 1994 Ace filed an application with the Patent and Trademark Office for a patent for the technique of pouring athletic rubberized track surfaces into a 3-foot deep trench lined with sand.

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trench lined with sand.

Is either Ace or Better entitled to a patent?

EXAMINATION CONTINUES

## II

1. Your client, Insulation, Inc., wants to adopt as a trademark and seek federal trademark registration for the term INXSOLAY in connection with the sale of home insulating material.

Insulation, Inc. has not yet employed the term INXSOLAY in connection with the sale of any goods or services. You have discovered that Davis Corp. obtained federal trademark registration for the trademark INKSEALY two years ago. What additional information do you want to know in order to advise your client as to the advisability of adopting as a trademark and seeking federal trademark registration for the term INXSOLAY? Why do you want this information?

EXAMINATION CONTINUES

## II

2. Numerous ski producers are located in New England State. New England State wants to adopt a statute to protect the ski industry from those who copy 1) the construction techniques used by New England State ski producers, and 2) the shapes of skis produced in New England State. You are counsel to the committee which will draft this legislation. What advice do you offer the committee as to how to draft this legislation? Briefly explain why you offer this advice.

EXAMINATION CONTINUES

## II

3. Network is planning to hire five writers and illustrators to write and illustrate a cartoon special to be aired on television during the upcoming holiday season. Competing networks also plan holiday cartoon specials. The contracts to be executed by the five writers and illustrators and by Network have been drafted except that the contracts do not deal with any issues of intellectual property. Draft appropriate sentences to be inserted into the contracts to remedy this oversight.

EXAMINATION CONTINUES

## II

4. Your client, Carter, has an idea for a movie dealing with extraterrestrials moving into a suburban neighborhood. Carter wants to sell her idea to a television network. Carter has not yet communicated her idea to anyone other than you.

What advice do you give Carter so as to most effectively protect her idea?

EXAMINATION CONTINUES

## III

Deb Designer designed and constructed a stuffed bear in September of 1993. The bear designed by Designer is realistic in shape and posture on four legs, has a slightly curved back, has black plastic nose, eyes, and claws, has gray/dark brown plush with  $\frac{3}{4}$ " long fur, is one foot long from nose to end, and has round ears. The bear's mouth and tail are not rendered. The bear's head points straight ahead and its right front foot is extended forward. In September of 1993 Deb signed a letter in which she stated that she gave all her rights in the bear to Peachy Toy Co. (Peachy).

Peachy distributed the bear widely with appropriate copyright notice through selective toy stores beginning in November of 1993.

Defend the Earth, Inc. (Defend), a nonprofit corporation organized to protect the environment, asked Peachy for a license to copy Peachy's bear and was refused. Defend instructed its designers to produce a bear based on Peachy's bear; the designers carried out the instructions in January of 1994. Defend's bear was designed to be distributed as a gesture of thanks to contributors to Defend's fundraising campaign. Defend's bear is realistic in shape and posture on all four legs, has a slightly curved back, has black plastic nose and eyes, has light brown plush with  $\frac{1}{4}$ " fur, is 5 inches long from nose to end, and has ears rendered by small balls of plush. The bear's mouth, tail, and claws are not rendered. The bear's head is turned to the bear's left and its right front foot is extended forward.

Defend began distributing its bear in March of 1994 as a gesture of thanks to contributors to Defend's fundraising campaign.

In May of 1994 Peachy registered a claim of copyright in its bear with the Copyright Office. In June of 1994 Peachy brought suit against Defend for copyright infringement of its bear, seeking statutory damages and an injunction. Is Peachy likely to succeed in its suit?

EXAMINATION ENDS