

GWid: _____

EXAMINATION
INTELLECTUAL PROPERTY – LAW 470 – SIEGEL
Spring, 2008

INSTRUCTIONS

1. This is an open book examination. You may use any written materials that you have brought with you (including typewritten, printed, or published materials). Computer use is permitted.
2. You have THREE HOURS to complete the exam.
3. The exam consists of this cover page plus 14 exam pages numbered 1 through 14.
4. There are three essay questions and 20 multiple-choice questions. All students must answer all questions. The recommended time allocations are:

Essay Questions: 1 — 40 minutes; 2 — 25 minutes; 3 — 35 minutes
Multiple Choice Questions: 80 minutes total

The weights of the questions are roughly proportional to the recommended time allocations. The multiple choice questions will be slightly de-weighted.

5. Do not put your name anywhere on your answers. Use your GWid number. Do not indicate whether you are taking the class pass/fail. Do not write “Thank you for a great class” or anything similar on your exam. If you are writing your answers by hand, remember to *write legibly*.
6. If, with regard to any essay question, you think additional facts are needed to answer the question, state clearly what facts you think are missing. Then make a reasonable assumption about the missing facts and answer the question based on your assumption. Do not change the given facts.

For all questions, if no location is stated for one of the given facts, assume that it occurred within the United States.

7. Using good judgment, address all the issues presented and assigned by the questions, even if your answers to some issues would, in real life, eliminate the need to address other issues. Provide reasons for your answers to the essay questions
8. Good luck.

QUESTION ONE

(40 minutes)

The Old North Church in Boston, Massachusetts was completed in 1723. One of its notable original features was a large stained glass window depicting scenes from the Bible.

In May 2008, vandals break into the church and destroy this window. The Executive Board of the church (which owns the church and all its associated property) is naturally much dismayed, especially because stained glass is not a common artistic medium these days and it is a rare artist who has the expertise to produce it. After much searching, the Board engages Phillip Porter, of New York, to restore the window. A written contract between Porter and the Board provides that Porter will restore the window to its previous design and will be paid \$20,000. The contract provides that the window must be completed by the end of 2010. The contract also provides, “the new window shall be considered a work made for hire for purposes of the copyright laws.” The contract contains no other reference to copyright.

Working from photographs of the prior window, Porter manufactures pieces of stained glass in his studio in New York City. He skillfully reproduces the exact colors and shapes of each piece of glass from the original window. He also works on other artworks for other clients during the same period. In December 2010, the stained glass is ready, and Porter installs it in the window at the Old North Church. Everyone is thrilled at how exactly Porter has managed to restore the design, shapes, and colors of the original window. The Board writes Porter a check for \$20,000.

Phillip Porter dies in 2030. He leaves his entire estate to his son, Paul Porter. Paul Porter dies in 2080. He leaves his entire estate to his daughter, Pamela Porter.

In 2085, Pamela Porter visits the Old North Church and discovers that the church is selling postcards depicting her grandfather’s window. Pamela Porter sends the Board a letter demanding a 10% royalty on sales of the postcards and threatening to sue for copyright infringement if she doesn’t get it.

You are the church’s general counsel. The Chair of the Executive Board comes to you and says, “Sheesh, we own that window, don’t we? How could we not have the right to sell postcards of something we own? Please write me a memorandum discussing Porter’s demand and any defenses we might raise to her potential claim of copyright infringement, and advising us as to what we should do.”

Write the requested memorandum. Assume no change in copyright law between now and 2085. Do not discuss the remedies that Porter might be entitled to if she were to win a lawsuit — just focus on liability. In case you missed them, read instructions 5-7 on the cover page.

QUESTION TWO

(25 minutes)

In 2008, Demetria Diakos opened a small hair salon in Westport, Connecticut called “Hair in Westport.” She chose the name because it conveyed the concept of a hair salon while sounding a little like the comforting phrase “Here in Westport.” The salon provided hair cutting and styling.

After her salon had been open a couple of months, Diakos received a letter from an attorney representing a business in Fairfield, Connecticut that was simply called “Hair.” The letter stated that “Hair” had been in business since 1969. The owner had named the business after the Broadway musical “Hair” that was popular at that time. The Fairfield “Hair” was a salon/spa that provided hair cutting and styling and also spa treatments such as manicure, facials, and massage. The letter did not suggest that the name “Hair” was federally registered. (The name “Hair in Westport” was not federally registered.) The letter demanded that Diakos cease and desist from using the name “Hair in Westport.”

Fairfield and Westport are adjacent, but Diakos, who had lived in Westport since 1975, had never previously heard of the Fairfield “Hair.”

Agitated, Diakos mentions the problem to you, one of her customers, knowing that you have some expertise in intellectual property law.

Provide Diakos with an analysis of the legal situation and also some practical business advice about what to do.

QUESTION THREE

(35 minutes)

On May 1, 2006, Brett Brilliant, a biochemist, applies for a patent on Bantazene, a chemical compound that he invented, which acts as a pesticide. Brilliant's patent application claims the compound itself and the process of using Bantazene as a pesticide. The patent is granted and issues on May 1, 2008.

On October 1, 2009, Steven Smart, a chemist working for American Airlines, discovers that when Bantazene is added to jet fuel, it tremendously increases the mileage that the fuel can provide for jets. American Airlines does not seek a patent on this discovery. Swearing all employees involved to secrecy, American starts adding Bantazene to the jet fuel it uses in its planes on November 1, 2009. Because jet fuel is so expensive these days, and such a large part of an airline's costs, American is able to lower its prices substantially. American buys all of its Bantazene legally from licensed pesticide distributors.

On March 1, 2010, Cara Clever, a chemist working for United Airlines, independently discovers the fuel mileage advantage of adding Bantazene to jet fuel. On May 1, 2010, Clever publishes an article in the *Journal of Chemistry* describing the use of Bantazene as a jet fuel additive. On December 1, 2010, Clever applies for a patent on the use of Bantazene as a jet fuel additive. The patent is granted and issues on May 1, 2012 and is assigned to United Airlines. Like American, United buys all its Bantazene legally from licensed pesticide distributors.

At an airline industry conference held later in 2012, the president of American Airlines says to the President of United Airlines, "hey, you stole our Bantazene process!" Thus apprised that American is using Bantazene in its jet fuel, United Airlines brings suit against American Airlines in district court for patent infringement. American Airlines counterclaims that United Airlines has violated American's rights in this use of Bantazene. Each side raises such issues as would be expected on the above facts and makes all appropriate arguments.

You are the law clerk to the district judge considering the case. The judge asks for a memorandum discussing the issues raised by the case and making a recommendation as to how to rule on each. The judge asks that you consider only questions of liability, not remedy.

Write the requested memorandum.

MULTIPLE CHOICE QUESTIONS

(80 minutes total)

INSTRUCTIONS

- 1. For all multiple choice questions, choose the best answer from the answers provided.**
- 2. Mark your answers on the bubble sheet using a #2 pencil. Do NOT simply mark your answers on the exam itself; that will NOT count.**
- 3. There is no penalty for wrong answers, so answer every question.**

QUESTIONS

[Redacted]

END OF EXAM