

SYLLABUS

Advanced Topics in Law A: Trademark Law

Course No. 6932 – Sec. No. 301 – Credits: 3.00

Campus: Florida A&M University – College of Law

Fall Term 2016; August 8 - November 15, 2016; Tuesday, Thursday 8:00 - 9:15 pm

Professor: Antonio G. Tapia Email: antonio.tapia@famu.edu

Office Phone: 407-571-6838 – FOR EMERGENCY USE ONLY

I.

Required Textbook

Trademark and Unfair Competition Law: Cases and Materials (5th Edition) Hardcover - June 3, 2013
by Jane C. Ginsburg, et al. ISBN-10: 0769865682

Other Resources

Available on www.uspto.gov

Trademark Manual of Examining Procedure - available on www.uspto.gov

Course Description

This course is designed to introduce students to the amazing and fun world of trademark law and practice. Trademark law is a very important area which has a nexus with many areas of law, including business, unfair competition, UCC, anti-trust and first amendment. It is a body of law that is based in policy that aims to protect consumers and the purveyors of goods and services. As we move to a more technology and business focus in central Florida and the US in general, it is certain that students who learn trademark law would benefit and be even more competitive in the job market and real world.

Finally the course will expose each student to the practical considerations faced by those working in related legal fields. The student will be exposed to the filing process, filing systems, and the typical life cycle of a case. Common litigation causes of action, procedure and remedies will also be discussed.

As this course is elective, it is highly recommended that students taking this course be highly motivated and interested in the subject matter.

The student will be required to complete weekly reading assignments and participate in classroom discussions of the same. This course will encourage succinct communication of complex legal doctrine and bolster the communication skills required to be a successful intellectual property professional.

Course Format

Class will include lectures and/or guest speakers, multimedia elements (videos, music, and interactive programs), and interactive classroom activities (presentations, practica, and group discussion).

Course Schedule: The course will consist of alternating class periods of traditional doctrinal lecture and case law presentation activities. Practica featuring working with each of the federal filing systems will be scheduled as permitted.

During traditional lecture periods, the class will engage in a guided lecture discussion with the professor regarding each topic. Students are expected to have completed the reading for each section and participate when called upon by the professor.

Case law presentation activities will consist on guided student presentation of key cases in each area of law. Students will be called on as individual “counselors” or as group “law firms” to discuss the facts, doctrinal issue, conclusion, as well as opposing arguments. Students are expected to have completed case briefs on each case for each section and be prepared to present them if called upon by the professor.

Participation in the class will have a bearing on the individual student’s Professionalism and Participation Score – which can be a discretionary grade adjustment at course end. Schedule is subject to change. The course outline is flexible and is subject to change according to the needs of the class.

Reading Assignments

For each class complete the reading assignment in the course schedule. It is strongly recommended that each student prepare a one page case brief for each case to assist in class discussions.

Course Schedule *subject to change

Class	Topic	Assignment
1	Introduction to Trademark, Syllabus and Objectives Competition and Trademarks	Textbook pp.: 21-56 Slides: 1-15
2	Subject Matter of Trademark Protection Word Marks Slogans Symbols Trade Dress Devices	57-84
3	Distinctiveness Spectrum of Distinctiveness Secondary Meaning	85-114
4	Use and Ownership Use in Commerce Analogous Use	121-151
5	Priority Concurrent Use	152-176
6	Registration of Marks Bases of Registration Practice Exercise (Optional)	177-202 Slides: 26-41
7	Bars to Registration Immoral, Scandalous or Disparaging Marks, Deceptive Terms False Suggestion of a Connection Lanham Act §2(b) and (c) §2(b): Likely Confusion	203-247

8	§2(e)(2) and (3): Geographic Terms §2(e)(5): Functionality	248-278
9	Loss of Rights Genericism and Confusion	279-314
10	Abandonment	315-348
11	Infringement Defendant's Use in Commerce Likelihood of Confusion Factors for Assessing Likelihood of Confusion	349-369 Slides: 60-68
12	Likelihood of Confusion in the Courts	370-401
13	Different Varieties of Confusion Initial Interest Confusion Post Sale Confusion Reverse Confusion Approval Confusion	402-443
14	Secondary Liability for Trademark Infringement	444-458
15	Defenses to Infringement Statutory Defenses: Incontestability §33(b) Fraud on the Trademark Office	541-556
16	Fair Use Parody	557-572 638-650
17	Functionality Laches	573-591
18	Judge Made Defenses: Nominative Fair Use Comparative Advertising First Sale Sovereign Immunity	592-619
19	Remedies Injunctive Relief Monetary Relief	925-956
20	Corrective Advertising Attorney's Fees	957-966
21	Counterfeiting Ex Parte Seizure Treble Damages and Attorney's Fees	967-997
22	Dilution Concept of Dilution Federal Dilution Federal Statue Word Marks	665-693
23	Blurring Tarnishment Trade Dress	693-739
24	False Advertising Commercial Advertising or Promotion Literal Falsehood	753-785

25	Misleading Representations Standing to Assert a §43(a) Claim	786-814
FINAL EXAM DATE TO BE ANNOUNCED		

*Schedule subject to change.

Final Exam

One final exam will be administered. At least one long form essay question will be included on the final exam, which will require the student to exhibit professional legal writing skills. Each essay question will refer to a provided fact pattern and require the student to analyze the legal issue(s) therein – using “IRAC” or similar format. Objective questions including multiple choice, fill in the blank and short answer may also be present. Make-up final exam will only be granted in extreme circumstances and will require documentation. Make-up final is offered at the sole discretion of the professor and not guaranteed.

ALL TESTS ARE CLOSED BOOK AND NOTES. Use of any unauthorized resources, assistance, copying or plagiarism is unpermitted academic dishonesty and will lead to discipline including receiving a failing grade and expulsion from the course and/or program.

Course Evaluation:

Grading Scale

The following scale will be used to determine course grade(s):

Course Grade	Percentage
A	90-100%
B	80-89%
C	70-79%
D	60-69%
F	0-59%

Course Grade Calculation

Course Grade will be calculated according to the following:

Course Work	Percentage
FINAL EXAM	100%

II.

Professionalism and Participation:

Ability to adhere to the following guidelines will be used to calculate a percentage of the student’s final grade for the course. Students who regularly participate, are proactive, attentive and exhibit completion of the reading assignments may merit an adjustment of their final grade up to one half grade value. This adjustment is at the sole discretion of the professor.

Attendance and Participation

Because so much of the learning experience in this class is interactive, **ATTENDANCE IS REQUIRED.** If you have advance notice that you will not be in class or in case of an emergency, please notify professor

immediately. Please provide documentation and follow up by email request to establish record of absence. In the event of an absence, it is your responsibility to obtain lecture notes and assignments. Some assignments may be based on in class activities and therefore may not be made up if you are absent.

Your success in this course will depend largely on the interest, willingness, and enthusiasm that you and your classmates bring to the experience. You are expected to be an active participant in class. Intentional obstruction or disruption of teaching, research, or lab activities is prohibited. Any behavior that is distracting to the professor or impedes learning will not be tolerated during class time. This includes but is not limited to unrelated conversations, completing homework or other coursework, sleeping, cell phone use, texting, surfing, or use of social media. Electronic Devices that are not required for class must be turned off. Cell phones must be turned off and out of sight during class time. This includes ear pieces and head sets. Professor reserves all remedies including referral to judicial officer and ejection from class.

Tardiness and Early Departure

Tardiness and early departure from the classroom are disruptive to the learning environment. Due to the interactive format of the class, it is required that the student arrive on time and remain in class for the entirety of the class. Arrivals after class begins will be marked tardy. Arrivals in excess of one hour after class begins, or a complete absence will be marked absent. Unexcused early departure is prohibited. You must notify your professor prior to class start if you need to make an excused early departure. Permitted excused early departures are granted at the discretion of the professor.

Florida A&M University College of Law recognizes the correlation between attendance and both student retention and achievement. Students must be enrolled before they can attend class. Students are expected to attend all class sessions and activities for which they are registered. Any class session or activity missed, regardless of cause, reduces the opportunity of learning and may adversely affect a student's achievement in the course. **A student who is absent from class 10 percent of the scheduled class time is subject to be withdrawn without warning by the college administration and/or professor.** A student may not be re-admitted to the class once withdrawn.

A student who has to be absent because of jury duty or court-mandated appearance needs to contact the appropriate instructors in advance of the absence in order that a plan for making up work missed can be made. When observance of religious holidays of students' own faith interferes with admission and registration; with attendance in class, class activities, examinations and official ceremonies; and with class work assignments, students are required to notify instructors, counselors or other appropriate personnel in advance of such absences.

Students are held responsible for material covered during their absences, with reasonable time provided to complete make-up assignments. Instructors will devise a plan for making up work missed. When practical, major class assignments, major examinations and official ceremonies shall be scheduled on other than major religious holidays. Students who believe they have been unreasonably denied educational benefits due to their religious beliefs or practices may seek redress through the student appeal procedures.

Student Code of Conduct

By taking this class, you agree to be bound by the Student Code of Conduct. It is the responsibility of a student to observe campus rules and regulations and to help maintain appropriate conditions in the classroom, on the campus, and in the community. The Student Code of Conduct is a statement of the school's expectations regarding student standards of conduct, both academic and non-academic. It is the student's responsibility to read the Code of Conduct and follow its expectations.

Academic Integrity

As members of the Florida A&M University College of Law community, students are expected to be honest in all of their academic coursework and activities. Academic dishonesty, such as cheating of any kind on examinations, course assignments or projects, plagiarism, misrepresentation and the unauthorized possession of examinations or other course-related materials, is prohibited.

Plagiarism is unacceptable to the college community. Academic work that is submitted by students is assumed to be the result of their own thought, research or self-expression. When students borrow ideas, wording or organization from another source, they are expected to acknowledge that fact in an appropriate manner. Plagiarism is the deliberate use and appropriation of another's work without identifying the source and trying to pass-off such work as the student's own. Any student who fails to give full credit for ideas or materials taken from another has plagiarized.

Students who share their work for the purpose of cheating on class assignments or tests are subject to the same penalties as the student who commits the act of cheating. When cheating or plagiarism has occurred, instructors may take academic action that ranges from denial of credit for the assignment or a grade of "F" on a specific assignment, examination or project, to the assignment of a grade of "F" for the course. Students may also be subject to further sanctions imposed by the judicial officer, such as disciplinary probation, suspension or dismissal from the College. Students may also be subject to further sanctions imposed by a judicial officer, such as disciplinary probation, suspension or dismissal from the College.

Withdrawal Policy

A student desiring to withdraw from a course after the add/drop period should initiate withdrawal procedures with an instructor or counselor. Withdrawals are not official until the withdrawal form is completed and given to the Office of Enrollment Services and Registrar. Withdrawal deadlines are published in the official College Catalog Academic Calendar.

III.

About the Professor

Antonio G. Tapia, Esq. is a registered patent attorney who has built a successful practice in the highly specialized field of intellectual property law. His firm, AGT Law, P.A. is a full-service intellectual property firm offering patent, trademark and copyright services to a diverse range of clients which include inventors, venture investors, published authors, actors, small businesses, start-ups, and franchises. He also supports artists by sponsoring special functions at the Orlando Museum of Art, Nude Night and the Orlando Fringe Festival.

In a short time AGT Law, P.A. grew quickly from an upstart solo practice to a well-established and highly-regarded firm. Its recent growth includes the addition of an internship program, support staff and of-counsel attorney relationships with large multi-state firms.

Antonio is a graduate of the top-tier Emory University School of Law. His prior experience includes work with Georgia Lawyers for the Arts, service as Assistant State Attorney, and with a multi-county, general practice firm. Additionally, he achieved his goal to become a registered patent attorney, a prestigious designation attained by fewer than three percent of attorneys nationwide. Antonio is one of very few patent attorneys with a pre-medical background and engages in protecting and patenting medical innovations. He also represents creators of mechanical, electrical and computer-based inventions in areas outside of medicine.

Antonio's success has also been recognized outside of the practice of law. Recently he was featured on the cover of the Orlando Business Journal and was voted 2012 "Businessman of the Year" by Orlando's Metropolitan Business Association, a renowned Chamber of Commerce. He participates regularly in speaking engagements including Insight Magazine's group for small businesses and entrepreneurs. Antonio teaches for Florida A&M College of Law, ABA approved paralegal studies program at Seminole State College, the Florida Supreme Court Justice Teaching Program, the Florida Bar Entertainment, Art and Sports Law Section, as well as other colleges and learning institutions.

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