



Review Test Submission: Trademark Questions

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Course	INTELLECTUAL PROPERTY FUNDMNTL
Test	Trademark Questions
Started	4/12/20 5:46 PM
Submitted	4/12/20 5:48 PM
Due Date	4/16/20 2:30 PM
Status	Needs Grading
Attempt Score	Grade not available.
Time Elapsed	2 minutes
Instructions	<p>This quiz includes a variety of questions. Please finish them by our next Virtual Class on Thursday, April 16, 2020. The quiz should take you only 10-15 minutes. There are no penalties for answering a question incorrectly, so please answer all questions. You may refer to course materials (the casebook and material on and link to the course blog) and notes to which you have made some contribution while taking the quiz. You may not, however, consult with anyone else while taking the quiz. Do not copy or distribute the questions or answers. Do not discuss the questions or answers until we discuss them on April 16, 2020.</p>
Results Displayed	All Answers, Submitted Answers, Correct Answers, Feedback, Incorrectly Answered Questions

Question 1

Needs Grading



This is a form for an essay question. No one wants to write an essay right now -- I know I don't.

So feel free to put whatever you like in the space below -- I will at least look at it briefly, so I wouldn't put anything you wouldn't want me to read.

There is no word limit.

← OK

Selected Answer: I love essay assignments!

Correct Answer: 

This is an example of a correct response -- I don't want to answer an essay question.

Response [None Given]

Feedback:

Question 2

10 out of 10 points



TRUE or FALSE: A trademark is not protectable under the Lanham Act if exclusive use of the trademark creates a significant non-reputation related disadvantage for the trademark owner's competitors.

Selected Answer:  True

Answers:  True

False

Response Feedback: This is the functionality doctrine -- if trademark protection produces a non-reputation related disadvantage for competitors, the trademark is not enforceable.

Question 3

Needs Grading



What is the difference between the defenses of nominative use and descriptive fair use in U.S. Trademark Law? (in 150 words or less)

Selected Answer: Nominative use is when the trademark is used to actually identify the actual good/service coming from the actual source (like in comparative advertising) and descriptive fair use is when a descriptive mark is used by another to describe their product, not as an indicator of source.

Correct Answer: 

Nominative use is where the alleged infringer uses the senior user's mark in the same way the senior user would use the mark--to identify the senior user's actual product or service as actually coming from the senior user. Comparative advertising is a good example of nominative use. In contrast, descriptive fair use is where an alleged infringer uses a senior user's descriptive mark to describe the alleged infringer's product, not as an indicator of source. For example, the use of "MICRO COLORS" to describe the colors being sold, not as an indicator of source (as a trademark) is a good example of descriptive fair use.

Response [None Given]

Feedback:

Question 4

TRUE or FALSE: To sue for trademark infringement under the Lanham Act, the trademark at issue must be registered with the United States Patent and Trademark Office.

Selected Answer: False

Answers: True

False

Response Feedback: Under Section 43 of the Lanham Act, a trademark owner can sue for both likelihood of confusion and dilution without having registered the mark. The Lanham Act provides for federal common law trademark protection.

Question 5

10 out of 10 points



The strongest theory of liability under federal trademark law that the company Nike, Inc. (a famous shoe manufacturer that uses the registered mark NIKE to identify shoes and clothing) can assert against Winston, Inc.'s usage of the word NIKE to identify high quality cat food would be

Selected Answer: Dilution by blurring under Section 43 of the Lanham Act

Answers: Likelihood of Confusion under Section 32 of the Lanham Act

Likelihood of Confusion under Section 43 of the Lanham Act

Dilution by blurring under Section 43 of the Lanham Act

Dilution by tarnishment under Section 43 of the Lanham Act

Response Feedback: Given the dramatic difference in the identified goods (shoes v. cat food), likelihood of confusion is unlikely. However, given that NIKE is famous, dilution is more viable because dilution does not require likelihood of confusion be established. The specific dilution case would be blurring, not tarnishment, given that mark is being used to identify high quality cat food, something unlikely to harm Nike's image.

Question 6

10 out of 10 points



The word mark SCREEN WIPE used to identify a pre-moistened cloth for cleaning computer monitors is . . .

Selected Answer: Generic

Answers: Generic

Descriptive

Suggestive

Arbitrary or Fanciful

Response Feedback: The mark SCREEN WIPE is generic for a cloth used to clean computer monitors because the "primary significance" of the phrase "screen wipe" is to define a genus of products (wipes for screens), not a specific product within that genus. Put another way, the phrase "screen wipe" does more than merely describe some aspect of the product, it defines a whole category of products.

Question 7

10 out of 10 points



The word mark BUG MIST to identify a spray insecticide is . . .

Selected Answer: Descriptive

Answers: Generic

Descriptive

Suggestive

Arbitrary or Fanciful

Response Feedback: The mark BUG MIST is merely descriptive for an insecticide spray because, while it does not define the category of products (the genus), it describes the identified product (a spray (mist) for insects (bugs)). The mark is not suggestive because under the "imagination test" there are not many mental jumps, if any, to get from the mark to the identified product.

Question 8

10 out of 10 points



The specific shell-shaped chocolate candy shown below used to identify the candy can be, at best, . . .





Selected Answer: Descriptive

Answers: Generic

Descriptive

Suggestive

Arbitrary or Fanciful

Response Feedback: The mark is the product itself (the chocolate candy) and, under *Wal-Mart v. Samara Bros.*, can be at best descriptive on the distinctiveness scale.

Question 9

Needs Grading



Identify by name the two types of dilution identified under Section 43 (c) of the Lanham Act? (in 15 words or less)

Selected Answer: Blurring and Tarnishment.

Correct Answer:

Blurring (43(c)(2)(B) of Lanham Act) and Tarnishment (43(c)(2)(C) of Lanham Act).

Response [None Given]

Feedback:

Sunday, April 12, 2020 5:48:59 PM EDT