Property and Intellectual Property

Chapter 9
Real Property

• Land
  – under - oil, minerals
  – attached - buildings, trees, crops

• Property - “legally protected expectation of being able to use a thing for one’s advantage.”
Personal Property

• Everything that is not real property.
• **Tangible** – Essence of property is its physical existence.
  – Cars, trailers, furniture, equipment.
• **Intangible** – Essence of property is the rights, not the physical existence.
  – Stocks, bonds, patents, copyrights, goodwill.
Intellectual Property

• Intangible property
• Major forms include:
  – trademarks
  – trade names
  – copyrights
  – patents
  – trade secrets
Copyright ©

- Registration simple—not a guarantee of validity
- Works must be *original*
- **Life of author plus 70 years**
- Gives owner exclusive right to:
  - reproduce
  - publish or distribute
  - display in public
  - perform in public
  - prepare derivative works based on original
Infringement and Fair Use in Copyright

• Fair use - “for purposes such as criticism, comment, news reporting, teaching,…scholarship, or research”

• Four Factors of “fair use”
  – purpose and character of copying
  – nature of work
  – extent of copying
  – effect of copying on market

• Example--ok to copy TV show for personal use
Patents

- **Exclusive right to make, use, or sell a product for 20 years**
- **Anyone who “invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent”**
- **Strong protection during life of patent**
- **But expensive, technical and time-consuming process**
- **Since patent divulges all info to competitors, some prefer trade secrets**
- **If Coca Cola had gotten a patent instead of trade secret it could be used by others after 1907**
Richardson-Vicks v. Upjohn

- RVI owned a patent, issued in 1985, for an OTC medicine for the relief of cough, cold, and flu symptoms.
- Upjohn contested its validity because it was very similar to prior inventions and was for something obvious, but in 1992 the patent office upheld the patent.
- RVI sued Upjohn for infringement for selling products that had the same formula as the patent.
- The jury held for RVI and awarded it a royalty of 7%. The judge overturned the jury verdict, and RVI appealed.
- HELD: The appeals court affirmed the trial judge’s ruling.
- The product formulation (2 ingredients of ibuprofen & pseudoephedrine) would have been obvious to one of ordinary skill in the art; patent invalid.
Want to Hear My Songs?
Pay Up  by Ted Nugent

• Issue: Is Copying Music Acceptable?
• People copy music files by burning CDs or downloading from the web without paying
• The music industry is attempting to upgrade the quality of music and also protect intellectual property rights
• The 9th Circuit Court of Appeals ruled that Napster had to stop providing unauthorized music
• But downloading music files is very difficult to stop
Trademark

• A commercial symbol
  – design, logo, distinctive mark, name or word
  – “brand name”
  – protected by common law & the Lanham Act
  – classified (see also Exhibit 9.1)
    • *arbitrary and fanciful* (most favored)
    • *suggestive* (not as favored--but Chicken of the Sea is okay)
    • *descriptive* (less favored--but Holiday Inn and Bufferin have protection)
    • *generic*—not protected, eg. Trampoline, nylon, thermos, shredded wheat, zipper, aspirin.
    • Note Xerox, Proctor and Gamble
Harley-Davidson, Inc. v. Grottanelli

• Grottanelli owns *The Hog Farm*, a motorcycle repair shop in NY. He used “hog” in connection with events he sponsored and products he sold. He also used variants of the Harley’s bar-and-shield logo.

• Harley sued to enjoin Grottanelli from using the word “hog” and from using the bar-and-shield logo. The district court held for Harley; Grottanelli appealed.

• Grottanelli was using the word “hog” when Harley was trying to disassociate itself from the word. Other facts also supported the claim that the word was a *generic term* long before Harley registered the word in 1987.

• HELD: Harley could not prohibit Grottanelli from using the word “hog,” but did prohibit him from using variations of the bar-and-shield logo.
Other Marks

**Service Marks**
- Apply to services, not goods
- Law is the same as for trademarks
- Ex: International Silk Assn. uses the motto: “Only silk is silk.”
- Ex: Burger King’s “Home of the Whopper”

**Trade Dress**
- Concerns the “look and feel” of products and service establishments.
- Size, shape color, texture, graphics, etc.
- Must be “inherently distinctive”
- *Two Pesos v. Taco Cabana*: One Mexican restaurant could not copy its competitor’s decor
Trade Secrets

• Coca-Cola has held secret the formula for Coke for over 100 years; so protection can be strong.
• Kentucky Fried Chicken recipe.
• Most trade secret lawsuits are common law actions of stealing & using secrets
• Prosecutors can also press criminal charges
• Protection in other countries is difficult
• Information is a trade secret if:
  – it is not known by the competition
  – business would lose advantage if competition were to obtain it
  – owner has taken reasonable steps to protect the secret from disclosure
Old Country Buffets (OCB) developed “small-batch cooking” to ensure freshness. The Klinkes fraudulently obtained a copy of OCB’s recipes and its EE manual.

The Klinkes opened Granny’s at which they used the OCB EE manual and recipes. OCB sued for trade secret theft.

The district court granted summary judgment for Klinkes.

HELD: The appeals court stated that the alleged secrets were so obvious that very little effort would be required to “discover” them.

“Klinkes may be liable for stealing something, but not . . . misappropriation of trade secrets. . . .”

- Tasini and other freelance authors wrote articles for NY Times Company. Authors registered copyrights in articles. Each Times magazine and newspaper then registered collective work copyrights.
- Times allowed LEXIS/NEXIS to publish the works online.
- Authors sue Times for copyright infringement as they did not give permission for online publication. Times said it had the right to reproduce the works. District Ct. held for Times; Appeals Court held for the authors; Times appealed to the U.S. Supreme Court.
- Section 201 (c) of the Copyright Act states that a “separate contribution to a collective work is distinct from . . . the collective work, and vests initially in the author of the contribution.”
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