



# Property and Intellectual Property

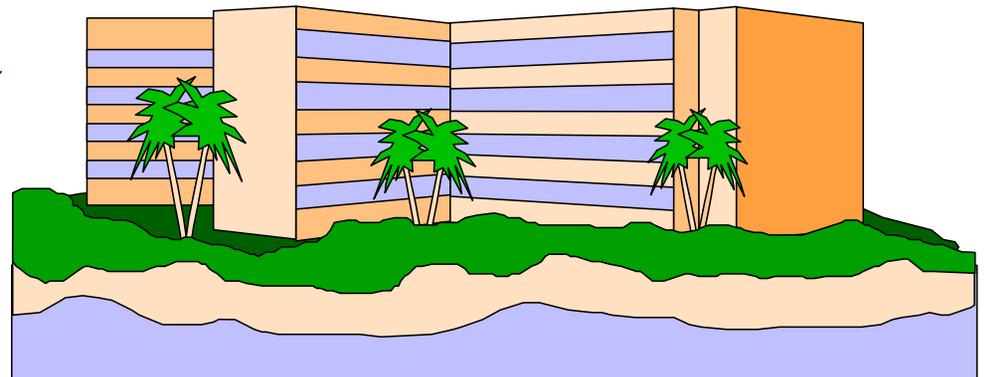
## Chapter 9



# 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

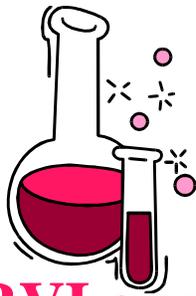
- Fair use - “for purposes such as criticism, comment, news reporting, teaching,...scholarship, or research”
- Four Factors of “fair use”
  - purpose and character of copying
  - nature of work
  - extent of copying
  - effect of copying on market
- **Example--ok to copy TV show for personal use**





# 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**

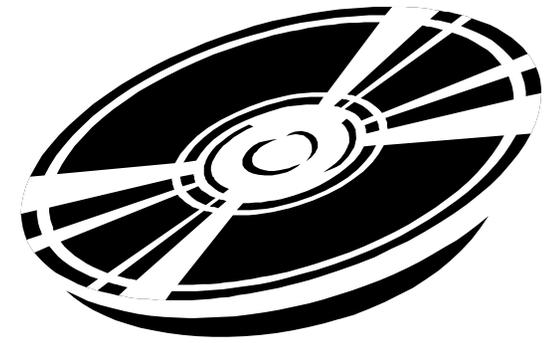


# Richardson-Vicks v. Upjohn

- 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

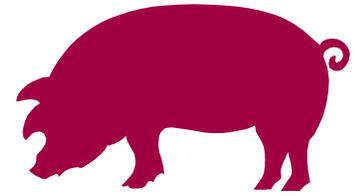
# Trademark



- 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

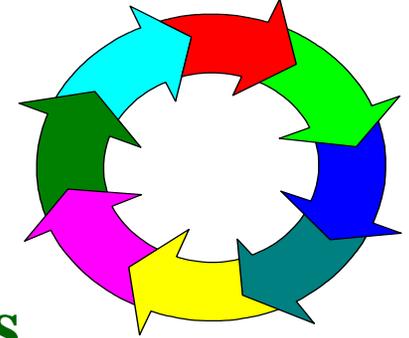


# Harley-Davidson, Inc. v. Grottanelli



- 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

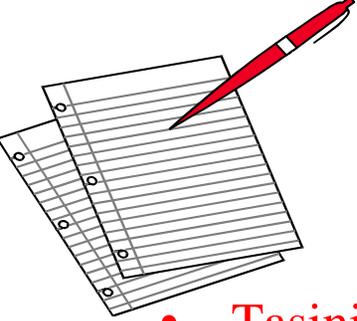
# Trade Secrets

- **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**



# Buffets, Inc. v. Klinke

- **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. . . .”**



# *New York Times Co. v. Tasini*

## (2001) ©

- 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.
- HELD: Affirmed. Both Times and LEXIS/NEXIS infringed.
- 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.”
- Publishers may make agreements for electronic reproduction.
- LEXIS infringed in publishing without permission; Times infringed by authorizing and aiding LEXIS in placing articles in their databases.