Introduction to Trademarks and Branding

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Patent – protects inventions, original ideas or new processes (e.g. machines, formulas, product designs)

Trademark – a word, symbol, phrase, or design that identifies the source of the goods ™ / ®

Copyright – protects original works of authorship (e.g., literary, music, dramatic, artistic work) ©
What are Trademarks?
A Trademark is Any:

- Word
- Name
- Logo  
  Used by a party to identify its goods or services and distinguish them from those manufactured or offered by others
- Color
- Trade Dress
- Sound
- Slogan
- Smell
Trademark Examples

- Word
  - SpaceX
  - Shell

- Name
  - Walt Disney
  - Johnnie Walker

- Logo
  - Under Armour
  - Apple
Trademark Examples

- **Color**

- **Trade Dress**
Trademark Examples

- **Sound**
  - “Don't leave home without it.” - Campbell's Soup

- **Slogan**
  - “Mmmm mmmm good” - Campbell's Soup
  - “Good To The Last Drop” - Maxwell House
Primary policy rationale for which Congress originally enacted trademark laws was to protect consumers from confusion and harm.

Trademark law falls under the “Commerce Clause” (unlike Copyrights and Patents which have direct authority in the “Progress Clause”).

More recent “additions” to trademark law by Congress protect exclusive rights holders:
- Dilution
- Anticybersquatting
Public Domain vs. Exclusive Rights
Trademarks: Spectrum of Distinctiveness

More Distinct

- **Fanciful**: KODAK, POLAROID, GOOGLE
- **Arbitrary**: APPLE for computers, SHELL for gasoline
- **Suggestive**: COPPERTONE for suntan oil, BLU-RAY
- **Descriptive**: CHAP STICK, SPORTS ILLUSTRATED
- **Generic**: SALT, ASPIRIN (KLEENEX and VELCRO are close)

Less Distinct
International Classes of Goods and Services

Application Contents

- Class
- Description of Goods and Services

Trademark Prosecution

- Descriptiveness
- Likelihood of Confusion
What makes for a good brand / trademark?

Ability to **DRIVE REVENUE!!!**
CostCo

Intel

Motorolla
How to come up with a non-descriptive mark/brand that’s attractive to the consumer

**Brainstorming session:**

1. List the qualities of your service / product that make it special.

2. Try to come up with as many (preferably unrelated) items / services that also have some of these same qualities.

3. After you have lots of ideas, get creative about using / combining your best ideas into distinctive marks / brands. Ideally, try to come up with about 5-10 marks / brands.

4. Rank your ideas, run preliminary clearance searches.

5. Run a full search, file TM apps.
Come up with the following:

a) A brand name and artistic logo for the product you are building.

b) A brief (approx. 5 words or less) slogan/description of your product.

Email an image of the logo to your instructor and TA by 5pm on 2/11/2018. In class on 2/12/2018, be prepared to discuss the following:

1. What are the qualities of the product that you would like to impart upon the consumer?

2. What were some of the key words that came out of your brainstorm session (including ones that you did not use)?

3. Where on the spectrum of distinctiveness does your mark fall?
Examples

Harvest the Sun
Examples

Bliss
Making peaceful recoveries.
Considerations

- Appearance / attractiveness to consumer
- Length
- Other meanings (e.g., languages) – where will mark be used?
- Terms alluding to product/technology (pros and cons)