

TRADEMARK LAW
Spring 2021
Law #6576
Holland Hall 180
TWR 10:45-11:40

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Virtual Office Hours
Tuesday & Thursday
3:00-4:00

Course Canvas Page

All course materials are accessible on Canvas at: <https://ufl.instructure.com/courses/419104>

Course Overview

This course will provide an introduction to the principles, doctrines, and policies of U.S. trademark law, which confers rights in symbols that identify the sources of goods or services. The focus of the course is on the law of the United States rather than on issues of foreign and international law. There are no prerequisites for this course, and no technical background is necessary.

Learning Outcomes

After completing this course, students should be able to:

1. Explain the requirements for creating a valid trademark
2. Classify marks based on their level of distinctiveness
3. Identify trade dress and its requirements
4. Describe confusion and infringement
5. Identify the differences between confusion and dilution
6. Explain the role of fair use and parody as defenses to infringement

Classes

Classes will be held from 10:45-11:40 am on Tuesday, Wednesday, and Thursday in Holland Hall 180.

Final Exam

The final exam is scheduled for Monday, May 3 at 8:30 a.m. The law school policy on exam delays and accommodations can be found [here](#).

Readings & Materials

The course text will be Barton Beebe's TRADEMARK LAW: AN OPEN-SOURCE CASEBOOK. The text is freely available online at tmcasbook.org. I highly recommend that you print a copy to bring to our class meetings. Amazon has low-cost printed versions available, but the page numbers may not directly correlate to the online version.

You will need access to the Trademark Manual of Examining Procedure, available online at: <https://tmep.uspto.gov/RDMS/TMEP/current>.

You may access supplemental materials and view other course related information on the course Canvas page.

Virtual Office Hours

Virtual Office Hours will be held via [Zoom](#) (Passcode 446391) on Tuesdays and Thursdays from 3:00 – 4:00 pm. I am also available at other times. Please email me to set up other times to meet virtually.

Etiquette: In Person Students

You are required to follow UF Law safety protocols at all times. In response to COVID-19, the following policies and requirements are in place to maintain your learning environment and to enhance the safety of our in-classroom interactions.

- You are required to wear approved face coverings at all times during class and within buildings. Following and enforcing these policies and requirements are all of our responsibility. Failure to do so will lead to a report to the Office of Student Conduct and Conflict Resolution. You also will no longer be permitted on the UF Law campus. Finally, Dean Inman will also report your noncompliance to the relevant state board of bar examiners.
- This course has been assigned a physical classroom with enough capacity to maintain physical distancing (6 feet between individuals) requirements. Please utilize designated seats and maintain appropriate spacing between students. Please do not move desks or stations.
- Sanitizing supplies are available in the classroom if you wish to wipe down your desks prior to sitting down and at the end of the class.
- Be mindful of how to properly enter and exit the classroom. Practice physical distancing to the extent possible when entering and exiting the classroom.
- If you are experiencing COVID-19 symptoms (<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>), please do not come to campus or, if you are already on campus, please immediately leave campus. Please use the UF Health screening system and follow the instructions about when you are able to return to campus. (See <https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/>.)

- Course materials will be provided to you with an excused absence, and you will be given a reasonable amount of time to make up work. See <https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/>.
- Place your name tent card where it will be visible. Do not log in to the Zoom feed for the classroom; only remote students should be using the Zoom feed.
- If you need to leave the room, please exit quietly and carefully. Eating and drinking will not be permitted in the classroom because masks must be worn at all times.

Etiquette: Remote Students

You need to ensure your Zoom name matches your preferred name and your last name must also show. If you are attending class remotely, you are expected to turn on video of yourself. You are expected to keep your microphone on mute unless you have been called on to ask or answer a question.

Do not use the chat function to ask questions directed to me during class; it will not be monitored by me, and students attending in person will not be able to see it. If you are trying to ask a question, please contact the TA. If you have a technical problem during the class, please contact UF IT (<https://www.law.ufl.edu/technology-services>).

Prohibition on Student Recording and Photography and Social Media Posting

Students may not take, circulate, or post photos or videos of classroom discussions, whether they are in-person, hybrid, or completely online. Students failing to follow this rule will be referred to the College of Law Honor Code Council and the university's Office of Student Conduct and Conflict Resolution.

Participation

The participation grade is determined by attendance, preparation for class, and participation in class discussions. I prefer to rely on volunteers for class discussion. In order to ensure a wide variety of participation, however, I may, as needed, engage in cold calling. Repeated lack of preparedness or participation, including not responding when asked a direct question, will impact your participation grade.

Class Preparation and Attendance

Preparation for class is mandatory. Before each class, you must complete the assigned reading and view any videos or other materials assigned, and be prepared to provide thoughtful answers to questions that I pose during class.

Note that ABA Standard 310 requires that students devote 2 hours of out-of-class preparation for every "classroom hour" of in-class instruction. Therefore, for this 3 credit course, I expect that you will spend at least 6 hours of preparation outside of class each week. This should

include very careful and thorough reading and preparation of assignments prior to each class, as well as review of your notes and class materials after each class session.

I expect you to attend class regularly and to be prepared to participate meaningfully in class discussion. In addition, students with serious attendance problems will not be eligible to take the final exam. You are required to attend in your chosen modality—i.e., in person or online—unless you have permission to attend remotely (see below). You are expected to be prepared to complete in-class exercises. Attendance will be taken each day.

You must seek permission to attend remotely and have your attendance count if you selected the in-person option. Permission will be granted if you are experiencing any type of illness, even if the symptoms are mild or you just feel like you might be coming down with something. **You should not attend in person if you are experiencing any of the symptoms listed on UF's COVID-19 website or have had close contact with someone who has COVID-19 as provided on UF's website** (<https://coronavirus.ufhealth.org/screen-test-protect/covid-19-exposure-and-symptoms-who-do-i-call-if/>). If you are dealing with a personal situation of high difficulty and prolonged duration, please seek assistance from Student Affairs as soon as possible. Missing 3 or more classes without prior notice will result in referral to Student Affairs. Requirements for class attendance and make-up exams, assignments, and other work in this course are consistent with University policies that can be found at: <https://catalog.ufl.edu/UGRD/academic-regulations/attendance-policies/>.

It will be considered a violation of the course rules and the Honor Code to falsely indicate that you were present in class, or to assist a classmate in such misrepresentation.

Attendance in class is required by both the ABA and the Law School. If you have six (6) or more unexcused absences, you will be barred from taking the final exam, and will automatically *fail* this course.

Technical Support

For technical difficulties with E-learning in Canvas or Zoom, please contact the UF Help Desk at:

- helpdesk@ufl.edu
- (352) 392-HELP
- <http://elearning.ufl.edu/> (See “Message Us” at the top)

Grading

The components of the final grade for the course are listed below:

Assignments (4)	10%
Discussion Boards (2)	5%
Memo re: Office Action Response	10%
Participation	5%
Final Exam	70%

You will receive full credit for the completion and timely submission of the assignments and discussion boards. Written assignments and discussion board posts submitted after the due date and time will only be eligible for half-credit.

I will grade and provide substantive feedback on the Memo re: Office Action Response.

After course grades have been posted, you may review your exam beginning after the first week of the following semester. All exam reviews will be conducted in my office, and you may arrange an appointment by e-mail.

The Levin College of Law’s grading policies may be found [here](#). The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent
A	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school grading policy is available at: <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>.

University Policy on Academic Misconduct

Academic honesty and integrity are fundamental values of the University community. Students should be sure that they understand the UF Student Honor Code at <http://www.dso.ufl.edu/students.php>.

Students are bound by the UF Law Honor Code, which can be found here:

<https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code>.

Accommodations for Students with Disabilities:

Students requesting accommodation should first register with the UF Disability Resource Center (352-392-8565, www.dso.ufl.edu/drc/) by providing appropriate documentation. Once registered, students will receive an accommodation letter, which should be presented to the UF Law Office of Student Affairs when requesting accommodation. This procedure should be followed as early as possible in the semester. Law students with disabilities can also contact the Levin College of Law Office of Student Affairs for assistance on these matters in 164 Holland Hall, 273-0620, www.law.ufl.edu/students/.

Student Course Evaluations

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to give feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. Students will be notified when the evaluation period opens, and can complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>.

Reading and Assignments

Below are the tentative assignments for the class. I reserve the right to modify the assignments from time to time, and to utilize additional handouts and materials. Such changes, communicated clearly, are not unusual and should be expected. All assignments are from Barton Beebe's TRADEMARK LAW: AN OPEN-SOURCE CASEBOOK (TL) or the Trademark Manual of Examining Procedure (TMEP) unless otherwise noted.

Week	To be completed before Tuesday class	To be completed before Wednesday class	To be completed before Thursday class	Assignments
Week 1 Jan. 19	Complete Getting to Know You ; Watch the USPTO's Trademark Basics video: http://www.uspto.gov/trademarks/basics/index.jsp ; watch Art of Logo Design https://tinyurl.com/hhgztly	Introduction to TM TL: 11-31	Distinctiveness TL: Pages 31-45 TMEP § 1209(a), (b) and (c)	Discussion Board #1 posted after class on Tuesday, January 19; Initial posting due by 11:59 pm on Thursday, January 21 and responses due by 11:59 pm on Sunday, January 24
Week 2 Jan. 26	Distinctiveness TL: 45-51 TMEP § 1209.03(g), (h) & (m); 1210.01(a); 1210.02(a) & (b); 1211.01(a); 1301.02; 1302; 1306.01;	Acquired Distinctiveness TL: 51-55; 63-76 TMEP § 1212.09(a); 1209.01(c)&(c)(1)	Generic Marks TL: 76-96 TMEP § 1212.06(d)	Assignment #1 posted after class on Thursday, January 28; Due by 11:59 pm on Sunday, January 31
Week 3 Feb. 2	Nonverbal Marks TL 96-112; TMEP § 1202.02, 1202.02(a), 1202.02(a)(i) &(ii); 1205.05, 1205.05(a)&(b)	Product Packaging and Product Configuration Trade Dress TL: 112-127; TMEP § 1202.02(b)&(b)(i)	Inherent Distinctiveness of Product Packaging Trade Dress TL 127-142; TMEP § 1202.02(b)(ii)	Discussion Board #2 posted after class on Thursday, February 4; Posting due by 11:59 pm on Sunday February 7. Be ready to discuss in class on Tuesday, February 9.
Week 4 Feb. 9	Discussion of packaging trade dress	Functionality TL 143-160; TMEP § 1202.02(a)(ii),(iii) & (v)	Aesthetic Functionality TL 173-181; TMEP § 1202.02(a)(vi)&(viii)	
Week 5 Feb. 16	Deceptive and Deceptively Misdescriptive Marks TL 187-192; TMEP § 1203.02(a)-(c) & (d)(1); 1209.04; 1210.01(a)-(c); 1210.02 (a)&(b)	False Connection/ Trademark Law and the First Amendment TL 192-199; TMEP § 1203.03; 1206 & 1206.01	Disparaging & Scandalous TL 199-212; TMEP § 1203.01; Watch The Slants: A Band Name Too Registration to Trademark! video: https://www.youtube.com/watch?v=8_yNmrsrLkc	Assignment #2 posted after class on Tuesday, February 16; Due by 11:59 pm Sunday, February 21.

(to be continued . . .)