

Intellectual Property
Fall 2022
Final Exam

This examination consists of **two questions** and **six pages**. Your answer has a limit of **2,000 words per question**, which will be strictly enforced. It is due by **11:59 AM on Thursday, December 15**. Please submit your answer using the instructions provided by the Law Registrar's office.

This exam will be **blind-graded**. You must not put your name or other identifying information anywhere on your answer. In addition, you must not compromise the anonymity of the grading in your communications with me. If you have any technical issues in taking the exam, you must discuss them with the registrar, not with me.

This is an **open-book** examination. You should not need to consult anything beyond the casebook and your notes, but you can if you wish. You are free to discuss the general legal principles we have covered with anyone, including each other.

You are also free to post general **questions** about the material covered in the course, about the exam instructions, or about the *facts* (not the law) in the problems on the exam in the designated discussion area on Canvas. I will answer all questions posted there before 11:59 PM on Friday, December 9.

Aside from the above, **you may not discuss the question** with anyone else until after I have returned your grades. You are also **specifically prohibited** from using any artificial intelligence or machine-learning system that generates text.

Your work on this examination is subject to the Cornell Code of Academic Integrity, the Law School Code of Academic Integrity, and the Campus Code of Conduct.

General Advice

Please make your answer as **specific** to the facts of the questions as you can. Generic statements or suggestions, such as “Make sure that all employees follow proper security practices,” will receive few or no points. Use **simple citations** (e.g. “*see Feist*”) where appropriate. I include **spelling, grammar, clarity, and organization** in my grading. I appreciate the use of headings to organize your answer, but they’re not required. If you find the question **ambiguous** or need to **assume additional facts**, state your assumptions and explain how they affect your answer. No reasonable resolution of an ambiguity will be penalized.

Assume for purposes of the examination that **present-day law** has been fully in effect at all relevant times.

Some of the people, places, things, and concepts on this exam are real. They are indicated in ***underlined bold italics*** and hyperlinked to a relevant Wikipedia page. If your legal analysis depends on simple, objective facts about them (e.g., when did a person live?), you should answer based on the real-life facts. But otherwise, you should base your analysis on the facts as given in the exam problem.

Other than that, **all names are fictitious**. Please disregard any resemblance to actual persons, places, or institutions.

Question 1: Distrust, but Falsify

Mikhail Gorbachev (Михаил Горбачёв), recognizable from his distinctive port-wine birthmark, was the head of the Soviet Union from 1985 until 1991, when it ceased to exist. He pursued policies of nuclear disarmament in a series of famous summit meetings (in Geneva in 1985, Reykjavik in 1986, Washington in 1987, and Moscow in 1988) with United States President Ronald Reagan. He broke with Soviet tradition by repeatedly appearing in public with his wife Raisa (Раиса Горбачёва), who maintained a polite but distant relationship with Reagan's wife Nancy. Domestically, Gorbachev promoted political openness and economic reform, survived both an attempted assassination and an attempted coup, and failed to prevent the individual republics making up the Soviet Union from declaring their independence. From 1991 until his death in 2022, he worked on international diplomacy, tried unsuccessfully to influence Russian politics, and appeared in ads for Pizza Hut and Louis Vuitton.

[This much is true. What follows is fiction.]

In 2005, director Al Ambrosini made a documentary about Gorbachev's life and times, titled *Gorbachev*. Much of the documentary consisted of interviews with Gorbachev himself, intercut with news footage of events from his career and shorter clips from interviews with other significant political figures and historians. The movie was produced and distributed by Ambrosini's production company, Ice Pick Clock. It premiered at the Naples Film Festival, played a limited theatrical release before being shown on premium cable channels, and made a small profit on its \$1,000,000 budget.

In late 2021, however, a Twitter user named Katya Shepherd created a fake movie poster for *Gorbachev* in the style of a crime drama. Shepherd arranged archival historical photographs of the Gorbachevs and Reagans with serious and worried expressions into an overlapping collage. She gave it the slogan "Disarmament Is Not An Option" and credits to real actors, e.g. "BOB HOSKINS as Mikhail Gorbachev, CLINT EASTWOOD as Ronald Reagan, JANE BIRKIN as Raisa Gorbacheva, and ESTELLE GETTY as Nancy Reagan." She kept the director's credit to Ambrosini.

Shepherd's tweet with the poster touched off an immense wave of retweets and replies. Other users started pretending that *Gorbachev* really

was a crime drama, not a documentary, and discussing how it was one of the great dramas of all time. Although people took the joke in all kinds of direction, most users commenting on it gradually settled into a kind of consensus. In their shared joke, *Gorbachev* was a thriller from 2005, directed by the real-life director Al Ambrosini, *about completely fictional people*. The plot involved two criminal bosses named Mikhail and Ronald uneasily collaborating on a massive drug deal, while also dealing with significant unresolved sexual tension. (Whether this tension was intentional on Ambrosini's part was a significant element of debate between users commenting on *Gorbachev*.) The mutual hatred between their wives, Raisa and Nancy, pushes the two bosses toward a violent confrontation, but both of the wives may be running angles of their own. The fictional film featured a car chase through Geneva and a gun battle in Reykjavik.

As time passed, users made increasingly elaborate contributions to the *Gorbachev* lore. Andrey Keitel composed, performed, and posted to YouTube an original 7-minute musical suite titled "Themes from *Gorbachev*." Joseph Cazale created a "Trailer for *Gorbachev*" by cutting together clips of the actual Gorbachevs and Reagans, clips of movie scenes featuring the actors from the fake credits (Bob Hoskins, etc.), Keitel's music, and an original voice-over track, which he posted to YouTube. It has received over 20 million views.

Your client is Lo Straniero Productions, a movie production company. The studio's executives find the *Gorbachev* concept compelling, and they also want to tap into the viral excitement around it. They want to make an *actual crime drama* out of *Gorbachev*, one that sticks as closely as possible to the collective Internet joke of what *Gorbachev* consists of. It will not be possible to cast exactly the same actors, but they want to use as much else as they can, including but not limited to the characters, the settings, the plot elements, the poster, the slogan, the music, and the voice-over.

Write a memorandum to Lo Straniero of 2,000 words or fewer describing the IP considerations that should inform its plan. What relevant IP rights do other parties hold, and what kinds of IP rights will Lo Straniero be able to secure? Give your advise on what Lo Straniero will need to do to be able to proceed.

Question 2: Lightning Round

Your firm has been asked to give its advice to several clients on the intellectual-property aspects of their proposed business models.

A. The rock band Figment was active 1985 to 1995. Except for a reunion tour in 2002, its members are retired from music. Its six studio albums are available on the major streaming services, and there was a DVD version of a live concert from the reunion tour. Figment still has an active fanbase who discuss its music on Internet forums. Your client is considering putting together a group of musicians, to be called Figments, who will record and release covers of Figment songs that are as close as possible to the original versions, and will tour performing Figment songs.

- Can the band sell cover versions of Figment songs?
 - Can the band tour performing covers of Figment songs?
 - Can the band call itself Figments?
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B. Your Client, BlockHead, plans to make and sell marble busts of famous and long-dead historical figures. Some of its busts (e.g. *Abraham Lincoln*) will be created by taking a precise laser scan of an existing bust owned by a museum or a private collector. These busts were made between 500 B.C. and 1865 A.D.) But in other cases (e.g., *Elizabeth I of England* and *Simón Bolívar*), the busts will be created made by collecting from the Internet images of as many portraits of the person as possible and then using a machine-learning model to reconstruct a three-dimensional model of the person's head.

- Can BlockHead make laser scans of existing busts?
- Can BlockHead use machine learning to create 3D models from portraits it finds on the Internet?
- Can BlockHead stop others from duplicating its busts?
- Can BlockHead stop others from creating busts of the same people?

C. Your client, Ramirez Snacks, plans to introduce a line of spicy corn chips called Infernos. The spiciest version will be called Infernos Extra and will be sold in a foil bag decorated to look like a fire extinguisher. Your trademark search has discovered the following: (1) A romance novel titled *Infernos of Passion*. (2) A line of gas furnaces from Bloch Heating named the Bloch Inferno 300, the Bloch Inferno 400, and the Bloch Inferno 500. (3) A line of corn chips called Blorbos, which come in several versions: Blorbos Original, Blorbos Lime, Blorbos Spicy, and Blorbos Spicy Extra.

- Can Ramirez call its spicy corn chips Infernos?
 - Can Ramirez call its spiciest corn chips Infernos Extra?
 - Can Ramirez sell Infernos Extra in a fire extinguisher bag?
 - Can Ramirez stop others from selling spicy corn chips?
 - Can Ramirez stop others from selling spicy pretzels called Infernos?
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D. Earsplitter Audio sells high-end audio equipment, including speakers, amplifiers, and mixers. Earsplitter devices have triangular sockets for their audio connections, and Earsplitter also sells audio cables that have triangular plugs that fit into the sockets on Earsplitter devices. Earsplitter holds the '805 utility patent, which claims in relevant part "a cable having a triangular plug end" and the '410 design patent depicting the triangular plug at the end of its cables. Earsplitter also prints, "The proprietary Earsplitter Triangle cable design is protected by copyright, trade dress, utility patent, and design patent" on all of its product boxes. Your client, Cable City, would like to sell audio cables that can connect Earsplitter devices, at a lower price than what Earsplitter charges for its own cables.

- Can Cable City sell Earsplitter-compatible cables?
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Give each client an analysis of its legal situation in 500 words or fewer. You do not need to write a summary tying them together. For each bulleted question asked by a client, answer "yes," "no," or "yes if ...". If your answer is "yes, if ..." explain what the client needs to do to make the answer into a "yes."