

TRADEMARK LAW
UNIVERSITY OF FLORIDA, LEVIN COLLEGE OF LAW
SPRING 2024 SYLLABUS – LAW 6576 (3 CREDITS)

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Office Hours: Thursdays, 1pm-3pm, in office

MEETING TIME: Wednesday and Friday, 1:15pm-2:40pm
LOCATION: HH270

COURSE DESCRIPTION AND OBJECTIVES:

Trademarks – especially brands and slogans – are enormously important to the United States economy. Consumers must constantly consider and differentiate between brands. Competitors, meanwhile, must constantly be aware of their rights to use, or to avoid using, particular marks – either because someone else has rights in a similar mark or because the asserted “mark” is actually generic, descriptive, functional, or otherwise undesirable or unenforceable, which could cost a company millions or billions of dollars in lost revenue.

This course covers concepts in trademark law, particularly in the robust federal system of trademark registration and enforcement. We will discuss the basis and extent of Trademark law, including Constitutional background and statutory language as well as applications in common law. We will also discuss requirements for establishing rights in a mark; the Trademark registration process; use requirements; infringement; fair use; and other issues involving ownership of marks, as well as related issues of false advertising and the right of publicity.

It is expected that we will have some guest lecturers from government and private practice, which will help expand students’ understanding, as well as give students more opportunity to ask questions about Trademark law and practice – and its place more generally within Commercial law and Intellectual Property. We may also substitute some class sessions and reading with other activities, such as attending and evaluating together an actual case being heard on trademark registration at the U.S. Patent and Trademark Office, by the Trademark Trial and Appeal Board.

STUDENT LEARNING OUTCOMES:

At the end of this course, students should be able to:

- Understand policies and principles of Trademark law – including its place in the U.S. legal system
- Develop a solid comfort level with the practice of Trademark law – including an understanding of how to apply relevant concepts in practice

- Identify legal issues involving Trademark law – including, generally, false advertising and right of publicity
- Identify and apply the elements of those legal areas to a given set of facts, including by analyzing the policy objectives; the scope of protection; and the limits thereof

REQUIRED READING MATERIALS:

This course will use a free, online casebook, Trademark Law, An Open-Source Casebook, Version 10 (2023) (the “Beebe Casebook”). You can access the Beebe Casebook online at tmcasebook.org. Online access is free of charge. Since Trademark law, like all areas of intellectual property and innovation law, is a constantly developing field, I may occasionally provide you with some additional articles or cases to assist in our class discussions.

Please be sure to register for the Canvas course page and to have the reading materials with you in print or via easily accessible electronic form in class. You are responsible for checking your Canvas page and the email connected to the page on a regular basis for any class announcements or adjustments.

COURSE EXPECTATIONS AND GRADING EVALUATION:

Class sessions will often include in-class projects with a partner or small group. These are intended to be fun opportunities to collaborate with classmates – as colleagues – on various Trademark problems and projects. Outside of class, you are free to collaborate or to pursue individual study methods as you see fit.

When assigned an in-class group problem or project, you will be asked to collaborate with your partner or group, and to take turns reporting the results of your group discussion to the rest of the class. I may also cold-call students at other times during class. I will always endeavor to do so in a courteous and respectful manner. In this regard, please treat the classroom, and everyone in it, with the respectful demeanor and professionalism that you would display in a courtroom.

Conducting yourselves in a professional manner also means not engaging in any behavior during class that may distract your classmates, the professor, or any visiting guests. **This includes, but is not limited to, accessing social media, sending e- mails, and any other use of electronic devices during class that does not involve note taking.** Your failure to comply with this policy may be subject to the grade deduction for participation described below, your removal from the classroom, and/or loss of your privilege to use a laptop or other electronic devices in the classroom.

Your grade in this class will be based on your performance on the final exam. I reserve the right to increase or decrease your final grade + or – about 25 percent, based on the quality of in-class participation, including via the group discussions (or, on the negative

side, your grade may be lowered by excessive absences, lateness, or unprofessional conduct in class).

The final exam will be a **open-book, essay-style exam on Exemplify**, consistent with the applicable UF and law school policies. The final exam has currently been scheduled by the law school administration for Thursday, May 2, as a remote exam. Your grade on the final exam – and ultimately in the course – will rest largely on your expressed understanding and depth of thought, with an emphasis on quality, and a likely word limit for the final exam prompts.

CLASS ATTENDANCE POLICY:

Attendance in class is required by both the ABA and the Law School. Attendance will be taken at each class meeting. Students are allowed a maximum of six absences during the course of the semester. Students are responsible for ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course. The law school's policy on attendance can be found [here](#).

UF LEVIN COLLEGE OF LAW STANDARD SYLLABUS POLICIES:

Other information about UF Levin College of Law policies, including compliance with the UF Honor Code, Grading, Accommodations, Class Recordings, and Course Evaluations can be found at this link:

<https://ufl.instructure.com/courses/427635/files/74674656?wrap=1>.

ABA OUT-OF-CLASS HOURS REQUIREMENTS: ABA Standard 310 requires that students devote 120 minutes to out-of-class preparation for every “classroom hour” of in-class instruction. Weekly classes are approximately 3 hours in length, requiring at least 6 hours of preparation outside of class including reading the assigned materials, and gathering and studying your notes.

COURSE SCHEDULE OF TOPICS AND ASSIGNMENTS

Each week, I will confirm the following week's reading assignment by the end of Friday's class, along with any schedule or other modifications. I will also generally post PowerPoint slides before each class session, so that you have them available during class to take notes.

In order to provide you with the best course experience, I will endeavor to avoid assigning an excessive amount of reading. I am setting forth here the schedule of assignments for the first two weeks of class.

Initial assignments:

Week One:

Wednesday, January 17: Introduction to Trademark Law, Beebe, pp1-20

Friday, January 19: Distinctiveness spectrum; inherent and acquired distinctiveness, Beebe pp24-41(top)

Week Two:

Wednesday, January 24: Genericness and Failure to Function, Beebe, pp49 (mid)-79(mid); 90(mid)-91(mid)

Friday, January 26: Nonverbal marks, Beebe pp99-122(top); 130(bottom)-131(bottom)

I look forward to seeing you in class!