

Intellectual Property
Fall 2018
Final Examination

This examination consists of **two questions** and **five pages**, including this cover page. The questions have suggested answer lengths that total about 3,500 words. Submit your answer by following the directions provided by the law-school registrar by the deadline of **3:00 PM on December 17**. Please make sure that the PDF does not contain your name or any other **identifying information**. I will not answer exam-related questions once the exam has been made available: please direct all correspondence to the registrar.

This is an **open-book** examination. You should not need to consult anything beyond the coursepack and your notes, but you can if you wish. This is an **individual** examination. You are free to discuss the general legal principles we covered this semester with anyone, including each other. But **you may not discuss the examination questions** with anyone else until after the examination period. 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.

Please 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 explain how they affect your answer. No reasonable resolution of an ambiguity will be penalized. Please use the following **formatting**: 13-point Palatino, 1-inch margins, double-spaced, bold for any major headings and italics for any minor headings.

The problem is set in the fictional American state of Roosevelt. Assume for purposes of the examination that present-day law has been fully in effect at all relevant times, that Roosevelt has enacted the Uniform Trade Secrets Act, and that it recognizes a common-law right of publicity.

Unless otherwise noted, all names are fictitious. Please disregard any resemblance to actual persons, places, or institutions—living, dead, or nonexistent.

Question 1: Making a Lawsuit

A senior partner at your firm just forwarded you this email from a client, who is the producer of a new true-crime podcast, *Depraved Heart*.

To: C.T. Ip
From: Moira Ricciardi
Re: podcast

Hey, CT!

Thanks again for looking at this. All of us here at Simpson Media are really excited about *Depraved Heart*, which we think will take the true-crime documentary genre to a whole new level. Based on hundreds of hours of interviews with Buddy Durst and our own exhaustive investigation, we think we have conclusive proof that he was innocent of the Koenig family triple murder and was framed by the police. We're looking forward to dribbling out the true story a bit at a time over the course of our twelve-episode season, and we think we'll have listeners desperately clicking to download each new episode in iTunes or to stream it on Spotify.

The first thing I wanted to check with you about is whether we have anything to worry about with Durst. I mean, obviously, I think he's pretty grateful we're on his side (except for that one misunderstanding about the collect-call charges in episode six) and will be even happier if the show helps to get him released from prison. But you never know, and the whole season is kind of about him. His name will be all over the podcast (it's in the freaking subtitle!) and we'll be using his picture in the show's logo and on the website. You don't see any chance he could turn around and sue us for using his name and picture and life story and the audio from the interviews, right?

Also, in episode eleven, during the interview where we got Officer Dassey to open up, you can hear a car roll up in the background blasting Funkadelic's "Get Off Your Ass and Jam" on the stereo. We don't want to edit it out because that part of the interview is crucial for the story. Do you see any problem?

Then, I've been thinking about some of the sponsors. Each week we have a different sponsor, so the episode starts, "This week's episode of *Depraved Heart* is brought to you by ..." and then we say their name and the host reads a 60-second script about how great they are and how you can get a special discount for *Depraved Heart* listeners if you go to their website and use the promo

code DEPRAVED. Most of this is squared away, but some of the sponsors are being a little difficult.

Episode four is sponsored by Rx in a Box. It's one of those places that sends you a different box every month, only this one has a doctor pick out different medications they think you should be on. The tag line is great: "Miracle cures can come true ... with Rx in a Box." That's fine, right?

Episode seven is going to be one of those meal-in-a-box places, it's called Green Apron and their whole thing is that they're like a certain other meal-in-a-box place only good for the environment – you know, green. The way we were thinking of taping the sponsorship segment, we thought maybe the script should never, you know, actually come out and actually say "Blue Apron," but we could just talk about "the other meal kits." That way we can't get into any legal trouble from Blue Apron. Sound right to you?

And we're having a little, tiny, disagreement with McLemore Industries over the episode two ad. Sounds like the show is a little more gruesome than they thought they were getting into. (I know, right? Who plans to sponsor a true-crime podcast and then gets all shocked, shocked to discover there's multiple-amputation murder?) If we can't work it out with them, is it okay if we just go ahead and run the ad anyway? They can't complain about free advertising, right?

Now, for the show closing theme, we really want to use this great cover I found of Bob Dylan's "It Ain't Me, Babe." It's an all-instrumental version by some guy I've never heard of named DJ Adnan. It has a great drum loop that really capture the claustrophobic feeling of the show. What kind of a license do we need and where can we get it?

Next, what are we supposed to do so no one else can rip off the show? I'm worried someone might take the episodes, strip out the ads, and upload them to YouTube or SoundCloud. Or they might make their own podcast about Buddy even though we got there first. And the name? What if someone makes a podcast called Depraved? Or starts selling T-shirts with the show logo on them? Just tell me what we need to do now to protect ourselves and we'll go out and get a patent or whatever we're supposed to.

Thanks again!

Write an email to the partner of about 1,750 words answering Ms. Ricciardi's questions. What IP risks does Simpson Media face, what if anything should it do to reduce those risks, what does it need to do to secure appropriate IP rights, and what will those rights protect it against?

Question 2: Comic Book Movie

Teen Girl Squad was an animated children's TV series, produced by Metalmation Studios from 1982 to 1986. The "squad" consisted of four close friends — Heather, Jennifer, Alison, and Lydia — and they solved minor town mysteries like missing dogs and sabotaged prom dresses. The show was never a huge hit, but it was generally well liked, and fans and critics agreed that the four main characters were appealing and their friendship felt genuine. The show's creator, Raymond Chapman, acknowledged in interviews that they were based on his sister Marzipan Chapman and her friends.

The show stopped airing in reruns in 1988. It was released as on VHS as a box set in 1992. Metalmation shut down in 1994, and all of its remaining assets (including all of its IP rights in Teen Girl Squad) were transferred to its corporate parent, VDX. It has never been officially released on DVD, Blu-Ray, or on streaming.

The Internet brought together fans of Teen Girl Squad. By the 2000s, many of them were parents themselves, and by the 2010s, many of them had teen girls of their own. They gathered on websites like TheGreatestSquad.com to talk about the show, post fan art, and create endless quizzes like Which Teen Girl Squad Girl Are You? Over time, the TheGreatestSquad community created its own private language to talk about the show, which they called TGS. The four lead characters were referred to as "Cheerleader," "So And So," "What's Her Face," and "The Ugly One," respectively. (This was based on a joke no one can remember.)

In 2015, one TheGreatestSquad user, Carol Pazquel, started posting drawings of Cheerleader and The Ugly One dressed as superheroes. The original show had featured moderately realistic animation; Pazquel's drawings were brightly colored and had strong, simple, geometric lines. In 2016, she continued to post pictures of the four beating up supervillains and engaged in dramatic rescues, and also started uploading long stories about their crime-fighting exploits, like thwarting plots by the evil organization Blue Laser to blow up the ocean or steal the sun.

Most other users who commented thought that both the drawings and stories were great. One user who was unamused, however, was Raymond Chapman, who posted several times that he thought Pazquel completely missed the point of the original show. He wrote, "TGS was deliberately just about girls being girls. This is an insult to everything TGS stood for."

Pazquel posted a long response expressing her admiration for the show and arguing that she was trying to be true to the characters while also recognizing their strength in a different way. Chapman replied, "Whatever, just keep my name off of it."

This year, Pom Pictures released *Teen Girl Superheroes*, a live-action superhero adventure about a foursome of crime-fighters named The Cheerleader, So And So, The Face, and Ugly. They have the same hair color and basic hairstyles as the Teen Girl Squad characters, but otherwise there are few physical resemblances (e.g. What's Her Face has long straight brown hair). They save the world from an organization named Blue Lazer by thwarting its plan to blow up the ocean.

To promote the launch, Pom Pictures has been giving out action figures modeled on the Teen Girl Superheroes. On the show, So And So has a "Justice Backpack Rocket," which is created entirely with computer-generated 3D modeling. The So And So action figure also has a backpack which shoots a spring-loaded small plastic "rocket" a few inches when a button on the backpack is pushed. Inventor Homsar Longardeaux has said in press interviews that he thinks the Justice Backpack Rocket is based on an invention of his, for which he has utility patent 6,110,403 (filed January 2, 2009 and issued February 20, 2010) ("Backpack Mounted Portable Rocket Launching System") and design patent D400,107 (filed January 2, 2009, and issued September 8, 2009) ("Portable Rocket Launcher").

Finally, someone on TheGreatestSquad with the username LeonardSportsinterviews has been selling T-shirts with the old Teen Girl Squad logo from the credits at the start of the show, except that "Squad" is crossed out and "Superhero" written instead.

Your client is the Thorax Corporation, which is in the process of acquiring Pom Pictures and is doing its due diligence.

Write a short memo of about 1,750 words which lays out any IP risks Pom Pictures faces due to Teen Girl Superheroes.