

## Intellectual Property Fall 2023 Final Examination

This assignment consists of **two questions** and **six pages**, including this cover page. It is due by **noon on Thursday, December 14**.

Submit your answer by uploading a PDF to the Final Exam assignment on Canvas. Your answer has a limit of **1,500 words per question**, which will be strictly enforced. Because the exam is blind-graded, keep your **name and other identifying information** out of the PDF you submit. Your PDF should end with an **appendix** including the following:

- A word count for your answer (including footnotes) to each question.
- A brief description of how you used (or did not use) generative AI. For example, “I input the question to Claude to generate ideas. I used ChatGPT to help clean up the answer” is fine. If you did not use any generative-AI tools, you can write “I did not use generative-AI tools in writing this answer” or words to that effect.

This is an **open-book** examination. You should not need to consult anything beyond the casebook, the slides, and your notes, but you can if you wish. Any hyperlinks in the questions are to pages that provide background information for your convenience; you are not required to consult or refer to them.

You are free to discuss the general legal principles we have covered with anyone, including each other. You are free to post general questions about the material covered in the course or clarifying questions 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 Monday, December 11.

Aside from that, **you may not discuss the question** with anyone else until after I have returned your grades. 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 make your answer as **specific** to the facts of the question as you can. Generic statements or suggestions, such as “Make sure that all em-

ployees follow proper security practices,” will receive few or no points. Your answer should assume that I am already familiar with the facts of the problem and relevant law, and dive directly into your analysis. Use **simple citations** (e.g. “*see KSR*”) where appropriate. I include **spelling, grammar, clarity, and organization** in my grading only to the extent that they interfere with my ability to understand the substance of your analysis. 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. Unless otherwise noted, all names are fictitious. Please disregard any resemblance to actual persons, places, or institutions, unless they are specifically incorporated into a question.

### **Policy on the use of Generative AI Systems**

You are **allowed** to use **generative-AI** tools in researching and writing your answer, subject to four conditions:

1. The tools must be **entirely automated**. You may not circumvent the rule against discussing the question with anyone by using a hybrid human/computer system, asking someone to help you with your prompts, or doing anything else that puts a human in the loop.
2. The tools you use must be **freely and publicly available**. You may not use any tool for which you paid a usage or subscription fee (or someone else paid it on your behalf), or use any tool that has not been released to the general public.
3. You must **disclose** which tools you used and give a brief description of how you used them in the appendix to your answer.
4. Any use of generative-AI tools is entirely **AT YOUR OWN RISK**. You are fully responsible for anything you submit; I will not accept “the computer did it” as an excuse for mistakes of fact or law. Large language models are well known to confidently make blatantly false assertions, cite non-existent cases, and inaccurately summarize legal doctrines. In my experience, they are also bad writers; their outputs are often bland and wordy. **YOU HAVE BEEN WARNED**.

### Question 1: High Frontier Justice

Your client is Changeling Televisuals, the production company responsible for the successful comedy-mystery-sci-fi series *Negen*. The show is a cozy police procedural set on a sleepy backwater space station, where every week Chief of Security Renée Brooks and her sidekick Deputy Morn solve a low-stakes crime among the station's eccentric residents and the even more eccentric ship's crews who are passing through the *Negen*. Typical plots involve finding the person who spoiled a crop of Rodden berries (spoiler: it was Brooks's cat), and tracking down a smuggling ring who have been diverting crates of paint (spoiler: it was a group of kids putting on a play).

The show is about to start production on its fourth season. You have taken a meeting with Rick Piller, the producer, to go over a number of outstanding legal issues.

- Hans Behr, one of the show's writers, told Piller that he used ChatGPT to help generate initial drafts of the scripts for six episodes. Behr would first ask ChatGPT to pitch lists of ideas for *Negen* episodes. He would then take the most promising ones, and have ChatGPT produce full-length scripts, give them rewrites to tighten up the dialogue, add some subplots, and then take them to the writer's room, where the whole group of a dozen writers would extensively edit the script. You have checked the files, and Changeling has properly executed work-made-for-hire agreements with all of the writers, including Behr.
- One of the show's featured actors, Avery Siddig, died unexpectedly over the summer. Changeling would like to use existing footage of him from unused scenes filmed for the first three seasons for flashbacks throughout the fourth season. Changeling is also considering using generative AI to digitally recreate Siddig's appearance and voice for a scene that would explain why his character is no longer on the show.
- Changeling would like to score a scene in the third episode, in which Morn is accidentally trapped in a soundproof airlock, with the song "I Can't Hear You" by the musical group The Quarks. But when approached for a license, The Quarks requested a fee of \$500,000 rather than the industry-standard of \$10,000 to \$20,000 for a scene of this

length. Changeling wants to know whether there is a way to just use the song anyway, or if not, what to do instead.

- Changeling visual artists create spaceships by gluing together interestingly shaped parts from plastic scale models of warships, planes, engines, and other kits. Changeling has received a cease-and-desist letter from Starlight Equipment, which manufactures and sells the DS-9 lawnmower. Starlight has exclusively licensed Jein Products to sell a plastic scale model kit of the DS-9, and the letter argues that several recognizable parts from the kit appear on the exterior of the Dax, a spaceship on *Negen*, and that this constitutes (a) infringement of Starlight's utility patent (No. 7,122,036), which claims a method of mowing grass by using pairs of blades rotating in opposite directions (and which is embodied in the DS-9), (b) infringement of Starlight's copyright in the design of the lawnmower, (c) infringement of Starlight's trade dress in the design of the DS-9, (d) a violation of Lanham Act Section 43(a) for falsely passing off the Dax as an original design, and (e) infringement of Starlight's design patent (No. D732,899) on the overall design of the DS-9.
- Within hours after a new episode of *Negen* is released each week to viewers, a few things happen. First, the fansite Negen Generation creates a page for the episode, including a plot synopsis, several still photographs, and information on the characters who appear in it.<sup>1</sup> Second, the site FreeTVScreenplays.com posts a transcript of the episode, written in [screenplay format](#), which is created by transcribing each line of dialogue. And third, users start uploading to YouTube clips from the episode, ranging from 10-second highlights of particularly funny lines of dialogue to the complete episode. Until now, Changeling has ignored all of these. Changeling wants to know if that approach should change, and if so, how.

*Advise Changeling on how it should respond to these issues.*

---

<sup>1</sup> You can assume that Negen Generation is broadly similar in content and style to [Memory Alpha](#), a wiki-based fansite for *Star Trek*.

## Question 2: Face/On

Your client is Melani Koskinen, an actress, singer, model, and influencer (with 15 million Instagram followers), who primarily goes by the name MMMelani in her professional career. She is the owner and CEO of MMMK, a company that manages her appearances, merchandising and endorsement deals, and other ventures. MMMK is launching a new cosmetics line and MMMelani has requested your advice on an IP strategy.

The centerpiece of the cosmetics line is a foundation layer made with 2-methyl-terpene (2MT), a nontoxic plastic that is sold in bulk and used primarily in bandages, children's toys, and pottery. Employees at MMMK have discovered that when 2MT is combined in a 1:2:1 ratio with silica oxide and talc (both widely used in existing [face powders](#)) it creates a substance that can be spread on the face like a liquid, but which quickly solidifies into a layer that is thin and breathable but opaque. The result is in effect a blank canvas on which a makeup artist can paint almost anything, creating striking images that do not smudge as the wearer sweats.

MMMelani is considering the following business models (either alone or in some combination) and would like your advice on which of them are workable from an IP perspective:

- Sell the foundation layer as a product by itself under the brand MMMSkin.
- Identify other existing cosmetics that apply well over a base of MMMSkin and sell them under the brand MMMPlus.
- Sell high-quality temporary tattoos in designs that artists hired by MMMK will create, and market them as being easy to apply over a base of MMMSkin.
- Use MMMSkin to have herself made up impeccably every time she does a photoshoot, records a video, or goes out in public, so that she is always better made up than other celebrities, and gets more gigs as a result.
- Record and post numerous videos of herself doing her makeup using MMMSkin to attract more viewers and followers on social media.

- Do photoshoots in which she has makeup artists use MMMSkin and MMMPlus to create intricate full-body designs on herself and other models, and then sell the photos to magazines and websites.
- Publish the formula for MMMSkin in a scientific journal and use the publication as an opportunity to build buzz for MMMSkin and get press coverage for MMMelani by highlighting her scientific interests.
- Advertise MMMSkin as “a modern recreation of an ancient Egyptian beauty secret” that has been “lost for centuries ... until now.”

*Advise MMMelani on the IP rights that are available (or not) to protect these business models from imitation and copying, and recommend an overall strategy.*