



Misappropriation

Miscellany &
Marginalia

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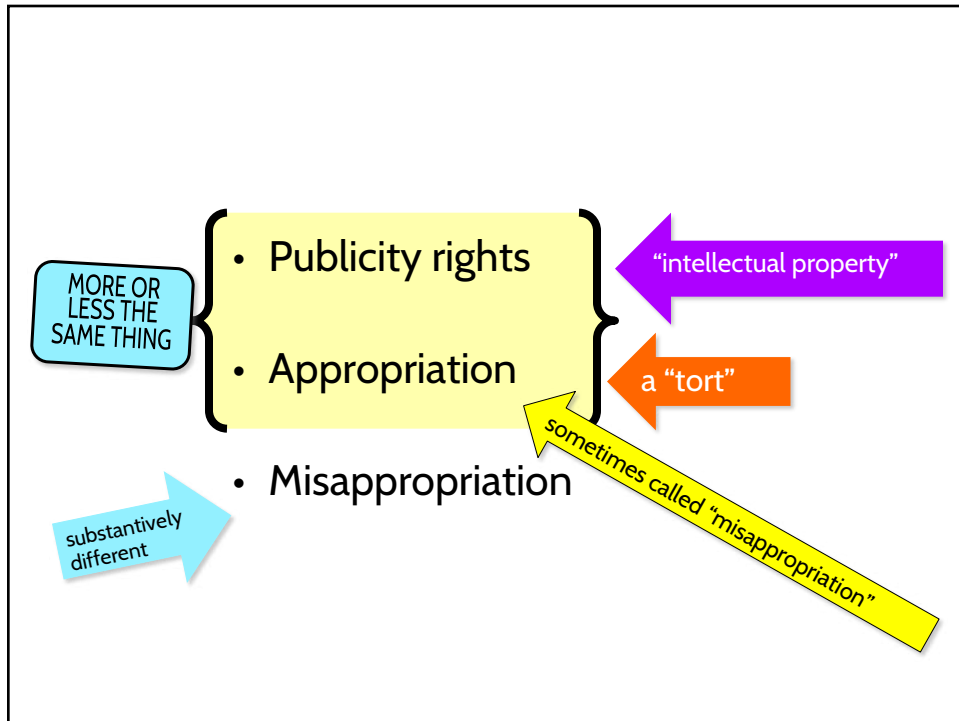


Konomark
Most rights sharable

terminology ...

The terminology can be very confusing, especially vis-à-vis right of publicity actions.

- Publicity rights
- Appropriation
- Misappropriation



Misappropriation



International News Service v. Associated Press, 248 U.S. 215 (1918)

“But in a court of equity, where the question is one of unfair competition, if that which complainant has acquired fairly at substantial cost may be sold fairly at substantial profit, a competitor who is misappropriating it for the purpose of disposing of it to his own profit and to the disadvantage of complainant cannot be heard to say that it is too fugitive or evanescent to be regarded as property. It has all the attributes of property necessary for determining that a misappropriation of it by a competitor is unfair competition because contrary to good conscience.”

International News Service v. Associated Press, 248 U.S. 215 (1918)



The public goods problem



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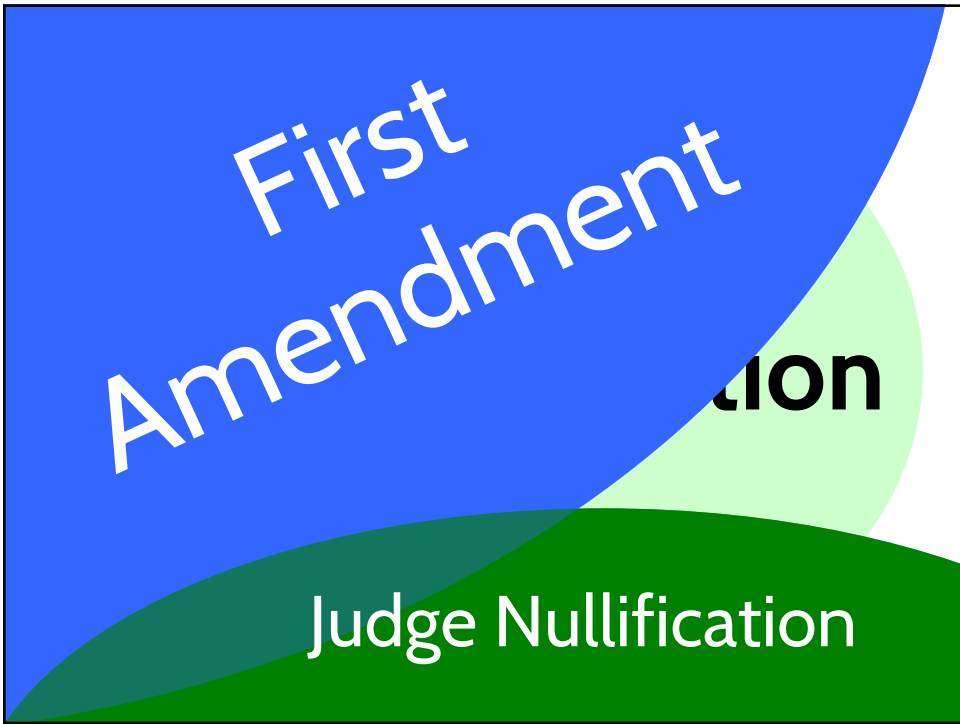
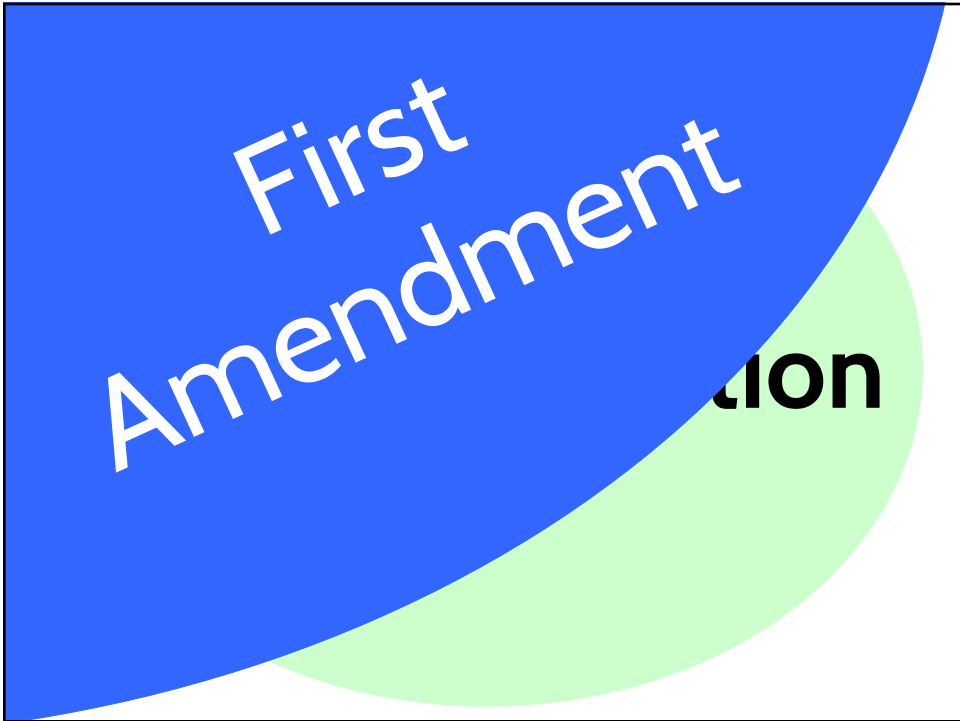
International News Service v. Associated Press, 248 U.S. 215 (1918)

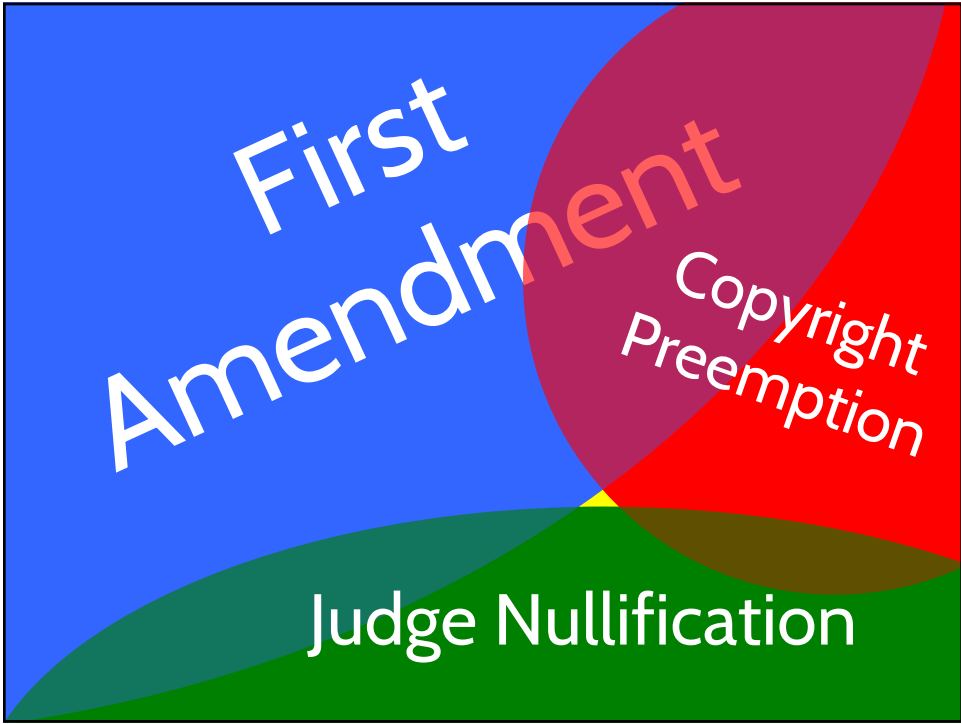
“But in a court of law, misappropriation is one of the most common forms of unfair competition. It has been defined as the acquisition of confidential information by a competitor through improper means.”

Misappropriation

International Trade Law, 248
U.S. 215 (1997)

Misappropriation





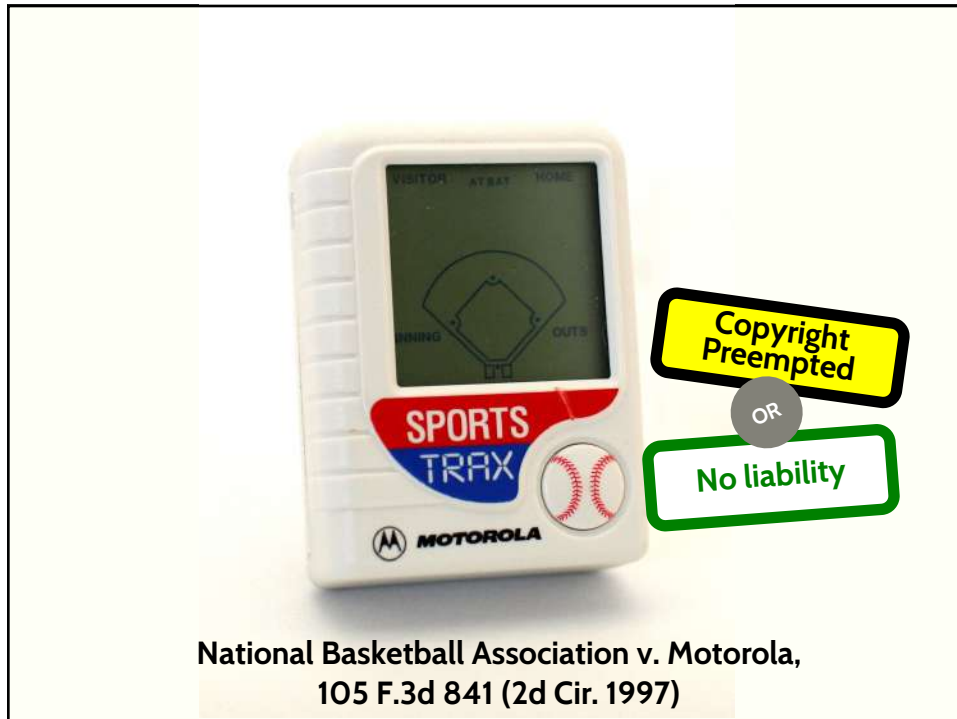
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Probably not
good law
anymore

International News Service v. Associated Press, 248 U.S. 215 (1918)

What is left of misappropriation?

- “Hot news”
- ???



“We hold that the surviving "hot-news" INS-like claim is limited to cases where: (i) a plaintiff generates or gathers information at a cost; (ii) the information is time-sensitive; (iii) a defendant's use of the information constitutes free-riding on the plaintiff's efforts; (iv) the defendant is in direct competition with a product or service offered by the plaintiffs; and (v) the ability of other parties to free-ride on the efforts of the plaintiff or others would so reduce the incentive to produce the product or service that its existence or quality would be substantially threatened. We conclude that SportsTrax does not meet that test.”

National Basketball Association v. Motorola, 105 F.3d 841 (2d Cir. 1997)

NBA v. Motorola elements of hot-news misappropriation:

- (i) a plaintiff generates or gathers information at a cost;
- (ii) the information is time-sensitive;
- (iii) a defendant's use of the information constitutes free-riding on the plaintiff's efforts;
- (iv) the defendant is in direct competition with a product or service offered by the plaintiffs; and
- (v) the ability of other parties to free-ride on the efforts of the plaintiff or others would so reduce the incentive to produce the product or service that its existence or quality would be substantially threatened.

Misappropriation

Misappropriation applications

(at least theoretically, since case law is scarce)

- Real-time stock quotes
- Play-by-play of live sports
- ???

Misappropriation