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UNIVERSITY OF NORTH DAKOTA SCHOOL OF LAW

Intellectual Property
Spring 2017

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ESSAY
ISSUE
SPOTTER

FINAL EXAMINATION - ESSAY

Open-book.

30 minutes reading/outlining, 45 minutes writing

Write your exam number in the box in the upper-left corner!

GENERAL INSTRUCTIONS:

1. All exam materials (including this booklet and your response) must be turned in at the end of the period. You will not receive credit unless you return this booklet with your exam ID number written in the box above.
2. You may not waive anonymity. Use only your exam ID number on your response. Self-identification on the exam or afterward will, at a minimum, result in a lower grade, and may result in disciplinary action.
3. Do not turn the page until instructed to begin.
4. Assume that today's date is the regularly scheduled date for the exam administration.
5. You may write anywhere on the examination materials – e.g., for use as scratch paper. Only answers and material recorded in the proper places, however, will be graded.
6. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems. It is upon these bases that you will be graded.
7. During the exam: You may not consult with anyone – necessary communications with the proctors being the exception. You may not view, attempt to view, or use information obtained from viewing materials other than your own.
8. After the exam: You may discuss the exam with anyone, except that you may not communicate regarding the exam with any enrolled member of the class who has not yet taken the exam, and you must take reasonable precautions to prevent disclosure of exam information to the same.
9. Unless expressly stated otherwise, assume that the facts recited herein occur within the United States, and references to rights, registration, applications, etc., are references to the same in the United States.
10. Unless directed otherwise, base your answer on the federal law, the general state of the common law, and typical state statutory law in the United States, including all rules, procedures, and cases as presented in class, as well as, where appropriate, the theory and history discussed in class, plus any hypothetical laws presented in the facts.
11. Unless otherwise explicitly stated: All references to patents and patent applications are of the utility kind (as opposed to plant or design) and are nonprovisional in nature.
12. Unless otherwise explicitly stated: All references to trademarks, trademark applications, and trademark registrations and registrability embrace service marks, and trade dress, and are federal in nature, rather than state-based.

SPECIFICS FOR THIS ESSAY PORTION:

13. You have a total of 1 hour 15 minutes.
14. 30-MINUTE RO PERIOD: The first 30 minutes is a reading-outlining period (RO Period). This is your time to carefully read the exam booklet (that is, the facts and the question or questions), to take notes, to reference your outlines or books, and to outline your response on scratch paper. **During the 30-minute RO Period you may not begin recording the response upon which you will be graded.** That is, if you are taking the exam on computer, you may not type any characters at all into the exam response file on your computer during the RO Period; and if you are taking the exam by handwriting, you may not make any mark in a blue book (that is, an exam-response booklet, sometimes labeled a “green book”) during the RO Period.
15. 45-MINUTE EW PERIOD: **Next you will have a 45-minute exam-writing period (EW Period) during which you will write your response.** For the avoidance of doubt, it is acknowledged that during the EW Period you may also continue to do what was allowed during the RO Period (e.g., refer back to the exam booklet, reference your books and notes—including any notes you created during the RO Period).
16. This portion of the examination is “open book.” You may use any notes and books you like. No electronic or interactive resources (such as a tablet computer, smart phone, etc.) may be used or referenced. You may, of course, use a laptop to write your exam, but you may not reference files stored thereon during the examination session. No materials may be shared during the exam.
17. As this exam will be graded anonymously, do not write your name on any part of the exam response or identify yourself in any way, other than to use your exam ID number appropriately.
18. Organization counts. Read all exam questions before answering any of them – that way you can be sure to put all of your material in the right place.
19. Within the confines of the questions you are asked, note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
20. If applicable, it is appropriate, if you wish, to note differences between minority and majority approaches in your answer, as well as statutory or other differences among jurisdictions.
21. Clarity counts. Feel free to use abbreviations, but only if the meaning is entirely clear. **Bluebooks: Make sure your handwriting is legible. I cannot grade what I cannot read. Skip lines and write on only on one side of the page. Computers: Please clearly label each question separately in your answer.**
22. Good luck!

Weather Wars

“IN BROADCASTING, WEATHER IS LIFE. It’s a key driver of all-news radio. And it’s even more important to TV. Success in local television is all about the local news shows. And that, in turn, means it’s all about the weather. No one watches local news for national politics. And local politics? No one cares. It comes down to weather – even here in sunny San Frangeles, where it’s habitually 72 degrees. Are you getting this?”

You’re standing on top of Cahuetro Peak, surrounded by radar domes and broadcast equipment, overlooking the jammed freeway traffic in the Altapulveda Pass. Next to you is Glen Grantley, general manager of all-news radio station KWX 660 and television station KTVT-TV Channel 3 (“TV 3”), both owned and operated by ClearCoast Communications. He’s brought you up here to explain the stations’ intellectual property woes.

“Let’s start with the radio. Two years ago, at my direction, KWX 660 introduced an important initiative: Advanced Color Radar Weather,” Glen says. “Since then, every weather report – that’s six times an hour, 24-hours a day – has begun with ‘*And now KWX 660 Advanced Color Radar Weather.*’”

“How does advanced color radar work?” you ask, curiosity piqued.

“It’s radar,” Glen says. “It’s uses radio waves to find things in the sky.”

“I understand that’s how radar works,” you say. “I’m asking about the ‘advanced color’ part.”

“Radar’s not in color,” Glen says. “It’s invisible radio waves. I suppose on TV you usually show a computer-generated radar map with color added to it. But even then the radar itself isn’t in color. But that’s beside the point. We use the term ‘Advanced Color Radar Weather’ on the radio.”

“So it’s just, umm ...”

“Theater of the mind, my friend,” Glen says. “Theater of the mind. Anyway, just last month, a new alternative music station, KKLL 99.9 FM, started using ‘advanced color radar’ when they did their weather reports. I had an intern keep track. They’ve used that phrase on average 12 times a day. And there’s more: We found out that KKLL is having their interns listen to KWX, copy down our weather report, and then hand that to the KKLL disc jockey to use on the air with minimal word changes. This morning I had one of my interns monitor both us and them, and here’s what he found,” Glen says, handing you his phone.



Fig. 1: One of TV 3’s pricey radars.

National Weather Service forecast for San Frangeles:	What was said on KWX 660 this morning at 6:11 a.m.:	What was said on KKLL 99.9 FM this morning at 6:15 a.m.:
Today: Sunny, with a high near 72. Light west wind 5 mph.	“And now KWX 660 Advanced Color Radar Weather. Clear and sunny with a high of 72 degrees. Light winds from the west. Tonight, a low of 71.”	“Let me look at the advanced color radar here. Clear skies, sunny. It looks like we’re in for a high of 72 degrees, with slight winds from the west and an overnight low of 71.”
Tonight: Clear, with a low around 71. Light west wind 5 mph.		

Fig. 2: What the KWX intern reported back to Glen.

“Why did your intern include the National Weather Service forecast?” you ask.

“That’s where KWX gets its weather information. From the federal government’s National Weather Service. It’s free, and, you know, they’re good at predicting the weather.”

You give Glen a quizzical look.

“Yeah, I know,” he says. “What about the ‘radar’ part of ‘Advanced Color Radar’? Well, I know for a fact that the National Weather Service uses radar as part of their forecasting work. So, you see, our weather is ‘radar weather.’ In a sense.”

“Why don’t KKLL disc jockeys just get the information from the National Weather Service directly instead of having interns write down what KWX said on the air?” you ask.

“I don’t know. All you have to do is take out the miles per hour part and make the text just a little less wooden. My guess is that even that’s too challenging for the KKLL disc jockeys. They’re not that bright. Obviously, they’re hired on the basis of looks.”

“For radio?” you ask incredulously.

“Everyone’s got to have an Instagram account these days, my friend.”

“So you also had a concern related to TV 3?”

“That’s right,” Glen says. Television’s not theater of the mind. You need pictures. So we spent \$60 million on these three highly advanced weather radars.” Glen gestures around. “They’re so sophisticated that the company that makes them only produces a few a year, and we had to outbid cities in Oklahoma, Kansas, and Iowa – you know, places with frequent killer tornados where these advanced radars can actually make a difference in terms of giving people crucial, up-to-the-moment information. So, as you can imagine, those stations were willing to fork over just about all their cash on hand for these things. They really bid us up. So anyway, once we got these things we spent \$70 million producing the most lavish marketing campaign you can imagine to promote our station featuring these radars. That included a 30-second television promotional spot¹ titled *Weather Domination*. We spent \$20 million alone producing the spot. No expense was spared. We got top-

¹ In broadcasting parlance, the term “spot” denotes what most people call a “commercial” or a “promo,” which is to say it’s a short pre-produced audiovisual work, usually timed out to exactly 60, 30, 15, or 10 seconds or some other standardized short duration such that it can be inserted into station breaks with other commercials and promos.

Hollywood directing, cinematography, and special effects. We even commissioned an original 30-second music score titled *Summon the Stormchasers*, composed by none other than Von Villiams. We recorded it with a full orchestra. I've been assured the copyrights to all of that, by the way, are owned by ClearCoast Communications. With one exception, we got written agreements with everyone we hired, signed by them and us, stipulating that the work was a work made for hire and also making an assignment of the full copyright. The exception was Von Villiams. And while we didn't get anything in writing from him, we have 15 witnesses to his oral agreement to assign the copyright, and we paid him \$5 million for it. Anyway, we debuted the spot a couple weeks ago, and it's beautiful. Everyone was talking about it. Then bad stuff happened."

"What bad stuff?" you ask.

"Well—and there's nothing you can do about these things—a tornado hit a city in Iowa that we outbid for a radar. A bunch of people died, and many experts said the radar we outbid them for could have saved lives. TV 3 got a ton of bad press. Then Ervin Ellyson, one of those aspiring writer-actor-comedians, made this video that's gone viral online."

Glen hands you his phone. Titled *Weather Abomination*, the video is 30 seconds long, 10 seconds of which is video footage from *Weather Domination*. The Von Villiams music runs the full 30 seconds, although it's not the same sound recording—someone re-recorded the score using synthesizers and keyboards. The voiceover is snarky and sarcastic. Here's the transcript:

Here on the West Coast, it's almost always 72 degrees. We do have some clouds—but just the good-looking ones. So when a sky this pretty gets its picture taken, it deserves the best. That's why TV 3 brings you live multiple skyscan accu-pinpoint precision HD doppler 7000 radar. We're the only station using all those adjectives in front of our radar—so you can trust TV 3. And TV 3 will not stop there. We are nearing completion of a new array of powerful jamming radars, so that we can disable Channel 7's and Channel 9's radars in the unlikely event there are any actual weather conditions in San Frangeles. TV 3—the team to trust.

"What do have for me?" Glen asks you. "Can we go after KKLL? Ervin Ellyson?"



Fig 3: One of TV 3's news vans on patrol for scoops and scandal among the millions of denizens of the San Frangeles megalopolis.

QUESTIONS

Provide analysis for the following:

1. **Discuss copyright issues.** Include issues relating to both radio (KWX 660 and KKLL 99.9 FM) and television (TV 3 and the Ervin Ellyson video).
2. **Discuss trademark issues.** Include only analysis relating to the term 'Advance Color Radar Weather' as it pertains to KWX and KKLL. There are no trademark issues to discuss in connection with TV 3 or Ervin Ellyson.

Note that the questions are not separately weighted; instead, they will be lumped together for assessment. So divide your time among the questions according to what requires the most discussion and analysis. Plan ahead to put information where it belongs. Do not provide analysis regarding other areas of law, including but not limited to misappropriation, patents, or right of publicity. Do not repeat the exact same analysis from issue to issue or from party to party. Instead, you may, if appropriate, incorporate previously stated analysis by reference. If analysis of an issue is similar to but not exactly the same as what you have written previously, then I suggest you note your prior analysis and go on to discuss any differences.

Feel free to use these or other reasonable abbreviations in your answer:

ClearCoast Communications	CC
Ervin Ellyson	EE
Glen Grantley	GG
KTVT-TV Channel 3	TV 3
KWX 660	KWX
<i>Summon the Stormchasers</i>	SS
Von Villiams	VV
<i>Weather Abomination</i>	WA
<i>Weather Domination</i>	WD

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