



# About this Course

Trademark & Unfair Competition  
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Konomark  
Most rights sharable

## Slides

- I don't always use slides, but when I do ...
- My practice is to read every word on every slide.
- And I will post all slides with text content\* to the class website after the class in which they are used.
  - \*Unless it's incidental text captured in a photo, or the like
- Therefore, I strongly urge you not to try to read the slides in class. Just listen. Then, look at the slides later to review things.

## Class Website

- The home for information about the course is the course website:  
[http://www.ericejohnson.com/courses/trademark\\_24/](http://www.ericejohnson.com/courses/trademark_24/)
- It's where to find the syllabus and chart of assignments. It's also where I'll post any slideshows, handouts, additional info about the exam, links to supplemental reading, etc.
- I have no plans to use Canvas. But if I do, I'll let you know by e-mail or by instruction on the chart of assignments.

## Old slides and other stuff on the web

- The following information is not secret ...
- I've taught this class previously, and I've taught the IP survey class many, many times. Many of the slides and other things that I'll be using is stuff I've used in years past.
- Those prior-year materials are findable, because I keep all my old course pages up on the web as an archive.
- So if you really want, for instance, to see slides before I post them – or if you want to see what could be ahead, you can probably find much of that sort of thing by looking through my old course webpages.
- That's why I leave that stuff up – so that everyone has access to it if they want it.
- But I try really hard to be transparent and clear and straightforward and organized with information you need for this semester, putting that on this semester's webpage. So I don't recommend digging around through the archives. But you can if you want; it's not doing anything sneaky.

## Book

- The books for this class are open source. (Open source means, among other things, that it's free and customizable.)
- You can read the books on a device. You can print them out. You can mark them up on your device and print it out later.
- Assuming we have a normal exam, at least a portion of the exam will be open book, with any printed materials allowed, but no accessing digital materials. Thus, you probably at least want a printed copy at the end of the semester.

## Basic outline

We'll cover things in this order:

- Preliminaries (overview, some theory)
- Trademark, the first part
- Non-trademark subjects
- Trademark, the second part

# The reading

## You need to do the reading

- Actually do the reading in this class. That's the expository portions *and the cases*. If you don't you will be at a substantial disadvantage.
- This is not a class where you need to master *rules*. For learning rules, the reading can be less crucial. But in this class, you'll need to know the cases and be able to apply them.
- In gleaning knowledge from the cases, *the facts* are as important or maybe even more important than the legal analysis.
- I will build the exam based on the reading. So not doing the reading will put you at a real disadvantage on the exam.
- I intend to conduct class time with the assumption that people have done the reading. People who haven't done the reading may feel lost and left behind.

## You need to do the reading right

- Don't read the case for the rule. That's boring. And it's not super informative.
- Try to approach it more like watching TV dramas and sports.
- Get engaged in the case. Read it as a story. Soak up the facts. Then pick who you're rooting for. Your side will either win or lose. Be happy or bitter, accordingly.
- Look, you will never again in your life have this kind of time to devote to thinking about and being engaged in a whole body of law that is not directly implicated in a client matter or docket matter. So soak it up. Enjoy it. Make it make you a better lawyer.

## How to approach the reading

I advise that you always be prepared to answer at least these questions about the reading:

- What is something interesting/compelling/instructive about this case?
  - Put differently, what is one thing you would point to as to why the case was worth reading, was worth assigning, or is worth remembering?
- What is your best argument against or critique of the court's opinion?
  - (. . . or, if not a judicial opinion, then of the author's writing, argument, or presentation)
- When you picture yourself as a litigator arguing the law to a court, or as an attorney writing a demand letter or responding to one, how could this case be useful to the future you?

The last topic on the syllabus is:

### 36. Dispute and Litigation Techniques

## the reading

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  - When you picture yourself as a litigator arguing the law to a court, or as an attorney writing a demand letter or responding to one, how could this case be useful to the future you?
- I expect you to provide the content for this. I expect you to teach this.
- Spend the whole semester accumulating material for this – *intentionally* as you do the reading. And also as you listen to and contribute to the discussion in class.

## Syllabus

- Read the syllabus!
- You will be assumed to be on notice for everything in it.
- It is long, but reading it is worth it.
- It is your guide to how to do well in class.
- It is my guide to what I've committed to, how I grade, handle any problems, etc.
- You'll find it on the class website.

## Selected in-class rules:

- No audio or video recording.
  - But I'll be recording.
  - And it's possible some students have gotten authorization to record.
- No eating. Keep down smells and noise.
- No electronic communications with others in class (except through Zoom if we have to do that again).
- Read the syllabus for more in-class rules.

## Grading

- Read the syllabus, it will provide information about grading in detail! What follows are highlights.
- Regular letter grades will be given for this course (A+, A, A–, B+, etc.).
- Based mostly on a final exam
- Also can affect your course grade:
  - things set out in the syllabus, including:
    - attendance
    - classroom conduct (e.g., violating class rules)
    - academic misconduct

## Grading

- There is no pre-determined grade-point average or grade distribution for the class. So you are not in competition with your fellow students for a limited pool of grades! Favor cooperation.
- The initial assignment of grades will be done by seeing the raw point totals from the exam and inserting cut-offs based on clumps and my sense of how performance corresponds to letter grades.
- Alternative minimum grading: According to the schedule in the syllabus. E.g., if you got 87% of max possible points, then you can't get lower than an B+ for the exam grade.
- You get the higher grade of the two methods.

## Attendance Policy

I have a very lengthy, detailed attendance policy. It's in the syllabus. Here's why it's lengthy and detailed:

- I'm required to require attendance, and I'm required to have an attendance policy.
- If I'm going to have an attendance policy, then I believe in enforcing it. Otherwise, the policy is an unjust tax on people who obey it.
- If I'm going to meaningfully enforce the attendance policy, then that means grading penalties and, in a sufficiently serious case, an F.
- And that means it's very important to have a clear, detailed, unambiguous policy that anticipates contingencies.
- Plus, grade penalties means situations where students have a strong incentive to dispute the penalty, which makes specificity and prior notice very useful.

At any rate, it's the result of a lot of work (and experience) in trying to make it both enforceable and fair.



## Attendance Policy

- It's § 9 in the syllabus. Read it.
- What follows are only highlights ...

## Attendance Policy

- Arriving late is half an absence.
- 9 absences is a step-down in grade.
- 10 absences is another step-down.
- 11 absences is another step-down.
- 12 absences is an F for the course or administrative withdrawal.
- If you hit 12 absences, you must immediately give me written notice according to § 9-5.
- **Note:** All of this is extra generous because of covid world (cf. IP '19: steps down at 6, 7, and 8, with F at 9).

## Attendance Policy

- If you claim special extenuating circumstances and/or excuse for religious observance, you must file an End-of-Semester Attendance Mitigation Statement according to § 9-6.
- It must be filed not earlier than the last day of class, nor later than the day after the last scheduled day of final exams for OU Law.
- Take a moment now to calendar this.

## Attendance Policy

- Do not ask me how many absences you've accumulated. You need to keep track yourself.
- If you take at least some notes in class, and you date your notes, you'll always know.
- Look. I don't add up attendance on a day-by-day basis. The only time I do it is after the semester when I'm doing grades. Then I make sure no one has gone over the incredibly generous number of absences I allow before doing grading deductions.
- Bottom line, it's just not reasonable to ask me to calculate how many absences you have during the semester. So I won't do it. Sorry if that sounds harsh.
- I really want to spend time outside of class on my students! Discussing students' questions, talking about legal careers, looking over your résumé, chit chatting about your hometown ...
- But calculating your interim attendance record? That's just not quality time.

# Law school straight talk

## Law school straight talk

- Look around. These people are not your competition. They are your future support and referral network.
- You will never have another opportunity to make so many friendships with so many people who might be in a position to help you in the future.
- So be kind, be generous, don't be a %\$#€!£.