Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

SKU: 9781305948464-SOLUTIONS

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

CHAPTER 2

Foundations of Trademark Law

LECTURE NOTES

Major points to be addressed in presenting the chapter materials include the following:

1. Trademarks perform two critical functions: they provide assurances to consumers that goods are of a certain quality and consistency and they assist consumers in making informed purchases. Both businesses and consumers benefit from protection of trademarks: Businesses benefit because they see the rewards of their investment in developing and marketing quality products, and consumers benefit because they can readily identify and purchase the goods they desire.

2. The value inherent in achieving consumer loyalty to a particular brand, product, or service is called goodwill.

3. There are four types of marks:

   - **Trademark.** a word, name, symbol, or device (or combination thereof) used to identify the goods or products of one person and distinguish them from the goods of another

   - **Service mark.** a word, name, symbol, or device (or combination thereof) used to identify the services of one person and distinguish them from the services of another

   - **Certification mark.** a word, name, symbol, or device (or combination thereof) used by one person to certify that the goods or services of another have certain features, generally as to quality, material, or some other characteristic (examples: Underwriters' Laboratory or Good Housekeeping Seals of Approval and STILTON®, certifying that cheese originates in a certain region)

   - **Collective mark.** a mark used by a collective membership organization, such as a labor union or fraternity, for its goods or services or used to identify that the person displaying the mark is a member of the organization

4. Trademark rights are acquired through use of the mark, not through registration, as is the case in many foreign countries. A person thus has rights in a mark even though the mark is not registered with the USPTO or in the state where it is used. One exception to this rule is the intent-to-use application (which allows people to file an application for a mark that they have a bona fide intent to use; registration issues,

© 2018 Cengage Learning®. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part, except for use as permitted in a license distributed with a certain product or service or otherwise on a password-protected website or school-approved learning management system for classroom use.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

however, only upon proof of actual use of the mark). The use required is bona fide use, not a token use, and the use must be interstate use.

5. A person who uses a mark without registering it is said to have a common law trademark. The mark can be protected in any geographical area in which it is used (and a reasonable area of expansion beyond).

6. Marks can be registered with the USPTO. Although registration of a trademark is not required, it offers several advantages, including the right to use the ® symbol, ability to bar importation of infringing goods, right to obtain registration in various foreign countries based upon the U.S. registration, right to bring an action in federal court for infringement, and receipt of a registration that is nationwide in scope.

7. If a mark does not qualify for federal registration (generally because it is not being used in interstate commerce), its owner can file a state trademark registration. Once a mark is used in interstate commerce, however, a federal registration should be sought, and there is no advantage in securing a state registration in addition to a federal registration.

8. The various laws and treaties governing trademarks are as follows:

   - **Lanham Act.** The Lanham Act is the federal statute governing trademark rights. In addition, regulations relating to trademarks are found in C.F.R. Title 37, and the USPTO follows the *Trademark Manual of Examining Procedure* as a reference work on trademark practices and procedures.

   - **NAFTA.** NAFTA is an agreement among the United States, Canada, and Mexico. NAFTA prohibits registration of marks that are primarily geographically deceptively misdescriptive.

   - **TRIPS.** TRIPS is a treaty signed by the United States in 1994, which bars registration of a mark for wine or liquor if the mark identifies a place other than the origin of the goods and was first used after 1996.

   - **TLTIA.** TLTIA, effective in 1999, simplified several requirements relating to trademark registration and maintenance.

   - **Anticybersquatting Consumer Protection Act.** The Act protects the public from acts of Internet "cybersquatting," which is the bad faith registration of Internet domain names.

   - **Madrid Protocol.** The Madrid Protocol facilitates international trademark protection by allowing applicants to file a single "international" application designating several countries in which trademark protection is desired.

© 2018 Cengage Learning®. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part, except for use as permitted in a license distributed with a certain product or service or otherwise on a password-protected website or school-approved learning management system for classroom use.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

- **Federal Trademark Dilution Act.** The FTDA protects famous marks against marks that are likely to cause confusion with famous marks.

9. There are five categories of marks:

   - **Generic marks.** generic marks are not really marks at all but merely the common name of a product such as “pencil,” “cereal,” or “computer.”

   - **Descriptive marks.** descriptive marks tell or describe something about the good or service offered under the mark, such as describing some quality or feature of the good/service (example: MIGHTY GOOD JUICE). Descriptive marks are not registrable unless secondary meaning is shown (secondary meaning or acquired distinctiveness refers to the association consumers make with the mark)

   - **Suggestive marks.** suggestive marks do not directly describe the good/service, but rather suggest something about the good/service (example: SOFT-AS-SILK for cake flour or FROOT LOOPS for fruit-flavored cereal)

   - **Arbitrary marks.** arbitrary marks consist of dictionary words used for unrelated products (example: BUMBLE BEE tuna)

   - **Fanciful/coined marks.** fanciful or coined marks are invented words (examples: PEPSI, KODAK)

10. A trade name is one used to identify a business. It cannot be registered as a trademark unless it serves to distinguish the goods and services offered by the business. (Example: the use of DELL on the letterhead of Dell Computers is use as a business name; placing the mark DELL on the computers sold by the company is use as a trademark).

11. In addition to words, names, and symbols, various other matter is protectable as trademarks, including the following:

    - Slogans, letters, and numbers

    - Logos and symbols

    - Names of performing artists (where the owner of the mark controls the quality of the goods or services or the goods are provided in a series)

    - Domain names and hashtags (if they function as an identification of the source of goods and services and not merely as an Internet address or tool to facilitate social media searching, respectively)

    - Foreign terms (so long as they are not descriptive)

© 2018 Cengage Learning®. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part, except for use as permitted in a license distributed with a certain product or service or otherwise on a password-protected website or school-approved learning management system for classroom use.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

- Shapes (so long as they are not functional)
- Trade dress
- Color (so long as it is not functional)
- Fragrances, sounds, flavors (possibly), and moving images
- Designs and ornamentation (if distinctive)
- Serialized literary and movie titles

12. Not every word, symbol, or slogan can function as a trademark. There are several exclusions from protection, including the following:

    - Disparaging or falsely suggestive marks

        Note to Instructors: In December 2015, the Federal Circuit held that the provision of the Lanham Act that prohibits registration of disparaging trademarks is unconstitutional because it violates the First Amendment. *In re Tam*, No. 2014-1203, 2015 WL 9287035 (Fed. Cir. Dec. 22, 2015). The court held that the USPTO's refusal to register the mark THE SLANTS for a band on the basis that the mark was disparaging to Asians chilled free speech and that the government may not prohibit speech merely because it is offensive. Although the holding was limited to the disparagement provision of the Lanham Act, the court noted that other provisions of the act, such as the provisions barring registration of *scandalous or immoral marks* might also constitute unlawful government regulation of expression. At the time of the writing of this text, the U.S. Solicitor General had filed a petition for a writ of certiorari with the U.S. Supreme Court, asking that the Court determine whether the provision in the Trademark Act that forbids disparaging marks violates the Free Speech Clause of the First Amendment. In the interim, the USPTO has suspended action on any pending trademark applications involving marks subject to refusals on the grounds that they are disparaging or comprise immoral or scandalous matter and has conceded that disparaging and scandalous marks should likely be treated the same way.

    - Insignia, coats of arms, and flags
    - Immoral or scandalous matter **(Instructors: See Note above)**
    - Names and portraits of living persons (unless permission is given)
    - Deceptive matter
    - Mere surnames (unless secondary meaning is shown)

© 2018 Cengage Learning®. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part, except for use as permitted in a license distributed with a certain product or service or otherwise on a password-protected website or school-approved learning management system for classroom use.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

- Geographical terms (if they are *geographically descriptive* they cannot be registered without proof of secondary meaning; under NAFTA, *geographically deceptively misdescriptive* marks cannot be registered even with proof of secondary meaning; and geographic marks used after 1996 in connection with wines and spirits must truly indicate the place of origin)

- Descriptive marks (unless secondary meaning is proven)

- Confusingly similar marks

- Functional devices

- Statutorily protected marks (marks of the Red Cross, Olympic rings, etc.)

13. The agency responsible for registering trademarks is the USPTO. It offers a wealth of information on its website.

Case Study: Fit Forever is considering offering several new products and services and would like to seek trademark protection for the marks under which those products and services will be offered. Some of the proposed marks include the following:

- "Taylor Swift's Workout Challenge" for a fitness class;
- "Challenge Gear" for its workout clothes;
- The overall image and design of its fitness centers (namely, their layout);
- "Nutrition Bar" for a protein bar with oats; and
- "U.S. Army Fitness Camp" for a fitness class.

Activities: Identify the type of mark each product or service represents (trademark, sound mark, color mark) and then indicate any possible objections the USPTO might have to each mark, if any.

- "Taylor Swift's Workout Challenge" for a fitness class;
  Service mark. This mark cannot be registered unless Taylor Swift's written consent is provided.

- "Challenge Gear" for its workout clothes;
  Trademark. This mark should be acceptable (assuming it does not infringe that of anyone else).

- The design and overall image of its fitness centers (namely, their layout);
  Trade dress. This should be registrable if it is nonfunctional and distinctive.

© 2018 Cengage Learning®. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part, except for use as permitted in a license distributed with a certain product or service or otherwise on a password-protected website or school-approved learning management system for classroom use.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

- "Nutrition Bar" for a protein bar with oats; and

  Trademark. At best, this mark is descriptive, and it is so highly descriptive it is not registrable without a significant showing of acquired distinctiveness.

- "U.S. Army Fitness Camp" for a fitness class;

  Service mark. This mark is not registrable because it falsely suggests an association with the U.S. government and implies that the class is offered by the U.S. Army or is identical to one offered by the Army.

Using Internet Resources – Chapter 2

1. Access the USPTO website and select "Search Trademark Database" under the "Trademarks" section. Use the "Basic Word Mark Search (New User)." Use the drop-down menu to search for marks by their registration number.
   a. Check U.S. Registration No. 2110475. What is the mark? What type of mark is this?

      The mark consists of a bottle. This is a mark for the shape of a bottle used for hair shampoo and conditioner.

   b. Check U.S. Registration No. 3621108. What is this mark? For what services is the mark used? What "Other Data" is given for this mark?

      The mark is RIHANNA, used in connection with musical sound recordings, tapes, discs, downloadable sound recordings, and video recordings featuring music, beauty, fashion, and modeling. The "Other Data" is as follows: "The name(s), portrait(s), and/or signature(s) shown in the mark identifies a living individual, whose consent(s) to register is submitted."

   c. Check U.S. Registration No. 3442244. What is this mark? What type of mark is this? What "Other Data" is given for this mark?

      This mark is CERTIFIED GF GLUTEN-FREE. It is a certification mark. The "Other Data" is as follows: "The certification mark is used by persons authorized by the certifier to certify that the products meet Applicant's standard for a gluten-free product."

   d. Check U.S. Registration No. 2416794. What is this mark? Who is the owner? Briefly, what is the description of the mark?

      This is a "design only" mark, owned by Tiffany and Company for its "robin's egg blue." It is a color mark.

   e. Check U.S. Registration No. 4345897. What is this mark? What goods are offered under the mark?

      The mark is #WINELOVER used in connection with T-shirts.

© 2018 Cengage Learning®. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part, except for use as permitted in a license distributed with a certain product or service or otherwise on a password-protected website or school-approved learning management system for classroom use.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

2. Access the USPTO website and select "See More Trademark Resources." Select "TMEP." Use the index to locate answers to the following questions.
    a. Locate the section relating to the use of names of particular living individuals. Would a mark that consists of less than a full name, such as PRINCE CHARLES'S MIDNIGHT COLOGNE, require the consent of the individual?

        Yes. To require consent, a name does not have to be a "full name," so long as it identifies a specific living individual. If so, written consent must be obtained.

    b. Review the section relating to collective marks. What are the two types of collective marks?

        There are collective trademarks/service marks, and there are collective membership marks.

3. Use an online database for federal statutes. What federal statute relates to penalties for unauthorized use of the mark SMOKEY BEAR?

    The statute is 18 U.S.C. § 711.

Discussion Questions – Chapter 2

1. Classify the following marks as trademarks, service marks, collective marks, or certification marks.
    - CYI (to show that services are provided by certified yoga instructors who have met certain standards)

        certification mark

    - The song *Double A–TOOT TOOT–M C O* used by AAMCO for its auto repair services

        service mark (sound mark)

    - COLORSTAY ULTIMATE STAY (for cosmetics)

        trademark

    - ACADEMY OF DENTISTRY INTERNATIONAL (to show membership in a group for dentists)

        collective mark

    - HAAGEN-DAZS for ice cream

        trademark (arbitrary mark)

© 2018 Cengage Learning®. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part, except for use as permitted in a license distributed with a certain product or service or otherwise on a password-protected website or school-approved learning management system for classroom use.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

2. Discuss whether a company could trademark a neon green color for a line of running shoes.

   It seems unlikely that the color neon green could be trademarked or monopolized by one company such that no others could use it. The color appears to be functional in that it promotes visibility of runners and thus improves the safety of runners.

3. Could the shape of a cap for a pen that prevents drying out of the ink in the pen be trademarked?

   No. Because the shape of the cap clearly improves the functioning of the item, it is functional and cannot be trademarked. No one party should be able to monopolize such a useful feature and prevent others from using it.

4. Each year Henderson Co. sells pastel candy eggs under the mark BABY BUNNY EGGS for the six-week period before Easter. Is the mark "in use" so as to support a trademark application although the goods offered under the mark are only offered for a few weeks each year? Discuss.

   Short-term use of the mark is likely acceptable to show that it is "in use" because the use is customary in the industry. By its very nature, Easter candy will only be of interest to consumers for a short period of time.

5. Discuss whether a person could likely obtain a trademark registration for the following marks for the goods or services indicated, and then discuss the objections, if any, that the USPTO might raise to registration of the mark.

Mark	**Goods or Services**
NEW MEXICO CHILES	Chiles from Illinois

   No. The mark is geographically deceptively misdescriptive. New Mexico is known for its chilies and consumers would be deceived by the mark.

ELEPHANT	Insurance services

   This should be (and is) registrable. It is an arbitrary mark. It has no meaning in connection with insurance services.

AUBURN EDGE	Hair color and dyes

   This mark should be registrable. It appears to be a suggestive mark and thus should be registrable without proof of secondary meaning.

O'MALLEY	Backpacks

   The mark is likely not registrable because it is primarily merely a surname.

© 2018 Cengage Learning®. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part, except for use as permitted in a license distributed with a certain product or service or otherwise on a password-protected website or school-approved learning management system for classroom use.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

COOKIES Cookies

The mark is not registrable. The mark is merely the generic term for the product.

COOKIES Stationery and paper goods

The mark should be registrable. Its use in connection with goods unrelated to cookies makes it arbitrary.

MARTHA STEWART'S HEAVENLY COOKIES Cookies

The mark cannot be registered without the written consent of Martha Stewart. Even if Ms. Stewart consents, the owner would likely need to disclaim "cookies."

BISCOTTI Cookies

When translated, the term "biscotti" means "cookies" or "small cookies." Thus, it is merely a generic term in a foreign language and thus is not registrable.

RED CROSS SWIM SAFETY Swimming lessons and water safety services

Unless the services are offered by the Red Cross, the mark is unregistrable because marks of the Red Cross are protected by special statutes.

JODY'S CHEESE SPREAD Spread not made of cheese

The mark is not registrable because it is deceptive. Consumers would be deceived by a product called "cheese spread" that has no cheese in it.

CHEESE SPREAD Prepared cheese spread

The mark is not registrable because it is generic for the goods offered under the mark. If a design or other wording (such as "Jody's") were added to the mark, it would be registrable (if the descriptive wording "Cheese Spread" were disclaimed.)

Putting It Into Words – Chapter 2

Your firm's client would like to trademark the color black for its bottles for its salad dressings. The black color blocks out light, which preserves the contents of the bottles for a longer period of time. Draft a short paragraph to be inserted in a letter from your attorney indicating whether a trademark application for such color is likely to be successful.

"We believe it is highly unlikely that the U.S. Patent and Trademark Office (USPTO) will register the color black for the bottles used for your salad dressings. Marks that are functional cannot be registered with the USPTO. A mark consisting of color is functional if it provides a utilitarian advantage to its owner, for example, the use of orange for safety signs. The functionality doctrine is intended to encourage legitimate competition and ensure that no one party exclusively appropriates a color that competitors may need. In the

© 2018 Cengage Learning®. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part, except for use as permitted in a license distributed with a certain product or service or otherwise on a password-protected website or school-approved learning management system for classroom use.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

present case, the color black used on your salad dressing bottles provides a useful function in that it helps extend the shelf life of the salad dressing and preserve the contents of the bottles. Thus, the USPTO would likely refuse to register the color black for your salad dressing bottles on the basis of functionality. We would be pleased to review the label, graphics, and designs used on these bottles to determine if they might qualify for trademark protection even though the color of the bottle itself will not qualify for registration."

© 2018 Cengage Learning®. May not be scanned, copied or duplicated, or posted to a publicly accessible website, in whole or in part, except for use as permitted in a license distributed with a certain product or service or otherwise on a password-protected website or school-approved learning management system for classroom use.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

INTELLECTUAL PROPERTY FIFTH EDITION

Chapter 2

Foundations of Trademark Law

Deborah E. Bouchoux

© 2018 Cengage Learning, Inc. All rights reserved.

CENGAGE Learning

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

Purpose and Function of Trademarks

- Purpose
  - Assure quality and consistency
  - Assist consumers with purchase decisions
- Function
  - Distinguish goods or services from others
  - Specify “source”
  - Indicate consistent quality
  - Serve as advertising device

© 2018 Cengage Learning, Inc. All rights reserved.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

Types of Marks

- Trademark
- Service mark
- Certification mark
- Collective mark
- See Exhibits 2–1, 2–5, and 2–11







© 2018 Cengage Learning, Inc. All rights reserved.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

Acquisition of Trademark Rights

- In the U.S.
  - Rights arise from *use* of mark
  - Not from registration
- Use based on interstate commerce
- Senior use vs. junior user
- Exception to use requirement:
  - Intent-to-use application

© 2018 Cengage Learning, Inc. All rights reserved.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

Common Law Rights, Federal Registration Under the Lanham Act, Laws and Treaties Governing Trademarks, and State Trademark Rights

- Common law trademark
  - Use of a mark without registration
- Federal Registration
  - Nationwide constructive use
  - Nationwide notice to the public
  - Infringing trademarks
  - Paris Convention

Deborah E. Bouchoux

© 2018 Cengage Learning, Inc. All rights reserved.

CENGAGE Learning®

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

Common Law Rights, Federal Registration Under the Lanham Act, Laws and Treaties Governing Trademarks, and State Trademark Rights

- Federal Registration
  - Right to bring an action in federal court
  - Incontestable status
  - Use of the registration symbol ®
  - *Ability to bar importation of infringing goods*
  - *Primar facie* (literally, "on its face") evidence of validity of mark and registration

© 2018 Cengage Learning, Inc. All rights reserved.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

Common Law Rights, Federal Registration Under the Lanham Act, Laws and Treaties Governing Trademarks, and State Trademark Rights

- Laws, and treaties, and rules governing trademarks
  - Lanham Act (U.S. Trademark Act)
  - *Trademark Manual of Examining Procedure* (TMEP)
- TMEP available for viewing and downloading
  - USPTO website

© 2018 Cengage Learning, Inc. All rights reserved.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

Common Law Rights, Federal Registration Under the Lanham Act, Laws and Treaties Governing Trademarks, and State Trademark Rights

- Amendments to the Lanham Act
  - North American Free Trade Agreement (NAFTA)
  - Trade-Related Aspects of Intellectual Property Rights (TRIPS)
  - Trademark Law Treaty Implementation Act (TLTIA)

© 2018 Cengage Learning, Inc. All rights reserved.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

Common Law Rights, Federal Registration Under the Lanham Act, Laws and Treaties Governing Trademarks, and State Trademark Rights

- Amendments to the Lanham Act
  - Anticybersquatting Consumer Protection Act
  - Madrid Protocol
  - Federal Trademark Dilution Revision Act
  - PRO-IP Act

© 2018 Cengage Learning, Inc. All rights reserved.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

Common Law Rights, Federal Registration Under the Lanham Act, Laws and Treaties Governing Trademarks, and State Trademark Rights

- State registration
  - Mark not used in interstate commerce
  - States have own trademark laws
  - Process is fairly expeditious and inexpensive

© 2018 Cengage Learning, Inc. All rights reserved.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

Categories of Marks

- Generic (not truly a mark)
- Descriptive (secondary meaning needed)
- Suggestive (requires some imagination)
- Arbitrary (known word/unfamiliar product)
- Fanciful or *coined* (no dictionary meaning)

© 2018 Cengage Learning, Inc. All rights reserved.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

Trade Names and Business Names

- Symbol or name used only as a business name
  - Cannot be registered as a trademark or service mark
- Name identifies and distinguishes goods and services
  - May be registrable under the Lanham Act

© 2018 Cengage Learning, Inc. All rights reserved.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

Protectable Matter

- Slogans, Letters, and Numbers
- Logos and symbols
- Names of performing artists
- Domain names and hashtags
- Foreign terms (if not descriptive)
- Shapes and containers (if not functional)

© 2018 Cengage Learning, Inc. All rights reserved.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

Protectable Matter

- Trade dress
- Color (if not functional)
- Fragrances, sounds, flavors, and moving images
- Designs and ornamentation
- Serialized literary and movie titles and characters

© 2018 Cengage Learning, Inc. All rights reserved.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

Exclusions from Trademark Protection

- Disparaging or falsely suggestive marks (this issue may be appealed to Supreme Court)
- Insignia
- Immoral or scandalous matter (this issue may be appealed to Supreme Court)
- Names and portraits of living persons (without consent)
- Deceptive matter

© 2018 Cengage Learning, Inc. All rights reserved.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

Exclusions from Trademark Protection

- Mere surnames
- Geographical terms (if descriptive or deceptive)
- Descriptive and confusingly similar marks
- Functional devices
- Statutorily protected marks

© 2018 Cengage Learning, Inc. All rights reserved.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual

U.S. Patent and Trademark Office (USPTO)

- Reviews trademark applications
- Divided into departments
  - Assignments
  - Postregistration
  - Intent-to-use

© 2018 Cengage Learning, Inc. All rights reserved.

Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Solutions Manual