

Trademark Law

University of Pittsburgh School of Law

Fall 2008

Prof. Madison

Memorandum Assignment #1

[Note from Professor Madison: This fact pattern uses real product names and types. However, the product itself is imaginary, and the fact that real beer product names have been used does not mean that those names refer to real beer products. However, the names of energy drink products do refer to real energy drink products. Any possible real-world health law implications of this fact pattern should be ignored.]

To: Junior Trademark Lawyer

From: General Counsel

Date: September 26, 2008

Re: Branding Issues

I've attached a request that just came in from our Marketing Department. They've cooked up what sounds like an outrageously risky product and need some trademark advice as they ponder their branding. Take a look at their memo, then analyze the problem and write up some recommendations for me. Obviously, the client needs our recommendations, but I need your reasoning, too. I need your feedback by 4:30 p.m. on Monday the 13th of October.

To: Trademark Department

From: Eric Idle, Director, Python Beverage Company Marketing Department

Date: September 26, 2008

Re: New Product Introduction

The Marketing Department is gearing up to introduce our new beverage of choice, and we'd like to get some trademark law advice. As you well know, our goal is to make as much money for the company as is humanly possible, at the lowest possible cost. At the same time, we want to dominate our market and keep present and future competitors at bay. We'd like your advice on how best to accomplish this from the legal standpoint. Specifically, we haven't yet settled on a name or logo. We're also open to suggestions regarding packaging and even as to some flavor issues.

The product is caffeinated light beer. We've done a lot of market research and concluded that there is a large market among 21-25 year olds, both men and women, for a product that tastes great, is less filling (fewer calories), gives a light (safe) buzz, and not only won't put you to sleep but will actually keep you going. The product is a classic lager-style beer, with guarana extract and ginseng added for the caffeine kick.

We know that some rival brewers are working on similar products. We don't plan to patent our formulas (patents are silly things; they're expensive and take too long), so our

IP strategy relies on solid trademarks. That's where you come in. Given what you know about trademark law, which of these things should we use, and are there any that we shouldn't?

Here are the options that we're considering:

Name:

- P to the E, graphically P^E [the PE would stand for Python Extra]
- Buzz Beer
- Iguana Light
- Third Rail
- Moonshot
- Kick Beer
- Liquid Charge
- Sparks

Formula: We're toying with adding an extra flavor to the beer, perhaps a very subtle blackberry/cherry aftertaste. When you first take a drink of the beverage, it would taste like regular light beer. But there would be this slightly fruity aftertaste, to give it a distinctive "wow" effect. The fruit flavor would be a safe chemical formula, not really blackberries or cherries. As you probably know, there are a variety of beers already on the market with different fruit flavors (the Cranberry Lambic and Cherry Wheat from Samuel Adams are my favorites, but don't tell anyone that I sample the competition!), but none of them are caffeinated beers.

Package: One way to go would be to sell the product in a standard beer bottle package. We've also talked about selling it in a can format, where the cans would be on the narrow side – like Red Bull and other energy drinks. Kids really seem to go for those little cans these days, and with our corporate-wide silver and blue color scheme, I think that we could come up with something really snazzy.

Thanks.

Rules and Guidelines for Assignment One

To the extent that these rules may appear to conflict with general advice regarding memos that appears in course-related webpages, these rules take precedence.

This is an "open" problem, meaning that there are no limits on the resources that you may bring to bear on your work. Among other things, you may consult with your classmates and other human beings. If you discuss the merits of the assignment with anyone, however, you must disclose that person's identity on or in your memo.

Format Memos must be typed or printed using a computer. Each memo, including any attachments, must be not longer than four [4] typewritten or printed pages, double-

spaced, with 1" minimum margins on all sides. ("To," "From," "Re," and "Date" headings may be single spaced.) You do not need to include a comprehensive statement of the facts; instead, you may refer to the factual background in my memo to you. No footnotes are permitted. The following font must be used: Twelve [12] point Times New Roman.

Grading Memoranda will be graded based on form, format, and writing quality as well as on content. The problems are designed so as not to have any single correct or even best solution. Each problem will present a range of issues that the memorandum should identify, analyze, and solve in a creative way.

Due date One hard copy of the work product prepared for this assignment must be turned in not later than Monday, October 13, 2007, at 4:30 p.m. Memos may be turned in either to the Registrar's Window or to my secretary, Ms. Melissa Shimko, in Room 314. Electronic (e-mailed) copies are not acceptable. Memos slipped under anyone's door are not acceptable. There were be no extensions or exceptions to this deadline. Memoranda that do not conform to the format instructions above, or that are turned in late, are subject to grade reductions.