

Copyright



RUNNING HEAD: IP LAW Intellectual Property Law Q1 Trademark Law For the Nike trademark “ Just do it” to be protectable, it must be shown to have been registered with the US Patent and Trademark Office, or if not registered, has established property rights through actual use. On the other hand, in order for Nike to prove that there was infringement, it must establish, through documentation of its commercial use, that it was the first to use the “ Just do it right” trademark and that the other party had used a similar a trademark without Nike’s consent. Moreover, Nike would need to show that there would be a likelihood of consumer confusion of the fair-use of the trademark. It would also be to Nike’s advantage if it formally sends a letter to that party informing the latter that there was an infringement of Nike’s trademark particularly taking into discussion the possible remedies that Nike can resort to if the latter does not cease and desist in its acts of infringement. If the other party refuses to stop and contest Nike’s action, such refusal may constitute proof of willful infringement (Irwin, Sutton & McCarthy 2008 p. 286; Hansen 2006 p. 111). In *Polaroid Corp v Polarad Electronics Corp* 287 F. 2d 492 (2nd Circ. 1961), the Court established the 8-factor Polaroid Test to determine whether the use of another of a trademark similar to that of a party will result in the likelihood of confusion. These factors are: the strength of the mark of the plaintiff; the degree of similarity between the two marks; identical products and distribution channels; effect of market expansion; proof of actual confusion; product quality; bad faith exhibited by the defendant; sophistication of prospective consumers. Applying the Polaroid test to the present case, the courts is likely find a case of infringement considering the following: similarity of the two products since both involve the manufacture of athletic products; the degree of similarity is strong with

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the other party adding a ' NOW" to the original; Nike markets itself in most parts of the world and there is no doubt that it is already in the market of the other party; actual confusion can be proven only in time but an initial survey can be made to show this; Nike can be damaged if the quality of the other party's product is below par; bad faith can be alleged, and; Nike can prove that not all of its consumers are sophisticated enough to distinguish between the two products. Possible defenses to a trademark infringement action are: fraud in trademark registration; abandonment of mark by the registrant; misrepresentation; fair use; prior use; antitrust law; equitable defenses such as laches, estoppel and acquiescence (Toren 2003 pp. 4-28). The trademark infringement law promotes honesty and respect for the property of others.

Q2 Copyright Law The three basic requirements of copyrightability: it must be any of the " works of authorship," which refers to the 8 types of works mentioned under the law (literary; musical; dramatic; pantomimes and choreographics; pictorial, graphic and audiovisual; sound recordings; architectural); it must be original, meaning it is not copied, and; it must be fixed in any tangible medium, which means that the work must be permanent that it can be appreciated by the senses, copied and be communicated (Dannenberg 2010 pp. 49-54). Claudette does not have a copyright on her work because it does not fulfill all the requirements of copyrightability: it is not fixed because it was not recorded or filmed, although it was original and a work of authorship. On the other hand, Martine does not have a copyright on her either because it is not original having been copied from Claudette's work although she has recorded it. The copyright law likewise promotes the value of honesty, originality and respect for the property rights of others. References: Dannenberg, R. (2010)

Computer Games and Virtual Worlds: A New Frontier in Intellectual Property Law. USA: American Bar Association. Hansen, H. (2006) US Intellectual Property Law and Policy. Massachusetts: Edward Elgar Publishing. Irwin, R. & Sutton, W. A. & McCarthy, L. (2008) Sport Promotion and Sales Management, 2nd Edition. Illinois: Human Kinetics. Polaroid Corp v Polarad Electronics Corp 287 F. 2d 492 (2nd Circ. 1961). Toren, P. (2003) Intellectual Property and Computer Crimes. New York: Law Journal Press.