**MEMORANDUM**

**THOMAS, THOMAS, AND THOMAS, PLLP**

FROM: [Associate name]

TO: [Senior partner name]

DATE: [Submission date]

**RE: [Insert here]**

***[Items in brackets are guidance for you. Delete them before submitting your final memo.]***

[*This template is prepared for students in Trademark and* Branding. It is specifically created for revised Project “X.” For this project, your audience is the supervising attorney who is reviewing your lawyering and your work product. This is not a persuasive document, it is objective. Do not hide the ball.]

[*Retain formatting.* You must use this template and maintain the existing formatting (11 pt. Garamond, single-space within paragraphs, extra space between paragraphs). You must retain the headings provided in the order given. (You may, however, add subheadings.) The bracketed text provides guidance in preparing the memo. For your submitted work product, remove the bracketed text before submitting your case file. Regarding memo length, there is no minimum or maximum length. However, it is likely impossible to do a good job in less than 6-7 pages, not counting the certification form. *Do not submit a memo of over 15 pages*, not counting the cease-and-desist letter, the complaint, the certification, or any exhibits.]

**INTRODUCTION**

[*Purpose.* This section required for both courses.In this section, *briefly* identify the name of your client, explain what you have done so far, and what you would recommend to the firm’s client. Specifically, give your short conclusions regarding; 1) your searching on behalf of Acme; and 2) any liability of Fringe to Acme, and your recommended enforcement strategy.]

**DISCUSSION OF SEARCHING**

**Search strategy.**

**[**The first part of the memo should explain the search strategies you used (be specific) and should briefly explain the results obtained (such as numbers of hits and the helpfulness of your strategies in finding relevant applications/registrations).]

[Tips: I would recommend that you organize your search results carefully, and that your memo's discussion of the search strategy correspond to how you organize your search results. The goal is to make it easy for your partner/client to work through the memo and underlying documentation.]

**Registrability with USPTO.**

[Discuss whether registration of the client's proposed mark would be **barred by Section 2 of the Lanham Act** (for example, whether the mark is merely descriptive without secondary meaning). This section for most students is quite short. No need to engage in negative issue spotting, just discuss any portions of Section 2 that are worth talking about..]

[Tips: In this part, your client is interested in learning whether it can register its chosen mark, or if the mark is instead barred by Section 2. Relevant issues here may include whether your client's chosen mark is **completely**barred as being scandalous, immoral, or illegal, or is barred as being generic or functional. You only need address Section 2 issues that are reasonably raised by your client's mark. So do not engage in negative issue-spotting. Further note that: 1) you need not here address problems with 2(e) descriptiveness because that should instead be discussed under "protectability"; and 2) you need not here address problems with 2(d) likelihood of confusion with preexisting marks because that should instead be discussed under "risk of liability."]

**Protectability against junior users.**

[For 2018, skip this part of the memo as you will be providing an actual liability analysis against a specified junior user.]

**Risk of liability to senior users.**

[This is the most important part of the “searching” portion of this memo. Discuss the extent to which the client’s use or registration of the proposed mark as a junior user might **cause a likelihood of confusion or dilution or other liability** with **the most pertinent** senior marks belonging to third parties that you found through your searching. In this part, you will likely want to carefully organize by types of senior marks, and may have to do several LOC analyses. How you organize, and whether you have more than one LOC analysis, are for you to determine.]

[Tips: This part discusses who might sue your client successfully. This part relies on your searching. You should discuss the most pertinent (relevant) hits from your search. You should analyze whether your client's chosen mark might create a likelihood of confusion ("LOC") with the pertinent senior hits. Think carefully about how to organize this part of the memo. You might be able to do one LOC analysis, or you may have to do several. Whether you do one or several LOC analyses depends on how you should group the pertinent marks. So think about whether you can group sets of marks together for shared analyses. You will definitely have to discuss LOC (infringement). Whether you also need to address dilution will depend on your mark and the results of your search. Note that you do not need to discuss every mark you find; instead, discuss the most pertinent marks.]

**Bottom-line recommendation regarding searching.**

[Here note, whether you recommend that your client **proceed with a full search** or instead **select a different mark**.]

[Tips: Choose your conclusion here carefully, as the revised facts for Project X indicate that: 1) Acme’s registration has already issued; 2) Acme has already started to use its chosen mark as of October 7. Thus, be careful about what you say *as your client is already using the mark!*]

**DISCUSSION OF ENFORCEMENT**

[*What to do here.* In this section, explain the nature of the alleged infringement and whether we are likely to prevail in an action against them. What bases of liability are reasonably applicable? (Section 32? Section 43(a)? 43(c)? 43(d))? Other, such as state law? Also, discuss the approach taken in your C&D letter/draft complaint. Finally, discuss your conclusion as to our client’s likelihood of success on the merits.]

**Nature of the opponent’s conduct.**

[*Discuss what is going on*. What is Fringe doing? Where? Give the basic facts material to your analysis.]

**Analysis of merits.**

[Discuss any applicable theories of liability raised by the facts (but don’t negative issue spot). Discuss the likelihood of Acme succeeding on the merits against Fringe.]

**Your enforcement strategy.**

[In light of your analysis of the merits, discuss your tactics and strategy regarding your C&D and your draft complaint. If you had to make any procedural decisions along the way (such as which federal district to sue in), discuss those as well.]

**Bottom-line recommendation regarding enforcement.**

[Here note, whether you recommend that your client **proceed with sending the C&D letter and complaint, or whether you recommend something else.**]

**OTHER COMMENTS & INFORMATION**

[*Optional both classes:* This section is optional. If there are other issues you deem worthy of discussion, include it here]

**CERTIFICATION OF ORIGINALITY,
ATTRIBUTION, and DISCLOSURE**

*[Instructions: fill this out completely and truthfully. Err on the side of disclosure. Add lines as needed.]*

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [name printed or typed] certify the following

Subject to the information in the disclosures below, my submission for this project is *original* to me. I have also fully complied with any restrictions or prohibitions contained in the assignment instructions.

*Copies of templates*. I have included copies of any and all materials I relied upon in the Project, such as copyright/trademark registrations, complaints, memos, or contracts. Those materials are **[add lines as needed]**:

[ATTACH SUCH MATERIALS TO THIS DOCUMENT.]

1. [Fill out, even if it is merely to say “N/A”]
2. [Fill out, even if it is merely to say “N/A”]
3. [Fill out, even if it is merely to say “N/A”]

*No outside assistance.* I have not obtained any assistance with this Project from anyone who is not a currently enrolled member of this class from this semester.

*Inside assistance.* I disclose and certify that I received or provided assistance to or from the persons named below **[add lines as needed]**.

|  |  |
| --- | --- |
| Persons providing **assistance to me**: | Nature of assistance, listed in detail |
| [Fill out, even if it is merely to say “N/A”] | [Fill out, even if it is merely to say “N/A”] |
| [Fill out, even if it is merely to say “N/A”] | [Fill out, even if it is merely to say “N/A”] |

|  |  |
| --- | --- |
| I provided **assistance to**: | Nature of assistance, listed in detail |
| [Fill out, even if it is merely to say “N/A”] | [Fill out, even if it is merely to say “N/A”] |
| [Fill out, even if it is merely to say “N/A”] | [Fill out, even if it is merely to say “N/A”] |

I have not omitted from this certification any source, person, or any type of assistance, whether given or received. Nor have I changed any of the language from the certification as provided to me from the Professor.

I recognize that this certification is to be interpreted broadly and includes without limitation: forms and preexisting materials used, reading drafts, suggesting edits, discussing issues, sharing sources, and getting tips. I recognize that violation of this certification may lead to a reduced score, a lowered grade, and referral to the academic integrity committee.

Handwritten signature:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:

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