The Course: Global Legal Issues in Marketing Decision Making

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ABSTRACT

As the marketing environment of products/services evolves becoming more global while product lifecycles get shorter, clearly marketers must pay closer attention to many domestic as well as international laws including laws governing market entry, antitrust, product liability, consumer protection and intellectual property rights. It is interesting that most business schools offer courses in both law/legal-political environments and marketing concepts, but few business schools have courses which heavily integrate law and marketing thinking.

Key Words: *legal environment, product liability, antitrust, intellectual property*

INTRODUCTION

A key question is: why are laws affecting marketing and their study important? In this regard, marketing scholars have a long history of keen interest in the legal environment; simply put one must clearly understand the legalities of successfully marketing products within a targeted area. Over the years, marketing journals have published numerous law related articles/opinions, and as result, a large of body of literature has been generated [e.g., Engle, 1936; Welch, 1984; Petty, 1994]. In this regard, Murphy and Laczniak [1980] started the modern era of teaching law and its impact on marketing. According to Petty [2000], Murphy and Laczniak believed that the trend most likely to influence education during the 1980s was the legal and regulatory trends on marketing decision making. Also, the Journal of the Academy of Marketing Sciences offers an occasional section titled “Marketing and the Law”; while the Journals of

Macromarketing and of Public Policy and Marketing frequently consider and publish articles on marketing and legal issues [Petty, 1999].

There are two key reasons why law is important to marketing managers. First, without knowledge of the law (market related), marketers can be charged with legal violations such as pricing fixing, mail fraud, antitrust issues and other infractions. Second, (product related) "product design considerations, often in conjuncture with promotional and warranty materials, may lead to expensive product liability exposure, leading to high insurance rates…" [Petty, 2000]. It, therefore, is very appropriate to re-consider the marketing of products/services and key laws that impact their marketing environments. Globally, pressing regulatory issues include: food safety, toy safety, Internet privacy, auto emissions, and anticompetitive practices.

With the obvious significance of such a marketing course, why do so few business schools actually offer an integrated "Global Legal Issues in Marketing Decision Making" course? One must speculate that such an integrated class is difficult to teach; marketing instructors tend to do a good job teaching the marketing mix elements (product, promotion, place and price), but they may do a lesser job teaching within the legal environment; while law instructors generally teach the law quite well, but have limited skills instructing the marketing mix. Clearly, this seems to be a class that requires multiple knowledge bases at least two disciplines-- marketing and law must be bridged.

Team teaching of the class or even hiring a marketing Ph. D. (who also has a law degree) may solve the problem, but these options tend to be quite expensive, and as a result, the legal marketing course has limited popularity and may not be offered. Also, both published textbooks for this type of course [Stern and Eovaldi, 1984; Cohen, 1995] are out of print meaning that this course may require potential instructors heavier start-up preparation.

REVIEW OF LEGAL MARKETING COURSES

A short questionnaire was forwarded to 62 chairpersons of marketing programs; some of the programs were very large schools such as Northwestern University, Louisiana State University, and the University of Iowa, but most were smaller programs such as Towson State University, Virginia Commonwealth University, and the University of North Florida. The questionnaire asked if there is currently a legal marketing course in the marketing course inventory, the laws reviewed in the identified course and the course level of instruction. The response rate was very low as only 13 marketing chairs responded (21% response rate); in this regard, seven chairs indicated that their programs currently did not have a legal marketing course (54% of the respondents); while six programs did have at least one marketing course which addressed to a degree the legal environment.

Again, the questionnaire generated six marketing programs with at least one marketing course with a legal thrust. Such undergraduate courses include: **Law of Marketing and Antitrust** (emphasis on antitrust and the legality of pricing, promotion, and distribution strategies) offered at the University of Pennsylvania; **Legal Aspects of Marketing** (analysis of statutes, regulations, and legal doctrines applicable to marketing practices while examining legal issues encountered by marketers in dealing with consumers and competition) offered at Indiana University (Bloomington campus). Graduate marketing courses (with a legal orientation) generated by the questionnaire include: **Ethical and Legal Issues in Marketing** (seminar course which addresses legal issues through a review of ethical issues such as ethics in marketing research, product liability, advertising, pricing and privacy concerns) offered at Southern New Hampshire University; **Legal Fundamentals for Technical Start-ups** (emphasis on legal issues

concerning ownership of intellectual property, protection of intellectual property, choice of business entity, ownership structure of new venture, employment law and securities law; also, emphasis is on legal issues faced by technology-driven start-ups, legal traps to avoid and when to consult with legal counsel) offered at John Hopkins University; **Public-Policy Issues in Marketing** (focus is on consumer protection policies and especially those dealing with advertising, labeling, and information disclosure regulations) offered at the University of Utah; and finally, **Global Marketing** (covers key legal issues in the global marketing arena with emphasis on entering global markets) offered at the University of Kansas.

After carefully reviewing marketing courses that stress legal issues, it is apparent that at least three areas of law need marketing course scrutiny and adequate coverage: antitrust and trade laws (the Sherman Antitrust Act: prohibits monopolies, price fixing, predatory pricing that restrains interstate trade/commerce and the Federal Trade Commission Act: establishes a commission to monitor unfair trade); (the Robinson-Patman Act: defines price discrimination as unlawful, establishes limits on quantity discounts, and prohibits certain promotional allowances); intellectual property rights (Lanham Trademark Act: protects and regulates brand names and trademarks and the World Trade Organization's Agreement (WTO) on Trade-related aspects of Intellectual Property Rights: attempts to bring uniformity in the way property rights are protected globally and to place property rights under common international rules); and consumer protection laws (the Consumer Product Safety Act: established the Consumer Product Safety Commission and the law authorizes the Commission to set safety standards for consumer products and to set penalties for companies failing to

uphold generated safety standards and the Federal Food, Drug and Cosmetic Act: attempts to regulate the production and sales of food, medicine and cosmetics).

There are two major approaches for reviewing the above noted legal issues within a marketing course: the legal orientation—the course is organized by legal topics, and the marketing mix elements are taught within the legal topics; this is appropriate for course instruction by business law faculty; the marketing orientation—the course is based on the coverage of the marketing mix (product, promotion, price and place) with legal topics addressed with the marketing framework; this approach probably with be used by a marketing faculty. The latter course framework probably is best suited for a marketing course with legal emphasis. Now, the above noted laws will be highlighted for possible marketing course inclusion.

ANTITRUST LAWS

At the outset, it must be mentioned that an examination of antitrust laws--including the Sherman Antitrust Act of 1890; the Federal Trade Commission Act of 1914 and the Robinson-Patman Act—is necessary in illustrating the importance of competition on the market and must be a requisite course of study for any legal marketing course.

. "The word 'antitrust' dates back from the late 1800s, when powerful companies dominated industries working together as 'trusts' to stifle competition." [FEDERAL TRADE COMMISSION WEBSITE]. Federal antitrust laws have had dramatic effects on both domestic and international commerce.

The Sherman Antitrust Act of 1890

The oldest and arguably the most important of these laws--the Sherman Antitrust Act-- has provided the basis for American antitrust enforcement and case law since 1890. In fact, antitrust law in the United States begins and ends with the provisions of the Sherman Antitrust Act of 1890. [Hovenkamp, 1999; Watkins, 2006].

Section 1 of the Sherman Antitrust Act requires that plaintiffs establish three elements: (1) a contract, combination or conspiracy; which (2) constitutes a restraint of trade; and (3) has an impact on interstate commerce. This section does not apply to unilateral actions in restraint of trade, but only reaches concerted activity involving more than one actor. [*Copperweld Corp.*, 467 U.S. at 759; Gilmore, 1988;].

Section 2 of the Sherman Act proclaims:

> [e]very person who shall monopolize or attempt to monopolize or combine or conspire with any other person or persons, to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or

> commerce among the several States . . . shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation . . . .

[15 U.S.C. §2].

In *Standard Oil Co. v. United States*, one of the first major Sherman Antitrust Act cases, Chief Justice White declared:

> The debates . . . conclusively show . . . that the main cause which led to the [Sherman Act] was the though that it was required by the economic condition of the times, that is, the vast accumulation of wealth in the hands of corporations and individuals, the enormous development of corporate organization, the facility for combination which such organizations afforded, the fact that the facility was being used, and that their power had been and would be exerted to oppress individuals.

[221 U.S. at 50]. Therefore, the Supreme Court recognized the underlying purpose of the Sherman Antitrust Act was to act as a means to combat the concentration of economic power in the hands of the few. [May. 1990; Watkins, 2006].

Simply speaking, the Sherman Act was intended to prevent arrangements designed to establish a monopoly. A monopoly is a market situation that can significantly increase the cost of goods to customers and can also limit product availability. If a company has monopoly power over a particular market, it has the ability to control market prices, set product quantities and/or exclude competition. Most would agree that competition promotes the common good by connoting market freedom. [Africa News, 2007]. In essence, competition provides consumers with a choice.

Nevertheless, it has never been easy to distinguish between precompetitive and anticompetitive conduct. [COMMWEBB, 2006]. "[T]he arguable merits of the government's antitrust enforcement efforts often change with shifts in the competitive landscape and the political climate. [COMMWEBB, 2006]. Further, as business has gone global over the past few decades, differing views have emerged about when and where competition should be moderated by regulation. [COMMWEBB, 2006].

Recently, the Supreme Court in a 7-2 opinion, aiming to rein in the high costs of antitrust litigation, toughened the standards for plaintiffs to get into court. [*Twombly*, 550 U.S. at ___; Bravin, 2007]. The Supreme Court ruled that an allegation that two or more companies are acting in parallel is not enough for an antitrust lawsuit to proceed. Even if the result benefited the companies and diminished competition, the plaintiffs must go further and include some allegations indicating that the companies were actively working together. [Bravin, 2007]. This ruling by the Supreme Court does not radically change the rules for antitrust actions. [Bravin, 2007]. Instead, it marks the latest in a sequence of cases where the Court has tightened the scope of the Sherman Antitrust Act. [Bravin, 2007].

The Federal Trade Commission Act of 1914

The Federal Trade Commission (FTC) Act empowers the FTC to prevent unfair methods of competition and unfair or deceptive acts or practices. [15 U.S.C. at 41-58;

Reynolds, 2002]. To accomplish these tasks, the FTC is granted the authority to investigate, prevent, and prosecute unfair or deceptive acts or practices in or affecting commerce, such as deceptive advertising and unsubstantiated product claims. [15 U.S.C. § 45(b); Crescenti, 2005]. The Act also authorizes the FTC after findings of fact to issue orders requiring violators "to cease and desist from using such method of competition." 15 U.S.C. § 45].

This Act originated as part of a package of antitrust litigation that President Woodrow Wilson proposed in a speech to Congress following the presidential campaign of 1912. [Wilson, 1914; Ward, 1992]. President Wilson's speech to Congress called for, among other things, the creation of a federal trade commission. [Ernst, 1989]. In response to widespread concern about the growth and behavior of monopolies and cartels, Congress passed the FTC Act. [Ward, 1992]. The Act was signed into law on September 26, 1914 and the FTC opened for business on March 16, 1915. [Majoras, 2006].

The FTC Act was originally enacted to protect the marketplace by prohibiting "unfair methods of competition." [15 U.S.C. § 45 (a); Ward, 1992]. But in 1938, Congress amended the Act to also prohibit "unfair or deceptive acts or practices", thereby focusing the FTC's interest on the consumer and business competition. [Wheeler Act of 1938]. In 1975, Congress passed the Magnuson-Moss Act, which gave the FTC the authority to adopt trade regulation rules that define unfair or deceptive acts in particular industries. [FEDERAL TRADE COMMISSION WEBSITE].

Effectively, the FTC "is charged with promoting competition and protecting consumer welfare by enforcing [the] nations' antitrust and consumer protections laws." [Deborah Platt Majoras, 2006]. This enforcement of the nation's antitrust laws "is essential to maintaining competitive markets that serve consumers." [Majoras, 2006]. "Competition in America is about price, selection and service. It benefits consumers by keeping prices low and the quality and choice of goods and services high. By enforcing antitrust laws . . . FTC helps to ensure that our markets are open and free." [FEDERAL TRADE COMMISSION WEBSITE].

Further, the "FTC promotes healthy competition and challenges anticompetitive business practices to make sure that consumers have access to quality goods and services, and the businesses can compete on the merits of their work." [FEDERAL TRADE COMMISSION WEBSITE]. The FTC also "enforces antitrust laws by challenging business practices that could hurt consumers by resulting in higher prices, lower quality or fewer goods or services." [FEDERAL TRADE COMMISSION WEBSITE]. Among the practices that the FTC monitors are company mergers, agreements among competitors, restrictive agreements between manufacturers and product dealers and monopolies. [FEDERAL TRADE COMMISSION WEBSITE]. Each of these actions are reviewed to determine the likely affect on consumers by focusing on, among other things, questions such as: (1) Would these actions lead to higher prices, inferior service or fewer choices for consumers?; (2) Would they lead to higher prices, inferior service, or fewer choices for consumers? and (3) Would they make it more difficult for other companies to enter the market? [FEDERAL TRADE COMMISSION WEBSITE].

The Robinson-Patman Act

The Robinson-Patman Act "is the principal federal antitrust statute governing price discrimination, promotional payments and allowances and other conduct relating to

the equal or unequal treatment of purchasers in the sale of commodities." [Cohen & Burke, 1998]. Congress passed the Robinson-Patman Act in 1936 during the Depression in an effort to protect small, independent businesses from the new buying power, profitability, and market share of large retail chains. [Rowe, 1962; Coons, 1996]. It was passed in response to the evidence that that suppliers charged lower prices to large retail chains (which made it difficult for small retailers to compete and put many of them out of business). [15 U.S.C. §13(a); *Recent Case: Antitrust Law- Robinson Patman Act*, 1997].

In particular, the Act makes it illegal for sellers to charge different prices to different purchasers where the effect of the discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them. [15 U.S.C. §13(a); *Recent Case: Antitrust Law- Robinson Patman Act*, 1997]. The Act also forbids hidden discounts such as the payment of certain brokerage fees or commissions in connection with the sale of goods where no services were rendered to justify the payment and or services to certain customers without providing proportionally equal benefits to competing customers. [Cohen & Burke, 1998]. There are some exceptions to the Act, which include allowing a seller or buyer to support a price differential on the ground that it was required to meet a competitor's price; that there was cost-based justification for the lower price; the market conditions changed between the time of the two sales; or that the lower price effectively was made available to all competing purchasers. [Cohen & Burke, 1998].

To satisfy the requirements of bringing a claim of illegal discrimination under the Robinson-Patman Act, a plaintiff must show that the defendant seller made: (1) at least two consummated sales, (2) of commodities, (3) of like grade and quality, (4) at discriminatory prices, (5) to different purchasers and (6) that occurred in commerce. [Salomon, 1974; Hansen, 1983; Copperweld Corp., 467 U.S. at 752; HovenKamp 1985; 15 U.S.C. § 12; Brooke, 113 S.Ct. at 2587; Coons, 1996]. The commerce requirement under the Act—unlike the Sherman Antitrust Act's commerce requirement—is strictly construed. As a result, there has been substantial debate as to the meaning of "in commerce."

Moreover, the issue of whether the Robinson-Patman Act actually benefits the market has been commonly debated. Indeed, the Robinson-Patman Act has been criticized by some commentators for reducing economic efficiency and consumer welfare. [Hovenkamp 1994; *Recent Case: Antitrust Law- Robinson Patman Act*, 1997]. Some studies have indicated that price discrimination is one way that markets balance supply and demand and increases allocative efficiency. [Shugart, 1990; Bork, 1993;*Recent Case: Antitrust Law- Robinson Patman Act*, 1997]. Other studies have shown that efforts to regulate price discrimination also reduce efficiency by requiring firms to follow costly procedures to defend even legal price discrimination. [Posner, 1976; US. DEPT' OF JUSTICE REPORT ON THE ROBINSON-PATMAN ACT, 1977; Bork, 1993; *Recent Case: Antitrust Law- Robinson Patman Act*, 1997].

INTELLECTUAL PROPERTY RIGHTS

"The term intellectual property governs intangibles which are a creation of the mind." [Shippey, 2002; Friel, 2007]. Intellectual property rights provide protections for

trademarks (which distinguish and identify goods and indicate the source of the goods and their protections include trade secrets, designs, brand names and domain names); copyrights (protection given to the exclusive author of an original creative work such as a musical, literary or otherwise graphic or artistic performance or work) and patents (statutory rights granted to inventors who discover or formulate a new and non-obvious invention that protects the inventors' exclusive rights to manufacture, use, sell and develop the inventions). [Friel, 2007].

The estimated value of intellectual property protected by trademarks, copyrights and patents in the United State is between $5 trillion and $5.5 trillion or about 45 percent of the United States Gross Domestic Product. [Shapiro and Hassett, 2005; Friel, 2007]. This means that intellectual property theft can significantly harm businesses and the economy of countries affected by the theft. [Friel, 2007]. US businesses each year lose at least $250 billion as a result of the theft of intellectual property. [Gutierrez, 2005; Friel, 2007].

The WTO's Agreement on Trade Related Aspects of Intellectual Property Rights (explained more below) defines counterfeit goods as the following:

> goods, including the packaging bearing without authorization a trademark which is identical to the trademark registered in respect of such, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner or the trademark in question under the law of the country of importation

[*WTO's Agreement on Trade Related Aspects of Intellectual Property Rights*, April 15, 1995; Friel, 2007]. In 2004, the sale of counterfeit goods resulted in a worldwide loss of sales as great as $512 billion. [Balfour, 2005; Friel, 2007]. The cost of counterfeit goods is not merely an economic cost, but may have other serious consequences such as posing health and safety dangers to consumers since counterfeit goods are made with lower quality components and are not put through the standard regulations governing safety and quality. [Friel, 2007]. Based on the economic impact of intellectual property rights on markets and the social and economic consequences of theft of these rights, a marketing law class must encompass instruction of intellectual property rights and legal protections—including instruction on the Lanham Trademark Act and the WTO's Agreement on Trade Related Aspects of Intellectual Property Rights.

The Lanham Trademark Act of 1946

"Trademark law enables producers to mark their goods in a distinctive manner that allows consumers to recognize that the products are from a particular source." [Baker, 1996]. This type of law significantly impacts marketing because it: (1) promotes the production of quality products; (2) decreases the consumer search and decision costs; (3) safeguards consumers from misrepresentation and (4) guarantees that manufacturers reap the rewards of their investment. [*Qualitex*, 115 S.Ct. at 1300; McCarthy, 1993; Baker, 1996; Gamez, 2006]. By allowing a consumer to distinguish among competitors, trademarks enable competition. [S. Rep. No. 79-133 , 1946; Gamez, 2006]. They also "serve a 'quality' function by acting as a warranty of goods and their composition." [Lalonde § 1.03[3](a); Friel, 2007].

From 1905 to 1946, the federal trademark act was controlled by the Trademark Act of 1905, which was limited in its protections for trademarks and did not include descriptive marks. [Standard Paint Co., 1911; Baker, 1996]. To address these limitations, Congress passed the Trademark Act of 1946, commonly referred to as the Lanham Act. [Baker, 1996]. The effect of the Lanham Act was to increase the scope of trademark protection by broadening the definition of trademarks "to include 'any word, name, symbol or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured and sold by others." [Act of July 5, 1946; Baker, 1996]. Unlike the earlier Trademark Act, the Lanham Act provides protection for descriptive marks. [Baker, 1996].

Under the Lanham Act, federally registered trademarks last for ten years, but they may renewed as long as the trademarks have not been cancelled or abandoned. [Lalonde § 1.03 [3] (a); 15 U.S.C. § 1058; Friel, 2007]. A mark is considered abandoned under the Trademark Act when:

> (1) its use has been discontinued with intent not to resume such use. Intent not to resume may be inferred from circumstances. Nonuse for 3 consecutive years shall be *prima facie* evidence of abandonment. "Use" of a mark means the bona fide use of such mark made in the ordinary course of trade, and not made merely to reserve a right in a mark.; or
>
> (2) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to become the generic name for the goods or services on or in connection with which it is used or otherwise to lose its significance as a mark.

[15 U.S.C. § 1127 (2006)].

Trademark law, however, does not offer complete protection to all uses of a mark and only allows the owner to use the mark as a "useful and valuable aid or instrument of commerce." [*Prestonettes, Inc.*, 264 U.S. at 368; Gamez, 2006]. The Lanham Trademark Act defines the "use in commerce" as the use of a mark in the ordinary course of trade, including placement of the mark in any manner on the goods, their containers, or their displays, tags or labels and the sale or the transport of the goods. [15 U.S.C. § 1127 (2006)]. In 1988, the Trademark Law Revision Act expanded the degree of use required to obtain the benefits of trademark protection. [Gilson, 2005; Gamez, 2006]. The purpose of this revision to the law was to preclude businesses from attempting to gain trademark protection without actually engaging "in commerce." [Gilson, 2005; Gamez, 2006].

WTO's Agreement on Trade Related Aspects of Intellectual Property

In 1994, the WTO was created by the Uruguay Round Agreement Act of 1994. [*WTO's Agreement on Trade Related Aspects of Intellectual Property Rights*, 1995; Friel, 2007]. Presently, the WTO has 151 member countries, including the US. [WORLD TRADE ORGANIZATION WEBSITE]. The WTO, which is now the leading international trade organization, is a negotiating forum that attempts to assist member countries' governments in resolving trade-related disputes between each other while promoting free trade through compromise and negotiation. [*Understanding the WTO*, 2007; Friel, 2007].

At the Uruguay Round negotiations in 1994, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) was adopted. [*WTO's Agreement on Trade Related Aspects of Intellectual Property Rights*, April 15, 1995; Friel, 2007]. The objective of the TRIPS Agreement was to provide "effective and adequate protection of intellectual property rights" to limit barriers to international trade and encourage global competition. [*WTO's Agreement on Trade Related Aspects of Intellectual Property Rights*, 1995; Koepsel, 2004]. Thus, one of the main purposes of the TRIPS Agreement is to foster free trade. [*WTO's Agreement on Trade Related Aspects of Intellectual Property Rights*, 1995; Friel, 2007].

It is in effect "the first international intellectual property protection agreement that protects the gamut of intellectual property rights." [De Carvalho, 2005; Friel, 2007]. The intellectual property rights covered by the TRIPS Agreement is not limited to trademarks, copyrights and patent, but also includes geographical indications, industrial designs, layout designs of integrated circuits and the protection of undisclosed information or trade secrets. [*Understanding the WTO*, 2007; Friel, 2007]. This Agreement does not provide for all areas of intellectual property such as the protection of trade names, collective marks, and utility models. [De Carvalho, 2005; Friel, 2007].

The first part of the TRIPS Agreement defines the general provisions and basic principles of the Agreement including minimum standards of protection for intellectual property, national treatment and most-favored nation articles. [*WTO's Agreement on Trade Related Aspects of Intellectual Property Rights*, 1995; Koepsel, 2004]. The Agreement's second part specifies the required minimum substantive standards for intellectual property protection, including the scope of the categories of intellectual property protection, the content of those protections and their reach. [*WTO's Agreement on Trade Related Aspects of Intellectual Property Rights*, 1995; Friel, 2007].

Next, the third part of the Agreement identifies the specific enforcement of intellectual property provisions. [*WTO's Agreement on Trade Related Aspects of Intellectual Property Rights*, 1995; De Carvalho, 2005; Friel, 2007]. These enforcement provisions were intended to be fair and equitable to support free trade and prevent abuse of the enforcement procedures. [*WTO's Agreement on Trade Related Aspects of Intellectual Property Rights*, 1995; Friel, 2007. These intellectual property rights can be enforced internally in countries or externally through the WTO's dispute settlement system. [*WTO's Agreement on Trade Related Aspects of Intellectual Property Rights*, 1995; Koepsel, 2004].

The fourth part of the Agreement is acquisition and maintenance of intellectual property rights, while part five sets out the dispute prevention and settlement. [*WTO's Agreement on Trade Related Aspects of Intellectual Property Rights*, 1995; Koepsel, 2004]. Part six of the Agreement discusses transitional arrangements and finally, part seven is the institutional arrangements, including establishment of the Council for TRIPS, international cooperation, protection of existing subject matter and security exceptions. [*WTO's Agreement on Trade Related Aspects of Intellectual Property Rights*, 1995; Koepsel, 2004].

The TRIPS Agreement is a non-self executing Agreement requiring the member countries to enact laws and regulations to make the provisions of the Agreement effective. [De Carvalho, 2005; Friel, 2007]. Additionally, members must comply with the processes and procedures of the WTO's dispute resolution mechanisms rather than

seeking independent punishments against purportedly violating countries. [Friel, 2007]. Fortunately, "the majority of intellectual property infringement cases under the TRIPS Agreement that undergo the dispute resolution mechanism are settled by mutual agreement." [Friel, 2007].

CONSUMER PROTECTION LAWS

The beginning of consumer protection policies surfaced in the 1960's and 1970's. [Oliveira and Goldbaum, 2001]. Neil W. Averitt and Robert H. Lande have analyzed the relationship between antitrust and consumer protection law. [Averitt and Lande, 2001]. "In their understanding, competition policy and consumer protection share a common goal: They are both intended to facilitate the exercise of what they call 'consumer sovereignty' or effective consumer choice." [Averitt and Lande, 2001; Oliveira and Goldbaum, 2001]. Averrit and Lande define "consumer sovereignty" as "a state in which consumers can freely take decisions based on their individual interest and in which markets will respond to the collective effect of those decisions." [Averitt and Lande, 2001; Oliveira and Goldbaum, 2001]. Therefore, consumer protection laws—including the Consumer Product Safety Act and the Federal Food, Drug and Cosmetic Act--provide consumers in the markets with product choices. Plus, consumer protection laws safeguard and ensure consumers can choose from quality products that have been subject to the standard regulations governing safety and quality. Clearly, these consumer protection laws are important and must be covered in a legal marketing course.

Consumer Product Safety Act of 1972

Before the Consumer Product Safety Act (CPSA) was enacted, Congress, in 1967, established the National Commission on Product Safety (NCPS) to investigate the adequacy of consumer protection against unreasonable risk caused by household products. [Klayman, 1982]. In its investigation, the NCPS recommended creating a federal regulatory agency invested with board authority to ensure consumer protection from hazardous products. [*Final Report*, 1970;)Klayman, 1982]. Congress responded to the NCPS's report by enacting the CPSA in 1972. [U.S.C. §§ 2051-2083; Klayman, 1982].

The main purpose for the enactment of the CPSA was to protect consumers against unreasonable risks of injury associated with consumer products. [15 U.S.C. §2051; Klayman, 1982]. To achieve this goal, Congress established the Consumer Product Safety Commission (CPSC) as an independent regulatory agency. [15 U.S.C. §2053; Klayman, 1982]. The CPSC "works to save lives and keep families safe by reducing the risk of injuries and deaths associated with customer products by developing voluntary standards with industry; issuing and enforcing mandatory standards or banning customer products if no feasible standard would adequately protect the public; obtaining the recall of products or arranging for their repair; conducting research on potential product hazards; informing and educating consumers through media, state and local governments, private organizations and by responding to consumer inquiries for detailed information on what CPSC does." [U.S. CONSUMER PRODUCT SAFETY COMMISSION WEBSITE].

According to the CPSC, "[d]eaths, injuries and property damage from consumer product incidents cost the nation more than $700 billion annually." [U.S. CONSUMER PRODUCT SAFETY COMMISSION WEBSITE]. For that reason, the CPCS "is committed to

protecting consumers and families from products that pose a fire, electrical, chemical or mechanical hazard or can injure children. The CPSC's work to ensure the safety of consumer products—such as toys, cribs, power tools, cigarette lighters, and household chemicals—contributed significantly to the 30 percent decline in the rate of deaths and injuries associated with consumer products over the past 30 years." [*CPCS Overview*, U.S. CONSUMER PRODUCT SAFETY COMMISSION WEBSITE].

> A "consumer product" under the CPSA:
>
> means any article or component part thereof, produced or distributed (i) for sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation or otherwise, or (ii) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school in recreation or otherwise . . .

[15 U.S.C. § 2052]. The term "consumer product" also includes "any mechanical device which carries or conveys passengers along, around, or over a fixed or restricted route or course or within a defined area for the purpose of giving its passenger's amusement, which is customarily controlled or directed by an individual who is employed for that purpose and who is not a consumer with respect to such device, and which is not permanently fixed to a site." [15 U.S.C. § 2052]. However, the term does not include a device which is permanently fixed to the site.

Furthermore, the term "consumer product" does not include the following: (1) any article which is not customarily produced or distributed for sale to or use or consumption by or enjoyment of a consumer; (2) tobacco and tobacco products; (3) motor vehicles or motor vehicle equipment; (4) pesticides; (5) any article which if sold by the manufacturer, producer or importer that would be subject to tax imposed by 4181 of the Internal Revenue Code of 1986; (6) aircraft, aircraft engines, propellers or appliances; (7) boats which could be subject to safety regulation under chapter 43 of title 46; vessels and appurtenances to vessels, which could be subjected to safety regulation under title 52 of the Revised Statute or other marine safety statutes administered by the department in which the Coast Guard is operating; and equipment, as defined in section 2101 (1) of title 46 to the extent that a risk of injury associated with the use of such equipment on boats or vessels could be eliminated or reduced by actions taken under any statute referred to15 USC § 2052; (8) drugs, devices or cosmetics; (9) food; and (10) meat, meat food products and egg products. [15 U.S.C. § 2052].

Specifically, the CPSA mandates that every manufacturer, importer, distributor, or retailer of a consumer product report to the CPSC upon learning that its product does not comply with the consumer product safety rule or contains a "defect" which could create a "substantial product hazard." [Zick, 1991].

There are several adverse consequences for firms that comply with the reporting requirements of the CPSA. [Zick, 1991]. The CPSC, upon receipt of this information and after an investigation may order a recall of the subject products, may seek injunctive relief to prevent further distribution of allegedly dangerous products and may order a firm to notify the public that a hazard exists. [Zick, 1991]. The failure to timely report may subject the firm to costly penalties. [*Medical Device Amendments of 1976*; Zick, 1991].

Furthermore, a firm's increased exposure to products liability can result from filing a substantial product hazard report. [*Nutrition Labeling Education Act of 1990*;

Zick, 1991]. As a result of these adverse consequences of reporting, a firm may choose not to report a defect or the failure to comply with the consumer product safety rule. [Zick, 1991]. Obviously, the failure to report such issues can have adverse effects on the consumer because dangerous products may remain on the market long after the existence of the dangers is known. [Zick, 1991].

Federal Food, Drug and Cosmetic Act of 1938

Congress designed the Federal Food, Drug and Cosmetic Act (FD&C Act) of 1938 to effectively proscribe dangerous food and drugs and curb deception of consumers. [21 U.S.C. §§ 301-392; McGuire, 1984]. Even before the enactment of this Act, people were concerned about the quality of products they used. [Shah & Khan, 2007]. As a matter of fact, the regulation of medicinal products originated with the inspection of imported drugs in 1848 when Congress passed the Drug Importation Act. [Shah & Khan, 2007]. This Drug Importation Act forced the US Customs Service to cease entry of adulterated drugs from overseas. [Shah & Khan, 2007].

Thereafter, in 1906, Upton Sinclair published his socialist novel, THE JUNGLE, describing filthy conditions in Chicago's packing plants. [Young, 1981]. Sinclair's account, which was corroborated by government inquiry, set in motion what would become a meat inspection bill directed at protecting the US domestic market. [Young, 1981]. On June 30, 1906, President Theodore Roosevelt signed the Pure Food and Drugs Act into law. [Johnson, 1964; Anderson, 1964; McGuire, 1984]. The Act forbade interstate and foreign commerce in adulterated and misbranded food and drugs. [Young, 1981].

The Congressional intent of this Act of 1906 was to: (1) proscribe dangerous food and drugs and (2) to prevent manufacturers from deceiving consumers. [40 CONG. REC. 9068-76; McGuire, 1984]. To satisfy these two goals, the Act required manufacturers to list the nature and quality of various ingredients in their products and to abstain from labeling products with false or misleading statements. [*Pure Food and Drug Act of 1906*; McGuire, 1984]. This prohibition of adulterated food included adulteration caused by the removal of valuable constituents, the substitution of ingredients that would reduce quality, the addition of deleterious ingredients and the use of spoiled animal and vegetable products. [Young, 1981]. "Making false or misleading label statements regarding a food or drug constituted misbranding . . . .[and] [t]he presence and quantity of alcohol of certain narcotic drugs had to be stated on proprietary labels." [Young, 1981].

The Act, however, did not, contain the following: (1) quality and identity standards for food; (2) prohibitions of false therapeutic claims for drugs; (3) coverage of cosmetics and medical devices; (4) clarification of the Federal Drug Administration's right to control factory inspections and (5) control of product advertising. [Young, 1981]. In addition, the limited scope of the Act of 1906 precluded it from protecting people from false and inflated claims in the print media and airwaves. [McGuire, 1984]. The Act also lacked procedures for testing the safety or effectiveness of a product before it entered the market. [McGuire, 1984].

In 1937, a drug called sulfanilamide elixir entered the market without any prior testing for toxicity. [McGuire, 1984; Shah & Khan, 2007]. Over one hundred people died from the product's toxic effect before the Federal Drug Administration (FDA)

withdrew it from the market. [McGuire, 1984; Shah & Khan, 2007]. As a result of this tragedy, Congress enacted the FD&C Act of 1938. [McGuire, 1984; Shah & Khan, 2007]. This Act gave the FDA new enforcement provisions, including extending control to cosmetics and therapeutic devices and authorized standards for the identity and quality of food and drugs. [Shah & Khan, 2007].

Moreover, the new Act imposed more stringent controls on foods injurious to health and required full and honest disclosure in product advertising and labeling. [21 U.S.C. §§ at 332, 343-346; McGuire, 1984]. The Act also prohibited manufacturers from marketing new drugs until they had persuaded the FDA that products were safe. [15 U.S.C. §§ 332, 343, 361-363;McGuire, 1984]. The Act of 1938, unlike the Act of 1906, was drafted under the view that average consumers are incapable of protecting themselves and need to be protected from the conditions of contemporary life. [McGuire, 1984].

After the enactment of the FD&C Act, the FDA started to identify those drugs that could not be labeled for safe use directly by the patient that required a prescription from a physician. [Young, 1981]. The FDA also began issuing food standards under the Act, beginning with food standards for canned tomatoes. [Young, 1981]. Further, the FDA developed recipe standards for foods that gave the list of ingredients that could be lawfully included in a product. [Young, 1981]. By the 1950s and 1960s, the FDA had pursued numerous cases of food branding that included false nutritional claims and by the 1960s about half of the food supply was subject to a food standard. [Young, 1981].

Finally, in 1990, Congress passed the Nutrition Labeling and Education Act (NLEA), which completely reformulated the way food products conveyed basic nutritional information. [21 U.S.C. § 301; Mathios, 2000]. The legislation required "[s]pecified nutrients, including calories, total fat, and saturated fat, must be listed in metric units and as a percentage of the recommended daily intake with primary emphasis on the percentage metric." [Mathios, 2000]. The NLEA Act required that the FDA implement the provisions of the Act by 1994. [21 U.S.C. § 301].

CONCLUSION

Few business schools now teach marketing law as a separate course because such courses are expensive and difficult to teach. Teaching marketing principles and key legal issues within a course is troublesome for several reasons including the unique academic training needed by the primary course instructor (skills/information in both marketing and law). This paper shows the growing importance of a legal marketing class. The paper also highlights the two primary instructional modes for the legal marketing course: 1. The Legal Oriented Course which is organized by legal topics and marketing mix elements are taught within the legal environment (may be taught by a business law instructor) and 2. The Marketing Oriented Course which is framed based on the marketing mix with legal topics reviewed within a marketing mix structure (probably taught by a marketing professor).

Three key areas of law (antitrust, intellectual property rights, and consumer protection laws) have and will continue to impact the designing and marketing of products and services. Clearly, it now behooves marketers to consider carefully the legal environment (in addition to marketing strategies) as legal issues will more strongly influence long term company revenues and profits. Undoubtedly, over time, the global

legal environment will become more important as consumers become more knowledgeable of markets, their rights and product quality issues; this means that legal marketing courses will be critically necessary and probably offered by many institutions.

REFERENCES

1. *Competition Counts: How Consumers Win When Businesses Compete*, FEDERAL TRADE COMMISSION WEBSITE , available at http://www.ftc.gov/bc/edu/pubs/consumer/general/zgen01.pdf.

2. Justin R. Watkins, *Always Low Prices, Always at a Cost: A Call to Arms Against the Walmartization of America*, 40 J. MARSHALL L. REV. 267 (2006).

4) Herbert Hovenkamp, FEDERAL ANTITRUST POLICY: THE LAW OF COMPETITION AND ITS PRACTICE 48 (2d.ed. 1999) ("The Sherman Act . . . has always been the driving force in American antitrust policy.").

5) 15 U.S.C. §1.

6) Debra A. Gilmore, *The Antitrust Implications of Boycotts by Health Care Professionals; Professional Ethics and the First Amendment*, AMERICAN JOURNAL OF LAW & MEDICINE (1988).

7)

8) 15 USC §2.

9) Robert H. Bork, THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF 90-91 (Free Press 1993) (alleging that the objective of antitrust is to "preserve, improve, and reinforce the powerful economic mechanisms that compel businesses to respond to consumers").

10) Richard A. Posner, ANTITRUST LAW: AN ECONOMIC PERSPECTIVE 4 (1976) (claiming that the goal of antitrust law should be the promotion of efficiency.

11) Albert A. Foer & Robert Lande, T*he Evolution of United States Antitrust Law: The Past Present and (Possible) Future*, 16 NIHON UNIV. COMPARATIVE L.J. 149 (2004), available at http://www.antitrustinstitute.org/archives/files/64.pdf at 18 (asserting that a proper antitrust policy promotes not only efficiency and innovation, but also seeks to

protect consumer choice and prevent consumers from paying artificially high prices; referring to their model as the "consumer protection regime").

12) Eleanor M. Fox, *The Modernization of Antitrust: A New Equilibrium*, 66 CORNELL L.REV. 1140, 1178 (1980) (rejecting the claim that the exclusive concern of antitrust law should be efficiency as contrary to antitrust jurisprudence).

13) Robert Lande, *Wealth Transfers as the Original and Primary Concern of Antitrust: The Efficiency Interpretation Challenged*, 34 HASTINGS L.J. 65, 96 (1982) (arguing that the principal concern underlying the passage of the Sherman Antitrust Act was preventing unfair transfers of wealth—such as denying consumers the right to competitively priced products-away from consumers by firms with market power).

14) Louis B. Schwartz, *"Justice" and Other Non-Economic Goals of Antitrust*, 127 U.PA.L. REV. 1076, 1076 (1979) (recognizing that a broad range of legislative history instructs against the premise that efficiency is the exclusive goal of antitrust law and advocates in favor of deference to noneconomic goals).

15) Robert Pitofsky, *The Political Content of Antitrust*, 127 U.PA.L.REV. 1051 (1979) (insisting that "political values," such as guarding against the excessive concentration of economic power, enhancing individuals and business freedom, and preventing the domination of the economy by a few giant corporations so as to necessitate government intrusion into economic affairs, were meant to play a role in the interpretation of antitrust laws).

16)

17) James May, *The Role of the States in the First Century of the Sherman Act and the Larger Picture of Antitrust Policy*, 59 ANTITRUST L.J. 93, 104 (1990) (contrasting current perspectives regarding the conflicting goals of antitrust law with the belief during the formative era that antitrust law "simultaneously could protect economic opportunity, efficiency, competition, fair distribution, and political liberty through a process of largely nondiscretionary adjudication").

18) *Nigeria; Country Economy Going Nowhere Fast Without Anti-Trust Regime*, AFRICA NEWS, July 23, 2007.

19) *FTC Mulls the Meaning of Monopoly*, COMMWEBB, November 1, 2006.

20)

21) Jess Bravin, *High Court Raises Bar on Antitrust Lawsuit*, THE WALL STREET JOURNAL, May 22, 2007;

22) Stuart M. Reynolds, Jr., *Article: The Relationship of Antitrust Laws to Regulated Intellectual Property in the New Marketplace*, 4 TUL. J. TECH & INTELL. PROP. 1, Spring 2002.

23) Brooke E. Crescenti, *Note and Comment: Undercover Marketing: If Omission is the Mission, Where is the Federal Trade Commission*, 13 J.L. & POL'Y 699 (2005).

24) 15 U.S.C. § 45(b).

25) Deborah Platt Majoras, Article: *The Federal Trade Commission: Learning from History as We Confront Today's Consumer Challenges*, 75 UMKC L.REV. 115, Fall 2006.

26) Peter C. Ward, *Article: Restitution for Consumers Under the Federal Trade Commission Act: Good Intentions or Congressional Intentions?*, 41 AM. U. L. REV. 1139, 1144 (1992).

27) Daniel R. Ernst, *Symposium: The Labor Exemption, 1908-1914*, 74 IOWA L. REV. 1151, July 1989.

28) 15 U.S.C. §13(a).

29) Sherie L. Coons, *Robinson-Patman Act Jurisdiction Over Retail Sales: A Reexamination of the Cases and the Case for Reform*, 21 IOWA J.CORP.L. 541, Spring, 1996.

30) *Recent Case: Antitrust Law- Robinson Patman Act- Ninth Circuit Rules That Secondary-Line Price Discrimination Cannot Be Rebutted by a Showing of No Anticompetitive Effect-Chroma Lighting v. GTE Products Corp*., 111 F.3d 653 (9th Cirt.), cert. denied, 118 S.Ct. 357 (1997), 111 HAR. L. REV. 615, December, 1997.

31) William R. Goetz, *Private Causes of Action Under the Reporting Rules of the Consumer Product Safety Act*, 70 MINN. L. REV. 955, April 1986.

32) Consumer Product Safety Act, Pub.L. No. 92-573, 86 Stat. 1207 (1972) (codified as amended at 15 U.S.C. § 2051-2083 (1982)).

33) Butcher v. Robertshaw Controls Co., 550 F.Supp. 692 (D. Md. 1981).

34) Elliot Klayman, *Comment: Standard Setting Under the Consumer Product Safety Amendment of 1981—A Shift in Regulatory Philosophy*, 51 GEO. WASH. L. REV. 96, November 1982.

35) NATIONAL COMM'N ON PROD. SAFETY, FINAL REPORT 1 (1970).

36) Publ. L. No. 92-573, 86 Stat. 1207 (1972)) (codified as amended at 15 U.S.C. §§ 2051-2083).

37) 15 U.S.C. §2051.

38) 15 U.S.C. §2053.

39) *CPCS Overview*, U.S. CONSUMER PRODUCT SAFETY COMMISSION WEBSITE, available at http://www.cpsc.gov/about/about.html.

40) 15 U.S.C. § 2052.

41) Frederick M. Rowe, PRICE DISCRIMINATION UNDER THE ROBINSON PATMAN ACT § 17 at 534-35 (1962).

42) 1 Phillip Areeda and Donald Turner, ANTITRUST LAW § 233 (c) at 248-49 (1978).

43) E. Thomas Sullivan and Herbert Hovenkamp, ANTITRUST LAW POLICY AND PROCEDURE 816 (1989).

44) Herbert HovenKamp, ECONOMICS AND FEDERAL ANTITRUST LAW § 13.6 at 347 (1985).

45) E. Thomas Sullivan & Herbert Hovenkamp, ANTITRUST LAW POLICY AND PROCEDURE 817-18 (1989)).

46) *FTC v. Morton Salt Co.*, 334 U.S. 37, 45 (1948);

45)Rakh B. Shah and Mansoor A. Khan, *The Evolution of FDA's Role in Ensuring Product Quality*, PHARMACEUTICAL TECHNOLOGY, July 2007 at 52.

46) Thomas F. McGuire, *Note: Food, Drug or Both?: Dual Classification Under the Federal Food, Drug and Cosmetic Act*, 1984 U. ILL. L. REV. 987 (1984).

47) Timothy D. Zick, *Note and Comment, Reporting Substantial Product Safety Hazards Under the Consumer Product Safety Act: The Products Liability Interface*, 80 GEO. L.J. 387, December 1991.

48) Jonathan D. Baker, *Note: Correcting a Chromatic Abberation: Qualitex Co. v. Jacobson Products Co.*, 9 HARV.J. LAW & TEC. 547, Summer 1996.

49) *Qualitex Co. v. Jacobson Prods. Co*., 115 S.Ct. 1300 (1995).

50) Candace S. Friel, *Article: The High Cost of Global Intellectual Property Theft: An Analysis of Current Trends, the Trips Agreement and Future Approaches to Combat the Problem*, 7 WAKE FOREST INTELL. PROP. L.J. 209, Spring 2007.

51) Joel M. Cohen and Arthur Burke, *Antitrust*, INTERNATIONAL FINANCE LAW REVIEW, June 1998 at 3.

52) Alicia Gamez, *Intellectual Property: Trademark: Note: WhenU.com, Inc. & Google, Inc,: Parsing Trademark's Use Requirement*, 21 BERKELEY TECH. L.J. 403 (2006).

53) Gesner de Oliviera & Sergio Goldbaum, Symposium: *Relations Between Regulation, Competition Policy and Consumer Protection in Telecommunications*, *Electricity and Water Supply*, 27 BROOKLYN J. INT'L. 65 (2001).

54) Neil W. Averitt & Robert H. Lande, *Consumer Sovereignty: A Theory of Antitrust and Consumer Law*, 65 ANTITRUST L.J. 713 (1997).

55) James Harvey Young, *FDA Consumer: The Long Struggle for the 1906 Law* (1981), available at http://www.cfsan.fda.gov/~lrd/history2.html.

56) John P. Swann, *FDA History Office* , *Trends in the Last Quarter-Century* (adapted from George Kurian, ed., A HISTORICAL GUIDE TO THE U.S. GOVERNMENT (New York: Oxford University Press, 1998)), available at http://www.fda.gov/oc/history/historyoffda/section5.html.

57) Alan D. Mathios, *Article: The Impact of Mandatory Disclosure Law on Product Choices: An Analysis of the Salad Dressing Market*, 43 J. LAW & ECON. 651, October 2000.

58) 21 U.S.C. § 301.

59) Kristen M. Koepsel, Article: *How Do Developed Countries Meet Their Obligations Under Article 67 of the Trips Agreement,.* 44 IDEA 167 (2004).

60) . *World Trade Organization Website, What is the WTO?,* available at http://www.wto.org/english/thewto_e/whatis_e/whatis_e.h].

61) Woodrow Wilson, *Address Before a Joint Session of congress on Additional Legislation for the Control of Trust Monopolies* (Jan. 20. 1914), H.R. Doc. No. 625, 63d Cong.2d Sess. 3 (1914), reprinted in 5 EARL W. KINTER, LEGISLATIVE HISTORY OF ANTITRUST LAWS AND RELATED STATUTES 3746-47 (1982).

62) Darrell Salomon, *The Robinson-Patman Ac*t "*Commerce" Requirement: The Emasculation of Moore v. Mead's Fine Bread*, 8 U.S.F. L. REV. 497, 502 & n.26 (1974).

63) Hugh C. Hansen, *Robinson Patman Law: A Review and Analysis*, 51 FORDHAM L. REVIEW 1113, 1126 (1983).

64) *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 113 S.Ct. 2578, 2587 (1993)).

69) Herbert Hovenkamp, FEDERAL ANTITRUST POLICY 925 (1994).

70) Robert H. Bork, THE ANTITRUST PARADOX 394-98 (1993).

71) William F. Shugart II, ANTITRUST POLICY AND INTEREST-GROUP POLITICS 64-65 (1990).

72) US. DEPT' OF JUSTICE REPORT ON THE ROBINSON-PATMAN ACT, 37-99 (1977).

71) ROBERT J. SHAPIRO and KEVIN HASSETT, THE ECONOMIC VALUE OF INTELLECTUAL PROPERTY 3, October, 2005.

72) KARLA C. SHIPPEY, A SHORT COURSE IN INTERNATIONAL INTELLECTUAL PROPERTY RIGHTS: PROTECTING YOUR BRANDS, MARKS, COPYRIGHTS, PATENTS, DESIGNS AND RELATED RIGHTS WORLDWIDE 1 (World Trade Press 2002).

73) Press Release, Hon. Carlos Gutierrez, Secretary, United States Department of Commerce, *Commerce Secretary Carlos Gutierrez Unveils Initiatives to Fight Intellectual Property Theft,* September 21, 2005, available at http://www.commerce.gov (follow "Newsroom" hyperlink; then follow "September 2005 Press Releases" hyperlink, then follow "9/21/2005" hyperlink).

74) *WTO's Agreement on Trade Related Aspects of Intellectual Property Rights*, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, art. 51, Legal Instruments-Results of the Uruguay Round, 33 I.L.M. 1125 (1995).
.

75) Federal Trade Commission Act ch. 311, 38 Stat. 717 (1914), now codified at 15 U.S.C. 41-58.

76) Frederick Balfour, *Fakes!*, BUSINESSWEEK, February 7, 2005 at 56.

77) *Qualitex Co. v. Jacobson Prods. Co*., 115 S.Ct. 1300 (1995).

78) J. Thomas McCarthy, 1 MCCARTHY ON TRADEMARKS & UNFAIR COMPETITION § 2.01 (3d. ed. 1993).

79) S. Rep. No. 79-133 at 4 (1946), reprinted in 1946 U.S.C.C.A.N. 1274, 1275.

80) ANNE GILSON LALONDE, GILSON ON TRADEMARK PROTECTION & PRACTICE § 1.03 [3] (a).

81) *Standard Paint Co. v. Trinidad Asphalt Mfg. Co.*, 220 U.S. 446 (1911).

82) 5 U.S.C. § 1058 (a) (2006).

83) *Prestonettes, Inc. v. Coty*, 264 U.S. 359, 368.

84) JEROME GILSON, et al., TRADEMARK PROTECTION AND PRACTICE 3.02 (8) (Supp. Nov. 2005).

85) NATIONAL COMM'N ON PROD. SAFETY, FINAL REPORT 1 (1970).
15 U.S.C. § 45.

86) *CPCS Frequently Asked Questions*, U.S. CONSUMER PRODUCT SAFETY COMMISSION WEBSITE.

87) Medical Device Amendments of 1976, Publ. L. No. 94-295, 90 Stat. 539 (1976).

88) Nutrition Labeling Education Act of 1990, Pub. L. No. 101-535, 104 Stat. 2353 (1990), as amended by Dietary Supplement Health and Education Act of 1994, Pub. L. No. 103-417, 108 Stat. 4325 (1994).

89) Johnson, *Introduction: The History of the 1906 Pure Food and Drugs Act and the Meat Inspection Act*, 37 FOOD DRUG COSM. L.J. 5, 5 (1982) (symposium).

90) Anderson, *Pioneer Statute: The Pure Food and Drug Act of 1906*, L J. PUB.L. 189, 189 (1964).

91) World Trade Organization Website, *What is the WTO*?, available at http://www.wto.org/english/thewto_e/whatis_e/whatis_e.h].

92) World Trade Organization, *Understanding the WTO, (*2007), available http://www.wto.org/english/thewto_e/whatis_e/tif_e/utw_chap1_e.pdf)

Cases

United States v. Topco Associates, Inc, 405 U.S. 596, 610 (1972).
Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752, 759 (1984).
Standard Oil Co. v. United States, 221 U.S. 1, 50 (1911).
Bell Atlantic Corp. v. Twombly, 550 U.S. at ___ (2007).

Statutes

Ch. 3915 § 8, Stat. 768, 770 (1960) (repealed 1938).

93) 21 U.S.C. § 301.

94) NUNO PIRES DE CARVALHO, THE TRIPS OF REGIME OF PATENT RIGHTS 28, 30 (2d. ed. 2005).

21 U.S.C. §§ 301-392.

Wheeler Act of 1938, ch. 49, Pub.L.No. 75-447, 52 Stat. 111, 111 (1938)

15 U.S.C. §12

21 U.S.C. §§332, 343-346a.

Act of July 5, 1946, ch. 540 § 45, 60 Stat. 427 (current version at 15 U.S.C. §1127 (1994).

Publ. L. No. 92-573, 86 Stat. 1207 (1972)) (codified as amended at 15 U.S.C. §§ 2051-2083).

40 CONG. REC. 9068-76 (1906).

15 U.S.C. §§ 332, 343, 361-363.