

STARBUCKS, TRADEMARK LAW AND THE EXIT 6 INCIDENT

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According to the results of a study conducted by the Pew Research Center, lawyers contribute little to society.¹ Collective attitudes towards attorneys are often encapsulated in popular clichés, such as “What do you call 10,000 lawyers at the bottom of the ocean?” “How can you tell when a lawyer is lying?” and “Why won't sharks attack lawyers?” Stereotypes, such as “ambulance chaser,” “pit bull,” “TV lawyer,” and “old boys club” reinforce the negative connotations associated with the legal profession.² Remarkably, perspectives that disregard contributions of the legal profession are routinely shared by managers and executives in the corporate setting.³ For instance, in a survey by the National Science Foundation (NSF), over 87% of surveyed businesses reported that intellectual property (IP) law protections were “not important” to their organizations.⁴ Such results are particularly discouraging in light of the growing evidence and scholarship highlighting the importance of legal strategy to business success.⁵

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¹ See PEW RESEARCH CENTER (July 11, 2013), *Public Esteem for Military Still High*, <http://www.pewforum.org/2013/07/11/public-esteem-for-military-still-high/>.

² See, e.g., Suzanne Meehle, *Why People Hate Lawyers: Getting Beyond the Stereotypes*, SOLO PRACTICE UNIVERSITY (Dec. 1, 2011), <http://solopracticeuniversity.com/2011/12/01/why-people-hate-lawyers-getting-beyond-the-stereotypes/>; Victoria Pynchon, *It's ok to Hate Lawyers*, FORBES (Jan. 18, 2013, 2:30 PM), <http://www.forbes.com/sites/shenegotiates/2013/01/18/its-ok-to-hate-lawyers/#2e41dbb97666>.

³ See, e.g., GEORGE J. SIEDEL & HELENA A. HAPIO, PROACTIVE LAW FOR MANAGERS: A HIDDEN SOURCE OF COMPETITIVE ADVANTAGE (2011); Larry A. DiMatteo, *Strategic Contracting: Contract Law as a Source of Competitive Advantage*, 47 AM. BUS. L. J., 727 (2010); Anthony J. Luppino, *Minding More than Our Own Business: Educating Entrepreneurial Lawyers Through Law School-Business School Collaborations*, 30 W. NEW. ENG. L. REV. 151, 177 (2007).

⁴ See John E. Jankowski, *Business Use of Intellectual Property Protection Documented in NSF Survey*, NATIONAL SCIENCE FOUNDATION (Feb. 2012), <http://www.nsf.gov/statistics/infbrief/nsf12307/>.

⁵ See, e.g., Sieedel & Haapio, *supra* note 3; CONSTANCE E. BAGLEY, WINNING LEGALLY: HOW TO USE THE LAW TO CREATE VALUE, MARSHAL RESOURCES, AND MANAGE RISK (2005); Constance E. Bagley, *Winning Legally: The Value of Legal Astuteness*, 33 ACAD. MGMT. REV. 378 (2008); Constance E. Bagley, *What's Law Got To Do with It? Integrating Law and Strategy*, 47 AM. BUS. L. J. 587 (2008); Robert C. Bird, *Law, Strategy, and Competitive Advantage*, 44 CONN. L. REV. 63 (2011); Robert C. Bird & David Orozco, *Finding the Right Corporate Legal*

To better educate the next generation of business professionals who will regularly engage in decision-making that requires an understanding and an appreciation for the role of law in the corporate setting, there is a growing need for innovative assignments that challenge students' preconceived notions and perspectives of the law.⁶ In response to this need, the author of this pedagogical note developed a critical reflection assignment from a real-life trademark dispute between Starbucks Coffee Company ("Starbucks") and the Exit 6 Pub and Brewery (Exit 6) in Cottleville, MO. In brief, Britton received a notice requesting Exit 6 to immediately cease and desist use of the term "Frappicino" in connection with the sale of a beer crafted by the brewery. As discussed more fully below, Britton's colorful response led to a wide range of amusement on the internet.⁷

The goal of the Starbucks – Exit 6 Assignment is to emphasize important concepts of trademark dilution law to undergraduate business law students. Students not only gain valuable insight into essential trademark principles of intellectual property law, but also learn how to apply a critical eye to legal events reflected in the media. Above all, students begin to understand how biases, mistaken beliefs about the law, and the absence of comprehensive information may dramatically hinder their capacities to critically evaluate legal disputes.

The discussion in this paper proceeds in three parts. Part I includes an overview of the incident that inspired the Starbucks Exit 6 assignment as well as a brief description of the assignment guidelines. Part II provides context for the assignment, followed by a brief primer on trademark law and a discussion of the pedagogical attributes of the assignment along two dimensions: (a) critical examination of trademark dilution principles in a real-world context; and (b) identification of the impact of biases and

Strategy, 56 MIT SLOAN MGMT. REV. 81 (2014); Larry A. DiMatteo, *Strategic Contracting: Contract Law as a Source of Competitive Advantage*, 47 AM. BUS. L. J. 727 (2010); George J. Siedel & Helena A. Haapio, *Using Proactive Law for Competitive Advantage*, 47 AM. BUS. L. J. 641 (2010).

⁶ See George J. Siedel, *Six Forces and the Legal Environment of Business: The Relative Value of Business Law among Business School Core Courses*, 37 AM. BUS. L. J. 717, 729 (2000) (Business executives spend nearly 25% of their work time dealing with legal issues).

⁷ See, e.g., Hayley Peterson, *Missouri Bar Gets Cease-And-Desist Order From Starbucks, Responds With Hilarious Letter And \$6 Check*, BUSINESS INSIDER (Dec. 31, 2013, 2:56 PM), <http://www.businessinsider.com/exit-6-pub-answers-starbucks-legal-demands-with-f-words-2013-12>; Susanna Kim, *Missouri Bar Owner Mocks Starbucks' Cease-and-Desist Letter*, ABC NEWS (Dec. 31, 2013, 10:05 AM), <http://abcnews.go.com/Business/missouri-bar-owner-mocks-starbucks-cease-desist-letter/story?id=21379263>; Emma Lacey-Bordeaux & Dave Alsop, *Starbucks goes after pub for 'Frappicino beer'; pub sends \$6, hilarious response*, CNN (Jan. 1, 2014, 10:47 AM), <http://www.cnn.com/2013/12/31/living/starbucks-frappicino-beer/index.html>; Carol Hartsell, *Best Response To Starbucks Cease And Desist Letter Ever*, THE HUFFINGTON POST (Dec. 31, 2013, 1:31 PM), http://www.huffingtonpost.com/2013/12/31/best-response-starbucks-cease-and-desist_n_4524621.html.

misperceptions on decision-making. Part III contains summaries of students' views on the Starbucks Exit 6 incident at each stage of the assignment as well as student evaluations of the assignment's impact as a teaching tool. Finally, Part IV closes with concluding remarks.

I. THE STARBUCKS – EXIT 6 ASSIGNMENT

A. *Background on the Starbucks Exit 6 Incident*

The Starbucks brand has come a long way since it opened its first store in Seattle's historic Pike Place Market in 1971. Today, the company's products are sold in more than 22,000 retail stores in sixty-seven countries.⁸ The Starbucks mission, "To inspire and nurture the human spirit – one person, one cup and one neighborhood at a time," provides a platform for the company's desire to strike a balance between profitability and a social conscience through ethical sourcing, environmental stewardship, and community involvement.⁹ The range of products offered by Starbucks includes more than thirty blends and single-origin premium coffees, smoothies, teas, merchandise, fresh food, and ready-to-drink (RTD) beverages.¹⁰ Consumers have responded. Net revenues for the company have increased steadily over the last five years, from \$11.7 billion in FY 2011 to \$19.2 billion in FY 2015.¹¹ The company's advertising expenses reached \$205.8 million, \$198.9 million, and \$227.9 million in 2013, 2014, and 2015 respectively.¹² Moreover, Starbucks products and locations are often featured in television shows and motion pictures.

In contrast to Starbucks, Exit 6 caters to a different segment of the beverage market: the local beer connoisseurs and enthusiasts of Cottleville, MO. As the first nano-brewery in the area, Exit 6 offers a wide selection of over 70 craft beers, 23 beers on tap, and 5 beers made in-house.¹³ The brewery's unique selection of beer offerings, which includes Razmanian Devil, Doc's Draft Hard Pear Cider, Evil Twin Justin Blabaer, Big Sky Ivan The Terrible, Left Hand Wicked Jujy, and Moonlight Meadery Kurt's Apple

⁸ See STARBUCKS, *Starbucks Company Profile*, <http://www.starbucks.com/about-us/company-information/starbucks-company-profile> (last visited Feb. 15, 2016).

⁹ *Id.*

¹⁰ *Id.*

¹¹ See STARBUCKS, *Fiscal 2015 Financial Highlights*, <http://investor.starbucks.com/phoenix.zhtml?c=99518&p=irol-reportsAnnual> (last visited Feb. 15, 2016).

¹² *Id.*

¹³ See EXIT 6 PUB AND BREWERY, *Welcome to Exit 6 Brewery*, <http://exit6brewery.com/> (last visited Apr. 15, 2016).

Pie, reflects the owner's passion for beer.¹⁴ The language on the brewery's website further reflects this passion in a variety of statements, such as 'Home of "No Compromise Brewing!"' "No crap on tap!" "Exit 6 was founded and is run by beer guys. We know what's good and we will only carry the best the industry has to offer. If we won't drink it, we don't sell it!" and "If you saw it on a commercial... We don't have it!"¹⁵

The incident that inspired this note centers on a late 2013 exchange of letters between Jeff Britton ("Britton"), the owner of Exit 6 and Anessa Owen Kramer (Kramer), an attorney for Honigman, Miller, Schwartz and Cohn, LLP (Honigman), the law firm representing Starbucks in trademark related matters. In the initial letter dated December 9, 2013, Kramer stressed Starbucks' ownership of the well-known "Frappuccino" trademark.¹⁶ Asserting that several U.S. registrations of the Frappuccino trademark had achieved incontestable status, Kramer also emphasized Starbucks' sales of millions of drinks under the Frappuccino trademark indicate the strength, fame, and association between the mark and the company. Kramer next indicated that use of the mark Frappuccino by Exit 6 in connection with the sale of a beer crafted by the brewery was likely to cause consumer mistake, confusion, or deception. Noting that the two marks were phonetically identical and only differed by one letter, Kramer asserted that Exit 6's use of the closely similar mark could mistakenly lead consumers to believe that the beer product was affiliated with or licensed by Starbucks. To resolve the matter, Kramer 'requested' written assurances from Britton that Exit 6 would: (a) cease and desist all use of the term "Frappuccino" or any other mark likely to generate confusion with Starbucks' Frappuccino mark; (b) remove the referenced listing from the website; and (c) refrain from further use of any Starbucks trademark, or any mark likely to cause confusion with or dilution of any Starbucks mark, in the future.

In a response that will forever live in internet infamy, Britton responded on behalf of Exit 6 and the Frappuccino mark. Britton began the letter by promising to avoid any mention of 'Frappuccino' in his letter, opting instead to refer his product as the "The F Word" beer. Britton assured Kramer that Exit 6 never intended any deception, confusion, or mistake in connection with the F word beer: "We never thought that our beer drinking customers would have thought that the alcoholic beverage coming out of the tap would have actually been from one of the many, many, many stores located a few

¹⁴ See EXIT 6 PUB AND BREWERY, *Our Beers*, <http://exit6brewery.com/our-beers> (last visited Apr. 15, 2016); EXIT 6 PUB AND BREWERY, *Current Tap/Cask List (24)* (May 14 2016 06:49 PM), <http://exit6brewery.com/what-s-on-tap>; EXIT 6 PUB AND BREWERY, *Current Bottle/Can List (118)* (May 14 2016 06:49 PM), <http://exit6brewery.com/bottle-list>.

¹⁵ See EXIT 6 PUB AND BREWERY, *supra* note 13.

¹⁶ See Peterson, *supra* note 7.

blocks away.”¹⁷ Britton went on to say, “I guess that with there being a Starbucks on every corner of every block in every city that some people may think they could get a Starbucks at a local bar. So that was our mistake.”¹⁸ Britton also commented that, “Unfortunately it was only similar to the F Word because we meant to call it the same thing. Lucky for us, we’re poor spellers.”¹⁹ Britton promised that Exit 6 would stop production of its “Starbucks-McDonalds-Coca Cola-Malboro Honey Lager” for fear of further reprisal. Notwithstanding the incident, Britton expressed a desire to remain on good terms with ... “Starbucks and Mr Bucks in General. ...” As a result, Britton enclosed a check for \$6 with his letter, the full amount of profit gained from the sale of the three beers sold using “dastardly F Word naming practice.”²⁰

B. *Developing the Assignment*

The author of this note was the instructor of the courses involved in this case study. The original debut of the letter exchange between Kramer and Britton took place in two sections of an undergraduate business law course (42 total students) during the winter 2014 semester. Students were provided with copies of the letters to stimulate class discussion on the subject of intellectual property law. There was no assignment connected to the letters at that time. Based on student engagement and interest during class discussion of the incident, however, the instructor determined that incorporating the letters into a formal, substantive class assignment in future semesters would enhance student learning in a humorous and novel way.

Beginning in the fall 2014 semester, 39 students in two sections of business law completed a formal assignment on the Starbucks Exit 6 incident consisting of four sub-parts: (a) initial read-through and critical reflection paper; (b) follow-up critical reflection paper; (c) in-class discussion; and (d) survey evaluating several characteristics of the assignment. Thirty-five undergraduate students completed the Starbucks – Exit 6 assignment and survey in the winter 2015 semester, followed by 29 students in the fall 2015 semester, and 30 students in the winter 2016 semester, for a total of 133 students.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ For the full text of the letter, see Hartsell, *supra* note 7.

C. Initial Read-through and Critical Reflection Paper

Prior to completing the assigned readings on intellectual property law from the course textbook, students are given copies of the letter exchange and asked to draft a minimum one page critical reflection paper in response to the letters.²¹ Students are given several guidelines by the instructor in connection with this portion of the assignment. Specifically, students are asked to read the letters and respond to the following questions at a minimum: (a) Did you hear about the Starbucks-Exit 6 incident prior to this assignment? (b) Do you believe the cease and desist request is a waste of time and resources by Starbucks? and (c) If you were in Starbucks' position, would you have taken the same action against Exit 6? Why or why not? To increase the likelihood of authentic responses, students are reminded that grades are based on the quality of their reflections, rather than whether they reach a "correct" conclusion. In addition, students are asked not to review any assigned textbook readings or engage in outside research prior to completing the reflection paper.²²

D. Follow-Up Critical Reflection Paper

Once students submitted their initial critical reflection papers, they were then asked to read through the assigned textbook materials on intellectual property law as well as supplementary reading materials provided by the instructor.²³ Students then completed a follow-up critical reflection paper where they reevaluated their initial perceptions on the Starbucks Exit 6 incident in light of the reading materials.²⁴ Specifically, students addressed the following points: (a) In light of trademark dilution, what are the potential consequences for a company that fails to investigate or take action? (b) Do you believe the cease and desist request is a waste of time and resources by Starbucks? (c) Did your initial view on Starbucks' cease and desist request

²¹ A copy of the assignment instructions distributed to students is located in Appendix A.

²² A limitation of the assignment is a presumption by the instructor that students at the undergraduate level have limited exposure to trademark law principles prior to exposure in business law or similar courses. Although students may have some familiarity with what a trademark is, they are less likely to have a firm grasp of the concept of dilution.

²³ Although course textbooks provide a solid foundation of basic trademark law concepts, students are provided with supplemental materials that include a more detailed description of trademark dilution. In addition, students are given information on other cases where Starbucks instituted legal action to protect its trademarks from dilution. Supplemental resources include the following: text of the 15 U.S.C. § 1125 (2016); *Moseley v. V Secret Catalogue, Inc.*, 537 U.S. 418, 418 (2003); *Overview of Trademark Law*, BERKMAN CENTER FOR INTERNET AND SOCIETY, <http://cyber.harvard.edu/metaschool/fisher/domain/tm.htm>.

²⁴ A copy of the assignment instructions distributed to students is located in Appendix B.

change? Why or why not? and (d) If you were in Starbucks' position, would you have taken the same action against Exit 6? Why or why not?

E. *In-Class Discussion*

After completion of the follow-up reflection paper and a brief lecture outlining the basic principles of trademark dilution law, students engaged in an active dialogue with classmates and the instructor by sharing their reactions to the assignment and what they learned with the class. In addition to discussing how and why trademark law principles drove the interactions between counsel for Starbucks and Exit 6, students were also asked to describe whether their initial opinions about the incident changed after reviewing course materials and engaging in additional reflection. Students were also asked whether they would have taken the same action against Exit 6 and whether the assignment changed their views on the role that lawyers and the legal system play in the business world.²⁵ To close out the discussion, the instructor asked students how the Starbucks Exit 6 incident compared to other incidents involving potential misuse of the Starbucks trademark.²⁶

II. PEDAGOGICAL GOALS OF THE ASSIGNMENT

The patchwork of demanding expectations placed upon business schools by AACSB, employers, and students encourages constant innovation in teaching techniques.²⁷ Despite the historical significance of the Langdellian

²⁵ To examine the impact of biases, beliefs, and preconceived views on decision-making, students watched a TED TALK video on biases during the in-class discussion. See Yassmin Abdel-Magied: *What does my headscarf mean to you?*, TED (Dec. 2014), http://www.ted.com/talks/yassmin_abdel_magied_what_does_my_headscarf_mean_to_you (looking beyond initial perceptions will open the door to new ways of supporting and encourage others people).

²⁶ For more information on the other trademark disputes involving Starbucks, see Anthony Kurzweil, *Dumb Starbucks' Shut Down as Comedian Behind it Announces NYC Plans*, KTLA (Feb. 10, 2014, 5:32 PM), <http://ktla.com/2014/02/10/starbucks-responds-to-dumb-starbucks-parody-shop-2/>; Tenny Tatusian, *Comedy Central's Nathan Fielder is Behind Dumb Starbucks*, L.A. TIMES (Feb. 10, 2014, 4:34 PM), <http://www.latimes.com/food/dailydish/ladd-nathan-fielder-dumb-starbucks-story.html>; Jonathan Stempel, *'Charbucks' Not A Trademark Violation Despite Starbucks Appeal, Court Rules*, THE HUFFINGTON POST (Jan. 15, 2013, 12:43 PM), http://www.huffingtonpost.com/2013/11/15/starbucks-loses-charbuck_n_4283018.htm.

²⁷ See, e.g., Manoj Athavale, Rod Davis, & Mark Myring, *The Integrated Business Curriculum: An Examination of Perceptions and Practices*, 83 J. EDUC. BUS. 295, 295 (2008).

method in law school education,²⁸ a growing body of scholarship suggests that the case method not only fails to present students with an accurate picture of the litigation process, but also fails to properly situate litigation and the law within a larger business context.²⁹ In addition to providing students with the practical knowledge and skills they will need to address real-world legal scenarios that they will encounter in the business world, the changing nature of the legal environment of business also requires a change in perspective towards the importance of law to strategic advantage. Senior managers from diverse companies, countries, and industries rank law as one of the three most valuable subjects in the business school curriculum.³⁰

Recent curricular developments and enhancements demonstrate a response by the academic community to the evolving needs of industry. For instance, over 75% of ABA-accredited law schools offer joint JD/MBA degree program options.³¹ Select institutions have responded by creating business law centers and interdisciplinary courses.³² Business law instructors at both the undergraduate and graduate levels have employed numerous varieties of active learning exercises to help their students internalize key course concepts.³³ As noted above, the Starbucks – Exit 6 Assignment is

²⁸ See, e.g., Maxine Morgan-Thomas, *The Legal Studies Case Brief Assignment: Developing the Reading Comprehension Bridge to Critical Thinking*, 3 INT'L. J. BUS. & SOC. SCI. 75, 75 (2012) (Under the Langdellian case method, students learn law by reading court opinions).

²⁹ See, e.g., Michelle M. Harner & Robert J. Rhee, *Deal Deconstruction, Case Studies, and Case Simulations: Toward Practice Readiness with New Pedagogies in Teaching Business and Transactional Law*, 3 AM. UNIV. BUS. L. REV. 81, 83 (2014) (students need to think beyond the narrow universe established by appellate decisions); Evan A. Peterson, *Business Law 360 Degrees: Bridging the Gap between theory and practice*, 4 J. MGMT. & SUSTAINABILITY 102 (2013) (case briefing and mock trial exercises are insufficient for the needs of today's business students, as these exercises fail to adequately address legal issues that business students will encounter as future managers and executives).

³⁰ See Siedel & Haapio, *supra* note 3, at 2.

³¹ See, e.g., Luppino, *supra* note 3.

³² See Evan A. Peterson, Michael D. Bernacchi, Dhruv S. Patel, & John T. Oziem, *Law School-Business School Collaboration: An Examination of Interdisciplinary Courses in JD/MBA Programs*, 18 Atl. L. J. 27 (2016) (Numerous institutions house business law centers that have taken proactive steps to advance the interdisciplinary course offerings available to their students, including Stanford Law School Arthur and Toni Rembe Rock Center for Corporate Governance; University of Texas School of Law Kay Bailey Hutchison Center for Energy, Law, and Business; Harvard Law School John M. Olin Center for Law, Economics, and Business; and the Yale Law School Center for the Study of Corporate Law).

³³ See, e.g., Deborah Maranville, *Infusing passion and context into the traditional law curriculum through experiential learning*, 51 J. LEGAL EDUC. 51 (2001); Cynthia Batt, *A Practice Continuum: Integrating Experiential Education into the Curriculum*, 7 ELON L. REV. 119 (2015); Charity Scott, *Collaborating with the Real World: Opportunities for Developing Skills and Values in Law Teaching*, 9 IND. HEALTH L. REV. 409 (2012); James G. Boggs, Amy E. Mickel, & Brooks C. Holtom, *Experiential learning through interactive drama: an alternative to student role plays*, 31 J. MGMT. EDUC. 832 (2007); Franklyn P. Salimbene, Anthony F. Buono, Vicki Van Steenberg Lafarge, & Aaron J. Nurick, *Service-learning and*

designed to achieve three main objectives: (a) provide a means for students to gain valuable insight into the basic legal principles of trademark dilution; (b) help students internalize these principles by critically examining them in the context of a real-world example; and (c) support students' recognition of how their biases and misperceptions of the law may encumber their abilities to critically evaluate legal disputes.

A. *Brief Primer on Trademark Law*

The Starbucks – Exit 6 Assignment contributed to student learning by presenting essential trademark dilution concepts in a novel and comical fashion.³⁴ A trademark is any word, symbol, or phrase used to identify the source of a particular manufacturer or seller's products and to distinguish them from the products of others.³⁵ The purpose of a trademark is to assist consumers in quickly identifying the source of good and incentivize manufacturers to invest in the quality of their products.³⁶ To receive the perpetual benefits and protections of federal trademark law, the owner of a trademark must take the necessary steps to enforce or “police” the trademark. The failure to actively use a trademark as well as defend against infringement, through litigation if necessary, will result in a loss of trademark protections.³⁷

Management Education: The Bentley Experience, 4 ACAD. MGMT. LEARNING & EDUC. 336 (2005); Celeste M. Hammond, *Borrowing from the B Schools: The Legal Case Study as Course Materials for Transactions Oriented Elective Courses: A Response to the Challenges of the MacCrate Report and the Carnegie Foundation for Advancement of Teaching Report on Legal Education*, 11 TRANSACTIONS: TENN. J. BUS. L. 9 (2009); Tina Stark, *Thinking like a Deal Lawyer*, 54 J. LEGAL EDUC. 223 (2004); Michelle Harner & Robert J. Rhee, *Deal Deconstruction, Case Studies, and Case Simulations: Toward Practice Readiness with New Pedagogies in Teaching Business and Transactional Law*, 3 AM. U. BUS. L. REV. 81 (2014).
³⁴ See, e.g., RONALD A. BERK, *HUMOR AS AN INSTRUCTIONAL DEFIBRILLATOR: EVIDENCE-BASED TECHNIQUES IN TEACHING AND ASSESSMENT* (2002); RONALD A. BERK, *PROFESSORS ARE FROM MARS, STUDENTS ARE FROM SNICKERS: HOW TO WRITE AND DELIVER HUMOR IN THE CLASSROOM AND IN PROFESSIONAL PRESENTATIONS* (2003); Ronald A. Berk, *Laughterpiece Theater: Humor as a Systematic Teaching Tool*, CENTER FOR TEACHING (2005), https://cft.vanderbilt.edu/wp-content/uploads/sites/59/vol117no2_humor_as_tool.html; Sarah E. Torok, Robert F. McMorris, & Wen-Chi Lin, *Is Humor an Appreciated Teaching Tool? Perceptions of Professors' Teaching Styles and Use of Humor*, 52 C. TEACHING 14 (2004); Melissa B. Wanzer, Ann B. Frymier, Ann M. Wojtaszczyk, & Tony Smith, *Appropriate and Inappropriate Uses of Humor by Teachers*, 55 COMM. EDUC. 178 (2006).

³⁵ See 15 U.S.C. § 1127.

³⁶ See, e.g., *Overview of Trademark Law*, BERKMAN CENTER FOR INTERNET AND SOCIETY, http://cyber.law.harvard.edu/meta_school/fisher/domain/tm.htm.

³⁷ See, e.g., John R. Harris, *Nuances of Trademark Protection: Policing, Bullying and Shaming*, TECH LAW & BUSINESS REPORT, <http://www.mmmtechlaw.com/nuances-of-trademark-protection-policing-bullying-and-shaming/>.

A necessary element to establishing a case for trademark infringement under the Lanham Act requires the plaintiff to establish a likelihood of confusion among reasonable consumers.³⁸ To determine the likelihood of such confusions, courts established a balancing test consisting of the following non-exhaustive factors: (a) strength of mark; (b) proximity of goods; (c) similarity of marks; (d) evidence of actual confusion; (e) marketing channels used; (f) type of goods and degree of care likely to be exercised by purchaser; (g) defendant's intent in selecting mark; and (h) likelihood of expansion of product lines.³⁹

In addition to the infringement protections afforded by the Lanham Act, trademark owners also receive additional protections under the Federal Trademark Dilution Act of 1996 (FTDA) and the Trademark Dilution Revision Act of 2006 (TDRA). The FTDA established consistent protections for “famous” trademarks through the creation of a cause of action for dilution.⁴⁰ Due to a disagreement in the lower courts regarding whether dilution claims necessitated a demonstration of actual dilution versus the likelihood of dilution, in 2003 the U.S. Supreme Court held that trademark owners were required to demonstrate actual dilution of a famous mark.⁴¹ Three years later, Congress enacted the TDRA to provide further clarification on the concept of dilution.

Notable developments contained in the TDRA include the following: (a) trademark owners only need to demonstrate a likelihood of dilution to receive injunctive relief; (b) dilution by blurring and dilution by tarnishment give rise to separate actions; and (c) an exemption for fair use parodies.⁴² Specifically, trademark owners are entitled to injunctive relief against others who instigate ... “use of a mark or trade name in commerce that is likely to cause dilution by blurring or dilution by tarnishment of the famous mark, regardless of the presence or absence of actual or likely confusion, of competition, or of actual economic injury.”⁴³ Dilution by blurring

³⁸ *Dep't of Parks & Recreation v. Bazaar Del Mundo Inc.*, 448 F.3d 1118, 1124 (9th Cir. 2006).

³⁹ *Network Automation, Inc. v. Advanced Sys. Concepts, Inc.*, 638 F.3d 1137, 1145 (9th Cir. 2011).

⁴⁰ For a more substantive overview of trademark dilution, see, e.g., Matthew D. Bunker & Kim Bissell, *Lost in the Semiotic Maze: Empirical Approaches to Proof of Blurring in Trademark Dilution Law*, 18 COMM. L. & POL'Y. 375 (2013); Jerre B. Swann, *The Evolution of Dilution in the United States from 1927 to 2013*, 103 THE TRADEMARK REP. 721 (2013); Haochen Sun, *Reforming Anti-Dilution Protection in the Globalization of Luxury Brands*, 45 GEO. J. INT'L L. 783 (2014); Derek A. Hawkins, *Likelihood of Destruction-Restructuring the Trademark Dilution by Blurring Factors in the Trademark Dilution Revision Act of 2006*, 18 MARQ. INTELL. PROP. L. REV. 409, 411 (2014).

⁴¹ *Moseley v. V Secret Catalogue, Inc.*, 537 U.S. 418, 418 (2003).

⁴² 15 U.S.C. § 1125(c)(1)-(3) (2016).

⁴³ *Id.* at § 1125(c)(1).

encompasses associations that arise due to the similarity between a mark and a famous mark that impair the distinctiveness of the famous mark.⁴⁴ By the same token, dilution by tarnishment covers associations that stem from the similarity between a mark and a famous mark which damage the reputation of the famous mark.⁴⁵ Although the legislator failed to provide additional clarity to the term ‘tarnishment’ in the statute beyond a basic definition, it did enumerate a non-exhaustive list of factors that courts may consider when assessing dilution by blurring:

- (i) The degree of similarity between the mark or trade name and the famous mark.
- (ii) The degree of inherent or acquired distinctiveness of the famous mark.
- (iii) The extent to which the owner of the famous mark is engaging in substantially exclusive use of the mark.
- (iv) The degree of recognition of the famous mark.
- (v) Whether the user of the mark or trade name intended to create an association with the famous mark.
- (vi) Any actual association between the mark or trade name and the famous mark.⁴⁶

A review of the Starbucks Exit 6 incident in connection with the above factors provides a sizeable level of support for Starbucks’ actions.

- Degree of similarity – The two marks, “Frappuccino” and “Frappicino,” are phonetically identical and differ by only one letter.⁴⁷
- Distinctiveness of famous mark – The range of products offered by Starbucks includes more than thirty blends and single-origin premium coffees, smoothies, teas, merchandise, fresh food, and ready-to-drink (RTD) beverages.⁴⁸
- Substantially exclusive use of famous mark – Starbucks has an active practice of enforcing its trademarks through cease and desist letters and litigation when necessary.⁴⁹

⁴⁴ *Id.* at § 1125(c)(2)(B).

⁴⁵ *Id.* at § 1125(c)(2)(C).

⁴⁶ 15 U.S.C. § 1125 (c)(2)(B) (i-vi) (2016).

⁴⁷ See Peterson, *supra* note 7.

⁴⁸ See STARBUCKS, *supra* note 8.

⁴⁹ See, e.g., Nat Rudarakanchana, *Starbucks (SBUX) Defends Frappuccino Cease-And-Desist Letter Sent To Little Exit 6 Brewery*, INTERNATIONAL BUSINESS TIMES (Jan. 3, 2014, 9:08 AM), <http://www.ibtimes.com/starbucks-sbux-defends-frappuccino-cease-desist-letter-sent-little->

- Famous mark degree of recognition – Starbucks’ advertising expenditures of \$205.8 million, \$198.9 million, and \$227.9 million in 2013, 2014, and 2015 respectively contribute to the company’s prominence as a global brand.⁵⁰
- Intended association with famous mark – The owner of Exit 6 asserted that there was never any intent to deceive or confuse Starbucks customers.⁵¹
- Actual association with famous mark – Given that Exit 6 only sold 3 beers with the offending name, for a total profit of \$6, the chance of actual confusion is virtually nonexistent.⁵²

B. Applying Course Concepts to Real World Examples Using Active Learning

The Starbucks – Exit 6 Assignment was designed to facilitate the examination of a real world business law scenario using the process of active learning. A wide range of scholarship supports the educational benefits of applying the active learning process to the study of current events and real world examples in an effort to develop student understanding of complex issues. Student learning is paramount when students are actively engaged and involved in the course material.⁵³ Active learning refers to a method of instruction that engages students in the learning process.⁵⁴ There are four main approaches to active learning in the classroom: (a) individual activities, (b) paired activities, (c) informal small groups, and (d) cooperative student projects.⁵⁵ The suitability of each approach depends on a variety of factors, including preferences of the instructor, time constraints, course objectives, physical space limitations, and the size of the class.⁵⁶ Fortunately, there numerous ways that an instructor may integrate active learning into his or her course, including: (a) collaborative writing; (b) brainstorming; (c) peer teaching; (d) role-playing; (e) project-based learning; (f) case-based

exit-6-brewery-1525806; John Stossel & Alan B. Goldberg, *Starbucks vs. Sambucks Coffee*, ABC NEWS (Dec. 9, 2005) <http://abcnews.go.com/2020/GiveMeABreak/story?id=1390867>.

⁵⁰ See STARBUCKS, *supra* note 11.

⁵¹ See Peterson, *supra* note 7.

⁵² See Lacey-Bordeaux & Alsup, *supra* note 7.

⁵³ See, e.g., Lucille M. Ponte, *The Case of the Unhappy Sports Fan: Embracing Student-Centered Learning and Promoting Upper-Level Cognitive Skills through an Online Dispute Resolution Simulation*, 23 J. LEGAL STUD. EDUC. 169, 169–170 (2006).

⁵⁴ See Michael Prince, *Does Active Learning Work? A Review of the Research*, 93 J. ENGR. EDUC. 223, 223 (2004).

⁵⁵ See Z. Zayapragassarazan & Santosh Kumar, *Active Learning Methods*, 19 NTTC BULLETIN 3, 3 (2012).

⁵⁶ *Id.*

instruction; and (g) simulations.⁵⁷ Active learning strategies support the development of numerous student competencies, including communication skills, the appreciation of law and ethics, and the management of uncertainty.⁵⁸ For instance, problem-based learning, an instructional method that centers on using real world problems to provide relevant context for the learning process, enhances students' problem-solving and critical thinking skills, collaboration skills, written and oral communication skills, information evaluation skills, and creativity.⁵⁹ As noted by Odom and Gonzalez,⁶⁰ effective problem-based scenarios provide students with a relevant context for the course materials, through which they can readily relate problems critical issues to a real world context and bridge the gap between theory and practice. The benefits to student engagement inherent in integrating active learning into classroom exercises are particularly necessary to the education of millennial students.⁶¹

The Starbucks – Exit 6 Assignment incorporated active learning into the classroom in several ways, including case-based instruction, project-based learning, and brainstorming. Although Starbucks – Exit 6 assignment was used only in classes at the undergraduate level, the underlying incident may support a variety of assignments in both undergraduate and graduate level business law and legal environment courses. Instructors may easily incorporate other active learning approaches and techniques by altering the format of the assignment. For instance, students can study the intellectual property issues inherent in new product development by developing and “branding” a fictitious beverage product. Once students develop a product name, they can conduct a preliminary search on the United States Patent and Trademark Office (USPTO) website to determine whether their “mark” has already been claimed by a different company.⁶² Business law instructors who wish to create a more developed, substantive assignment may incorporate the

⁵⁷ *Id.*

⁵⁸ See Alan L. Neville, *Problem-Based Learning and Medical Education Forty Years In: A Review of its Effects on Knowledge and Clinical Performance*, 18 MED. PRINC. & PRACT. 1, 7 (2009).

⁵⁹ See Prince, *supra* note 44.

⁶⁰ Lamar Odom & Analco Gonzalez, *Kelo v. City of New London: An Ideal Case to Teach Ethical and Legal Principles*, 25 J. LEGAL STUD. EDUC. 343, 347 (2008).

⁶¹ See, e.g., Amy Roehl, Shweta Linga Reddy, & Gayla Jett Shannon, *The Flipped Classroom: An Opportunity To Engage Millennial Students Through Active Learning Strategies*, 105 J. FAM. & CONSUMER SCI. 44 (2013); Kathy L. Dean & James P. Jolly, *Student Identity, Disengagement, and Learning*, 11 ACAD. MGMT. LEARNING & EDUC. 228 (2012); Philip Hallinger & Jiafend Lu, *Assessing the Instructional Effectiveness of Problem-based Management Education in Thailand: A Longitudinal evaluation*, 42 MGMT. LEARNING, 279 (2011).

⁶² Students may search existing trademarks using the Trademark Electronic Search System (TESS) located at <http://tmsearch.uspto.gov/bin/gate.exe?f=tess&state=4805:qwm712.1.1>.

trademark search task into a larger assignment on new product development by also asking students to address legal issues related to torts, marketing and advertising, business entity selection, and ethical sourcing/production.⁶³ Another potential assignment may ask students to compare and contrast the Starbucks Exit 6 incident to 2 or 3 similar trademark disputes that resulted in litigation. Such an assignment may allow students to engage in an even deeper discussion of the details and nuances of trademark dilution. A third potential assignment may solicit a comparison of the trademark laws of the United States with the trademark laws of 2 or 3 other countries of the students' own choosing. Although such an assignment is likely more appropriate for a course on international business law, the instructor may use such an assignment to provide student with additional perspective of United States trademark laws in a global context. This brief list represents only a small snapshot of the diverse potential uses for the Starbucks Exit 6 incident in the classroom.

C. Recognizing Biases in Decision-Making

According to McCann, Haltom, and Bloom, three features influence contemporary American perspectives towards the legal system: (a) methods utilized by reformers to inundate popular culture with the notion that plaintiffs' greed has risen to uncontrolled levels; (b) institutional practices of the mass media related to the news coverage of civil litigation; and (c) ideological predispositions towards the role of law in private life.⁶⁴ McCann, et al. further noted that these three elements were present collectively in perhaps the most infamous tort case in recent decades, *Liebeck v. McDonald's Restaurants*.⁶⁵ In addition to *Liebeck*, popular culture contains

⁶³ For instance, students may examine the legal liabilities stemming from marketing and advertising by creating a fictitious product label or advertisement and addressing the express warranties that are created through directions for product use, nutrition facts, product ingredients, or statements on product quality.

⁶⁴ See Michael McCann, William Haltom, & Anne Bloom, *Java Jive: Genealogy of A Juridical Icon*, 56 U. MIAMI L. REV. 113 (2001).

⁶⁵ *Liebeck v. McDonald's Rest., P.T.S. Inc.*, No. CV-93-02419, 1995 WL 360309 (N.M. Dist. Ct. Aug. 18, 1994) (Jury awarded \$2.86 million to plaintiff Stella Liebeck who suffered third-degree burns after accidentally spilling hot coffee from a McDonald's restaurant in her lap); see also McCann, et al., *supra* note 3 ("In short, our analysis attempts to provide insights into the complex, multi-dimensional process by which narrative constructions in the courtroom, the press, and popular culture transformed the complaint of a badly burned grandmother into an icon for runaway litigiousness."). See also Rosemary Hartigan et al., *Critical Thinking and the McDonald's Hot Coffee Case: A Pedagogical Note*, 24 S. L. J. 337, 364 (2014) (pedagogical note on using the McDonalds case to teach critical thinking skills in legal studies courses).

numerous other examples of bizarre legal cases that stand to potentially influence prevailing views towards the U.S. legal system.⁶⁶

In light of such cases, the views of undergraduate students towards the law are not necessarily surprising. For instance, at the start of each new semester, the instructor distributes an informal survey asking students to provide basic information on what teaching techniques help them to best learn course materials, their post-graduation career goals, and personal interests and hobbies. The survey also includes an item asking students to rate their initial level of interest in the study of business law.⁶⁷ Nearly without fail, the results fall into a familiar pattern.⁶⁸ Given the literature on managers' perceptions of lawyers and the legal system,⁶⁹ these results are

⁶⁶ See, e.g., *Haimes v. Temple University Hosp.*, 39 Pa. D. & C.3d 381 (Pa. Ct. Com. Pl. 1986) (jury awarded \$600,000 to plaintiff who filed a medical malpractice claim alleging that a CT scan prevented her from practicing her occupation as a psychic); Matt Smith, 'Froot' is Not Fruit, *San Francisco Lawsuit Alleges*, SF WEEKLY (Sept. 29, 2009, 9:30 AM), <http://archives.sfweekly.com/thesnitch/2009/09/29/froot-is-not-fruit-san-francisco-lawsuit-alleges> (plaintiff alleged that he purchased Froot Loops cereal based on a mistaken belief the product contained fruit); Elisha Fieldstadt, *Pimp Sues Nike for Not Warning Shoes could be Dangerous if Used to Beat People*, NBC NEWS (Jan. 11, 2014, 1:20 PM) http://usnews.nbcnews.com/_news/2014/01/11/22268548-pimp-sues-nike-for-not-warning-shoes-could-be-dangerous-if-used-to-beat-people (plaintiff sued Nike for not warning him that their shoes could be used as a dangerous weapon); Lloyd Vries, *Get An Earring, Join The Lawsuit*, CBS NEWS (July 19, 2006, 11:01 AM), <http://www.cbsnews.com/news/get-an-earring-join-the-lawsuit/> (plaintiff sued Michael Jordan because he was tired of people mistaking him for the basketball legend); Randy Spencer, *Tom and Jerry Go To Court*, COVERAGE OPINIONS (DEC. 3, 2014), <http://www.coverageopinions.info/Vol3Issue16/RandySpencer.html> (website chronicling real-life "common cartoon accidents" that result in litigation); Helena A. Haapio, *Proactive Contracting: Using Contracts for Business Success and Problem Prevention*, INTERNATIONAL CONTRACT MANUAL § 25:10 (Albert H. Kritzer et al. eds., 2015) (continued depiction of lawyers as "fighters" in movies and television shows obscures the roles and actions that lawyers pursue beyond the courtroom).

⁶⁷ A copy of the course introductory survey is located in Appendix D.

⁶⁸ The survey results from the instructor's most recent business law course indicated that approximately 18% of students wished to attend law school and had a genuine interest in the law. Approximately 23% indicated that although they do not necessarily have an interest in business law, they were willing to learn more about the topic. Forty-five percent of students expressed indifference to the study of business law, while 14% indicated that the course was not relevant to their career goals or personal life. After distributing the survey for almost three years, no student has indicated a belief that the law is completely boring or useless.

⁶⁹ See, e.g., Richard S. Gruner, *Lean Law Compliance: Confronting and Overcoming Legal Uncertainty in Business Enterprises and Other Complex Organizations*, 11 NYU J. L. & BUS. 247, 255 (one managerial view of the law . . . "treats legal requirements as the equivalent of the weather -- that is, as sources of constraining forces that limit activities and that must be responded to when problems arise. . ."); David Orozco, *Legal Knowledge as an Intellectual Property Management Resource*, 47 AM. BUS. L. J. 687, 687 (2010) (" . . . To a surprisingly large degree, managers have yet to fully grasp the strategic aspects of legal decision making."); Justin W. Evans & Anthony L. Gabel, *Legal Competitive Advantage and Legal*

expected to a certain degree. The question then becomes, how can business law instructors effectively educate and maintain the interest of students with diverse views and levels of interest in the subject matter throughout the course of an entire semester?

The Starbucks – Exit 6 Assignment assists students in examining the biases and preconceived notions that they bring to the study of business law in general, and the corporate use of trademark law protections in particular, from various sources, including the media, popular culture, and past experiences. Biases are inherent to the decision-making process.⁷⁰ Despite this fact, however, decision-makers routinely fail to recognize that true, unadulterated decision-making, unsullied by any form of bias, is habitually beyond their grasp.⁷¹ Unconscious reactions frequently undermine rational decision-making and mislead decision-makers into believing that they have made rational decisions.⁷²

Sources of potential bias include emotional motivations, moral motivations, and social influences.⁷³ As noted by Lee and Lebowitz,⁷⁴ a variety of common biases hinder one's ability to engage in rational decision-making, including:

Entrepreneurship: A Preliminary International Framework, 39 N.C.J. INT'L L. & COM. REG., 333, 335 (2013) (“The dissonance between managers and attorneys has led to the law's pronounced neglect as a strategic business resource.”); Siedel & Haapio, *supra* note 15 at 647 (“managers often think of law as a burden or obstacle rather than a source of competitive advantage.”); Robert C. Bird, *The Many Futures of Legal Strategy*, 47 AM. BUS. L. J. 575, 575 (2010) (“Managers view the regulatory environment as an impediment to growth and the lawyer's sole province.”).

⁷⁰ See, e.g., REID HASTIE & ROBYN M. DAWES, RATIONAL CHOICE IN AN UNCERTAIN WORLD (2010); DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2012); Daniel Kahneman, Dan Lovallo, & Olivier Sibony, *Before You Make that Big Decision*, 89 HARV. BUS. REV. 50 (2011).

⁷¹ See Dan Ariely: *Are We in Control of Our Own Decisions?*, TED (Dec. 2008), http://www.ted.com/talks/dan_ariely_asks_are_we_in_control_of_our_own_decisions.html (people are not as rational as they think they are when they make decisions).

⁷² See, e.g., Laura A. Kaster, *Improving Lawyer Judgment by Reducing the Impact of “Client-Think,”* 67 DISP. RESOL. J. 56 (2012).

⁷³ See, e.g., George F. Loewenstein, Elke U. Weber, Christopher K. Hsee, & Ned Welch, *Risk as Feelings*, 127 PSYCHOL. BULL. 267 (2001); Hans-Rüdiger Pfister & Gisela Böhm, *The Multiplicity of Emotions: A Framework of Emotional Functions in Decision Making*, 3 JUDGMENT & DECISION MAKING 5 (2008); X. T. Wang, Frederic Simons, Brédart, Serge, *Social Cues and Verbal Framing in Risky Choice*, 14 J. BEHAV. DECISION MAKING 1 (2001); Eldad Yechiam, Meir Druyvan, & Eyal Ert, *Observing Others' Behavior and Risk Taking in Decisions from Experience*, 3 JUDGMENT & DECISION MAKING. 493 (2008).

⁷⁴ See, e.g., Samantha Lee & Shana Lebowitz, *20 Cognitive Biases that Screw Up Your Decisions*, BUSINESS INSIDER (Aug. 26, 2015, 12:28 PM), <http://www.businessinsider.com/cognitive-biases-that-affect-decisions-2015-8>.

- *Anchoring bias – overreliance on the first piece of information obtained*
- *Availability heuristic bias – overestimation of the importance of available information*
- *Bandwagon effect bias – tendency to adopt a belief that is held by others*
- *Choice-supportive bias – positive feelings towards a decision despite awareness of inherent flaws*
- *Confirmation bias – exclusion of any information that fails to confirm preconceptions*
- *Conservatism bias – favoritism towards prior information over newly discovered information*
- *Outcome bias – evaluation of decision based on outcome rather than on decision-making process*
- *Selective perception bias – perception of outcome based on initial expectations*

III. OVERVIEW OF THE RESULTS

A. Summary of Students' Initial Views

The instructor reviewed a total of 133 student responses from five sections of business law over a period of two academic years.⁷⁵ As indicated in Table 1, student responses in the initial read-through reflection paper revealed that the incident was not widely recognized among the instructor's business law students. In spite of coverage of the incident by a variety of media outlets,⁷⁶ the lack of prior exposure among most of the instructor's business law students is not necessarily surprising. Of the sixteen students who had prior knowledge of the incident, most learned about the incident on the internet, three learned about it from talking with students from the instructor's winter 2014 business law course. Despite the fact that a majority of the students did not have knowledge of the incident prior to exposure in class, most of them expressed strong initial opinions on the incident.

In response to the second question, 72 students (or 54%) believed Starbucks' actions were wasteful, 39 students (or 29%) believed Starbucks' actions were not wasteful, and 22 students (or 17%) were uncertain whether

⁷⁵ Intercoder agreement was employed to increase reliability of the results. Each semester, the instructor compared his coding of student responses submitted during that semester to the coding of his graduate assistant.

⁷⁶ See, Peterson et al., *supra* note 7.

Starbucks' actions were wasteful or not wasteful.⁷⁷ As the instructor anticipated, the initial reading invoked a variety of emotional reactions from students regarding Starbucks' conduct. Student responses included comments such as, "ridiculous," "a joke," "stupid," "insane," and "lame as hell." In addition, students cited the role of lawyers and the legal system in their questioning of the legality and ethicality of Starbucks' actions. For example, several students referred to lawyers as, "greedy pigs," "ambulance chasers," "rats," "scum," and "thieves," while others cited their favorite pop culture lawyer jokes. Several students also expressed their distaste for the brand, claiming Starbucks wanted to "eradicate mom and pop coffee shops." Interestingly, several students included incorrect statements of the law in support of their positions.⁷⁸

In response to the third question, 48 students (or 36%) indicated they would take the same action as Starbucks, 71 students (or 53%) would not take the same action, and 14 students (or 11%) were uncertain. A majority of the students who would not take the same action as Starbucks questioned the potential for consumer confusion between the two marks, with several citing the low sales by Exit 6 in support of their positions. Interestingly, a number of students who indicated Starbucks' actions were wasteful in question 2 indicated they would take the same action as Starbucks in question 3.

Table 1: Initial Read-through Responses

Prior Knowledge of Starbucks-Exit 6 Incident	
Yes	16 (12%)
No	117 (88%)
Total	133 (100%)
Pre-Reading Views on Cease and Desist Request	
Wasteful	72 (54%)
Not Wasteful	39 (29%)
Uncertain	22 (17%)
Total	133 (100%)
Pre-Reading Take Same Action as Starbucks	
Yes	48 (36%)
No	71 (53%)
Uncertain	14 (11%)

⁷⁷ See Appendix A. Students who failed to take a definite position, students who expressed a mistrust of the facts, and students who claimed an inability to answer due to lack of legal knowledge were coded as uncertain.

⁷⁸ For example, small segments of students cited a perceived lack of malicious motives by Exit 6 as a complete defense to infringement, intertwined trademark protections with copyright protections, and asserted that Exit 6's actions were protected by the First Amendment.

B. Summary of Students' Post Read-through Views

As expected, collectively students' perceptions of the Starbucks – Exit 6 incident demonstrated a significant transformation after examining the course textbook and supplemental reading materials on trademark law. Overall, most students were able to clearly articulate the potential consequences for a company that fails to take steps to protect its trademark. As indicated in Table 2, 38 students (or 29%) believed that Starbucks' actions were wasteful, 86 students (or 65%) believed that Starbucks' actions were not wasteful, and 9 students (or 7%) were uncertain whether Starbucks' actions were wasteful. Students who asserted that the company's actions were not wasteful cited the importance of a company taking active steps to preserve its trademark, even in cases that may seem trivial at first glance. Students who still thought Starbucks' actions were wasteful acknowledged that although they better understood the reasons behind the company's actions after examining course textbook and supplemental reading materials, they were still unconvinced that Exit 6's actions represented a legitimate threat to the Frappuccino trademark. Students who expressed uncertainty acknowledged the importance of preventing trademark dilution, but conveyed skepticism as to whether the doctrine was relevant in the Starbucks-Exit 6 incident.

With respect to the third question inquiring whether their views on Starbucks' cease and desist request changed after completing the assignment, 94 students (or 71%) indicated that their views did change, compared to 39 students (29%) whose views did not change. Overall, the general opinion of the class changed from sympathy for Exit 6's struggle in a David vs. Goliath confrontation scenario to understanding Starbucks' need to protect its trademarks from dilution. Students who initially expressed negative attitudes towards Kramer, Starbucks' attorney, later acknowledged that the attorney's December 9th letter reflected an accurate depiction of the law rather than "legalese," "legal mumbo jumbo," or "legal threats." Interestingly, several students who initially expressed the view that Starbucks' actions were not wasteful changed their positions to wasteful after reviewing the textbook and supplemental materials.

In response to the fourth question, 88 students (or 68%) indicated they would take the same action as Starbucks, compared to 41 students (or 32%) who would not take the same action. Four students (or 3%) still expressed uncertainty as to how they would proceed. Students primarily cited the importance of guarding against trademark dilution in support of their decisions. Students who indicated they would not take the same action as Starbucks' cited potential negative public relations consequences as well as the belief that Exit 6's beer failed to present a legitimate threat to the Frappuccino trademark.

Table 2: Post-Read through Responses

Follow-Up Paper Views on Cease and Desist Request	
Wasteful	38 (29%)
Not Wasteful	86 (65%)
Uncertain	9 (7%)
Total	133 (100%)
Follow-Up Paper Change in Viewpoint	
Yes	94 (71%)
No	39 (29%)
Total	133 (100%)
Follow-Up Paper Take Same Action as Starbucks	
Yes	88 (68%)
No	41 (32%)
Uncertain	4 (3%)

C. Evaluating the Assignment's Impact as a Teaching Tool

Alongside expressing their views about the case, students rated the effectiveness of the Starbucks – Exit 6 assignment as a teaching tool in conjunction with the materials on trademarks and intellectual property. Subsequent to the follow-up reflection paper but prior to the in-class discussion, students completed a short anonymous survey containing the following questions:

- (a) The assignment improved my understanding of the role trademarks play in brand protection;
- (b) The assignment improved my ability to examine a legal issue from multiple perspectives; and
- (c) The assignment improved my ability to recognize how biases towards the law may hinder my ability to critically evaluate legal disputes in a managerial setting.

Students responded using a 5-point Likert Scale (0-worst, 5-best). The frequency of student responses is noted in Table 3.⁷⁹

⁷⁹ A copy of the survey instrument is located in Appendix C.

Table 3: Frequency Distribution on Assignment Impact

Sample n = 133	Question 1	Question 2	Question 3
0	0	0	1
1	0	3	4
2	1	9	2
3	12	17	20
4	48	61	57
5	72	43	49

As expected, the Starbucks – Exit 6 assignment had a significant impact on helping students learn about the role that trademarks play in brand protection. Ninety percent of students gave the exercise a rating of 4 or better. In addition, nearly 80% of students indicated that the assignment helped them to examine contemporary legal issues from diverse viewpoints. Similarly, 80% of students also revealed that the assignment improved their ability to recognize how biases towards the law may hinder their ability to critically evaluate legal disputes in a managerial setting.

As future entrepreneurs, managers and business executives, students learn a variety of important lessons with respect to the enforcement of trademarks from the Starbucks – Exit 6 Assignment. The incident reinforces the importance of investigating and aggressively pursuing suspected cases of infringement. Even seemingly trivial instances of potential infringement, such as the sale of 3 beers, may ultimately lead to the loss of trademark protection status.⁸⁰ As a result, organizations must develop systems to monitor and guard against the unauthorized use of their brand trademarks. By the same token, to preserve its reputation from a public relations standpoint, the policing system established by the trademark owner must take corporate values into account.⁸¹ In contrast, budding entrepreneurs must conduct their due diligence to ensure that the names, designs, marketing and advertising materials connected to upcoming products do not infringe on existing trademarks.

Additionally, it is important for students to recognize and account for the influences that the media and popular culture may impose on their views of the legal actions taken by companies in defense of their intellectual property. The critical examination of a legal issue cannot occur if decision-making is clouded by a solitary reliance on such sources at the expense of further investigation of the facts and legal principles surrounding a given

⁸⁰ See Harris, *supra* note 37.

⁸¹ Sean P. Melvin, *Case Study of a Coffee War: Using the Starbucks v. Charbucks Dispute to Teach Trademark Dilution, Business Ethics, and the Strategic Value of Legal Acumen*, 29 J. LEGAL STUD. EDUC. 27, 53 (2012).

issue.⁸² Attitudes shape frames of reference, effectively creating filters to block the discovery of germane information.⁸³ In addition, corporate directors are bound to exercise care in their decision-making by acting only on an informed basis.⁸⁴ Specifically, directors have a duty to inform themselves of all reasonably available material information prior to making a business decision.⁸⁵ Consequently, the requirement to apply a “critical eye” to the assessment of existing information includes an obligation to look beyond the potential limiting perspectives of accounts supplied by the popular media.

IV. CONCLUDING REMARKS

In the tech-savvy age of today, faculty in higher education face a variety of challenges in keeping millennial students engaged within the classroom. The Starbucks – Exit 6 assignment is a modest attempt to stimulate business law students with diverse viewpoints and interests by comically presenting essential trademark concepts in a novel fashion. Students not only gain valuable insight into essential trademark principles of intellectual property law, but also learn how to apply a critical eye to legal events reflected in the media. The data also demonstrate that the assignment helps improve students’ understanding of the role trademarks play in brand protection; their ability to examine legal issues from multiple perspectives; and their ability to recognize how biases hinder decision-making. The Starbucks – Exit 6 assignment serves as a useful template for business law faculty who wish to educate their student in an entertaining and informative manner.

⁸² See Hartigan, et al., *supra* note 65, at 364.

⁸³ *Id.*

⁸⁴ See 1 R. FRANKLIN BALOTTI & JESSE A. FINKELSTEIN, BALOTTI AND FINKELSTEIN'S DELAWARE LAW OF CORPORATIONS AND BUSINESS ORGANIZATIONS § 4.15 (2015).

⁸⁵ *Sealy Mattress Co. of New Jersey, Inc. v. Sealy, Inc.*, 532 A.2d 1324, 1337 (Del. Ch. 1987).

APPENDIX A

Business Law: The Starbucks – Exit 6 Assignment

Critical Reflection Assignment Instructions:

Your goal for this assignment is to draft a minimum one page critical reflection paper in response to a cease and desist letter involving a real-life trademark dispute between Starbucks Coffee Company (Starbucks) and Exit 6 Pub and Brewery (Exit 6) in Cottleville, MO. You may access the letters from the following website:

http://www.huffingtonpost.com/2013/12/31/best-response-starbucks-cease-and-desist_n_4524621.html

At a minimum, your paper must address the following questions:

- (a) Did you hear about the Starbucks-Exit 6 incident prior to this assignment?
- (b) Do you believe the cease and desist request is a waste of time and resources by Starbucks?
- (c) If you were in Starbucks' position, would you have taken the same action against Exit 6? Why or why not?

Your grade for this assignment is based on the quality of your critical reflection, as opposed to whether or not you reach a “correct” conclusion. Please refrain from reviewing the assigned textbook readings or engaging in outside research in connection with this reflection assignment.

APPENDIX B

Business Law: The Starbucks – Exit 6 Assignment

Follow-Up Critical Reflection Paper:

As noted in the course syllabus, this assignment is a continuation of the critical reflection paper that you drafted in response to the trademark dispute between Starbucks and Exit 6. If you have not already done so, please read the assigned pages on intellectual property law in your course textbook as well as the supplementary reading materials. Once you have read and digested the materials, your next task is to draft a minimum two-page follow-up critical reflection paper.

At a minimum, your critical reflection paper must address the following questions:

- (a) In light of trademark dilution, what are the potential consequences for a company that fails to investigate or take action?
- (b) Do you believe the cease and desist request is a waste of time and resources by Starbucks?
- (c) Did your initial view on Starbucks' cease and desist request change? Why or why not?
- (d) If you were in Starbucks' position, would you have taken the same action against Exit 6? Why or why not?

Similar to the initial reflection paper on the Starbucks Exit 6 case, your grade for this assignment is based on the quality of your critical reflection rather than whether or not you reach a "correct" conclusion.

APPENDIX C

Business Law: The Starbucks – Exit 6 Assignment

Survey

Please respond to the following questions *based on your experience completing the Starbucks – Exit 6 Assignment*. Check the degree to which you agree or disagree with each of the following statements, where 1 = strongly disagree; 2 = disagree; 3 = neutral; 4 = agree; 5 = strongly agree.

Your responses to this survey are anonymous.

<i>Please check the appropriate level of agreement</i>	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
	1	2	3	4	5
1. The assignment improved my understanding of the role trademarks play in brand protection					
2. The assignment improved my ability to examine a legal issue from multiple perspectives					
3. The assignment improved my ability to recognize how biases towards the law may hinder my ability to critically evaluate legal disputes in a managerial setting					

Thank you for your response.

APPENDIX D

Name: _____

Business Law – Introduction to the Course Survey

1. What teaching techniques are most effective for your learning style? Examples may include: supplemental handouts, class lectures, visual aids (videos, charts, infographics), group discussions, role-playing demonstrations, hypotheticals, or group exercises.

2. What sets you apart from your classmates? What interests you? What are your hobbies?

3. What are your professional goals after graduation?

4. On a scale of 1 to 5 (at this very instant), how interested are you in the study of business law?
 1. Super excited. Law is awesome! I want to go to law school!
 2. Sort of excited. Business law might be interesting, but I'm not yet convinced. Tell me more.
 3. Indifferent. I'm stuck in this required course. Just tell me how to avoid speeding tickets and wake me when it's over.
 4. Sort of annoyed. Law is not relevant to my personal life or career goals.
 5. Super annoyed. Law could not be more boring or useless.