

Beware the Trademark Trolls Lurking Around the Schoolhouse

An Overview of Relevant IP Law, Recent Caselaw and Best Practices
for Texas School Lawyers

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Agenda

- ▶ Key Takeaways and Best Practices
- ▶ Lanham Act (trademark) Overview
- ▶ Copyright Law Overview
- ▶ Example of jury instructions involving school district and copyright claims.
- ▶ Review of recent and ongoing cases impacting Texas schools and intellectual property rights.
- ▶ TEA requirements for intellectual property rights involving federal funds.
- ▶ A proposed rethinking of Eleventh Amendment immunity and application to Texas school districts.
- ▶ A discussion of the Work for Hire Doctrine.



Key Takeaways and Best Practices

Common areas of concern for public schools, teachers, librarians, principals and all different types of administrators regarding potential IP Law exposure:

- ▶ Teacher webpages
- ▶ School logos and mascots (appearing on uniforms, goods and elsewhere)
- ▶ Curriculum use, worksheets, study guides and third-party materials
- ▶ Software use and licensing
- ▶ PTO, Boosters and Foundations and their use of school IP
- ▶ Use of federal funds and impact on IP rights
- ▶ Work For Hire doctrine for employees, contractors and vendors
- ▶ Posters and displays at school and classroom
- ▶ Construction (architectural designs and plans)

Key Takeaways and Best Practices...

Common areas of concern ...

- ▶ Music and Fine Arts (sheet music, marching band drill charts, plays, etc.)
- ▶ Playing movies and music at school (including streaming Netflix in classrooms, movies at assemblies, etc.)
- ▶ Student copyright to student works and school use of student works
- ▶ Selling and placing advertising on school buses, advertising at stadiums, banner-ads on websites, etc.
- ▶ Code written by IT department personnel (original or not) or specialized forms/tracking documents being created (or borrowed from)

Key Takeaways and Best Practices...

- ▶ Carefully review, and have broker review, your school's insurance policies and coverage, and specifically ensure you have coverage for trademark and copyright claims, not just "advertising injury" but true coverage.
- ▶ Acknowledge that IP litigation is often fact intensive, document intensive, can require many types of experts, may require sophisticated discovery management systems, and that costs of defense are often high because of this.

Key Takeaways and Best Practices...

Include copyright and trademark legal considerations in all contracts or agreements being reviewed.

- ▶ Be sure your school clients are complying with TEA's federal grant assurances that have specific IP requirements.
- ▶ Include appropriate warranties and representations from vendors or consultants that are creating works for the school or providing works for school use, to protect the school.
- ▶ Consider indemnification requirements where consultants or vendors are doing work that could bring copyright or trademark exposure.
- ▶ Consider standardizing work-for-hire language in employment agreements, contractor, vendor and consultant agreements, etc., to protect the school's investment in any created IP or derivative works.

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