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Beware the Trademark Trolls Lurking Around the Schoolhouse

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

For those of you, like me, who are impatient and like to skip ahead to dessert before supper or for the brave that like ice cream for breakfast... Blue Bell Ice Cream[®] of course...I offer you the following scientific Newsweek article to share with loved ones: <https://www.newsweek.com/why-eating-ice-cream-breakfast-good-you-study-524356>

And more importantly:

Key Takeaways and Best Practices

- 1) Public schools, teachers, librarians, principals and all different types of administrators have areas of potential IP Law exposure and need to pay attention. Common areas of concern:
 - 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)
 - 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)

- 2) 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.

- 3) 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.
- 4) Include copyright and trademark legal considerations in all contracts or agreements being reviewed. It comes up in more and different types of agreements than you might initially think.
 - 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.
- 5) Establish protocol for use of copyright material in classrooms, on campuses and centrally.
- 6) Establish protocols for conducting copyright and trademark searches prior to use or with creation of materials or marks (especially for logos).
- 7) Train teachers, librarians, principals and other administrators on correct principles of “fair use” and recognize that “fair use” is not the same legal standard between different laws. Copyright fair use doctrine is not the same as trademark fair use doctrine—which is a common misunderstanding.
- 8) Protect and maintain the school system’s own intellectual property (federal vs. state registrations of trade or service mark, copyright, etc.).

Paper Summary

This paper will include the following:

- An overview of Lanham Act (trademark) claims, including discussion of “fair use” standards under trademark law.
- An overview of copyright law, including discussion of “fair use” standards under copyright law.
- A review of recent jury instructions involving school district and copyright claims.
- A discussion of recent and ongoing cases impacting Texas schools and intellectual property rights.
- A summary of TEA requirements for intellectual property rights involving federal funds.

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Title search: Beware the Trademark Trolls Lurking around the Schoolhouse

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