Acquisition by Creation

Because you have “a property in your own person” do you own the fruits of your labor?

- **INS v. AP**
  - News as property?
- *Cheney Brothers Silk v. Doris Corp.*
  - Property limited to chattels which embody invention?
- **Smith v. Chanel**
  - Copying unpatented products
- **Virtual Works, Inc. v. Volkswagen of America, Inc.**
  - Cybersquatting

**International News Service v. Associated Press**

248 U.S. 215 (1918)
Casebook, p. 60

The Court’s Questions

1. Is there a property right in the news?
2. If there is, does it survive publication?
3. Was INS engaging in unfair competition?
INS v. AP cont’d

- What kind of property?
- Is INS reaping where it has not sown?
- *Pierson v. Post* and *Ghen v. Rich* concerns about proper allocation of resources?

Cheney Brothers v. Doris Silk Corp.

F.2d 279 (1929), Casebook, p. 64

Copying OK?

- “[A] man’s property is limited to the chattels which embody his invention. Others may imitate them at their pleasure.”
- Only Congress has the authority to limit copying. Common law approach.
- Limiting *INS v. AP* on its facts.
Smith v. Chanel, Inc.
402 F.2d 562 (1968)
Casebook, p. 65

Copying OK?

• Can Smith use the Chanel name in this manner?

• “[I]mitation is the lifeblood of competition.”

• “the expenditure of great effort, skill and ability”

• Free riding

Property in Ideas and Information

Intellectual Property

Legislation

• Patent

• Copyright

• Trademark

http://www.uspto.gov/
Douglas G. Baird,

**Wheat and Information Are Fundamentally Different**

Baird cont’d

Without intellectual property rights, the products are **public goods** (nonexclusive).

- Invest in R&D
- Create & sell a product
- Imitators sell at lower cost
- First creator may not recoup all R&D
- Getting information is cost free
- Information may be under-produced
Baird cont’d
With intellectual property rights, there are costs to maintaining exclusivity/limiting access.
• Invest in R&D
• Create & sell a product
• IP exclusive rights prevent imitators to some degree
• Recoup all R&D (and hopefully some profit)
• Limit access to information (transaction costs)
• Information produced

Virtual Works, Inc. v. Volkswagen of America, Inc.
238 F.3d 264 (2001), Casebook, p. 69

Domain Names
• VW.net or VW.com
• Federal Trademark Dilution Act insufficient
• Congress enacts ACPA
  • Cybersquatters
Virtual Works, Inc. cont’d

Two-Part Inquiry

i. Whether Virtual Works acted in **bad faith**?

ii. Whether Virtual Works registered, trafficked in, or used a domain name;

   I. that is identical or confusingly similar to a **distinctive** mark; or

   II. is identical, confusingly similar to, or **dilutive** of a **famous** mark?

Virtual Works, Inc. cont’d

- Applicable statutorily enumerated factors
- More Trademark Dilution
  - Parasites
  - Poachers