

TRADEMARK AND UNFAIR COMPETITION

Syllabus - Spring 2026

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Office Hours: Thursdays 12:00 – 1:00 PM or by appointment

COURSE INFORMATION

- Course Number/Section Number: 5317/16368
- Mode of Instruction: face-to-face
- Meeting times: Tuesdays and Thursdays 1:00 – 2:30 PM
- Classroom: TBD
- Casebook: Barton Beebe, Trademark Law: An Open-Source Casebook, Version 12 (2025)
 - The casebook is available free of charge in PDF and Word version at www.tmcasbook.org. For students preferring to get printed copies (which is recommended), the website has links to print versions on an at-cost, royalty-free basis.

COURSE DESCRIPTION AND LEARNING OBJECTIVES

This is a one-semester, three-credit course which will introduce you to the laws and policies governing the creation, use, and licensing of trademarks. Additionally, it will deal with related issues of unfair competition such as commercial disparagement/defamation, right of publicity, and false advertising. While the course is focused entirely on U.S. law, it will at times contrast the predominantly use-based trademark system in the U.S. with registration-based systems in other countries. It examines ways in which an organization can develop, register, and assert trademark rights, as well as methods for enforcing those rights focused predominantly on trademark infringement and dilution actions.

By the end of the semester, you should be able to do the following:

- Understand the case law and statutory law that governs trademarks in the U.S.
- Apply the policy rationales of U.S. trademark law to various real and hypothetical facts
- Search the United States Patent and Trademark Office database for registered trademarks
- Assess the strengths and weaknesses of trademarks and trademark claims

ATTENDANCE AND CLASS PARTICIPATION

Attendance: The Law Center Student Handbook reads in part: “The Law Center has a minimum 80% attendance policy for students. Any student who attends fewer than the minimum percentage of classes may be dropped automatically from the class. Faculty members are free to impose stricter attendance standards. Faculty members may consider those who come in late or leave early as absent, or may decline to let a late student attend that day.” Absences in violation of law center policy may be sanctioned by a reduction in the final grade or, in egregious cases, by involuntary withdrawal from the class.

You must come to class unless you have a legitimate reason for not doing so. Illness and family emergencies are legitimate reasons. Out of consideration for your colleagues, do not come to class if you are ill. If you miss class due to illness or for any other reason, please get notes from your colleagues. If someone asks you for notes for a missed day of class, please share with them the notes for that day. You may also discuss what you missed with me, but please do so as soon as possible to ensure that you can catch up with the rest of the class.

Participation: I expect students to have read and done their best to understand the materials for each class. I will call on students to brief cases or comment on a particular topic. For each case we discuss in class, please be prepared to address:

- The facts
- Issues presented
- The court’s conclusion
- The court’s reasoning
- Best arguments both sides did or could make
- Any policy rationales that may impact the outcome of the case

If you are unprepared for a given class, please email me by 12:00 PM on the day of the class to let me know. Each student can take up to two free passes during the semester which will not affect assessment of the student’s performance in the course.

EXAMS AND GRADING

Your final grade will be based primarily on an in-class final examination given at the end of the semester. This exam will be in “closed book/notes” locked format. You will not have access to your print or digital materials. I may give ungraded practice problems throughout the course. Use these problems to help you examine your understanding of the relevant topics and to help you prepare for the final exam. I reserve the right to raise or lower grades one-third of a letter grade (e.g., from a B to a B+; or A- to B+) on the basis of class participation.

GENERAL TOPICS

The class will meet for 75 minutes twice a week in which we will cover the tentative list of topics provided below. Additional reading assignments may be available in a separate document or posted on the Learning Management System. Based on availability of speakers, we may also have guest

speakers for some of the topics. A detailed weekly reading assignments list will be provided in our Learning Management System.

- Introduction to Trademark Law
- Trademark Distinctiveness, the Abercrombie Spectrum, and Inherent Distinctiveness
- Acquired Distinctiveness and Genericism
- Distinctiveness Analysis of Nonverbal Marks
- Utilitarian Functionality
- Aesthetic Functionality, Deceptive Marks, and False Suggestion of a Connection
- Disparaging and Scandalous Marks
- Use as Prerequisite for Rights
- The Registration Process
- The Geographic Extent of Trademark Rights
- The Actionable Use Requirement and the Contemporary LOC Test
- Survey Evidence and Sponsorship Confusion
- Initial Interest and Post-Sale Confusion
- Reverse Confusion and Reverse Passing Off
- Trademark Dilution by Blurring
- Trademark Dilution by Tarnishment
- Cybersquatting
- Secondary Liability
- Descriptive Fair Use
- Nominative Fair Use
- Expressive Use of Trademarks

A. *Honor Code*

The UHLC Honor Code applies to all aspects of this course. You are responsible for knowing all Honor Code provisions and for complying with the Honor Code. Please inquire if you have any questions regarding how the Honor Code's provisions apply to specific activities or situations related to this course. Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to comply with the Honor Code in relation to this course and to comply with the instructions in the course syllabus.

B. *AI Generated Text*

The software technology known as artificial intelligence has recently expanded its capability to generate text (AI Generated Text). Examples of the technology include what are known as “generative” large language models (LLMs), and a specific implementation what is well known in the general public is ChatGPT. These systems can generate text in response to prompts and/or input of

other text/documents/code/images. The output, the AI Generated Text, appears to have human-mimicking “intelligence” and is thus potentially usable as a substitute for written work product one might generate themselves. AI Generated Text can include computer code or programs as well as human language content.

Your continuing enrollment in this course is deemed to be a pledge by you under the Honor Code to not prompt, generate, obtain, read, or use any AI Generated Text in relation to any activity or assessment in this course. This applies to AI Generated Text from yourself or others. This pledge includes that your assessment work product in the course is without any contribution from AI Generated Text. This specifically extends to the plagiarism policy and unauthorized aid/materials parts of the Honor Code: AI Generated Text will be treated as from another/other in applying the plagiarism policy to this course. The term “assessment” means any work product generated for this course that is submitted to the instructor or presented in a class session, regardless of whether it is graded content or not. Assessments include mid-terms and final exams. AI Generated Text may not be used in the development or drafting of any assessments created by you in a non-proctored environment, such as a “take-home” final examination unless specified as an exception below. The parts of the Honor Code that refer to unauthorized materials or aid are specifically prohibited from any use of AI Generated Text in this course unless specified as an exception below.

The following activities are exceptions to the immediately preceding paragraph; the intent of these exceptions is to allow use of AI Generated Text for specifically and narrowly defined activities in relation to this course:

- Creating content for an outline that you use to summarize the course content.
- “Conversing” with the AI Generated Text software system to create hypotheticals to better understand course content, alone or with others.
- Checking text drafted by you for misspellings, grammar and punctuation errors.

C. *Mental Health and Wellness Resources*

The University of Houston has a number of resources to support students’ mental health and overall wellness, including CoogsCARE and the UH Go App. UH Counseling and Psychological Services (CAPS) offers 24/7 mental health support for all students, addressing various concerns like stress, college adjustment and sadness. CAPS provides individual and couples counseling, group therapy, workshops and connections to other support services on and off-campus. For assistance visit uh.edu/caps, call 713-743-5454, or visit a Let’s Talk location in-person or virtually. Let’s Talk are daily, informal confidential consultations with CAPS therapists where no appointment or paperwork is needed.

Need Support Now? - If you or someone you know is struggling or in crisis, help is available. Call CAPS crisis support 24/7 at 713-743-5454, or the National Suicide and Crisis Lifeline: call or text 988, or chat 988lifeline.org.

D. *Title IX/Sexual Misconduct*

Per the UHS Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>. *Reasonable Academic Adjustments/Auxiliary Aids*

E. *Reasonable Academic Adjustments/Auxiliary Aids*

The University of Houston is committed to providing an academic environment and educational programs that are accessible for its students. Any student with a disability who is experiencing barriers to learning, assessment or participation is encouraged to contact the Justin Dart, Jr. Student Accessibility Center (Dart Center) to learn more about academic accommodations and support that may be available to them. Students seeking academic accommodations will need to register with the Dart Center as soon as possible to ensure timely implementation of approved accommodations. Please contact the Dart Center by visiting the website: <https://uh.edu/accessibility/> calling (713) 743-5400, or emailing jdcenter@Central.UH.EDU.

The Student Health Center offers a Psychiatry Clinic for enrolled UH students. Call 713-743-5149 during clinic hours, Monday through Friday 8 a.m. - 4:30 p.m. to schedule an appointment.

The A.D. Bruce Religion Center offers spiritual support and a variety of programs centered on well-being.

The Center for Student Advocacy and Community (CSAC) is where you can go if you need help but don't know where to start. CSAC is a “home away from home” and serves as a resource hub to help you get the resources needed to support academic and personal success. Through our Cougar Cupboard, all students can get up to 30 lbs of FREE groceries a week. Additionally, we provide 1:1 appointments to get you connected to on- and off-campus resources related to essential needs, safety and advocacy, and more. The Cougar Closet is a registered student organization advised by our office and offers free clothes to students so that all Coogs can feel good in their fit. We also host a series of cultural and community-based events that fosters social connection and helps the cougar community come closer together. Visit the CSAC homepage or follow us on Instagram: @uh_CSAC and @uhcupbrd. YOU belong here.

F. *Women and Gender Resource Center*

The mission of the WGRC is to advance the University of Houston and promote the success of all students, faculty, and staff through educating, empowering, and supporting the UH community. The WGRC suite is open to you. Stop by the office for a study space, to take a break, grab a snack, or check out one of the WGRC programs or resources. Stop by Student Center South

room B12 (Basement floor near Starbucks and down the hall from Creation Station) from 9 am to 5 pm Monday through Friday.

G. *Recording of Class*

Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the Justin Dart, Jr. Student Accessibility Center. If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor's recordings for their own studying and notetaking. Instructor's recordings are not authorized to be shared with anyone without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

H. *Resources for Online Learning*

The University of Houston is committed to student success, and provides information to optimize the online learning experience through our Power-On website (<https://uh.edu/power-on/learning/>). Please visit this website for a comprehensive set of resources, tools, and tips including: obtaining access to the internet, AccessUH, Blackboard, and Canvas; using your smartphone as a webcam; and downloading Microsoft Office 365 at no cost. For questions or assistance contact UHOnline@uh.edu.

I. *UH Email*

Please check and use your CougarNet email for communications related to this course. Faculty use the CougarNet email to respond to course-related inquiries such as grade queries or progress reports for reasons of FERPA. To access your CougarNet email, login to your Microsoft 365 account with your CougarNet credentials. Visit University Information Technology (UIT) for instructions on how to connect your CougarNet e-mail on a mobile device.

J. *Webcams*

Access to a webcam is required for students participating remotely in this course. Webcams must be turned on (state when webcams are required to be on and the academic basis for requiring them to be on). (Example: Webcams must be turned on during exams to ensure the academic integrity of exam administration.)

K. *Security Escorts and Cougar Ride*

UHPD continually works with the University community to make the campus a safe place to learn, work, and live. The security escort service is designed for the community members who have safety concerns and would like to have a Security Officer walk with them, for their safety, as they make their way across campus. Based on availability either a UHPD Security Officer or Police Officer will

escort students, faculty, and staff to locations beginning and ending on campus. If you feel that you need a Security Officer to walk with you for your safety, please call 713-743-3333. Arrangements may be made for special needs.

Parking and Transportation Services also offers a late-night, on-demand shuttle service called “Cougar Ride” that provides rides to and from all on-campus shuttle stops, as well as the MD Anderson Library, Cougar Village/Moody Towers and the UH Technology Bridge. Rides can be requested through the UH Go app. Days and hours of operation can be found at <https://uh.edu/af-university-services/parking/cougar-ride/>.

L. *Syllabus Changes*

Please note that I may need to make modifications to the course syllabus. Notice of such changes will be announced as quickly as possible through our Learning Management System.

M. *Helpful Information*

For various types of support, visit Coogs Care <https://uh.edu/dsa/coogscare/> and the Student Health Center: <https://www.uh.edu/healthcenter/>