Exam #_____

Federal Trademark & Copyright Registration Practice
Fall, 2009
Final Examination
December 8, 2009
1:00pm – 3:00pm[1]

Instructions:

- This exam counts as **35%** of your grade.
- Use your exam number; do not use your name anywhere.
- This is a closed book exam.
- All questions pertain to the United States federal trademark and/or copyright registration systems.
- **Section 2 of the Lanham Act is attached for your reference.**
- **The copyright application form (CO) is attached for your reference; you will not be filling out the form for this exam; all copyright registration answers can go into your blue book.**
- Following is the point distribution:

Question Number	Point Value
1	30
2	5
3	7
4	10
5	15
6	3
7	15
8	15
Total:	100

Questions:

1. **(30 points)** On November 17, 1983, Kenneth (born 1957) and Talita (born 1961) Paolini gave birth to a son, Christopher J. Paolini. In 1985, Kenneth and Talita had a daughter, Angela. Christopher and Angela were home-schooled at the foothills of the Rocky Mountains in Montana. At age 15, Christopher began writing a fantasy genre fiction novel eventually entitled Eragon. Eragon is the name of the main character, a boy from a poor family living in the fictional mountainside town of Carvahall in the fictional Palancar Valley on the fictional continent of Alagaësia. By virtue of the legend which he is unwittingly bound to fulfill, Eragon discovers a blue rock, which he learns upon its hatching is a dragon egg. Eragon names his new companion dragon Saphira and the two

[1] 1:00pm – 4:00pm for those allotted 50% extra time per ESL 50% rule.

have many adventures. Christopher intended Eragon to be the first book of a trilogy which would bear the title The Inheritance Trilogy, meaning that each book not only has its own title but also the titles "Inheritance: Book 1" (or 2 or 3 as applicable). However, as has happened with other writers, his trilogy now looks as though it will be a four-book series, which series now carries the title The Inheritance Cycle.

Christopher sketched out the fictional world, plot summary, and first draft during the first year (1999 - 2000) and wrote the virtually complete draft the following year (2000 - 2001). After this draft was created, Christopher showed his parents – authors in their own right -- the manuscript. They loved it and helped him register copyright in the 233-page manuscript (Reg. TXu 1-000-216). The family self-published the Eragon book under their Montana limited liability company, Paolini International LLC. The 472-page self-published book (going from single spacing to double spacing accounting for most of the doubling in the page count, although some editing was involved) was offered for sale to the public starting on February 1, 2002 and further contained **a map of Alagaësia (the map illustration is attached as Image 1)** and cover art created by Christopher Paolini, which was a depiction of Saphira's eye (Saphira is Eragon's dragon) **(Saphira's eye illustration is attached as Image 2)**. Two months later, Christopher edited the book down to 468 pages, adding to and revising some of the prior book, which second edition was offered for sale to the public on April 1, 2002.

During the year 2002, Christopher and his family traveled to different booksellers in the area (and a little beyond) trying to sell the book, which was a grueling and unfulfilling part of the whole story (but reality with selling books). While Christopher dressed in medieval costume and signed books, the rest of his family worked on a movie screenplay. As luck would have it, a novelist (Carl Hiaasen) and his stepson were shopping at a bookstore at the same time Christopher was in the store advertising his book. The stepson loved the book, the novelist told his publisher, the Alfred A. Knopf company ("Knopf"), and the Alfred A. Knopf Books for Young Readers publisher (a division of Random House) agreed to publish the book and manage sales of the book through its well-oiled machinery for book selling. Knopf hired the well-known horror and fantasy illustrator John Jude Palencar (born 1957) as an independent contractor to create the cover art, which is a portrait of Saphira, with no copyright assignment or other transfer of ownership. This was a fitting tribute, since Christopher named the fictional Palancar Valley in the novel after the illustrator (albeit with a slight vowel change). The Palencar-illustrated book became available for purchase by the public on August 26, 2003, although it also contained Christopher's map of Alagaësia and his Saphira's eye illustration inside the book. **An image of the Palencar-illustrated, Knopf-published book is attached (Image 3).**

Knopf's significant backing made all the difference. Eragon was the third-best-selling children's book of 2003, second-best-selling-paperback in 2005, and placed on the New York Times bestseller list for 121 weeks. Starting on October 31, 2002, the Paolinis sent their movie screenplay to every movie producer and anyone who knew a movie producer, asking them to send it to anyone they knew who might help turn the movie dream into a reality. Twentieth Century Fox Films Corporation (TCF), a U.S. company,

using the work for hire provisions available for motion pictures for the contributors to the film, produced a motion picture, also entitled Eragon, the screenplay for which was written by Peter Buchman (who refuses to give out his date of birth) (the Paolini family version being completely discarded), and direction provided by Stefen Fangmeier. The movie was released in the United States on December 15, 2006. **An image from the movie is attached (Image 4). The DVD was released by TCF on March 20, 2007 (Image 5).**

Completed by Christopher in early 2005, Book two of Inheritance Cycle series was entitled Eldest and offered for sale to the public on August 23, 2005 in a 668-page hardcover book; Eldest immediately made the New York Times bestseller list. Brisinger is book three of the series; it was first available for purchase on September 20, 2008 as a 748-page hardcover book. Book critics chided Brisinger's length, and Christopher finished a deluxe edition in the spring of 2009 that was released on October 13, 2009 which deleted scenes and added previously unseen artwork of Christopher's. Brisinger had record-breaking first-day sales and was a bestseller list-maker. John Jude Palencar also created cover art for Eldest and Brisinger. **The three books in the series (so far) are available as a set (Image 6);** each book includes the map of Alagaësia and Christopher's illustration of Saphira's eye that were in the first book. Book four of the series is unfinished and the title has not yet been released.

a. You represent the Paolini family and Paolini International, LLC (assume any and all conflicts of interest are waived) and have so represented them since the year 2000. You registered for Christopher the copyrights for the unpublished work (TXu 1-000-216). What other copyright registration applications could you make on behalf of your clients? For each work, list

    - author(s) (you can abbreviate Christopher to "CJP")
    - title(s)
    - claimant(s)
    - type of work (e.g. TX, VA, PA, SR, Serial, Motion picture/audiovisual)
    - work included
    - work excluded
    - creation date,
    - publication date
    - prior registration(s)
    - by when you ideally would have (or will) register the work

    Form CO is attached for your reference, but your answers can go into your blue book.

b. Change of Perspective: Now you represent John Jude Palencar. Can he get a copyright registration? Please explain.

2. **(5 points)** You represent Knopf, the publisher of the books described above. Can you obtain a trademark registration? Please explain.

3. **(7 points)** It is November, 2006. You represent Dune Entertainment, LLC, which provided significant financial investment to Twentieth Century Fox Films Corporation (TCF) for the Eragon film (which had a $100 million budget), in connection with preserving its financial interests in any profits from the film. You drafted a security instrument, which was signed by TCF on November 17, 2006. You are aware that TCF is obtaining financing from another investor, Ingenious Media Investments, Ltd., but do not know the details. How can you best perfect your client's security interest in the film?

4. **(10 points)** Erag Service, Inc., under a work for hire agreement with TCF, designed swords to be carried by the main characters in the Eragon movie. A replica of Eragon's film prop sword (complete with certificate of authenticity), which includes "Eragon" engraved in the blade, is available for sale over the Internet **(Image 7 – Eragon sword)** from a company called CB Swords **(Image 8 – CB Swords website).** Master Cutlery, Inc. manufactures the swords under license from TCF. Master Cutlery, Inc. sells other cutlery products, including replica daggers from the Rambo movies. See **Master Cutlery website page (Image 9), Certificate of Authenticity for a replica Rambo knife (Image 10), and sample of packaging used by Master Cutlery (Image 11).**

   a. If you were to file a trademark application to protect the ERAGON mark in connection with the replica swords, who would be your client?

   b. Attached is a listing from the Acceptable Identification of Goods and Services Manual for a search of "daggers or fantasy or axe or sword or cutlery." Given what you know about Master Cutlery, Inc., draft an identification of goods/services for the MASTER CUTLERY mark.

   c. Identify the most likely rejection basis for the MASTER CUTLERY trademark application (assuming there is no rejection under Section 2(d)).

5. **(15 points)** The Eragon movie did not make a fabulous showing at the box office in the U.S., but box office sales soared overseas (primarily in the European Community, but also in Japan, South Korea, Singapore, and Russia, all of whom are members of the Madrid Protocol). Licensees of TCF sell Eragon toys in the U.S. and oversees, namely, board games, puzzles, trading cards, dragon stuffed animals, resin dragons, and action figures bearing the mark ERAGON. TCF is concerned about counterfeit and infringing merchandise in all of these locations. The only ERAGON mark (or anything close to

Eragon) registered or pending in the United States is a registration owned by a doctor for the mark ERAGON for a medical apparatus called an endoscope. In the CTM, however, an individual in Germany is applying for the mark HERAGON in connection with toys (namely, wooden toddler toys) in International Class 28, but a search does not reveal any actual use of that mark. What should TCF do to protect the ERAGON mark with respect to the toys affiliated with the movie?

6. **(3 points)** You know a trademark filing has been successfully submitted to the U.S. Patent & Trademark Office when what happens?

7. **(15 points)** The mark "DILBERT" in International Class 16 for a "syndicated comic strip" was registered at the PTO on December 5, 1989. It is still a "live" registration today. Without even looking at the procedural history for this mark on TESS, describe what you would expect to see in the post-December 5, 1989 procedural history and why it is there.

8. **(15 points)** Three months ago, Delta T Corporation applied to register the PIVOT (plus design) mark below in International Class 11 for "ceiling fans and electric fans" with a dates of first use both listed as 00/00/2000.



Delta T's lawyers just received an office action suspending the application based on the pending application for PIVOT (standard character) in International Class 11 for "electrical lighting fixtures" having a date of first use of 12/5/2005, a filing date of 2/14/2009, and a publication date of 11/28/2009. What are Delta T's possible avenues for obtaining a registration?

END OF EXAM
Good luck with the rest of your exams!