**MEMORANDUM**

**THOMAS, THOMAS, AND THOMAS, PLLP**

FROM: [Associate name]

TO: [Senior partner name]

DATE: [Submission date]

**RE: [Insert here]**

[\*\*\*\* *Regarding bracketed text*. This document is for my law students for a class and is not legal advice. Further information about this law-school class project can be found at <https://www.nathenson.org/courses/trademark/projects/registration/>. In this template for your memo, bracketed text provides guidance in preparing the memo. For your submitted project, remove all brackets and bracketed text. In some places (such as the memo header), substitute the brackets with applicable text; in others, delete the brackets and guiding text completely. You should also insert screenshots into this document and attach exhibits, as instructed below and as you otherwise find to be appropriate. Exhibits should be labeled (e.g., Exhibit A, Exhibit B, etc.), and the memo should refer to exhibits by that label. For this project, your audience is the senior partner who is reviewing your lawyering and your work product. This is not a persuasive document, it is objective. Do not hide the ball. \*\*\*\*]

[\*\*\*\* *Format, maximum length.* I am a stickler for good legal typography, which uses aesthetics for utilitarian purposes.[[1]](#footnote-1) *Good legal typography is utilitarian, conveying the intended message—whether educating, cautioning, or persuading—in a visual format that makes reading easier for the audience, not more cumbersome.* It is also an important part of branding your work as careful, and for providing comfort and confidence to your reader. For your reader, this template uses book-sized clean fonts (Garamond 11), single-spacing with additional spacing between headings and paragraphs, and wide 1.5” margins, all of which help to avoid overloading the focus of a busy reader, and to foster the reader’s ability to provide comments and annotation. *So you must* use this template and maintain the existing formatting (including 11 pt. Garamond, 1.5” margins; single-space within paragraphs, and extra space between paragraphs). You must also use the headings provided in the order given. You must even retain the existing full justification. You may, however, add more sections and subheadings if you want. \*\*\*\*]

[\*\*\*\* *Length.* Regarding memo length, there is no maximum length because you will need to add screenshots and it would be difficult to dictate a maximum memo length. Let the goals of the work product be your guide. As noted below, the reader is the senior partner and they need not be told about every unsuccessful search you ran; instead, the goal here is to review your reasoning, searching, application, and recommendations. \*\*\*\*]

**INTRODUCTION**

[\*\*\*\* *Purpose.* In this section, briefly identify your client, their planned mark, goods or services, what you’ve done so far, and what your bottom-line recommendation is. Be careful not to claim you’ve “done” things not yet done, such as doing a full search or filing a trademark application. That’s for your client to decide in consultation with the senior partner. Remember, the senior partner is busy and may not remember everything you’ve discussed with them prior to their review of your submission. Therefore, use the introduction section to *briefly* summarize, with further details to follow in the table in the next section below as well as in the sections that follow. \*\*\*\*]

**BASIC INFORMATION**

[\*\*\*\* In addition to the introduction section above, use the table I provide below. If you need to add cells to the table, go ahead. \*\*\*\*]

|  |  |
| --- | --- |
| Attorney name |   |
| Client & CEO |   |
| Client’s proposed mark |   |
| List goods/services from client’s initial proposal [\*\*\*\* Duplicate the Acme, Inc. CEO’s initial listing received via the senior partner. If your CEO made any typos or grammatical errors, retain them in full. Be accurate. \*\*\*\*] |   |

**PRELIMINARY SEARCHING**

***Search strategy:***

[\*\*\*\* In this subsection, tell me your search strategy and the extent to which you found it effective or ineffective. You may use multiple paragraphs. \*\*\*\*]

***Most Pertinent USPTO Search # 1***

[\*\*\*\* This section (and the two that follow) is for the most *pertinent* USPTO search (i.e., the one most useful in finding relevant hits) that you ran. (Do not bother giving me details of unsuccessful searches unless you do not have three pertinent searches; first attempts at searching, like initial bike-riding, tends to be less than successful.) For this search, cut and paste into this section the *actual search parameters* you used in TESS as shown in the output “Refine Search” box (so that I can copy and paste them to review your searches on TESS myself). Also state the number of hits you found, and briefly summarize whether the search was effective and why. Provide a screenshot below of the first page of hits for this search. Do not include any individual application or registration records here; instead, you will include your most pertinent marks in a later subsection. \*\*\*\*]

***Most Pertinent USPTO Search # 2***

[\*\*\*\* Do the same thing for the second most pertinent USPTO search. \*\*\*\*]

***Most Pertinent USPTO Search # 3***

[\*\*\*\* Do the same thing for the third most pertinent USPTO search. \*\*\*\*]

***Other Searching***

[\*\*\*\* For common-law searches such as Google and other sources, briefly explain what you did. Also, provide *pertinent* screenshots below or attach exhibits to the memo. Remember, here you are just discussing the searching. Pertinent *hits* go in the sections below. \*\*\*\*]

***Most Pertinent Hit # 1***

[\*\*\*\* *Provide mark.* As before, I do not need to hear all the hits you found, many of which will not be pertinent. Instead, provide *the single most pertinent* USPTO or common-law hit you found (i.e., the one most likely to be an impediment to use or registration). Provide the mark; if it is stylized or a logo, then paste a copy of it below. Provide its owner and the goods/services. If the hit is from TESS, indicate the registration #, or the application # if unregistered. Indicate its status (such as LIVE, DEAD, etc.). If the mark is common-law found through Google or some other source, then explain where you found it, and include working internet links to the source material. (Practice and typography hint: if the link is long or cumbersome, then create a short link by typing something like “click here,” then highlight those words, and finally, hit CTRL-K to add the URL [likely COMMAND+K on Macs]. This will create a working, easy-to-read link). You may also use screenshots or exhibits if helpful to the reader.

[\*\*\*\* *Provide discussion.* After providing the mark information, briefly state why the hit may or may not be an impediment to your client’s mark. Although you have not yet officially studied the likelihood of confusion factors, consider which factors may be most relevant to your thinking and explain how they may apply. Finally, do not ever state that a “mark” is dead based on its USPTO TESS status, because a “dead” USPTO application or registration may belong to someone with live, continuing common-law rights, or even with live state or federal registrations or applications that you have not found. \*\*\*\*]

***Most Pertinent Hit # 2***

[\*\*\*\* Do the same thing for the next most pertinent USPTO or other hit. \*\*\*\*]

***Most Pertinent Hit # 3***

[\*\*\*\* Do the same thing for the next most pertinent USPTO or other hit. \*\*\*\*]

***Bottom-line recommendation***

[\*\*\*\* Based on your searching, do you recommend that the client choose another mark, or do you suggest that the client take the next step, such as filing, running a full search, etc.? Briefly explain. You may use more than one paragraph. \*\*\*\*]

**CLIENT CONFERENCE AND DRAFT ITU APPLICATION**

[\*\*\*\* *You must prepare a TEAS Standard ITU application.* This subsection addresses your draft ITU application. Even if you believe that the client should not proceed with the mark, for this project you must still prepare an ITU application for my review. In that case, put the client’s name or my name down as the signatory, and I will take it from there, counseling the client accordingly. (For example, as senior partner I may conclude that your caution is not warranted and that the client should file to get their foot in the door pending further searching.) But for me as senior partner to do my job, I need to have an application ready in case—based on my experience and judgment—I think the client should apply for registration. \*\*\*\*]

***Conference with client:***

[\*\*\*\* In this subsection, summarize your discussion with your client regarding what they wanted and what you suggested. You may use multiple paragraphs. Note that you are also required to attach your notes of this conference as an exhibit along with any supportive correspondence. \*\*\*\*]

***Classes applied for:***

[\*\*\*\* List each class applied for along with the goods or services for each class, exactly as you drafted them for my review in your draft application for the USPTO. \*\*\*\*\*]

***Strength of client’s mark in isolation:***

[\*\*\*\* In this subsection, discuss how conceptually strong the client’s mark is on the *Abercrombie* spectrum. You may use more than one paragraph. Also address whether this would make the client’s mark, if used, a strong mark or a weak mark; put differently, how close might subsequent users be able to get to the client’s chosen mark without creating likely confusion? You may use multiple paragraphs. \*\*\*\*]

***Draft ITU application:***

[\*\*\*\* *What to do below.* This section will be dedicated to your discussion of how you filled out the application, and why you made the choices you did. Take as many paragraphs as you need and be organized. Create subheadings. One way to organize this subsection is by organizing by the sections of the application and putting relevant discussion under the appropriate subheading. \*\*\*\*]

**[OTHER COMMENTS & INFORMATION; TITLE AS YOU SEE FIT]**

[\*\*\*\* If there are other issues you deem worthy of discussion, include them here in one or more additional sections/subsections, unbracketed and titled as appropriate Otherwise omit this section including the bracketed heading. \*\*\*\*]

**EXHIBITS TO MEMORANDUM**

[\*\*\*\* On a new page, provide a listing of Exhibits along with what they are, e.g.:

Exhibit A: Notes of Sept. 27 conversation with Jan Smith, CEO, Acme, Inc.

Exhibit B: Emails between T-Cubed and Smith regarding \_\_\_\_\_ mark

Exhibit C: Printout of \_\_\_\_\_\_ mark found on eBay at URL {provide URL}.

The exhibits should follow immediately after this page, be properly and consistently labeled (you can use Foxit for PC and likely other programs for Mac to annotate and label your working PDFs). Use those labels for citing to these documents in the memorandum. \*\*\*\*]

**CERTIFICATION OF ORIGINALITY & ATTRIBUTION**

*[Instructions: this certification should be the very last thing in your file. Fill it out completely and truthfully. Err on the side of disclosure. Add lines as needed. As noted below, you must attach to it any templates you used, along with annotation of language copied or adapted.]*

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [name printed or typed] certify the following

Subject to the information in the disclosures below, my submission for this project is *original* to me. I have also fully complied with any restrictions or prohibitions contained in the assignment instructions.

*Copies of templates*. **I have attached and marked up copies** of any and all materials I relied upon in the Project, such as applications, registrations, C&D letters, complaints, memos, or contracts. Those materials are also cited below. I have marked these documents up to indicate any language or materials that I used or otherwise relied upon. Below is a listing (*use actual descriptive citations; do not merely provide a URL*). At the end of this certification I have also attached these documents in the order provided below:

1. [Fill out, even if N/A]
2. [Fill out, even if N/A]
3. [Add lines if needed]

*No outside assistance.* I have not obtained any assistance with this Project from anyone who is not a currently enrolled member of this class from this semester.

*Inside assistance.* I disclose and certify that I received or provided assistance to or from the persons named below **[add lines as needed]**.

|  |  |
| --- | --- |
| Persons providing **assistance to me**: | Nature of assistance, listed in detail |
| [Fill out, even if N/A] | [Fill out, even if N/A] |
| [Add lines if needed] | [Add lines if needed] |

|  |  |
| --- | --- |
| I provided **assistance to**: | Nature of assistance, listed in detail |
| [Fill out, even if N/A] | [Fill out, even if N/A] |
| [Add lines if needed] | [Add lines if needed] |

*No omissions or changes.* I have not knowingly omitted from this certification any source, person, or any type of assistance, whether given or received. Nor have I changed any of the language in this form with the exception of portions that I have been instructed to complete.

*Broad construction.* I recognize that this certification is to be interpreted broadly and includes without limitation: forms and preexisting materials used, as well as me or others reading drafts, suggesting edits, discussing issues, sharing sources, and getting tips.

*Consequences for violation.* I recognize that violation of this certification may lead, without limitation, to a reduced score, a lowered grade for this project or the course, and referral to the academic integrity committee.

Provide an actual signature or an E-signature (for e-sig, do/s firstname lastname/):

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Rev. 7/19/22*

1. *See* Typography for Lawyers, *What is Good Typography*, *available at* <https://typographyforlawyers.com/what-is-good-typography.html>; *see also* Matthew Butterick, Typography for Lawyers (2d edit. 2018), *available at* <https://www.amazon.com/Typography-Lawyers-2nd-Matthew-Butterick/dp/159839262X/>. [↑](#footnote-ref-1)