**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/enforcement/>. 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, it is likely impossible to do a good job in less than six pages of text using the required formatting (note that this extreme low-ball estimate does *not* include counting screenshots, the certification form, or exhibits). *Do not go over ten such pages* (again, not counting any screenshots, exhibits, or certification—note that with extensive screenshots, the non-exhibit/certification portion of ). \*\*\*\*]

**INTRODUCTION**

[\*\*\*\* *Purpose.* In this section, *briefly* (and I emphasize that word) summarize information about your client, your opponent, what you have done so far, and what you would recommend the client do next. Also briefly summarize the client’s likelihood of succeeding on the merits. Be careful not to claim you’ve “done” things not yet done, such as drafting or filing a court complaint. That’s for your client to decide in consultation with your supervising attorney. Further detail can follow in the sections below. \*\*\*\*]

**DISCUSSION**

**Nature of the client’s rights.**

[\*\*\*\* *Discuss what is going on*. Who is your client? What are their rights? It’s hard for the reader to understand the stakes and strength of any claims or defenses if you don’t tell them what they are. Keep in mind that your reader, the senior partner, may have many matters they are supervising. Just because your partner may have assigned you the matter and has touched base with you from time to time does not mean they remember everything, so you still need to lay things out. Also, consider that others besides you and your supervisor may need to follow up on your work. So without being exhaustive, *what does reader need to know*? Give the basic facts material to the discussion that ensues in the sections below. \*\*\*\*]

**Nature of the opponent’s allegedly infringing conduct.**

[\*\*\*\* *Discuss what is going on*. What is your opponent doing? Where? Give the basic facts material to your analysis. Here an elsewhere, feel free to use screenshots and exhibits without having them count to the page limit. \*\*\*\*]

**Enforcement.**

[\*\*\*\* *What to do here.* Discuss the approach taken in your C&D letter and why you made the C&D choices you did. Regarding your correspondence and negotiation with your opponent, discuss what you did, and how it worked. If you’ve received responses from anyone besides the infringer, discuss those as well. Here, stick to the historical facts regarding plans, facts, and outcomes. \*\*\*]

**Honest reflection.**

[\*\*\*\* *What to do here.* Here is the most important part to me. What went well? What went poorly? Why? ***Reflect***. If you have experienced *any* dilemmas—and most of you will face errors of fact, law, strategy, or ethics/professionalism—then you must discuss them as well, and you must do it honestly and reflectively. Remember, your supervising partner needs to know what’s going on, so *do not hide the ball*. **I expect you to be reflective and thoughtful: we learn from doing and we learn particularly well from our mistakes.** So if you’ve made any missteps (and nearly all of you will), I want you to discuss what happened, what you learned, and how you’ll avoid such dilemmas in the future. Be specific, noting what went wrong (or well) and what you learned. And if you made ethical errors, discuss the relevant Florida provisions and note how you may have violated them. What did you learn and what will you do going forward? For that matter, would it be prudent for you or this firm to no longer represent the client? Do not put a sugar coating on bad facts because the whole purpose of this experience is to learn from our experiences, good or bad. Put differently, this portion is as much reflection as it is a character check. *Cf.* [Kobayashi Maru](https://youtu.be/cU1ah6MOorg). \*\*\*\*]

**Analysis of merits, defenses, and remedies.**

[\*\*\*\* *What to do here.* Discuss any arguably applicable theories of liability reasonably raised by the facts (but don’t negative issue spot). If your opponent has any reasonably applicable defenses or counterclaims, whether stated by your opponent in their correspondence or not, discuss those as well. Discuss the likelihood of your client succeeding on the merits. Finally, what remedies, if any, might our client obtain? Do not speak generally, explain yourself. Rely on relevant binding caselaw from the most likely applicable circuit. And if there are procedural issues relevant to your client, discuss them as well. \*\*\*\*]

**Bottom-line recommendation.**

[\*\*\*\* *What to do here.* At this point, you have sent your C&D, negotiated, and considered the merits. Should we file a lawsuit?Should we settle? If so, on what terms? Or is case this a loser? If the client files, is it likely to lose, possibly facing sanctions and attorneys’ fees? Factor in practical considerations as well. What do *you* think the client should do going forward? \*\*\*\*]

**[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: [What it is, etc.]

Exhibit B: [What it is, etc.]

Exhibit C: [What it is, etc.]

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,
AND PREFERENCES FOR *EXCELLENCE IN IP AWARD*** *[Instructions: fill this out completely and truthfully. Err on the side of disclosure. Add lines as needed.]*

**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.

**PREFERENCES FOR *EXCELLENCE IN IP* AWARD**

Additionally, I am aware that my work product from this course (projects 1 and 2) might qualify me for consideration for the *Excellence in Intellectual Property* award. By choosing “TO SUBMIT (Option 1), I acknowledge that I am affirmatively waiving my rights, without limitation, under the Family Educational Rights and Privacy Act (FERPA), any other applicable federal or state or other laws or regulations, as well as any university or law school policies that protect the privacy of student information. This waiver is required in order for my work product from this course (namely my submissions for projects 1 and 2) to be considered for the award because final determination of the winner is done by submission of the top work product to outside reviewers.

Accordingly:

\_\_\_\_\_ Option 1: I want to be considered for the award, and therefore choose TO SUBMIT my work product from this course for consideration for the *Excellence in Intellectual Property* award.

\_\_\_\_\_ Option 2: I decline to be considered for the award, and therefore choose NOT to submit my work product from this course for consideration for the *Excellence in Intellectual Property* award.

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

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

Date:

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*Rev. 7/23/22*

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)