**Assignment 2: Resolving Intellectual Property Rights**

Due Week 10 and worth 220 points

**Note:** The companies mentioned herein are merely hypothetical organizations with characteristics developed to enable students to respond to the assignment. You may create and / or make all necessary assumptions needed for the completion of this assignment if those assumptions are consistent with the facts presented. **Do not make assumptions which obviate the need to conduct a legal analysis of the issues.**

In this assignment, you will act as the fictional character of Betty Fuller, Head of Marketing at Simply Green Products, while you draft a memorandum to the company President. In this memorandum, you must explain how you would resolve the legal issues discussed in the scenario.

**Scenario**

Simply Green Products (SGP) is a $10 million company that produces biodegradable packing materials that orchards use in the Shenandoah Valley to transport their apples, peaches, and pears nationwide. Biodegradable materials are more eco-friendly because they break down into the environment. Such packing materials are marketed under the name “SafePac,” which is heavily advertised in trade journals. Simply Green Products have had the name “SafePac” imprinted on all of their packing material since 2008. Although SGP never filed for either state or federal trademark protection, following the advice of one of their summer interns, they did register the domain name “SafePac.com.” With the movement toward more eco-friendly agricultural production, the fact that such packing materials are biodegradable provides a primary marketing advantage over non-biodegradable competitors.

Despite the fact that SGP is highly eco-friendly, it is not particularly technologically advanced. SGP mostly advertises in trade journals and magazines, with most orders coming via the mail or phone orders. Shep Howard, President of SGP realizes his company needs to increase its marketing presence and recently hired Betty Fuller, a recent Strayer graduate with an MBA, to be the new Director of Marketing for the company. Ms. Fuller has been charged with bringing SGP’s marketing plan into the 21st century.

In preparing the new Marketing plan, Ms. Fuller, quickly noticed that although SGP owned Safepac.com, the name SafePac, itself had never been registered with the Trademark and Patent Office. Accordingly, one of the first things Ms. Fuller did was start the registration process. When searching the USPTO office database to see if a mark has already been filed she found the following entries shown below:

She immediately realized SGP had a problem. Ms. Fuller did some additional research and found that a company called Safe Choices, Inc. uses the SafePack name to market an emergency weather kit in the form of a backpack; and had received a federal registration for the mark from the Patent and Trademark Office in 2002. This backpack is sold both online at SafePack.com and in sporting goods stores nationwide.

**Note:** “A complete search is one that will uncover all similar marks, not just those that are identical. In this regard, searching for trademark availability is not the same as searching to register a domain name. A domain name search may focus on exact or “dead on” hits, with no consideration given to similar names or use with related products and services. Basically, a domain address is either available or it is not. The trademark process, on the other hand, is more complex. As part of the overall examination process, the USPTO will search its database to determine whether registration must be refused because a similar mark is already registered for related products or services (i.e., even identical marks may co-exist if used on goods or services not considered to be related in any way). Please note that the USPTO does **not** offer advisory opinions on the availability of a mark prior to filing of an actual application.”

<http://www.uspto.gov/trademarks-application-process/search-trademark-database>

**Legal Issues**

Ms. Fuller contacted Shep Howard to discuss SGP intellectual property problems and to devise a plan on how to proceed. In her meeting with Howard Ms. Fuller explained the legal issues to Howard as follows:

1. SGP has been using the product name SafePac since 2008 but never trademarked or otherwise registered that named. A company called Safe Choice had registered the names SafePack and SafePacs back in 2002 and those names were listed live marks by the USPTO. Arguably, SafePac may be confusingly similar to Safe Choices marks to preclude registration of the marks. Moreover, use of the name may “constitutes a false designation of origin which is likely to confuse customers as to the source of the goods”. However, safe Choice and SGP are in different product lines and, therefore, arguably are not competitors, a requirement for infringement. The intellectual property issue at hand involves the Lanham Act.
2. Even if the USPTO finds that SGP’s proposed mark and Safe Choices marks are not similar or that SGP and Safe Choice are not competitors, registrations may nonetheless be denied under the provisions of the Trademark Dilution Revision Act of 2006, 15 U.S.C. § 1125(c). For additional information, see Duvall, S.A. (2007). The Trademark Dilution Revision Act of 2006: balanced protection for famous brands. The Trademark Reporter, 97(6), 1252-1285.
3. Since we purchased the domain name SafePac.com, Safe Choice may attempt to accuse SGP of cybersquatting and try to have that domain name transferred to their control. Any such action would proceed under the Anticybersquatting Consumer Protection Act (ACPA), 15 U.S.C. § 1125(d).

Finally, she outlined her plan on how to proceed with the marketing plan based on how she though the legal issues would be resolved. Mr. Howard then asked Ms. Fuller to put the information she had just given him in memo form.

**Assignment Requirements**

In the role of Betty Fuller, prepare the memorandum requested by Shep Howard. The memo should be three to four (3-4) pages in which you:

1. Decide whether or not SGP can register SafePac as a trademark given the issues discussed in “legal issue: a”.
2. Decide whether or not the Trademark Dilution Revision Act of 2006 would be violated if the USTPO granted SGP a trademark on SafePac.
3. Decide whether or not the Anticybersquatting Consumer Protection Act would be violated by SGP’s use of safepac.com.
4. Describe how your resolution would affect the marketing options available to the company.
5. Use at least three (3) quality academic or legal resources in this assignment, such as a government Website, Law school Websites, Restatements of laws, and other treatises of Law.  Your paper must include internal citations indicating the sources of your legal statements.
**Note:** Wikipedia and other Websites do not qualify as academic or legal resources.
6. Format your assignment according to the following formatting requirements:
	1. Typed, double spaced, using Times New Roman font (size 12), with one-inch margins on all sides.
	2. Include a cover page containing the title of the assignment, the student’s name, the professor’s name, the course title, and the date. The cover page is not included in the required page length.
	3. Include a reference page. Citations and references must follow APA format. The reference page is not included in the required page length