



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7



The McGraw-Hill Companies

Contents

Hot Topics	2
Video Suggestions	11
Ethical Dilemma	15
Teaching Tips	18
Chapter Key	21

Dear Professor,

Welcome to McGraw-Hill's February issue of *Proceedings*, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 1, Issue 7 of *Proceedings* follows the same format as previous editions of the newsletter, incorporating "hot topics" in business law, video suggestions, an ethical dilemma, teaching tips, and a "chapter key" cross-referencing the February newsletter topics with the various McGraw-Hill business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. Intellectual property violations in the Christian products industry;
2. Usurious interest rates in the credit card industry;
3. The need for foreclosure prevention in order to stabilize the housing market in 2010;
4. Videos related to a) the business lobby at the United Nations climate summit in Copenhagen, Denmark; and b) the federal government's most recent attempt to "crack down" on intellectual property violations;
5. An "ethical dilemma" related to whether banks have an ethical obligation to increase lending in order to help the economy overcome "The Great Recession"; and
6. "Teaching tips" related to a) the outcome of the United Nations climate summit in Copenhagen, Denmark and b) the world's "Top 20" carbon-emitting countries.

I hope this newsletter assists you greatly in Spring Semester 2010!

Jeffrey D. Penley, J.D.
Catawba Valley Community College
Hickory, North Carolina



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

Of Special Interest

This section of the newsletter covers three (3) topics:

- 1) Intellectual property violations in the Christian products industry;
- 2) A 79.9 annual percentage rate credit card; and
- 3) Stabilization of the housing market through foreclosure prevention.

Hot Topics in Business Law

Article 1: "Some in \$4.6 Billion Christian Industry Copy Designs, Logos"

http://www.usatoday.com/news/religion/2009-12-18-christian-copyright_N.htm

This article indicates that American retailers sell approximately \$4.6 billion worth of Christian products annually, and some are spoofs or spinoffs of commercial logos or brand names. Many of these goods are illegal, trademark attorneys say, but companies are often unaware their names are being copied or refuse to put up a fight for fear of being labeled anti-faith.

The article mentions several of these spoofs or spinoffs, including:

1. Teen retailer Abercrombie & Fitch's name transformed to "Abreadcrumb & Fish," a reference to the biblical story of Jesus miraculously feeding the multitudes with bread and a few fish;
2. "iPray" merchandise as a spinoff of "iPod";
3. The logo for the popular "Rock Band" video game "tweaked" for a Christian necklace with a pendant shaped like a guitar pick;
4. Sermons available for preachers to purchase based on popular television shows such as "Lost" and "Survivor"; and
5. A "Christianized" version of the "HOPE" poster from Barack Obama's presidential campaign, with an image of Jesus replacing the president.

Other imitators include Christian versions of the Subway restaurant logo, the "got milk?" advertising campaign, and the "Intel inside" sticker that is on millions of computers.

Church marketing consultant Brad Abare has observed such merchandise and does not like it. He refers to such products as "Jesus Junk." According to Abare, a representative of the nonprofit Center for Church Communication in Los Angeles, "We think it's just dumb. It's not a true reflection of creativity."

Trademark attorney Michael G. Atkins of Seattle states that although legal parodies of commercial trademarks are protected under the First Amendment to the United States Constitution, such religious products generally do not fall



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

into that category. According to Atkins, "You could take Microsoft and change their logo around to make fun of Microsoft, and that would be legal, but (you) can't use the Microsoft logo to promote (a) Christian theme because there's no real connection there. That's illegal."

Although it is difficult to estimate how many manufacturers produce such merchandise (as the article indicates, anyone with a screen printing machine and a computer can make a T-shirt design), there are a few major "players" in the Christian merchandise industry. Berryville, Arkansas-based Kerusso sells Christian-themed items including T-shirts, dolls and jewelry, and it asks customers to report anyone that "rips off" their designs, many of which are original. Its products are available in more than 7,000 stores nationwide. Some of Kerusso's popular products are "copycats" of corporate brands and logos known worldwide. The company makes a Facebook shirt (a "Jesus Christ wants to be your friend" T-shirt that mimics the design of the popular networking site), as well as a shirt on which iPod is transformed into "iPray." Kerusso also sells an "Amazing Grace" shirt that resembles the "American Idol" television logo, and its "Abreadcrumb & Fish" (a play on Abercrombie & Fitch) shirt is labeled a "classic" on its website.

Kerusso chief executive officer Vic Kennett says he occasionally gets complaints from companies whose logos are parodied, and Kerusso generally changes those designs or discontinues merchandise. Kerusso altered its red "Jesus Christ—Eternally Refreshing" T-shirt after Coca-Cola complained the design too closely resembled its well-known script logo.

Kennett views the commercial spoofs—which comprise approximately fifteen percent of Kerusso's merchandise, as modern-day parables. According to Kennett, "If Jesus were here today would he make parody T-shirts? I doubt it. But in his day, he did use parables. He used things that were common and recognized in everyday life to make a point or say something with a deeper meaning." Nevertheless, Abercrombie & Fitch attorney Reid Wilson claims the "Abreadcrumb & Fish" design is a blatant trademark rip-off, and the clothing chain sends cease-and-desist letters any time such products surface.

Trademark attorney Michael Atkins says few companies are willing to make a fuss over the issue. According to Atkins, "I think you have a real tension between the legal department and the (public relations) department. (Large companies) are very sensitive to looking like they are anti-Christian, so they are very restrained in going after the wrongdoers."

Baxter Chism, a United Methodist pastor in Dadeville, Alabama, understands the idea of Christians using pop culture references to be relevant, even if he does not always think of it that way. He bought a shirt that pictures Jesus dressed as a hockey goalie with the words "Jesus Saves!" because it was funny, not to be "hip." Children are bombarded by advertising from a young age, he said, and many adults can quote from commercials far easier than from the Bible. According to Chism, "I consider this a window of opportunity to proclaim Christ to people by using a topic they understand. Jesus spoke to us in stories that were culturally relevant to those listening."



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

Church marketing consultant Brad Abare just wishes Christians would pay more attention to the commandment “Thou shall not steal.” “The whole claim for Christians in general is that God is the source of all creativity,” Abare states. “I think there’s something to being original that will speak to people in a way that we don’t have to copy.”

Discussion Questions

1. Consider the five (5) “spoof” or “spinoff” examples mentioned in the article description and set forth below:
 - a. Teen retailer Abercrombie & Fitch’s name transformed to “Abreadcrumb & Fish,” a reference to the biblical story of Jesus miraculously feeding the multitudes with bread and a few fish;
 - b. “iPray” merchandise as a spinoff of “iPod”;
 - c. The logo for the popular “Rock Band” video game “tweaked” for a Christian necklace with a pendant shaped like a guitar pick;
 - d. Sermons available for preachers to purchase based on popular television shows such as “Lost” and “Survivor”; and
 - e. A “Christianized” version of the “HOPE” poster from Barack Obama’s presidential campaign, with an image of Jesus replacing the president.

In your reasoned opinion, do you view these examples as violation of intellectual property (more particularly, trademark) rights? Explain your answer.

A trademark is any name, term, sign or symbol used to identify a good. Once trademark protection is granted by the United States Patent and Trademark Office, the intellectual property owner is entitled to the right of exclusivity in the use of such trademark. This essentially means that no party is entitled to use the trademark without the permission of the trademark holder. A trademark violation can occur if a name, term, sign or symbol is identical or substantially similar to one that is already mark-protected.

Without permission of the intellectual property holder, it would appear that all of the above “spinoffs” constitute trademark violations, since they are substantially similar to existing trademarks.

2. Traditionally, educators and reporters have been accorded “fair use” protection in the use of intellectual property. Although fair use protection does not give protected parties complete immunity from legal liability in the use of intellectual property, it does offer them greater protection than the community at large. In your opinion, should such fair use protection be extended to those who produce and sell Christian-themed products? Why or why not?



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

In the opinion of your author, an argument for fair use would be better presented if it involved Christian organizations (such as churches) that use intellectual property for non-profit purposes. The fact that all of the organizations mentioned in the article are businesses selling apparel for profit generation weakens the "fair use" argument.

3. Would you advise a trademark holder (such as Abercrombie & Fitch) to vigorously assert its intellectual property rights against Christian-themed product manufacturers and sellers, or in the interests of public relations, would you advise the trademark holder to "stand down" against such parties? Explain your answer.

Intellectual property holders are faced with a difficult situation in this instance. Without question, there could be a public relations "downside" to vigorously enforcing intellectual property rights against "Christian" organizations, even if the organizations mentioned in the article exist for the purpose of generating a profit. In the opinion of your author, however, there is an even greater risk for intellectual property holders to do nothing. History is littered with examples of formerly-trademarked names (thermos, escalator, yo-yo, raisin bran, etc.) that are now public domain names freely accessible to anyone who chooses to use them. These formerly-trademarked names became part of the public domain because the intellectual property holders of such names did not assert their right of exclusivity (i.e., they were "lax" in enforcing their intellectual property rights.) Essentially, the old adage "use it or lose it" applies to the trademark right of exclusivity. Ask yourself this question: If you were the chief executive officer of Abercrombie & Fitch, an organization that has spent years and countless advertising dollars building the corporate brand, would you "stand down" on the enforcement of the company's trademark, if to do so risked the right of exclusivity in the trademark and might even compromise the very identity of the company?

Article 2: "Bank Offers Credit Card With 79.9% APR"

<http://www.cbsnews.com/stories/2009/12/18/business/main5995218.shtml?tag=cbsnewsSectionContent.8>

According to the article, in order to circumvent a new regulatory cap on credit card fees, First Premier Bank has boosted the annual percentage rate (APR) on its credit card offering to those with bad credit to 79.9%. This is a strategy other subprime credit card issuers could adopt in order to get around the new rules.

Typically, the First Premier card comes with a minimum of \$256 in fees in the first year for a credit line of \$250. Beginning in February 2010, however, a new law will cap such fees at 25 percent of a card's credit line.

In a recent mailing for a preapproved card, First Premier lowers fees to exactly that limit: \$75 in the first year for a credit line of \$300. The new law does not impose a cap on interest rates, providing First Premier with the opportunity to charge an APR of 79.9%, up from the previous 9.9 percent. According to Anuj Shahani, an analyst with Synovate, a research firm that tracks credit card mailings, First Premier's 79.9% APR is "the highest on the market. It's the highest (APR) we've ever seen."



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

For its 79.9% APR card, First Premier targets people with bad credit who likely cannot qualify for credit cards at other lending institutions. First Premier's target market consists of individuals who depend heavily on credit, meaning they will likely incur steep financing charges. For a borrower with a \$300 balance, a cardholder would pay approximately \$20 per month in interest.

First Premier says the 79.9% APR offer is just a test, and that it's too early to tell whether it will be continued. To comply with the new law, the bank said it will no longer offer the card that has \$256 in first-year fees as of February 21, 2010; customers, however, will still be able to use their existing cards. The bank asserts that "no final decisions" have been made regarding any rate changes for existing cards.

In defense of its 79.9% APR card, First Premier claims it needs to "price our product based on the risk associated with this (the subprime) market." The bank has declined to specify exactly how many people have been offered the card.

In a mailing sent to prospective customers in October 2009 with the revamped terms, First Premier writes "...you might have less-than-perfect credit and we're OK with that." The letter notes that an online application or telephone call is still required, but guarantees a sixty-second status confirmation. The letter also states there are no hidden fees that are not disclosed in the attached form, where the 79.9 percent interest rate and the \$75 annual fee are listed. There is also a \$29 penalty if the borrower pays late or exceeds the \$300 credit limit.

According to the article, the revamped terms may not be the only changes to First Premier's credit policy; First Premier also appears to be moving away from the riskiest borrowers. The bank typically mails offers to subprime households, meaning those with credit scores below 700. In the third quarter of 2009, however, 84 percent of its offers were sent to subprime households, down from 91 percent the same period in 2008. That could mean First Premier will not issue cards as liberally to those with bad credit.

According to Odysseas Papadimitriou, chief executive officer of CardHub.com, as harsh as First Premier's terms seem, the bank's refusal to issue cards to prospective borrowers with especially poor credit ratings could be a blow to those who rely on such a card. States Papadimitriou: "Even when the cost of credit is astronomical, for people in true emergencies, it's much better than not having access to credit."

Until February 21, 2010, the date the new regulations capping credit card fees goes into effect, First Premier is still offering its even-higher-fee card (\$256 in first-year fees) online.

Discussion Questions

1. In your reasoned opinion, should the government regulate business (banking) matters such as credit card fees? Why or why not?



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

Student opinions will likely vary in response to this question. Those who favor a "free market" approach to business will perhaps argue that businesses (including banks) should be able to charge whatever the market will bear for their services; along those lines, if the market will support an annual credit card fee of \$256 (or an annual interest rate of 79.9%, for that matter), "so be it." Free market advocates will also assert that the \$256 annual fee also reflects the fact that First Premier Bank is servicing the subprime market, and that the fee level reflects the higher risk associated with the subprime market. The contrary argument here would favor government regulation of credit card fees in order to protect those with subpar credit. Those who are in the subprime credit market have already experienced financial difficulties, and exorbitant credit card fees will only exacerbate their financial problems. Both sides of the regulatory argument will likely concede that in terms of bargaining power and relative sophistication in "the art of the deal," banks do have the "upper hand" in the subprime market, since subprime borrowers are unlikely to be able to receive credit from any financial institutions other than subprime lenders.

2. Assuming that the government should regulate business (banking) matters such as credit card fees, would such regulation be more effective at the federal level, or at the state level? Explain your answer.

The new regulation capping credit card fees at 25 percent of a card's credit line is a federal regulation. There is a strong argument to be made that if government should regulate banking matters such as credit card fees, such regulation should come at the federal level. The new federal regulation is uniform, meaning that it is applicable in every state. The fact that the new law is federal in nature means that it is much easier to interpret and apply than if each state decided what the annual credit card fee cap should be (or if there should be a cap at all.) To give a comparative example, each state currently decides whether there should be a "usury" cap on interest rates charged by lending institutions located in its jurisdiction. Arguably, South Dakota has the most liberal usury laws of any state. Should it come as any surprise, then, as to the location from where First Premier's 79.9% APR credit card is issued? As the article indicates, the cards are serviced by its sister organization, Premier Bankcard. Premier Bankcard is the tenth-largest issuer of MasterCard and Visa Cards in the country, with more than 3.5 million customers. Its "base of operations?" South Dakota!

3. In your reasoned opinion, is the new law (effective February 21, 2010) well-crafted law? Why or why not?

This article reveals a very important premise of law: If a law is not well-crafted, it is arguably not worth the paper on which it is printed! For those who favor government regulation of business in order to advance the interests of "the little guy," the purpose of the new law is sound; namely, the new law seeks to avoid financial exploitation of those with subpar credit, individuals who can least-likely afford exorbitant fees. There is a strong argument in this case, however, that the new law does not and will not fulfill its purpose, since it only caps annual credit card fees, and not interest rates as well. First Premier has already demonstrated through its "shift of focus" that the new law is easy to circumvent, by simply focusing on the annual percentage rate charged to subprime borrowers, rather than the annual fees it assesses. Your author is somewhat surprised (aside from the obvious lobbying influence



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

that credit card companies have on lawmakers!) that the United States Congress has not decided to regulate, at the federal level, credit card interest rates. Until the federal government chooses to issue a uniform usury law, such laws addressing interest rates will consist of a "patchwork quilt" of varying state regulations. This affords credit card companies the opportunity to flock to jurisdictions that take a "hands off" approach to regulating interest rates, including (as mentioned in the article) South Dakota.

Article 3: "Report: 3.2 Million Foreclosures Must Be Prevented in 2010 to Stabilize Housing Market"

http://www.huffingtonpost.com/2009/12/18/report-32-million-foreclo_n_397740.html

According to a new report by Credit Suisse analysts, more than three-quarters of 2010's estimated 4.2 million foreclosures will need to be prevented in order to further stabilize housing prices.

The analysts argue that already there are early signs of recovery. Thanks to a decline in foreclosure sales from their winter highs, the homebuyer tax credit, and "record high affordability levels," housing prices have begun to stabilize; for a recovery to take hold in 2010, however, foreclosure sales will have to decrease even more. The analysts note that if foreclosure sales represent some 25-30 percent of all home sales in 2010, then home prices could see an increase. For that to happen, however, the Credit Suisse analysts estimate that approximately 3.2 million foreclosures must be prevented next year.

It is unclear how exactly that would happen, given the early returns on the Obama administration's \$75 billion foreclosure-prevention plan. Some 31,000 homeowners have received permanent relief under the plan's mortgage modification program, which aims to help troubled homeowners modify their mortgages into sustainable monthly payments relative to income. Approximately 700,000 homeowners are enrolled in three-month trials.

Although the plan is aiming to help three to four million homeowners, a government watchdog has publicly questioned numerous times whether that is achievable, given the performance to date and the plan's design. For example, the plan requires that homeowners have an income. With ten (10) percent unemployment, many experts have questioned whether the government's Home Affordable Modification Program (HAMP) can help the unemployed stay in their homes.

According to the Credit Suisse analysts, "Current performance statistics on HAMP are quite disappointing...However, multiple rounds of government attempts to achieve foreclosure prevention...are likely to keep (the) volume of foreclosure sales under check." In other words, the analysts expect the Obama administration to "step up" its efforts.

Though it would be welcomed by distressed homeowners, government efforts would not be free. Talk of federal budget deficits is playing a big role in the present job creation and health care debates on Capitol Hill. Lenders, investors, homeowners and mortgage servicers all receive taxpayer-funded cash for every successful permanent modification under HAMP. Thus far, the government has allocated approximately \$27 billion via the program.



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

Underscoring the importance of preventing foreclosures, the Credit Suisse report notes: "Home price stabilization has primarily resulted from (a) decline in share of foreclosure sales." If foreclosure sales start to creep up in 2010, last year's gains in stabilizing the housing market could soon evaporate.

Discussion Questions

1. As the article indicates, under the Home Affordable Modification Program (HAMP), some 31,000 homeowners have already received permanent relief under the plan's mortgage modification program, which aims to help troubled homeowners modify their mortgages into sustainable monthly payments relative to income; further, approximately 700,000 homeowners are enrolled in three-month trials, and the plan's ultimate objective is to assist three (3) to four (4) million homeowners. In your reasoned opinion, does the federal government have an ethical obligation to assist those who are unduly encumbered with their mortgages?

Admittedly, this is a difficult question to address. There is a "story behind" each mortgage that is in risk of default, ranging from the single "breadwinner" of the family who lost her job due to corporate restructuring/downsizing to the family with a combined annual income of \$50,000 who chose to pursue its interpretation of the American dream by purchasing a "McMansion" with a \$400,000 "jumbo" mortgage! Remind your students that every dollar the government spends on a mortgage bailout is arguably a dollar detracted from other programs that might better advance the government's ethical obligations (whatever they may be) to the people.

2. In answering Discussion Question Number 1 above, does the government's outstanding indebtedness influence your opinion? (As of January 6, 2010, the United States national debt totals approximately \$12.3 trillion, representing about \$40,000 of indebtedness for every United States citizen; further, the national debt has increased an average of \$3.96 billion each day since September 28, 2007! See http://www.brillig.com/debt_clock/)

Government indebtedness should at least be considered in addressing the question of how vigorously the government should intervene in the mortgage market. Arguably, the best argument for the government's mortgage "bailout" program is that if the government does not intervene, the economy will be subjected to further peril at a time when the nation still endures "The Great Recession." Ask your students whether government indebtedness matters. In the opinion of your author, the national debt does matter, since it can affect the value of the dollar, cause lenders to question whether additional loans should be extended to the United States government, and can influence interest rates. The concern here is that beyond a certain "tipping point" (what that point is can be the subject of much debate), outstanding federal indebtedness can imperil the economy just as much as (if not more than) a mortgage default crisis.

3. In your reasoned opinion, does the Home Affordable Modification Program (HAMP) represent sound economic policy? Why or why not?



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7



The McGraw-Hill Companies

Best of luck in terms of conclusively resolving the answer to this question by way of classroom discussion! Reasonable minds will likely differ in terms of whether the Home Affordable Modification Program (HAMP) represents sound economic policy. Free market advocates will likely contend that a mortgage borrower should either succeed or fail on his/her own merits, and that if circumstances should cause a mortgage to result in default, such is the nature of risk in the capitalist system. Free market advocates may also argue that government intervention in the mortgage market sets a dangerous precedent, in the sense that should our economy face a comparable challenge in the future, individuals will expect assistance similar to that afforded by way of the HAMP program. Opponents of the HAMP program will argue that it further imperils an already budget-strapped federal government (see the information provided in Discussion Question Number 2 and the answer provided in response to Discussion Question Number 2), and that such a program, if extended to three (3) to four (4) million Americans (the stated goal of the plan), may drive the federal government over the "financial precipice." Finally, opponents of the plan will argue that it is fundamentally unfair to the millions of Americans who a) assume manageable mortgages and b) dutifully make their mortgage payments.

For those who favor HAMP, the best argument is that HAMP will help save the United States economy from "financial Armageddon." If the plan works in terms of assisting millions of Americans in avoiding the perils of mortgage default and foreclosure and in helping "shore up" home values (an American family's home is typically its greatest asset), HAMP advocates will argue that the program was well worth the investment. HAMP benefits not only mortgagors who are in risk of default, but also a) banks, given the fact that their security interests (the houses on which they foreclose) may not be sufficient to account for the outstanding mortgage balance) and b) communities, which experience substantial "blight" when large numbers of homes in their areas sit vacant.



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

Video Suggestions

Video 1: "The Business Lobby in Copenhagen"

http://www.huffingtonpost.com/2009/12/18/the-business-lobby-in-cop_n_397128.html

(Note: For an accompanying article, see the same above-referenced website address)

Purpose of video: To discuss the lobbying efforts of the oil and gas industries (and others) to influence global warming policy discussions by The United Nations at Copenhagen, Denmark

Discussion Questions

1. Is an international treaty to limit carbon emissions and global warming feasible? Is it enforceable?

Although an international treaty to limit carbon emissions and global warming may become a reality one day, it is difficult to predict a time when a substantial number of nations will agree that it is in their mutual best interests to sign on to such an agreement. This issue is discussed in detail in "Teaching Tips" 1 and 2 below. In short, although five nations (the United States, China, India, Brazil and South Africa) did broker a modest climate deal at the United Nations climate summit in Copenhagen, the proposal does not set overall carbon emissions targets or deadline, nor does it establish a legally binding treaty. Instead, all the deal does is subject the five signatory nations to an "international consultation" in the future that would allow each country to "show the world what they're doing." In short, the deal only involves a few nations, and even for signatory nations, the deal does not have any real, enforceable limitations on carbon emissions.

In terms of enforceability, domestic law is difficult enough to enforce; international law presents an exponentially greater problem. One has to believe that strict enforcement of an international treaty to limit carbon emissions would be a virtual impossibility. Realistically, would the nations of the world ever agree to have United States "carbon emissions inspectors" inspect their territories to confirm treaty compliance? Is voluntary compliance with such a treaty a realistic alternative?



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

2. Should businesses be allowed to engage in The United Nations' policy debate on carbon emissions and global warming? Why or why not?

Arguably, businesses should be allowed to engage in such a debate, since they have a vested interest in the possibility of an international treaty to limit carbon emissions and global warming. If one assumes that mandatory limitations on global carbon emissions would have a negative effect on manufacturing activity and economic output, this "vested interest" is easy to see.

The downside to business involvement in such a debate is that businesses are, arguably, hopelessly biased in terms of their opinions regarding the debate, and will always argue against a strict carbon emissions limitations treaty for fear that such a treaty would infringe upon corporate productivity and profit. Add to this the financial resources available to businesses in their lobbying efforts, and it is easy to see why some believe businesses have too much power in crafting law.

3. In terms of its purpose and mission, is the business lobby in Copenhagen any different from the business lobby in Washington, D.C. (the United States Congress?) Explain your answer.

There are substantial similarities between the business lobby in Copenhagen and the business lobby in Washington, D.C. Both would seek to influence the crafting of law in such a way as to benefit business interests. Ask your students whether there is anything inherently unethical about business lobbying. Are such activities unethical merely because they seek to advance business interests? Was not President Calvin Coolidge correct when he said "the business of America is business?" Could not the same be said with regard to "the business" of the world?

Video 2: "NBC Nightly News with Brian Williams: Feds Crack Down on Knockoffs"

<http://video.msn.com/video.aspx?mkt=en-us&brand=msnbc&vid=f261698e-e2c9-4642-8f8b-540fa4c644d3>

Purpose of video: To discuss the government's most recent attempt to "crack down" on intellectual property infringement (more particularly, the sale of counterfeit goods)

Discussion Questions

1. Is it realistic to expect that the United States government will ever be able to fully control intellectual property violations? Why or why not?

In terms of intellectual property law, enforcement will always be a challenge. In all likelihood, "full control" of intellectual property violations is not a realistic objective, since the government will likely never have the resources (financial and otherwise) available to be able to completely eradicate intellectual property violations. That is not to say that the government does not do a "good job" in terms of enforcing intellectual property law; rather, in the opinion of your author, the government performs admirably in terms of using the resources available to bring intellectual property violators to



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

justice. For every person apprehended, however, there will always likely be another person willing to "take their place" in terms of violating intellectual property law.

2. As the video indicates, the focus of the federal government in its most recent "crackdown" on intellectual property violations pertained to goods produced in other countries, and then "smuggled" into the United States for sale. In your opinion, is there a better way to control international violations of United States intellectual property rights other than searching for the goods after they have already been disseminated in the United States? What about encouraging our trading partners (such as China) to "crack down" on those who manufacture such goods within their borders? What about more thorough inspection of shipping containers that reach United States ports?

In terms of the alternatives mentioned in Discussion Question 2 (encouraging our trading partners to "crack down" on those who manufacture such goods within their borders, versus more thorough inspection of shipping containers that reach United States ports,) inspection would appear to be the more realistic alternative. For years, the United States has encouraged China to more strictly enforce international intellectual property laws. The response is always the same ("We are committed to the enforcement of international intellectual property laws,") but the result is always the same as well; namely, "knockoff" goods continue to reach United States borders.

Only a small percentage of shipping containers that reach the United States are actually inspected. In the opinion of your author, additional financial resources devoted to the inspection of shipping containers that reach United States ports would be "money well spent." First, greater inspection would yield greater discovery of knockoff goods before those goods are "spread like the wind" to the various states (and become even more difficult to discover.) Second, greater inspection would carry the added advantage of a useful tool in controlling terrorism. Any terrorism expert will advise that shipping container inspection is a wise, cost-effective way to reduce the risk of another mass-casualty terrorist event in the United States.

3. Do you agree with the argument presented in the video that counterfeit goods hurt the United States economy, and reduce the number of jobs available to United States workers? Why or why not?

Although this argument would be difficult to "quantify" in terms of the actual number of jobs lost in the United States due to counterfeit goods, most students should accept the premise that such goods do have a negative impact on the United States economy. Counterfeit goods are usually sold "under-the-counter," meaning that no tax is generated for the federal, state and local governments. Given the fact that the United States manufacturing base has been decimated in recent years, however, and the fact that most goods (especially textiles) are produced outside the United States, it is difficult to say how profound a negative impact counterfeit goods have on domestic manufacturing jobs.

The best argument against counterfeit goods is that the dissemination of counterfeit goods constitutes a violation of property rights. Intellectual property rights (trademarks, service marks, copyrights, patents, trade secrets, etc.) are arguably just as valuable as tangible property rights (personal



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7



The McGraw-Hill Companies

property, real estate, etc.), so encourage your students to think of counterfeit goods as a significant deprivation of property rights.



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

Of Special Interest

This section of the newsletter addresses the question of whether banks have an ethical obligation to increase lending in order to help the United States economy grow out of "The Great Recession."

Ethical Dilemma

(Note: This Ethical Dilemma is based on the article "Nation's 4 Biggest Banks Cut Business Lending by \$100 Billion Since April," available at

http://www.huffingtonpost.com/2009/12/16/nations-4-biggest-banks-c_n_394264.html)

This article notes that while the Obama administration and the United States Congress work to increase bank lending, the nation's four biggest banks have collectively cut their loans to businesses by more than \$100 billion over the past six months. Bank of America, JPMorgan Chase, Citigroup and Wells Fargo cut their commercial and industrial lending by a combined 15 percent from April to October, representing \$100 billion, according to the most recent Treasury Department data. Loans to small businesses are down \$7 billion, or four percent.

The reduced lending by the four biggest bank holding companies, all of which are largely considered to be "too big to fail," appears to be steeper than in the overall banking sector. Over the same time period, commercial and industrial loans at all banks declined about 10.8 percent, or \$166 billion, according to Federal Reserve data; that figure includes Bank of America, Citibank, Wells Fargo and JPMorgan Chase.

Among the "big four," Wells Fargo had the smallest decline at 5 percent, while Citigroup had the largest at 29 percent. JPMorgan Chase cut its loans by \$21 billion, or 13 percent. Bank of America "led the pack" in terms of its cuts. The bank slashed commercial and industrial loans by 21 percent. Thanks to its enormous size, that translated into a \$58 billion decrease, by far the largest decline in business lending by any United States bank.

President Barack Obama announced his administration's small business lending initiative in March 2009. As the unemployment rate hovers around ten percent, there has been an increased push recently by the administration and members of the United States Congress to stimulate lending to small businesses in hopes of increasing the availability of jobs. This initiative led President Obama to meet with the nation's top bankers in December 2009, and after the meeting, Bank of America pledged to increase lending to small- and medium-sized businesses in 2010 by at least \$5 billion.

The article indicates that although there is no clear reason to explain big banks' decline in lending, analysts have pointed to a number of different possibilities, including:



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

1. Decreased loan demand;
2. A decrease in credit-worthy borrowers with sufficient collateral;
3. Cautious regulators protecting banks from potential losses; and
4. Banks' need to "shore up" their balance sheets in anticipation of future, unrealized loan losses.

While Federal Reserve survey data and the banks themselves point to decreased demand for loans, small business advocates say the fact remains that banks are cutting back, making it even more difficult for credit-worthy businesses to secure financing. "Lending isn't easing. It's just as difficult to get loans now as it was six months (ago)," says Molly Brogan, vice president of public affairs for the National Small Business Association. "For months we've heard the administration talking about getting TARP (Trouble Asset Relief Program) funds to small business" in the form of increased bank lending. "But the proof is in the pudding. You're either going to do something about it or you can keep talking," states Brogan.

Discussion Questions

1. In your opinion, do the nation's largest banks have an ethical obligation to increase lending, especially to the nation's small businesses? Why or why not?

Most students likely have some familiarity with the government "bailout" of many of the nation's troubled financial institutions, beginning with the Bush administration, and continuing with the Obama administration. Government assistance to financial institutions was viewed by both administrations as a necessity, in part based on the premise that particularly large financial institutions were "too big to fail;" in other words, to have one or more large United States financial institutions fail would be disastrous to the United States and global economies. The best argument supporting the premise of an ethical obligation on the part of the nation's largest banks to increase lending is based on the notion of reciprocity; in other words, since United States taxpayers have, in effect, saved the nation's largest banks, those banks should in turn save the American people from the prolonged ravages of "The Great Recession" by increasing lending, since the flow of loan dollars has a direct, positive effect on the nation's economy. Ethics are based on fundamental notions of "right versus wrong," and the "right" approach in this instance, at least arguably, is for banks to increase lending and get the economy moving again. In part, economic solvency is the reason "we the people" saved the nation's largest banks from the "financial precipice" they faced beginning in 2008.

2. In your opinion, why have the nation's largest banks not increased lending, in spite of the Obama administration and the United States Congress' efforts to encourage them to do so?

Arguably, overextension in the subprime lending market led many of the nation's largest banks to near financial ruin in 2008. For years, banks had willingly extended/overextended credit to those who, by more conventional standards of evaluation, were not credit-worthy. The problem was exacerbated, of



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

course, by the prolonged recession that began in 2008. Having faced near-financial ruin, avoided only in some instances by United States government intervention, many banks may still be “gun-shy” about increasing lending. In the opinion of your author, the reluctance of banks to increase lending is a natural reaction to near-financial ruin. The unfortunate dilemma here is that the government intervened (in large part) to get the credit market “moving” again in the interests of improving the economy and more specifically, the plight of the American worker. It is important to emphasize here that although the United States government extended tens of billions of dollars in financial assistance to the nation’s largest banks, there were no contractual (i.e. legal) obligations put upon banks to increase lending. Ask your students whether the government’s failure to dictate increased lending on the part of banks (as a condition of financial assistance) represents a colossal oversight on the part of the government. You should receive some interesting responses!

3. What is the best argument against the contention that the nation’s largest banks have an ethical obligation to increase lending?

Arguably, “loose” lending led the nation’s largest banks to the financial precipice (see the reference to subprime lending in response to Discussion Question Number 2 above) in 2008. Accordingly, the best argument against the contention that the nation’s largest banks have an ethical obligation to increase lending is that such a practice would not make good business sense. Note the reference in the article to a decrease in credit-worthy borrowers with sufficient collateral (given the tough, prolonged recession) and banks’ need to “shore up” their balance sheets in anticipation of future, unrealized loan losses. Essentially, the best argument here is that decreased lending after near-financial ruin resulting from an overextension of credit in the past is a natural, sensible business decision; that, and the realization that our nation has not yet overcome the most prolonged recession since FDR, “The Grapes of Wrath,” and The New Deal.



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

Of Special Interest

This section of the newsletter will assist you in covering Video 1 ("The Business Lobby in Copenhagen,") presented earlier in this newsletter.

Teaching Tips

Teaching Tip 1:

As a follow-up to Video 1 ("The Business Lobby in Copenhagen"), you may want to discuss the article "U.S., Others Broker Modest Climate Deal" at http://www.msnbc.msn.com/id/34475636/ns/us_news-environment/. This article describes the climate policy framework brokered by President Barack Obama and four peers at the United Nations climate summit in Copenhagen, Denmark as "something small rather than a big nothing," despite the fact that Obama called the framework a "meaningful and unprecedented breakthrough." The five nations' pledges will be subject to an "international consultation" that will allow each country to "show the world what they're doing." The agreement was reached during a meeting among the leaders of the United States, China, India, Brazil and South Africa.

The proposal does not set overall emissions targets or deadlines, let alone establish a legally binding treaty, which had been the expectation for Copenhagen months ago. Many delegates to the United Nations climate summit had hoped that China and the United States, the world's two largest carbon polluters, would deepen their pledges to cut the emissions of greenhouse gases tied to accelerated global warming, but that was not to be.

Greenpeace United States Executive Director Phil Radford asserts that President Obama may eventually become known as "the man who killed Copenhagen, but as the article indicates, Obama's "hands were tied" from the beginning of the summit, since the United States Congress is still mulling over legislation that would establish mandatory curbs on greenhouse gases.

Ask your students whether they consider the United Nations climate summit at Copenhagen a success or a failure. Student answers will likely depend on whether they 1) take global warming seriously; 2) believe that global warming is caused, in pertinent part, by "man-made" carbon emissions; and 3) believe that mankind can have any appreciable impact on reducing global warming. Regardless of student opinions regarding the aforementioned issues, it is difficult to view the Copenhagen summit as a success. As mentioned previously, the proposal does not establish overall carbon emissions targets or deadlines, nor does it establish a legally binding treaty. In that sense, the agreement among the United States, China, India, Brazil and South Africa does not possess any degree of definitiveness, nor does it have any real enforcement mechanism. "Eternal optimists" can at least hold out hope for a



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

definitive, enforceable treaty in the future by claiming that the Copenhagen summit was at least a “step in the right direction.”

Teaching Tip 2:

This “teaching tip” is related to Video 1 (“The Business Lobby in Copenhagen”) and “Teaching Tip 1” above. In discussing the international efforts to control carbon emissions and global warming, as well as the United Nations climate summit at Copenhagen, students may be interested to know the top twenty (20) countries in carbon dioxide emissions. This information can be found at http://www.ucusa.org/global_warming/science_and_impacts/science/each-countrys-share-of-co2.html. Those countries are, in terms of descending order of carbon dioxide emissions and total emissions (in millions of metric tons of carbon dioxide, rounded to the nearest metric ton) in 2006, as follows:

1. China (6018);
2. United States (5903);
3. Russia (1704);
4. India (1293);
5. Japan (1247);
6. Germany (858);
7. Canada (614);
8. United Kingdom (586);
9. South Korea (515);
10. Iran (471);
11. Italy (468);
12. South Africa (444);
13. Mexico (436);
14. Saudi Arabia (424);
15. France (418);
16. Australia (417);
17. Brazil (377);
18. Spain (373);
19. Ukraine (329); and
20. Poland (303).

Remember from “Teaching Tip 1” above that the “policy framework” agreement brokered at Copenhagen, calling for an “international consultation” that will allow countries to “show the world what they’re doing” (in terms of controlling carbon emissions), involved five (5) nations: the United States, China, India, Brazil and South Africa. These countries are, in terms of carbon emissions, numbers 2, 1, 4, 17 and 12, respectively. For those who believe that global warming is real, that it is caused, in pertinent part, by “man-made” carbon emissions, and that mankind can have an appreciable impact on reducing global warming, this information is very revealing in the sense that other nations must come forward if a meaningful, comprehensive international climate control treaty is to be reached.



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

Discuss with your students how complicated it would be to reach a comprehensive, international climate control treaty. Start by discussing the competing interests, economic and otherwise, between China and the United States. As the above table indicates, China and the United States lead the world in terms of carbon dioxide emissions. They are also competitors in global business. China's dynamic and growing manufacturing base, which emits thousands of millions of metric tons of carbon dioxide annually, has largely contributed to China's burgeoning economic development. China has seen its global economic position and the living standards of its people improve dramatically as a result. Ask students whether they really believe China would be willing to potentially compromise its economic position by entering into a global carbon emissions reduction treaty. From the standpoint of the United States, our nation is enduring the longest recession since The Great Depression. Ask your students whether it would be worth the risk of further endangering our economy (from the standpoint of potentially extending the recession and compromising our competitive economic position globally) to enter into a global carbon emissions reduction treaty. An international treaty must, in many respects, be based on mutual trust. Ask students whether enough mutual trust exists between the United States and China to serve as a foundation for a global emissions reduction treaty. How would such a treaty be enforced? Would signatory nations have to depend on the honesty of treaty partners in order to make a global carbon emissions reduction treaty work?

Finally, discuss the position of developing nations in terms of a climate control treaty. Ask students whether it would be in the best interests of countries who are not on the "Top 20" list (in terms of carbon dioxide emissions) to sign on to such a treaty. Many of these nations would be classified as "lesser developed" countries. At "first blush," students might respond that it is in the best interests of such nations to enter into a global climate control treaty since they would have the least to lose, and since those countries who are on the "Top 20" list have the most to lose (in terms of the negative economic effects of such a treaty.) Following this argument, China and the United States would have the most to lose by way of a global climate control treaty since they are economic powerhouses, and would see their economies most affected by carbon emission reduction standards, which would likely negatively affect their manufacturing output. Remember, however, that many of these developing nations want what China and the United States have in terms of economic performance, and might accordingly interpret a global climate control treaty as a potential "stumbling block" in terms of their economic development. All of this assumes that a global climate control treaty would have a negative effect on the economies of signatory nations. Ask your students whether this is a well-founded assumption. Expressed another way, is it possible to have both meaningful carbon emissions reduction and economic growth? Would carbon emissions reductions always have a negative effect on economic performance?



Proceedings

A monthly newsletter from McGraw-Hill

February 2010 Volume 1, Issue 7

The McGraw-Hill Companies

Chapter Key for McGraw-Hill/Irwin Business Law texts

Editions	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Kubasek et al., Dynamic Business Law	Chapters 12, 45 and 49	Chapters 6 and 12	Chapter 2	Chapter 6
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 6 and 25	Chapters 1 and 6	Chapter 2	Chapter 1
Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 14th Edition	Chapters 8, 24 and 48	Chapters 8 and 52	Chapter 4	Chapter 52
Barnes et al., Law for Business, 10th Edition	Chapters 3, 8 and 34	Chapters 8 and 47	Chapter 3	Chapter 47
Brown et al., Business Law with UCC Applications Student Edition, 12th Edition	Chapters 20, 21 and 23	Chapters 21 and 43	Chapter 1	Chapter 43
Reed et al., The Legal and Regulatory Environment of Business, 15th Edition	Chapters 7, 11 and 17	Chapters 11 and 13	Chapter 2	Chapters 13
McAdams et al., Law, Business & Society, 9th Edition	Chapters 7, 15 and 16	Chapter 16	Chapter 2	Chapter 16

This Newsletter Supports the Following Business Law Texts

- Barnes et al., Law for Business, 10th Edition, 2009© (007352493X)
- Brown et al., Business Law with UCC Applications Student Edition, 12th Edition, 2009© (0073524948)
- Kubasek et al., Dynamic Business Law, 2009© (0073524913)
- Kubasek et al., Dynamic Business Law: The Essentials, 2010© (0073377686)
- Mallor et al., Business Law: The Ethical, Global, and E-Commerce Environment, 14th Edition, 2010© (0073377643)
- McAdams et al., Law, Business & Society, 9th Edition, 2009© (0073377651)
- Reed et al., The Legal and Regulatory Environment of Business, 15th Edition, 2010© (007337766X)

