



# Lecture 8

Law 115  
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# Agenda

- Guest Speaker: Apple v. Samsung (Andrea Sander)
- Examples of Common Contracts
- Requirements for a Valid Contract
- Breaching a Contract
- Contract Remedies
- Parts of a Contract
- Negotiating, Drafting, & Amending

Guest Speaker:  
Apple v. Samsung  
(Andrea Sander)



# Apple v. Samsung – U.S. Litigation

## Utility Patent

Tap to Zoom  
Scroll Bounce  
Pinch to Zoom

## Design Patent



## Trade Dress



Total Damages Awarded by Jury: \$1.05 billion

- New damages trial ordered on ~50%



# Apple's Claims and Corresponding Jury Findings

		Utility Patents			Design Patents				Trade Dress			
		'163	'381	'915	'D087	'D305	'D677	'D889	Dilution Only		Dilution & Infringement	
Accused Product	Damages per Product*	Tap to zoom	Scroll bounce	Pinch to zoom					Registered Original iPhone	Unregistered iPhone 3G	Combination iPhone	iPad and iPad 2
Captivate	\$80,840,162	x	x	x		x			x	x	x	
Continuum	\$16,399,117	x	x	x		x			x	x	x	
Droid Charge	\$50,672,869	x	x	x		x			x	x	x	
Epic 4G	\$130,180,896	x	x	x		x			x	x	x	
Exhibit 4G	\$1,081,820	x	x	x								
Fascinate	\$143,539,179	x	x	x		x	x		x	x	x	
Galaxy Ace	0	x	x	x			x				x	
Galaxy Prevail	\$57,867,383	x	x	x					x	x	x	
Galaxy S (i9000)	0	x	x	x		x	x	x	x	x	x	
Galaxy S 4G	\$73,344,668	x	x	x		x	x	x	x	x	x	
Galaxy S II (AT&T)	\$40,494,356	x	x	x		x		x	x	x	x	
Galaxy S II (i9100)	0	x	x	x		x		x	x	x	x	
Galaxy S II (T-Mobile)	\$83,791,708	x				x			x	x	x	
Galaxy S II (Epic 4G Touch)	\$100,326,988								x	x	x	
Galaxy S II (Skyrocket)	\$32,273,558					x			x	x	x	
Galaxy S Showcase (i500)	\$22,002,146					x	x	x	x	x	x	
Gem	\$4,075,585	x	x	x		x						
Indulge	\$16,011,184	x	x	x		x						
Infuse 4G	\$44,792,974	x	x	x	x	x	x	x	x	x	x	
Intercept	0	x	x	x								
Mesmerize	\$53,123,612	x	x	x		x	x		x	x	x	
Nexus S 4G	\$1,828,297	x	x	x								
Replenish	\$3,350,256	x	x	x								
Transform	\$953,060	x										
Vibrant	\$89,673,957	x	x	x		x	x	x	x	x	x	
<b>TABLETS</b>												
Galaxy Tab	\$1,966,691	x	x	x								
Galaxy Tab 10.1 (Wi-Fi)	\$833,076	x	x	x				x				x
Galaxy Tab 10.1 (4G LTE)	0	x	x	x				x				x
<b>Grand Total:</b>	<b>\$1,049,393,540</b>											

\* Where trade dress and/or design patent claims were successful damages are likely to represent Samsung's actual profits.

# A Bit About Trade Dress

Apple Product	Product Image	Trade Dress Claims Asserted	Prevailed	Damages
Registered Original iPhone		Dilution	Yes	Yes, because jury found willfulness  Damages likely based on Samsung's profits
Unregistered iPhone 3G		Dilution	Yes	Yes, because jury found willfulness  Damages likely based on Samsung's profits
Unregistered Combination iPhone		Dilution	No (not protectable)	N/A
Unregistered iPad and iPad 2		Dilution Infringement	No (not protectable)  No (not protectable)	N/A

## Infringement

- Likelihood of consumer confusion as to source or sponsorship of Samsung's products

## Dilution

- Fame
- Samsung product likely to impair Apple's ability to uniquely identify its product ("blurring")
- Willfulness (for monetary damages)

# Why Did Apple Leverage So Much IP?

Easy Answer:



- Most likely damages from utility patent claims = reasonable royalties
- Trade dress and design patent allow for award of *infringer's profits*
- Trade dress also allows for discretionary award of treble damages

What's the Risk?



- The jury (or judge on appeal) may find that the asserted IP is not protectable

# What is the Likely End Result?

- Samsung will design around the trade dress and design patent rights in future models
  - Galaxy S models have avoided design and trade dress claims so far (but still facing utility patent claims)
- Apple will win some amount of money
- Samsung will continue to have a dominant market share
- Increased media attention on design rights for technology companies (e.g. Blackberry and Ryan Seacrest)



# Contracts



# Examples of Common Contracts

- Contract to purchase a home/car/other large item
- Apartment lease
- Prenuptial agreement
- End user license agreement (EULA)
- Employment agreement
- Nondisclosure agreement (NDA)



# Requirements for a Valid Contract



A contract is an agreement between two or more parties. To be legally enforceable a contract must have 3 elements:

1. Offer
2. Acceptance
3. Consideration

Contracts can be verbal or they can be in writing



# Requirements for a Valid Contract

Offer

- A promise to do something or pay an amount

Acceptance

- Agreement to accept the offer

Consideration

- Exchange of value between the parties



# Requirements for a Valid Contract

Types of contracts that do need to be in writing

- Transfers of real property
- Service contracts that cannot be performed within one year from date of agreement
- Sale of goods over \$500
- Guaranteeing the debt of someone else



# Breaching a Contract

**When a valid contract exists** and one of the parties fails to do something that they promised to do as part of the contract, that party has breached the terms of the contract.

- **Material breach:** excuses the non-breaching party from performing + allows the non-breaching party to sue for damages
- **Any Old Breach:** allows the non-breaching party to sue for damages but does NOT excuse the non-breaching party from performing their duties under the contract



# Contract Remedies

## Equitable Remedies

- Specific performance
- Injunction
- Award calculated when monetary damages are too speculative

## Legal Remedies

- Expectation damages
- Reliance damages
- Restitution damages



# Contract Remedies

## Expectation Damages

- Puts the non-breaching party in the position they would have been in had the breaching party performed

## Reliance Damages

- Puts the non-breaching party in the position they were in before entering the contract

## Restitution

- Used to give back what was unjustly taken
- Puts the non-breaching party in the position they would be in had they not performed



# Contract Remedies

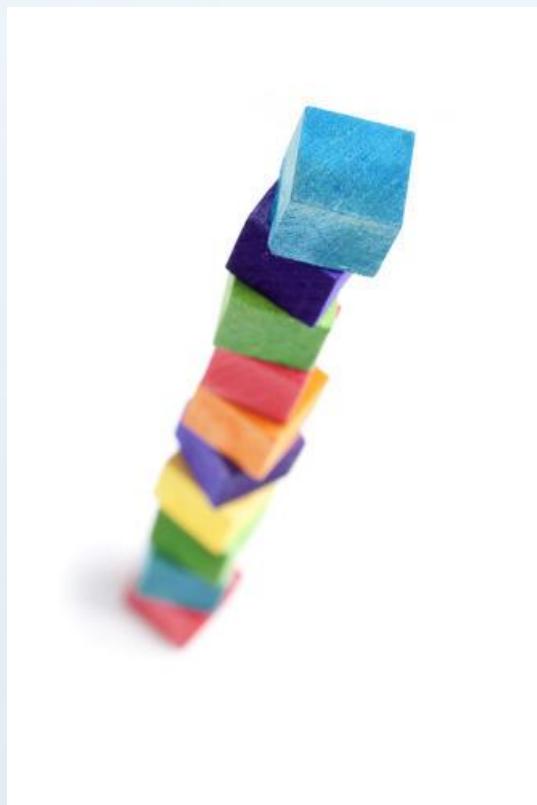


**Liquidated Damages:** a specific amount set forth in the contract that the breaching party must pay if they do not perform

1. The amount must be reasonable relative to actual loss from breach; and
2. Harm caused by breach must be uncertain or very difficult to calculate



# Parts of a Contract



The basic building blocks of almost any contract include...

- ✓ Identity of the parties
- ✓ Definitions
- ✓ Rights and obligations of each party (payments, services, etc.)
- ✓ Underlying assumptions (representations and warranties)
- ✓ Other terms



# Parts of a Contract

Other terms can include...

- Governing law and jurisdiction
- Limitations on liability
- Dispute resolution
- Indemnification
- Entire agreement clause: statement that contract constitutes entire agreement
- Method for making amendments



# Negotiating, Drafting, & Amending

