ALSB JOURNAL OF BUSINESS LAW & ETHICS PEDAGOGY
VOLUME 3; ISSUE 2
WINTER 2021

ABOUT THE ALSB JOURNAL OF BUSINESS LAW & ETHICS PEDAGOGY

The *ALSB Journal of Business Law & Ethics Pedagogy* (JBLEP) is published by the Academy of Legal Studies in Business. The objective of this double-blind, peer-reviewed journal is to offer faculty another outlet that archives the excellent research and teaching ideas of our members and other faculty, as well as to provide publishing and service opportunities. The average acceptance rate for each volume since inception is approximately 20%.

The *ALSB Journal of Business Law & Ethics Pedagogy* is dedicated to disseminating business law and ethics pedagogical research and ideas in an online, open-access format. JBLEP welcomes contributors to share their research and innovations in business law and ethics teaching, student learning, and classroom experiences in scholarly articles.

For additional information, visit our online presence at https://jblep.alsb.org

CONTENT & OPINIONS

EDITORIAL BOARD AND STAFF EDITORS (2021-2022)

FROM THE EDITOR

Promoting Diversity in Teaching and Scholarship

There are many ways to accommodate diverse learners in the classroom, such as including inclusivity and disability statements in syllabi, incorporating multiple identity groups, and selecting content that encourages reflection and dialogue. But how often do we consider diversity in our research? A colleague and I had a conversation last year about a possibility I had not considered before—diversity in sourcing for scholarship and writing.

A recent panel of writers within the Association of Health Care Journalists discussed "source diversity" as a great way to bring new perspectives to a journal or news article. Rather than just relying on the typical experts in an area for opinions—which may be somewhat monolithic—the panel participants encouraged the audience to look for voices that will add rich, diverse perspectives to writing. They recommended taking the time to seek out sources that may better represent, engage, and include readers, and concurrently reflect the many knowledgeable contributions in the world from diverse role models.

As authors writing about the important subjects of business law and ethics, we should consider the process of seeking new and/or different authoritative voices for our articles. This process is important to keep in mind for case writing as well. Several other colleagues recently discussed with me their research on gender inclusiveness in case studies; they found in a review of over 200 cases from a business case journal that just over a third (37%) featured a female protagonist. The Harvard Business Case Publishing Group—one of the leading academic case publishers—featured even fewer female protagonists—only 11% of cases. Too few case studies include underrepresented minorities as well. In 2021, Chair Jan Rivkin of the Harvard MBA Program identified this disparity and said "By studying cases with a wide diversity of protagonists, students learn that talent and leadership come from all background and identities. If students don't understand that, they'll worsen inequities, miss out on opportunities for themselves, and miss chances to create opportunities for others."

In this issue of the *Journal of Business Law & Ethics Pedagogy,* the featured authors provide a number of teaching exercises and research results that will both reach diverse learners and start conversations.

In the first article, *Interactive Videos: An Effective Tool for Improving Learning Outcomes in Business Law*, author Jeffrey Bone discusses his successes with a blended learning program that highlights legal cases. Pairing Face-to-Face instruction with multi-media, Professor Bone explores hybrid learning, which is becoming more and more commonplace in the post-COVID era.

Authors Michael Conklin and Andrew Tiger begin a conversation about potential gender bias in their article *Student Gender Bias in College Class Selection*. They ask the question "When college students are faced with the real-life decision of choosing classes, does the gender of the instructor influence their decision?" See the surprising and interesting results of this multiple regression analysis, which leads to many more questions and potential future research avenues.

In the teaching exercise *A GOAT Walks into a Copyright Lecture: Using the Jumpman Logo Case to Teach Copyright Law Basics*, author Jason Hildebrand highlights *Rentmeester v. Nike, Inc*.—the Jumpman

logo case—as perhaps the "Greatest of All Time" pedagogical case for teaching business students copyright law basics and the importance of making wise intellectual property business decisions. In this informative case discussion, students learn the importance of this unique and interesting copyright case, as well as how to navigate and search government intellectual property records.

In the teaching article *Contract Exercises in the Age of Snapchat*, authors Dale Thompson, Susan Supina and Susan Marsnick offer two in-class expedient contract exercises intended to keep students on the edge of their seats—or screens—as the case may be. Breaking down the known complexities of contract making, the authors simplify and condense procedures, highlight relevant issues, and help students to understand this important process in little more than a *snap*.

* * *

Christine Ladwig
EDITOR-IN-CHIEF

A GOAT Walks into a Copyright Lecture: Using the Jumpman Logo Case to Teach Copyright Law Basics

*Jason R. Hildebrand**

ABSTRACT

While this paper does not resolve the Michael Jordan vs. LeBron James "Greatest of All Time," or "GOAT" debate among professional basketball fans, it does highlight *Rentmeester* v. *Nike, Inc.*—the Jumpman logo case—as perhaps the GOAT pedagogical case for teaching business students copyright law basics and the importance of making wise intellectual property business decisions. This paper discusses why the Jumpman logo case is particularly appealing from a pedagogical perspective and how the case can be practically applied in the Business Law classroom.

KEY WORDS: COPYRIGHT, INTELLECTUAL PROPERTY, BUSINESS LAW, ETHICS

I. Introduction

While Americans did not seem to agree on much during the spring 2020 stay-at-home mandates,[1] it appears that we *did* manage to agree on at least one thing: Michael Jordan still captivates. During the infamous COVID-19 lockdown, an average of 5.648 million Americans viewed each of the 10 episodes of The Last Dance,[2] ESPN's Michael Jordan documentary series that "provided an in-depth look at the Chicago Bulls' dynasty through the lens of the final championship season in 1997-98."[3] Conspicuous throughout the documentary, of course, were Mr. Jordan's shoes, and the "Jumpman" logo—intellectual property that Nike based on a photograph that was the subject of a four year court (of law, not basketball) battle.

*Part-time Lecturer of Business Law, Finance Department, The University of North Carolina at Charlotte

[1] Catherine Lucey, *More Americans Fear Lifting Coronavirus Restrictions Too Soon, WSJ/NBC Poll Says*, Wall Street Journal, April 19, 2020 ("Nearly six in 10 in the survey said they were concerned that the country would move too fast to loosen restrictions aimed at slowing the outbreak, compared with about three in 10 who said the greater worry was the economic impact of waiting too long." Further, "views on when to reopen split along partisan lines, with 77% of Democrats expressing concern about opening too quickly, compared with 39% of Republicans. By contrast, 48% of Republicans are worried the U.S. will take too long, compared with 19% of Democrats.")

[2] Ryan Young, *Viewership Numbers from 'The Last Dance' Prove Michael Jordan Documentary Was a Smash Hit*, Yahoo!Sports, May 21, 2020, https://sports.yahoo.com/michael-jordan-the-last-dance-documentary-numbers-viewership-figures-espn-chicago-bulls-224004795.html ("The Last Dance averaged 5.648 million viewers across all 10 episodes when they premiered on Sunday nights … making it the most-watched ESPN documentary of all time. The first episode had the largest audience at 6.34 million, while the eighth episode had the lowest at 4.918 million…. In total, the ten episodes are averaging 12.876 million viewers through on-demand viewing.")

[3] ESPN.com, *'The Last Dance': The Untold Story of Michael Jordan's Chicago Bulls*, May 19, 2020, https://www.espn.com/nba/story/_/id/28973557/the-last-dance-updates-untold-story-michael-jordan-chicago-bulls. The documentary aired between April 19, 2020, and May 17, 2020.

Ironically, intellectual property, specifically copyright law, does not typically pique business students' intellectual interests.[4] But turning a $15,150.00 investment into $3.1 billion in annual revenue[5] sure does. Thankfully, the two combined in *Rentmeester v. Nike, Inc.*,[6] a case commonly referred to as the Jumpman logo case, named after the now nearly ubiquitous "Jumpman" logo created and owned by Nike.[7] *Rentmeester* is a copyright infringement action brought by Jacobus Rentmeester, a famous photographer and former Olympic rower for the Netherlands, against Nike, Inc., regarding a photo and logo featuring arguably the "Greatest of All Time" or "GOAT"—professional basketball player Michael Jordan.[8] While this paper doesn't resolve the GOAT debate among professional basketball fans, it highlights *Rentmeester v. Nike, Inc.* as perhaps the GOAT pedagogical case for Business Law professors to teach students copyright law basics and the importance of making wise intellectual property business decisions. This paper looks at why *Rentmeester* is particularly appealing from a pedagogical standpoint, and how the case can be practically applied in the Business Law classroom.

II. Background and Outcome of *Rentmeester*

A. Background of Rentmeester v. Nike, Inc.

Rentmeester is a copyright infringement action brought by photographer Jacobus Rentmeester against Nike, Inc.:

> The case involves a famous photograph Rentmeester took in 1984 of Michael Jordan, who at the time was a student at the University of North Carolina. The photo originally appeared in *Life* magazine as part of a photo essay featuring American athletes who would soon be competing in the 1984 Summer Olympic Games.[9]

Importantly, "Mr. Rentmeester set out to create a unique and creative picture of Mr. Jordan."[10]

> Instead of taking a traditional picture of Mr. Jordan in a traditional setting (i.e., a conventional basketball shot in a gym), Mr. Rentmeester photographed Mr. Jordan outdoors in an untraditional pose.
>
> Mr. Rentmeester took the photo … on a relatively isolated grassy hill [on the University of North Carolina campus] with no visual distractions other than the setting sun and a basketball hoop he had temporarily installed on the hill. For the pose, Mr. Rentmeester instructed Mr. Jordan to jump straight up and perform a *grand jeté*, a ballet leap [in which a dancer leaps with

---

[4] See e.g., *Student Attitudes Towards Intellectual Property*, Intellectual Property Associates Network research paper at 8, available at https://www.nus.org.uk/PageFiles/12238/2012_NUS_IPO_IPAN_Student_Attitudes_to_Intellectectual_Property.pdf ("Students feel it was important to know about IP to ensure everyone receives recognition for their work and ideas, but they do not perceive a strong link between IP and commercial success."). Copyright even has been likened to a "forgotten stepchild." See Mark S. VanderBroek and Jennifer M. D'angelo. *Copyright Protection: The Forgotten Stepchild of a Franchise Intellectual Property Portfolio*. Franchise Law Journal, col. 28, no 2, 2008, pg. 84.

[5] Jonathan Stempel, *Nike Defeats Appeal Over Iconic Michael Jordan Photo, Jumpman Logo*, Reuters, Feb. 27, 2018, https://www.reuters.com/article/us-nike-lawsuit-jordan/nike-defeats-appeal-over-iconic-michael-jordan-photo-jumpan-logo-idUSKCN1GB2R7.

[6] *Rentmeester* v. *Nike*, *Inc*., No. 3:15-cv-00113-MO, 2015 WL 3766546 (US Dist. Ct. D. Oregon June 15, 2015); *Rentmeester* v. *Nike*, *Inc*., 883 F.3d 1111 (9th Cir. 2018).

[7] See U.S. Trademark Registration Number 1558100, Registered September 26, 1989, by Nike, Inc. The Jumpman logo is considered to be one of the most recognizable logos in sports. See e.g., Fox Rothschild LLP, *Air Jordan Logo Too Similar to Rob Gronkowski Logo, Says Nike*, July 1, 2017, available at https://advertisinglaw.foxrothschild.com/2017/07/air-jordan-logo-similar-rob-gronkowski-logo-says-nike/.

[8] *See* photos and logo *infra*.

[9] *Rentmeester*, 883 F.3d at 1115.

[10] *Rentmeester*, 2015 WL 3766546 at 1.

> legs extended, one foot forward and other back], while holding a basketball. Mr. Rentmeester claim[ed] he was the first person ever to photograph Mr. Jordan, or any other basketball player, in this specific pose. Mr. Rentmeester believed that a photograph 'with Mr. Jordan extending his non-shooting left arm straight and forward, triumphantly holding a basketball … and framing the shot with Mr. Jordan appearing to glide away from the earth and toward a basketball hoop … would be powerful, compelling, and unique.'[11]

Sound familiar? Around this time, Nike was preparing to launch its endorsement relationship with Mr. Jordan, including promoting the Air Jordan brand of basketball shoes.[12] Nike contacted Mr. Rentmeester to request color transparencies of Mr. Rentmeester's photo. Mr. Rentmeester provided Nike with two color transparencies for $150.00 under a limited license authorizing Nike to use the transparencies "for slide presentation only, no layout or any other duplication."[13]

Within seven months of receiving Mr. Rentmeester's color transparencies, "Nike hired a photographer to produce its own photograph of Jordan, one obviously inspired by Rentmeester's. In the Nike photo, Jordan is again shown leaping toward a basketball hoop with a basketball held in his left hand above his head, as though he is about to dunk the ball."[14] Nike displayed the photo on billboards and posters as part of its marketing campaign for the new Air Jordan brand.[15]

> When Rentmeester saw the Nike photo, he threatened to sue Nike for breach of the limited license governing use of his color transparencies. To head off litigation, Nike entered into a new agreement with Rentmeester in March 1985, under which the company agreed to pay $15,000.00 for the right to continue using the Nike photo on posters and billboards in North America for a period of two years. Rentmeester alleges that Nike continued to use the photo well beyond that period.
>
> In 1987, Nike created its iconic "Jumpman" logo, a solid black silhouette that tracks the outline of Jordan's figure as it appears in the Nike photo. Over the past three decades, Nike has used the Jumpman logo in connection with the sale and marketing of billions of dollars of merchandise. It has become one of Nike's most recognizable trademarks. [16]

In January 2015, Mr. Rentmeester sued Nike in the United States District Court for the District of Oregon alleging that the Nike photo and the Jumpman logo infringed the copyright in his 1984 photo of Mr. Jordan.[17]

---

[11] See *id*. (Internal quote Pl.'s Response at 23.)

[12] See *id*. See also *Rentmeester*, 883 F.3d 1111 at 1116.

[13] *Rentmeester*, 2015 WL 3766546 at 2.

[14] *Rentmeester*, 883 F.3d at 1116.

[15] See *id*.

[16] See *id*.

[17] See *id*. For an interesting observation about Mr. Rentmeester's timing, see Nasar Khan, *The Fight for Nike's "Jumpman,"* available at https://www.lutzker.com/the-fight-for-nikes-jumpman/ ("[Mr.] Rentmeester may have refrained from bringing the action at an earlier date, thinking he was barred by the statute of limitations …. However, in *Petrella* v. *MGM, Inc.*, a 2014 Supreme Court decision, it was held that a copyright owner can bring suit for ongoing infringement event if the initial infringement was long in the past.").

B. Outcome of Rentmeester v Nike, Inc.

1. United States District Court, District of Oregon

Setting out the legal standard, the District Court stated: "It is undisputed that in order to state a claim for infringement, Mr. Rentmeester must allege (1) ownership of a valid copyright[18]; and (2) unauthorized copying of protectable material….For unauthorized copying, Mr. Rentmeester must allege facts that demonstrate that Nike had access to his work and that the works at issue are substantially similar."[19] The court went on to plainly state the obvious: "The most difficult part of this case is determining how similar the works must be to qualify as substantially similar."[20] Stating the same concept a different way, the court later asked; "The key question always is: Are the works substantially similar beyond the fact that they depict the same idea?"[21]

The "idea," as determined by the court, was "Michael Jordan in a gravity-defying dunk, in a pose inspired by ballet's grand-jeté."[22] After defining the idea, the court noted that there were only a relatively few ways to express that idea, thus affording "thin" copyright protection to Mr. Rentmeester's photo.[23] In evaluating that "thin" protection, the court compared the unprotected elements of the photo to the protected elements.[24] The unprotected elements of the photo, according to the court, were: "the basketball hoop, the basketball, a man jumping, Mr. Jordan's skin color, and his clothing."[25] Continuing its analysis, the court stated:

> Turning to Mr. Jordan's actual pose as an expression of the idea to use the grand- jeté, it would be entitled to protection and any substantial similarities between it and Mr. Jordan's pose in the Nike Photo could result in a finding of infringement. Although at first glance there are certainly similarities between the two expressions of the pose, a closer examination reveals several material differences.[26]

The "material differences," according to the court, included the following[27]:

	Rentmeester Photo	Nike Photo[28]
Mr. Jordan's Right Arm	Bent at the elbow	Extended straight down and away from the basket
Mr. Jordan's Left Arm	Bent slightly backwards	Fully extended and depicted above the basket
Mr. Jordan's Legs	Positioned in the stance of someone jumping forward; legs apart, nearly creating a straight line	Positioned in the stance of someone jumping up vertically and spreading legs wide in a straddle position, creating a "V" as opposed to a straight line

[18] The court seemingly ignored this element for the remainder of its opinion.

[19] *Rentmeester*, 2015 WL 3766546 at 2.

[20] *Id*.

[21] *Id*. at 3.

[22] *Id*. at 4.

[23] See *id* at 5.

[24] See *id*.

[25] *Id*.

[26] *Id*. at 6.

[27] While neither court utilized a chart to compare the photos, presenting a slide with the information in chart format can be an efficient teaching tool. *See* additional chart *infra*.

[28] *See* photos *infra*.

In concluding that these material differences resulted in no substantial similarity between the photos, the court stated:

> I believe these many differences are sufficient to overcome the one similarity that Mr. Rentmeester has to hang on to – the fact that the photograph[s] were taken from similar angles…. Given the lack of substantial similarity between the photographs at issue, Mr. Rentmeester cannot satisfy the objective test for copyright infringement. Mr. Rentmeester's claims regarding the Nike Photo are therefore dismissed with prejudice.[29]

Regarding Mr. Rentmeester's claim relative to Nike's Jumpman Logo, the court similarly found that there was no substantial similarity.[30] "The only similarity," noted the court, "is the pose – the Jumpman Logo is nothing more than an expression of the pose…. Mr. Rentmeester has shot another brick."[31]

2. United States Court of Appeals, Ninth Circuit

After losing at the District Court, Mr. Rentmeester appealed to the United States Court of Appeals for the Ninth Circuit. Framing its analysis similar to the District Court, the Court of Appeals noted that an individual claiming copyright infringement must plausibly allege that he owns a valid copyright in the work and that another party copied protected aspects of that work's expression.[32] The court then commented:

> Proof of unlawful appropriation—that is, *illicit* copying—is necessary because copyright law does not forbid all copying. The Copyright Act provides that copyright protection does not 'extend to any idea … regardless of the form in which it is described, explained, illustrated, or embodied in [the copyrighted] work.'…Thus, a defendant incurs no liability if he copies only the 'idea' or 'concepts' used in the plaintiff's work. To infringe, the defendant must also copy enough of the plaintiff's expression of those ideas or concepts to render the two works 'substantially similar."[33]

"To prove unlawful appropriation," the court noted, "the similarities between the two works must be 'substantial' and they must involve protected elements of the plaintiff's work."[34]

The court was quick to note that Rentmeester plausibly alleged that he owns a valid copyright in his work and that there was "copying" by Nike due to Nike's access to the photo's color transparencies.[35] Nike, therefore, had a reasonable opportunity to view Rentmeester's photo.[36] "Nike's access to Rentmeester's photo, combined with the obvious conceptual similarities between the two photos, is sufficient to create a presumption that the Nike photo was the product of copying rather than independent creation."[37] The court then turned its attention to the crux of the dispute: "The remaining question is whether … Nike copied enough of the protected expression from Rentmeester's photo to establish unlawful appropriation."[38]

---

[29] *Rentmeester*, 2015 WL 3766546 at 7.

[30] See *id*.

[31] *Id*.

[32] See 883 F.3d at 1116 - 1117.

[33] See *id*. at 1117.

[34] *Id*.

[35] See *id*. at 1117 – 1118.

[36] See *id* at 1118.

[37] *Id*.

[38] *Id*.

> Without question, one of the highly original elements of Rentmeester's photo is the fanciful (non-natural) pose he asked Jordan to assume. That pose was a product of Rentmeester's own 'intellectual invention,' … it would not have been captured on film but for Rentmeester's creativity in conceiving it….
>
> Without gainsaying the originality of the pose Rentmeester created, he cannot copyright the pose itself and thereby prevent others from photographing a person in the same pose. He is entitled to protection only for the way the pose is expressed in his photograph, a product of not just the pose but also the camera angle, timing, and shutter speed Rentmeester chose. If a subsequent photographer persuaded Michael Jordan to assume the exact same pose but took her photo, say, from a bird's eye view directly above him, the resulting image would bear little resemblance to Rentmeester's photo and thus could not be deemed infringing.[39]

The court then assessed the "similarities in the selection and arrangement of the photos' elements, as reflected in the objective details of the two works," noting that "The two photos' selection and arrangement of elements must be similar enough that 'the ordinary observer, unless he set out to detect the disparities, would be disposed to overlook them.'"[40] Conceding that the two photos were "undeniably similar in the subject matter they depict;" i.e., Michael Jordan in a leaping grand jeté-inspired pose, the court explained that "Rentmeester's copyright does not confer a monopoly on that general 'idea' or 'concept."[41]

Affirming the District Court's opinion, the Court of Appeals compared the following elements from the photos and determined that the photos were not substantially similar[42]:

	Rentmeester Photo	Nike Photo
Mr. Jordan's Limbs	Bent limbs convey a sense of horizontal (forward) propulsion	Straight limbs convey a sense of vertical propulsion
Outdoor Setting	Grassy knoll	No grassy knoll or other foreground element at all
Basketball Hoop Position	Whimsically out-of-place and at a height that appears beyond the ability of anyone to dunk on ("even someone as athletic as Jordan," according to the court[43])	Realistic and appears to be easily within Mr. Jordan's reach
Background	Cloudless blue sky with sun looming large in lower right-hand corner	Chicago skyline silhouetted against the orange and purple hues of late dusk or early dawn with no sun appearing at all
Mr. Jordan's Figure	Cast in shadow	Brightly lit
Arrangement of the Elements Within the Photo	Mr. Jordan positioned slightly left of center, appearing as a relatively small figure within the frame; basketball hoop stands atop a tall pole planted in the ground, balancing Mr. Jordan's left-of-center placement	Basketball hoop takes up the entire right border of the frame, highlighting Mr. Jordan's dominant, central position; basketball hoop is also lit and angled differently toward the viewer

[39] *Id* at 1119.

[40] *Id*. at 1121.

[41] *Id*.

[42] See *id*. at 1121-1122.

[43] *Id*. at 1122.

Consequently, in ruling for Nike, the court concluded:

> In our view, these differences in selection and arrangement of elements, as reflected in the photos' objective details, preclude as a matter of law a finding of infringement. Nike's photographer made choices regarding selection and arrangement that produced an image unmistakably different from Rentmeester's photo in material details – disparities that no ordinary observer of the two works would be disposed to overlook. What Rentmeester's photo and the Nike photo share are similarities in general ideas or concepts…. Rentmeester cannot claim an exclusive right to ideas or concepts at that level of generality…. Copyright promotes the progress of science and the useful arts by 'encourag[ing] others to build freely upon the ideas and information conveyed by a work.'… [T]hat is all Nike's photographer did here.[44]

Turning to the Jumpman logo, the court summarily noted that "If the Nike photo cannot as a matter of law be found substantially similar to Rentmeester's photo, the same conclusion follows ineluctably with respect to the Jumpman logo … [which is] even less similar to Rentmeester's photo than the Nike photo itself."[45]

3. Supreme Court of the United States

Mr. Rentmeester then petitioned the Supreme Court of the United States for a writ of certiorari. On March 25, 2019, the Court denied Mr. Rentmeester's Petition, thereby granting final victory to Nike.[46]

III. Why is this Case So Pedagogically Appealing?

A. Audience Analysis

A recent Westlaw search showed that there are no fewer than 2,885 federal cases addressing 17 U.S.C.A. § 102, the U.S. Code's general statement about copyright.[47] This section states:

> Copyright protection subsists … in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device….
>
> In no case does copyright for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.[48]

So why out of nearly 3,000 cases does *Rentmeester*, unpublished, even, at the District Court level, stand out as perhaps the GOAT pedagogical tool for teaching copyright law basics, and practical applications, to business students? The answer is what the University of Pittsburgh Department of Communications calls "Audience Analysis."[49] "Audience analysis involves identifying the audience and adapting a speech [or lecture] to their

---

[44] *Id*. at 1122-1123.

[45] *Id*. at 1123.

[46] See 139 S. Ct. 1375 (Mem) (2019).

[47] Westlaw search conducted September 3, 2019.

[48] See 17 U.S.C.A. § 102.

[49] "Audience Analysis," University of Pittsburgh, Department of Communications, available at https://www.comm.pitt.edu/oral-comm-lab/audience-analysis.

interests, level of understanding, attitudes, and beliefs. Taking an audience-centered approach is important because a [professor's] effectiveness will be improved if the presentation is created and delivered in an appropriate manner."[50]

Rentmeester uniquely hits the "audience analysis" sweet spot for Business Law students. It strikes a balance between providing the substantive basics of copyright law while highlighting for future business leaders that seemingly mundane intellectual property decisions can create potentially lucrative business opportunities. In other words, it effectively captures business students' interests and understanding.

In his article, "A New Paradigm for the Teaching of Business Law and Legal Environment Classes," Professor Marc Lampe notes that "Except incidentally, business school legal faculty are not teaching future lawyers or paralegals…. To best serve the needs of our students, the introductory course in law should offer a managerial approach that is realistic and practical for *future business practitioners*….[I]n business schools students should learn about law in a way that better enhances their abilities as business decision makers."[51] This is precisely what *Rentmeester* does – shows the enormous potential of coupling a fundamental understanding of legal principles with wise (or unwise, perhaps, in the case of Mr. Rentmeester) business decision making.

Also, "[h]igher education faculty are encouraged to integrate current events into their curriculum and augment these events with other scholarly works…. because most issues will at some point impact student[s] professionally and personally…."[52] Rentmeester is particularly appealing because Mr. Jordan and the Jumpman logo remain uniquely recognizable worldwide, nearly two decades after Mr. Jordan retired from professional basketball.[53] Perhaps even more importantly, *Rentmeester* allows business students to see the incredible effect individual decisions can have on a business, even those as seemingly dull as copyright law applied to a photograph. For Nike, when Mr. Jordan came into the picture (literally and figuratively), it lagged competitors in the basketball shoe market; now, Nike and its Jordan brand dominate all competition.[54] Business students will uniquely have many take-aways from *Rentmeester*, including exposure to both substantive copyright law and its practical application to business decisions.

B. Copyright Basics

1. Substantive Law – What is Copyright?

Copyrights arise out of Article 1 of the U.S. Constitution, which provides: "[The Congress shall have power] To promote the progress of science and useful arts, by securing for limited times to authors … the exclusive right to their respective writings …."[55] Specific to copyrights, Congress exercised this power by enacting Title 17 of the United States Code Annotated. Plainly stated:

> Copyright is a form of protection provided by the laws of the United States to the authors of "original works of authorship" that are fixed in a tangible form of expression. An original work of authorship is a work that is independently created by a human author and possesses at least

[50] *Id*.

[51] Marc Lampe, *A New Paradigm for the Teaching of Business Law and Legal Environment Classes*, 23 J. Leg. Stud. Educ. 1 (2006).

[52] Barbara Burgess-Wilkerson, Clovia Hamilton, Chlotia Garrison, Keith Robbins, *Preparing Millennials as Digital Citizens and Socially and Environmentally Responsible Business Professionals in a Socially Irresponsible Climate*, paper delivered at the Proceedings of the 83rd Annual Conference of the Association for Business Communication (October 24-27, 2018), electronic copy available at https://ssrn.com/abstract=3319110.

[53] See Fox Rothschild LLP, *Air Jordan Logo Too Similar to Rob Gronkowski Logo, Says Nike*, July 1, 2017, available at https://advertisinglaw.foxrothschild.com/2017/07/air-jordan-logo-similar-rob-gronkowski-logo-says-nike/ (noting that Nike's Jumpman logo is "one of the most recognizable trademarks in sports").

[54] See Luke Longo, *Nike Is About to Extend Its Dominance in Basketball, so Buy NKE Stock*, InvestorPlace (April 3, 2019), available at https://investorplace.com/2019/04/nike-is-about-to-extend-its-dominance-in-basketball-so-buy-nke-stock/. See also Ashley Lutz, *2 Charts That Show How Nike Dominates the Sneaker Market*, Business Insider (June 23, 2014) available at https://www.businessinsider.com/nikes-dominanates-basketball-shoes-2014-6 (Nike's namesake and Jordan brand controls 97% of the U.S. basketball shoe market).

[55] U.S. Constitution, Article 1, Section 8, Clause 8.

> some minimal degree of creativity. A work is "fixed" when it is captured (either by or under the authority of an author) in a sufficiently permanent medium such that the work can be perceived, reproduced, or communicated for more than a short time. Copyright protection in the United States exists automatically from the moment the original work of authorship is fixed.[56]

Consistent with the above, *Rentmeester* succinctly provides the fundamental premise of copyright protection: "Ideas-even very creative ideas-are not granted copyright protection. Rather, it is the expression of the idea that is protected."[57] This is precisely what *Rentmeester* turned on. It is unmistakable that the idea conveyed in Mr. Rentmeester's photo and in Nike's photo were similar, but it was Nike's unique expression of Mr. Rentmeester's idea that won the day. And, while *Rentmeester* does not detail Nike's decision-making process, it seems very likely that the unique expression chosen by Nike was a deliberate business decision made by creative businesspersons knowledgeable about substantive copyright law.

2. Substantive Law – What is Copyright Infringement?

Rentmeester also simply articulates the standard for copyright infringement: (1) ownership of a valid copyright, and (2) that another person copied protected aspects of the particular expression.[58] The court noted that "a defendant incurs no liability if he copies only the 'ideas' or 'concepts' used in the plaintiff's work. To infringe, the defendant must also copy enough of the plaintiff's expression of those ideas or concepts to render the two works 'substantially similar.'"[59] As the District Court put it, "[t]he most difficult part … is determining how similar the works must be to qualify as substantially similar."[60] "The key question always is: Are the works substantially similar beyond the fact that they depict the same idea."[61]

Regarding copying protected aspects of a particular expression, *Rentmeester* noted that "[p]roof of copying by the defendant is necessary because independent creation is a complete defense to copyright infringement. No matter how similar the plaintiff's and the defendant's works are, if the defendant created his independently, without knowledge of or exposure to the plaintiff's work, the defendant is not liable for infringement."[62] In other words, if Nike somehow independently came up with the same idea – a photo of "Michael Jordan in a gravity-defying dunk, in a pose inspired by ballet's grand-jeté,"[63] it would have been an even easier win for Nike, even if the photo was expressed in an identical fashion.

Here, though, the court acknowledged that "Nike's access to Rentmeester's photo, combined with the obvious conceptual similarities between the two photos, is sufficient to create a presumption that the Nike photo was the product of copying rather than independent creation."[64] So, "the remaining question is whether Rentmeester has plausibly alleged that Nike copied enough of the protected expression from Rentmeester's photo to establish unlawful appropriation."[65] It is important to point out that establishing *unlawful* appropriation is necessary "because copyright law does not forbid all copying."[66] Ideas, procedures, processes,

---

[56] Copyright Basics, Circular 1, United States Copyright Office.

[57] *Rentmeester*, 2015 WL 3766546 at 3. Codified in 17 U.S.C § 102(b).

[58] See *Rentmeester*, 883 F.3d at 1116-1117.

[59] *Id*.

[60] *Rentmeester*, 2015 WL 3766546 at 2.

[61] *Id*. at 3.

[62] *Rentmeester*, 883 F.3d at 1117.

[63] *Rentmeester*, 2015 WL 3766546 at 4.

[64] *Id*. at 1118.

[65] *Id*.

[66] *Id*. at 1117.

systems, methods of operation, concepts, principles, or discovery are all outside the reach of copyright protection.[67]

C. A Picture (or Three) is Worth a Thousand Words

Rentmeester also serves as an invaluable teaching tool because pictures (copied below) found in both the District Court case and the Court of Appeals Appendix bring to life the copyright distinctions that words, alone, cannot. Incorporating the pictures, below, from *Rentmeester* into the classroom discussion helps to show students exactly what, in the courts' mind, distinguished Nike's photograph and logo from Mr. Rentmeester's photograph.

Rentmeester's photograph

Nike's photograph

Nike's Jumpman logo

[67] *See id*, citing 17 U.S.C. § 102(b).

D. Beyond Copyright Basics: Practical Application

1. Legal Application: Ownership, Registration, and Civil Procedure

Beyond the basic substantive copyright law overview, *Rentmeester* also provides practical application material for Business Law instruction.

For instance, Business Law professors can introduce the concept of copyright ownership. Typically, copyright ownership resides in the actual preparer or creator of the work; in this case, Mr. Rentmeester for his respective photograph. However, when a work is created by an employee within the scope of employment, the employee is considered the author while copyright ownership resides in the employer – commonly referred to as works made for hire.[68] So, had Mr. Rentmeester been a photographer employed by Nike, and the photo was taken within the scope of his employment, he would have no ownership claim to his photo. Important to business students:

> Compliance with the work made for hire provisions often is not considered from a business standpoint until it is too late. Such oversights can result in copyright ownership residing in the creator, even if the creator and the ostensible employer in a special order or commission situation (or even situations where works are created by actual employees for the employer, but outside the scope of employment) actually intended that the ostensible employer would own the copyright.
>
> The principle to remember is that just because a company paid for the creation of a work does not mean that it owns the copyright in that work. For the employer to own the copyright, it must meet the work for hire requirements or obtain an assignment of copyright rights.[69]

Also, as the Court of Appeals noted, an owner registering her or his photograph, or other work, with the Copyright Office permits that registrant to file a civil action in federal court for infringement.[70] From a pedagogical standpoint, though, it's also important to highlight to business students that copyright protection is automatically granted the moment a work is created and tangibly fixed.[71] Therefore, Business Law professors should emphasize that even if a business doesn't typically register its copyrighted works, it should still routinely use proper copyright notices on their works[72] and actively self-police infringers through, for example, cease-and-desist letters. However, registering the copyright not only allows a business to file an infringement action in federal court, but also allows the business, under certain circumstances, to be awarded statutory damages and attorney fees in the event of a trial.[73]

During this discussion, it could be helpful to actually show students the U.S. Copyright Office's website and how to navigate it, including searching the copyright records available online and the website's easy to navigate categories of frequently registered works.[74] For reference, a link is provided here: https://www.copyright.gov/. On the Copyright.gov homepage, the Resources section contains a link to "Search Copyright Records" (note, though, that online searching is only available for registrations from 1978 to the present). An interesting and relevant search to demonstrate to students is to type "Rentmeester, Jacobus" in the "Search for" text box and select Name in the "Search by" drop down menu. A screenshot may be viewed on the next page:

---

[68] See 17 U.S.C. § 201(b).

[69] John F. Hornick, *Copyright Law For Businesspeople: A Handy Guide* (November 2003), available at https://www.finnegan.com/en/insights/copyright-law-for-business-people-a-handy-guide.html.

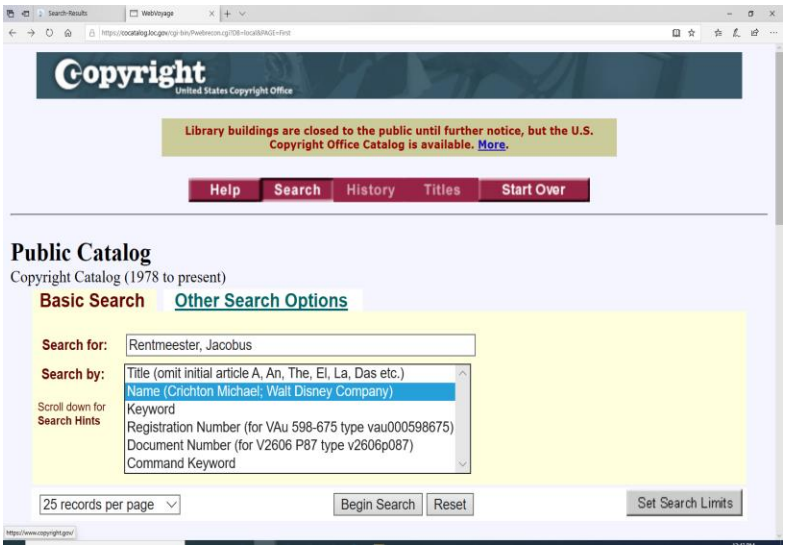
[70] See *Rentmeester*, 883 F.3d at 1118; see also 17 U.S.C. § 411(a).

[71] See 17 U.S.C.A. § 102.

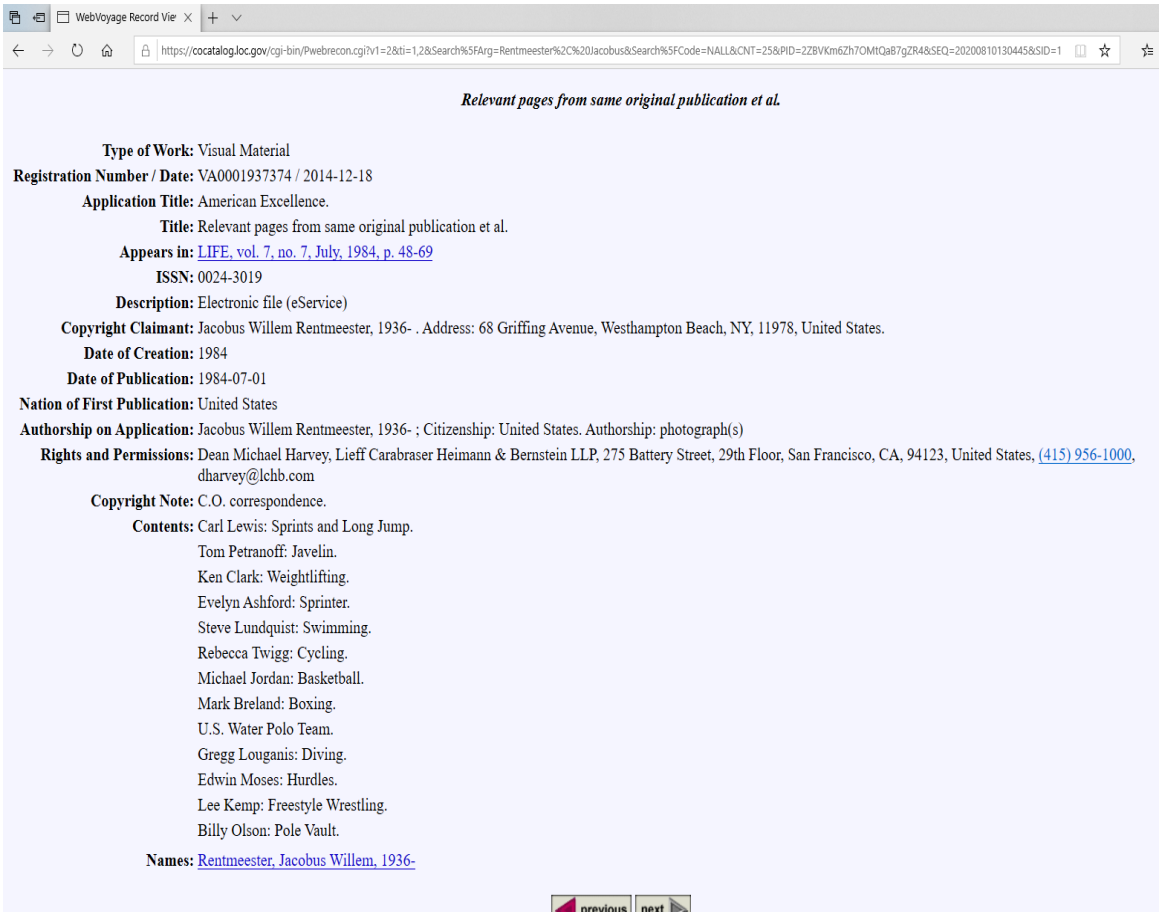
[72] See 17 U.S.C.A. § 401 (©, year of first publication of the work, and the name of the owner of copyright in the work).

[73] See 17 U.S.C.A. § 412.

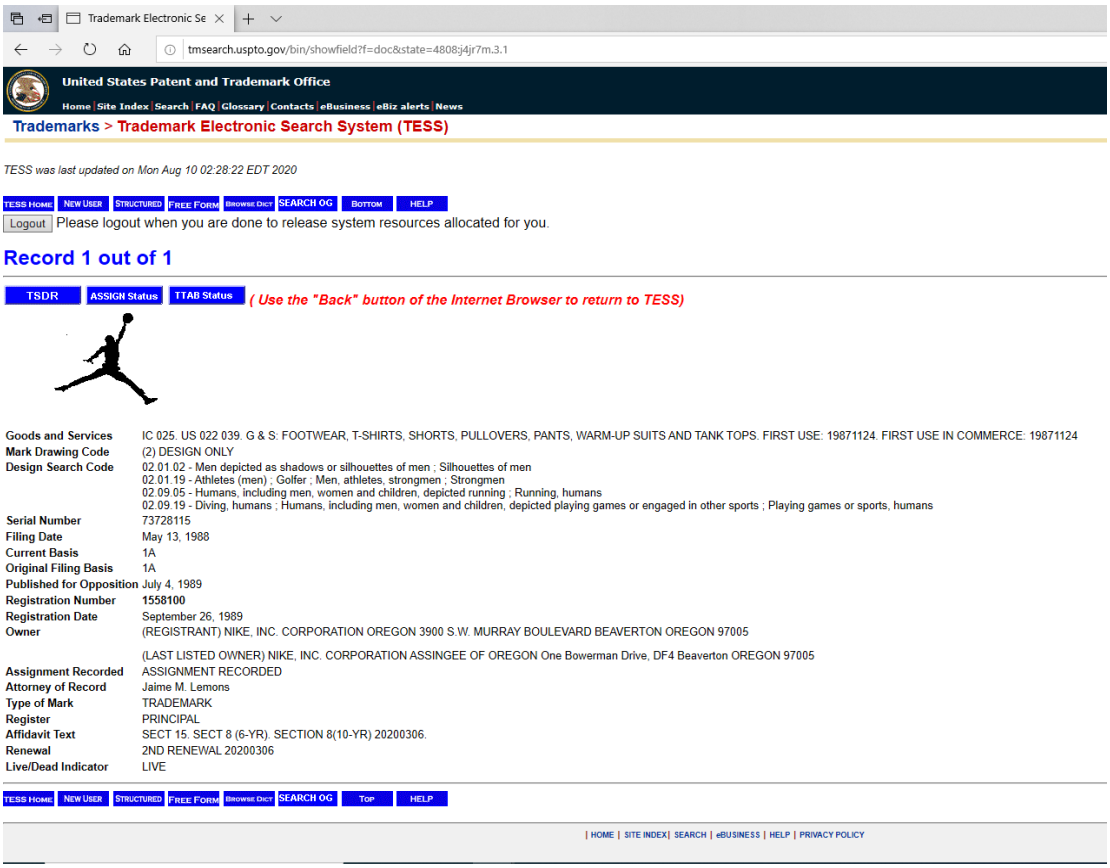
[74] For example, Literary Works, Performing Arts, Visual Arts, Other Digital Content, Motion Picture, and Photographs.



The Results page will include an entry with the Full Title "Relevant pages from same original publication et al." with copyright number VA0001937374. This entry is Mr. Rentmeester's copyright registration for all of the athlete photographs he took that appeared in the July 1984 *Life* magazine that featured certain American athletes that would compete in the 1984 Olympics (note Mr. Jordan's name appears near the middle of the list). A screenshot is below:

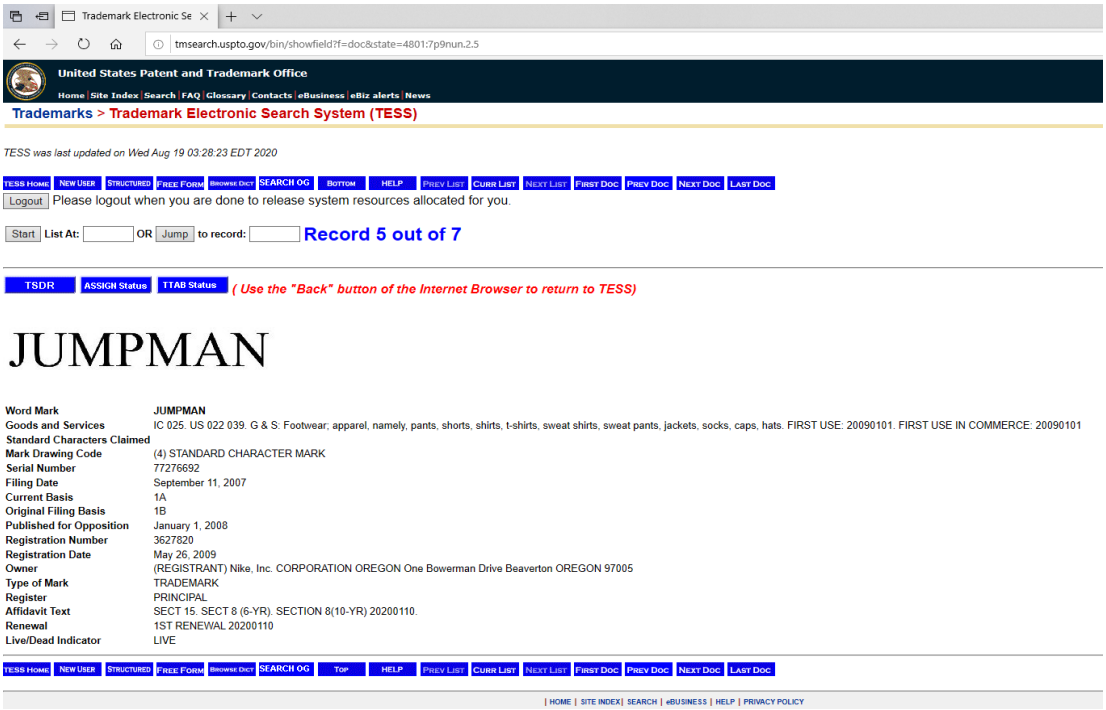


It also could be helpful to provide the same basic tutorial for trademarks and to take the opportunity to highlight the basic distinction between a copyright and a trademark. Namely, "[a] copyright protects original works of authorship including literary, dramatic, musical, and artistic works" whereas "[a] trademark is a word, phrase, symbol, and/or design that identifies and distinguishes the source of the goods of one party from those of others."[75] Tying back to *Rentmeester*, you can clarify that photographs are typically the subject matter of a copyright registration, while logos (i.e., brand identifiers) are typically the subject matter of a trademark registration. To get started with the brief tutorial, a link to the U.S. Patent and Trademark Office's website is provided here for reference: https://www.uspto.gov/. On the USPTO.gov homepage, the Trademarks tab contains a section for "Application process" which provides a link for "Searching Trademarks." From there, you can click the link to "Search our trademark database." An interesting and relevant trademark search to demonstrate to students is to show them Nike's Jumpman logo registration. Within the Trademark Electronic Search System, first select Basic Word Mark Search. Then, in the Search Term text box type 1558100 (the trademark's registration number), and in the Field drop down menu select Serial or Registration Number, and it will take you take you to Nike's design mark for the Jumpman logo. The applicable screenshot follows:



[75] United States Patent and Trademark Office, *Trademark, Patent, or Copyright?*, June 9, 2016, https://www.uspto.gov/trademarks-getting-started/trademark-basics/trademark-patent-or-copyright#

Incidentally, typing "Jumpman" into the Search Term text box, and selecting Combined Word Mark will take you to Nike's registration for the standard character mark "Jumpman" (Reg. Number 3627820). A screenshot follows:



Trademark Electronic Se

tmsearch.uspto.gov/bin/showfield?f=doc&state=4801:7p9nun.2.5

United States Patent and Trademark Office

Home | Site Index | Search | FAQ | Glossary | Contacts | eBusiness | eBiz alerts | News

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Wed Aug 19 03:28:23 EDT 2020

TESS Home | New User | Structured | Free Form | Browse Dict | Search OG | Bottom | Help | Prev List | Curr List | Next List | First Doc | Prev Doc | Next Doc | Last Doc

Logout | Please logout when you are done to release system resources allocated for you.

Start | List At: | OR | Jump | to record: | Record 5 out of 7

TSDR | ASSIGN Status | TTAB Status | *(Use the "Back" button of the Internet Browser to return to TESS)*

JUMPMAN

Word Mark	**JUMPMAN**
Goods and Services	IC 025. US 022 039. G & S: Footwear; apparel, namely, pants, shorts, shirts, t-shirts, sweat shirts, sweat pants, jackets, socks, caps, hats. FIRST USE: 20090101. FIRST USE IN COMMERCE: 20090101
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	77276692
Filing Date	September 11, 2007
Current Basis	1A
Original Filing Basis	1B
Published for Opposition	January 1, 2008
Registration Number	3627820
Registration Date	May 26, 2009
Owner	(REGISTRANT) Nike, Inc. CORPORATION OREGON One Bowerman Drive Beaverton OREGON 97005
Type of Mark	TRADEMARK
Register	PRINCIPAL
Affidavit Text	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20200110.
Renewal	1ST RENEWAL 20200110
Live/Dead Indicator	LIVE

TESS Home | New User | Structured | Free Form | Browse Dict | Search OG | Top | Help | Prev List | Curr List | Next List | First Doc | Prev Doc | Next Doc | Last Doc

| HOME | SITE INDEX | SEARCH | eBUSINESS | HELP | PRIVACY POLICY

Displaying this in class, as well, may be instructive for at least three reasons. First, you can show students the noticeable difference between a design mark (e.g., a logo) and a standard character mark. Second, you can highlight the specific Goods and Services to which the registration attaches; here, namely footwear and apparel. Third, you can encourage students to conduct similar searches in their future business careers to help prevent intellectual property legal disputes from arising.[76] For instance, if a business intends to introduce a new product line, it would be wise for a business manager to proactively search the Trademark Electronic Search System to determine whether a confusingly similar mark is already registered. This will allow the manager to resolve any potential conflicts ahead of time and thereby avoid the increased time and expense of defending against an infringement claim after the new product already has launched.[77] You can also note to students that performing these basic searches on their own can help minimize outside legal counsel fees, while nonetheless encouraging them to engage with an IP expert when potential conflicting registrations arise. In concluding the tutorial, a good discussion question, especially for an online class, is to ask students to search for the registration of a brand or product line they are familiar with and to describe their findings in a Discussion post and link to the search results. Or, students can be asked to think of a new brand or product line for a hypothetical company and determine if any potentially conflicting marks already are registered.

Additionally, it is helpful to remind students that in their business license works from others, they should carefully review the license agreement and ensure they accept no liability arising out of their use of the work in case the work is found to infringe a third party's copyright.

Incidentally, *Rentmeester* also provides a good opportunity to review the basics of the American judicial system and civil procedure. As *Rentmeester* deals with federal copyright law, it is appropriately in the federal courts, beginning at the United District Court for the District of Oregon.[78] From there, Mr. Rentmeester

[76] See Lampe, *supra* note 51, at 13.

[77] See *id*.

[78] *Rentmeester*, 2015 WL 3766546 at 1.

appealed to the United States Court of Appeals, Ninth Circuit.[79] After the Court of Appeals affirmed the District Court opinion, Mr. Rentmeester petitioned for writ of certiorari to the United States Supreme Court. The Supreme Court denied Mr. Rentmeester's Petition, thereby granting final legal victory to Nike.[80]

2. Ethics Application: Did Nike Take Advantage of Mr. Rentmeester or Did It Just Make Good Business Decisions?

Rentmeester also can be helpful to briefly introduce or review certain introductory business ethics topics in your course, perhaps most effectively through discussion questions that students can respond to orally or in a written assignment. A set of two sample discussion question sets and their related business ethics topics follows, one focused introspectively, the other focused outwardly:

> **Discussion Question Set 1**: If you were a new Nike employee and your supervisor asked you to carry out this particular deal with Mr. Rentmeester, but you thought Nike was taking advantage of him, would you address your concern with your supervisor or would you simply go along with it? If you simply went along with it this time, do you think you would be more or less likely to simply go along with it the next time an ethical concern surfaced? Why or why not?

This question can be posed to discuss ethical topics including obedience to authority, conformity bias, and prescripting. Regarding obedience to authority:

> Sometimes people suspend their own ethical standards in order to please authority as a matter of conscious self-interest. The authority figure has their future in his or her hands, and so they ignore their own ethical standards in order to advance their careers…. More worrisome is the subordinate who focuses so intently upon pleasing a superior that he or she does not even see the ethical issue involved because the ethical aspect of the question seems to fade into the background.[81]

Based on the above description, part of the discussion can include whether any of your students have been faced with the prospect of ignoring their own ethical standards in order to please their supervisor.

Similarly, regarding conformity bias, "people behave in ways that are consistent with the culture because they feel they are expected to do so. Their behavior may have little to do with their personal beliefs, but they behave as they are expected to behave in order to fit into the context and to be approved by peers and superiors."[82] "People who join new workplaces look to their co-employees for cues as to appropriate work behavior, and, unsurprisingly, if they perceive co-workers acting unethically, they will be more likely to do so themselves."[83] Put simply, "dishonesty is contagious."[84] Again, students can be asked how conformity bias has manifested itself in jobs or internships they have had.

---

[79] See *Rentmeester*, 883 F.3d at 1111.

[80] *Rentmeester* v *Nike, Inc.*, 139 S. Ct. 1375 (2019).

[81] Robert Prentice, *Teaching Behavioral Ethics*, 31 J. Leg. Stud. Educ. 341 (2014).

[82] Linda K. Trevino and Katherine A. Nelson, Managing Business Ethics: Straight Talk about How to Do It Right, 160, 7th Ed. (2017).

[83] Prentice, *supra* note 79, at 343.

[84] *Id*.

While students can "easily relate to the potentially toxic effects of the conformity bias,"[85] the discussion can turn to the helpful exercise of prescripting:

> Wondering why some people act heroically, perhaps by running into a burning building to save a child while others are milling around out on the sidewalk, psychologists interviewed a number of people who had been heroes. The most consistent answer they received was that those who acted the hero had thought about the situation before and already made up their mind as to what they would do if the situation presented itself. While other bystanders' minds were racing, these people already had an action plan.[86]

As suggested by Professor Robert Prentice, students can be tasked with "writ[ing] a paper describing an ethical challenge they anticipate that they will run into in their careers….[T]hen … write thoughtfully and carefully about how they would like to handle that ethical challenge should they actually run into it."[87] As noted by Professor Prentice, "the purpose … is to set off alarm bells in a student's head should they find themselves facing an ethical challenge that they have previously thought about or hear themselves saying that they are about to do something that they said they would never do."[88]

> **Discussion Question Set 2**: Even though it was legally permissible for Nike to copy portions of Mr. Rentmeester's photo, was it ethically right? Why or why not? From an ethical standpoint, what more could Nike have done to prevent being accused of copyright infringement by Mr. Rentmeester?

Discussion of these questions can include business ethics topics such as the moral minimum, corporate social responsibility, virtue ethics, and framing. "Compliance with the law is sometimes called the moral minimum. If people and entities merely comply with the law, they are acting at the lowest ethical level society will tolerate. The study of ethics goes beyond those legal requirements to evaluate what is right for society."[89] Here, Nike's actions complied with the law, as determined by both the District Court and the Court of Appeals. With these discussion questions, though, students can be given the opportunity to debate whether Nike merely fulfilled the moral minimum or acted at a higher ethical level in its dealing with Mr. Rentmeester.

Corporate social responsibility "combines a commitment to good citizenship with [in part] a commitment to making ethical decisions [and] improving society."[90] Part of corporate social responsibility "requires that corporations demonstrate that they are promoting goals that society deems worthwhile and are moving toward solutions to social problems."[91] Moreover, "businesses, as part of society, have a responsibility to behave ethically … executives have an ethical duty to care about multiple stakeholders because it is simply the right thing to do."[92] "Today's business environment warrants that managers go beyond bare legal compliance. Society increasingly demands, and successful business people see the wisdom of 'integrity-based' management, which combines a concern for the law with an emphasis on ethics."[93] With these descriptions, students can discuss whether Nike's dealings with Mr. Rentmeester were consistent with its social responsibilities. Students also can address what goals Nike seemed to be promoting with its dealings with Mr. Rentmeester, what degree of care, if any, Nike showed towards him, and did Nike act appropriately under the

---

[85] *Id*.

[86] *Id*., at 359.

[87] *Id*.

[88] *Id*., at 360.

[89] Kenneth W. Clarkson, Roger LeRoy Miller, and Frank B. Cross, Business Law Texts and Cases, 91, 14th Ed. (2018).

[90] *Id*.

[91] *Id*.

[92] Trevino and Nelson, Managing Business Ethics: Straight Talk about How to Do It Right, 329.

[93] Lampe, *supra* note 51, at 13.

circumstances. The construct of virtue ethics can be brought into the discussion, too; essentially, the notion that "character dispositions or virtues, such as loyalty, integrity, justice, and prudence are necessary components of both the good business-person and the good moral human being."[94] Did Nike demonstrate any of these character dispositions when it copied part of Mr. Rentmeester's photo and conducted transactions with him? "When we understand business as a social activity, we see that it has far reaching effects beyond its own doors. Virtue ethics, when properly applied to business, forces us to think about how the business environment which is so prominent in our lives influences the persons we become."[95]

The last discussion question, regarding what, from an ethical standpoint, Nike could have done to avoid being accused copyright infringement, can be posed to introduce or review framing. "Psychologists often say that they can dramatically change people's answers to questions simply by reframing them."[96] In other words, "if a choice is framed as a business decision, people will tend to make dramatically different (and less ethical) choices than if the same decision is framed as an ethical decision."[97] In this discussion, the analysis would be reversed; i.e., framing the choice as an ethical decision by Nike instead of a business decision. In other words, could Nike have prevented being accused of copyright infringement by framing the transactions with Mr. Rentmeester as a series of ethical decisions instead of a series of business decisions? As noted by Professor Marc Lampe, "[a]n important way businesses and individuals can prevent legal liability is by practicing ethical behavior."[98]

3. Business Application: Making the Most of $15,150.00

a. From Nike's Perspective

Business students may tend to think of copyright law, and intellectual property generally, as a legal formality that does not require much attention. But, *Rentmeester* shows that wise foresight with IP opportunities can be potentially game-changing for businesses. In this case, Nike effectively "issue spotted" when it came to taking their own photograph and designing the Jumpman logo and creatively produced a unique solution that has helped it generate billions in revenue for many years – a slam dunk by all accounts!

b. From Mr. Rentmeester's Perspective

On the flip side of that coin, and to help reinforce the importance of making wise intellectual property decisions, an engaging assignment can be to ask your business students to role-play as a business advisor to Mr. Rentmeester in 1984 and 1985. How could creative business consultants have better steered Mr. Rentmeester in his negotiations with Nike? Perhaps including in the original license agreement a provision requiring payment of a percentage of profits from any sales made from products based on, arising out of, or conveying the same idea as Mr. Rentmeester's photograph? Even the court recognized that there were "obvious conceptual similarities between the two photos."[99] Or, more simply, payment of Nike stock. As Professor George Siedel described, there are "two basic types of negotiation: dividing the pie and enlarging the pie…. [I]ntegrative negotiation [i.e., enlarging the pie] involves expanding the pie by integrating each side's interests."[100] "[A] key factor that distinguishes a great negotiator from a good one is the ability to look at the deal from the other side's

[94] John Morse, The Missing Link between Virtue Theory and Business Ethics, J. of Applied Philosophy, 47-48 (1999).

[95] *Id*., at 57.

[96] Prentice, *supra* note 79, at 345.

[97] *Id*.

[98] Lampe, *supra* note 51, at 13.

[99] *Rentmeester*, 883 F.3d at 1118.

[100] George Siedel, *Why and How to Add Negotiation to Your Introductory Law Course*, 1 J. Bus. L. & Ethics Pedagogy 44 (2018).

perspective."[101] Thus, with more creativity, Mr. Rentmeester could have taken a cooperative approach[102] to the negotiations with Nike and worked towards a more mutually beneficial arrangement by including an in-kind stock payment as part of (or all of) the deal. Mr. Rentmeester, then, would have at least reserved his seat at the table in the event the Nike "pie" was enlarged in the future, which we now know it was, significantly. In March of 1985, when Mr. Rentmeester licensed his photo to Nike for $15,000.00 (seven months after the initial $150.00 limited license for transparencies), Nike's stock price was approximately $0.14. This would have translated into 107,142 shares of Nike. Today, the value of those shares would be more than $11,000,000.00[103], not accounting for re-investing dividends. So, it is not hard to see that wiser, more creative, or more aggressive negotiation by Mr. Rentmeester or his legal counsel could have resulted in a windfall for him in the same way it did for Nike.

IV. Conclusion

Rentmeester v. *Nike Inc.* is as pedagogically valuable from a substantive legal perspective as it is from a general business perspective. While intellectual property decisions, especially regarding copyright, don't often appear to be potentially lucrative for businesses, future business leaders will need to be able to "issue spot" copyright law pitfalls and potentials. *Rentmeester* provides students with the basic framework for identifying and evaluating these issues. Beyond that, *Rentmeester* also provides practical application tools for business students to make sound, creative, and ethical business decisions, thereby making *Rentmeester* perhaps the GOAT in its respective field.

[101] *Id*. at 47.

[102] *See*, *id*. at 55.

[103] Approximately $11,328,480.00, as of August 17, 2020.