

# GCIN 2027 Intellectual property, knowledge and creativity: Mapping out the legal issues

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## Introduction

The course is the continuation of the GCIN 2016 with special references to some important issues in relation to the intellectual property laws in the creative industries.

With the completion of the courses the students are expected to:

- a. The importance of the intellectual property laws in the creative industries with global perspectives.
- b. The development and trend of the intellectual property laws with special reference to traditional cultural expression, copyrights, patent and trademarks.
- c. Equipped with relevant legal knowledge on the application of the relevant laws in Hong Kong and the neighbouring jurisdictions.

## Course Assessment:

The course will be assessed by the followings:

- a. Course participation: 10%
- b. Presentation: each presentation carries 10%, in total of 60%
- c. Essay: final essay of 30% with not more than 2000 words. The deadline will be announced later in the course.

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Students are encouraged to participate actively in the class and be prepared for each class for reading relevant materials.

## Long Essay

Discuss the meaning of "passing off". In what ways could a trader invoke his rights for an unregistered mark or name through the doctrine of "passing off"? Please explain with the support of relevant cases (2000 words).

Deadline: TBC

## General reading

This course requires to prepare readings prior to the class. Apart from the required readings, a students are expected to prepare presentations in each meeting.

Basic textbook:

Wong and Lee (2010) *Intellectual Property Law and Practice in Hong Kong* (Sweet and Maxwell).

Michael D Pendleton, Alice Lee (2007) *Intellectual Property in Hong Kong*, LexisNexis.

Yu Raymond (2013), *Intellectual Property for Business*, Lexis Nexis.

Luo, Li (2014), *Intellectual Property Protection of Traditional Cultural Expressions: Folklore in China*, Springer.

Meeting 1: Introduction

Spence (2017), Ch. 1

Meeting 2: WIPO, Traditional Knowledge and Traditional Cultural Expressions

Readings:

Sara Bannerman, The WIPO and Traditional Knowledge in Rimmer M (ed.) (2015), *Indigenous Intellectual Property*, EE.

Marc Perlman, Traditional Cultural Expressions in Robinson D. (ed.) (2017) *Protecting Traditional Knowledge*, Routledge.

Debora Halbert (2006), *Resisting Intellectual Property*, Routledge.

Meeting 3: Traditional Cultural Expressions in the Greater China Region

Yahong Li, *International and Comparative Intellectual Property: Law, Policy and Practice*, LexisNexis, Ch 1 and 2.

Meeting 4: Issues in Copyright: authorship, ownership, exploitation, term, moral rights, and economic rights

Wong and Lee, Chapter 3

Spence (2007), Ch. 4

Cases:

University of London Press v University Tutorial Press [1916] 2 Ch 601

Ladbroke (Football) Ltd v William Hill (Football) Ltd (1964) 1 WLR 273

Interlego v Tyco [1989] AC 217

Meeting 5: Issues in Copyright: Infringement, exceptions and criminal offence

Wong and Lee, Chapter 3

Cases:

Designer Guild v Russell Williams [2000] 1 WLR 2416; [2001] FSR 11 (HL)

HKSAR v Tan Say Seng [2000] 3 HKC 236

HKSAR v Mega Laser Products (HK) Ltd [1999] 3 HKC 161  
HKSAR v Ho Hon Chung Danel [2004] 3 HKC 304

Meeting 6: Issues in Patent: Registration and novelty

Wong and Lee, Ch.4

Cases:

Canon Kabushiki Kaisha v Green Cartridge Co (Hong Kong) Ltd [1995] 1 HKC 729 and Green Cartridge Co (Hong Kong) Ltd v Canon Kabushiki Kaisha [1996] 2 HKC 180.

Aerotel Ltd v Telco Holdings Ltd [2007] RPC 7.

Tanashin Denki Co Ltd v King Long Industrial Ltd [1997] 4 HKC 217.

Meeting 7: Issues in Patent: Infringement, exceptions and criminal offence

Cases:

Cantac v Hill and Smith [1982] RPC 183.

Monsanto Co v Stauffer Chemical Co [1985] RPC 515.

SKF v Evans [1989] FSR 513.

Meeting 8: Issues in Trade Marks: Registration and refusal of registration

Wong and Lee, ch.1

Spence (2007), ch.5

Cases:

Prince Sovereign and Device Trade Mark [1989] 2 HKC 247

Richemont International SA v Da Vinci Collections (HK) Ltd [2006] HKC 403

Lam Soon Marketing Services Ltd v Lam Mei hung (t/a Yat Hing Trading Co), [1994] 3 HKC 414.

Meeting 9: Issues in Trade Marks: infringement, exceptions and entitlement

Cases:

Arsenal Football Club plc v Reed [2003] RPC 39.

O2 Holdings Ltd v Hutchison 3G Ltd [2006] RPC 29.

Re Ping An Securities (2009) 12 HKCFAR 808.

Meeting 10: Passing Off

Wong and Lee, Ch. 2

Cases:

Starbucks (HK) Ltd v British Sky Broadcasting Group plc [2013] EWCA Civ 1465.

Lau Wing Mou v Lo Kong [1992] 1 HKLR 60.

Shaw Bros (Hong Kong) Ltd (No 2) v Golden Harvest (HK) Ltd [1972] HKLR 147.

Levi Strauss & Co v Maruichi Holdings (HK) Ltd [1992] 1 HKC 419.

Meeting 11: Conclusion

References:

Yahong Li, *International and Comparative Intellectual Property: Law, Policy and Practice*, LexisNexis

David Moser and Cherly Slay, *Music Copyright Law*, Course Technology

Francioni and Gordley (ed.) (2013) *Enforcing International Heritage Law*, Oxford University Press.

Michael Spence (2007), *Intellectual Property*, Oxford University Press.

Christoph Antons (ed.) (2009) *Traditional Knowledge, traditional Cultural Expressions and Intellectual Property Law in the Asia-Pacific Region*, Wolters Kluwer.

Graber and Burri-Nenova (ed.) (2008) *Intellectual Property and Traditional Cultural Expressions in a Digital Environment*, Edward Elgar.

Matthew Rimmer (ed.) *Indigenous Intellectual Property: A Handbook of Contemporary Research*, Edward Elgar.

Shyambrishna Balganesch (ed.) (2013), *Intellectual Property and the Common Law*, Oxford University Press.

Justine Pila and Paul Torremans (ed.) (2016) *European Intellectual Law*, Oxford University Press.

Tanya Aplin and Jennifer Davis (ed.) (2017) *Intellectual Property Law: Texts, Cases and Materials*, Oxford University Press.

William Cornish, David Llewelyn and Tanya Aplin (2013), *Intellectual Property: Patents, Copyrights, Trademarks & Allied Rights*, Sweet and Maxwell.

Daniel F. Robinson, Ahmed Abdel-Latif, Pedro Roffe (ed.) (2017) *Protecting Traditional Knowledge : The Wipo Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore*, Taylor and Francis.

José Bellido (ed.) (2017) *Landmark Cases in Intellectual Property Law*, Oxford University Press.