THIS EXAMINATION CONSISTS OF **FIVE** PAGES

PLEASE ENSURE THAT YOU HAVE A COMPLETE PAPER

THE UNIVERSITY OF BRITISH COLUMBIA

PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – APRIL 2023

LAW 422/570C

Intellectual Property Law

Section 2

Jon Festinger, K.C.

**TOTAL MARKS:**  70

**WRITING TIME ALLOWED:** 3 HOURS

**READING TIME ALLOWED:** 15 MINUTES

(9:00 AM PST) **READING TIME ALLOWED:** 15 MINUTES

(9:15 AM PST) **WRITING TIME ALLOWED:** 3 HOURS

This is an open book examination, meaning that you can refer to class notes, the course casebook (Canadian Intellectual Property Law: Cases and Materials (3rd or 2nd Ed.)), the course PowerPoint slides, and other class readings. Unless otherwise indicated, assume the applicable laws are the laws of British Columbia and Canada.

You have 15 minutes of reading time. The reading time is in addition to the 180 minutes of writing time. During the reading time, you should only make notes on the question sheet or on the scrap paper. During the reading time, do not write anything that you want marked. The reading time is in addition to the times suggested for each question.

Students writing by hand:

1. Please write legibly on every second line of your exam booklet. Write on one side of the page only.
2. Do not put your name on the exam booklets. Use only your exam number.
3. At the end of the exam, please return all exam booklets, including blank ones. No credit will be given for anything written in a booklet that is removed from the exam room, even briefly.

Do not begin your exam until you are instructed to do so.

Please put your exam code on the question paper and return the question paper at the end of the exam.

**This examination consists of THREE (3) questions. PLEASE ANSWER ALL THREE (3) QUESTIONS.**

**If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing, and continue answering the question.**

**Have a great summer!**

**Question 1 [45/70 marks, 120 minutes recommended]:**

Taylor Mercy of Toronto, a UBC computer engineering student, is one of the biggest fans of Canadian popstar Shawn Mendes. Taylor is one of the most active members of Mendes Army, as Shawn’s Fanbase is known.

Taylor has created an artificial intelligence (“A.I.”) app. Apps are programmes that are downloaded and installed on a computer or mobile device. The project name of Taylor’s app is “MendesGTP”. The app has the following features that users may implement:

* Users can take the musical composition of any song ever written that they have a digital version of (from a CD or downloaded from the internet, for example from a YouTube video) and upload that song into the app. Mendes GTP will use its algorithms to digitally reprocess the original to make it sound as if it is being performed by Shawn Mendes. For example, the user could, if they wished, input any song from the iconic rock/blues group Led Zeppelin (1968-80 and one of Mendes’ musical influences) and have it sung by a voice and style that very much sounds like Shawn Mendes. The app refers to this as “Music Mode”.
* MendesGTP has two Music Mode sub-settings that users can choose from to set up the tempo and musical composition of the song being performed: A. Laconically (Cambridge Dictionary definition: “in a way that uses very few words”) Downtrodden; or B. Delusionally Upbeat.
* Users are provided with a slider in the graphic interface that allows the user to determine the amount of random noise (also known as Gaussian Noise) incorporated into the A.I. calculations by the A.I. architecture used in MendesGTP from 10% to 90%. Note that ‘random noise’ in this case means generated musical audio that fits the new music in theme, but that isn’t directly drawn from the original music. Random noise is often added to A.I. input data during the training of the artificial intelligence to improve the robustness and generalization ability of the mathematical model underlying what the A.I. produces as an end-product. The greater the amount of random noise (for e.g., 90%) used, the lower the percentage of digital content directly used from any particular Shawn Mendes song, lyric, video, or image. The random noise generator slider described above is also available for Music mode, as well as for the Photograph Mode described below.
* MendesGTP also has a Photograph Mode where users can digitally input any photo of or including Shawn Mendes they can find into MendesGTP, which can then alter the photo to change Mendes’ facial expression with a very natural looking result. Once again, there are two sub-settings A. “Camilla Cabello breakup mode” which will put a realistic sad and pensive frown on Mendes or B. “Weed Mode” (a reference to the Rolling Stone magazine December 2018 cover story on Mendes, where he famously said: “I love weed.”) which will result in a contented but distant half-smile.
* The final feature in MendesGTP is a marketplace which allows users to sell any digital file they made through MendesGTP to each other. The app provides for every aspect of the transaction. Although MendesGTP is itself free to users, transactions occurring through the apps marketplace result in a 15% commission upon completion of any transaction being paid to Taylor Mercy.

MendesGTP is near the end of its development cycle. Taylor Mercy, being a wise and responsible UBC student, knows to come to you at the Allard Business Law Clinic for intellectual property advice. Note that YOU ARE NOT BEING ASKED TO PROVIDE ANY ADVICE WITH RESPECT TO PERSONALITY RIGHTS OR PRIVACY RELATED LEGAL ISSUES.

To summarize, the various modes and features of MendesGTP are:

1. “Music Mode” which makes any song digitally ingested by the App sound as if it is being performed by Shawn Mendes (with sub-settings for A. Laconically Downtrodden; or B. Delusionally Upbeat).
2. “Photograph Mode” which transforms any photograph of or including Shawn Mendes digitally inputted to the App, which then alters the photo to change Mendes’ facial expression to either: A. “Camilla Cabello breakup mode”; or B. “Weed Mode”.
3. The MendesGTP Marketplace allows users to sell any digital file they made through MendesGTP to each other, with a 15% commission going to the developer.

Taylor asks that you first provide your legal opinion and strategic advice by way of an infringement and fair dealing assessment of the first two modes and sub-settings respecting outlined above. Be sure to include your opinion and strategic advice respecting the impact on your fair dealing assessment of:

(a) the MendesGTP Marketplace, and (b) the random noise slider (described in the third bullet of the scenario) if set by the user at a low (10%), medium (50%), or high (90%) level. Also, please address any particular aspects of damages and remedies you feel apply.

(**40/45** marks)

You are also asked for your legal opinion and strategic advice on whether moral rights claims under the *Copyright Act* commenced by Shawn Mendes or by others against Taylor Mercy in respect of the MendesGTP app’ Music Mode would be successful. Please explain why or why not.

(**5/45** marks)

Fortunately, you know exactly what to do with this complex file. You will contact Ryan Black the Co-director of the Allard Business Law Clinic, who will know all the answers. Unfortunately, Ryan is away on one of his not infrequent trips to small eastern European countries for relatively random video game law conferences. Accordingly, you will have to provide the best answers that you are able to without his input.

**Question 2 [15/70 marks, 35 minutes recommended]:**

Taylor Mercy also asks for your legal advice and strategic assessment of various potential names for the app. Please briefly consider the trademark and/or passing off implications of each of the following suggestions. To avoid repetition, you may wish to make some general observations that apply to all the names first, and then deal with specific differences between them.

1. MendesGTP;
2. MercyGTP
3. BetterGTP
4. TreatYouBetterGTP
5. WonderGTP
6. WunderGTP
7. StichesGTP

**Question 3 [10/70 marks, 25 minutes recommended]:**

Considering the impact that drug companies had in rapidly developing and deploying effective vaccines during the worldwide COVID pandemic, please consider and elaborate on any aspect of Canadian patent law where you believe that reform might be effective and helpful to the goals of patent law as you understand them.

**END OF EXAM**