

THE MICHELSON INSTITUTE FOR INTELLECTUAL PROPERTY

Nathan Khalil and Dana Nasser, Business Department, Santa Monica College

IP in Action: An Interactive Group Activity

This short exercise challenges students to bring a new brand, and possibly a new invention, to the market while navigating issues and opportunities related to intellectual property rights.

Students will practice the following skills: collaboration, creativity and innovation, intellectual property acumen, business strategy, problem solving, and verbal communication.

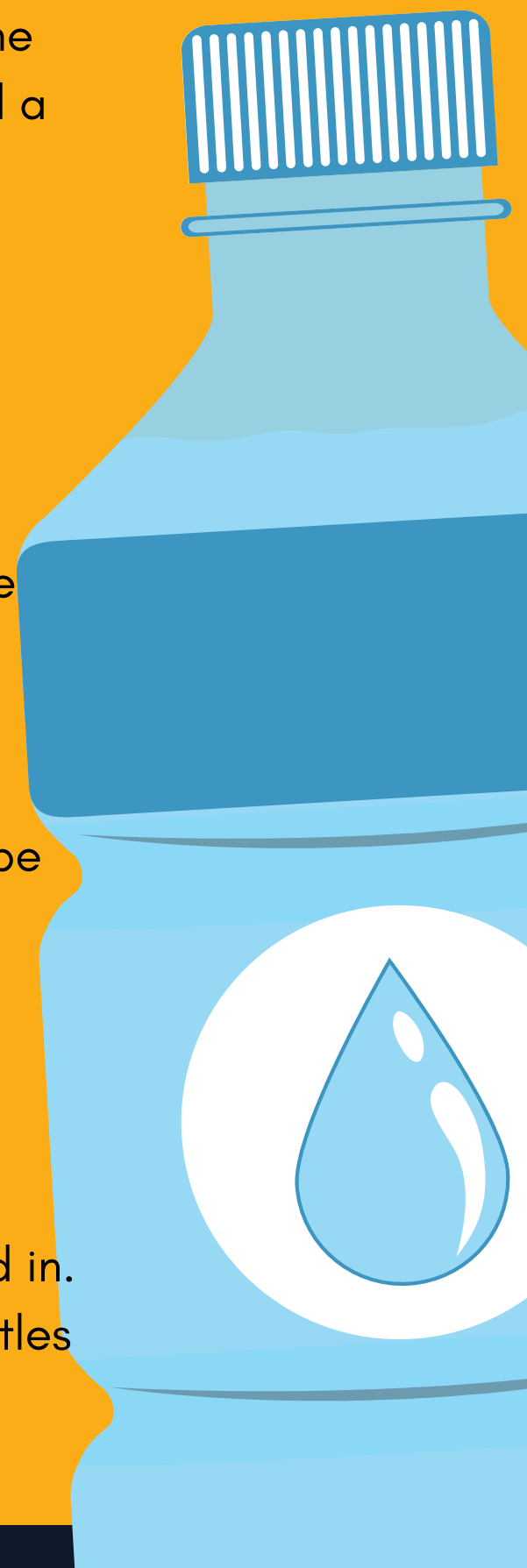
Approximate time: 30-45 minutes

RULES

Separate the class into teams of about 5 students. **Instruct teams** to use the provided materials to create a new water bottle brand and to optionally add a functional element. They should create a label and logo, and may choose to customize the water bottle functionality. (allotted time: 5-7 minutes)

Share the following prompt with the class:

- You and your group have formed a small start-up company that is now developing a water bottle product line. Your goal in this exercise is to fashion a brand and label for your product. You may also seek to improve the functionality of the conventional water bottle.
- All of the resources you need are in your bag. Do not use any additional materials.
- You must use at least one of each category of items, or your design will be disqualified.
- You must use all 4 of the letter stickers, and must use 6 of the other 9 decorative stickers in the bag.
- Marker-use is optional. If utilized, markers can be used only to fill in the backdrop of the sticker-label.
- Time: You have 7 minutes to complete this exercise. Time will be factored in. If you finish early, you will have a better chance of winning! After the bottles are in, one member from each team will pitch their design and brand.



Keep a timer and record the order in which teams finish the exercise.

Give each team approximately 3 minutes to **pitch their new brand** and the features of the water bottle. Teams should explain their design choices, the name of their product or brand, and the utility of any added functional features. How is the product distinguished from others that may be on the market?

After the pitches, give teams a chance to respond to other teams about **potential infringement issues**. The primary issue will be trademark infringement, as the respective bottles will invariably visually resemble one another. There will also likely be patent infringement issues as some of the functionality designs (eg. using the pipe cleaners to create a handle) may resemble one another.

- **For patents:** Note that because the U.S. has a “first-inventor-to-file” patent system, the first team to complete the exercise will have an advantage if infringement issues arise.
- **For trademarks:** We will likewise assume that the first design turned in enjoys trademark protection, while the other designs are infringing.
- **The team with the NPE card** (explained below) will have a one-time use advantage to play it against another team’s invention so that they are unable to use it.
- **The “winning” team** will be able to bring their product to “market” successfully with the least amount of infringement issues, and with a competitive advantage.

- Water bottles (stripped of labels)
- Blank, self adhesive label that can be wrapped around and adhered to the water bottle.
- Pipe cleaners (4 per team)
- Scissors
- Sticker letters for participants to place on the blank label
 - “S”
 - “A”
 - “L”
 - “I”

- Large envelopes for materials
- Markers (2-3 colors, which should be the same colors across groups)
- Decorative sticker sheets containing stickers for participants to attach to the label (same set for each group)
- “NPE” Card (only distribute to 1 team)

***The NPE card** should read: “If you’ve received this card, you are a Non-practicing entity (NPE). NPE’s hold a patent for a product or process but have no intention to actually use the patent. You can use this card only one time against another team’s invention so they are unable to use it. For example: If a team uses pipe cleaners to create a handle, you’re allowed to use this card to inform them that they are infringing on your invention and, therefore, are unable to use the pipe cleaners as a handle.”*

Be ready to expose or poke holes at infringement issues that may arise during the course of the team presentations. Have students work among the teams to settle these issues, and at the end of the discussions they will look to you for a final “ruling”. Allow them to ask questions throughout.

- Are there any potential trademark infringement issues? For example, did multiple teams have the same or a similar brand name, logo, design and color scheme, or a mix of several of these elements?
- Are there any potential design patent infringement issues? For example, did multiple teams create similar designs (eg. square corners) on the water bottle? If yes, which of the affected teams was the “first-to-file” (first complete the exercise)?
- Are there any potential utility patent infringement issues? For example, did multiple teams create a ‘handle’ or new functionality for the water bottle that are similar in utility? If yes, which of the affected teams was the “first-to-file” (first to complete the exercise)?
- As you give the teams time to work out potential business solutions – suggest forms of negotiation. Do any teams suggest a licensing agreement with other teams? Do any teams completely fold due to not being able to overcome their infringements?

Intellectual Property: creations of intellect, such as inventions and artistic works, for which the creator is rewarded with proprietary protection.

Patent: an intellectual property right granted by a government to an inventor that gives them the exclusive right to the invention for up to 20 years, in exchange for disclosing the details of the new technology to society for its ultimate benefit.

Trademark: an intellectual property right granted by a government to an individual, business, or legal entity that creates and uses a distinctive word, name, symbol, or device to distinguish its products or services from those from any other entity in the marketplace.

First-inventor-to-file: a priority status granted by the United States Patent and Trademark Office (USPTO) to an individual (or individuals, for joint inventions) who first files their patent application.

Non-practicing entity (NPE): an entity that holds a patent for a product or process but has no intention to actually use the patent. Historically, NPEs helped to expand the pool of inventors to include ordinary citizens without the wealth or resources to commercialize their own inventions.

Infringement: a violation of the exclusive rights held by the owner of the intellectual property.

License: an agreement through which an IP owner (licensor), while retaining ownership of the IP, grants third parties rights to another entity (licensee) to use that IP in conjunction with a product or service.

Royalty: a payment made by one party to another that owns a particular asset (such as IP) for the right to the ongoing use of that asset.

Fair Use: a doctrine that, when applicable, permits the limited use of a copyrighted material or a trademark without having to first acquire permission from the copyright or trademark holder.

- For more on intellectual property and a full glossary of IP terms, please download a free copy of “The Intangible Advantage” at MichelsonIP.com/intangible-advantage.
- For more IP fundamentals, please watch our [Basics of Intellectual Property](#) YouTube playlist.