



Proceedings

A monthly newsletter from McGraw-Hill Education



February 2019 Volume 10, Issue 7

Contents

Hot Topics	2
Video Suggestions	9
Ethical Dilemma	15
Teaching Tips	18
Chapter Key	19

Dear Professor,

Happy Groundhog Day and Valentine’s Day! Welcome to McGraw-Hill Education’s February 2019 issue of Proceedings, a newsletter designed specifically with you, the Business Law educator, in mind. Volume 10, Issue 7 of Proceedings incorporates “hot topics” in business law, video suggestions, an ethical dilemma, teaching tips, and a “chapter key” cross-referencing the February 2019 newsletter topics with the various McGraw-Hill Education business law textbooks.

You will find a wide range of topics/issues in this publication, including:

1. The indictments of four Audi engineering managers in the Volkswagen diesel emissions cheating scandal;
2. France’s \$57 million fine of Google for violation of a new European Union privacy law;
3. Amazon shareholder opposition to the company’s selling of facial-recognition technology to the United States government;
4. Videos related to a) Pacific Gas and Electric’s (PG&E’s) decision to file for Chapter 11 bankruptcy as a result of its potential liability for the 2018 California “Camp Fire” and b) PepsiCo’s legal battle with a Tennessee Moonshine Distillery over PepsiCo’s ‘Mountain Dew’ trademark;
5. An “ethical dilemma” related to the world’s first “gene-edited” babies (occurring in China); and
6. “Teaching tips” related to Article 1 (“Four Audi Managers Indicted in Emissions Cheating Scandal”) and Video 2 (“PepsiCo in Legal Battle with Moonshine Distillery over ‘Mountain Dew’ Trademark”) of the newsletter.

February is the shortest month of the year. Make the most of every day!

Jeffrey D. Penley, J.D.
 Senior Professor of Business Law and Ethics
 Catawba Valley Community College
 Hickory, North Carolina



Proceedings

A monthly newsletter from McGraw-Hill Education

February 2019 Volume 10, Issue 7



Of Special Interest

This section of the newsletter covers three (3) topics:

- 1) The indictments of four Audi engineering managers in the Volkswagen diesel emissions cheating scandal;
- 2) France's \$57 million fine of Google for violation of a new European Union privacy law; and
- 3) Amazon shareholder opposition to the company's selling of facial-recognition technology to the United States government.

Hot Topics in Business Law

Article 1: "Four Audi Managers Indicted in Emissions Cheating Scandal"

<https://www.foxnews.com/auto/four-audi-managers-indicted-in-emissions-cheating-scandal>

According to the article, a federal grand jury in Michigan recently indicted four engineering managers at German carmaker Audi in connection with a widening diesel emissions cheating scandal.

Richard Bauder, Axel Eiser, Stefan Knirsch and Carsten Nagel were named in a 12-count indictment charging them with violating the federal Clean Air Act, as well as wire fraud and conspiracy.

A Justice Department spokesperson said that none of the four was in custody and they were believed to be in Germany. A spokesman for Volkswagen, which owns Audi, said he could not comment about whether the men still work for the company.

It's unlikely any of the German citizens will face a U.S. judge in the case. Germany's constitution forbids extraditing its citizens other than to another European Union member state or to an international court.

The indictment alleges that Bauder, Eiser, Knirsch and Nagel helped to develop and implement so-called "defeat devices" designed to cheat emissions tests for three-liter diesel engines.

According to court documents, Bauder was head of Audi's diesel engine development department in Neckarsulm, Germany, from 2002 until around February of 2012. Eiser had the same position in Ingolstadt, Germany, from 2009 until around May of 2013. Knirsch had the same position in Ingolstadt from May 2013 to May of 2015, and also was a member of Audi's management board. Nagel was head of Audi's Engine Registration and Testing in Neckarsulm from 2002 through February 2017.

The indictment said the employees realized they could not create a diesel engine with a storage tank for fluid to treat diesel emissions "within the design constraints imposed by Audi, including the need for a large trunk and high-end sound system." So, they and co-conspirators allegedly designed software to cheat on the emissions tests so they could get by with a smaller tank for the fluid.



Proceedings

A monthly newsletter from McGraw-Hill Education

February 2019 Volume 10, Issue 7



Tests conducted by Nagel and others found that nitrogen oxide emissions from vehicles with the diesel engines were up to 22 times above the U.S. limit, the indictment stated. The results were shared with Knirsch and Nagel, according to the indictment.

The document also alleged that the suspects covered up the defeat devices when dealing with U.S. officials, knowing that "if they had told the truth and disclosed the (device's) existence ... Audi would not have obtained the requisite (compliance) Certificates ... and would not have been legally permitted to sell the Subject Vehicles in the United States."

The indictments mean 13 VW employees have been charged in the scandal, in which VW used software on about 600,000 vehicles to turn pollution controls on during EPA tests and turn them off while on the road. Two have pleaded guilty and were sentenced to jail time, while six others, including former VW CEO Martin Winterkorn, have remained in Germany.

Volkswagen pleaded guilty in 2016 to criminal charges in the scandal and is set to pay more than \$30 billion in penalties and lawsuit settlement costs.

Discussion Questions

1. What is an indictment?

An indictment is a formal charge or accusation of a serious crime.

2. As the article indicates, none of the four Audi engineering managers indicted is in United States custody, and they were believed to be in Germany. Given these circumstances, are the defendants subject to United States federal court jurisdiction? Why or why not?

As noted in the article, it is unlikely that the defendants, all German citizens, will face a United States court, since Germany's constitution forbids extraditing its citizens other than to another European Union member state or to an international court. With that being said, the court may allow the defendants to be tried "in absentia," meaning that the case could proceed, and verdicts could be entered against the defendants in their absence.

3. Discuss the business ethics aspects of this case. In your reasoned opinion, how egregious were the ethical violations committed by Volkswagen, Audi, and their employees?

In your author's opinion, the ethical violations committed by Volkswagen, Audi, and their employees should "shock the conscience" of any reasonable person, since design and installation of the "defeat devices" on Volkswagen and Audi automobiles involved intentional violations of law by a number of corporate employees.

Article 2: "France Fines Google Nearly \$57 Million for First Major Violation of New European Privacy Regime"



Proceedings

A monthly newsletter from McGraw-Hill Education

February 2019 Volume 10, Issue 7



https://www.washingtonpost.com/world/europe/france-fines-google-nearly-57-million-for-first-major-violation-of-new-european-privacy-regime/2019/01/21/89e7ce08-1d8f-11e9-a759-2b8541bbbe20_story.html?utm_term=.55306064c99f

According to the article, Google has been fined nearly \$57 million by French regulators for violating Europe's tough new data privacy rules, marking the first major penalty brought against a U.S. technology giant since the region-wide regulations took effect last year.

France's top data privacy agency, known as the CNIL, said that Google failed to fully disclose to users how their personal information is collected and what happens to it. Google also did not properly obtain users' consent for the purpose of showing them personalized ads, the watchdog agency said.

To French regulators, Google's business practices ran afoul of Europe's new General Data Protection Regulation. Implemented in 2018, the sweeping privacy rules, commonly referred to as GDPR, have set a global standard that has forced Google and its tech peers in Silicon Valley to rethink their data-collection practices or risk sky-high fines. The United States lacks a similar, overarching federal consumer privacy law, a deficiency in the eyes of privacy rights advocates that has elevated Europe as the world's de facto privacy cop.

Despite Google's recent changes to comply with the E.U. rules, the CNIL said in a statement that "the infringements observed deprive the users of essential guarantees regarding processing operations that can reveal important parts of their private life since they are based on a huge amount of data, a wide variety of services and almost unlimited possible combinations."

In response, Google said it is "studying the decision to determine our next steps," adding: "People expect high standards of transparency and control from us. We're deeply committed to meeting those expectations and the consent requirements of the GDPR."

French regulators began investigating Google on May 25, 2018 — the day GDPR went into effect — in response to concerns raised by two groups of privacy activists. They filed additional privacy complaints against Facebook and its subsidiaries, photo-sharing app Instagram and messenger service WhatsApp, in other E.U. countries.

"We are very pleased that for the first time a European data protection authority is using the possibilities of GDPR to punish clear violations of the law," said Max Schrems, the leader of the nonprofit Noyb.eu (None of Your Business). "It is important that the authorities make it clear that simply claiming to be compliant is not enough."

The French fine could presage even tougher scrutiny of Google and the rest of Silicon Valley in Europe, which already has demonstrated its willingness to punish U.S.-based tech companies for their missteps. In recent years, E.U. officials have penalized Apple for its tax practices, probed Facebook for multiple privacy scandals and slapped Google with a record-breaking fine on charges it



Proceedings

A monthly newsletter from McGraw-Hill Education



February 2019 Volume 10, Issue 7

sought to undermine its corporate rivals. U.S. consumer advocates have strongly encouraged Washington to follow Europe's lead.

"The big question now is why the Federal Trade Commission failed to act against the tech firms over these many years," said Marc Rotenberg, the executive director of the Electronic Privacy Information Center. The FTC is Washington's top privacy and security watchdog.

Under the E.U.'s data privacy law, tech giants including Google must give users a full, clear picture of the data they collect, along with simple, specific tools for users to consent to having their personal information harnessed. In both cases, France said that Google had erred.

Full details about what Google does with users' personal information are "excessively disseminated across several documents," according to the CNIL. The lack of transparency is even more jarring to users, the watchdog said, because of the sheer volume of services Google operates — including its Maps service, YouTube and its app store.

Even though Google users can modify their privacy settings when they create an account, French regulators said it still isn't enough — partly because the default setting is for Google to display personalized ads to users. Meanwhile, Google requires people who sign up to agree to its terms and conditions in full to create their accounts, a form of consent that the CNIL faulted because it requires users to agree to everything — or not use the service at all.

Some consumer advocates still bristled that France had not gone far enough. La Quadrature du Net, one of the groups that filed the complaint against Google, lamented it is "very low in comparison to Google's annual turnover."

While the group said it appreciated the initial move to fine Google, they felt that the French regulators had focused only on a small portion of the tech company's alleged violations. They said they hoped that the enforcement agency would respond soon to the rest of their complaint, and they noted that the maximum possible fine is more than \$4.7 billion.

Estelle Massé, a data protection expert at the advocacy group Access Now, described the French ruling as "the first big signal" about Europe's willingness to enforce GDPR. Other companies, she said, had engaged in practices similar to Google, raising the possibility that additional U.S. tech giants could face fines of their own.

"Google is not the only one doing this," Massé said. "This is significant for Google as a company but also for other actors."

Discussion Questions

1. Is Google subject to the jurisdiction of the European Union? If so, why? If not, why not?



Proceedings

A monthly newsletter from McGraw-Hill Education



February 2019 Volume 10, Issue 7

Google is subject to the jurisdiction of the European Union, since it has substantial business operations there. If a company avails itself to business opportunities in a jurisdiction, the company subjects itself to the laws of the jurisdiction.

2. Discuss Europe's new General Data Protection Regulation.

As indicated in the article, the European Union's General Data Protection Regulation is a uniform privacy law recognized by all member countries. Within its ambit, the Regulation requires technology companies such as Google to give users a complete and easy-to-understand description of the data they collect, along with an opportunity for users to either permit or deny corporate use of the data.

3. As the article indicates, the United States lacks an overarching federal consumer privacy law comparable to Europe's General Data Protection Regulation. Should the United States enact such a law? Why or why not?

This is an opinion question, so student responses may vary. In your author's opinion, consumers should have an opportunity to either permit or deny corporate use of their data.

Article 3: "Amazon Investors Want It to Quit Selling Facial-Recognition Tech to the Government"

<https://www.cnn.com/2019/01/17/tech/amazon-shareholders-facial-recognition/index.html>

According to the article, Amazon investors are urging the company to halt sales of its facial-recognition software to government agencies over fears the technology could be used to violate people's rights.

In a resolution filed recently, a group of shareholders asked Amazon's board to stop selling its tool, Rekognition, to governments unless a third-party evaluation determines it "does not cause or contribute to actual or potential violations of civil and human rights."

The group was organized by Open MIC, a nonprofit that encourages activism by investors in tech and media companies. The investors behind the resolution, which include the religious order Sisters of St. Joseph of Brentwood, hope Amazon's board will put it to a vote at the online retailer's annual shareholder meeting in the spring.

Shareholder resolutions are rarely approved, and they are not binding. That means that even if the facial-recognition one does pass, the company does not have to abide by it. The group of shareholders did not say how much of Amazon's stock it holds.

Rekognition uses deep learning — an artificial intelligence technique for finding patterns in data — to identify objects (such as cats or sofas), faces and scenes in videos and images. For example, it could be used to scan the faces of people entering a courthouse in real time to see if they are in a criminal database. Released in 2016, it has been used by government customers including police departments in Florida and Oregon.



Proceedings

A monthly newsletter from McGraw-Hill Education



February 2019 Volume 10, Issue 7

The shareholder group is the latest organization to voice concerns about the potential misuse of AI, and of facial recognition, in particular.

While facial-recognition software can be helpful for combating issues such as sex trafficking, it's still quite error prone. The American Civil Liberties Union, which opposes Amazon's sale of the software to the government, highlighted one of the issues with facial recognition technology in July.

It said that it tested Rekognition and found that it incorrectly matched 28 members of Congress with mugshots in a database, and that the errors were more common with people of color.

Last year, nearly 20 groups of Amazon shareholders sent a letter to CEO Jeff Bezos, asking the company to stop selling Rekognition to the government. More than two dozen civil rights groups, led by the ACLU, made the same request. And hundreds of Amazon employees have asked the company to stop selling the software to government as well.

Amazon declined to comment on the shareholder resolution.

In October, Bezos said Amazon would keep doing business with government agencies, including the US Department of Defense.

"If big tech companies are going to turn their back on the DoD, this country is going to be in trouble," Bezos said on stage at the Wired 25 conference in San Francisco.

Discussion Questions

1. As the article indicates, Amazon investors are urging the company to halt sales of its facial-recognition software to government agencies over fears the technology could be used to violate people's rights. In your reasoned opinion, should shareholders have control over such an issue, or would it be more appropriately and effectively addressed by executive leadership and/or the board of directors? Explain your response.

Traditionally, corporate policy decisions have been within the discretion of executive leadership, subject to oversight and approval by the board of directors. In recent years, however, shareholders have sought greater oversight in corporate policy-making, implementation and review. Corporations ignore shareholder input at their peril, since shareholders own the corporation.

2. In developing and selling its facial-recognition software, is Amazon violating an individual's right to privacy? Is it violating civil and human rights, as the Amazon shareholder group organized by Open MIC claims? Explain your responses.

These are opinion questions, so student responses may vary. If facial-recognition software is used in a public place, such as a courthouse as illustrated in the article, there is arguably no violation of privacy, civil rights, or human rights.



Proceedings

A monthly newsletter from McGraw-Hill Education



February 2019 Volume 10, Issue 7

3. Are governmental entities, such as the police departments in Florida and Oregon referenced in the article, violating an individual's right to privacy? Explain your response.

The answer to this question would, in large part, depend on specifically how the police departments in Florida and Oregon are using the facial-recognition software. Due to the Fourth Amendment to the United States Constitution, governmental intrusions on an individual's right to privacy are subject to stricter scrutiny than private-party privacy violations.



Proceedings

A monthly newsletter from McGraw-Hill Education

February 2019 Volume 10, Issue 7



Video Suggestions

Video 1: “PG&E, Utility Tied to Wildfires, Will File for Bankruptcy”

<https://www.cnn.com/2019/01/14/business/pge-bankruptcy-wildfires/index.html>

Note: In addition to the video, please also see the following related article included at the above-referenced internet address:

“PG&E, Utility Tied to Wildfires, Will File for Bankruptcy”

According to the article, Pacific Gas and Electric, facing billions of dollars in claims over the deadly 2018 Camp Fire, is headed to bankruptcy court.

PG&E, the state's largest utility, said recently it will file for bankruptcy on January 29, after a 15-day waiting period required by California law. It needs to use the bankruptcy process, which will allow it to shed some of its debt, to pay for damages and stay in business to provide gas and electric service to its customers.

The company, in a public filing, cited at least \$7 billion in claims from the Camp Fire. The wildfire caused 86 deaths and destroyed 14,000 homes, along with more than 500 businesses and 4,300 other buildings.

It is believed the fire was started when a PG&E power line came in contact with nearby trees. PG&E reported "an outage" on a transmission line in the area where the blaze began, about 15 minutes before it started. Within the massive burn area, PG&E found power equipment and a fallen power pole riddled with bullet holes, according to a letter it sent to regulators. The company also reported that it found a downed line with tree branches on it.

In addition, a series of wildfires in 2017, many of which were also blamed on PG&E, caused \$10 billion in damages and 44 deaths. In 11 of those fires, state investigators found the company violated codes regarding brush clearance near its power lines or had made related violations.

"The people affected by the devastating Northern California wildfires are our customers, our neighbors and our friends, and we understand the profound impact the fires have had on our communities and the need for PG&E to continue enhancing our wildfire mitigation efforts," said John Simon, who was recently named interim CEO, in a statement. "We remain committed to helping them through the recovery and rebuilding process. We believe a court-supervised (bankruptcy) process ...will best enable PG&E to resolve its potential liabilities in an orderly, fair and expeditious fashion."



Proceedings

A monthly newsletter from McGraw-Hill Education



February 2019 Volume 10, Issue 7

PG&E said in a company filing that it has only about \$1.5 billion in cash and cash equivalents on hand. It said it believes bankruptcy is in the best interests of not just wildfire claimants but also other creditors, its shareholders and customers.

Shareholders are generally wiped out in the bankruptcy process. Shares of PG&E were already down 63% since the start of the Camp Fire.

The company has reported that CEO Geisha Williams, who had been in the job less than 11 months, has stepped down. The company said it would look to hire a new chief executive with "extensive operational and safety expertise."

Discussion Questions

1. What type of bankruptcy (Chapter 7, Chapter 11, or Chapter 13) will PG&E file?

PG&E will file for Chapter 11 bankruptcy. This is reorganization bankruptcy for a corporation, giving the corporation an opportunity (with the consent of the bankruptcy court) to restructure its debts. Chapter 11 may involve some debt forgiveness, but the primary purpose of this form of bankruptcy is debt restructuring.

2. In your reasoned opinion, how important is it for the bankruptcy court to actively and successfully steward PG&E through the bankruptcy process? Why (arguably) is a bankruptcy case like this more important to stakeholders than the bankruptcy of, for example, a local retailer? Explain your response.

In your author's opinion, it is vital for the bankruptcy court to actively and successfully steward PG&E through the bankruptcy process. PG&E is a quasi-public, investor-owned utility, an organization that maintains the infrastructure for a public service (in this case, the provision of electricity). Public utilities are subject to various forms of public control, and in the context of bankruptcy, the court has substantial control over the substantive provisions of PG&E's bankruptcy reorganization plan and how those provisions are implemented. It is extremely important for the court to successfully devise, implement and orchestrate this plan—in some areas of California, PG&E is the only electricity provider for customers.

3. In your reasoned opinion, should the law limit the liability exposure of corporations? Why or why not?

This is an opinion question, so student responses may vary. Although limiting the liability exposure of corporations (commonly referred to as "tort reform") may keep many corporations in business, with concomitant advantages to shareholders, employees and other corporate stakeholders, such a change in law might not account for the appropriate amount of damages that should be levied against a company in a particular case. In other words, certain victims of corporate mis-, mal-, or nonfeasance may not be "made whole again."



Proceedings

A monthly newsletter from McGraw-Hill Education

February 2019 Volume 10, Issue 7



Video 2: “PepsiCo in Legal Battle with Moonshine Distillery over ‘Mountain Dew’ Trademark”

<https://abcnews.go.com/beta-story-container/Business/pepsico-legal-battle-moonshine-distillery-mountain-dew-trademark/story?id=60399678>

Note: In addition to the video, please also see the following related article included at the above-referenced internet address:

“PepsiCo in Legal Battle with Moonshine Distillery over ‘Mountain Dew’ Trademark”

According to the article, PepsiCo, one of the world’s largest food companies, is in a legal battle with a Tennessee distillery, Ole Smoky Moonshine, over the distillery’s trademark application for the term “Mountain Dew.”

PepsiCo filed a Notice of Opposition with the Trademark Trial and Appeal Board in 2016 opposing Ole Smoky’s trademark for “Ole Smoky Mountain Dew Moonshine.” PepsiCo said that its products “are sold in almost every supermarket in the United States,” and that it has “built up a very high level of consumer and trade recognition symbolized by (PepsiCo’s) marks.”

PepsiCo went on to say that Ole Smoky’s use of “Mountain Dew” would “be likely to cause confusion, to cause mistake or to deceive with consequent injury to (PepsiCo).” PepsiCo added that they will be “damaged” if Ole Smoky were to be granted a Mountain Dew trademark.

“Mountain Dew is one of the world’s most iconic and recognized brands, and has been since it was established more than 70 years ago,” a spokesperson for PepsiCo’s Mountain Dew said in a statement. “The planned unauthorized use of Mountain Dew by another party violates PepsiCo’s trademark rights, and we must vigorously protect our brand.”

Ole Smoky’s founder, Joe Baker, said that “mountain dew” has long been a synonym for the alcoholic beverage moonshine, and that the drink has had ties to the Appalachian Mountain region – which includes Tennessee, Kentucky and Georgia – since before Prohibition began in 1920.

In a response to PepsiCo’s notice on the U.S. Patent and Trademark Office’s website, Ole Smoky argues that “Mountain Dew was first used as a trademark for a distilled spirits product around 1890 by John W. McCulloch,” and cited an article from 1897 referring to the spirit and a permit from the Alcohol and Tobacco Tax and Trade Bureau, which granted McCulloch the sole right to use the “Mountain Dew” name on distilled spirits.

McCulloch incorporated his distillery in 1900 and renamed it Green River Distilling Company, according to a declaration filed by McCulloch’s great-grandson, Robert McCulloch, to the USPTO.

Although the distillery would close down during Prohibition, Robert McCulloch told ABC News that he began the process in Kentucky of restarting Mountain Dew in 2004, with the intention of partnering with PepsiCo to sell his alcoholic Mountain Dew, but PepsiCo denied the request. A few



Proceedings

A monthly newsletter from McGraw-Hill Education



February 2019 Volume 10, Issue 7

years later, in 2009, changes in Tennessee's liquor laws allowed moonshine to be legally produced and sold there.

In 2015, he sold the rights and goodwill of the trademark for Mountain Dew for distilled spirits to Ole Smoky Distillery, LLC, through his own company, McCulloch Pre-Prohibition Brands, LLC, according to the response.

In 2015, Ole Smoky Moonshine filed an application to trademark "Ole Smoky Mountain Dew Moonshine" for distilled spirits.

PepsiCo holds over 20 trademarks for "Mountain Dew" – with different variations of spelling – for non-alcoholic beverages, cooking sauces, clothing and headphones, among other categories. PepsiCo argues in its filing that its use of the Mountain Dew trademarks have "been continuous and they have not been abandoned," and because of this, consumers have become accustomed to associating the Mountain Dew name with PepsiCo's products.

It said that PepsiCo's Mountain Dew trademarks "have become famous, representing assets of enormous goodwill and of inestimable value to PepsiCo."

While PepsiCo claims Ole Smoky Distillery will cause confusion among consumers, Baker said it is actually PepsiCo that caused the confusion in the marketplace first.

PepsiCo has a history of linking its Mountain Dew soda to spirits distilled in the mountains, Baker said. He pointed to PepsiCo selling Mountain Dew in the 1960s in glass bottles labeled with images of the soda brand's mascot Willy the Hillbilly and his gun. In 1966, the first TV commercial for Mountain Dew featured a Willy the Hillbilly and other people in a mountain region to the backdrop of bluegrass music.

In 2015, PepsiCo also released a non-alcoholic beverage called Mountain DEWshine, a clear, citrus-flavored soda that came in a clear glass bottle or a clear glass jug. In the press release announcing DEWshine, PepsiCo touched on the history of Mountain Dew, saying, "The legacy of DEW began in the backwoods of Tennessee where a few rebels created and poured the very first batch of Mountain Dew into glass bottles."

The DEWshine labels featured Willy the Hillbilly and said "Non-Alcoholic." When they were marketed on TV, the commercials said that DEWshine was "available legally for the first time." Ole Smoky writes in their counterclaim that "the term 'shine' is often used as a shortened version of the word 'moonshine'" and that PepsiCo's use of "available legally for the first time" suggests "that the product is actual moonshine."

"There's no doubt they're playing on the idea of moonshine culture. It could be confusing," Baker said. "It's a play on the historical elements of spirits."

In response to Ole Smoky's claims that DEWshine could be confusing to customers, PepsiCo denied in a court argument that DEWshine was "misdescriptive."



Proceedings

A monthly newsletter from McGraw-Hill Education



February 2019 Volume 10, Issue 7

Baker, who said he was surprised by PepsiCo's filing, hopes that the two companies can resolve their dispute so that they can both sell their Mountain Dew products.

"My goal would be we can peacefully exist with Pepsi since our products are different," Baker said. "I hope we can call our moonshine mountain dew same way it's been called mountain dew since as far as I can remember. Hopefully, they can exist in a market that's not confusing to consumers and can each be celebrated."

Robert Hall, Ole Smoky's CEO, said their company "is not going to fall to the big corporation" and cited other rulings in trademark disputes as examples. In 2014, for example, a Vermont artist won a legal battle with fast-food company Chick-fil-A over the use of his phrase, "Eat more kale," which is similar to the fast food company's trademarked phrase, "Eat more chicken."

Discussion Questions

1. What is a trademark?

A trademark is a name, term, sign or symbol that is used to identify a good. In the context of this article, the term "Mountain Dew" is used to identify a soft drink produced and sold by PepsiCo.

2. Describe the "right of exclusivity" recognized by intellectual property law.

The "right of exclusivity" recognized by intellectual property law is the right to control the dissemination and use of the protected intellectual property (marks, copyrights, and patents). For a trademark protected by the United States Patent and Trademark Office (USPTO), the trademark holder has the right of exclusivity for a period of ten years, and the holder can renew the ten-year period for an indefinite number of times (provided that the trademark has not become part of the public domain, which usually results when the trademark holder does not actively assert the right of exclusivity.)

3. In your reasoned opinion, has Ole Smoky Moonshine violated PepsiCo's trademark rights? Why or why not?

This is an opinion question, so student opinions may vary. In fact, it may ultimately take judicial review to make this decision. The outcome of the case depends, in large part, on whether the term "Mountain View" has a secondary meaning outside of PepsiCo's trademark. As indicated in the article, that term has been used as a synonym for the alcoholic beverage moonshine, and that drink has had ties to the Appalachian Mountain region since before Prohibition began in 1920.



Proceedings

A monthly newsletter from McGraw-Hill Education

February 2019 Volume 10, Issue 7



Ethical Dilemma

Of Special Interest

This section of the newsletter addresses the world's first "gene-edited" babies (occurring in China).

“China Confirms He Jiankui Gene-Edited Babies, Says Scientists Involved Will Be ‘Dealt With Seriously’”

<https://www.newsweek.com/china-gene-editing-he-jiankui-broke-law-ethics-experiments-hiv-babies-1298864>

According to the article, an investigation by authorities in China has concluded that a scientist in the country did create the world's first gene-edited babies.

According to a report in China's Xinhua news agency, He Jiankui performed human embryo gene-editing activities despite them being “officially banned in the country.” The report said He, along with the other researchers involved, would be punished in accordance with the law. The case has now been handed over to the Ministry of Public Security.

He, an associate professor at the Southern University of Science and Technology in the Guangdong province, announced the world's first gene-edited babies at the Second International Summit on Human Genome Editing in Hong Kong in November last year. He said he had altered the DNA of seven human embryos to make them more resistant to HIV and that this experiment had resulted in the birth of twin girls.

He was condemned by scientists across the globe, who said the experiments were unethical and dangerous. Many critics said there was no way of knowing the long-term effects of gene editing. Furthermore, He did not provide evidence showing exactly what he had done, meaning his peers could not review the work he had carried out—a hallmark of scientific research.

His claims were also denounced by Chinese authorities, which suspended He's research activities and launched an investigation into the claims. According to Xinhua, the government said the experiments were “extremely abominable” and that they were in direct violation of the laws and ethics of the country. He was reportedly placed in a government-owned apartment, possibly under some form of house arrest.

According to the *South China Morning Post*, the report into He's activities show he had “organized a project team that included foreign staff, which intentionally avoided surveillance and used technology of uncertain safety and effectiveness to perform human embryo gene-editing activity with the purpose of reproduction, which is officially banned in the country.”



Proceedings

A monthly newsletter from McGraw-Hill Education

February 2019 Volume 10, Issue 7



Xinhua claims He self-funded the experiment in pursuit of “personal fame and fortune” and forged ethical review papers to push ahead with the work. He recruited eight couples for the experiment. This resulted in two pregnancies, with the six other couples withdrawing from He’s program. Support is currently being provided to the families of the babies involved.

“This behavior seriously violates ethics and scientific research integrity, and seriously violates relevant state regulations,” Xinhua said. “The relevant person in charge of the investigation team said that He Jiankui and the personnel and institutions involved will be dealt with seriously according to the law.”

Earlier this month, one of He’s colleagues told the U.K.’s *Telegraph* that the scientist could face the death penalty if the state brings charges of corruption and bribery against him. Robin Lovell-Badge, from London’s Francis Crick Institute, told the newspaper, “There is an official investigation led by the ministries of science and health. Lots of people are probably going to lose their jobs. He wasn’t the only one involved in this, obviously. So how has he got them to do all this work? He could be had up on all sorts of charges of corruption, and being guilty of corruption in China these days is not something you want to be. Quite a few people have lost their heads for corruption.”

In an email to Lovell-Badge following the death penalty reports, He said that contrary to many reports, he was “actually doing well.”

Discussion Questions

1. As the article indicates, Jiankui He, an associate professor at the Southern University of Science and Technology in the Guangdong province of China, announced the world’s first gene-edited babies at the Second International Summit on Human Genome Editing in Hong Kong. He said he had altered the DNA of seven human embryos to make them more resistant to HIV and that this experiment had resulted in the birth of twin girls. Does the fact that He’s objective was a “noble one” (making humans more resistant to HIV) diminish or eliminate the ethical concerns in this case? Why or why not?

This is an opinion question, so student responses may vary. The crux of the ethical debate here is whether the “greater good” should prevail in this case (with humans potentially less subject to disease), or whether concerns regarding “playing God” through genetic engineering should rule the day.

2. Would your opinion regarding He’s practices be different if he had engaged in human genetic engineering in the private sector, as opposed to the public sector? Explain your response.

This is an opinion question, so student responses may vary. Arguably, an act or decision is either ethical or unethical regardless of whether it occurs in the public or private sector.

3. As the article indicates, under Chinese law, He could be subject to the death penalty. In your reasoned opinion, should this even be a possibility? Why or why not?



Proceedings

A monthly newsletter from McGraw-Hill Education



February 2019 Volume 10, Issue 7

This is an opinion question, so student responses may vary. In the United States, the death penalty is reserved exclusively for first-degree (premeditated and deliberated) murder. Despite the controversy surrounding the death penalty in the United States (particularly, whether the death penalty itself is unethical), some individuals favor expanding the death penalty to other types of offenses.



Proceedings

A monthly newsletter from McGraw-Hill Education



February 2019 Volume 10, Issue 7

Of Special Interest

This section of the newsletter will assist you in addressing Article 1 (“Four Audi Managers Indicted in Emissions Cheating Scandal”) and Video 2 (“PepsiCo in Legal Battle with Moonshine Distillery over ‘Mountain Dew’ Trademark”) of the newsletter.

Teaching Tips

Teaching Tip 1 (Related to Article 1--“Four Audi Managers Indicted in Emissions Cheating Scandal”): “Engineering a Deception: What Led to Volkswagen’s Diesel Scandal”

For an excellent article summarizing the Volkswagen Emissions Scandal, including an associated timeline, please refer to the following article:

“Engineering a Deception: What Led to Volkswagen’s Diesel Scandal”

<https://www.nytimes.com/interactive/2017/business/volkswagen-diesel-emissions-timeline.html>

Teaching Tip 2 (Related to Video 2—“PepsiCo in Legal Battle with Moonshine Distillery over ‘Mountain Dew’ Trademark”):

For further information regarding intellectual property rights, including trademark protection, please refer to the United States Patent and Trademark (USPTO) web site at the following internet address:

<https://www.uspto.gov/>



Proceedings

A monthly newsletter from McGraw-Hill Education

February 2019 Volume 10, Issue 7



Chapter Key for McGraw-Hill Education Business Law Texts:

	Hot Topics	Video Suggestions	Ethical Dilemma	Teaching Tips
Barnes et al., Law for Business	Chapters 3, 4, 5, 6 and 47	Chapters 7, 8 and 44	Chapter 3	Chapters 3, 5, 8 and 47
Bennett-Alexander & Hartman, Employment Law for Business	N/A	N/A	N/A	N/A
Kubasek et al., Dynamic Business Law	Chapters 2, 5, 7, 8, 44 and 46	Chapters 8, 12 and 32	Chapter 2	Chapters 2, 7, 12 and 46
Kubasek et al., Dynamic Business Law: The Essentials	Chapters 2, 4, 5, 6 and 7	Chapters 7, 8 and 19	Chapter 2	Chapters 2, 4, 6 and 8
Liuzzo, Essentials of Business Law	Chapters 2, 3, 4, 5, 6 and 47	Chapters 4, 21 and 28	Chapter 2	Chapters 2, 3, 28 and 37
Langvardt et al., Business Law: The Ethical, Global, and E-Commerce Environment	Chapters 3, 4, 5, 6, 7, 47 and 52	Chapters 7, 8 and 30	Chapter 4	Chapters 4, 5, 8 and 52
McAdams et al., Law, Business & Society	Chapters 2, 4, 5, 7, 8 and 17	Chapters 7, 15 and 18	Chapter 2	Chapters 2, 4, 17 and 18
Melvin, The Legal Environment of Business: A Managerial Approach	Chapters 2, 5, 9, 17, 18 and 22	Chapters 9, 20 and 24	Chapter 5	Chapters 5, 18, 22 and 24
Pagnattaro et al., The Legal and Regulatory Environment of Business	Chapters 2, 13, 19	Chapters 10, 11 and 18	Chapter 2	Chapters 2, 11, 13 and 19
Sukys, Brown, Business Law with UCC Applications	Chapters 1, 5 and 33	Chapters 6, 21 and 33	Chapter 1	Chapters 1, 5 and 33



Proceedings

A monthly newsletter from McGraw-Hill Education

February 2019 Volume 10, Issue 7



This Newsletter Supports the Following Business Law Texts:

- Barnes et al., Law for Business, 13th Edition ©2018 (1259722325)
- Bennett-Alexander et al., Employment Law for Business, 9th Edition ©2019 (1259722333)
- Kubasek et al., Dynamic Business Law, 4th Edition ©2017 (1259723585) *New edition available for Summer/Fall 2019 use*
- Kubasek et al., Dynamic Business Law: The Essentials, 4th Edition ©2019 (125991710X)
- Liuzzo, Essentials of Business Law, 10th Edition ©2019 (1259917134)
- Langvardt (formerly Mallor) et al., Business Law: The Ethical, Global, and E-Commerce Environment, 17th Edition ©2019 (1259917118)
- McAdams et al., Law, Business & Society, 12th Edition ©2018 (1259721884)
- Melvin, The Legal Environment of Business: A Managerial Approach, 3rd edition ©2018 (1259686205)
- Pagnattaro et al., The Legal and Regulatory Environment of Business, 18th Edition ©2019 (1259917126)
- Sukys (formerly Brown/Sukys), Business Law with UCC Applications, 14th Edition ©2017 (0077733738) *New edition available for Summer/Fall 2019 use*

