



SCHOOL OF LAW

NPIP502: IP Law, Business and Ethics

END OF SEMESTER EXAMINATIONS

August/December 2024

LECTURER: (Mr C. Munguma)

DURATION: (3 HRS)

INSTRUCTIONS

The paper contains **6** questions.

Answer **all** questions from Section A and any other **2** questions from Section B.

Write your answer clearly. Use numbered headings or subheadings to show which part of your answer refers to which question. Example: Question 2 (d).

SECTION A

This part is compulsory for all candidates.

Question 1

Darjeeling tea, known as the "Champagne of Teas," is a premium tea grown in the Darjeeling district of West Bengal, India. In 2011, it received Geographical Indication (GI) status, protecting its unique flavour and supporting local farmers. However, the market faced challenges from counterfeit Darjeeling tea being sold by sellers mislabeling tea from other regions. A strategy to combat this was necessary to bring order into the market.

- a) Examine the measures that can be taken to effectively enforce the GI status of a product such as Darjeeling tea and to prevent the sale of counterfeit products in the market? **(18marks)**
- b) Discuss the challenges counterfeit products (such as the fake Darjeeling tea above) pose to the market, society and the effect it has on the reputation of the genuine product? **(7 marks)**

Question 2

Recently South African police raided a warehouse where infringing detergents were being manufactured. After the manufacture of the illicit detergents labels and packaging for well-known South African brands such as OMO, Sunlight, Surf and Mac were affixed on the infringing bottles and packs. The products were then sold in the market especially in low income communities with a price tag 40% lower than that of genuine brands. Most of the consumers did not establish that they had bought infringing products. In terms of effectiveness the majority of consumers had felt that the infringing products were good.

As a result of the operation 1 ton of manufactured infringing detergents were seized and another half a ton of raw materials. Two men that were behind the operation were arrested by the police and appeared in court.

- a) As a prosecutor advise the court what charge or charges these two men will face in court. You are to assume that the national trademark law creates criminal offences for IPR infringement. Justify your choice. **(5marks)**
- b) Examine the nature of infringement that was taking place in the above case justifying why criminal action would be necessary in the case. **(10marks)**

c) In the event that the right holders for the brands Mac, Omo, Sunlight and Surf want to take civil action, explain the remedies they could seek? You are to assume each brand holder is aware of the quantity of products sold in the past and the money realized from passing off their brand name. **(10marks)**

Section B

Answer any two questions from this section.

Question 3

The approaches used by courts to determine whether a patentee, who has prevailed in an infringement suit, is entitled to injunctive relief, rather than only compensatory damages, vary by country. In your view, in which of the following three countries is the approach taken by the courts the most sensible: **United Kingdom; Germany; or the United States** (choose one country). Your answer should reflect a clear understanding of the ways in which the three approaches differ. **[20marks]**

a) In 2 or 3 paragraphs discuss the usefulness or otherwise of criminal penalties for the infringement of industrial property. **[5marks]**

Question 4

In not more than three pages discuss:-

a) Four (4) possible defences you can use for a claim based on patent infringement of a pharmaceutical right **[20 marks]**

b) As a consultant engaged by a university and a foreign private company engaged in a research collaboration advice on the some key provisions they should include in their collaboration agreement to resolve potential conflicts. **[5 marks]**

Question 5

What are the differences between the following processes of alternative dispute resolution measures (ADR):

a. Mediation and arbitration.

b. Med- arbitration and expert determination.

[10 marks]

- c. “Arbitration is often touted as having numerous advantages for parties compared to civil litigation. In reality, alternative dispute resolution measures (such as arbitration) presents a number of practical and structural challenges.”

Explain some of the challenges that arbitration presents compared to litigation.

[15marks]

Question 6

As people spend more time on social media, they are likely to spend time watching their favourite influencers and engage more with the products they promote. **Discuss how** could the enforcement of current legal standards be improved in your country to effectively address the IP infringement issues raised by *social media* and *influencers*?

[25marks]

End of Paper