



SCHOOL OF LAW

NPIP530: TRADEMARKS, GIS & UNFAIR COMPETITION

END OF SEMESTER EXAMINATIONS

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LECTURERS: (Mrs B. Kahari, Mr C. Munguma & Mr G. Mandewo)

DURATION: (3 HRS)

INSTRUCTIONS

The paper contains **7** questions.

Answer **all the** questions from **Section A**, **one** (1) question from **Section B** and **one** (1) question from **Section C**. Answer questions for Section A, B and C in separate answer booklets given to you.

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

SECTION A

Answer all questions in this Section.

QUESTION 1

A young South African engineer has invented a new eco-friendly composite material for manufacturing bicycles. This material is stronger than traditional carbon fiber, yet it is made from sustainable resources, which significantly reduces the environmental footprint of production. The engineer, who formed the company DekasamaBikes Ltd, is seeing rapid demand for these bicycles.

DekasamaBikes Ltd bicycles are sold under the trademark "Insimbi Carbon". The term "Insimbi" comes from Zulu and means "metal." The name has quickly gained popularity within South Africa, and DekasamaBikes Ltd aims to expand to the international market within three years. Their initial focus will be on the following regions: the United Kingdom and Belgium, Italy and Spain, Cameroon and Senegal, Botswana, Uganda, and Zimbabwe, as well as China, Brazil, and Portugal.

As an IP consultant, you have been requested to advise DekasamaBikes Ltd. To ensure a comprehensive IP strategy, your report must cover the following:

1. Discuss the probability of success in registering the trademark "Insimbi Carbon" in South Africa and in the other listed countries. Are there any advantages of conducting an availability search before filing an application, and which NICE class would be most appropriate for the product?
2. Explore the national, regional, and international routes available for trademark registration for each group of countries.
3. Assess the possible advantages of each filing route.
4. Discuss the possible disadvantages of each filing route.
5. You have recently watched the movie **Air**. What in your opinion were the key lessons about brand commercialisation from that movie?

(30 points)

QUESTION 2:

A young entrepreneur has developed a revolutionary cooling system for smartphones that enhances performance and battery life in hot climates. Due to the high demand for this technology, the entrepreneur is looking to expand the business internationally.

The entrepreneur established IceCool Systems (Pvt) Ltd and is marketing the product under the trademark "CoolCore." Recently, a popular smartphone manufacturer, BreezeMobiles Ltd, has approached IceCool Systems for a partnership to co-market their products. BreezeMobiles Ltd uses the trademark "ProWind 5G" for their high-end smartphones.

Both companies aim to expand rapidly into Southern African countries (Botswana, Uganda, and Malawi) and subsequently into European markets (Spain and Denmark) as well as China.

As an intellectual property consultant, you are tasked with preparing a memo outlining how IceCool Systems (Pvt) Ltd and BreezeMobiles Ltd can effectively grow their businesses through:

- a) Developing their brands,
- b) Commercializing their brands (separately and together), and
- c) Using social media to improve their market presence.

(20 points)

SECTION B

Answer one question in this Section.

Question 3

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) Briefly discuss the steps the producers of the tea had to take in order to have Darjeeling tea registered as a GI, nationally and internationally?

(7marks)

- b) Why is the GI status important for the protection of Darjeeling tea, and what benefits does it provide to local farmers?

(8 marks)

- c) Discuss the challenges counterfeit Darjeeling tea pose to the market, and the effect it has on the reputation of genuine Darjeeling tea?

(10 marks)

Question 4

- 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) What are the main changes that were made to the Lisbon agreement for the Protection of Appellations of Origin by the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications?

(7marks)

SECTION C

Answer one question in this Section.

Question 5

Unfair competition laws were instituted to curb unfair competition practices in the market. Concerning your own country's legislation, institutions, and practice, evaluate the effectiveness of the above in curbing unfair competitive practices. [Please note that if your country may not have a well-developed system, you may choose another country in your region] **[25marks]**

Question 6

There are various definitions of unfair competitive practices, drawing from international, regional, and national legislation, explain such practices and base the explanation on practical examples. It would be best if you further exposed why the practice constitutes unfair competition. **[25marks]**

Question 7

In Zimbabwe, Medical Co. charges high prices to the government and the patients for its Cancer Pill. Compared to the prices in international markets, the prices charged in Zimbabwe by Medical Co are five (5) times higher. Medical Co justifies its pricing strategy by its contractual freedom to set the prices of its patented drug at its will.

(a) Is the pricing of Medical Co anticompetitive? Justify your answer. **[10 marks]**

Medical Co competes in the pharmaceutical market in South Africa with a South African pharmaceutical company called SA Pharma which also commercializes a medicine similar to Cancer Pill. In order to avoid competing in the same market in South Africa, Medical Co and SA Pharma agree not to compete in the South African market.

(b) Is the understanding between Medical Co and SA Pharma anticompetitive? Justify your answer. **[15marks]**

End of Examination Paper