



COLLEGE OF BUSINESS, PEACE, LEADERSHIP AND GOVERNANCE

IP Law, Business and Ethics: PIP502

END OF SEMESTER EXAMINATIONS

August/December 2023

LECTURER: (Mr Christopher 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 (a).

SECTION A (Compulsory for all candidates)

Question 1

- a) 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. [18marks]

- b) Explain any two methods/approaches that are used by the courts to determine the damages that a successful patent holder is entitled to in an infringement dispute. [7marks]

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 inserted on the infringing bottles. 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. Justify your choice (5marks).
- b) Examine the nature of infringement that was taking place in the above case justifying why criminal action would be justified 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 what remedies would they seek? You are to assume each brand holder is aware of the quantity of products sold and the money realized from passing off their brand name (10marks)

Section B

Answer any two questions from this section.

Question 3

- a) What are some of the challenges that are posed by the internet environment in the enforcement of copyright in the modern world? [15marks]
- b) Discuss the availability of criminal penalties to the infringement of copyright.[10marks]

Question 4

In not more than three pages answer the following:-

- a) You are trademark attorney and your client who is in the business of making cheese has been sued for infringing a competitor's product. What possible defences can you use in your client's defense against the trademark infringement claim? [15 marks]
- b) As a consultant engaged by your government advice the Minister of Trade and Industry how the **industrial property** laws can be strengthened by including criminal provisions in them that are deterrent to infringers. What would you recommend to be included in the law relating to patents and trademarks? [10 marks]

Question 5

What are the differences between the following processes of alternative dispute

Resolution measures (ADR):

- a. Expedited arbitration and ordinary arbitration.
- b. Med- arbitration and expert determination. [10 marks]
- c. Discuss the advantages of having IP disputes resolved through the WIPO Arbitration and Mediation Centre as compared to court litigation at national level. [15 marks]

Question 6

As people spend more time on social media, they are likely to spend time watching their favorite influencers and engage more with the products they promote. According to Henien, the influencer economy is expanding rapidly; many can generate as much as seven-figure incomes. Some social media influencers use their platform to earn money by partnering with companies to advertise services or products, like lipsticks, to their followers. Like traditional entrepreneurs, they jump-start new businesses, taking responsibility for the risks,

responsibilities, and rewards. Unlike traditional entrepreneurs, connecting to followers is more important than selling the product or service.

Discuss how could the enforcement of current legal standards be improved in your country to effectively address the IP infringement issues raised by influencers? [25marks]

End of Paper