



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

QUESTION 1

A young Kenyan scientist has developed a revolutionary process for recycling plastic. He then uses this recycled plastic to make the popular type of shoe called "croc's." The special type of plastic he produces has increased durability and reduces the environmental impact by requiring fewer raw materials and utilizing organically sourced components. The scientist who formed the company, Inotals (Pvt) Ltd, is experiencing significant demand for his croc's shoes.

Inotals (Pvt) Ltd croc's are made with a unique African design under the trademark "cha plastiki". The Swahili words "cha plastiki" which translates to "of plastic" has quickly gained popularity in Kenya. Inotals (Pvt) Ltd intends to expand its distribution worldwide within 5 years. The company's initial focus will be on the following markets: the United Kingdom and Belgium, Italy and Spain, Cameroon and Senegal, Botswana, Uganda, and Zimbabwe, as well as China, Brazil, and Portugal.

You are an IP consultant requested to advise Inotals (Pvt) Ltd. To ensure effective IP strategy, please provide comprehensive information about the process of registering the "cha plastiki" mark in Kenya and in the other countries they are interested in. Your report must include advice on the following:

1. Discuss the probability of success in registering the mark "cha plastiki" in Kenya and in the above-listed countries? Are there any advantages of undertaking an availability search before filing an application and which NICE class is appropriate for the product,
2. Discuss the national, regional and international routes available for trademark registration for each group of countries,
3. The possible advantages of filing through each route,
4. The possible disadvantages of each filing route, and
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 engineer has developed a ground-breaking internal component design for lithium batteries that significantly enhances their output and lifespan by 30%. Due to the high demand for this innovative technology, the engineer is seeking to expand their business globally.

The engineer has created the company, Lezima Tech-Solutions (Pvt) Limited, which has secured a contract to supply lithium batteries to all government complexes

in Uganda using the trademark "More power, More solar." Meanwhile, Obibi Company Limited, a manufacturer of Inverters has approached Lezima Tech-Solutions (Pvt) Limited about a potential joint venture to market their products together. The trademark for Obibi Company Limited inverter is "The Giant Pro."

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

As an intellectual property expert, you are tasked with preparing a memo outlining how Lezima Tech-Solutions (Pvt) Limited and Obibi Company Limited effectively grow their businesses through:

- a) **Brand Development,**
- b) **Commercialization,**
- c) **Social Media.**

(20 points)

SECTION B

Question 3

You are appearing before a parliamentary portfolio committee on Agriculture and Commerce as an IP expert. The ministers responsible for agriculture on the one hand, and of Trade on the other hand in your country do not have faith in GIs. They prefer patents and Utility models as IP regimes that can improve the national innovation thrust. The two Ministers are part of the parliamentary committee on Agriculture and Commerce.

- a) With the aid of examples from Europe, Latin America or Asia (choose one region) provide a write up showing the benefits of protected GIS to a country.

(Max of 2 pages: 15 marks)

- b) You are to advise the parliamentary portfolio committee on the laws and policies that may be necessary to advance GIs and GI products in your country. You are to assume that there are 5 potential GI agricultural and handicraft products and that there are no current GI laws in place in the country.

(Max of 1 and half page: 10marks)

Question 4

Discuss the steps a country will follow to protect a named geographical indication product. You are to assume that the country already has a sui generis GI law in place since the last 10 years but no GI registrations have been made.

[Max 2 and half pages: 25marks]

Section C

Question 5

Unfair competition laws and Intellectual property rights are in contradiction. Discuss appealing to complementarity and highlighting the effect of each in the market.

(25 Marks)

Question 6

In Ghana, the Pharmaceutical Company *Pharma Co* charges high prices to the government and the patients for the *Corona Pill*. Compared to the prices of the *Corona Pill* in international markets, the prices charged in Ghana are five (5) times higher. *Pharma Co* justify its pricing strategy by its contractual freedom to set the prices of its patented drug at its will.

Assume for this question that Ghana has a competition law that prohibits agreements and abuse of dominance.

(a) Is the pricing strategy of company X in Ghana anticompetitive? Justify your answer. **(10 Marks)**

(b) Explain critically how the following can assist in encouraging competition in the market

(i) Block exemptions **(5 Marks)**

(ii) Compulsory licensing **(10 Marks)**

Question 7

Appealing to unfair competition practices, clearly demonstrate how they give unfair advantage in business and give concrete examples.

(a) Abusive conduct **(5 Marks)**

(b) Vertical agreements **(5 Marks)**

(c) Exclusionary conduct **(5 Marks)**

(d) Horizontal agreements **(5 Marks)**

(e) Exploitative practices **(5 Marks)**

End of Examination Paper