

LEGAL PROFESSION ADMISSION BOARD

MARCH 2014

INTELLECTUAL PROPERTY LAW

Time: Three Hours This paper consists of **four** questions.

Candidates are required to attempt all **four** questions.

Question One (*Patents*) and Question Two (*Trade Mark and Passing Off*) are worth **thirty (30)** marks each.

Question Three (*Confidential Information*) and Question Four (*Design*) are worth **ten (10)** marks each.

Answer each question in a separate booklet, and indicate clearly on the front of the booklet the number of the question you are answering and also your student number.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given and could, in some circumstances, result in the candidate receiving a fail grade.

This examination is worth 80% of the total marks in this subject.

Permitted Materials: This is an open book examination. Candidates may refer to any books and any printed or handwritten material they have brought into the examination room.

As some instances of cheating, plagiarism and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct may result in instant expulsion from the examination and may result in exclusion from all further examinations.

This examination should not be relied on as a guide to the form or content of future examinations in this subject.

BACKGROUND FACTS

Ian is a senior Australian government public servant attending the International Experts Meeting in Melbourne of the International Atomic Energy Agency. The meeting is considering Accident Management in light of the Fukushima Daiichi Nuclear Power Plant Disaster.

During the coffee break, Ian has a skype video call with his wife Therese. Therese is an environmental activist and is strongly against nuclear power. While she is talking to Ian she observes that there is a slide from the NSW Department of Health presentation to the Experts Meeting still showing on a screen behind Ian. The slide sets out the projected number of deaths in 12 months, 5 years, 10 years and 25 years, and the types of illnesses that people are likely to suffer from, if the Lucas Heights nuclear reactor in NSW had a meltdown. The slide includes "CONFIDENTIAL" in big letters at the bottom of the slide. Therese pretends to listen to Ian talk about the food at the conference and the weather in Melbourne while she copies the information from the slide.

Therese has created a windmill for a wind farm. The windmill has curved arms which are fixed at an angle of 64 degrees and are silver tipped. She was inspired to create curved arms after watching the US movie "Man From La Mancha" (based on the Spanish novel *Don Quixote* written by Cervantes), where the hero fights windmills that have curved arms. Therese was further inspired to fix the angle at 64 degrees after reading a Spanish book *The Karma of Numbers*, also written by Cervantes, where 64 was described as a perfect karma number because it was 2 to the power of 6. The inspiration to tip the arms of the windmill in silver came to her after reading a Japanese academic paper that claimed silver increases aerodynamic lift. In fact, most aeroplane engines have silver tips.

Therese has applied for a patent for her windmill. However, she wants people to think that her windmill is purely natural so she does not disclose in her patent application that she electrically charges her windmill once a month – she does not know whether it will work if it is not charged. Therese has also applied for design registration for her windmill. IP Australia registers the patent and the design.

Therese has called her business the 'International Post Atomic Energy Agency'. The logo is the same as the IAEA logo, except with the handwritten word "post" included as shown below. She has applied to register the combination name and logo as a trade mark in class 7 wind turbines, and class 1 fuel for nuclear energy.



(Background facts continues)

(Background facts continued)

Therese has paid for full page advertisements in all of the Australian daily newspapers. The advertisements disclose all of the information in the NSW Department of Health slide asks the question “Wouldn’t you prefer a post atomic energy age?” and includes Therese’s business name and logo.

The one page advertisements create a buzz for Therese’s windmill. Christie, a windmill manufacturer, decides to build a competing windmill. However, her windmill has a curve of 45 degrees not 64 degrees – surprisingly this does not affect the operation of the windmill, although Christie’s windmill looks very different from Therese’s windmill. In addition, Christie uses aluminium tipping instead of silver tipping.

Question 1 – Patent

- a) What are Therese’s potential claims against Christie for infringing Therese’s registered patent?
(15 marks)
- b) On what grounds can Christie claim that Therese’s patent should be revoked?
(15 marks)

Question 2 – Trade Marks and Passing Off

- a) On what grounds can IAEA oppose registration of Therese’s trademark?
(20 marks)
- b) What are IAEA’s potential claims against Therese in passing off and under section 18 of the Australian Consumer Law?
(10 marks)

Question 3 – Confidential Information

What are the NSW Department of Health’s potential claims against Therese for breach of confidence?
(10 marks)

Question 4 – Design

What are Therese’s potential claims against Christie for infringing Therese’s registered design?
(10 marks)

END OF PAPER