

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2013

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

The Australian Society of Florists Ltd (“ASF”) has for 20 years promoted and marketed a range of activities using the word “Chelsea”. This is a reference to the famous Chelsea Flower Show that is held each year in the London suburb of Chelsea.

The ASF has developed the Chelsea Vase. The vase consists of two strands of intertwined metal piping (see illustration below). It keeps fresh flowers alive for longer by pumping a combination of helium, boron and heavy water (which is water containing deuterium hydrogen molecules instead of protium hydrogen molecules) from the base of the vase. The Chelsea Vase was developed by ASF’s employee Brian who was inspired by a French 1950’s science fiction movie where the mad scientist character combined helium, boron and heavy water to make chickens grow faster, and a Japanese academic study about pumping heavy water into fresh flowers to keep them alive for longer. Unfortunately, when ASF’s patent attorney drafts the patent application, he only refers to water and not heavy water – and if you use normal water it doesn’t always work. Brian knows the Chelsea Vase will be a great success – Brian and his friend Shona sell flowers at the Eveleigh Market in Redfern, and they have been using the Chelsea Vase at their stall to help them keep the flowers fresh.

The ASF has also registered the Chelsea Vase as a design, with the pump hidden in the thinner, second metal pipe of the vase.



Every year the ASF arranges the “Chelsea Oration”, a public lecture which is the highlight of the Australian florist’s calendar and which is held in conjunction with the ASF’s “Chelsea Exhibition”, a flower exhibition. The ASF has registered “Chelsea” as a trade mark in class 35 for arranging exhibitions for commercial purposes, and conducting exhibitions for commercial purposes.

The ASF had a board meeting to discuss who would give the Chelsea Oration for 2013, identified the celebrity gardener Jamie Durie and asked their president Therese to contact Jamie to make arrangements.

Ian is an ASF employee who read the ASF board minutes that were left on the ASF photocopier. He resigned from ASF and formed a break-away association, the Australian Society of Flower Arrangers (“ASFA”). Before ASF had a chance to start advertising this year’s Chelsea Oration and before Therese contacted Jamie Durie, Ian started advertising and promoting the ASFA’s “Chelsea Oration” and has contacted Jamie Durie in order to ask him to deliver the lecture.

Ian has also applied to register the words “Chelsea Oration” as a trade mark in class 41 for arranging and conducting conferences.

(Background facts continues)

(Background facts continued)

Ian has arranged the manufacture of copies of the Chelsea Vase and Ian is selling them. However, Ian's vase is made of silver unlike ASF's vase which is made of aluminium. In addition, Ian's vase has one thick and two adjoining thin metal pipes rather than one thick and one thin metal pipe, and the pump is hidden in the third metal pipe.

Question 1 – Patents

On what grounds can Ian oppose ASF's Chelsea Vase patent application?

(30 marks)

Question 2 – Trade Marks and Passing Off

(a) Trade Marks

Assuming that IP Australia has accepted Ian's trade mark application for "Chelsea Oration" in class 41, on what grounds can ASF oppose registration of the mark?

(20 marks)

(b) Passing Off

What are ASF's claims against Ian in passing off and under section 18 of the Australian Consumer Law for Ian using "Chelsea Oration" for the name of the ASFA event?

(10 marks)

Question 3 – Confidential Information

What are ASF's claims against Ian for breach of confidence?

(10 marks)

Question 4 – Design

What are ASF's claims against Ian for infringing ASF's registered design?

(10 marks)

END OF PAPER