

LEGAL PROFESSION ADMISSION BOARD

MARCH 2013

INTELLECTUAL PROPERTY LAW

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

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

All questions are of equal value.

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 an elite cyclist. Ian discovers that if he mixes crushed Arnott's Biscuits chocolate "Tim Tam" biscuits with Lagavulin single malt whisky and injects the resulting liquid three times a day, it improves his cycling performance. He notices that it only works with single malt whisky not blends of whisky, and it works best with Lagavulin single malt whisky.



In creating his performance-enhancing invention, Ian was inspired by a Finnish feature film from the 1930's about an elite javelin thrower who injects himself with liquid whisky to improve his performance, and an academic study done in Switzerland about the performance benefits of dark chocolate for swimmers.

Ian is required to disclose the invention to the Commonwealth Anti-Doping Agency before he is allowed to participate in official races if he has injected himself with the performance-enhancing invention. This includes disclosing that the invention works best with Lagavulin single malt whisky. Everything he provides to the Commonwealth Anti-Doping Agency about his invention is labelled "Confidential".

Ian then applies to register his patent with IP Australia. The patent specification refers to whisky but does not specifically refer to single malt whisky, or Lagavulin single malt whisky. Ian's patent is registered.

Silvano reads the details of the registered patent and decides to start producing medical tablets and capsules made of the active ingredients of Arnott's Biscuits "Tim Tam" biscuits. He calls his product "Tim Tabs". Silvano sells the tablets and capsules with instructions how to mix the tablets and capsules with whisky. Silvano sells the tablets and capsules in packets that have a picture of the Arnott's Biscuits parrot (seen in the photograph above) on a bicycle.

Brian is an officer at the Commonwealth Anti-Doping Agency. He tells Graeme, the Australian-employed Australian-based representative of the Paris-based "Tour De France" cycling race about Ian's invention, including that it works best with Lagavulin single malt whisky. The organiser of the "Tour De France" decides that it is within the rules of the "Tour De France" that cyclists who use Ian's invention are entitled to cycle in the "Tour De France" race. Graeme thinks this is outrageous and leaks the invention, including the role of Lagavulin single malt whisky, to the Sydney Morning Herald newspaper.

(Question 1 follows)

Question 1

- (a) Is Ian's invention patentable?
- (b) Assuming that Ian's invention is patentable, are Silvano and Silvano's customers infringing the patent?
- (20 marks)

Question 2

Assuming that Arnott's Biscuits has a registered trade mark "Tim Tams" in class 30 for biscuits, is Silvano's use of the phrase "Tim Tabs" in relation to medical tablets and capsules infringing Arnott's Biscuits registered trade mark "Tim Tams"?

(20 marks)

Question 3

What are Arnott's Biscuits potential claims against Silvano for passing off and breach of section 18 Australian Consumer Law in relation to Silvano's use of the phrase "Tim Tabs" and the parrot device?

(20 marks)

Question 4

- (a) What are Ian's potential claims against the Commonwealth Anti-Doping Agency for breach of confidence?
- (b) What are the "Tour De France" organiser's potential claims against Graeme for breach of confidence?
- (20 marks)

END OF PAPER