

UNIVERSITY COLLEGE LONDON

University of London

EXAMINATION FOR INTERNAL STUDENTS

For the following qualifications :-

LL.B.

LL.B. Part II: Intellectual and Industrial Property Law

COURSE CODE : LAWSII04
DATE : 23-MAY-02
TIME : 10.00
TIME ALLOWED : 3 hours 15 minutes

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TURN OVER

INTELLECTUAL AND INDUSTRIAL PROPERTY

Answer **FOUR** questions.

1. Examine the packet of Walkers ready salted crisps provided and consider the following:
 - (i) In what circumstances, if any, would you advise Walkers that the phrase “QUALITY FRESHNESS AND TASTE” was registrable as a UK or Community trade mark?
 - (ii) Advise a competitor of Walkers as to whether, having obtained flood-damaged multipacks of WALKERS plain, cheese and onion and salt ‘n’ vinegar crisps, it can open up the multipacks and repackage them as “WALKERS multiflavour multipacks” for export to Sweden, where crisps retail at a far higher price than in England.
 - (iii) On the reverse of the package is a table entitled “TYPICAL NUTRITIONAL VALUES”. Can Walkers prevent the reproduction of an identical table by a competitor who has either copied it verbatim or who has independently generated the table, having calculated the values independently?
 - (iv) Advise Walkers, as proprietor of the WALKERS trade mark for savoury snack foods and crisps, as to the steps it should need to take on learning that the producers of JOHNNY WALKER Scotch whisky were proposing to launch a range of JOHNNY WALKER savoury bar snacks.
 - (v) Advise Walkers as to the likely registrability, as a UK or Community trade mark, of the colour combination red and yellow for plain crisps.
2. Does UK case law on the interpretation of patent claims truly reflect the approach to interpretation required by the Protocol to Article 69 of the European Patent Convention 1973?
3. Arthur, a computer programmer, seeks your advice. He has written a computer program which, when loaded on to a computer linked to an infrared tracking device, will enable the user of the computer to obtain data concerning the state of activity of all of the electrical devices on a domestic circuit and to control those devices. For example, a user of the computer so programmed would be able, while using his computer for normal purposes such as sending emails or doing his accounts, to check whether his washing machine had completed its cycle, whether the oven timer had been set, whether the telephone was in use, or whether any phone messages had been left.

Arthur wants to know (i) how UK law can protect him against the unauthorised exploitation of his program by others and (ii) what problems he might face in seeking to obtain that protection.

TURN OVER

4. Evaluate the effectiveness of “threats” proceedings as a means of providing genuine protection for innocent parties when intellectual property infringement actions are imminent. Is it fair to describe the risk of “threats” proceedings as being merely another inconvenience to be overcome by a rights owner in seeking to enforce his legitimate interests?
5. Apex Pharmaceutical plc employs, under contracts of employment, financial directors, research scientists, laboratory assistants, marketing staff, travelling sales representatives and secretarial support staff. Advise Apex as to what sort of strategy it should adopt for protecting itself against damage which may be done to its portfolio of patents, database rights, copyrights and trade secrets by employees (i) during the currency of their employment and (ii) after their employment by Apex has ended.
6. Magdalene Minogue is a final year law student at UCL. Having failed to obtain a summer placement or a training contract with a law firm, she has decided to enter show business as an exotic dancer in an Internet café. Before starting, she seeks your advice on the following points:
 - (i) Ever since she was a little girl, friends have called her “Kylie”. Can she therefore perform in public as “Kylie Minogue” (the name under which a very well known singer and performer already works)?
 - (ii) She wants to know if she can prevent the disclosure of the fact, known to several of her classmates, that she had a brief but passionate affair with Greasy Pete, a traffic warden.
 - (iii) She asks how she can control and commercially exploit the use of her name and pictures by others.
 - (iv) Having invented a routine which involves stripping off her clothes to music while simultaneously wrapping herself in a boa constrictor, Magdalene wants to know if she can stop her rivals from copying the routine.
7. Explain the different types of relief which the courts can provide in intellectual property infringement litigation. Which do you consider the most effective, and why?
8. Outline and contrast the recognition given to the different types of public interest by patent, copyright and trade mark law. Do the courts keep a satisfactory balance between (i) the public interest in being able to use intellectual property and (ii) the owner’s being able to exploit it by himself or not, as he wishes?
9. Is it necessary to preserve the common law of passing off, now that the protection given to registered marks is so extensive?

CONTINUED

10. Comment on **TWO** of the following pairs of cases:

- (i) *Pro Sieben Media AG v. Carlton UK Television Ltd* [2000] ECDR 110 and *Hyde Park Residence Ltd. v. Yelland* [2000] ECDR 275
- (ii) *MOBIL/Friction-reducing additive* [1990] EPOR 73 and *Merrell Dow v. Norton* [1996] RPC 76
- (iii) *Asprey & Garrard v. WRA (Guns) Ltd* (CA, unreported, 2001) and *LTJ Diffusion v. SADAS* (ECJ, Adv. Gen., unreported, 2002)
- (iv) *McCulloch v. Lewis A. May (Produce Distributors)* [1947] 2 All ER 845 and *Stringfellow v. McCain Foods (GB)* [1984] RPC 501

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