

DEPARTMENT OF TRADE AND INDUSTRY PATENT EXAMINATION BOARD

EXAMINATION 2016

Group 1 Subject (a)

Legal Framework for the Protection of Intellectual Property in South Africa

Examiners: A. van der Merwe, D. Cochrane, P. Sibisi, D. Biagio

Moderator: L. van der Walt

Time: 4 hours

Marks: 100

Instructions:

1. Answer all four questions. Each question must be answered in separate answer books.
2. Please note that the four questions carry equal mark values; accordingly, equal time should be devoted to the questions.
3. The term "TRIPS Agreement" or "TRIPS" refers to the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization (WTO).

4.

QUESTION 1: TRADE MARKS ACT, NO. 194 OF 1993 (the “Act”)

- 1.1 What, in terms of the Act, is the definition of:
a) a “mark”; and
b) a “trade mark”. (4)
- 1.2 Philosophically, does a trade mark serve in trade as a badge of origin? If so, why, and what about local franchises that use the trade mark of a foreign principal e.g. MACDONALD’S? (4)
- 1.3 Does the Act provide a basic requirement for a trade mark to be registrable? If so, what is that requirement? Does the Act provide categories of unregistrable trade marks? If so, in what section of the Act do those categories appear? (6)
- 1.4 Please briefly list any three of the defences to infringement provided in the Act; and what relief can the High Court grant to a proprietor where a trade mark registration is found to be infringed? (6)
- 1.5 Section 10 of the Act provides that a mark that consists exclusively of a geographical sign or indication, is not registrable as a trade mark. However, your client wishes to register such a mark for his cycling club so that its members can use this mark in their badges. Is this possible in terms of the Act? Please explain this to your client briefly. (2)
- 1.6 Is it possible for two different companies to use and register identical or similar trade marks in respect of the same or similar goods? Explain and motivate your answer. (3)

Total [25]

QUESTION 2: COPYRIGHT ACT, NO. 98 OF 1978 (the “Act”)

- 2.1 Name eight categories of works recognized by the Act as being eligible for copyright protection. (8)
- 2.2 What is the definition of “musical works” in terms of the Act? (2)
- 2.3 Authorship plays an important role in copyright law. In terms of the Act, who is the author of the following works;
- 2.3.1 Artistic work
 - 2.3.2 Artistic work which is computer generated
 - 2.3.3 Musical work
 - 2.3.4 Cinematograph film
 - 2.3.5 Computer program
 - 2.3.6 Sound recordings (6)
- 2.4 There are two main requirements for any work to be eligible for copyright under the Act. What are they? (2)
- 2.5 When shall a work be deemed to have been published in terms of the Act? (4)
- 2.6 Who may sue for copyright infringement? (3)

Marks [25]

QUESTION 3: PLANT BREEDERS' RIGHTS ACT, NO. 15 OF 1976 (the "Act")

1. Name the International Convention of Plant Breeders' Rights that South Africa is a member of, and to which agreement of this Convention South Africa is currently a signatory. (2)
2. One of the basic requirements for obtaining a Plant Breeders' right for a variety of plant in South Africa is that the variety is "new". Discuss the provisions of Section 2 of the South African Plant Breeders' Rights Act in respect of "new". (4)
3. The three other basic requirements for obtaining a Plant Breeders' right for a variety are that the variety is Distinct, Uniform and Stable. Provide a short explanation for each of these requirements. (6)
4. What is the duration of a Plant Breeder's Right in terms of Section 21 of the Plant Breeders' Rights Act? (3)
5. In addition to the "Farmers Privilege" list 4 of the exceptions to a Plant Breeder's Right provided for in Section 23(6) of the Plant Breeders' Rights Act, and mention the requirement for these exceptions to apply. (5)
6. Explain the exception to infringement provided for in terms of Section 23(6)(f) of the Plant Breeders' Rights Act, which is also known as "Farmers Privilege". (5)

Marks [25]

QUESTION 4: INTERNATIONAL AGREEMENTS, CONVENTIONS AND TREATIES

- 4.1 List four ways in which benefit can be derived for the proprietor of intellectual property. (2)
- 4.2 Give two reasons why a group of companies would establish a separate IP holding company to own the group's intellectual property. (1)
- 4.3 (a) Name four international treaties/conventions to which South Africa has already acceded. (4)
- (b) Name three international treaties/conventions to which South Africa has not yet acceded. (3)
- 4.4 Provide 3 main objectives of the TRIPS Agreement. (3)
- 4.5 Explain how the TRIPS Agreement ensures that there is no discrimination regarding the IP protection afforded to nationals of member states. (2)
- 4.6 (a) How did the Doha Declaration come about? (1)
- (b) How did the Doha Declaration achieve its objective? (2)
- 4.7 How does South African law on the registrability of a design applied to an article go beyond the provisions of the TRIPS agreement? (2)
- 4.8 Explain the provisions of the TRIPS Agreement regarding the effect of a patent as it pertains to the importation of a patented article. (2)
- 4.9 In terms of article 35-38 of TRIPS members are obliged to provide protection for layouts (topographies) of integrated circuits. Explain how South Africa complies with this provision. (1)
- 4.10 Explain why South African law does not comply with the TRIPS Agreement pertaining to the protection of undisclosed information during registration of pharmaceutical or agricultural products. (2)

Marks [25]