

DEPARTMENT OF TRADE AND INDUSTRY PATENT EXAMINATION BOARD

EXAMINATION 2015

Group 1 Subject (a)

Legal Framework for the Protection of Intellectual Property in South Africa

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Moderator: L. van der Walt

Time: 4 hours

Marks: 100

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Instructions:

1. Answer all four questions.
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).

**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 "device";  
b) a "mark"; and  
c) a "trade mark"? (6)
- 1.2 What is the fundamental requirement for a trade mark to be registrable in terms of the Act? Does the Act provide any qualifications to this requirement? If so, please indicate briefly what these may be. (3)
- 1.3 Is it necessary, in terms of the Act, to register a trade mark in respect of specified goods or services falling within a certain class/es? If so, please give two brief reasons why this is important. (3)
- 1.4 Is it possible, in terms of the Act, to register a trade mark in a particular colour or colours? Is there any advantage in registering a trade mark in black and white? (2)
- 1.5 List the requirements to be proved, in terms of the Act, in an infringement situation where the respective goods/services are identical. Please also list any three of the defences to infringement provided in the Act. (6)
- 1.6 Is it possible, in terms of the Act, for two different companies to use and register the same trade mark in respect of the same or similar goods? (2)
- 1.7 Your local farmers' association has designed a new mark, including a device and the geographical location of the association, that it wants to protect for all its members to use. Is it possible, in terms of the Act, to register this mark? If so, how? (3)

Marks [25]

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

- 2.1 Copyright in a sound recording vests the exclusive right to do or to authorize the doing of a number of acts in the Republic. Name four. (4)
- 2.2 What is the definition of “emitted signal” 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 sound recording;
  - 2.3.2 literary work;
  - 2.3.3 photograph;
  - 2.3.4 published edition;
  - 2.3.5 programme-carrying signal? (5)
- 2.4 There are two main requirements for any work to be eligible for copyright under the Act. What are they? (2)
- 2.5 Name two circumstances under which copyright in a literary or musical work will not be infringed. (4)
- 2.6 In terms of the Act, what is the term of copyright in the following works:
- 2.6.1 sound recording;
  - 2.6.2 literary work;
  - 2.6.3 artistic work;
  - 2.6.4 published edition;
  - 2.6.5 cinematograph film? (5)
- 2.7 Under what circumstances will a work not be eligible for copyright protection? (3)

Marks [25]

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

- 3.1 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)
- 3.2 One of the basic requirements for obtaining a Plant Breeder's Right for a variety of plant in South Africa is that the variety is "new". Discuss the provisions of Section 2 of the Act in respect of "new". (4)
- 3.3 What are the other three basic requirements for obtaining a Plant Breeder's Right for a variety in South Africa? (3)
- 3.4 Provide the definition in terms of Section 1 of the Act for the "breeder" of a variety. (3)
- 3.5 After a Plant Breeder's Right application is filed in South Africa, what is the deadline for making plant material to the Registrar available for testing purposes? (1)
- 3.6 What is the duration of a Plant Breeder's Right in terms of Section 21 of the Act? (3)
- 3.7 List the remedies that are available to the holder of a Plant Breeder's Right in South Africa that has been infringed. (4)
- 3.8 Explain the exception to infringement provided for in terms of Section 23(6)(f) of the Act, which is also known as "Farmers' Privilege". (5)

**Marks [25]**

**QUESTION 4: INTERNATIONAL AGREEMENTS, CONVENTIONS AND TREATIES**

4.1 Has South Africa acceded to the following Conventions/Treaties? (Yes/No):

Convention/Treaty	
(a)	The Agreement on Trade-Related Aspects of Intellectual Property Rights
(b)	Rome Convention for the Protection of Performers and Producers of Phonograms and Broadcasting Organisations
(c)	International Convention for the Protection of Industrial Property
(d)	International Convention for the Protection of Literary and Artistic Works
(e)	Hague Agreement Concerning the International Registration of Industrial Designs
(f)	Washington Agreement on IP in Respect of Integrated Circuits
(g)	Treaty on the International Recognition of the Deposit of Micro-organisms for the Purpose of Patent Procedure
(h)	Patent Cooperation Treaty
(i)	Agreement Concerning the International Registration of Marks
(j)	WIPO Copyright Treaty
(k)	WIPO Performances and Phonograms Treaty

(11)

4.2 What are the main objectives of TRIPS as stated in articles 7 and 8?

(4)

4.3 What is the position of the TRIPS Agreement on the issue of international, national and territorial exhaustion of rights?

(1)

4.4 Give an example of where South African legislation does not align with the provisions of the TRIPS agreement?

(1)

4.5

(a) According to article 30 of the TRIPS Agreement, what is a so-called "Bolar-type provision"?

(3)

(b) Set out the key principles of the Bolar-type provision in our Patents Act, No. 57 of 1978 (as amended).

(3)

4.6 Does the TRIPS Agreement prescribe the use of the trade mark as a requirement for registrability? Is this aligned with our Trade Marks Act, No. 194 of 1993?

(2)

Marks [25]