UNIVERSITY OF KWAZULU-NATAL, PIETERMARITZBURG CAMPUS
SCHOOL OF LAW: JUNE MAIN EXAMINATION 2014
MODULE AND CODE: INTELLECTUAL PROPERTY LAW
(LAWS4IP) FULL- TIME

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Duration: 2 hours
Total: 50 marks

External examiner : Ms. S. Driver
Independent Moderator : Prof T. Woker
Internal examiner : Ms. S Soni

INSTRUCTIONS

1. Students must answer all questions.
2. Students are encouraged to write legibly.
3. This paper consists of 5 pages. Please ensure you have all 5 pages.
QUESTION 1

The following illustration forms part of the specifications of a patent application lodged by South African inventor John Mason. Mason believes he has devised a method of salvaging wrecked ships from the bottom of the ocean that is both cost efficient and quick. It involves the use of a vessel on the surface of the ocean (See label 1 on diagram), and the running of a hollow tube from this vessel to the sunken ship on the ocean floor (See label 4 on diagram). Hollow bodies are pumped into the sunken vessel via this hollow tube and are then inflated with air. As a result of the hollow bodies in the sunken ship being filled with air, the sunken vessel achieves buoyancy and it will then float to the surface for further salvage operations to commence. Mason applies for patent registration on the 5th of January 2014.

Whilst waiting for the outcome of his application, Mason discusses the application with his grandfather. Upon hearing his explanation of the invention, Mason’s grandfather indicates
that he has heard of a very similar invention. Mason’s grandfather excuses himself and goes up to the attic to search his old books and papers. After a short while he returns and hands Mason an old and weathered “Duck Tales” comic from the late 1970’s. His grandfather then says to him, “I told you this whole thing sounded familiar. Donald Duck did the same thing in this old comic book I used to read when I was younger!”

Answer the following questions:
1.1 List and describe the requirements for patentability in terms of the South African Patents Act 57 of 1978. [10 marks]

1.2 Advise whether Mason is likely to be granted the patent. [5 marks]

[Total Q1: 15 Marks]

QUESTION 2

You are a lawyer specializing in intellectual property law. You have been approached by a number of clients who pose the following questions to you. Answer their queries, referring to case law where relevant.

2.1 Is it possible to register a trade mark in relation to the shape of a product? (10 marks)

2.2 What is the relevance of ‘propriety’ in South African trade mark and copyright law? (10 marks)

[Total Q2: 20 Marks]
QUESTION 3

Esther is a graphic artist, employed by Jarndyce & Co Ltd, an agricultural equipment manufacturer based in Johannesburg to devise a logo for its stationary. The logo devised by Esther comprises a white prancing horse set on a scroll-like base in red carrying the company motto in black, all surrounded by a green laurel wreath. Jarndyce now uses the logo on its stationery and marketing material and applies the logo to its equipment.

Jarndyce has recently discovered that a Durban-based agricultural equipment manufacturer, Skimpole Ltd, now uses a logo which is remarkably similar to that used by Jarndyce. After making enquiries, Jarndyce has found out that Esther licensed the copyright in the logo without the motto to Skimpole. Skimpole has started exporting equipment bearing its logo to the United Kingdom. Skimpole was unaware of Jarndyce’s logo.

Advise Jarndyce fully on its rights in respect of its logo and any recourse that it has against Esther and Skimpole.

[Total Q3: 15 Marks]

[TOTAL FOR THE PAPER: 50 MARKS]