



RIARA LAW SCHOOL

UNIVERSITY EXAMINATION FOR BACHELOR OF LAWS (LLB) DEGREE

AND

PRE-KENYA SCHOOL OF LAW CORE COURSES COMPLIANCE PROGRAM

SEPTEMBER – DECEMBER 2018

RLLB 414: INTELLECTUAL PROPERTY LAW

INSTRUCTOR: ETALE REAGAN

INSTRUCTIONS

1. This is the final examination in Intellectual Property Law. You will earn 70% of your final grade from this final examination and 30% from Continuous Assessment Assignments.
2. This examination has **THREE** questions. Please answer **ALL THREE QUESTIONS**.
3. This examination has 3 pages, including this one.
4. Time allocated for this examination is **THREE** (3) hours. You must stop writing when time is called.
5. Please sign the roll sheet when you turn in your answer sheet. If you fail to sign the roll sheet, we shall have no way of establishing that you sat for this examination and your marks will not be reported.
6. This is an **OPEN BOOK** examination. This means you are permitted to bring hard copies of the **statutes** to the examination room. However, you are not allowed to access materials stored in computers, electronic gadgets or the internet. You should not bring to the examination room any of the following: cell phones, tablets, computers, notes, outlines, or books. Neither should you bring to the examination room books or materials unrelated to this course. If you need to have medicine or food items with you, please let the invigilator know before the examination begins.
7. This examination is governed by **Riara University Academic Honesty Regulations**. Students who violate those regulations will be penalized. Students have an obligation to report to the invigilator any incidences of academic dishonesty compromising the integrity of this examination.

QUESTION ONE (30 marks)

Fenoscadia Limited (Fenoscadia) has been in operation since 2008 as a pharmaceutical company manufacturing, branding, supplying and selling its own products in East Africa. It produces a broad range of pharmaceutical products including antibiotics, antiseptics and analgesics (pain killers). Fenoscadia limited had gained a reputation in East Africa for its consistent quality products and reliability.

Fenoscolin, Fenoscadia' flagship drug is very popular for the cure of Pyaemia disease which is prevalent in Kenya. Fenoscadia records high sales of Fenoscolin in the Central, Rift Valley and Western regions of Kenya.

FENOSCOLIN

On 20th July, 2018, Fenoscadia applied for registration of “Fenoscolin” as a trade mark in Class 5. The mark was subsequently advertised in the Kenya Industrial Property Journal on 1st September, 2018. On 15th October, 2018, Fenoscadia received a notice from the Registrar of Trademarks that Pfizer International Limited (Pfizer), a Swiss based pharmaceutical manufacturer had lodged a notice of opposition of registration of its mark. In its Notice of Opposition, Pfizer argued that it had validly registered a trademark in Kenya; “Fenozolin” as below;

FENOZOLIN

Fenoscadia was surprised by this development and out of caution ordered an investigation on the market if “Fenozolin” was sold in Kenya. The market investigation revealed that “Fenozolin” was available in local pharmacies and chemists in Nairobi, Nyeri and Eldoret only. Further, it was discovered that there was another drug, “Noscolin” in the market, manufactured by Estrella Limited, a company based at the Industrial Area in Thika. A search at the Registrar of trademarks reveals that no “Noscolin” trademark exists on the Register of Trade marks.

Fenoscadia is deeply concerned about both the opposition by Pfizer and the Noscolin drug which it deems to be the reason its “Fenoscolin” sales have been decreasing over time. It approaches you, a distinguished trade mark lawyer for legal advice. Using applicable statutes, relevant case law and international conventions, advice Fenoscadia.

QUESTION 2 (20 MAKRS)

Felipe Andreas is an upcoming artiste based in Nairobi. In April 2015, He typed the song “*Feliz Compleanos*” on his laptop and printed a copy which he shared with his friend Tom. Tom advised Felipe that it would be best if he produced the song in a studio for his audience. Felipe liked the idea although he did not have the money to pay for the studio services. Tom advised Felipe to approach Alejandro, a fellow musician and the proprietor of Jazz Studios, a famous music production house. Alejandro was amused by Felipe’s song and in his opinion, it would greatly sell if he recorded it. Alejandro agreed to bear the costs of the audio and video recording of the song using his equipment. Felipe identified the best equipment and scenes to have the song recorded. Subsequently, he had the song recorded and edited at Jazz Studios as he wished and first broadcast to the public via Homeboyz Radio. The song immediately gained popularity amongst the youthful population of Nairobi and various radio and Television stations air it regularly. In March, 2016, Felipe was informed by Tom that the song was also available on the “skiza” platform owned by Safaricom Limited to entertain its subscribers’ callers. Tom ridiculed Felipe why he was still struggling financially yet his debut song was a hit. Felipe discloses he owed Alejandro Kshs. 200,000 for the recording services which Alejandro was to recover from the song’s royalties and thereafter pay the remainder to his bank account. However he has not heard from him again since December, 2015. He discloses that sometime in 2016, he had approached Safaricom and several radio and TV stations on how they got his song but they referred him to the Music Copyright Society of Kenya (MCSK) whom they said authorized” them to broadcast and further that they had paid all their dues. Felipe’s various letters and emails to MCSK went unanswered save from one reply in which they acknowledged that Alejandro was their member. Tom advised Felipe to visit you, a well-known intellectual property practitioner for legal advice. With the correct use of case law, statutes and international conventions, advise Felipe on his rights and remedies.

QUESTION 3(20 MAKRS)

You are the legal officer in Stampede Technology Limited, a technology start-up based in Nakuru. The firm has developed a new gadget which remotely monitors occupancy of parking slots using sophisticated technology and alerts drivers of areas with free parking slots via SMS on their phones. The County Government of Nakuru has approved the gadget and would like it rolled out soonest. The Managing Director cautiously asks for your legal advice on any intellectual property protection (if any) that the company should acquire before the roll-out. Advise the managing director accordingly.