

IMPORTANT INFORMATION: READ NOW

DEPARTMENT OF MERCANTILE LAW

ESSENTIAL TRADE-MARK LAW

IPSP044

Tutorial Letter 101/4/2017

**SCHEME OF WORK, STUDY RESOURCES AND
ASSIGNMENTS**

Contents

- 1 A word of welcome**
- 2 Tuition rationale**
- 3 Communication with your lecturers**
- 4 Communication with the University administration**
- 5 Study material**
- 6 How the assignment system works**
- 7 How the examination system works**
- 8 Assignments and assessment criteria**

1 A WORD OF WELCOME

We are pleased to welcome you to this module and hope that you will find it both interesting and rewarding. We will do our best to make your study of this module successful. You will be well on your way to success if you start studying early in the semester and resolve to do the assignments properly.

This tutorial letter contains important information about this module. We urge you to read it carefully and to keep it at hand when working through the study material, preparing the assignments, preparing for the examination and addressing questions to your lecturers.

In this tutorial letter, you will find the assignments for the semester and instructions on the preparation and submission of the assignments.

This tutorial letter also includes certain general and administrative information about this module. Please study this section of the tutorial letter carefully.

Right from the start we would like to point out that **you must read all the correspondence** you receive during the semester **immediately and carefully**, as it always contains important and, sometimes, urgent information.

We hope that you will enjoy this module and wish you all the best!

2 TUITION RATIONALE

Essential Trade-mark Law (IPSP044) is one of the first four modules offered as part of a joint intellectual property programme by the University of South Africa and the WIPO Worldwide Academy. The focus of this module is on the special circumstances prevailing in developing countries. This module will approach the subject-matter against the background of international conventions and the obligations they impose on developing countries. It will then be demonstrated, using South African law as an example, how these obligations have been discharged. You will be expected to examine the law of your own countries to determine how these obligations have been discharged, or how they should be discharged.

Students who have completed the DL101 module and have registered for the WIPO/UNISA Specialisation Program in Intellectual Property for the first time should note that this is an advanced module dealing with the finer detail and more complicated aspects of the topic. This module will therefore require a far greater effort on your part than did the DL101 module as well as an independent, responsible and critical approach.

The purpose of this module is to equip you with the basic knowledge and skills to apply the legal principles pertaining to trade-mark law within the structure and functioning of the legal systems of developing countries.

You will not be able to rely solely on the lecture notes. Indeed, it will be essential to supplement these by having recourse to the relevant statutes and decisions of the courts, and also by consulting any other prescribed materials.

After studying this module, completing the activities and critically evaluating your own responses, you should be able to use your knowledge of the general principles of the law of trademarks in everyday situations, understand the basic structure and functioning of trade mark law, engage with selected legal texts pertaining to trademark law, pass on knowledge obtained through your studies to members of organisations or bodies involved in the practice and

regulation of trademarks.

3 COMMUNICATION WITH YOUR LECTURERS

The lecturer responsible for this module is:

Lecturer's name:	Prof E Hurter
Building and office number:	Cas van Vuuren Building 6-136
E-mail address:	hurtee1@unisa.ac.za
Telephone number:	012 429-8487 + (27 12) 429-8487 (international calls)

PLEASE NOTE: 1. The lecturer should be contacted regarding course content only.

4 COMMUNICATION WITH THE UNIVERSITY ADMINISTRATION

Students must address all queries on administrative matters to:

Administrators:	Ms P Mofokeng
Building and office number:	Cas van Vuuren Building 6-157
E-mail address:	cbuslaw@unisa.ac.za
Telephone number:	012 429-8432 / 8774 +(27 12) 429-8432 / 8774 (international calls)
Fax number:	+(27 12) 429-8206 / 2094

5 STUDY MATERIAL

5.1 Tutorial material

The tutorial material for Essential Trade-mark Law consists of the following:

- A study guide
- Tutorial letters
- Cases
- Legislation and international instruments

5.2 Prescribed textbook(s)

There is no prescribed textbook for this module. This means that you do not have to buy any books for this module. **You need only your study guide, cases, legislation and international instruments and the tutorial letters.**

5.3 Resources

5.3.1 Recommended books

There are no recommended books for this module.

5.3.2 Additional books

Below follows a list of additional books you may consult for this module, should you wish to do so. Please note that you need not consult these books. They provide background or additional reading for students who wish to read more widely on the topics covered by this module. The University Library will not allow you to take this book on loan and so you will have to make your own arrangements to obtain a copy.

Webster & Page *South African Law of Trade Marks* 4 ed (loose-leaf service issue 14 or 15). This is a comprehensive work on the South African law of trade marks.

5.3.3 Prescribed cases

Photocopies of the prescribed cases will be uploaded to *myUnisa*

For the purposes of assignments and examinations, a thorough knowledge of these cases is essential! You should bear in mind that the other cases discussed in your study guide are important and should not be ignored. They must be studied as they appear in your study guide.

List of prescribed cases

Arjo Wiggins Ltd v Idem (Pty) Ltd 2002 (1) SA 591 (SCA)

Beecham Group plc v Triomed (Pty) Ltd 2003 (3) SA 639 (SCA)

Cadbury (Pty) Ltd v Beacon Sweets & Chocolates (Pty) Ltd 2000 (2) SA 771 (SCA)

Cowbell AG v ICS Holdings Ltd 2001 (3) SA 941 (SCA)

Laugh It Off Promotions CC v South African Breweries International (Finance) BV t/a Sabmark International & another 2006 (1) SA 144 (CC)

McDonald's Corporation v Joburgers Drive-Inn Restaurant (Pty) Ltd; McDonald's Corporation v Dax Prop CC; McDonald's Corporation v Joburgers Drive-Inn Restaurant (Pty) Ltd and Dax Prop CC 1997 (1) SA 1 (A)

Plascon-Evans Paints Ltd v van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A)

Verimark (Pty) Ltd v BMW AG 2007 (6) SA 263 (SCA)

5.3.5 Legislation

We will provide you with an extracts from legislation and international instruments.

6 HOW THE ASSIGNMENT SYSTEM WORKS

6.1 Assignments and learning

Assignments are seen as part of the learning material for this module. As you do the assignments, study the reading texts, consult other resources or do research, you are actively

engaged in learning.

6.2 General remarks

You must submit your assignments electronically via *myUnisa*. Assignments may **not** be submitted by fax or e-mail. For detailed information and requirements as far as assignments are concerned contact assign@unisa.ac.za.

To submit an assignment **via *myUnisa***

- Go to *myUnisa*.
- Log in with your student number and password.
- Select the module.
- Click on assignments in the left-hand menu.
- Click on the assignment number you want to submit.
- Follow the instructions on the screen.

6.3 Commentaries and feedback on assignments

Assignments are marked electronically. Marked assignments will be sent back to students via *myUnisa* and will include commentaries and feedback on the assignment.

6.4 Submission dates (Please note that you must submit the two assignments SEPARATELY.)

The closing dates for the submission of the assignments are:

- ... for the **first semester**

Assignment 01: 20 March 2017 Unique number 790831

Assignment 02: 24 April 2017 Unique number 715982

- ... for the **second semester**

Assignment 01: 21 August 2017 Unique number 801225

Assignment 02: 22 September 2017 Unique number 869602

6.5 Purpose of the Assignment

The assignment is an extremely important part of the module. In the assignment you must prove your ability to deal with the subject-matter. The purpose of assignments is fourfold:

- to assist you to work through the study material
- to teach you the necessary reading and writing skills
- to teach you to make a synthesis from various sources; to gather material and present it in a logical, ordered fashion and with convincing arguments (merely copying the study material is not acceptable)
- pre-examination assessment: this is the only opportunity before you write the examination for us to assess your ability to answer examination-style question.

6.6 General approach to essay-type assignments

In order to answer your assignments satisfactorily, you must work through the prescribed study material carefully. The following basic guidelines can be of help:

- Students normally complain that they cannot rewrite the **study material in their own words**. However, there are three easy steps to accomplish this:
 - **Study** the relevant study material until you understand it. While you are reading the particular section or chapter, make notes or lists of the key words and concepts.
 - Put away your study material and try to **summarise** that particular study unit in your own words by **using your notes** and list of key words.
 - Use the study material to **finalise** your summary with **references to case law** and other relevant authority.
- You are expected to consult cases and legislation when answering an assignment, and to then cite these materials as authority in your answer. **Do not refer to sources you have not personally consulted.**
Quotations from case law and other sources must be kept to a minimum. All quotations must be **accurate** and **acknowledged** fully.
- Although students may work together when preparing assignments, each student must write and submit his or her own individual assignment. In other words, each student must submit his or her own work. It is unacceptable for students to submit identical assignments on the basis that they worked together. Similarly, it is unacceptable for students to copy anything from the Internet or from any other source without acknowledgement and to pass it off as their own work. **That will amount to plagiarism and all students concerned will be given a zero grade.** Furthermore, these students may be subjected to disciplinary proceedings of the University.
- **Names of cases and Latin expressions** must either be underlined or typed in italics. **Neatness** is a prerequisite. **Plan** your answers in advance.
- We restrict the length of assignment answers to teach you to write concise and logical legal arguments. It is very easy to write long, rambling answers but such answers do not earn good marks. You must learn to summarise your study material so that you can answer a question in a factually correct, concise and logical manner. This will also teach you to give similar answers in an examination.
- Please ensure that your name and address, student number, module and module code, and assignment number are written clearly on the assignment cover. This information must be correct.
- Remember that your assignment must have precisely the same number as that given in this tutorial letter.
- It is wise to **make a copy of the assignment** before submitting it, in case electronic submission fails.

7 HOW THE EXAMINATION SYSTEM WORKS

7.1 Examination admission

All students who submit the compulsory assignment 01 in time (before or on the date of submission) will be admitted to the examination regardless of the mark obtained for the assignment. Students who do not submit the compulsory assignment before or on the due date,

will not receive admission to write the examination. The mark obtained for the compulsory assignment will count towards your final mark.

Submission of assignment 02 is not compulsory in the sense that it will not grant you admission to the examination. However, the mark obtained for this assignment will count towards your final mark.

The marks obtained for the assignments will --- provided you obtain an examination mark of at least 40% --- count up to 20% of your final mark. You need to obtain a subminimum of at least 40% in the examination before your year mark will be taken into account. This means that a student who has obtained at least 40% in the examination and who has a good year mark will have a great advantage above another student who has no year mark or a poor year mark. You need to obtain a final mark of 50% (combined examination mark and year mark) to pass this module.

7.2 Examination period

This module is a semester module. This means that if you are registered for the first semester you will write the examination the week of the 19th of May 2017. If you are registered for the second semester you will write the examination the week of the 20th of October 2017. Announcements regarding the specific dates and times will be posted in advance.

7.3 Examination paper

At the end of the semester you will write **one paper** on Essential Trade-mark Law. The paper counts 100 marks. This will be a 'take home' examination: you will be given the examination paper to answer at home. The examination must then be submitted on *myUnisa*.

For this reason you should make sure that the Administrator always has your current e-mail address.

We will inform you of the specific examination date during the course of the semester.

Should the examination dates for two or more of your modules fall on the same day, you must contact the Administrator immediately so that special arrangements can be made for the submission of your answers.

Enquiries regarding examination results must please be forwarded to exams@unisa.ac.za

8 ASSIGNMENTS

PLEASE NOTE!!! PLEASE NOTE!!!

1. **Make sure that you submit your assignments before or on the closing date. No extensions will be granted for the submission of assignments.**
2. The marks that you obtain for the assignments will form part of your year mark and may count towards your final mark if you obtain a subminimum of 40% in the examination.
3. We **restrict the length of your assignment answers**. Your answers should, therefore, be concise and logical. This will also teach you to be brief and to the point in the examination.

ASSIGNMENTS FOR SEMESTER 1

ASSIGNMENT 01: COMPULSORY

CLOSING DATE: 20 March 2017

Your answers to the assignment questions should **not** exceed two typed pages. Your answer to the assignment must be accompanied by the following declaration. Assignments submitted without this declaration will be returned unmarked.

Declaration

I know that plagiarism is to use someone else's work and pass it off as my own.

I know that plagiarism is wrong.

I confirm that this assignment is my own work.

I have acknowledged in the bibliography accompanying the assignment all the sources that I have used.

I have not directly copied without acknowledgement anything from the Internet or from any other source.

I have indicated every quotation and citation in a footnote or bracket linked to that quotation.

I have not allowed anyone else to copy my work and to pass it off as their own work.

I understand that if any unacknowledged copying whatsoever appears in my assignment I will receive zero per cent for the assignment.

I am aware of the UNISA policy on plagiarism and understand that disciplinary proceedings can be instituted against me by UNISA if I contravene this policy.

I indicate my understanding and acceptance of this declaration by entering my name hereunder:

Name:

QUESTION

P is the manufacturer of cosmetic products which he markets under the trade mark EVENFLOW. P's trade mark EVENFLOW is registered in class 3 in respect of cosmetic products. Since 1980, P has marketed his EVENFLOW cosmetic products intensively. According to a recent market survey EVENFLOW cosmetics are one of the most popular ranges of cosmetic products in South Africa. M has commenced marketing paint under the trade mark EVENFLO and has filed an application for the registration of EVENFLO in class 2 in respect of paints and varnishes. Advise P whether there are any grounds under the Trade Marks Act of 1993 on which he can prevent M from using the EVENFLO mark. Refer **only** to the most relevant sections of the Act. [10]

ASSIGNMENT 02

CLOSING DATE: 24 APRIL 2017

Your answers to the assignment questions should **not** exceed two typed pages. Your answer to the assignment must be accompanied by the following declaration. Assignments submitted without this declaration will be returned unmarked.

Declaration

I know that plagiarism is to use someone else's work and pass it off as my own.

I know that plagiarism is wrong.

I confirm that this assignment is my own work.

I have acknowledged in the bibliography accompanying the assignment all the sources that I have used.

I have not directly copied without acknowledgement anything from the Internet or from any other source.

I have indicated every quotation and citation in a footnote or bracket linked to that quotation.

I have not allowed anyone else to copy my work and to pass it off as their own work.

I understand that if any unacknowledged copying whatsoever appears in my assignment I will receive zero per cent for the assignment.

I am aware of the UNISA policy on plagiarism and understand that disciplinary proceedings can be instituted against me by UNISA if I contravene this policy.

I indicate my understanding and acceptance of this declaration by entering my name hereunder:

Name:

QUESTION

F is a manufacturer of electronic equipment which he markets under the mark LECTROLON. Although F's mark LECTROLON has not been registered as a trade mark, it has acquired a reputation through sales, advertising and promotion. F discovers that V, a local manufacturer, is marketing a range of electrical household appliances under the mark ELEKTROLIN. V has also applied for the registration of the ELEKTROLIN mark in respect of electrical apparatus and instruments.

Advise F whether there are any grounds on which he can oppose V's application for the registration of the ELEKTROLIN mark in respect of electrical apparatus and instruments.

[10]

ASSIGNMENTS FOR SEMESTER 2

ASSIGNMENT 01: COMPULSORY

CLOSING DATE: 21 August 2017

Your answers to the assignment questions should **not** exceed two typed pages. Your answer to the assignment must be accompanied by the following declaration. Assignments submitted without this declaration will be returned unmarked.

Declaration

I know that plagiarism is to use someone else's work and pass it off as my own.

I know that plagiarism is wrong.

I confirm that this assignment is my own work.

I have acknowledged in the bibliography accompanying the assignment all the sources that I have used.

I have not directly copied without acknowledgement anything from the Internet or from any other source.

I have indicated every quotation and citation in a footnote or bracket linked to that quotation.

I have not allowed anyone else to copy my work and to pass it off as their own work.

I understand that if any unacknowledged copying whatsoever appears in my assignment I will receive zero per cent for the assignment.

I am aware of the UNISA policy on plagiarism and understand that disciplinary proceedings can be instituted against me by UNISA if I contravene this policy.

I indicate my understanding and acceptance of this declaration by entering my name hereunder:

Name:

QUESTION

P is the manufacturer of cosmetic products which he markets under the trade mark EVENFLOW. P's trade mark EVENFLOW is registered in class 3 in respect of cosmetic products. Since 1980, P has marketed his EVENFLOW cosmetic products intensively. According to a recent market survey EVENFLOW cosmetics are one of the most popular ranges of cosmetic products in South Africa. M has commenced marketing paint under the trade mark EVENFLO and has filed an application for the registration of EVENFLO in class 2 in respect of paints and varnishes. Advise P whether there are any grounds under the Trade Marks Act of 1993 on which he can prevent M from registering the EVENFLO mark. [10]

ASSIGNMENT 02

CLOSING DATE: 22 September 2017

Your answers to the assignment questions should **not** exceed two typed pages. Your answer to the assignment must be accompanied by the following declaration. Assignments submitted

without this declaration will be returned unmarked.

Declaration

I know that plagiarism is to use someone else's work and pass it off as my own.

I know that plagiarism is wrong.

I confirm that this assignment is my own work.

I have acknowledged in the bibliography accompanying the assignment all the sources that I have used.

I have not directly copied without acknowledgement anything from the Internet or from any other source.

I have indicated every quotation and citation in a footnote or bracket linked to that quotation.

I have not allowed anyone else to copy my work and to pass it off as their own work.

I understand that if any unacknowledged copying whatsoever appears in my assignment I will receive zero per cent for the assignment.

I am aware of the UNISA policy on plagiarism and understand that disciplinary proceedings can be instituted against me by UNISA if I contravene this policy.

I indicate my understanding and acceptance of this declaration by entering my name hereunder:

Name:

QUESTION

F is a manufacturer of electronic equipment which he markets under the mark LECTROLON. Although F's mark LECTROLON has not been registered as a trade mark, it has acquired a reputation through sales, advertising and promotion. F discovers that V, a local manufacturer, is marketing a range of electrical household appliances under the mark ELEKTROLIN. V has also applied for the registration of the ELEKTROLIN mark in respect of electrical apparatus and instruments.

Advise F whether there are any grounds on which he can oppose V's application for the registration of the ELEKTROLIN mark in respect of electrical apparatus and instruments.

[10]

We hope that you will enjoy this module and we wish you success with your studies.

Kind regards

Prof E HURTER