

IPSP02Y - Essential Competition Law

Assignment 2 - Unique Number: 724437

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Declaration

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- I know that plagiarism is wrong.
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NOTE

Please note that footnotes will be denoted as ¹ and will appear at the bottom of the page. References will be denoted by [1] and will appear at the end of the document.

¹This is a footnote.

1 Discuss quotation from [*Atlas Organic Fertilizers (Pty) Ltd v Pikkewyn Ghwano (Pty) Ltd & others*] [2] and its compliance with international conventions and other instruments to determine whether competition is unlawful. [10]

The law of Republic recognises and grants a general action in the case of unlawful competition based on the principles of *lex Aquilia*. As per **the quotation** from Judge van Dijkhorst [2] the difficulty in establishing an action in the case of unlawful competition is to quantify the degree of unfairness and \ or dishonesty. Moreover, as per Judge van Dijkstra, the ideal legal instrument is one in which the framework for establishing or trying unlawful competition is well defined and robust enough to provide adequate direction to the courts, but not so rigid as to restrict the sentiment of an environment of fair play and open competition.

As per [article 10^{bis}][1], where it is stipulated that (1) Union member countries must provide adequate protection for the nationals against unfair competition; (2) dishonest² acts of competition constitutes acts of unfair competition; and finally (3) a detailed list and description of the forms and nature of acts that would constitute unlawful competition. **The quotation** indeed complies with the requirements of Paris Convention for the Protection of Industrial Property.

In corroboration to the above [article 1][4] emphasises that in the course of industrial or commercial activities an act or practice that is contrary to honest practices shall be deemed as an act of unfair competition. Moreover [4] does not require the entities to be in direct competition, unlike [1]. The basis for much of the provisions and notes of Model Provisions on Protection Against Unfair Competition, are based on those described in [article 10^{bis}][1], albeit in much more detail and specifics. **The quotation** does indeed comply with these requirements.

As per [article 40][3], members of the World Trade Organisation, members are free to determine appropriate methods in implements it's provisions, moreover regarding competition [3] gives particular attention to intellectual property rights, their abuse and subsequent adverse effects in relevant markets, trade, transfer and dissemination of technology. For the most part **the quotation** is in agreement with the provisions of [3].

References

- [1] Paris Convention for the Protection of Industrial Property, 1883. [Online]. Available: http://www.wipo.int/treaties/en/text.jsp?file_id=288514.
- [2] *Atlas Organic Fertilizers (Pty) Ltd v Pikkewyn Ghwano (Pty) Ltd & others*, 1981 (2) SA 173 (T).
- [3] Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994. [Online]. Available: https://www.wto.org/english/tratop_e/trips_e/trips_e.htm.
- [4] Model Provisions on Protection Against Unfair Competition, 1996. [Online]. Available: [ftp://ftp.wipo.int/pub/library/ebooks/wipopublications/wipo_pub_832\(e\).pdf](ftp://ftp.wipo.int/pub/library/ebooks/wipopublications/wipo_pub_832(e).pdf).

²Any acts of competition contrary to honest practices in industrial or commercial matters.