



NATIONAL OPEN UNIVERSITY OF NIGERIA
PLOT 91, CADASTRAL ZONE, NNAMDI AZIKWE
EXPRESS WAY, JABI - ABUJA
FACULTY OF LAW
DEPARTMENT OF PRIVATE AND PROPERTY LAW (PPL)
OCTOBER/NOVEMBER EXAMINATION 2016

COURSE CODE: LAW 436 (PPL 436)
COURSE TITLE: LAW OF INTELLECTUAL PROPERTY II
CREDIT UNIT: 4
TIME ALLOWED: 2 ½ HOURS
INSTRUCTIONS: ANSWER FOUR QUESTIONS ONLY.
QUESTION ONE IS COMPULSORY

QUESTION

- 1.** AwufDey Information Services Ltd ('AwufDey') operates a website which provides information about consumer goods, such as electrical appliances, computers, mobile phones, iPods, etc. For each type of product, the website carries specification and reviews of the most popular models. Also included are images of the products, price and information about financing purchases. There are numerous links to other websites, for example to manufacturers and retailers selling the products and finance companies, from which enquiries and orders may be placed. The manufacturers, retailers and finance companies pay AwufDey a small percentage on completed sales or finance agreements by persons going through the AwufDey website. Olu Olu and Co, the law firm used by AwufDey, drew up all the necessary licence agreements covering the use of this information. They also wrote the terms and conditions covering the use of the website and a privacy policy for the website.

The work of designing and developing the website included writing the computer programs, search engines and links, and writing additional content. Databases also had to be created to include all the information provided by the manufacturers, retailers and finance companies. All of this work was undertaken jointly by Mohammed, an employee of AwufDey, and Chidi, a self-employed computer programmer and website designer. Mohammed's contract of employment expressly covered the work he carried out. Chidi's contract with AwufDey made no mention of intellectual property rights and no other

document was signed by Chidi or on his behalf in relation to his work for AwufDey. Recently, AwufDey has found that there is a rival website under the name PRICERIGHT which provides very similar information, though covering a wider range of products. Much of the information about products which also appear on AwufDey's website, such as specifications, images of products and prices, is identical to that on PRICERIGHT's website.

AwufDey recently discovered that Chidi was partly responsible for the design and development of the PRICERIGHT website. AwufDey obtained a search order and obtained copies of the computer programs, search engines and other elements of the PRICERIGHT website which are not visible when accessing the website over the internet. On examination, there are a number of similarities and, in relation to the computer programs, the algorithms, 'business logic' and architecture appear to be similar. However, the computer programs are written in a different programming language. The databases have a similar structure and contain most of the information in AwufDey's databases plus a significant amount of additional material, resulting from the more extensive product range covered in the PRICERIGHT website.

- a. Advise AwufDey and Olu Olu and Co in relation to the issues relating to copyright and identify what rights subsist in relation to AwufDey's website (limited to copyright and related rights as per the question). 10 MARKS
- b. Consider the ownership of those rights, not forgetting that some of the information and materials on AwufDey's website belongs to third parties. 5 MARKS
- c. Identify what elements of the PRICERIGHT website may infringe those rights. 5 MARKS
- d. Consider textual infringement and non-textual infringement as appropriate, using appropriate authorities. 5 MARKS

2. Chief Obi is a pig farmer. He has perfected a way of grilling and storing Pork, which he decided to sell under the name Mazi obi Parma pork. Chief obi also operates a website to publicise his business under the domain name: 'www.maziobiparmapork.co.ng'. Mr Bolaji is an established Nigerian Parma Pork producer, based in the Ikorodu in lagos, and he has brought an action against Chief Obi before the High Court in Lagos, *inter alia*, for passing off. Advise Mr Bolaji on the passing off issues. 15 MARKS

3. In terms of trade mark law, and with reference to case law in the courts in the United Kingdom and the European Court of Justice, explain the following.

- (a) 'Non-origin association'. 4 MARKS
- (b) The test for likelihood of confusion when comparing similar signs and/or similar goods or services. 4 MARKS

(c) Whether there is a requirement for a likelihood of confusion in terms of identical or similar signs used in relation to non-similar goods or services in respect of the relative grounds of refusal and the equivalent infringing act. 4 MARKS

(d) The doctrine of exhaustion of rights. 3 MARKS

- 4.** The restrictive manner in which the courts have interpreted the exceptions to subsistence of the UK unregistered design right have reduced the exceptions almost down to vanishing point. As a result, the protection of spare parts now afforded by the unregistered design right flies in the face of the House of Lords policy decision in *British Leyland Motor Corp v Armstrong Patents Ltd* [1986] 2 WLR 400, in which the House of Lords judges were fully aware of the danger of allowing spare parts to be protected.

Discuss with reference to recent cases on the unregistered design right. 15 MARKS

- 5.** Slim and Fit Sliming products Ltd have developed their new Slimmer powder to be added to meals. Outline the intellectual property rights which may subsist concurrently in a packet of the company's new powder which they plan to market. The powder is contained in a box with artwork and instructions for use on the outside and stamped with slim and fit trade mark. Short advertising slogans incorporating the name slim and fit are written on the box.

A. Answer the following question with references to *Cow (PB) & Co. Ltd v. Common Rubber Manufacturing Ltd* (1959) RPC 240.

8 MARKS

B. What criteria should be used by an English court in deciding whether to grant: (i) an interim injunction; and (ii) a permanent injunction in patent infringement cases?

7 MARKS

- 6.** Discuss the following cases pointing out their relevance to intellectual property law
- i. *Law Society of England and Wales v Griffiths* (1995) RPC 16. 3 MARKS
 - ii. *Beautimatic International Ltd v. Mitchell International Pharmaceuticals Ltd* (2000) FSR 267. 3 MARKS
 - iii. *Darcy V. Allin (1602) 11 Co Rep 84b*. 3 MARKS
 - iv. *Electric & Musical Industries Ltd v. Lissen Ltd* (1939) 56 RPC 23. 3 MARKS
 - v. *Holly Hobbies Trademark* (1984) FER 199. 3 MARKS