

QUESTION 1

A British business, XX, uses the trade mark TOFI TEE in relation to chocolate products. The mark has been in use in London for three years. A South African business, YY, adopts the trade mark TOFI TEE also in relation to chocolate products. Does XX have any remedy in South Africa to prevent YY's use of its trade mark? Analyse the common and statutory law relief that might be applicable. There are no registered marks. You must specifically refer to relevant judgments.

Answer

Assume three years enough reputation. Slenderella case - Morals not relevant, is there a business? Tie rack case. Same, but granted on copyright grounds - Caterham case/Whether the plaintiff has, in a practical and business sense, a sufficient reputation amongst a substantial number of persons who are either clients or potential clients of his business. And further principles of the case. Discuss section 35 as interpreted in the McDonalds case.

[20]

QUESTION 2

Discuss the pillars of South African public competition law as found in the Competition Act 98 of 1998.

1. Restrictive practices

Horizontal - Section 4

Vertical – section 5

Abuse of a dominant - section 8

Mergers - section 12A(1)

[20]

QUESTION 3

Mrs Naledi designs a computer program that causes a dispenser to release food for pets every few hours. Assuming that the program otherwise complies with the requirements of the Patents Act 57 of 1978, would the program be patentable? Explain the legal position by analysing the various relevant provisions of the Patents Act, and refer to relevant case law. Also discuss other exclusions from patentability.

Section 25(b) of the Patents Act - Exclusions from patenting

- c) Further exclusions:
- (4) Further exclusions
- (d) Medical exclusion

Software exclusion controversial - Biiski v Kappos

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