

IMPORTANT INFORMATION: READ NOW

DEPARTMENT OF MERCANTILE LAW

LAW OF COMPETITION AND TRADE MARKS

LML402P

Tutorial Letter 101/3/2010

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

Contents

- 1 A word of welcome**
- 2 Tuition rationale**
- 3 Communication with your lecturers**
- 4 Student support system**
- 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 both semesters and instructions on the preparation and submission of the assignments.

This tutorial letter also provides all the information you need with regard to the prescribed study material and how to obtain it. Please study this information carefully and make sure that you obtain the prescribed material as soon as possible.

We have also included 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 tutorial letters** you receive during the semester **immediately and carefully**, as they always contain important and, sometimes, urgent information.

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

2 TUITION RATIONALE

As a student enrolled for this module, you will study the law of competition and trade marks. This will not constitute a first encounter: some of these topics were already dealt with in the module The Law of Negotiable Instruments, Intellectual Property and Competition, although on a rather general and elementary level. In this module you will become acquainted with the finer detail and more complicated aspects of these topics.

This module is divided into two sections:

Section A: Competition Law

Section A comprises a study of the South African law of competition with special reference to the following topics: the function and sphere of competition law, public competition law, the Competition Act, the general principles of unlawful competition and the recognised forms of unlawful competition

Section B: Law of Trade Marks

Section B comprises a study of the South African law of trade marks with special reference to the following topics: the nature of the right to a trade mark, the function of a trade mark, the statutory definition of a trade mark, the registrability of trade marks and their registration, the effect and duration of a registration, rectification of the register, assignment and licensing of trade marks, infringement of trade mark rights. Section B also includes a discussion of the remedies available in the event of unlawful competition and trade mark infringement.

The purpose of this module is to equip you with the knowledge, skills and competencies to analyse and solve problems relating to the law of competition and trade marks in South Africa. We expect you to have a thorough knowledge of the underlying principles of the law of competition and trade marks, and to evidence an independent, responsible, and critical approach to your work. Bear in mind that you are concerned here with an advanced study of the law of competition and trade marks, which will require a fair measure of independent research. 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 the 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 competition and trade marks in order to analyse and evaluate problem situations, to identify relevant legal issues, to apply the relevant legal principles to those issues and to suggest solutions and provide responsible advice.

3 COMMUNICATION WITH YOUR LECTURERS

The lecturers responsible for this module are as follows:

Lecturer's name:	Prof BR Rutherford
Building and office number:	Cas van Vuuren Building 6-148
E-mail address:	ruthebr@unisa.ac.za
Telephone number:	012 429-8448

Lecturer's name:	Prof RA Kelbrick
Building and office number:	Cas van Vuuren Building 6-98
E-mail address:	kelbra@unisa.ac.za
Telephone number:	012 429-8338

Letters should be sent to:

The Module leader (LML402P)
 Department of Mercantile Law
 PO Box 392
 UNISA
 0003

PLEASE NOTE: Letters to lecturers may not be enclosed with or inserted into assignments.

Communication with the University

If you need to contact the University about matters not related to the content of this module, please consult the publication *Your Service Guide @ Unisa* which you received with your study material. This booklet contains information on how to contact the University (e.g. to whom you may write, important telephone and fax numbers, addresses and details of the times certain facilities are open).

Always have your student number at hand when you contact the University.

Please note that all administrative enquiries should be directed to the Unisa Contact Centre. Enquiries will then be channelled to the correct department. The details are as follows:

Calls – RSA only	0861 670 411
International Calls	+27 11 670 9000
Fax Number	012 429 4150 / +27 12 429 4150
Email	study-info@unisa.ac.za

4 STUDENT SUPPORT

For information on the various student support systems and services available at Unisa (eg student counselling, tutorial classes, language support), please consult the publication *Your Service Guide @ Unisa* which you received with your study material.

If you have access to a computer that is linked to the Internet, you can quickly access resources and information at the University. The **myUnisa** learner management system is Unisa's online campus that will help students to communicate with their lecturers, with other students and with the administrative departments of Unisa – all through the computer and the Internet.

To go to the *myUnisa* web site, start at the main Unisa website, <http://www.unisa.ac.za>, and then click on the “login to *myUnisa*” link on the right-hand side of the screen. This should take you to the *myUnisa* website. You can also go there directly by typing in <http://my.unisa.ac.za>.

Please consult the publication *Your Service Guide @ Unisa* which you received with your study material for more information on *myUnisa*.

5 STUDY MATERIAL

5.1 Inventory letter

At the time of registration, you will receive an inventory letter that will tell you what you have received in your study package and also show items that are still outstanding. Also see the booklet entitled *Your Service Guide @ Unisa*.

Check the study material you received against the inventory letter. You should have received all the items specified in the inventory, unless there is a statement like “out of stock” or “not available”. If any item is missing, follow the instructions on the back of the inventory letter without delay.

PLEASE NOTE: Your lecturers cannot help you with missing study material. Please contact the Unisa Contact Centre at 0861 670 411 (RSA only), or +27 11 670 9000 (international calls) (also see par 3 above).

5.2 Study material

The Department of Despatch should supply you with the following study matter for this module:

- study guide
- tutorial letters

Apart from Tutorial Letter 101 and 301, you will also receive other tutorial letters during the semester. These tutorial letters will not necessarily be available at the time of registration. Tutorial letters will be despatched to students as soon as they are available.

If you have access to the Internet, you can view the study guides and tutorial letters for the modules for which you are registered on the University's online campus, *myUnisa*, at <http://my.unisa.ac.za>

5.3 Prescribed textbook(s)

There is **no prescribed textbook** for LML402P. This means that you do not have to buy any additional books for this module. **You need only your study guide and the tutorial letters.**

5.4 Resources

5.4.1 Recommended books

There are no recommended books for this module.

5.4.2 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 does not necessarily keep these books and they may, therefore, not be easily obtainable.

Van Heerden & Neethling *Unlawful Competition* 2ed (2008). This is an important work on the private law of competition.

Brassey ed *Competition* (2002). This is an important work on the public law of competition.

Neuhoff, Govender, Versfeld, Dingley *A Practical Guide to the South African Competition Act* (2006). This is a very useful work on the Competition Act.

Webster & Page *South African Law of Trade Marks* 4 ed (1998). This is a very good work which you may find useful in connection with section B of the study guide which deals with the law of trade marks.

5.4.3 *myUnisa* resources

Check the *myUnisa* site for this module and look under 'Resources'

5.4.4 Prescribed cases

We appreciate that it is impossible to study all the cases cited in the study guide(s) and textbook(s) in the time at your disposal. A selection has therefore been made of the most important decisions. Some of the cases included in the list below are leading ones; others may contain an informative discussion, a succinct statement of principles or a set of facts that neatly illustrates such principles.

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

The prescribed cases are not available in the form of a reader or casebook. You will have to make your own arrangements with the library if you wish to obtain photocopies from the library. Therefore the number of pages is indicated in each case.

Please consult **Your Service Guide @ Unisa** on how to order photocopies from the library.

The prescribed cases mentioned in this tutorial letter, are furthermore placed on the **Electronic Reserves**. This means that this material is made available in full text, either by providing links to scanned images of cases on the library catalogue or by providing links to full-text cases on existing commercial databases. You will then be able to access electronic reserves material from a remote workstation.

A List of the electronic reserves material appears at the end of this tutorial letter. Each title has been allocated a **request number** which you should supply on the request card when requesting material from the library.

This material may also be requested by telephone from the main library in Pretoria at telephone number (012) 429-3133 (08:00 - 18:00 Weekdays; 08:00 - 13:00 Saturdays). Please keep your request number and student number ready and indicate if you need book or electronic reserve material.

List of prescribed cases

Arjo Wiggins Ltd v Idem (Pty) Ltd 2002 (1) SA 591 (SCA) [8]

Atlas Organic Fertilizers (Pty) Ltd v Pikkewyn Ghwano (Pty) Ltd 1981 (2) SA 173 (T) [18]

Beecham Group plc v Triomed (Pty) Ltd 2003 (3) SA 639 (SCA) [8]

Blue Line Manufacturing (Pty) Ltd v National Brands Ltd 2001 (3) SA 884 (SCA) [5]

Cadbury (Pty) Ltd v Beacon Sweets & Chocolates (Pty) Ltd 2000 (2) SA 771 (SCA) [10]

Capital Estate & General Agencies (Pty) Ltd v Holliday Inns Inc 1977 (2) SA 916 (A) [9]

Cowbell AG v ICS Holdings Ltd 2001 (3) SA 941 (SCA) [6]

Federation Internationale de Football v Bartlett 1994 (4) SA 722 (T) [13]

Geary & Son (Pty) Ltd v Gove 1964 (1) SA 434 (A) [6]

Laugh It Off Promotions CC v South African Breweries International (Finance) BV t/a Sabmark International & another 2006 (1) SA 144 (CC) [22]

Long John International Ltd v Stellenbosch Wine Trust 1990 (4) SA 136 (D + CLD) [8]

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) [17]

National Brands Ltd v Blue Lion Manufacturing (Pty) Ltd 2001 (3) SA 563 (SCA)

Premier Hangers CC v Polyoak (Pty) Ltd 1997 (1) SA 416 (A) [6]

Royal Beech-nut (Pty) Ltd t/a Manhattan Confectioners v United Tobacco Co Ltd t/a Willards Foods 1992 (4) SA 118 (A) [5]

Schultz v Butt 1986 (3) SA 667 (A) [13]

Stellenbosch Wine Trust Ltd v Oude Meester Group Ltd 1972 (3) SA 152 (C) [7]

Verimark (Pty) Ltd v BMW AG 2007 (6) SA 263 (SCA) [5]

5.4.5 Legislation

The two most important **statutes** dealt with in the study guide are

The Competition Act 89 of 1998 (as amended)

The Trade Marks Act 194 of 1993 (as amended)

We will provide you with an extract from the Trade Marks Act in a tutorial letter.

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, discuss the work with fellow students or tutors or do research, you are actively engaged in learning. Looking at the assessment criteria given for each assignment will help you to understand what is required of you more clearly.

6.2 General remarks

PLEASE NOTE: Enquiries about assignments (e.g. whether or not the University has received your assignment or the date on which an assignment was returned to you) must be addressed to the Unisa Contact Centre at 0861 670 411(RSA only), or +27 11 670 9000 (international calls) (also see par 3 above). You might also find information on *myUnisa*.

Assignments should be addressed to:

The Registrar
PO Box 392
UNISA
0003

You may submit written assignments and assignments done on mark-reading sheets either by post or electronically via *myUnisa*. Assignments may **not** be submitted by fax or e-mail. For detailed information and requirements as far as assignments are concerned, see the brochure ***Your Service Guide @ Unisa*** which you received with your study material.

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

For written assignments, markers will comment constructively on your work. However, commentaries on compulsory assignments will be sent to all students registered for this module in a follow-up tutorial letter, and not only to those students who submitted the assignments. The tutorial letter number will be 201, 202, etc.

As soon as you have received the commentaries, please check your answers. The assignments and the commentaries on these assignments constitute an important part of your learning and should help you to be better prepared for the next assignment and the examination.

6.4 Submission dates

The closing dates for the submission of the assignments are:

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

Assignment 01: 26 February 2010

Assignment 02: 26 March 2010

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

Assignment 01: 6 August 2010

Assignment 02: 17 September 2010

6.5 Assessment of assignments

In your assignments, we expect you to use your knowledge of the general principles of the law of competition and trade marks to analyse and evaluate problem situations, to identify the relevant legal issues, to apply the relevant legal principles to those issues and to suggest solutions and provide responsible advice.

When answering problem type questions, it is important to clarify for yourself the area of the work which contains the answer. For example, in a trade mark question, first decide whether you are asked if a mark can be registered, opposed or infringed. Different statutory provisions apply in each instance. For example, if you were to deal with infringement issues by considering the legislation that applies when cancellation is sought, you will not earn any marks. Once you have clarified the area, set out the relevant legal principles. Deal only with those principles that relate to the given facts. Next, apply these principles to the facts. This is where a number of students lose marks - they set out the law in some detail, but then do not illustrate how it applies to the factual situation they have been asked to solve. Finally, state your conclusion or provide advice. Also remember that the facts are merely there to illustrate the legal issues we want you to address - if you think the facts are insufficient, just say that it is impossible to reach a definite conclusion. Do not waste your time on unnecessarily lengthy speculations on various potential scenarios.

Please note: Although students may work together when preparing assignments, each student must write and submit his or her own individual assignment. In other words, you must submit your own ideas in your own words, sometimes interspersing relevant short quotations that are properly referenced. It is unacceptable for students to submit identical assignments on the basis that they worked together. That is copying (a form of plagiarism) and none of these assignments will be marked. Furthermore, you may be penalised or subjected to disciplinary proceedings by the University.

7 HOW THE EXAMINATION SYSTEM WORKS

For general information and requirements as far as assignments are concerned, see the publication ***Your Service Guide @ Unisa*** which you received with your study material.

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.

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 in May/June 2010 and the supplementary examination will be written in October/November 2010. If you are registered for the second semester you will write the examination in October/November 2010 and the supplementary examination will be written in May/June 2011.

During the course of the semester, the Examination Section will provide you with information regarding the examination in general, examination venues, examination dates and examination times.

7.3 Examination paper

You will write **one two-hour paper**. The paper counts **100 marks**.

7.4 Previous examination papers

Previous examination papers are not available to students. You may, however, accept that examination questions will be similar to the questions asked in the activities in your study guide and in the assignments.

7.5 Tutorial letter with information on the examination

To help you in your preparation for the examination, you will receive a tutorial letter that will explain the format of the examination paper, give you examples of questions that you may expect and set out clearly what material you have to study for examination purposes.

8 ASSIGNMENTS**PLEASE NOTE!!! PLEASE NOTE!!!**

1. Please **consult** the brochure ***Your Service Guide @ Unisa for instructions*** on how to complete assignment covers and submit written assignments.
2. **Make sure that you submit your written assignments before or on the closing date. No extensions will be granted for the submission of assignments.**
3. 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.
4. 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.
5. **The detailed commentary on each assignment** will be sent to you in a tutorial letter so that you can check your answers by using the commentaries. **Remember**, the assignments and the commentaries on these assignments constitute an important part of your study material for the examination.

ASSIGNMENTS FOR SEMESTER 1**ASSIGNMENT 01: COMPULSORY****CLOSING DATE: 26 FEBRUARY 2010****QUESTION****Your answer should not exceed two written pages or one typed page.**

Angela is a manufacturer of cosmetic products which she markets under the mark REVITAL. The REVITAL mark has not been registered as a trade mark. The REVITAL range of cosmetics proves extremely popular. Betty starts marketing a range of cosmetic products in competition with Angela. Betty's products are marketed under the mark REVITYL and in a similar packaging to that used by Angela. In promotional material, Betty states that her REVITYL cosmetics are manufactured in France and use the finest French fragrances. An investigation reveals that Betty's REVITYL cosmetics are manufactured in Pinetown, Natal and use locally produced fragrances.

Advise Angela whether there are any grounds on which she can institute action against Betty under the private law of competition. [10]

ASSIGNMENT 02**CLOSING DATE: 26 MARCH 2010****QUESTION****Your answer should not exceed two written pages or one typed page.**

Rick is a manufacturer of fashion clothing and sportswear in the United Kingdom. Rick markets his clothing under the trade mark ANCHOR. The ANCHOR trade mark is not registered in South Africa. Rick exports his ANCHOR clothing and sportswear throughout Europe and the United States of America. Although Rick's garments are not available in South Africa, ANCHOR fashion garments and sportswear have become well-known in South Africa as a result of extensive advertising in both overseas and local magazines. Rick discovers that Steve has commenced using the mark ANCHOR on his locally manufactured clothing and has filed an application for the registration of the trade mark ANCHOR in class 25 in respect of clothing and footwear.

Advise Rick briefly whether there are any grounds under the Trade Marks Act 194 of 1993 on which he can prevent Steve from

(a) using the ANCHOR mark in relation to clothing

(b) registering the ANCHOR mark in respect of clothing and footwear.

[10]

ASSIGNMENTS FOR SEMESTER 2**ASSIGNMENT 01: COMPULSORY****CLOSING DATE: 6 AUGUST 2010****QUESTION****Your answer should not exceed two written pages or one typed page.**

Gugu is a manufacturer of cosmetic products which she markets under the mark SUPASTAR. The SUPASTAR cosmetics utilize a recipe which Gugu obtained during a visit to a remote tribe on the Virgin Islands. Ben, a chemist in the employ of Gugu, was instrumental in adapting the Virgin Island formula for use in Gugu's SUPASTAR cosmetics. Ben subsequently leaves Gugu's employ to start his own cosmetic manufacturing business. Shortly thereafter Gugu discovers that Ben is using the same recipe in his competing cosmetic products. Advise Gugu whether there are any grounds on which she can institute action against Ben under the private law of competition.

[10]

ASSIGNMENT 02**CLOSING DATE: 17 SEPTEMBER 2010****QUESTION****Your answer should not exceed two written pages or one typed page.**

Paul is a manufacturer of fashion clothing and sportswear in the United Kingdom. Paul markets his clothing under the trade mark TRENDY. The TRENDY trade mark is registered as a trade mark in South Africa in class 25 in relation to clothing and footwear. Paul markets his TRENDY clothing in Europe, the United States of America, Australia and South Africa. Paul discovers that Jane has commenced using the mark TRENDI on her locally manufactured clothing and has filed an application for the registration of the trade mark TRENDI in class 25 in respect of clothing and footwear.

Advise Paul briefly whether there are any grounds under the Trade Marks Act 194 of 1993 on which he can prevent Jane from

(a) using the TRENDI mark in relation to clothing

(b) registering the TRENDI mark in respect of clothing and footwear.

[10]

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

Kind regards

PROF BR RUTHERFORD

PROF RA KELBRICK

ELECTRONIC RESERVES ARTICLE LIST

LML402P 2010

When requesting ARTICLES from the Library, please supply **full Request number** on your request card.

Verskaf asseblief **volledige Aanvraagnommer** wanneer ARTIKELS by die Biblioteek aangevra word.

AUTHOR/TITLE	REQUEST NUMBER
Arjo Wiggins Ltd v Idem (Pty) Ltd and another. South African law reports. Vol. 1 (2002). p. 591-604.	10-025220-LML402-r.
Atlas Organic Fertilizers (Pty) Ltd v Pikkewyn Ghwano (Pty) Ltd and others. South African law reports. Vol. 2 (1981). p. 173-206.	10-017659-LML402-r.
Beecham Group plc and another v Triomed (Pty) Ltd. South African law reports. Vol. 3 (2003). p. 639-653.	10-025221-LML402-r.
Blue Lion Manufacturing (Pty) Ltd v National Brands Ltd. South African law reports. Vol. 3 (2001). p. 884-892.	10-019441-LML402-r.
Cadbury (Pty) Ltd v Beacon Sweets & Chocolates (Pty) Ltd and another. South African law reports. Vol. 2 (2000). p. 771-781.	10-025222-LML402-r.
Capital Estate and General Agencies (Pty) Ltd and others v Holiday Inns Inc. and others. South African law reports. Vol. 2 (1977). p. 916-932.	10-017664-LML402-r.
The Competition Act 89 of 1998 (as amended). 73 p.	10-025226-LML402-r.
Cowbell AG v ICS Holdings Ltd. South African law reports. Vol. 3 (2001). p. 941-951.	10-025223-LML402-r.
Federation Internationale de Football and others v Bartlett and others. South African Law Reports. Vol. 4 (1994). p. 722-744.	10-017614-LML402-r.
Geary & Son (Pty) Ltd v Gove. South African law reports. Vol. 1 (1964). p. 434-445.	10-025224-LML402-r.
Laugh it Off Promotions CC v SAB International (Finance) BV t/a Sabmark International (Freedom of Expression Institute as Amicus Curiae). South African law reports. Vol. 1 (2006). p. 144-187.	10-034680-LML402-r.
Long John International Ltd v Stellenbosch Wine Trust (Pty) Ltd and others. South African law reports. Vol. 4 (1990). p. 136-150.	10-017670-LML402-r.
McDonald's Corporation v Joburgers Drive-Inn Restaurant (Pty) Ltd and another ; McDonald's Corporation v Dax Prop CC and another ; McDonald's Corporation v Joburgers	
Drive-Inn Restaurant (Pty) Ltd and Dax Prop CC. South African Law Reports. Vol. 1 (Jan. 1997). p. 1-33.	10-017672-LML402-r.

National Brands Ltd v Blue Lion Manufacturing (Pty) Ltd. South African law reports. Vol. 3 (2001). p. 563-569.	10-017660-LML402-r.
Premier Hangers CC v Polyoak (Pty) Ltd. South African law reports. Vol. 1 (1997). p. 416-427.	10-017684-LML402-r.
Royal Beech-Nut (Pty) Ltd t/a Manhattan Confectioners v United Tobacco CO Ltd t/ a Willards Foods. South African law reports. Vol. 4 (1992). p. 118-127.	10-029970-LML402-r.
Schultz v Butt. South African law reports. Vol. 3 (1986). p. 667-691.	10-017685-LML401-r.
Stellenbosch Wine Trust Ltd and another v Oude Meester Group Ltd ; Oude Meester Group Ltd v Stellenbosch Wine Trust Ltd and another. South African law reports. Vol. 3 (1972). p. 152-165.	10-029971-LML402-r.
The Trade Marks Act 194 of 1993 (as amended).	10-025227-LML402-r.
Verimark (Pty) Ltd v BMW AG. SCA. 53 (2007). 13 p.	10-040079-LML402-r.