

**MASTER PROGRAMME EUROPEAN INTELLECTUAL PROPERTY LAW
MODULE 1, 2003, HOME EXAM**

Imagine, the renowned author J.K. Rowling, Harry Potter's spiritual mother, has recently had busy times. Rightly or wrongly she feels that her empire is being threatened and she will have to fight. Contrary to her hero, Harry, she cannot use witchcraft, but has to satisfy her needs by the help of legal specialists and considers going to court.

The reason is Harry has got some, possibly unfair, competition by Sonja Plotter, who is the heroin in a recently published book by a Dutch company. The publisher has obviously believed in Sonja's attraction, because the book is to be issued both in English and German on 1 April. From Rowling's perspective the book about Sonja Plotter copies the storyline, plot and the characters of her book, Harry Potter and the Philosopher's Stone.

Sonja undoubtedly has some features in common with Harry. Like him she is an orphan, has a strange mark on her face, wield magical powers and battles an enemy too bad to be named.

Sonja's spiritual farther, Jan K. Carlson, a Swedish citizen naturalised in The Netherlands, says that his work with little Sonja is a parody, putting Harry Potter in a Swedish and feministic context. His book, Sonja Plotter and the Looking Glass, is no copy of Rowling's work whatsoever, but a response to the hype surrounding the boy wizard, and he trusts his readers to be able to tell the difference between Potter and Plotter. Sonja does not harm Harry in any way, rather she is his burlesque sister, who has been partly inspired by Pippi Longstocking and has her roots in the Nordic traditions and folklore. » (For information about Pippi, see for example http://www.gebonn.de/projekte/buecher/rez/lindgren/pippi_en.htm)

Inspired by his Dutch publisher's obvious belief in Sonja's success, Jan has furthermore arranged with the Chinese toy manufacturer, Coko, to produce both Sonja dolls with all the characteristics including the distinctive strange mark on her face as well as a complete setting of building bricks for the constructing of Sonja's wizard school, the Hagbard Castle according to the description in the book. The toys and building bricks can be ordered from Jan's website, www.Sonja.Plotter.com, where they already now are exposed.

Rowling and her publishers have, of course, protected the valuable names and features of Harry Potter and his literary surroundings by all legal means, such as EC trademarks, domain name registrations etc. It should be added that Rawlings has granted the LEGO Company a licence to Harry Potter, which includes all rights to produce and market LEGO bricks for creation of a genuine Harry Potter environment such as Hogwarts Castle. The products have been offered to the public on *inter alia* LEGO Company's and Harry Potters websites since 10 March 2002. (See www.lego.com/harrypotter)

To boost the sales of the book Jan contacts his marketing agent, Mr. De Pinto, who has his advertising company registered in Portugal, but his marketing and financial

offices located in London. Mr. De Pinto promptly comes with a brilliant idea. He has access to mailing lists of school kids, participating in computer-game newsgroups and in Harry Potter fan clubs. From his server in Poland Mr. De Pinto sends a huge number of individual e-mails to participants in these lists in some Nordic countries, where the demand for the English edition of the book is estimated to be high. In the e-mails there is advertisement for the new Sonja Plotter book and a special price (in US dollars) for those who order within two weeks time.

The marketing turns out very successful. Yet, just before repeating the procedure, both Jan and Mr. De Pinto receive a letter of complaint by the Swedish Consumer Ombudsman. The Ombudsman finds the advertising to be misleading because it fails to provide information about shipping costs and duty charges. Moreover direct e-mail advertising to children under 12 years of age is prohibited as unfair under the Swedish Marketing Practices Act. The Ombudsman requires that Jan and his advertising agent cease and desist from using such marketing methods and threatens to file an injunction claim in the Swedish Market Court.

As Jan was threatened by Rawling's publisher on the new release of his book and ordered to withdraw his work, he reacted by making a domain name registration of *tohellwithharrypotterandcompany.com*.

But Jan's irritation did not end with that. He got some trouble with his fiancé as well, the Dutch chemist, Sara Bowe. In order to make some of the wizard tricks of little Sonja realistic, Jan had "borrowed" some formulas from Sara's desk to use in his book, not quite realising that they were part of a patent application that she was to hand in to the European Patent Office. What he, however, knew was that Sara was working with manipulation of female hormones and the preparation of cloning experiments and found that it would be an interesting part of Sonja's magical abilities if she were able to invent and perform such changes in human beings. Sara now accuses Jan to have destroyed her future and fortune.

After losing faith in Jan and the rest of humanity, Sara decides to change her research focus from humans to the genetic manipulation of animals instead. Her aim is to include a human gene, coding for a female hormone, into the genome of a sheep. Thus, the sheep expresses the hormone by secreting it in its milk, thereby render it cheap to purify and manufacture. She wishes to patent the gene and the sheep.

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The senior partner of your firm asks you to write a memorandum of law that identifies the legally significant facts and legal issues, references the relevant sources of law, applies the law to the relevant operative facts, and draws logical and well-documented conclusions. Among the issues that you should discuss in your memo is who can be sued, in which country or countries can suit be brought, what legal claims are relevant, what if any grounds for defence are applicable, and what sanctions are available. You can ignore any conflict of interest issues.

But your memo should cover:

- An evaluation of the present situation, possible exclusive rights and their scope, risks and chances, including jurisdiction and applicable law in view of both parties.

- Advise to Jan and Mr. De Pinto on the chances to win the lawsuit and on possible grounds for defence.

- The implications of Jan's domain name registration.

- Advise on the implications of the inclusion of Sara's formula in the book, and the possible patenting of Sara's inventions.

And any further legally relevant observation is welcome!

Your task is to evaluate not advocate. Thus, the memorandum should be objective and should identify both the strengths and weaknesses of your conclusions. Each issue should be treated separately. Excessive overlapping of thought in the discussion indicates that you have not identified the issues with sufficient precision.

The teaching staff will take into consideration both the substantive treatment of the facts and issues as well as the more formal aspects of the memo, namely, the correct treatment of sources, the use of clear and concise legal English or Swedish and brevity. Indeed, the memorandum of law may be a maximum of five pages but may be shorter.

GOOD LUCK!