

MASTER PROGRAMME
EUROPEAN
INTELLECTUAL PROPERTY LAW
MODULE 1
2006
HOME EXAM

Answers can be written in the following languages: Danish English, French, German or Swedish.

You are not supposed to have special knowledge of national law for the purpose of the exam. You should, thus, give your answers with references to European directives and regulations and, if relevant, to European and international conventions/treaties.

**Send/e-mail the assignment to the course administrator
by mail or fax
before 9:00 am (Swedish time)
on April 4, 2006**

Fax : +46 8 612 41 09

Master Programme in European Intellectual Property Law 2006
Stockholm University
Module 1

YOUR TASK

Your task is 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.

The memorandum should cover the questions, be objective and should identify both the strengths and weaknesses of your conclusions. Any further legally relevant observation is welcome! Each issue should be treated separately. Excessive overlapping of thought in the discussion indicates that you have not identified the issues with sufficient precision.

Among the issues that you should discuss in your memo is, 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.

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 language and brevity. Do not exceed 5000 words!

GOOD LUCK!

MARIANNE LEVIN

Stockholm, 31 March 2006

Lately, reports about the spread of bird flu in Asia and now in Europe have dominated the news. Many fear that the virus may mutate into a new type of virus with the ability to infect humans. If this occurs, it could lead to a worldwide epidemic.

Ronja R., a risk capitalist in the computer industry, has purchased a number of .eu domain names, such as www.birdflu.eu, as she believes there is money to be made in the wake of this disease. She has been following the spread of the bird flu in the world and believes she could make a humanitarian contribution as well as get a good return on her investment.

Thus, Ronja R. posts information about bird flu on her website www.birdflu.eu. Her website also contains an advertisement for a home protection kit she has put together using the following slogan – “Buy Ronja’s little white box – a bird flu emergency protection kit.” Ronja’s idea is that the protection kit should be a kit for home use by consumers and contain a variety of exclusive products that can in different ways protect consumers from the dreaded virus. She sets the price for the exclusive kits at 2000 EURO.

Ronja R. quickly obtains some white metal boxes, on which she applies some stickers with the symbol of a red cross on a white background. She wants to emphasize that the kits contain humanitarian relief.



Clearly, an emergency kit needs to contain medicine. Ronja R. has heard of an anti-viral pharmaceutical (i.e. Biriflu) that prevents the virus from spreading to non-infected cells. The pharmaceutical company Flocke has a patent on the anti-viral pharmaceutical Biriflu in Europe as well as in most countries around the world. The name BIRIFLU is also registered as a national trademark in these countries.

Since 2003, Flocke has trebled the production of Biriflu but still hasn’t been able to meet the demand for the drug. Thus, many individuals have been stock piling their own private inventory. Ronja R. realizes of course that including Biriflu in the protection kit would increase its market value significantly. As it is both cheaper and easier to obtain Biriflu in the U.S., Ronja calls her contact, Gregory P in Washington, D.C., and asks him to airmail her in Sweden 10,000 boxes of Biriflu. As Ronja paid cash, Gregory P. sent the boxes at once.

Ronja R. does some more research on the disease. Apparently, in order for humans to become infected, they need to be in close contact with infected birds. Thus, a good way of protecting oneself from the disease is to avoid all contact with birds. Ronja R. decides that the second product in the home protection kit should be an acoustic bird scarring device. She designs a device consisting of a recorder enclosed within a steel covering. The device is activated by photo cells and makes live predatory birds sounds that scare away other birds.

In order to obtain live bird sounds, Ronja R. buys a number of compact discs (CDs) containing the live recorded sounds of Nordic birds. At home, however, she discovers that she is unable to make copies from the CDs due to a technological device applied by the producer, but this is not a problem for long. After a quick search on the Internet, she discovers that all she needs to disembark the system is to draw a line with a felt marker on the outer edge of the CDs. After doing so, Ronja R. copies certain chosen bird sounds from the CDs to her new acoustic bird scarring device.

Ronja R. decides that the protection kit should also contain a tool for removing dead birds and bird excrement. Thus, she manufactures a pair of tongs in the shape of a pelican beak. The inspiration for her design came from the design for a pair of tongs in the shape of a flamingo beak which Ronja R. saw on the Internet. The design for the flamingo beak is registered as an EU design by the company D-Design. The pelican tongs can be used to pick up dead birds and thanks to the design of the pelican's characteristic "bag", it can be used as a container for bird excrement.



Flamingo Beak



Pelican Beak

Ronja R. also buys a number of patent and design protected masks that cover the mouth, which vouch for the high quality of her protection kit. One of Ronja R's artist buddies paints a picture of pelican on the masks in exchange for a small sum. The hand painted pelican on the masks gives the kits the right touch.

Ronja R. begins an aggressive marketing campaign on her website www.birdflu.eu, including e-mail to people whom she knows own their own residence or at least a summer place. The recipients of her e-mails are chosen from the people with whom she has come into contact with over the years or from tips as to possible investors in the computer industry, particularly in Great Britain and Germany. The e-mail messages contain advertisements for her website as well as for the home protection kit.

Ronja R. has hardly begun her marketing campaign before the letters and phone calls start pouring in from lawyers representing various persons whose interests Ronja R. is alleged to have violated. To make matters worse, the Swedish Customs will not release her package and the Red Cross Organization is asking for a donation of 50.000 EURO or it is threatening to forbid the sales of the home protection kit. Ronja R. has never seen anything like this before. She is being threatened with legal action from home and abroad. First she reasons to herself that the rest of the world is pissed because they didn't come up with the great idea for a home protection kit first. But to be on the safe side, she contacts you, a knowledgeable IP expert to find out if there is any substance behind all these legal threats. She asks that you conduct a legal investigation of the possible risks associated with her actions, and the legal grounds in the various accusations against her. And is it really possible that she could be sued in another country under some foreign law? She is SWEDISH after all!