

***MASTER PROGRAMME
EUROPEAN
INTELLECTUAL PROPERTY LAW
MODULE 1
2005***

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 the assignment to Erik Sandgren
by mail or fax
before 9:00 am (Swedish time)
on March 22, 2005
Name the file after your lastname!**

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Master Programme in European Intellectual Property Law 2005
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 emphasised in italics, 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 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.

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, 17 March 2005

The following has happened:

In January 2004 Digital Design HelpDesk Ltd launched a new and very interesting CAD-program (DDHD 2004) with over 1 000 options to vary textile designs. The program was a success in the European market, as it offered considerable lift in new designs without having to engage additional designers.

At the official Designs Fair in Thessalonica, Greece, on 1-2 June 2004 Hector Manopoulos with the Greek firm, GreekDeco, presented the firm's new collection for curtain designs. Even if the Thessalonica Design Fair as such could be regarded as "international", it was only visited by Greek customers. But Hector had a certain success there, and he was especially proud of one new, geometric design, which he had named Dector. For the solution to this design he and one of his employees had used the DDHD 2004 CAD-program. After the comparatively positive outcome at the fair, Hector decides to protect the Dector design in all EU, and he applies for a community design registration at the OHIM on 1 October 2004.

On 15 August, the Swedish company Swetex AB, which is also one of the licensees to the DDHD 2004 program, applies for a community designs registration at OHIM for a new textile design, Swemodular Original. After that date, Swetex attended the Frankfurt Textile Fair 1-3 September 2004, where it had quite a success with not least the Swemodular Original design.

In December 2004, when Swetex had started to deliver ordered textiles, a rather irritated English customer phoned. Gordon Luxis from LuxInterior Ltd. had just come home from a vacation in Greece. What had he seen in one of open street markets in Athens, if not the design, Swemodular Original, that he had purchased in Frankfurt as an exclusive Swedish design, and to a considerably lower price than he had paid. Of course, he had asked from where this design came and received the answer that this was an original Greek textile from a company called GreekDeco. After a close comparison with the sample he had bought in Greece, there were admittedly some differences. But as a whole he regarded them as insignificant. LuxInterior, as an exclusive design firm that sells all over Europe was, indeed, not interested in having such commonplace articles that were sold in the streets. He threatens to cancel the order to Swetex, if these Greek textiles were not immediately removed from the market. The CEO of Swetex, Kalle Svensson, gets furious – and frightened. But at the same time he feels rather comforted by his design registration. He will, as he says, “hang this little counterfeiting Greek”, and start a legal process against Hector and his firm.

What are the chances of a successful trial?

It so happens that everyone seems to be after Hector these days. After presenting his design at the fair, Hector is approached by the Greek representative of a German firm, MobilTex, who has registered "Dector" as a Community Trademark for home textiles in February 2000, without using it until now, offering Hector to buy the mark for a decent price. Hector agrees, and the CTM registration is changed accordingly. Briefly thereafter, Hector receives a letter from UK-based CosyHome Co., claiming that it is the owner of the UK mark "Dectora", which has been registered and used for furniture since 1998. As CosyHome's counsel explains, the firm is in the course of expanding its business to the whole Community, and intends to lay an additional accent on home textiles. It is therefore determined to sue anyone who might come in their way, taking "all necessary steps to cancel conflicting signs and claiming adequate sanctions for infringement". Hector is of the opinion that there is no real conflict between the two marks for the time being, and that, if CosyHome should indeed take

up home textiles as a new line of business, it would be himself who could claim for infringement.

***Hector wants to know whether he is right about the infringement issue and where and how he might bring possible infringement proceedings against CosyHome
He also asks where and how CosyHome might raise the claims it has announced against him.***

Hector realises that the legal troubles could cost GreekDeco a lot of money, and he feels pressured to come up with a new bestselling design to be able to pay his skilled but (oh!) so expensive lawyer. However, the DDHD 2004 program is no longer up to date with the latest design trends, and Hector needs new inspiration and help. When DDHD launches an expensive update of their program, DDHD 2005, Hector realises that he needs it badly. Hector's younger brother Lector, who is employed as webmaster at GreekDeco, comes up with what seems to be a creative solution. Lector has found a similar design program on the web, which he downloads for free at the SmartFreeDownload.com. Using the source code of the DDHD 2004 Lector then makes necessary changes to the Internet program, and voilà, Hector is back on track again! By using the program created by Lector, which is named LeDesign, Hector starts working with a new collection for table linen to be presented at the next Frankfurt Textile Fair in June 2005. They come out really smashing.

But Hector is now faced with family trouble. Lector, always being dependent on his big brother, feels that he is not getting enough credits for LeDesign and other contributions to the firm. Hector will, as usual, get all the recognition, including be recognised as the sole creator of the new table linen collection. After consulting the webpage LawGuru.com, Lector comes up with a plan. He creates some innovative flow charts and input-output schemes for LeDesign, which he then uses in an application for patent protection at the EPO. He tells Hector about his application and also points out that he now has double protection for his work, as he is also the owner of the copyright to LeDesign. But as a noble gesture, Lector offers to let Hector or GreekDeco buy out the IP rights for a brotherly price. After all, it's only fair that he gets "his tiny piece of the cake", Lector explains.

Hector feels betrayed by his little brother and wants to know if Lector really is correct in his demands?