

## **CIPIT & IPCHECK-IN**

### **INTELLECTUAL PROPERTY LAW MOOT COURT COMPETITION 2016**

#### **QUESTION**

##### **I**

Kutlass Electronics Limited (hereinafter referred to as Kutlass) is a manufacturer of mobile phones and accessories. The company is known for its very slim smart phones which are especially popular with young people all over the country. The company has its offices in 3 major towns in Zadalonea; Gogala, Bataclan and Samba with 200 full-time employees and 100 part-time staff.

Ms. Sein Majorie is an employee at Kutlass and works in the Sales department. Her job entails interacting with customers in all the three towns and receiving feedback on how to improve the products. She also has a background in IT and Mechanical Design.

In her frequent interactions with Kutlass phone users she realized a common complaint regarding the battery life of the smart phones which was rather short. She saw this as an opportunity and using her IT and mechanical design skill she invented a pocket sized solar powered charger which was well compatible with Kutlass smart phones. She then presented it to the Kutlass head of Manufacturing Designs at the company.

She also came up with the brand name “Angaza” for the device. The device was well received and she was given a hefty bonus for the invention. Majorie was put in charge of its marketing throughout the country. Kutlass further proceeded to file patent applications on the invented device and were granted a Patent.

She developed a new interest in charger devices and decided to explore new ways of providing alternative chargers on-the-go. She thereafter handed in her resignation letter and proceeded to establish her own company to manufacture portable mobile phone charging devices including the one she made while at Kutlass. She then proceeded to develop a website [www.angazasimu.com](http://www.angazasimu.com) which was also served as her online store for her company’s products.

The Kutlass IT Department intended to set up a website to promote their charger devices and came across the website [www.angazasimu.com](http://www.angazasimu.com). On further investigation they established it belonged to Majorie who was a former employee at Kutlass.

Kutlass issued a Cease and Desist Letter to Majorie informing her that she had no right to manufacture the portable charger device nor use the word 'ANGAZA' in marketing the product as it is a Trademark Infringement. Majorie opposed the notice on the following grounds;

- i) She is the original inventor of the device
- ii) She did not create the device on company time or using company resources, therefore the invention belonged to her.

Majorie, further issued a counter-claim requiring Kutlass to pay her royalties for the invention.

## QUESTION

### II

Kutlass Limited (hereinafter referred to as Kutlass) is a manufacturer of a chemical solution that acts as a water purifier which can remove water contaminants from any source. The company also manufactures a portable water purifier apparatus. The water purifier apparatus can separate contaminants from free flowing liquid forms and solid forms as well. The said apparatus comes in different sizes for domestic and industrial purposes.

Kutlass is located in Germany with subsidiary in Zadalonea by the name Kutlass Properties Limited (hereinafter referred to as K.P.Ltd.). Kutlass has been granted a patent for a water device in Zadalonea. The patent numbers are ZA/P/2000/50341.

The relevant claims of the patent are as follows;

*Water purifying device separating contaminants from solid forms comprising;*

*A stand having an upper and lower chamber; an inlet configured on the upper chamber to allow flow of liquid; a strainer placed at the base of the inlet separating the upper chamber from the lower chamber; a tap affixed to the lower chamber providing an outlet for purified water.*

Kutlass sells the water purifier device under the registered trademark 'AQUA'. The products have been sold in Tanzania, Uganda and Zadalonea these have been sold to water bottlers and institutions. The product has been found to be extremely effective with no complaints from the consumers.

Giventia Enterprises Limited (hereinafter referred to as Giventia) a company based in Zadalonea manufactures water pumps and water purifiers and is recognized as a major supplier of water purifiers in the country.

The country experienced extremely heavy rains in the season of October to December 2013 which led to heavy flooding in several Counties. There were several outbreaks of water-borne diseases. This led to a huge demand for the products in the country which was at nearly 200,000 units. In February 2014 owing to Kutlass' inability to supply the number of units in demand due to import restrictions Giventia approached Kutlass for technical assistance and Licensing to manufacture the patented product 'AQUA' in Zadalonea.

However, Kutlass declined to grant the license despite numerous requests. The records available also showed that Kutlass had only supplied 1,000 units of the product against the high demand. In

addition Kutlass supplied the units at Kshs. 20,000 per unit, while Giventia supplied at Kshs. 5,000 per unit.

In September 2014 the Kutlass technical and manufacturing team visited Pargo Products Limited to inspect and set up a plant to manufacture its water purifier products. During the inspection the team was stunned to find their product already being manufactured under the name 'AKUA'. The team later learnt the infringing product was supplied by Giventia.

Kutlass armed with this information hired a private investigator who visited Giventia posing as potential large-scale consumer. The Investigator visited the marketing and operations department to check out the products and secretly took photographs of the products. The information gathered was then given to Kutlass. A Cease and Desist Letter was thereafter sent to Giventia requiring them to stop the manufacture of Kutlass patented products and the use of the Trademark 'AKUA'. Giventia on receiving the notice approached the Zadalonea Industrial Property Institute seeking a Compulsory License of the patent ZA/P/2000/50341 on the following grounds;

- a) The reasonable requirement of public health had not been met for 10,000 units only 900 units were supplied.
- b) The patented product is not available to the public at a reasonable price.
- c) The patent was not worked in Zadalonea as it was imported from Ethiopia.

Kutlass has now issued a notice to Giventia of the filing of a Trademark and Patent Infringement Suit.

The issues identified for determination before the court;

1. Whether Kutlass has locus standi to maintain the suit against Giventia under the Industrial Property Act and the Trademarks Act
2. Whether the Pargo Products Limited is liable for infringement for the act of manufacturing and selling products similar to those of Kutlass Limited
3. Whether the mark AKUA used by Giventia is deceptively similar to AQUA used by Kutlass Limited.
4. Whether the claim by Giventia seeking Compulsory License from Kutlass is justified and whether the Head of the Patents Tribunal is justified in listening to and determining the claim.