

Problem Set 2

Tripsland is an island north of Tallinn, Estonia. Shortly after the disintegration of the former Soviet Union, Tripsland emerged as a newly independent state. To convince other countries its commitment to protect intellectual property, Tripsland enacted, in 1997, the Comprehensive Intellectual Property Law (“CIPL”), which virtually copied the TRIPs Agreement verbatim and included all optional provisions as if they were mandatory (i.e., CIPL replaced every single occurrence of the words “may be” with the words “shall be”). CIPL was adopted in June 1998 and entered into force in January 1999. In June 1999, Tripsland joined the World Trade Organization.

1. Mediterranean is a small island country in the middle of Aegean Sea. Due to its weather, farmers in the country are able to grow rare agricultural products. Among its most unique products is appotato, which looks like a new potato, yet tastes like an apple. For the past two centuries, the country has successfully exported Mediterranean appotatoes all around the world. No other countries have ever produced appotatoes. Two years ago, however, a company in Tripsland was able to grow appotatoes in its greenhouse using chemically-enhanced enzymes. Would the company be able to sell its product as Mediterranean appotatoes in Tripsland?

2. Alpha, Inc. registered its trademark in sportswear in the United States on December 1, 2002. Two weeks later, Alpha opened its first clothing store on Park Avenue in New York City. While on winter vacation, Jordan Patriot visited his friend who was taking ITAP at Cardozo. Attracted by the trendy design of the Alpha line, Patriot bought a dozen of clothing items from the store. When Patriot returned to Tripsland, he showed his uncle, Roger Summer, Alpha’s products. His uncle, who owns a clothing store, was fascinated by the Alpha design and immediately thought of an idea. He registered Alpha in Tripsland and started selling Alpha imitation products to the local market in his store. When the Senior Vice President of Alpha was alerted to Summer’s product, she contacted you for counsel. Would Alpha be able to stop Summer from infringing on its trademark?

3. The Chinese New Year, which falls between mid-January and mid-February, is an important occasion for the Chinese. To celebrate this occasion, the Chinese will decorate their home with vases of blossoms, platters of oranges and tangerines, and what the Westerners called a “prosperity tray”—a tray with candies, dried sweet fruit and vegetables, and melon seeds. Major Festival specializes in manufacturing traditional Chinese food products. To distinguish its “prosperity tray” from its competitors’, Major Festival uses a specially-designed 3-dimensional tray that has the shape of an octagonal pyramid. Most recently, the company learned that there were several Chinese communities in Tripsland. Although the marketing executives of the company are eager to export their products to Tripsland, they are concerned about the unfair competition they would face in the country. The Vice President of Major Festival wants to know

whether Tripsland will protect against unfair competition of its “prosperity tray.” He sought your counsel. What would be your response?

4. Jonathan Lonely started playing computer when he was eight. He switched from Apple II to Apple IIe to IBM PCs – 8086, 286s, 386s, you name it. In 1995, he noticed a “new, big thing” called the World Wide Web. Immediately, he could see the potential of selling products on the Internet. A big trader of baseball cards, Lonely started a website called Baseball Card Central. Soon, he found that the name was too long and too clumsy for his customers. He thought for a while and came up with a new and better name, CardBay, which was named after the place where he was living. “It can’t go wrong to have CardBay for a guy who lives in Trips Bay,” he thought. But he was wrong. A few months after renaming his website CardBay, he received a cease-and-desist letter from eBay, which he had never heard of. eBay has not registered its mark in Tripsland. Nor does it have any stores in the country. Would eBay be able to sue CardBay in Tripsland? Who would likely prevail? Suppose Lonely decides to change the name CardBay to Cardline to avoid troubles with eBay. And suppose he receives another cease-and-desist letter, this time from Priceline, what would be your advice if Lonely sought your counsel?

5. Cyclemania is the manufacturer of motorcycles whose dual-track X-triple engines produce a unique exhaust sound. Attracted by this sound, Tripsland residents have voted Cyclemania’s motorcycles #1 in Tripsland for the past 7 years. Shortly before Christmas, Cyclemaniac introduced its new line of motorcycles that produce a similar exhaust sound. Even worse, Cyclemaniac sells its motorcycles for half of Cybermania’s selling price. To save money, many Tripsland residents have purchased Cyclemaniac’s motorcycles in lieu of Cyclemania’s. Concerned about its lost profits, Cyclemania sued Cyclemaniac for unfair competition under CIPL. Who would prevail?