Group discussion – past exam question (trade marks & business reputation)

1. A past exam question dealing with trade marks & business reputation issues (attached) will be discussed.

Revision

2. Remarks regarding examination format and examination technique.

3. General discussion of course topics and overview.
Past Exam Question – Trade Marks & Business Reputation

Students must answer both Part A and Part B of this question.

Background Facts

Gorgola Pty Limited (“Gorgola”) is an internationally-renowned brand of high quality fashion accessories for men and women. Its products include handbags, manbags, shoes, overcoats and scarves. All of Gorgola’s products consist of a style of tartan check pattern which Gorgola contends is immediately recognisable by consumers as being associated with its products.

In March 2004, Gorgola opened retail stores in the capital city of each State in Australia. Prior to then, Gorgola’s products had only been available through selected boutique stores in Australian capital cities. So, from March 2004 Gorgola’s products were available in Gorgola retail stores and selected boutique stores around Australia.

In October 2004, ‘Mega Pets’ commenced importing into Australia a specially-designed leather overcoat for dogs of all sizes. The overcoat was labelled and marketed under the name ‘Kanine Koat’ (being a play on the words ‘Canine Coat’). The Kanine Koat was in the style of a tartan check pattern which Gorgola says is a “blatant copy” of its check pattern. However, Mega Pets says it came up with the design for its check pattern after engaging a consultant to the Australian Highland Dancers’ Association.

Gorgola has recently become aware of Mega Pets’ sale in Australia of the Kanine Koat. Gorgola is concerned that the Kanine Koat infringes its rights.

Part A

In addition to the Background Facts, assume that Gorgola has registered its tartan check pattern as a trade mark under the Trade Marks Act 1995 (Cth) in the following classes:

Class 18: Leather goods, handbags, travel bags, umbrellas, parasols.

Class 25: Clothing, footwear, headgear.

Advise Gorgola as to whether it could bring an action for trade mark infringement against Mega Pets in respect of its sale of the Kanine Koat. [13 marks].

Part B

In addition to the Background Facts, assume that Gorgola has not registered as a trade mark its tartan check pattern.

Advise Gorgola as to whether it has any cause of action against Mega Pets in passing off or under the Trade Practices Act 1974 (Cth). (12 marks).