

THE JOINT EXAMINATION BOARD

PAPER T1

BASIC UNITED KINGDOM TRADE MARK LAW

12th November, 1992

2.00 p.m. - 4.00 p.m.

StudentBounty.com

Please read the following instructions carefully. This is a TWO HOUR paper.

1. You should attempt no more than eight questions from Part A and no more than five questions from Part B.
2. The number of marks allotted to each question is placed in brackets at the end of the question.
3. Where a question permits of reasons being given for the conclusions reached, such reasons should be given.
4. Start each question (but not necessarily each part of each question) on a fresh sheet of paper and number it clearly in the margin. Write on one side of the paper only using BLACK ink. You must write your examination number and the designation of the Paper in the top right hand corner of each sheet. You must NOT staple your pages together. You must NOT state your name anywhere in the answers.
5. Unless specifically requested answers are NOT required in letter form.
6. NO printed matter or other written material may be taken into the examination.

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Part A

1. What are the provisions in the Trade Marks Act 1938 which deal with colour?

(5 marks)

2. Write brief notes on Sections 12 (1) and (2).

(5 marks)

3. What are the provisions in Section 13 providing for the conclusive validity of trade marks?

(5 marks)

4. Who may:

- a) file a trade mark opposition under Section 18; and
- b) an application for rectification of a trade mark registration under Section 32?
- c) On whom does the burden of proof rest in each case?

(5 marks)

5. Discuss the meaning of "bona fide" as used in rectification proceedings under Section 26.

(5 marks)

6. In what circumstances may the Registrar accept use of a mark, which differs from the mark as registered, in rectification proceedings?
(5 marks)
7. Write brief notes on the provisions in the Trade Marks Act 1938 relating to Certification trade marks.
(5 marks)
8. What are the provisions relating to security for costs? (Rule 56).
(5 marks)
9. Write brief notes on Defensive registrations.
(5 marks)

Part B

10. A trade association writes to you to say that they have for the last twenty years been producing a monthly magazine under the title WATERWORKERS WANDERINGS. The title always appears in the same highly distinctive script format. The magazine is sent to members of the association without a specific charge being made although obviously the cost of providing the publication is partly borne out of members' annual subscriptions. The magazine is also available for sale to the public.

The trade association say that they are wondering what rights they have in the title and whether they can take any action to register this title, or whether this is unnecessary in view of the considerable reputation which it now has.

What points would you need to consider in advising your clients?

(12 marks)

11. Your client, Joe Bloggs, writes to say that he has a trade mark TIMECTERA which was entered on the Register ten years ago in respect of "jewellery" in Part A of the Register but has not been used for the past six years. He has become aware of another company selling watches under the name TIMECTER.

He asks what action he can take to prevent the use from continuing.

Write a letter in layman's terms advising your client.

(12 marks)

12. Write brief notes on the important issues of the following cases:

- a) HALLELUJAH - TM (1976) RPC 605
- b) Reckitt & Colman Products Ltd
v.
Borden Inc. & Ors (1990) RPC 341 (JIF LEMON)
- c) WELDMESH - TM (1966) RPC 220
- d) BON MATIN - TM (1989) RPC 537

(12 marks)

13. A client has a registered trade mark in Part A in respect of "cosmetics; moisturisers; face and eye creams; perfumery; preparations for the hair; soaps; essential oils; all included in Class 3". The mark has been continuously used throughout the United Kingdom for the past ten years in relation only to perfumes and soaps.

A third party asks the client to amend the registration by excluding "preparations for the hair" and says that if this is not done it will apply for rectification of the Register in respect of those goods.

What points would you need to consider in advising your client?

(12 marks)

14. Explain the essential elements which must be established to succeed in a "passing off" action, making reference to any relevant cases.

(12 marks)

15. A client is selling a highly successful patented automobile anti-theft device under the name SAFIREN. Competitors are developing competing technology quickly and will soon be offering for sale similar types of devices.

Ignoring the question of patent infringement, what should the client do to ensure that its device is firmly established in the minds of the public as being the first of its type to be sold, and to ensure that the name does not become a generic term for the type of device concerned?

(12 marks)

