

THE JOINT EXAMINATION BOARD

PAPER T1

BASIC UNITED KINGDOM TRADE MARK LAW

18th November, 1993

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. In the appropriate boxes at the top of each sheet please enter the designation of the paper, the question number, and your Examination number. Write on one side of the paper only using BLACK ink. You must NOT staple 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.
7. Answers MUST be legible. If the examiners cannot read a candidate's answer no marks will be awarded.

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PART A

1. Explain the meaning of "with goodwill" and "without goodwill" in so far as this is relevant to assignments of trade marks in the United Kingdom (5 marks)
2. Write brief notes on "oral use of a trade mark". (5 marks)
3. Write brief notes on a reported case relating to an application for registration of a mark which would be likely to deceive or cause confusion under Section 11. (5 marks)
4. What are the requirements for distinctiveness necessary for a trade mark to be accepted for registration in Part A of the Register? (5 marks)
5. What do you understand by the term "saving for vested rights"? (5 marks)
6. On what basis can a registration be removed from the Register on an application by a third party? (5 marks)
7. Outline the provisions whereby an applicant who does not use or propose to use the trade mark applied for can validly apply for registration. (5 marks)
8. Write brief notes on disclaimers and their effect. (5 marks)
9. Write brief notes on the different rights arising from Part A and Part B registrations. (5 marks)

PART B

10. A client who is in the cigarette and tobacco business writes to you saying that he has recently attended a meeting of the major tobacco and cigarette manufacturers. It was decided by those present that each company would submit to the others a list of trade marks which they would

like to protect in the United Kingdom for possible future use.

The client says that provided none of the other companies has any objection to the marks proposed then each company will apply to register the list of selected marks in each case. He says that since the companies represent the major manufacturers in the United Kingdom provided that they do not have any objections to one another's lists there should be no need to carry out any searches.

It has been agreed that most of the trade marks will probably not be used at least for a number of years and that probably only 20% of those on each list will definitely be required.

What issues would you discuss with your client and why? Do not consider unfair competition law.

(12 marks)

11. Your client approaches you having recently lost a bitter commercial dispute (not relating to trade marks) with a rival. He is anxious somehow to get his own back against the rival company and has asked you to apply in his company's name for rectification of the Register in respect of various trade marks which have been registered by the rival company but which have not been used for at least the last eight years.

Although the client is not himself interested in using the marks or anything similar he is keen to apply for registration of those marks.

What advice would you give your client?

(12 marks)

12. You act for a company which is the proprietor of CHEW FINE, one of the leading brands of chewing gum in the United Kingdom. The mark was registered for "chewing gum" as a result of the filing of evidence of use over a period of fifty years.

The client wishes to have the broadest possible protection for confectionery and foodstuffs. He has no intention of selling any products other than "chewing gum".

What advice would you give your client?

(12 marks)

13. Your client has three trade marks registered in respect of "articles of clothing". The trade marks are DARETA, DURETA, and DARATA. The trade mark DARETA is associated with the other two.

A third party wishes to register and adopt for use the trade mark BARETA in relation to "articles of clothing". They have written to your client threatening to apply for rectification of the Register in connection with the registration of DARETA which has been cited by the Registrar of Trade Marks. (Neither of the other registrations has been cited).

The trade mark DARETA has not been used for the past ten years but the other two trade marks are in use for a very wide range of clothing.

What advice would you give your client?

(12 marks)

14. Your client is a motor car manufacturer who has for many years sold high performance cars under the name HIGH PEAK which has been registered by your client in Part A since 1975 in Class 12 in respect of "motor land vehicles and parts and fittings therefor".

For many years the client has organised motor car rallies and other promotional activities relating to motor car racing.

Another company has now started offering weekend driving courses for those wishing to improve their skills and is marketing these courses under the name HIGH PEAK.

Your client does not have any registrations other than in Class 12. The activities of the other company have only recently started and there have not as yet been any instances of confusion.

What is your client's legal position?

(12 marks)

15. Provide a summary of the important issues of the following cases:

(a)	Whisqueur	(1948)	66 RPC 105
(b)	Pianola	(1906)	23 RPC 774
(c)	Bostitch	(1963)	RPC 183
(d)	Bon Matin	(1989)	RPC 537

(12 marks)