

**THE JOINT EXAMINATION BOARD**

**PAPER T1**

**BASIC UNITED KINGDOM TRADE MARK LAW**

**17th November, 1994**

**2.00 p.m. - 4.00 p.m.**

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 room.
7. Answers MUST be legible. If the examiners cannot read a candidate's answer no marks will be awarded.

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BASIC UNITED KINGDOM TRADE MARK LAW - T1 1994

Date: 17th November 1994

Time: 2.00 p.m. - 4.00 p.m.

PART A

1. Write brief notes on disclaimers  
(a) Under the Trade Marks Act 1938  
(b) Under the Trade Marks Act 1994.  
(5 marks)
2. Write brief notes on the differences between Part A and Part B registrations under the Trade Marks Act 1938 as they existed before the entry into force of the Trade Marks Act 1994.  
(5 marks)
3. Explain briefly Section 12(2) of the Trade Marks Act 1938 concerning honest concurrent use.  
(5 marks)
4. List 5 grounds which under the Trade Marks Act 1938, form the basis of an application for rectification of the register.  
(5 marks)
5. What are the transitional provisions in the Trade Marks Act 1994 relating to Defensive registrations.  
(5 marks)
6. Explain the circumstances in which a trade mark owner, who does not intend to use the trade mark himself, may obtain a valid registration under the provisions of the Trade Marks Act 1994.  
(5 marks)

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7. In the famous decision of COCA COLA (1986 F.S.R. 472 H.L.) under the Trade Marks Act 1938, it was held that the shape of an article cannot be a trade mark. How has the position been changed by the Trade Marks Act 1994? (5 marks)
8. List 5 grounds upon which Opposition may be filed under the Trade Marks Act 1994. (5 marks)
9. Write a short paragraph which you would include in a letter to a client explaining what is meant by "passing-off". (5 marks)

PART B

10. Your client has a Part A registration for the trade mark QUIKRAM for "motor land vehicles". He has used this trade mark for many years. On the 10th November 1994, he heard that a large well-known manufacturer had been selling motor boats under the trade mark QUICK RAMS since July 1994. Ignoring your client's position under common law:-

Discuss the question of infringement

- (a) under the Trade Marks Act 1938, and  
(b) under the transitional provisions of the Trade Marks Act 1994.

(12 marks)

11. On 10th November 1994, your client informs you that he wishes to use the trade mark BEANPOLE on soaps and asks you to search this trade mark on the UK Trade Marks Register. A registration for BEENPOLE has been found for the same goods and investigations show that the trade mark is in use although only on a small scale in Cornwall. Your client advises you that the registration you have found is not a problem because he does not intend selling his goods on the open market but merely manufacturing them in the United Kingdom for export to Nigeria.

Advise your client whether he is free to use and register his trade mark.

(12 marks)

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12. Your client's application filed under the Trade Marks Act 1938 has been examined and a prior virtually identical trade mark has been cited for the identical goods. The prior registration is dated August 1989. The client believes that the cited trade mark is not in use in the United Kingdom, nor has it ever been in use, but has no proof. As it is now 5 years old and he understands that trade marks can be cancelled if they have not been used on the registered goods during a 5-year period, on 10th November 1994 the client instructs you to apply for cancellation.

Advise your client.

(12 marks)

13. Write brief notes on the following reported cases:-

1. YORK
2. HOLLY HOBBIE
3. JIF LEMON

How will the Trade Marks Act 1994 help the proprietors of these trade marks?

(12 marks)

14. Your clients are Wine Merchants. They have numerous trade marks registered for wines of all kinds. Their business relating to Madeira wines has not proved successful and your clients have now found a buyer for this line and its related trade marks. You have been sent a draft Deed of Assignment for your comments. The "goodwill" part of the Assignment reads:-

"....the assignor has agreed to transfer to the assignee the said trade marks together with the whole of the goodwill of the business concerned in the goods in respect of which the said trade marks are registered".

The draft Assignment also includes two unregistered trade marks which your clients advise are in use in the United Kingdom for Madeira wines.

Advise your clients under the Trade Marks Act 1938. Ignore the Trade Marks Act 1994.

(12 marks)

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15. Your client would like you to attack a registration of the trade mark AQUASOFT dated 4th March 1949 in Class 3 on the grounds of non-use. Your client has established that the trade mark has not been used on the registered goods in the United Kingdom for over the past six years. The only reason he wishes to do this is to try to acquire a monopoly in AQUA-prefixed marks in Class 3 on the Trade Marks Register. Advise your client under the Trade Marks Act 1994, by answering the following questions:-

1. Is your client entitled to apply for revocation of this registration?
2. Will the attack be foiled if the trade mark is put back into use and what would be the relevant dates to watch?
3. On whom is the burden of proof?

(12 marks)

