

## THE JOINT EXAMINATION BOARD

## PAPER P7 – PRINCIPLES OF TRADE MARK LAW

Thursday 3<sup>rd</sup> November 2011

3.00 p.m. – 5.00 p.m.

*Please read the following instructions carefully. Time Allowed – **2 HOURS***

1. You should attempt **eight of questions 1 to 9** in Part A and **five of questions 10 to 15** in Part B.
2. Each question in Part A carries a maximum of five marks and each question in Part B carries a maximum of twelve marks. The marks awarded to each question, and each sub-section if applicable, are shown at the foot of the question. If more than the required 8 questions are answered in Part A or more than the required 5 questions are answered in Part B, only the first 8 or 5 respective answers will be marked.
3. Please note the following:
  - a. Start each question (but not necessarily each part of each question) on a fresh sheet of paper;
  - b. Enter the Paper Number (P7), the question number and your Examination number in the appropriate boxes at the top of each sheet of paper;
  - c. The scripts are photocopied for marking purposes. Please write with a **dark inked pen** on one side of the paper only and within the printed margins, and do not use highlighters in your answer;
  - d. Do not state your name anywhere in the answers;
  - e. Write clearly; examiners cannot award marks to scripts that cannot be read;
  - f. Reasoning should always be given where appropriate;
  - g. You must number all the pages of your answer script. Once the exam finishes, an additional 5 minutes will be allowed for you to do this.
4. Under the Examination Regulations **you may be disqualified from the examination and have other disciplinary measures taken against you if:**
  - a. you are found with unauthorised printed matter or other unauthorised material in the examination room;
  - b. your mobile phone is found to be switched on;
  - c. you copy the work of another candidate, use an electronic aid, or communicate with another candidate or with anyone outside the examination;
  - d. you continue to write after being told to stop writing by the invigilator(s). **NO WRITING OF ANY KIND IS PERMITTED AFTER THE TIME ALLOTTED TO THIS PAPER HAS EXPIRED.**
5. **At the end of the examination assemble your answer sheets in question number order, number all the pages and put them in the WHITE envelope provided.** Do not staple or join your answer sheets together in any way. Any answer script taken out of the examination room will not be marked.

THIS PAPER CONSISTS OF **THREE** PAGES, INCLUDING THIS ONE.

## PAPER P7 – PRINCIPLES OF TRADE MARK LAW

### PART A

1. What provisions are there under Article 6bis Paris Convention for the protection of Well-Known Marks? (5 marks)

2. Licensing agreements:

2. a) What do you understand by the terms exclusive licence; sole licence and non-exclusive licence, as set out in UK Trade Marks Act 1994? (3 marks)

2. b) Under what circumstances may more than one exclusive licence exist for a single trade mark? (2 marks).

(5 marks)

3. What acts constitute infringement under Article 9 of the Community Trade Mark Regulation (Rights Conferred by a Community Trade Mark)? (5 marks)

4. Who may submit Observations to OHIM and on what basis? What happens to such Observations? (5 marks)

5. List the grounds of Opposition to a Community Trade Mark application set out in Article 8 of the Community Trade Mark Regulation (Relative Grounds for Refusal). (5 marks)

6. For UK Trade Mark Registrations:

6. a) What is the initial duration of a UK Trade Mark registration and from when does that period run. (2 marks)

6. b) For what periods may the registration be renewed and when must the renewal fees be paid? (3 marks)

*[Do not discuss subsequent restoration of a lapsed registration.]*

(5 marks)

7. On what grounds may a Community Trade Mark registration be revoked?

(5 marks)

8. What is meant by the doctrine of free movement of goods?

(5 marks)

9. For Community Trade Marks:

9. a) What is meant by claiming priority? (2 marks).

9. b) What are the similarities and differences between claiming priority and claiming seniority? (3 marks)

(5 marks)



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### PART B

#### 10. Likelihood of Confusion:

Outline the tests set down in the reported cases *Sabel BV v. Puma AG* and *Canon v. Metro-Goldwyn Meyer* for comparing marks for confusing similarity and the effect of enhanced distinctiveness of a mark under consideration. (12 marks)

#### 11. Absolute Grounds for Refusal of Registration:

11. a) What signs or marks may be refused under UK Trade Marks Act 1994 Section 3(1) (Grounds for refusal of registration)? Which of these grounds may be overcome by means other than a denial of the Examiner's allegations and what are those means? (9 marks)

11. b) Outline the tests laid down in *Windsurfing Chiemsee* regarding acquired distinctiveness. (3 marks)

(12 marks)

#### 12. Restitutio in Integrum under Community Trade Mark Law:

12. a) Who may apply for Restitutio in Integrum? What are the grounds for such an application? (5 marks)

12. b) What must be filed and what are the applicable time limits for filing such an application? (5 marks)

12. c) What time limits are specifically excluded? (2 marks)

(12 marks)

#### 13. Relative Grounds for Refusal of Registration under Section 5 UK Trade Marks Act 1994:

13. a) What is the time limit for filing an opposition; is the period extendable; and from what date does it run? (3 marks)

13. b) According to Trade Marks Act 1994 Section 6 (Meaning of "Earlier Trade Mark"), what rights may be taken into account in an Opposition? (9 marks)

(12 marks)

#### 14. Madrid Protocol Applications:

14. a) Who is entitled to be an Applicant for a Madrid Protocol application? (5 marks)

14. b) Under what conditions can a Madrid Protocol Application be based on more than one application or registration? (3 marks)

14. c) Explain Transformation of a Madrid Protocol Application? (4 marks)

(12 marks)

15. Outline the advantages and disadvantages of National Trade Marks in Europe vs. a Community Trade Mark. (12 marks)