

**THE JOINT EXAMINATION BOARD**

**PAPER T1**

**BASIC UNITED KINGDOM TRADE MARK LAW**

**20th November, 1996**

**3.00 p.m. - 5.00 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.
8. NO writing whatsoever, including numbering of papers, is allowed prior to the commencement of the examination or after it has finished.
9. Please put your answers in QUESTION NUMBER ORDER before placing in envelope provided.

**THIS PAPER COMPRISES 4 PAGES (INCLUDING THIS FRONT SHEET)**

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20th November, 1996

3.00 p.m. - 5.00 p.m.

PART A

1. (a) What is a disclaimer?  
(b) What is a condition of registration? (5 marks)
  
2. Discuss trade mark registration on the basis of Honest Concurrent Use as set out in Section 7 of the Trade Marks Act, 1994. (5 marks)
  
3. (a) What are the minimum requirements for obtaining a filing date for a trade mark application?  
(b) When must applications fees be paid to avoid abandonment of the application? (5 marks)
  
4. What are the absolute grounds for refusal laid down in Section 3 of the Trade Marks Act, 1994? (5 marks)
  
5. In simple terms, explain the differences between a Certification trade mark and a Collective trade mark. (5 marks)
  
6. Has the definition of a "trade mark" been widened under the 1994 Trade Marks Act? (5 marks)
  
7. Briefly outline opposition procedure under the Trade Marks Act, 1994. (5 marks)
  
8. Your client registered her trade mark six years ago but only commenced using it three weeks ago and sales have exceeded all expectations. Then, completely out of the blue, third parties applied to revoke the registration on the grounds of five years' non-use. Your client advises you that she has never heard of the attackers

before and is concerned that she will lose all rights in her registration. Advise.

(5 marks)

9. Briefly outline the procedure for renewal of a trade mark registration under the Trade Marks Act, 1994.

(5 marks)

### PART B

10. Discuss comparative advertising under the 1994 Trade Marks Act referring to any reported cases.

(12 marks)

11. In simple language explain to your lay client what is meant by "passing-off".

(12 marks)

12. Your client has registered the trade mark BIG BOY for men's jeans. He has used this trade mark for many years. He has just heard that a large clothing manufacturer is using the trade mark BIG BUOY for men's shirts. He is not sure whether they commenced use in September 1994 or December 1994. Advise your client on his position. Ignore your client's position under common law.

(12 marks)

13. Your client has only recently become aware that United Kingdom is now "a first to register" country. Despite many years use your client has refused to register her trade mark, relying on her common law rights instead. You apply to register your client's trade mark but on examination, a prior pending application for the identical trade mark, identical goods, has been cited. Through investigations, you ascertain that the applicant of the cited mark has no use of that trade mark in the United Kingdom. The cited mark has not yet been advertised. Advise your client on what should be done.

(12 marks)

14. Your client is the registered proprietor of the trade mark YELLOW SAIL for wines. Your client would like to establish a line of wines under various trade marks commencing "YELLOW" but finds that there are quite a number of registrations commencing "YELLOW" on the Register already for the same goods, for example, YELLOW BOAT, YELLOW BARN, YELLOW SUN. Investigations have shown that none of these trade marks is in use in the United Kingdom nor has been used during the last five years. Advise your client.

(12 marks)

15. Your client, Howmuch Limited, is the owner of application No. 1482106 HOWMUCH which was filed in Class 2 on 03.11.1994 in respect of "paint". Howmuch Limited has used the mark HOWMUCH in relation to household paints since 1991 throughout the UK and EC. The product is widely advertised on UK television and has had annual sales of £3,000,000 in the UK since 1991.

You notice the advertisement of application No. 1481890 HOWMUCH in the Trade Marks Journal which is proceeding in Class 27 in respect of wallcoverings. Application No. 1481890 was filed on 02.11.1994.

Outline your client's potential grounds for opposition against application No. 1481890; and indicate the further information you will require from your client.

(12 marks)