

University of London

**EXAMINATION FOR INTERNAL STUDENTS**

For The Following Qualification:-

*LL.B.*

**LL.B. Part II: Intellectual and Industrial Property Law**

**COURSE CODE : LAWSII04**

**DATE : 19-MAY-04**

**TIME : 10.00**

**TIME ALLOWED : 3 Hours 15 Minutes**

## INTELLECTUAL AND INDUSTRIAL PROPERTY LAW

Answer **FOUR** questions. Where there is an overlap between the answers on questions in this paper and your assessed essay (if any), no credit will be given for repetition.

1. David Beckham is a well-known personality who derives a large income both as a professional footballer and also in respect of his endorsement of the goods and services of third parties. His fashion preferences have included the wearing of a sarong (a form of wrap-around skirt).

Read the advertisement appended to this examination paper and, on the assumption that he has not consented to the making or publication of the advertisement, advise David Beckham on the following issues:

- (i) For the purposes of the law of passing off may David Beckham, in the light of the disclaimer that appears in this advertisement, maintain that the advertisement constitutes a false representation that he has endorsed talkSPORT's promotion?
  - (ii) Can David Beckham bring an action for copyright infringement in respect of the publication of a photograph of a model who is dressed so as to resemble him?
  - (iii) After David Beckham first reads this advertisement in a daily newspaper, he indicates that he wishes to prevent any further dissemination of the advertisement before the trial of his claims against talkSPORT are heard. On what grounds should he base his claim for interim injunctive relief pending the trial?
2. Zoltan opens the Hungry Hussar restaurant, which serves Hungarian cuisine to the discerning diner. Zoltan's recipes are all culled from a Hungarian cook-book, "Revolutionary Hungarian Recipes", which was compiled by Eva Sztik in 1894 and subsequently translated into English by Egbert Hump in 1985. The interior decoration of the restaurant is based on photographs taken of the dining room of Klotski Castle, a royal residence which was destroyed by fire in 1908. The restaurant provides entertainment for its patrons in the form of gypsy violinists who wander between the tables while they serenade the patrons with gypsy folk-tunes. Diners are not admitted to the Hungry Hussar unless they either (i) demonstrate that they are descended from the Hungarian nobility or (ii) pay £5 for a "certificate of nobility" issued by the head waiter. The certificate of nobility is in fact a picturesque Hungarian wine label in which the name of the wine has been blanked out, the name of each diner being written into the resulting gap.

Zoltan seeks your advice as to any intellectual property rights he may have infringed and as to how he might remove or minimise the risk of being sued for infringing them.

**TURN OVER**

3. Explain the operation of the concepts of (i) novelty and (ii) inventive step in establishing the patentability of an invention. How does each of these concepts make use of the concept of prior art?
4. To what extent is confidential information of a commercial nature protected by law? In your opinion does this protection provide an adequate balance between the need to protect confidentiality of the needs of competitors and the public at large?
5. Topsy Trains develops a mechanism which triggers a railway train's braking system whenever a train fails to stop at a "stop" signal or passes that signal at a greater than permitted speed. The mechanism consists of a device which, when a laser is beamed at a reflecting plate affixed to the engine or leading carriage of an oncoming train, detects the reflection of that beam on a light-sensitive receptor plate and measures its velocity. If the train's speed appears dangerous, the mechanism triggers a braking system which halts the train. Data received by the receptor plate is fed into a small computer processing unit which is programmed to "read" the data, to record all data readings and to trigger the braking system when necessary. Claim 1 of Topsy Train's patent characterises the invention as "a braking mechanism whereby a laser beam, being directed into the path of a vehicle in motion, is directed to a reflecting plate affixed to the vehicle at such an angle that the beam is reflected from the vehicle so as to reach a second reflecting plate which, by operation of a velocity-calculating computer program, enables the braking mechanism to be activated".

Advise Topsy Trains in the following circumstances:

- (i) Advanced Communications Corporation (ACC), a US manufacturer of electronic communications equipment, seeks to challenge the validity of the patent. ACC maintains that the patent should not have been granted because the braking mechanism is a program for a computer and/or a presentation of information and is not therefore an "invention".
  - (ii) Subsequent to the priority date of Topsy's patent, ACC has devised and is marketing its own braking mechanism, employing sound waves which are beamed at the train and the reflection of which is "read" via a receptor plate which activates the braking system. This mechanism has the disadvantage that speed calculations based on reflected sound are 15% less accurate than those achieved through the measurement of reflected laser beams. However, it has the advantage that a reflecting plate does not have to be fixed to the train. ACC asserts that its mechanism does not infringe Topsy Train's patent.
6. Contrast the manner in which the fair use of another's patent, copyright or trade mark right constitutes a defence to an action for infringement. In respect of which right is fair use most aptly protected?

**CONTINUED**

7. Mole, a researcher in the United Kingdom Government's Department of State Secrets, is employed to compile and analyse data relating to the use of official propaganda and "spin" by other Government Departments. In the course of the discharge of these duties, Mole decides to intersperse his official comments with personal written comments of his own. These comments relate initially to his personal reaction of surprise and disgust whenever he encounters acts that he considers to be examples of Governmental dishonesty. The comments subsequently relate to his own thoughts and feelings on the meaning of life, the aesthetics of spin and his own affections for Miss Pretty, a colleague for whom he has formed a deep affection. The comments are noted on the official files and also subsequently repeated in a personal notebook that Mole keeps. One day Mole's notebook is stolen from his jacket pocket. Mole is later informed that the notebook has fallen into the hands of the Editor of *The Daily Wail*, who proposes to serialise its contents under a series of sensational headlines. Mole is anxious to prevent the publication of the contents of his notebook, not least because it would prove embarrassing to Miss Pretty, who has no idea of Mole's interest in her. The Department of State Secrets is anxious to prevent publication of the notebook's contents, which confirm that the Government has been systematically misleading the British public on a number of extremely sensitive issues.

Advise Mole and the Department of State Secrets as to the legal grounds upon which they might prevent publication and as to the grounds upon which Mole might resist the Department's claims.

8. "Sex in the City" is the title of an extremely well-known television series which portrays the mores and the customs of four nubile and sexually active women from New York. The words SEX IN THE CITY have been registered as a United Kingdom trade mark in respect of television programmes, DVDs and various items of clothing, including socks and underwear.

Advise the owner of the registered trade mark in the light of the following scenarios:

- (i) Sock Shop Ltd decide to relaunch their chain of "Sock Shop" outlets in the City of London as "Sox in the City";
- (ii) Style in the City Ltd open a night club and bar in the City of London under the name "Sex in the City";
- (iii) Dolce Vita Srl, an Italian company, produced for the Italian market a series of pornographic films. These films were imported into the United Kingdom for sale under their original Italian titles. The imported films were then overstickered with a label "Sex in the City", the importers arguing that the words "sex in the city" were entirely descriptive of the content of the films.

**TURN OVER**

9. What is the “essential function” of a trade mark and what is the relevance of this concept to the continuing development of United Kingdom and European trade mark law?
10. Advise an applicant as to how he might secure the registration of the following signs as trade marks:
- (i) an application by Wrigley’s to register the slogan “FROM THE MAKERS OF WRIGLEY’S CHEWING-GUM” for chewing-gum;
  - (ii) an application by the radio station talkSPORT to register the word talkSPORT for the provision of radio programme services;
  - (iii) a combination of the two colours green and red in respect of vacuum cleaners.
  - (iv) the format and internal decoration of the Fab Four restaurant, which comprises (a) a dining area with plain brick walls but no wall decoration, (b) plain wooden trestle tables and chairs, (c) waiters dressed in “Beatle suits” of the sort worn by the Beatles pop group in the 1960s and (d) piped music consisting exclusively of the songs popularised by the Beatles during the 1960s.

**END OF PAPER**

ies extinction  
ne RSPB, part of

the birds that are threatened by  
human activity.  
Endangered birds include the

remaining wildlife depends on  
save some of the world's most  
cherished natural habitats."

the robbery. They will appear  
in court at Staines, south-west  
London, today.

# Win **BECKHAM'S** weekly wage\*



Win £80,000 in talkSPORT'S  
biggest ever cash  
give-away!

This amazing new competition  
starts today on the UK's only  
Sports Breakfast Radio Show, with  
Mike Parry and Alan Brazil. Every  
weekday from 6-10am.

Tune in to talkSPORT for your  
chance to win Beckham's  
weekly wage packet.  
You could be £80,000 richer!

*(The photographs is of a model and not David Beckham who does not endorse this promotion)*

**talkSPORT**  
**talkSPORT**

**WITH 6.6 MILLION LISTENERS, THE UK'S BIGGEST COMMERCIAL RADIO STATION**

\*Beckham's weekly wage is estimated to be £80,000 per week, based on press reports and this sum is the main prize. This promotion is subject to talkSPORT's competition terms and conditions, which are available by sending a SAE to talkSPORT, PO Box 1089, London SE1 8WQ or visiting our website, [www.talksport.net](http://www.talksport.net). The judge's decision is final and no correspondence will be entered into. talkSPORT will not be liable for any loss, damage or disappointment suffered by a person taking part or not being able to take part in this competition.