

Notes to trainers and students about the 2018 Foundation Certificate Sample Assessment Materials Mark Schemes

1. All Patent Examination Board mark schemes for live papers are subject to the standardisation process. This includes the examiners considering where alternative and legitimate answers provided by the candidate should be added to the mark scheme.
2. This sample assessment mark scheme has not been through a standardisation process and anyone consulting these Sample Assessment Materials' mark schemes should consider points 3 – 5 below.
3. Where a question contains several parts, the examiners may award marks for relevant points irrespective of whether the candidate has made the point in the same part of the question as the mark scheme.
4. Where the mark scheme indicates a whole mark is to be awarded for an answer or part of an answer, the examiners may award a half a mark if the answer is incomplete, not precise, or partially correct.
5. The Patent Examination Board operates a positive marking policy. Marks are not deducted for incorrect answers.

**FC5 – Trade Mark Law
Mark Scheme - Sample Assessment Material**

SECTION A

Question 1

- a) Where can you file an application to register an EUTM, according to Article 25(1) ('*Filing of applications*') EUTMR?
1 mark
- b) Applications to register an EUTM must meet what requirements in order to obtain a filing date, according to Article 26(1) ('*Conditions with which applications must comply*') EUTMR?
2 marks
- c) How are application fees for EUTMs calculated, according to Article 26(2) ('*Conditions with which applications must comply*') EUTMR? (No fee amounts are needed.)
1 mark

Total: 4 marks

Answer

- a) At the European Union Intellectual Property Office.

ALLOW: EUIPO/OHIM/Office for Harmonization of the Internal Market.

NO MARK to be awarded if the 'UKIPO' or 'central industrial property office of an EU Member State' is given as a second option.

1 mark

- b) **Half a mark for each of the following:**

- i) A request for registration.
- ii) Information identifying the applicant.
- iii) A list of the goods or services in respect of which registration is requested.
- iv) A representation of the trade mark.

ALLOW as an alternative to (iv): 'A representation, if electronic, in the correct format and size.'

2 marks

- c) The application fee and an extra fee for each additional class above the **first**.

Do not penalise omission of references to optional 'search fees'.

1 mark

Total: 4 marks

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Question 2

Section 3 ('*Absolute grounds for refusal of registration*') *TMA 1994*, sets out the categories of sign that shall not be registered as United Kingdom trade marks. 'Specially protected emblems' is one such category. List six others.

Do not list any of the types of specially protected emblem referred to in Sections 4, 57 or 58 of the *TMA 1994*.

6 marks

Answer

One mark for any of the following up to a maximum of 6 marks to be awarded overall:

- i) Signs which do not satisfy the requirements of Section 1(1).
- ii) Any sign not capable of being represented graphically (**ACCEPT: 'enabling the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor' – change being introduced by Regulation 2015/2436**).
- iii) Any sign which is not capable of distinguishing goods or services of one undertaking from those of other undertakings.
- iv) Trade marks which are devoid of any distinctive character.
- v) Trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of services, or other characteristics of goods or services (**DO NOT PENALISE omitted examples of characteristics from this list**).
- vi) Trade marks which consist exclusively of signs or indications which have become customary in the current language/in the bona fide and established practices of the trade (**1 mark for either, up to a maximum of 1 mark**).
- vii) Signs which consist exclusively of a shape or another characteristic which results from the nature of the goods themselves (**shape/characteristic acceptable as an alternative answer**).
- viii) Signs which consist exclusively of a shape (or another characteristic) which is necessary to obtain a technical result.
- ix) Signs which consist exclusively of the shape (or another characteristic) which gives substantial value to the goods.
 - x) Trade marks which are contrary to public policy or to accepted principles of morality.
 - xi) Trade marks which are of such a nature as to deceive the public.
 - xii) Trade marks if or to the extent that their use is prohibited in the United Kingdom by any enactment or rule of law.
 - xiii) Trade marks if or to the extent that the application is made in bad faith.
- xiv) Geographic indications.
 - xv) Traditional terms for wine.
 - xvi) Traditional specialties guaranteed.
 - xvii) Plant variety denominations.

Total: 6 marks

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Question 3

- a) Explain the legal benefit 'consent' from the owner of an earlier registered trade mark provides to a trade mark applicant or owner, according to Sections 5(5) ('*Relative grounds for refusal*') and 47(2) ('*Grounds for invalidity of registration*') TMA 1994.
2 marks
- b) Give one further reason why an applicant for registration of a trade mark might seek consent.
1 mark
- c) Suggest two reasons why the owner of an earlier registered mark might grant consent.
2 marks

Total: 5 marks

Answer

- a) Legal certainty. The proprietor of the earlier trade mark or a successor in title (**0.5 marks**) cannot (**1 mark**) subsequently invoke Section 5 grounds in opposition or invalidity proceedings (**0.5 marks**).

1 MARK MAXIMUM if an answer indicates that the applicant is merely provided with reassurance that the earlier rightsholder is happy, or does not intend to bring such actions.

2 marks

- b) The owner of the junior mark will also want to eliminate the risk of infringing the earlier mark (per Section 9(1)).
1 mark

If infringement is addressed in (a) it can be credited here.

- c) **One mark for any of the following up to a total of 2 marks:**
- i) To demonstrate that he is not neglecting to police his mark (which might ultimately put it at risk of revocation).
 - ii) To avoid a revocation action on grounds of non-use.
 - iii) To avoid an invalidity action of absolute grounds (if vulnerable).
 - iv) To avoid an invalidity action on relative grounds (if there are even more senior marks in the junior mark applicant's portfolio).
 - v) In order to facilitate the future expansion of the senior mark into new markets, where any further filing might conflict with the junior mark,
 - vi) as part of a more extensive coexistence arrangement for partitioning the parties' respective markets (eg along geographic lines).
 - vii) He is offered a financial inducement.

Other reasonable answers are acceptable.

2 marks

Total: 5 marks

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Question 4

Section 10(3) (*'Infringement of registered trade mark'*) TMA 1994 sets out the scenario in which a sign, if used in the course of trade, can infringe a trade mark registered for dissimilar goods and services. Set out the requirements of this section.

2 marks

Answer

Two marks total out of the following (0.5 marks each):

- Signs identical/similar.
- The registered mark has a reputation in the UK.
- The use without due cause
- would take unfair advantage of,
- or be detrimental to,
- the distinctive character
- or the repute of the registered mark.

Total: 2 marks

Question 5

Section 11(3) (*'Limits on effect of registered trade mark'*) TMA 1994 provides a defence to infringement on the basis of an earlier right protected by virtue of any rule of law in a particular locality. Write notes on the requirements for that defence to operate.

4 marks

Answer

The owner of an unregistered trade mark or other sign has a defence in the following circumstances:

- i) The mark has been continuously used **(0.5 marks)**
- ii) in relation to goods or services **(0.5 marks)**
from the earlier of **(1 mark)**:
- iii) a date prior to the first use of the trade mark in relation to those goods or services **(1 mark)**,
- iv) or a date prior to the registration (accept: priority date) of the trade mark in respect of those goods or services **(1 mark)**.

Total: 4 marks

Question 6

List two categories of registrable transaction, other than an assignment or licence, as set out in Section 25 (*'Registration of transactions affecting registered trade mark'*) TMA 1994.

2 marks

Answer

One mark each for any two of the following:

- i) A security interest.

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- ii) The making by personal representatives of an assent.
- iii) An order of a court transferring a registered trade mark.

Total: 2 marks

Question 7

- a) Explain the difference between:
 - i) a basic fee;
 - ii) a supplementary fee; and
 - iii) an individual fee

for the purposes of Article 8 (*'Fees for International Application and Registration'*) of the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*.

3 marks

- b) The International Bureau notifies you that the fees you have paid are insufficient to cover the number of classes of good and services you have listed in your *Madrid Protocol* application. According to the abovementioned Article 8, what happens if the shortfall is not paid (or the list of good or services reduced) before the deadline set by the International Bureau?

1 mark

Total: 4 marks

Answer

- a) Basic Fee: Application fee payable for all Madrid Protocol applications. **1 mark**

Supplementary Fee: Standard Madrid Protocol class fee for each class above the third. Payable to Designated Contracting Parties that have not opted to receive Individual Fees. **1 mark**

Individual Fee: Fees for applying to certain Designated Contracting Parties that have opted to charge fees by this method. The structure and level of payments is set by each Designated Contracting Party. **1 mark**

- b) The whole Madrid Protocol application is deemed abandoned. **1 mark**

Total: 4 marks

Question 8

- a) Set out the conditions under which an EUTM application may be opposed by the proprietor of a trade mark, if an agent or representative of the proprietor has applied for registration. **2 marks**
- b) Set out the grounds on which an EUTM application may be opposed without the opponent having to have an earlier registered trade mark (or earlier registered trade

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mark application), according to Article 8 ('*Relative grounds for refusal*') EUTMR. **Do not address the *Paris Convention*.**

3 marks

Total: 5 marks

Answer

a) If the agent/representative does so without the proprietor's consent **(1 mark)** unless the agent or representative justifies his action **(1 mark)**.

2 marks

b) On opposition by the proprietor of a non-registered sign/mark used in the course of trade **(1 mark)** of more than mere local significance **(1 mark)** acquired prior to the date of application/priority for registration of the EUTM and a law confers on its proprietor the right to prohibit the use **(1 mark)** of a subsequent trade mark

3 marks

DO NOT ACCEPT grounds for invalidity (eg copyright infringement) that cannot be raised in opposition proceedings against trade mark applications at the EUIPO.

Total: 5 marks

Question 9

Article 13 ('*Exhaustion of the rights conferred by an EUTM*') EUTMR sets out circumstances in which, despite the ownership of an EUTM, a proprietor may not enforce his trade mark rights. Set out these circumstances.

4 marks

Answer

One mark for any of the following:

- i) Goods have been put on the market in the EEA under that trade mark **(0.5 mark if 'EU' rather than 'EEA' is stated)**
- ii) by the proprietor or with his consent **(0.5 mark if only 'by the proprietor' is given).**
- iii) The proprietor's rights are not exhausted where there exist legitimate reasons for the proprietor to oppose further commercialisation of the goods;
- iv) especially where the condition of the goods is changed/impaired after they have been put on the market.

4 marks

Total: 4 marks

Question 10

Set out four differences between:

- a UK trade mark application; and

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- an EUTM application

in respect of the official search for earlier trade marks conducted by the UKIPO and EUIPO respectively.

4 marks

Answer

- i) UKIPO: UK, EUTM and International (UK) and (EU) marks are searched.
EUIPO: only EUTMs are searched **(1 mark)**: unless at the request of the applicant when filing, and on the payment of a further fee, the EUIPO can additionally request participating national IPOs to prepare a local search report which will be transmitted back to the EUIPO **(additional 0.5 marks available)**.
- ii) UKIPO: all applications are searched.
EUIPO: the applicant must request, at the time of application, if he wants a copy of the search report. **(1 mark)**
- iii) UKIPO: the Applicant is given two months to contest the citation(s).
EUIPO: there is no provision for arguing the citations. **(1 mark)**
- iv) UKIPO notifies the owners of any cited UK and International marks which designate the UK that the application has been published so that they have an opportunity to file opposition (and owners of EUTMs and International Registrations which designate the EU if and only if they have paid to 'opt in' for notifications – **additional 0.5 marks available**).
EUIPO notifies the owners of any cited EUTMs that the application has been published so that they have an opportunity to file opposition. **(1 mark)**

Marks as indicated up to a total of 4 marks

Total: 4 marks

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SECTION B

Question 11

Your client is an Argentinian football player. He has never played in Europe, but he was the star player for Argentina in the 2014 World Cup held in Brazil, when his team reached the final. World Cup matches are watched by billions of television viewers around the world including in the UK.

Football clothing and football equipment, all bearing his name under licence, are sold on market stalls in North and South America. These products are also sold through an Argentinian website controlled by your client. The website can be viewed in the UK but it is not possible to place orders for shipping to the UK.

Your client has registered his name as a trade mark for sports clothing and sports equipment throughout North and South America, but, so far, not in Europe.

Your client tells you that a Welsh company has started to sell chewing gum bearing his name. He also has evidence that the Welsh company employs an actor who closely resembles him to promote the chewing gum. The actor dresses as a footballer, in a football strip in the same colour as your client's team, with your client's name printed on the shirt.

Your client says he has never endorsed any products intended for sale in the UK. Nor has he endorsed any products in North and South America except his own licensed clothing and sports equipment ranges.

Prepare a memo to the attorney leading on this case in which you:

- a) **give two remedies that the law of passing off can provide your client, assuming he is able to establish a successful case;**

2 marks

- b) **discuss whether the law of passing off can in fact prevent the continued use of your client's name and image in the UK in relation to the chewing gum, given the above facts;**

11 marks

- c) **explain whether the remedies under the *Paris Convention* available to your client (assuming he is able to establish a successful case) differ from those available under the law of passing off described in part (a) of this question (Argentina is a member of the *Paris Convention*);**

1 mark

- d) **discuss whether the rights under the *Paris Convention* can in fact prevent the continued use of your client's name and image in the UK in relation to the chewing gum, given the above facts.**

6 marks

Total: 20 marks

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Answer

- a) **One mark for each of the following up to a maximum of 2 marks to be awarded overall:**
- i) The courts can impose an injunction preventing further use of the mark by the defendant and award costs and damages.
 - ii) The courts can also award damages or account of profits. **(1 mark for either)**
 - iii) If the offending use started recently it may be possible to obtain an immediate temporary injunction.

2 marks

- b) **One mark for any of the following (or other sensible points) up to a maximum within the totals for each heading, and a maximum of 11 marks to be awarded overall:**

GOODWILL (up to a maximum of 3 marks)

- i) The client must prove goodwill, ie that he has built up a protectable goodwill through sales of his products under his trade mark (or through receiving fees for giving endorsements) in the UK.
- ii) The client appears not to have a business in the UK, which indicates no goodwill.
- iii) He is probably very famous here because football is such a popular sport and the last World Cup was watched by so many UK television viewers, but fame or reputation does not necessarily equate with having a UK business.

MISREPRESENTATION (up to a maximum of 3 marks)

- i) The client must show that there has been a misrepresentation, ie that the defendant's use of the client's name or image will lead the public to believe that the chewing gum is manufactured by (or endorsed by) the client.
- ii) Actual evidence of confusion is not essential but can be good evidence of a misrepresentation.
- iii) The greater the difference in the goods, the greater must be the goodwill of the claimant for the necessary connection or misrepresentation to be made; since the client's goodwill is small (or non-existent) in the UK, the difference in the products may be fatal.
- iv) The use of a 'lookalike' to promote the product nevertheless might confuse customers into thinking that he has personally endorsed the product, or at least is likely to create a connection with your client that may amount to a misrepresentation that he has consented to this campaign.

DAMAGE (up to a maximum of 3 marks)

- i) Damage may be inferred if goodwill and misrepresentation are present.
- ii) If the client has no business in the UK and no business in chewing gum, there is unlikely to be much, or any damage in terms of direct loss of sales.
- iii) It might be possible to show damage in the form of loss of opportunity if the client is planning to expand his business, or endorse products in the UK;
- iv) but ultimately, if there is no goodwill, there is unlikely to be damage to goodwill.

CONCLUSION (up to a maximum of 2 marks)

The prospects for success on passing off are weak/poor.

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The client would be unwise to take a passing off action further/incur substantial legal fees, especially in relation to a product where he has no existing business.

11 marks

Other reasonable answers are acceptable, particularly on the recommendation.

- c) Only an injunction is available. **(No marks if other remedies are suggested (other than interim injunctions.))** **1 mark**
- d) The name must be well known in the United Kingdom **(1 mark)** as being the mark of a person who is a national **(1 mark)** of a Convention country. Protection applies whether or not that person carries on business, or has any goodwill, in the United Kingdom **(1 mark)**.

However, in this instance, there is no indication that the mark (as opposed to the footballer) is well known **(1 mark)**. (In other words, there are no rights to protect his image rights, as opposed to a trade mark per se.)

There are no rights under the Paris Convention to protect anything other than similar good and services **(1 mark)** and consequently a claim in relation to chewing gum is destined to fail **(1 mark)**.

6 marks

Total: 20 marks

Question 12

In 2000, your client opened a business under the name SAXON, offering lessons in microlight flying. Microlight aircraft are essentially hang gliders with engines. In fact, many people who enjoy flying hang gliders go on to fly microlight aircraft and most schools offer lessons in both.

He registered the name SAXON as a trade mark in the UK in 2000 in relation to teaching microlight flying. He renewed the registration in 2010. He has been actively giving microlight flying lessons under the SAXON trade mark since 2000.

He contacts you because a watching service for his trade mark has disclosed that a Karen White has applied to register SAXONY as a trade mark in the UK in relation to teaching hang gliding.

Your client instructs you to oppose Karen White's trade mark application, which has just been published.

Do not address the law of passing off when answering any part of this question.

- a) **Advise your client of the ground of opposition which has the best chance of success, giving reasons for your advice.**

9 marks

Your client tells you that Karen White used to be an instructor at his school and believes she has "stolen" the name.

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- b) Suggest a further possible ground of opposition, in light of the possible ‘theft’ of the name, including what your client must prove.**

4 marks

Karen decides to apply for another trade mark, ‘SAX’, protecting ‘flight training and flying lessons’.

- c) Analyse the prospects for successfully opposing this trade mark application on relative grounds.**

7 marks

Total: 20 marks

Answer

- a) One mark for any of the following (or other sensible points) up to a maximum within the totals for each heading, and a maximum of 9 marks to be awarded overall:**

GROUND (1 mark)

- i) The ground of opposition that has the best chance is that the client’s UK registered mark and Karen White’s mark are similar and the services are similar and that there exists a likelihood of confusion on the part of the public. **(DO NOT PENALISE failure to mention likelihood of association.)**

SIMILARITY OF SIGNS (up to 2 marks)

- ii) In this case they differ by only one letter,
iii) and the final letter in an English word is often the least important, which indicates a visual and phonetic similarity.
iv) On the other hand, conceptually, the marks might be regarded as dissimilar (early-medieval Englishman v modern German province).

SIMILARITY OF SERVICES (up to 3 marks)

- v) Flying schools (ie the subject matter of the applications) are teaching students to fly in both cases, and using similar forms of technology.
vi) We are told that learners (ie the end-users of the respective services) often learn to fly both.
vii) We are told that many schools (ie suppliers of the respective services) teach clients to fly both.

LIKELIHOOD OF CONFUSION (LOC) AND CONCLUSION (up to 3 marks)

- viii) The likelihood of confusion must be assessed globally taking account of all relevant factors.
ix) It is not essential to support this ground of opposition by evidence although evidence of confusion would be likely to be persuasive.
x) The typical user would choose a flight instructor with care.
xi) The mark has been used; however, there is no evidence of enhanced distinctiveness.
xii) Similarities between the goods may offset differences in the signs.
xiii) The marks are very close and the similarity of services is strong. So the conclusion overall is that there is a likelihood of confusion.

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Other reasonable answers are acceptable, such as the signs not being similar (conceptual grounds dominating the comparison): or well-argued case that the services are dissimilar.

9 marks

b) One mark for each of the following or other sensible points up to a maximum of 4 marks to be awarded overall:

- i) It is possible to oppose an application on grounds of the applicant's bad faith.
- ii) Taking someone else's name can amount to bad faith.
- iii) To be successful it is necessary to prove by evidence that the applicant's conduct fell short of acceptable commercial behaviour.
- iv) Without evidence, the allegation will not succeed.

4 marks

c) One mark for any of the following (or other sensible points) up to a maximum within the totals for each heading, and a maximum of 7 marks to be awarded overall:

SIMILARITY OF SERVICES (up to 2 marks)

- i) Karen's trade mark, as drafted, is identical to your client's. **(1 mark)**
- ii) However, Karen has the possibility of limiting her trade mark to, for example, *hang glider training*, in which case the analysis is as above. **(1 mark)**

SIMILARITY OF SIGNS (up to 3 marks)

- iii) Visually, in this case, the signs differ by a significant number of letters.
- iv) Aurally, the difference in the number of syllables is more marked.
- v) However, the first syllable of SAXON carries the stress, which could give rise to aural similarity.
- vi) The conceptual difference between the trade mark is lost.

LOC AND CONCLUSION (up to 2 marks)

- i) Identity of the services means there is no need to apply the Canon v Cannon offsetting test.
- ii) The marks remain very close, particularly aurally. On balance, the marks still conflict.
- iii) Even were Karen to limit her mark to hang-gliding, the position in respect of the similarity of services is no different to that stated in part (a) above. The offsetting test would be harder to satisfy, but on balance the marks would still conflict.

7 marks

Total: 20 marks

Question 13

Your client is considering protecting a first trade mark in several European countries and a second trade mark in the US, UK, Japan and China.

Write a list for your client setting out:

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- a) **nine advantages and four disadvantages of registering a trade mark as a single EUTM rather than registering the mark as separate national registrations in several EU territories;**

13 marks

- b) **five advantages and two disadvantages of registering a portfolio of trade marks using the *Madrid Protocol*, rather than registering the mark as separate national registrations.**

7 marks

Total: 20 marks

Answer

- a) **One mark for each advantage such as the following up to a maximum of 9 marks to be awarded overall. Other reasonable answers are acceptable:**

- i) The possibility of EU-wide relief through a single infringement action.
- ii) The procedure is administratively simpler than multiple national applications (by reason of the EUTM's unitary nature, simplifying filing, licensing, charging, assigning and maintaining).
- iii) The applicant requires only one representative.
- iv) Use anywhere in the Union, eg in a single Member State, protects the EUTM throughout the whole EU against cancellation for non-use.
- v) The fee structure is very attractive.
- vi) Provision for conversion eliminates the risk attached to the unitary nature of the EUTM (ie if there is a fatal objection to an application in one territory, the filing date is not lost in the others).
- vii) Seniority provisions enable further cost and administration savings by permitting expiry of national rights.
- viii) The choice of languages includes English, which is widely used, so there is seldom a need to pay translation costs.
- ix) The scope of the registration expands automatically to include new Member States which may join the EU in future.

9 marks

One mark for each disadvantage such as the following up to a maximum of 4 marks to be awarded overall (half marks may be awarded). Other reasonable answers are acceptable:

- i) Failure to meet absolute grounds/challenge under relative grounds, valid in one jurisdiction invalidates the EUTM in its entirety.
- ii) Oppositions are more likely because an EUTM can be opposed by any national registered/pending/user right throughout the EU.
- iii) There is greater risk of marks being refused on absolute grounds, particularly for non-distinctiveness in other EU languages.
- iv) In the event of an objection on grounds that the mark is not distinctive, filing evidence of acquired distinctiveness can be very expensive or impossible because it is necessary to show acquired distinctiveness in every territory of the EU to which the objection applies.
- v) If the application is refused, conversion delays registration, and is expensive.

4 marks

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b) One mark for each advantage such as the following up to a maximum of 5 marks to be awarded overall. Other reasonable answers are acceptable:

- i) The application requires only one representative, both for filing and maintenance, reducing costs.
- ii) The procedure is administratively simpler than multiple national applications filed through agents, both for filing and maintenance.
- iii) Renewals, assignments, etc require a single notice.
- iv) The system avoids the need for powers of attorney, notarisation, etc.
- v) There is a time limitation on receiving notice of rejections.
- vi) The language regime is attractive for anglophone applicants.

5 marks

One mark for each advantage such as the following up to a maximum of 2 marks to be awarded overall. Other reasonable answers are acceptable:

- i) 'Central attack' mechanism means that registrations are precarious for their first five years.
- ii) Not all applicants/assignees meet the qualification requirements.

2 marks

Total: 20 marks

Question 14

a) Set out precisely (including any limitations and qualifications) the grounds for revocation of a UK trade mark, described in Section 46 ('*Revocation of registration*') TMA 1994.

17 marks

b) Explain the circumstance under which a court, rather than the UKIPO, would hear an invalidity case.

3 marks

Total: 20 marks

Answer

a)

i) That within the period of five years **(0.5 mark)** following the date of completion of the registration procedure **(0.5 mark)** the mark has not been put to genuine use **(0.5 marks)** in the United Kingdom **(0.5 marks)** by the proprietor or with his consent **(0.5 marks)** in relation to the goods (or services) for which it is registered **(0.5 marks)**.

3 marks

ii) Or use has been suspended for an uninterrupted period of five years, **1 mark**

iii) and the mark has not commenced or resumed **(0.5 marks)** after the expiry of the five-year period and before the application for revocation is made **(0.5 marks)**,

1 mark

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- iv) provided that, any such commencement or resumption of use after the expiry of the five-year period **(0.5 marks)** but within the period of three months **(0.5 marks)** before the making of the application **(0.5 marks)** shall be disregarded **(0.5 marks)** unless preparations for the commencement or resumption began **(0.5 marks)** before the proprietor became aware that the application might be made **(0.5 marks)**.
3 marks
- v) There are no proper reasons for non-use. **1 mark**
- vi) Use of a trade mark includes use in a form differing in elements **(0.5 marks)** which do not alter the distinctive character **(0.5 marks)** of the mark in the form in which it was registered.
1 mark
- vii) Use in the United Kingdom includes affixing the trade mark to goods/packaging **(accept either)** in the United Kingdom solely for export purposes. **1 mark**
- viii) Alternatively, a mark may be declared invalid if, in consequence of acts or inactivity of the proprietor **(1 mark)**, it has become the common name in the trade **(1 mark)** for a product or service for which it is registered.
2 marks
- ix) Alternatively, a mark may be declared invalid if that in consequence of the use made of it **(1 mark)**, by the proprietor or with his consent **(1 mark)**, in relation to the goods or services for which it is registered, it is liable to mislead the public **(1 mark)**, particularly as to the nature, quality or geographical origin of those goods or services **(0.5 marks for any two up to 1 mark)**.
4 marks
- x) Where grounds for revocation exist in respect of only some of the goods/services for which the trade mark is registered, revocation shall relate to those goods/services only.
1 mark
- 17 marks**
- b)
- i) The applicant has a right to instigate proceedings in court **(1 mark)**.
- ii) If proceedings concerning the trade mark in question are pending in the court, the application must be made to the court **(1 mark)**.
- iii) If, in any other case, the application is made to the registrar, he may at any stage of the proceedings refer the application to the court **(1 mark)**.
3 marks

Total: 20 marks