

Introduction

This was a reasonably well-answered examination, with almost all candidates doing sufficiently well to pass. There were few high scores. This year there were fewer questions that permitted candidates to easily amass full points.

The paper did demonstrate gaps in candidates' practical ability to understand and apply, rather than recite, the law. Questions – particularly in Part B - were generally not answered in the depth required. In particular the word 'explain' demands more than a recitation of the statute or a leap to a conclusion.

Part A

Question number	Comments on questions
Question 1	<p>This straightforward question examined the cascade principle of jurisdiction. The scenario sought to limit some of the options available.</p> <p>It was well answered by most candidates. Some candidates wasted time with unnecessary points about, for example, the jurisdiction of the Spanish courts: something the question sought to exclude. It is important to apply the relevant points of learning to the facts set out in the question, rather just recite rote learning.</p>
Question 2	<p>This question concerned the calculation and effect of renewal deadlines.</p> <p>It was generally well answered. Some candidates demonstrated that they were not up-to-date with their law; failing to remember that renewal dates of EUTMs are no longer rounded up to the end of the month. Candidates must also clearly distinguish late renewal within the grace period, from <i>restitution</i>.</p>
Question 3	<p>This question concerned the requirement to register an exclusive licence.</p> <p>This question was not answered universally well. It required the recitation of a statutory provision about licensing formalities, and a brief explanation of what these provisions mean. Admittedly it is one of the more complicated provisions of the Trade Marks Act. Licensing is just as important to IP practice as getting registrations.</p>

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Question 4	<p>This question examined 'conversion'. It was in a common format for such questions, and generally well answered.</p> <p>There was no need to waste time speculating on meanings of the trade mark at issue in EU languages other than those stated by the question.</p>
Question 5	<p>This question was about exhaustion.</p> <p>It was generally well answered, although an unexpectedly large number of candidates did not appreciate how basic EU exhaustion principles affect the ability to enforce <i>national</i> marks.</p> <p>A brief <i>discussion</i> about valid reasons for opposing further commercialisation, in light of the facts given in the scenario (the commercial need to pay for TV adverts), was required for full marks. This was universally overlooked.</p>
Question 6	<p>This question about shape marks was answered moderately well.</p> <p>Candidates generally did not know that 'shape marks' generally attract distinctiveness objections as well as the more specific statutory exclusions.</p> <p>Candidates were generally good at remembering that acquired distinctiveness does not overcome the specific statutory exclusions for shape marks.</p>
Question 7	<p>A question about generic names and their ability to serve as trademarks.</p> <p>Like question 6, general 'lack of distinctiveness' should not be overlooked, even where more specific absolute grounds for objection exist.</p>
Question 8	<p>This was a poorly answered question about copyright. This question relied on candidates knowing that copyright cannot be cited in EU opposition proceedings.</p>
Question 9	<p>This was a question about the defence provided through the holding of a registered trade mark.</p> <p>It was moderately well answered. There were many intelligent and incorrect guesses at a question that was designed to probe an understanding of this statutory provision, rather than an ability to recite its wording.</p> <p>Most candidates omitted this answer.</p>

Part B

Question number	Comments on question
Question 10	<p>This question, about the effect of differences between trade marks in various situations, was not well answered.</p> <p>Too many candidates fixated on the idea of very minor changes being permissible, without remembering that this is so only in three situations; even though they had been earlier asked to cite those three situations!</p> <p>Many candidates did not appreciate that the registration of a mark can be lawful, even if it is used in a modified form in order to comply with the law.</p>
Question 11	<p>Most candidates scored full or nearly full marks for this question - concerning the differences between priority, seniority and basic registrations. This was entirely attributable to candidates working hard to learn this area of law.</p>
Question 12	<p>This was the worst answered question in the whole of the paper. It gave an archetypal 'well known mark' situation, and then invited candidates to compare the similarity of two products.</p> <p>Many candidates missed (or only mentioned in passing) the former point, and most jumped straight to a conclusion on the latter point without conducting any analysis, and therefore missed most of the points available. Every sentence in every question has a role to play in the answer. If a candidate does not address a particular fact given in a scenario, they are almost certainly on the wrong track.</p> <p>Rubric instructions such as 'Do not to address passing off' should be heeded, so as not to waste time.</p>
Question 13	<p>A straightforward question about 'marks with a reputation' of a type that comes up virtually every year. Few candidates scored more than half marks, due to a lack of analysis. Generally, the statute was quoted and a conclusion leapt to. Each element of the 'mark with a reputation' provision needs to be applied against the scenario presented, such as an explanation as to how 'detriment to repute' might occur in the scenario presented. 'Due cause' is also widely overlooked.</p>
Question 14	<p>This question primarily probed candidates' understanding of 'goodwill' and relate concepts. The easier sub-questions were answered universally well. The more difficult sub-questions not</p>

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	<p>so. Too many candidates talked about 'reputation' and 'well known' marks in an ordinary English sense of the words, rather than the statutory sense.</p> <p>Many candidates omitted this question. Possibly because it was not in the format of the typical FC5 'scenario' question used for examining candidates' knowledge of passing off law.</p>
Question 15	<p>A badly answered question probing knowledge of one of the three case law judgments on the syllabus. Possibly candidates have rote-learnt the famous part of the <i>Windsurfing</i> case that relates to proving acquired distinctiveness, and not the part that deals with the registrability of geographic names. The question heavily suggested points to be addressed in candidates' analysis, and few if any candidates picked up on these. Again, every sentence in every question has a role to play in the answer: if a candidate does not feel the need to address a particular fact given in a scenario, they are almost certainly on the wrong track.</p> <p>Many candidates omitted this question, possibly because of its focus (case law) or more likely because they had worked their way systematically through the paper.</p>