

## Examiner's Report 2015 FC5 (P7) – Trade Mark Law

### Introduction

This year's examination tested candidate's knowledge of the law and also, their ability to apply the same. The spread of questions in the paper ensured that candidates were tested on all the specified areas of trade mark law – including different filing systems, filing processes, prosecution/examination, opposition and post registration issues.

A lot of marks were available if candidates recited the provisions of the statute/articles in the syllabus. Those with the higher marks were the ones who took it one step further and applied the law.

The best papers were written by those students who used methodical and precise answers. Some of the questions could be answered with a number of points and the candidates with the strongest answers were those who were precise with their answer. One of the best scores was actually one of the shortest papers.

### Questions

#### Part A

Question number	Comments on questions
<b>Question 1</b>	<p>This question tests candidates' knowledge of the effect of a CTM and the second part of the question then tests the candidates' application of the principals from a practical perspective.</p> <p>The question was generally well answered with the second part of the question being answered more poorly. It required candidates to know how to apply the law and not only recite it.</p>
<b>Question 2</b>	<p>Generally a well answered question. This question is a good example of how being logical in an answer can assist in gaining a candidate extra marks. If candidates had learnt the filing process, it was easy to gain marks as candidates needed to go through step by step the process. This also helps candidates pick up extra marks, for example, if the fees are not paid, what are the consequences. Running through the process logically, can act as a reminder to candidates as to peculiarities/precise details,</p>
<b>Question 3</b>	<p>If candidates had revised as per the syllabus, this was an easy question to score marks on as the majority of the marks came from citing the law.</p>
<b>Question 4</b>	<p>Again, this is another question where if candidates stepped through the process of filing observations logically, easy marks could be picked up.</p> <p>Candidates should also remember to be precise in their answers. It is not enough to state file observations at the UKIPO – how should they be filed?</p>

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<b>Question 5</b>	<p>This question tested candidates' knowledge of the formalities regarding the filing of a formal notice of opposition.</p> <p>These are basic provisions which had candidates studied the syllabus, they should be able to refer to in their answers.</p>
<b>Question 6</b>	<p>This was a well answered candidate, tackled by most candidates.</p> <p>If candidates had learnt the relevant provisions of the act, they easily achieved the full marks available for this question by reciting the provisions in a logical and methodical manner.</p>
<b>Question 7</b>	<p>This question tested candidates' practical knowledge of conversion and how it works in practice. The information asked for was of a basic level and therefore, candidates should not feel that we are asking for answers where they will not be practising in. This is basic information which all students should have a good grasp of.</p>
<b>Question 8</b>	<p>On the whole the question was well answered, requiring candidates to explain the provisions regarding replacement.</p>
<b>Question 9</b>	<p>This was the least popular question by far but for those who tackled it, they generally scored well as they had obviously learnt the provisions. Marks could have been gained by candidates if they referred to the specific articles. The question asked for this specifically and therefore, candidates should take care to ensure they do as the question asks.</p>

### Part B

Question number	Comments on question
<b>Question 10</b>	<p>This was the first question in the higher mark section of the paper. If a question is worth ten marks, candidates need to bear in mind that two or three marks are unlikely to score high marks.</p> <p>Most candidates picked up on the obvious marks for the answer, that is seek consent, opposition on absolute grounds. The higher marks were gained for thinking about less obvious points for example, opposition on the basis of a well-known mark, claiming priority, copyright.</p>
<b>Question 11</b>	<p>This question highlights the importance of reading the whole question before starting to answer the question. A few candidates discussed in section a) opposition under Article 8(4) when clearly the question asks for this in section b).</p> <p>For those who scored high marks, they went further than only stating the obvious points in respect of the basis of the grounds of opposition however, very few out the finer details such as apply to register the mark yourself re Article 8(3) and to rely on a Passing off claim under</p>

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	Article 8(4), the mark does not necessarily have to be in use.
<b>Question 12</b>	<p>This was by far the least popular question of the paper but generally, those who tackled it scored well.</p> <p>Candidates recognised that the question was based on the principals of the Chimsee case. There were a lot of marks on offer if candidates carefully stepped through the case law and the provisions set out in the case.</p> <p>When answering a question, candidates should try to answer completely. Many students would say one could file evidence of use but not then go on to elaborate what sort of evidence would be needed. The candidate probably knows this but in not commenting, they missed easy marks.</p>
<b>Question 13</b>	<p>This question required knowledge of the law and then the practical application thereof.</p> <p>If candidates had learnt the processes for claiming seniority, easy marks for part d) where available.</p>
<b>Question 14</b>	<p>This question is a good example of when good examination technique plays a part to gaining marks. If the question asks for four names and offers two marks, candidates can easily work out that each answer is worth half a mark and therefore, they need to be accurate in their answers.</p> <p>Section c) was very well answered with most candidates scoring the maximum amount of marks available. Marks were picked up with more concise answers where they followed a basic structure from the start to the finish of the application processes, with candidates making comparisons as they went along. This meant candidates did not miss easy marks but also meant answers were concise, saving candidates time.</p>
<b>15</b>	<p>The paper had already tested on the basic provisions relating to conversion/transformation and so candidates could pick up easy marks by regurgitating their answer and adding to the same.</p> <p>The purpose of this question was to test the finer details of conversion/seniority.</p> <p>Most candidates who tackled this question attained marks of ten or more so on the whole, a well answered question.</p>