

FC5 Trade Mark Law 2025

Section / article numbers are not required.

Half marks are available for answers insufficiently precise to attract a full mark

Question 1 - Paris Convention

Eddie, a British national who lives and works in the UK, manufactures garden ornaments under the brand GRANDEE, but holds no trade mark registrations.

Eddie's brand has, in the last three years, become very well known in UK design circles. However, he has become alarmed at a recent attempt to register an EU trade mark for an identical name, for garden ornaments.

Explain whether Eddie can use Article 6bis (Well Known Marks) of the Paris Convention to oppose this EU trade mark application.

2 marks

Answer

There does not appear to be any evidence to suggest this is possible [1 mark¹]:

Article 6(2)(c) EUTMR applies Article 6bis PC, and permits a well-known unregistered mark to serve as a 'earlier mark' for relative grounds purposes if (but only if) the mark is well-known in a Member State [1 mark²] of the EU.

2 marks

Question 2 – Madrid Protocol

Shula is a British national. Under what circumstance can she use the Madrid Protocol with an EU Trade Mark serving as the basic registration?

3 marks

Answer

Article 2 (1)(ii) MP provides that Shula can do this only if she is domiciled in the EU [1 mark¹] or has a real and effective [1 mark²] industrial or commercial establishment [1 mark³] in the EU.

3 marks

Question 3 - Laws of Member States of the MP

- a) Describe i) when and ii) to whom a Form MM18 (E) *Declaration of Intention to Use the Mark* must be submitted when seeking trade mark protection designating the USA via the Madrid Protocol.

2 marks

- b) Describe i) when and ii) to whom a Section 71 *Declaration of Use and/or Excusable Nonuse* must be submitted to maintain a Madrid Protocol trade mark designation for the USA.

5 marks

- c) Describe any additional information that must be submitted with either Form MM18E or a Section 71 Declaration.

3 marks

Total: 10 marks

Answer

Part (a)

- i) On filing a MP application **[0.5 mark¹]** or subsequent designation **[0.5 mark²]**, designating the USA.
- ii) To the applicant's Office of Origin (application) **[0.5 mark¹]** or to WIPO (subsequent designation) **[0.5 mark²]**

Allow as an alternative, to WIPO following an irregularity notice for it being missing) **[0.5 mark³]**

2 marks

Part (b)

- i)
- between five and six years **[1 mark¹]** of grant of protection **[0.5 mark²]**
 - and then between nine and ten years **[1 mark³]** of grant of protection (i.e not on renewal) **[0.5 mark⁴]**,
 - and then within a corresponding window every 10 years of grant of protection thereafter (again, not on renewal) **[1 mark⁵]**
- ii) to the USPTO **[1 mark¹]**

5 marks

Part (c)

Only the Section 78 Declaration requires additional information **[1 mark¹]** namely one current specimen **[1 mark²]** of use per class of products/services **[1 mark³]**

3 marks

Total: 10 marks

Question 4 – EU Trade Mark Law

Set out the time limits (including the dates from which these are measured) for applying to convert an EU trade mark application or EU trade mark into national applications.

6 marks

Answer

Article 139 EUTMR sets out the following:

Triggering event	Period	from
Application is deemed to be withdrawn [0.5 mark ¹]	3 months [1 mark ²]	Date of the communication fixing the period [0.5 mark ³]
Application is withdrawn [0.5 mark ⁴] or		Date of withdrawal / cessation [0.5 mark ⁵]
EUTM ceases to have effect due to surrender/non-renewal [0.5 mark ⁶]		Date of withdrawal / cessation [0.5 mark ⁷]
Application is refused [0.5 mark ⁸] or		Date the decision acquired the authority of a final decision [0.5 mark ⁹]
a EUTM ceases to have effect by decision of the EUIPO/Court [0.5 mark ¹⁰]		Date the decision acquired the authority of a final decision [0.5 mark ¹¹]

6 marks

Question 5 – Relative Grounds

Your client is looking to initiate invalidity proceedings against an EU trade mark that was filed and registered in 2024.

Discuss the feasibility of the following proposals:

- a) To rely upon a UK trade mark that became fully registered in July 2020 as an ‘earlier mark’. The trade mark has been in continuous use in the UK since its registration date.

1 mark

- b) To rely upon an EU trade mark that also became fully registered in July 2020 as an ‘earlier mark’. The trade mark has been in continuous use in the UK since its registration date, but no evidence of use in another EU Member State is available.

3 marks

Total: 4 marks

Answer

- a) EUIPO Communication 2/20, section V, provides that as from 1 January 2021, UK rights cease to be ‘earlier rights’ for the purposes of inter partes proceedings [1 mark¹].

1 mark

- b) EUIPO Communication 2/20, section V, provides that such use would in principle be accepted by the Cancellation Division. **[1 mark¹]**, but only use up to 31 December 2020 will be taken into account **[1 mark²]**. Hence proceedings will need to commence by 31 December 2025 at the latest **[1 mark³]**

3 marks

Total: 4 marks

Question 6 - Application Process

Set out the circumstances in which an application for a UK trade mark can be amended or restricted.

6 marks

Answer

Section 39 TMA provides that the applicant may at any time restrict the goods or services covered by the application **[1 mark¹]**

In other respects, an application may be amended only by correcting—

- (a) the name or address of the applicant **[1 mark²]**
- (b) errors of wording or of copying **[1 mark³]** , or
- (c) obvious mistakes **[1 mark⁴]**,

and then only where the correction does not substantially affect the identity of the trade mark **[1 mark⁵]** or extend the goods or services covered by the application **[1 mark⁶]**

Amending classifications, or adding a limitation or disclaimer, **[1 alternative mark⁶, beyond the syllabus]**

6 marks

Question 7 – Priority

On 1 September 2012, David applied for a UK trade mark FIELDBROOK, for apples, but it lapsed in 2022.

On 1 December 2024, David filed a fresh UK application for FIELDBROOK, for apples and pears. He now wishes to apply for an EU trade mark.

Explain what priority date(s) (if any) David can claim.

3 marks

Answer

David cannot claim priority as the property period has expired. **[1 mark¹]**

Both the 2012 mark (in the case of apples and the 2024 mark (in the case of pears) served as first publications **[1 mark²]** from which the 6 month **[1 mark³]** priority periods will have been calculated.

3 marks

Question 8 – Property Transactions

Jennifer, owner of UK trade mark 42424242, has recently died. In her will, she appoints Usha as personal representative of her estate, with Adam as her sole beneficiary.

- a) Explain what documents need to be executed to fulfil the requirements of the *Trade Marks Act*, in order to allow Adam to become the new owner of the mark. (Do not discuss general probate documents not mentioned in the *Trade Marks Act*.)

2 marks

- b) Set out any statutory deadline under the *Trade Marks Act* for the filing of these documents with the UKIPO, and the consequences of not meeting the deadline(s).

2 marks

Total: 4 marks

Answer

Applying section 24 and 25 TMA:

A testamentary disposition/assent **[1 mark¹ for either]** needs to be drafted transferring property from the estate to Adam

An IPO form needs to be completed to register the assent at the IPO **[1 mark²]** (a Form TM16)

2 marks

Registration must occur within 6 months of the assent **[1 mark¹]**. Otherwise, if the mark is infringed before the particulars of the transaction are registered, in proceedings for such an infringement, the court shall not award him costs **[1 mark²]**.

2 marks

Total: 4 marks

Question 9 – Infringement

Under what circumstances may a court order a defendant to destroy their infringing goods?

2 marks

Answer

Section 15 TMA provides that destruction may be ordered if it is not reasonably practicable **[1 mark¹]** for the offending sign to be erased, removed or obliterated **[1 mark²]**.

2 marks

Total for Part A: 40 Marks

Part B

Question 10

- a) 'Molly Malone' (also called 'In Dublin's Fair City') is a well-known song in the UK, recounting the life and death of an impoverished Irish fishmonger.

Your client, Twinkle Winkles plc, sells frozen shellfish throughout the UK. It plans to use the song 'Molly Malone', both with and without lyrics, in its TV and online adverts. Twinkle Winkles also occasionally sets up wheel-barrow-shaped promotional stands within supermarkets, and is planning to play 'Molly Malone' from speakers under the stands.

The sales director of Twinkle Winkles, Ruairi, has asked you to register the song 'Molly Malone' as a trade mark.

Twinkle Winkles currently sells mussels, winkles and clams, but wants protection for all edible sea molluscs and other similar seafood, as it can foresee having to harvest new species as sea temperatures rise in the coming years.

Advise Twinkle Winkles whether registration of the song, both with and without lyrics, is possible. Only address absolute grounds.

13 marks

- b) Ruairi says he is a little concerned. 'Molly Malone's chorus repeats the phrase '*Cockles and mussels, alive-alive-o*'. However, Twinkle Winkles presently does not sell cockles, nor does it sell live shellfish: rather its shellfish are killed during the flash-freezing process within minutes of being landed on the trawler.

Could this represent a problem for the proposed registration?

2 marks

- c) Ruairi is also concerned at a campaign being organised by a pressure group, No Hate in Ads. The group engages in civil disobedience and legal action to prevent advertisers using songs it does not approve of. No Hate in Ads has previously issued a press statement denouncing 'Molly Malone' as '*unacceptable*', as it '*perpetuates the sexualisation of exploited working poor under colonial rule*'.

Could this represent a problem for the proposed registration?

2 marks

- d) 'Molly Malone' comes from a genre of song called 'Music Hall' (or 'Vaudeville'). Music Hall was a popular form of entertainment before the advent of cinema; an aspect of which involved entertainers encouraging their audiences to sing along with them to catchy songs. 'Molly Malone' has been recorded many hundreds of times since.

Could this represent a problem for the proposed registration?

3 marks

Total: 20 marks

Answer:

Up to 1 mark for any suitable contribution towards the analysis (including the following), up to a total of 20 marks:

Section 3(1)(a) (Up to 4 marks)

- A sound mark is certainly capable of serving as a trade mark.
- *Sieckman*? Clarity and precision is the principal issue here:
 - The name of a song would not be sufficient.
 - There is no way of representing the song with and without lyrics in a single application.
 - Musical notation is allowable, but can capture a particular melody line/setting only and the sound will differ from instrument to instrument and voice to voice.
 - Need to check with the IPO if it allows recordings in certain formats (in fact it does).

Section 3(1)(b) (Up to 2 marks)

- Consumers are unaccustomed to relying on the sound of music alone (without any other branding) to indicate trade origin.
- Rather a song is likely to be perceived just as music to accompany the advertisements, especially as the song is relevant to the industry at issue.

Section 3(1)(c)

- A song is not descriptive of any characteristic of shellfish

Section 3(1)(d)

- There is no indication that the song is used by anyone else, let alone has become customary

Acquired Distinctiveness

- There is no possibility of arguing acquired distinctiveness in this case as use has not commenced.

Total for 3(1) discussion – 9 marks

Section 3(2)(a) –

- A song is not a characteristic of shellfish **[0.5 mark⁹]**

Section 3(2)(b) –

- A song is not provide any technical result to shellfish **[0.5 mark¹⁰]**

Section 3(2)(c)

- The song does provide any value to shellfish **[0.5 mark¹¹]**

Section 3(3) (Policy, morality, deception) [0.5 mark¹²]

- On the facts up to this point, no objection

Section 3(4), (4A-D) (Legality) [0.5 mark¹³]

- No objection

Section 3(6) (Bad faith). [1 mark¹⁴]

No objection, in particular as the specification will not be regarded as overwide as use across its breadth is foreseeable in future.

Conclusion [0.5 mark¹⁵]

Any clear, actionable conclusion – e.g. the song is not currently registrable.

Total for discussing remainder of section 3 / conclusion - 4 marks

Part b)

Section 3(3)(a) provides that a trade mark shall not be registered if it is of such a nature as to deceive the public (for instance as to the nature or quality of the goods). **[1 mark¹]**.

For the version with lyrics (the only mark to which the objection might apply), it is very unlikely that the words within a well-known song will be taken literally and consequently it does not appear that this provision is breached **[1 mark²]**

Total: 2 marks

Part c)

There is risk of opposition under section 3(3)(a), which provides that a trade mark shall not be registered if it is contrary to public policy or to accepted principles of morality **[1 mark¹]**.

The level and extent of offence that needs to be met is high, and unlikely to be made out in this instance **[1 mark²]**.

Total: 2 marks

Part d)

Section 5(4) provides that a trade mark *shall not be registered if, or to the extent that its use in the United Kingdom is liable to be prevented by virtue of an earlier right ... in particular by virtue of the law of copyright* **[0.5 mark¹]** in an opposition/invalidity action brought by the owner **[0.5 mark²]**.

Although the song is 'old' it is not outside the bounds to possibility that it (or any orchestration) is still in copyright – this needs to be checked. **[1 mark³]**. Likewise there might be rights in the recording for which permission will be required. **[1 mark⁴]**.

Total: 3 marks

Total: 20 marks

Question 11

Your client Phil is a craftsman specialising in glass blowing and glass cutting. He makes very expensive water and wine glasses, decanters and vases, which he sells through boutique homeware stores throughout Europe.

Phil has applied to register the following UK trade mark:

Mark	Priority	Filing Date	Goods
SILVERY GRACE	EU Trade Mark 40302010 dated 1 June 2025	1 September 2025	Glassware (Nice class 21)

The trade mark has been examined, and the examiner has cited the following registration, owned by Grace & Co (Cutlers) Ltd:

Mark	Priority	Filing Date	Goods
GRACE'S SILVER		1 April 2020	Cutlery (Nice class 8)

Phil understands that Grace & Co has been selling cheap mass-produced cutlery sets (i.e. of knives, forks and spoons), exclusively through 'Pound stores' - stores catering to budget shoppers, which charge a fixed £1 per item.

Advise Phil whether his application is vulnerable to opposition. Only discuss relative grounds. Do not discuss passing off or 'marks with a reputation'.

20 marks

Answer

Up to 1 mark for any substantial contribution towards the analysis of this scenario (such as those indicated below), up to the total indicated:

Enforceability of the earlier mark

The registration date of the earlier mark is not given. Nevertheless as applications take more than two months to register (not least because of the advertisement period), the earlier mark will be enforceable without evidence of use, as it will be less than five years from the priority date of the application **[1 mark¹]**.

1 mark¹

Average Consumer

We must ignore the superfluous facts about the respective markets, and look only at the application. The products will in general be sold to the general public.

Nevertheless, that consumer is likely to spend above-average care, as these are products likely to be studied closely prior to purchase.

2 marks

Similarity of Marks

Aural

Each mark contains the word(parts) SILVER and GRACE albeit in the reverse order.

The only different sounds “y” and “s” are in the middle of the mark, and so will be less likely to be heard.

2 marks

Visual

Each mark contains the word(parts) SILVER and GRACE albeit in the reverse order.

The only different letters “y” and “s” are in the middle of the mark, and so will be less likely to be observed.

2 marks

Conceptual

Both marks would be understood to have conceptual meaning:

- SILVERY GRACE would be understood as an adjective and a noun, meaning style.
- GRACE’S SILVER would be understood as a name (Grace) and a product being sold (silverware).

Hence there are very different conceptual differences.

2 marks

Overall

The visual aspect is likely to be given more weight in a retail environment. Overall the marks would enjoy a **medium similarity**.

1 mark

Total SOM – 7 marks

Similarity of Goods

It is important to address the goods as listed in the specification, regardless of the markets which in practice they are being sold into.

Users? The goods would appeal to identical users.

Nature? Both products are for tableware. However, they are of different materials and will be manufactured through different processes.

Value? Both products (as registered) cover a range of price-points from budget to luxury.

Purpose? Both are used for eating.

Method of use? – The products are used differently.

Complementary? The products are clearly highly complementary.

Competitive? The products are not substitutable or otherwise competitive.

Distribution channels? These are likely the same, with the products placed close or even next to each other in stores and catalogues.

Manufacturing origin? It is perfectly conceivable that the same manufacturer will produce both items.

6 marks

Overall –The complementarity of the goods is particularly strong. Overall, there is a **high similarity** between the goods.

1 mark

Total SOG – 7 marks

Likelihood of confusion

Enhanced distinctiveness – The mark is being used, but no evidence is presented.

A medium similarity of the marks is reinforced by a strong similarity of the goods. Even though the average consumer will take care in purchasing these products, confusion is likely.

2 marks

Conclusion

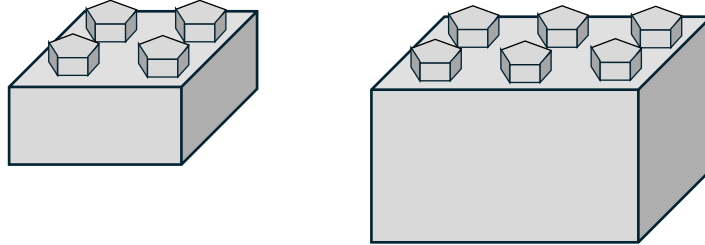
Any clear, actionable conclusion – e.g. Opposition is likely to be successful.

1 mark

Total – 20 marks

Question 12 – Passing Off

Jack manufactures interlocking toy bricks, selling them under the name PEGGIO. PEGGIO bricks are comprised with an array of pentagonal ‘pegs’, which engage with holes on the undersides of corresponding bricks in order that the bricks bind together. Examples of two bricks are illustrated here:



Jack explains that the PEGGIO bricks have been a huge commercial success in the USA. To date, UK buyers have had to order sets of bricks online from American sellers, but Jack has just signed a distribution deal with the UK’s largest toy retailer, Play-With-Us plc, which will start selling PEGGIO bricks next month. Play-With-Us has been running a major TV and online advertising campaign ‘counting down the days’ until PEGGIO bricks will be available in its shops. The adverts tell customers to look out for the ‘unique’ pentagonal pegs, and promise that the bricks bind more tightly together than the market-leading bricks, allowing taller structures to be built, and wider spaces to be spanned.

However, Jack has discovered that a rival manufacturer, Duplico Ltd, has recently started manufacturing bricks with pentagonal pegs, and is distributing them for sale through independent toy stores. He believes Duplico has moved quickly to design, manufacture and distribute its bricks as soon as adverts for PEGGIO bricks started airing. Jack is also upset that DUPLICO bricks use cheap virgin plastic rather than recycled plastic, and so will have a lower retail price than PEGGIO bricks.

Advise Jack whether Duplico Ltd can be held liable for passing off. Do not discuss any other intellectual property right.

17 marks

Suggest the remedies that would be appropriate in a case such as this.

3 marks

Total: 20 marks

Answer

Up to 1 mark for any substantial contribution towards the analysis of this scenario (such as those indicated below), up to the total indicated:

Goodwill (*NOW TV being the lead UKSC case on this issue*)

- Goodwill must be in relation to repeat sales in the UK [**1 mark¹**]
- The commercial success of the product in the US sales, no matter how large, is insufficient to generate goodwill [**1 mark²**]
- Goodwill is not mere knowledge or reputation, and the Play-With-Us adverts in the UK are insufficient to generate goodwill [**1 mark³**].

- Earlier 'passive' sales to UK buyers from US sellers will not give rise to goodwill – 'active' sales promotion in the UK was required. **[1 mark⁴. Award 0.5 mark¹ for considering this point but reaching the opposite conclusion].**

Misrepresentation

- A feature of a 3D product can give rise to misrepresentation (*Dolly Blue*, *Jiff Lemon*) **[1 mark¹]**
- The 3D feature does not need to be fixed, so the pegs could constitute the instrument of misrepresentation regardless of the various sizes of bricks on which they are used. **[1 mark²]**
- For there to be a misrepresentation:
 - the defendant must replicate a feature that hitherto has only been associated with the claimant. **[1 mark³];**
 - the public must recognise that feature as an indicator of the source of origin **[1 mark⁴]**, and
 - rely on it in their purchasing decision. **[1 mark⁵]**
- The first criteria is, on the facts, made out **[1 mark⁶]**. Advertising alone is sufficient.
- A feature of a 3D product is unlikely on its own to satisfy the second criteria, as consumers are not used to relying on product shape alone as an indicator of origin (*Dolly Blue* / *Jiff Lemon*) **[1 mark⁷]**.
- It is only if the feature has acquired secondary meaning **[1 mark⁸]** (*Camel Hair Belt*) that a consumer would regard it as an indicator of origin. This requires evidence **[1 mark⁹]**
- It benefits Jack that the shape of the pegs is explicitly referenced in the advertising **[1 mark¹⁰]** although this on its own is not enough to create secondary meaning **[1 mark¹¹]**
- Key is whether a feature would be seen as serving a functional purpose or is merely arbitrary **[1 mark¹]**. Or in the words of the court "capricious" **[1 mark¹²]**
- Here, a potential functional purpose, namely the clutch-power of the pegs, has been stressed, making it more difficult to prove misrepresentation **[1 mark¹³]**
- Policy reasons will also prevent the court from allowing the monopolisation of the functional design **[1 mark¹⁴]**
- The use of additional signs makes it difficult to isolate the product feature as being a sign of origin (*Dolly Blue*) **[1 mark¹⁵]**
- There needs to be evidence that the composition of the bricks is known for there to be a misrepresentation **[1 mark¹⁶]**
- The average consumer for these products will be parents, exhibiting an ordinary degree of attention. **[1 mark¹⁷]**

Damage

To the extent that there is goodwill and misrepresentation, damage can be implied **[1 mark¹]**

Damage would take the form of diversion of sales **[1 mark²]**

and potentially reputational damage if there is evidence that the product is seen as less eco-friendly than it really is **[1 mark³]**.

Here, Jack might struggle to show that damage will be caused from the misrepresentation rather than from the mere fact of being in competition, to the level strong enough to satisfy the test in a *quia timet* action. **[1 mark⁴]**

Overall

Due to the difficulty in establishing both goodwill and misrepresentation, it is most likely that in this case there is no actionable passing off [**1 mark¹**]

Total for analysis of passing off: 17 marks

Remedies

An interim injunction would be appropriate given the imminent launch of the product [**1 mark¹**]

Otherwise Jack should seek:

- common law damages [**0.5 mark¹**] or an equitable account of profits [**0.5 mark²**] plus
- a permanent prohibitory injunction [**0.5 mark³**] plus a mandatory injunction for delivery up (or declaration on oath that the products have been destroyed) [**0.5 mark⁴**]

Total for remedies: 3 marks

Total: 20 marks

Question 13 - Defences

You act for Farmbridge, a tractor manufacturer. When making its tractor seats, Farmbridge uses a forming machine made by Acme Inc. of the USA. A vital component of the machine, the jigger, will soon need replacing; however, no spares have been available in the UK for over a year. Original Acme Inc. jiggers are made of brass, with Acme's UK registered trade mark ACME stamped into them.

- a) Satya, Farmbridge's production engineer, proposes a number of solutions:
- i) Import a jigger from Switzerland.
 - ii) Import a jigger from the United States.
 - iii) Laser-scan Farmbridge's current jigger, and use a 3-D printing machine to reproduce it exactly – noting that the ACME stamp will also be reproduced.
 - iv) Refurbish a worn-out jigger sourced from the UK, noting that the stamp will remain on the product.

Advise Satya whether any of these options infringes the *Trade Marks Act*.

4 marks

- b) Satya realises that other UK users of Acme's forming machine will also need replacement jiggers, and sees an opportunity for Farmbridge to sell these.

Advise Satya whether importing/reproducing/refurbishing 100 jiggers (as described in parts i) to iv) above) and selling them to UK users, infringes the *Trade Marks Act*.

10 marks

- c) Satya believes that, as an alternative, Farmbridge can manufacture replacement jiggers from scratch using its CNC lathe, although the quality will not be as good as the original. Acme's stamp will not be reproduced, but Farmbridge would market these to other UK users of Acme forming machines using the statement:

ACME replacement parts, made by Farmbridge Ltd

Advise Satya on the suitability of this wording and, if necessary, suggest any improvements that could be made, giving reasons for your answer.

4 marks

- d) Satya has just become aware of an existing trade mark for FARMBRIDGE protecting '*components for mechanical apparatus, including jiggers, gizmos and widgets*'. The mark is owned by Neil Farmbridge, of no relation to Farmbridge Ltd. Satya is concerned that Farmbridge Ltd will not be able to mark the CNC-made jiggers, or its packaging, with the FARMBRIDGE name.

Assuming the mark is valid and in use, advise Satya about this marking issue.

2 marks

Total: 20 marks

Answer

a)

- i) This use does not amount to “use *in the course of trade*” [1 mark¹. Allow 0.5 mark for referencing that importation is listed as a ‘use’ but that rights are exhausted]
- ii) This use likewise does not amount to “use *in the course of trade*” [1 mark¹. Allow 0.5 mark¹ for referencing that importation is listed as a ‘use’]
- iii) This use also does not amount to “use in the course of trade” [1 mark¹]
- iv) This use likewise does not amount to “use in the course of trade” [1 mark¹]

Total: 4 marks

b)

- i) The importation, offer and supply these items amounts to an infringing use under section 10(1) and (4) [1 mark¹]. However as Switzerland is an EEA member, [1 mark²] ACME’s rights will have been exhausted [1 mark³].
- ii) The importation, offer and supply these items amounts to an infringing use under section 10(1) and (4) [1 mark¹] unless supplied directly from Acme, or Acme’s consent has been given or can be secured [1 mark²].
- iii) The affixing, offer and supply these items amounts to an infringing use under section 10(1) and (4) [1 mark¹]
- iv) The offer and supply these items amounts to an infringing use under section 10(1) and (4) [1 mark¹]. However, rights will have been exhausted [1 mark²] unless there exist legitimate reasons for the proprietor to oppose further dealings in the goods for the purpose of protecting the proprietor’s property (in particular, where the condition of the goods has been changed or impaired after they have been put on the market) which is a risk here [1 mark³]. Nevertheless, the law generally allows refurbished products to be put on the market, but they must be clearly identified as such [1 mark⁴].

Total: 10 marks

c)

Section 11(2)(c) provides a defence use of the trade mark for the purpose of identifying or referring to goods or services as those of the proprietor of that trade mark, in particular where that use is necessary to indicate the intended purpose of a product or service (in particular, as accessories or spare parts) [1 mark¹] provided the use is in accordance with honest practices in industrial or commercial matters [1 mark²]. Here the statement does not make it sufficiently clear that the parts are not original ACME parts [1 mark³]. Rather the statement needs to clearly state that the parts are substitutes for ACME parts [1 mark⁴].

Total: 4 marks

d) Section 11(2)(a) provides a defence in relation to the use by an individual of his own name or address. [1 mark¹]. However as Farmbridge is not an individual, it will not benefit from this defence, this defence will not be available [1 mark²] to any infringement action unless consent can be secured.

Total: 2 marks

Grand Total: 20 marks