

LAW AND PRACTICE OF TRADE MARKS

EXAMINATION PAPER 2001

Time Allowed: 3 Hours

Answer **SIX** questions only.

Candidates **MUST** answer Question Number 1 and Question Number 2.

In the event of a Candidate failing to answer Question Number 1 and Question Number 2 the examination paper of that Candidate will **NOT** be considered valid.

1. Write notes on any **THREE** of the following cases:
 - (a) Sterling Winthrop Group Ltd v. Farbenfabriken Bayer AG [1976] RPC 469.
 - (b) Willys Overland Motors Incorporated's Application [1947] IR 344.
 - (c) Falcon Travel Ltd v. Owners Abroad Group plc [1991] 1 IR 175.
 - (d) Coca Cola Co. v. F. Cade & Sons Ltd [1957] IR 196.
 - (e) Case C-173/98 Sebago Inc. v. GB-Unic SA [1999] 2 CMLR 1317.

2. Aldos Motor Company Limited manufactures luxury cars. It has registered the mark 'Aldos' in the Register of Trade Marks in respect of Class 12 for vehicles. Harry Perry was trained as a mechanic by Aldos Motor Company Limited and worked for five years in a garage which was an authorised Aldos dealership. Last year he set up his own garage which services Aldos cars and also sells secondhand Aldos cars along with other makes of vehicle. Harry has advertised his garage in newspapers and car magazines as 'Harry Perry for Aldos Sales and Servicing'. There is also a large sign above Harry's garage which bears this message. Almost invariably cars sold by Harry have a sticker placed in the back window which reads 'Harry Perry No. 1 Dealer for Aldos'. This is regardless of whether the particular car happens to have been manufactured by Aldos Motor Company Limited.

Advise Aldos Motor Company Limited.

3. While making detailed reference to relevant decisions of the courts of the United Kingdom and the European Court of Justice, consider the extent to which the shapes of goods may be registered as trade marks.

4. Identify and discuss the provisions which you would expect to find in a properly drafted trade mark licence agreement.
5. Set out:
 - (a) The procedural steps which have to be taken in order to secure the registration of a trade mark;

AND

 - (b) The procedural steps to be followed in order to oppose the registration of a trade mark.
6. Consider the extent to which evidence as to the results of surveys can support a claim as to a likelihood of confusion on the part of the public and indicate how you would go about adducing such evidence in the most effective manner possible for the purpose of an opposition hearing.
7. Outline and discuss:
 - (a) The provisions of the Trade Marks Act 1996 that deal with removal of a trade mark from the register on the grounds of non-use.

AND

 - (b) The use requirements necessary to avoid a trade mark being removed from the register on the grounds of non-use.
8. Outline the procedure to be followed in order to apply for a Community trade mark.
9. Gulliva S.p.A. is an Italian company which wishes to apply to register 'Gulliva' as a Community trade mark in Class 38 for telecommunications. At present Gulliva S.p.A. does not trade in Ireland, but it has a number of large multinational customers that have branches or subsidiaries in this country. Last month it discovered that an unconnected Irish company, Gulliver Limited, has been operating a shop in Dublin that sells and repairs mobile telephones and arranges for the installation of intercom systems in apartment and office blocks. Gulliver Limited has been trading in the Dublin area for three years and last year had an annual turnover of approximately IR£2,500,000.

Advise Gulliva S.p.A. as to the relevance, if any, which Gulliver Limited's existence and activities will have in relation to its application for a Community trade mark and the respective rights which Gulliva S.p.A. and Gulliver Limited would be able to assert if Gulliva S.p.A. secured a Community trade mark for 'Gulliva'.

10. Write notes on EACH of the following in the context of the Community trade mark system:
- (a) Securing a filing date;
 - (b) Claiming and obtaining priority in respect of an earlier trade mark application;
 - (c) Claiming and obtaining seniority in respect of an earlier registered trade mark; and
 - (d) Appeals from decisions of the Office for Harmonisation in the Internal Market.