

## **Notes on Exam Results for Paper B 2009**

### **General Comments**

Overall, this exam was not answered very well. If candidates apply better exam techniques, then this will help them with future examinations. Some basic tips for candidates are:

- 1) Always read the question carefully and make sure to answer the question that is asked.
- 2) Do not indulge in a regurgitation of all the tests you have memorised. In most instances, this will not assist you and wastes valuable time in an exam. Use the tests wisely and appropriately.
- 3) Time appeared to be an issue with most of the candidates. Take care to stick to the time allocated for each question.

### **Question 1**

The question asked the candidate to:

- a) identify causes of action
- b) requirements for each cause of action
- c) remedies available for each cause of action
- d) provide recommendations on how the client should proceed.

Answers to a), b) and c) were generally good. Most candidates correctly identified potential infringement, passing-off, and Fair Trading Act causes of action. Candidates could also identify the correct tests for each action. But most candidates applied those tests poorly or did not even apply the tests. So most candidates did not assess the chances of success in each action, did not assess the chances of receiving any remedies, and did not provide recommendations to the client.

Several candidates wrongly concluded the other party's mark was registered and so had a defence to trade mark registration infringement. Consequently, these candidates did not assess the chances of success in an infringement action or an opposition proceeding, and missed out on crucial marks.

Other candidates calculated the opposition deadline from the date the application was accepted and not the date of publication. Always take care to read the question carefully and be careful when considering dates.

## **Question 2**

- (a) Most candidates were able to correctly describe the process for filing customs notices as a means for border protection. Most candidates scored well on this question.
- (b) This question was answered poorly. Most candidates identified Section 17(2) correctly and how the Maori Advisory Committee assists the Commissioner during examination of trade marks. Most candidates had little understanding beyond that of the application of Section 17(1)(c), the MACs role, and Sections 177-180.
- (c) When attempted, this question was answered poorly. Most candidates had little or no understanding of the Major Events Management Act 2007.

## **Question 3**

Most candidates were able to identify that the client should apply to partially revoke the registration on the grounds of non-use (Section 66(1)(a)). Candidates should take some care to ensure they use the correct terms. In more than one case, candidates referred to a non-use revocation application as an invalidity action. An invalidity action is a separate action under Section 73.

Most candidates did not comment on the possible attack against the registration on the grounds of invalidity (Section 73) because the owner of the registration is a distributor.

Almost all candidates were able to identify the correct procedures. But be careful of small errors in time frames as these can cost marks.

Almost all candidates failed to mention that use of the client's marks is likely to constitute trade mark infringement or failed to advise the client not to use the mark.

## **Question 4**

This question was answered very well by most candidates.

### **Part I**

The question asked the candidates to devise a strategy for searching the IPONZ website. Several included references to marketplace searches. Marks were not awarded for this.

## Part II

A lot of candidates regurgitated tests at the beginning of this question. This meant the candidates ended up running out of time. Be careful to focus on answering the question instead of attempting to state tests that are not subsequently referred to or relevant.

In general, assessments of the similarity of marks and the similarity of goods and services were done well.

## Part III

When attempted, the submissions were generally done poorly.

### **Question 5**

For the most part, this question was not answered well.

The question required the candidate to carefully consider whether the trade marks were similar.

Then advise on whether the mark can be used, and registered.

Most candidates could identify the three different types of protection - standard application, certification trade mark application, and collective trade mark application. But most candidates were unable to identify the advantages and disadvantages of each form of protection and apply to this situation.