

## **Examiner's Comments for Paper B 2010**

### **Question 1**

The question asked the candidate to:

- a) advise on an appropriate strategy for protecting the trade marks associated with a World Championship Event
- b) highlight any relevant legislation and laws for protecting the trade marks
- c) highlight any relevant legislation and laws for preventing counterfeit product being sold leading up to and during the tournament.

Most candidates were able to identify that the client needed to protect its trade marks under the Trade Marks Act, and once registered, recommended the applicant file Customs Notices, and record the event as a Major Event under the Major Events Management Act. However, few were able to provide a list of trade marks and classes for those trade mark applications, or provide a list of words and labels to registered under the MEMA.

Most candidates did not identify Copyright Notices under the Copyright Act as a protection means. In addition, most candidates failed to identify trade mark infringement, passing-off, and the Fair Trading Act as possible causes of action.

Metallica Orders were suggested by many candidates.

Licence arrangements were not suggested by most candidates.

### **Question 2**

Most candidates scored well on this question, and were able to put together good searching strategies and comment accurately on the registrability of each mark.

### **Question 3**

Most candidates did not score well on this section. Candidates struggled to identify all of the relevant issues. Most did not correctly identify the different causes of action available to HVL based on each of its registrations. The differences in the registrations created different risks for Landau and Muscles Limited. This also meant the candidate had to consider different strategies and defences to minimize the risks for each cause of action.

Some candidates incorrectly assumed the second registration was open for opposition, which meant they immediately were unable to consider all of the relevant issues.

### **Question 4**

This question was answered well by all candidates.

### **Question 5**

Generally this entire question was answered well.

Most candidates could accurately describe the process for recording a partial assignment, the process for recording assignments when licensees were recorded against the trade mark, and recommend an additional protection strategy.

### **Question 6**

This question was generally not answered well, and probably suffered because it was the last question in the paper.

- a) Most candidates did not accurately identify that prior use of the domain name could provide grounds for an objection to use and registration of the mark by Thomson LLP. Therefore, candidates were unable to identify any strategies for defending that objection to enable use and registration of the trade mark by Thomson LLP.
- b) Most candidates were able to accurately consider the domain name dispute resolution process as a possible cause of action for Thomson LLP. But most candidates failed to provide a conclusion for that action.