

2001 Examination for Registration as Patent/Trade Marks Attorney

General Report

Trade Mark Law

Question 1

This problem question was poorly done.

Many candidates seemed unable to distinguish substantial from trivial issues. Very few noticed that “shiploads” of saucepans bearing the HERMAN trade mark had been imported and distributed by Albert. On the other hand, far too much comment was addressed to the surname significance of HERMAN. The key point was that if Albert could not obtain registration he could not sustain his claim to ownership of the mark.

Complaining about information included in or omitted from a question is not likely to be fruitful.

Question 2

Two part questions seem to trouble many candidates even where, as in this case, there are issues common to both parts. The issues raised in both parts of this question involved basic trade mark knowledge. Most answers were disappointing.

Question 3

Three of the four chosen cases deal with fundamental issues and thorough knowledge of them is essential to trade mark practitioners. Several candidates made no attempt to deal with two or more cases and there were poor answers when attempts were made. Guessing what a case is about is not recommended.

Question 4

Answers to this problem question were of a higher standard than those to problem Question 1. However, all candidates should have been able to deal with the fact that registration is Australia wide, but reputation is frequently local. Comment on the differences between actions for infringement, passing off and breaches of the Trade Practices Act was essential to an acceptable answer.

The issue of the disclaimer was not mentioned by several candidates, but others demonstrated good understanding.

Question 5

It should go without saying that there are no right or wrong answers to questions such as these. Cogency and consistency of reasoning are what is looked for but regrettably not often shown. Two of the fact situations were closely based on (but not identical to) two important trade mark cases (Polo Textiles and Caterpillar).