Intellectual Property The Law of Trademarks Copyrights Patents and Trade Secrets 5th edition Bouchoux Test Bank

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Name:_____ Class:_____ Date:_____

Chapter 02 - Foundations of Trademark Law

1. The terms “trademark” and “service mark” are synonymous.
   a. True
   b. False

ANSWER: True
POINTS: 1
QUESTION TYPE: True / False
HAS VARIABLES: False
DATE CREATED: 9/21/2016 6:14 AM
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2. Certification marks are used by their owners to indicate that goods are of a certain quality or from a certain region.
   a. True
   b. False

ANSWER: False
POINTS: 1
QUESTION TYPE: True / False
HAS VARIABLES: False
DATE CREATED: 9/21/2016 6:14 AM
DATE MODIFIED: 9/21/2016 6:15 AM

3. To file a trademark application, one must show actual use of a mark.
   a. True
   b. False

ANSWER: False
POINTS: 1
QUESTION TYPE: True / False
HAS VARIABLES: False
DATE CREATED: 9/21/2016 6:16 AM
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4. Even token use of a mark is sufficient to secure a trademark registration.
   a. True
   b. False

ANSWER: False
POINTS: 1
QUESTION TYPE: True / False
HAS VARIABLES: False
DATE CREATED: 9/21/2016 6:17 AM
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5. For a trademark to be valid, it must be registered with the USPTO.
   a. True
   b. False

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ANSWER: False
POINTS: 1
QUESTION TYPE: True / False
HAS VARIABLES: False
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6. A generic term such as “BUTTER” (used in connection with butter) can never be registered as a trademark.
   a. True
   b. False

ANSWER: True
POINTS: 1
QUESTION TYPE: True / False
HAS VARIABLES: False
DATE CREATED: 9/21/2016 6:17 AM
DATE MODIFIED: 9/21/2016 6:18 AM

7. Once a corporation is given permission by a secretary of state to use that corporate name, it will be able to obtain a trademark registration for that name.
   a. True
   b. False

ANSWER: False
POINTS: 1
QUESTION TYPE: True / False
HAS VARIABLES: False
DATE CREATED: 9/21/2016 6:18 AM
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8. The French term “pain” (meaning “bread”) would be registrable for bread.
   a. True
   b. False

ANSWER: False
POINTS: 1
QUESTION TYPE: True / False
HAS VARIABLES: False
DATE CREATED: 9/21/2016 6:21 AM
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9. A single color can be registered as a trademark.
   a. True
   b. False

ANSWER: True
POINTS: 1

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QUESTION TYPE: True / False
HAS VARIABLES: False
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10. Hashtags can never be registered as trademarks.
    a. True
    b. False
ANSWER: False
POINTS: 1
QUESTION TYPE: True / False
HAS VARIABLES: False
DATE CREATED: 9/21/2016 6:22 AM
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11. Identify the two functions of a trademark.
ANSWER: **The functions are to provide assurance that goods are of a certain quality and to assist consumers in making purchasing decisions.**
POINTS: 1
QUESTION TYPE: Essay
HAS VARIABLES: False
DATE CREATED: 9/21/2016 6:22 AM
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12. The value inherent in achieving consumer loyalty to a product or service offered under a mark through consistent loyalty of goods and services offered under a mark is called _____.
ANSWER: **goodwill**
POINTS: 1
QUESTION TYPE: Completion
HAS VARIABLES: False
DATE CREATED: 9/21/2016 6:23 AM
DATE MODIFIED: 9/22/2016 7:56 AM

13. Identify the four types of trademarks.
ANSWER: **The four types are trademarks, service marks, certification marks, collective marks.**
POINTS: 1
QUESTION TYPE: Essay
HAS VARIABLES: False
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14. Explain how you would acquire trademark rights in a mark such that you could file a trademark application for it.

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ANSWER: **One should *use* the mark in interstate commerce. Applications must be based on actual use of the mark (more than token use). Alternatively, one may file a trademark application based on a bonafide intent to use the mark.**

POINTS: 1
QUESTION TYPE: Essay
HAS VARIABLES: False
DATE CREATED: 9/21/2016 6:25 AM
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15. Explain the benefit of an intent-to-use application.

ANSWER: **An ITU application allows one to file a trademark application for a mark without having actually used the mark. Using a mark (in advertising, etc.) can be expensive. Then, if the USPTO refuses an application, one would have incurred the expense in using the mark and not received a registration. Thus, the ITU application allows one to file a trademark application relatively inexpensively. If the USPTO refuses registration, the applicant will not have expended a great deal of money in using or marketing the mark and can select another mark and try again.**

POINTS: 1
QUESTION TYPE: Essay
HAS VARIABLES: False
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16. A party who is using a trademark without having registered it is said to have _____ rights to the mark.

ANSWER: **common law**

POINTS: 1
QUESTION TYPE: Completion
HAS VARIABLES: False
DATE CREATED: 9/21/2016 6:27 AM
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17. Identify two benefits to obtaining a trademark registration.

ANSWER:

- **Nationwide constructive use effective from the filing date of the application (meaning that the public is assumed to have notice that the registrant has nationwide priority in the use of its mark as of this date);**
- **Nationwide notice to the public of an owner's claim to a mark, thereby precluding a later user from claiming it used a mark in good faith in a remote territory and should be able to continue use;**
- **The ability to bar importation of goods bearing infringing trademarks (assuming the registration is deposited with the U.S. Customs and Border Protection);**
- **The right under the Paris Convention to obtain a registration in various foreign countries based upon the U.S. registration;**
- **The right to bring an action in federal court for trademark infringement and recover lost profits, damages, costs, and possibly triple damages and attorneys' fees;**
- **Incontestable status of the registration after five years of continuous use subsequent to**

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the registration (meaning that the mark is immune to certain challenges), assuming appropriate documents are filed;

- **The right to use the registration symbol (®) with the mark;**
- **A possible basis to claim priority to an Internet domain name; and**
- ***Prima facie* (literally, "on its face") evidence of the validity of the mark and of the registration, the registrant's ownership of the mark, and the registrant's exclusive right to use the mark in connection with the identified goods and services.**

POINTS: 1
QUESTION TYPE: Essay
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18. Some trademarks are stronger than others. Identify the five categories of marks, beginning with the weakest and ending with the strongest.

ANSWER: **The five categories of marks are generic, descriptive, suggestive, arbitrary, and coined/fanciful marks.**
POINTS: 1
QUESTION TYPE: Essay
HAS VARIABLES: False
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19. What is the biggest difference between descriptive and suggestive marks (with respect to obtaining a trademark registration for such marks)?

ANSWER: **Descriptive marks cannot be registered without a showing of secondary meaning. Suggestive marks can be registered without a showing of secondary meaning.**
POINTS: 1
QUESTION TYPE: Essay
HAS VARIABLES: False
DATE CREATED: 9/21/2016 6:30 AM
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20. Describe why functional devices cannot be registered as trademarks.

ANSWER: **Competitors and others need to be able to use a device that is functional. One party should not be able to appropriate that device in perpetuity. (One should obtain a patent for the functional device, assuming it satisfies other requirements for patentability.)**
POINTS: 1
QUESTION TYPE: Essay
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21. Discuss whether you would be able to obtain a trademark registration for SHENANDOAH VALLEY CABERNET if the product is not from that area.

ANSWER: **No. Under TRIPS, one cannot get a registration for wine or spirits that do not originate in the place identified in the mark.**
POINTS: 1
QUESTION TYPE: Essay
HAS VARIABLES: False
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22. Discuss whether you would be able to obtain a registration for LEATHERTOTE for suitcases made of plastic.

ANSWER: **No. An application for this mark would likely be rejected as being deceptive. Consumers would believe that the products offered under the mark were leather, when in actuality they are plastic.**
POINTS: 1
QUESTION TYPE: Essay
HAS VARIABLES: False
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23. The overall look and concept of a product is called its _____.

ANSWER: **trade dress**
POINTS: 1
QUESTION TYPE: Completion
HAS VARIABLES: False
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24. Describe whether you would be able to obtain a trademark registration for the color green or the color magenta for a plant fertilizer.

ANSWER: **It is highly unlikely one could obtain a registration for the color green for a plant fertilizer. The color would be functional because the green color would likely blend into the color of plants and would thus be desired by consumers. On the other hand, the color magenta would likely be registrable. There is no need to have this color available to other competitors and it does not appear that it would be desirable to consumers; thus, magenta should be registrable for the plant fertilizer.**
POINTS: 1
QUESTION TYPE: Essay
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25. The federal statute that governs trademarks is called _____.

ANSWER: **the U.S. Trademark Act or the Lanham Act**
POINTS: 1
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