

<b><u>FACULTY</u></b>	: LAW
<b><u>DEPARTMENT</u></b>	: MERCANTILE LAW
<b><u>CAMPUS</u></b>	: APK
<b><u>MODULE</u></b>	: LLM TRADE MARK LAW (TML9X0C)
<b><u>SEMESTER</u></b>	: FIRST
<b><u>EXAM</u></b>	: MAIN

<b><u>DATE</u></b>	8 JUNE 2021	<b><u>SESSION</u></b>	8.30 – 14:30-
<b><u>ASSESSOR</u></b>	PROF RW ALBERTS		
<b><u>EXTERNAL MODERATOR</u></b>	ADV O SALMON SC		
<b><u>DURATION</u></b>	6 HOURS	<b><u>MARKS</u></b>	: 100
NUMBER OF PAGES: 2			

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**INSTRUCTIONS:**

- 1 Your answers must be substantiated in detail.
- 2 Submit the answers on Blackboard, alternatively email to [walberts@uj.ac.za](mailto:walberts@uj.ac.za)
- 3 This is an open-book examination. You may use any materials but are not allowed to share information with other students.
- 4 You are not allowed to be in contact with other students.
- 5 Your answers will be tested for plagiarism in general and in respect of the answers of other students.
- 6 Do not copy and paste from any sources. Answers must be provided in your own words.
- 7 Use quotation marks where literally quoting from sources.
- 8 You are welcome to contact the lecturer by WhatsApp (0823769275) during the examination.
- 9 Save your work frequently.

### **QUESTION 1**

A has a trade mark registration for the mark GOOSE for sandals. B has used the mark GOOSE for sandals for a number of years. Explain the merits of each party's case in terms of the fundamental requirements of passing off/infringement? Refer to authority in other countries as well.

**[20]**

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### **QUESTION 2**

The government makes a regulation prohibiting the use of a trade mark on any soft drink containing sugar, except in letters 1 cm high, and without any other material. This is meant to counter obesity. Explain the constitutional implications of this action.

**[20]**

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### **QUESTION 3**

X uses the trade mark PARADISE for the sale of vegetables, and has a registration for the mark for "retail services". Y sells fruit under the name PARADISE and has filed a registration for "fruit". Analyse the legal position of the parties with reference to case law and academic writings.

**[25]**

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### **QUESTION 4**

X sells counterfeit DVDs. The packaging of the DVD is blank except for the back, where it is stated "Michael Jackson's Greatest Hits". MICHAEL JACKSON is a registered trade mark. Does this amount to infringement? Differentiate between the position in South African, English and Australian law.

**[15]**

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### **QUESTION 5**

TESLA is a registered trade mark for cars. The cars are expensive and very prestigious. A company manufacturing pistols wants to adopt the mark. Would that amount to an unfair advantage as envisaged in section 34(1)(c) of the Trade Marks Act? Refer to case law in your answer.

**[20]**

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**TOTAL MARKS: [100]**