Exam#_____

FRANKLIN PIERCE LAW CENTER
INTER PARTES PRACTICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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INSTRUCTIONS: THIS IS AN OPEN BOOK EXAMINATION

TRUE OR FALSE [5 points ea.]

T___F___ 1. There are four types of inter partes proceedings that may be heard by the Trademark Trial and Appeal Board (TTAB).

T___F___ 2. TTAB proceedings are conducted under two sets of procedural rules and one set of rules of evidence.

T___F___ 3. The concept of standing relates to the interest of a party in the possible outcome of a preceeding.

T___F___ 4. A party must plead and prove three elements (excluding standing) to suceed as a planitiff in a proceeding based on likelihood of confusion, mistake or deception.

T___F___ 5. Proof of likelihood of confusion requires proof that the goods or services of the parties are the same or are directly competitive.

T___F___6. Any person may succeed in an opposition which alleges that a mark is descriptive of the goods described in the application.

T___F___7. A notice of opposition or a petition of cancellation is served by the plaintiff on the defendant or the defendant's attorney.

T___F___ 8. A counterclaim to a notice of opposition or a petition for cancellation may be pleaded at any time during the pendency of a proceeding.

T___F___9. A motion for summary judgment is possible in a TTAB proceeding but only on the basis of facts obtained as a result of discovery in the proceeding.

T___F___10. Discovery in a TTAB proceeding is conducted solely on the basis of the Trademark Rules of Practice.

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MULTIPLE CHOICE - More than one answer may be correct for any question. [5 points for each correct answer].

1. In a TTAB proceeding in which the complaint alleges that the defendant's mark is merely descriptive of the goods, the TTAB may consider evidence of use in the following:

   a) dictionary definitions
   b) trade journals
   c) publications of general circulation
   d) information in computer data bases
   e) all of the above
   f) none of the above

2. In a TTAB proceeding in which the complaint alleges that the defendant's mark is likely to cause confusion, mistake or deception, the TTAB considers:

   a) only the marks of the parties
   b) the marks of the parties and the goods or services in the defendant's application or registration
   c) the marks of the parties and the goods or services on which the parties are using their marks
   d) the marks of the parties and the goods or services in the defendant's application or registration and the goods or services in the plaintiff's registration plus the goods or services for which the plaintiff is using its mark
   e) the marks of the parties and the goods or services in the defendant's application or registration plus the goods or services in the plaintiff's registration plus the goods or services for which the plaintiff proves use from a date prior to the earliest date provable by applicant

3. A cancellation proceeding may be commenced:

   a) at any time against any registration on the Principal Register or the Supplemental Register
   b) prior to the expiration of a statute of limitations against any registration on the Principal Register or the Supplemental Register
   c) at any time against a registration on the Supplemental Register
   d) at any time against a registration on the Principal Register on certain grounds, at any time against a registration on the Supplemental Register, and prior to the expiration of a statute of limitations against a registration on the Principal Register or certain grounds
   e) none of the above

4. The time to answer a notice of opposition or petition for cancellation is:

a) a reasonable time considering all the circumstances of the case
b) the time specified in the order notifying the defendant of the institution of the proceeding
c) the time specified in the order notifying the defendant of the institution of the proceeding plus any extension of time granted by the TTAB
d) within 30 days after the plaintiff begins to take discovery
e) within 30 days after the defendant receives the answers to interrogatories

5. A response to a notice of opposition or petition for cancellation may:

a) admit or deny an allegation
b) plead insufficient knowledge to admit and therefore deny an allegation
c) be a motion to dismiss for failure to state a claim
d) be a motion for judgment on the pleadings
e) all of the above

6. A motion for summary judgment:

a) argues solely on the basis of law
b) demonstrates that there is no issue about each material fact necessary to support the moving party's claim or defense
c) points out that the other party's claim or defense has no factual support for a critical element
d) requires a showing by the moving party that there is no genuine issue of any material fact and that the party is entitled to judgment as a matter of law

7. Discovery in a TTAB proceeding:

a) starts and closes according to timing agreed upon by the parties
b) starts and closes on dates set by the TTAB
c) may have the dates reset by agreement of the parties subject to approval by the TTAB
d) may be commenced only by order of the TTAB on motion by at least one party

8. Discovery in a TTAB proceeding may include:

a) interrogatories
b) requests for production
c) requests for admission
d) oral depositions
e) all of the above

9. Responses to discovery requests may include:

a) objections based on lacked relevance
b) objection based on lack of relevance and that the response will lead to admissible evidence
c) objection based on the attorney - client privilege
d) objection based on confidentiality of information plus absence of a protective order
e) objection that the information is protected by attorney work product rule
f) all of the above

10. Evidence in a TTAB proceeding is:

a) is in the form of testimony before an Administrative Trademark Judge
b) is in the form of testimony before a Notary Public and is recorded by a court certified reporter
c) is in the form of testimony which may be taken only of individual parties and officers and employees of partnership or corporate parties
d) may include testimony plus a notice of reliance on the fruits of discovery taken of the adverse party plus a notice of reliance on copies of publicly available publications
e) may include the matter described in d) plus certified copies of public records introduced copies of public records an introduced by a notice of reliance
f) must be relevant to the issues framed by the pleadings