INTERNATIONAL & COMPARATIVE TRADE MARK LAW (1 Credit)

FINAL EXAMINATION

Professor **José A. Gómez-Segade** **Spring 2003**

Instructions:

This is a one-hour open book exam (one hour and a half for students with native language different from English). You may consult the course materials and any other materials. Yet, your examination must be your own work. Do not discuss it with other students.

Write your answers in the blue book supplied, but please use only one side of the page and observe the margin. Please write as legibly as possible, and try to present a "clean" exam. Evaluation will take into account clearness, cleanness and systematic of the written answers

Grading will be anonymous. Please **do not** put your name on anything your turn in. **BE SURE YOUR EXAM NUMBER IS ON THE BLUE BOOK. ONLY ONE BLUE BOOK IS AVAILABLE.**

Note: In all answers, please specify articles, paragraphs and sentence(s) of International Conventions. Where appropriate, personal views of the rationale behind the provisions, and differences and similarities between them would be welcome.

1.-Mr.MONET, a national of France, having its domicile in Miami (USA)Paris, has a factory of textiles in Thailand. He is owner of the registered trademarks RIVIERE in different countries, among them France, Portugal, USA, Thailand and Italy. He wants to have the trademark in China, Japan, Vietnam, Singapore Indonesia, Russia and Thailand. His counsel wants to know if he can obtain an international registration in all these countries, where the application should be filed (country of origin), which Treaties are applicable, what the consequences of the international registration are, the duration of the international registration. Please, explain your answers **[30 points]**

2.-Could you explain what is the meaning and the requirements of the seniority in the Community Trademark Regulation? Please, explain your answer. **[20 points]**

3.- What is the difference between the Paris Convention and TRIP's in relation with well-known trade marks? **[10 points]**

4.-What does it mean when it is stated that CTM has a unitary character? **[10 points]**

5. Madrid Agreement Concerning the International Registration of Marks

Madrid Agreement (Marks) (1891), revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Nice (1957) and Stockholm (1967), and amended in 1979

and

Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

Madrid Protocol (1989)

(Madrid Union)[1]

Status on February 4, 2003

State	Date on which State became party to the Madrid Agreement[2]	Date on which State became party to the Madrid Protocol (1989)
Albania	October 4, 1995	–
Algeria	July 5, 1972	–
Antigua and Barbuda	–	March 17, 2000
Armenia	December 25, 1991	October 19, 2000[7,11]
Australia	–	July 11, 2001[6,7]
Austria	January 1, 1909	April 13, 1999
Azerbaijan	December 25, 1995	–
Belarus	December 25, 1991	January 18, 2002[7,11]
Belgium	July 15, 1892[3]	April 1, 1998[3,7]
Bhutan	August 4, 2000	August 4, 2000
Bosnia and Herzegovina	March 1, 1992	–
Bulgaria	August 1, 1985	October 2, 2001[7,11]
China	October 4, 1989[4,5]	December 1, 1995[5,6,7]
Croatia	October 8, 1991	–
Cuba	December 6, 1989	December 26, 1995
Czech Republic	January 1, 1993	September 25, 1996
Democratic People's Republic of Korea	June 10, 1980	October 3, 1996
Denmark	–	February 13, 1996[6,7,8]
Egypt	July 1, 1952	–
Estonia	–	November 18, 1998[6,7,10]
Finland	–	April 1, 1996[6,7]
France	July 15, 1892[9]	November 7, 1997[9]
Georgia	–	August 20, 1998[7,11]
Germany	December 1, 1922	March 20, 1996
Greece	–	August 10, 2000[7,11]
Hungary	January 1, 1909	October 3, 1997[10]
Iceland	–	April 15, 1997[7,11]
Ireland	–	October 19, 2001[6,7]
Italy	October 15, 1894	April 17, 2000[6,7]
Japan	–	March 14, 2000[7,11]
Kazakhstan	December 25, 1991	–
Kenya	June 26, 1998	June 26, 1998[6]
Kyrgyzstan	December 25, 1991	–
Latvia	January 1, 1995	January 5, 2000
Lesotho	February 12, 1999	February 12, 1999
Liberia	December 25, 1995	–
Liechtenstein	July 14, 1933	March 17, 1998
Lithuania	–	November 15, 1997[6]
Luxembourg	September 1, 1924[3]	April 1, 1998[3,7]
Monaco	April 29, 1956	September 27, 1996
Mongolia	April 21, 1985	June 16, 2001
Morocco	July 30, 1917	October 8, 1999
Mozambique	October 7, 1998	October 7, 1998
Netherlands	March 1, 1893[3,12]	April 1, 1998[3,7,12]
Norway	–	March 29, 1996[6,7]
Poland	March 18, 1991	March 4, 1997[11]
Portugal	October 31, 1893	March 20, 1997
Republic of Korea	–	April 10, 2003[6,7]
Republic of Moldova	December 25, 1991	December 1, 1997
Romania	October 6, 1920	July 28, 1998

State	Date on which State became party to the Madrid Agreement[2]	Date on which State became party to the Madrid Protocol (1989)
Russian Federation	July 1, 1976[13]	June 10, 1997
San Marino	September 25, 1960	–
Serbia and Montenegro	April 27, 1992	February 17, 1998
Sierra Leone	June 17, 1997	December 28, 1999
Singapore	–	October 31, 2000[6,7]
Slovakia	January 1, 1993	September 13, 1997[11]
Slovenia	June 25, 1991	March 12, 1998
Spain	July 15, 1892	December 1, 1995
Sudan	May 16, 1984	–
Swaziland	December 14, 1998	December 14, 1998
Sweden	–	December 1, 1995[6,7]
Switzerland	July 15, 1892	May 1, 1997[7, 11]
Tajikistan	December 25, 1991	–
The former Yugoslav Republic of Macedonia	September 8, 1991	August 30, 2002
Turkey	–	January 1, 1999[10, 11]
Turkmenistan	–	September 28, 1999[7,11]
Ukraine	December 25, 1991	December 29, 2000[6]
United Kingdom	–	December 1, 1995[6,7,14]
Uzbekistan	December 25, 1991	–
Viet Nam	March 8, 1949	–
Zambia	–	November 15, 2001
(Total: 71 States)	(52)	(57)

[1] The Madrid Union is composed of the States party to the Madrid Agreement and the Contracting Parties to the Madrid Protocol.

[2] All the States party to the Madrid Agreement have declared, under Article 3*bis* of the Nice or Stockholm Act, that the protection arising from international registration shall not extend to them unless the proprietor of the mark so requests.

[3] The territories of Belgium, Luxembourg and the Kingdom of the Netherlands in Europe are to be deemed a single country, for the application of the Madrid Agreement as from January 1, 1971, and for the application of the Protocol as from April 1, 1998.

[4] In accordance with Article 14(2) of the Madrid Agreement, this State declared that the application of the Stockholm Act was limited to marks registered from the date on which accession entered into force, namely, October 4, 1989.

[5] Not applicable to either the Hong Kong Special Administrative Region or the Macau Special Administrative Region.

[6] In accordance with Article 5(2)(b) and (c) of the Protocol, this Contracting Party has declared that the time limit to notify a refusal of protection shall be 18 months and that, where a refusal of protection results from an opposition to the granting of protection, such refusal may be notified after the expiry of the 18–month time limit.

[7] In accordance with Article 8(7)(a) of the Protocol, this Contracting Party has declared that, in connection with each request for territorial extension to it of the protection of an international registration and the renewal of any such international registration, it wants to receive, instead of a share in the revenue produced by the supplementary and complementary fee, an individual fee.

[8] Not applicable to the Faroe Islands and to Greenland.

[9] Including all Overseas Departments and Territories.

[10] In accordance with Article 14(5) of the Protocol, this Contracting Party has declared that the protection resulting from any international registration effected under this Protocol before the date of entry into force of this Protocol with respect to it cannot be extended to it.

[11] In accordance with Article 5(2)(b) of the Protocol, this Contracting Party has declared that the time limit to notify a refusal of protection shall be 18 months.

[12] The instrument of ratification of the Stockholm Act and the instrument of acceptance of the Protocol were deposited for the Kingdom in Europe. The Netherlands extended the application of the Madrid Protocol to the Netherlands Antilles with effect from April 28, 2003.

[13] Date of accession by the Soviet Union, continued by the Russian Federation as from December 25, 1991.

[14] Ratification in respect of the United Kingdom and the Isle of Man.