This chapter focuses on ‘relative grounds’ for denying an application to register a trade mark as set out in section 5 of the Trade Marks Act 1994 and Article 8 of the European Union Trade Marks Regulation (EUTMR). It identifies ‘earlier trade marks’ and ‘earlier rights’ before turning to the tests which allow a prior mark to oppose the registration of a subsequent one. First, it reviews the so-called double identity ground, where an identical (later) mark is applied for, in the context of identical products. Second, it considers when likelihood of confusion may be established. Third, it surveys three situations referred to collectively as ‘dilution’, where the later mark may mentally evoke the earlier one in a way that is not confusing, yet still wrongful. It also explains the ‘advertising function’ of a trade mark, along with requirements relating to reputation and ‘due cause’. Finally, the chapter discusses relevant provisions governing unregistered trade marks, copyright, design right, and registered design right in the UK.
38. Relative grounds for refusal

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