

VESTIBULAR 2012

1ª Fase

INGLÊS

Instruções Gerais:

- Hoje você deverá elaborar uma **Redação** e responder às questões de **Língua Portuguesa** e de **Inglês**.
- Você terá **4 horas** para realizar as três provas.
- O verso das páginas poderá ser utilizado para rascunho. **Os rascunhos não serão considerados** para efeito de correção.
- As respostas das questões, bem como a **Redação**, deverão ser redigidas nos espaços destinados a elas, com letra legível e, obrigatoriamente, com **caneta azul ou preta**.
- Não se esqueça de **assinar as tarjetas das capas de todos os cadernos da prova**, no local indicado.
- Não se identifique em nenhuma das folhas do corpo da prova, pois isso implicará risco de anulação.

Instruções para a prova de Inglês:

A prova de **Inglês** é composta por três questões e vale, no total, 10 pontos, assim distribuídos:

Questão 1 – 3 pontos

Questão 2 – 3 pontos

Questão 3 – 4 pontos

Não se esqueça: todas as questões devem ser respondidas **em inglês**.

Estará automaticamente eliminado do processo seletivo o candidato que obtiver **nota bruta inferior a 3,0** na prova de **Inglês**.

CAN A COLOUR BE A TRADEMARK?

In the 20 years since Christian Louboutin made his first pair of ladies' shoes with shiny red-lacquered soles, his vertiginously heeled, sexy, colourful and nearly unwearable creations have become an object of desire for celebrities like [Jennifer] Lopez, Angelina Jolie and Madonna, who even lets her daughter Lourdes wear a metal-studded number. Today the puckish Frenchman is the biggest star in high-fashion shoe design, selling about 240,000 pairs a year in America at prices ranging from \$395 for espadrilles to as much as \$6,000 for a "super-platform" pump covered in crystals. The revenue of his company, Louboutin, is forecast at \$135m this year.

Yet all this could be at risk, says Louboutin's lawyer, if Yves Saint Laurent (YSL), another fashion firm, continues to gain the upper hand in a legal dispute between the two companies. On August 10th a district court in New York refused to grant a preliminary injunction stopping YSL from selling shoes with a red sole that Louboutin says infringe its trademark. The judge did not believe that a designer could trademark a colour. He asked both parties to appear again in court on August 19th to decide how to proceed with the case.

"We don't like it," says Harley Lewin of McCarter & English, an American law firm which is representing Louboutin. The judge has overreached, according to Mr Lewin, by making this a case about the justification of Louboutin's trademark rather than a ruling on a request for a temporary injunction prohibiting the sale of red-soled YSL shoes. He intends to appeal against the decision.

Louboutin sued YSL alleging that several of its rival's shoes infringed Louboutin's trademark on women's shoes with a red outsole, which was granted to the company in 2008 by America's Patent and Trademark Office. Louboutin identifies the shade it uses as "Chinese red", but argues that any confusingly similar shade would infringe the trademark. YSL's offending shoes are red all over.

In denying the request for an injunction the judge said that in the fashion industry colour serves ornamental and aesthetic functions vital to robust competition, so Louboutin was unlikely to be able to prove that its brand was entitled to trademark protection. He acknowledged that courts had recognised the use of colour in trademarks in the fashion industry before, but only in patterns with multiple designs such as the Louis Vuitton logo or Burberry check. Trademarks have been given to single colours for industrial products, such as yellow for Post-it notes.

Louboutin retorts that granting a trademark to one or several colours, such as Gucci's stripes, is the same. Moreover, it maintains that Christian Louboutin was the first to use red outsoles. Not true, says its opponent, who claims that King Louis XIV had red-heeled dancing shoes in the 18th century and Dorothy danced in ruby slippers in "The Wizard of the Oz".

The judge has made up his mind that no fashion designer should be allowed a monopoly on colour because as artists they all need to be able to use the full palette. To make this point, he imagined Picasso taking Monet to court over the use of blue in his painting of water lilies, because it was the same or close to the distinctive shade of indigo, the "colour of melancholy" he used in his Blue Period. Moreover, unlike patent law, trademarks are never about granting monopolies, argues David Bernstein, a lawyer for YSL at Debevoise and Plimpton. Trademarks are merely the right to indicate the origin of a product or service.

Susan Scafidi of Fordham University School of Law in New York says that the judge sidestepped the important question by boiling the argument down to aesthetic functionality. The true challenge of the case, says Ms Scafidi, is to determine when the use of colours on a portion of apparel is a design element and when it is a trademark. It will now be the job of an appeal court to rule on the matter. And if Louboutin loses again, the company says it will take its case all the way to the Supreme Court.

- Adapted from *The Economist* August 20th 2011

Introduction

This article from *The Economist* discusses a legal dispute between two rival fashion companies. Read the text and answer the questions below. You are advised to read the questions carefully and give answers that are of direct relevance and written in English. Copying from the article is unacceptable. In answering the questions, you may use American English or British English, but you must be consistent throughout.

(This question tests your understanding of the text, as well as your ability to identify and paraphrase the relevant pieces of information.)

Question 1

Two major fashion companies, Christian Louboutin and Yves Saint Laurent (YSL) have gone to court because of a controversy involving shoe design. In your own words, what caused this controversy? What are the facts of the case and what are the two opponents' main arguments? What did the judge decide and how did he justify his decision? What examples did he use?

(This question tests your ability to construct a balanced, considered, and fluent argument in the form of a short composition. The quotation below highlights one aspect of an important U.S. commercial law. Read the quote and answer the question. You should write about 120 words.)

The Sherman Antitrust Act, passed in 1890, prohibits “unreasonable restraints upon and monopolization of trade in interstate and foreign commerce.”
(Source: Barron’s Law Dictionary)

Question 3

In answering this question, take the Sherman Antitrust Act into account and consider the following statement: If someone steals your car, you no longer have your car, but if someone steals your idea, you still have your idea.

With all of this in mind, discuss whether Christian Louboutin’s complaint against YSL is justifiable from a legal or any other standpoint. Looking at the larger picture, you may examine the importance of brand and quality and take into account factors such as aesthetic freedom, the creativity needed in order to produce great fashion, the monetary loss or gain that might result from a “stolen” idea, and the intensely personal nature of consumer fashion preference. Is fashion art or business?
