

NATIONAL LAW UNIVERSITY, DELHI

LL.M. (Professional), II -Semester (Batch of 2019)

Online Take Home Assessment- 2020

Paper: Trademarks & Geographical Indicators

Time: 6:00 Hours

Total Marks: 50

Instructions:

1. Mail your assignments only to submissions.llmpro@nludelhi.ac.in
 2. All sections are compulsory.
 3. No clarification shall be sought on the question paper.
 4. Every Question Carries 5 marks.
 5. **Mention only your Name, Roll No. and subject name on the First page. Start writing your answers from the second page only. Do not mention your name and roll no on any other page.**
 6. Plagiarism will be strictly monitored and would lead to deduction of marks. Only the following can be copied and should be in quotes:
 - a. Legal provisions
 - b. Extracts from court judgments
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Section 1

1. Mr. Dheeraj comes up with the idea of a startup which attempts to do food delivery by drones. He comes up with a name Fooddrones.com. The company has hired 15 employees and 100 interns to do a survey of the market and find potential customers in Gurugram. He has also applied for a trademark for 'Fooddrones.com'. The mark is opposed by one Mr. Pawan, who also has come up with a mark 'Dronefood.com' for a similar start up. Would Mr. Pawan succeed?
2. Ms. Radha has mark 'Rads' for clothing. She assigned her mark to Ms. Sarita, Ms. Savita and Ms. Sangeeta. Ms. Radha dies 9 years after the registration of the mark and is survived by her legal heir Ms. Meera. Meanwhile, Savita comes across an infringement of the mark by a company called Samir textiles. Answer the following questions:
 - a. How do the rights in trademark evolve after the death of Radha?
 - b. What action can be taken by Savita about the infringement of the mark?
3. Akola group is a multi-national corporation engaged in manufacture of potato chips with the brand name 'Hangul chips', with the photo of a Hangul on the chips. The chips were launched in 2010 and were a rage across Europe. In 2014, an Indian manufacturer, Asia chips, came up with the same brand name and started selling chips with the name 'hangul chips'. Hangul applied for a trademark before entering India and applied for an infringement, arguing that the mark 'Hangul chips' is a well-known mark? What are the factors which the court would look into to determine if the mark is a well-known mark, in this case?

4. Mr. Mirza, Mr. Murad and Mr. Ali are 3 brothers who were involved in making Chikan kurtas in Lucknow. Mr. Murad goes to Nagpur and starts manufacturing Chikan using the same process and names his venture 'Murad Kurtas', no way specifying the linkage to Chikan or Lucknow. Mr. Mirza opens a new shop named 'Lucknow Chikan' where he sells Chinese machine made Kurtas in the name of Chikan kurtas. Ali decides to sue Murad and Mirza for infringement of GIs. Advise the court.

Section 2

1. Ms. Gargi has come up with a novel variety of dosa batter, unique is colour, smell and texture. While other dosa batters are white in colour, her dosa batter has a violet colour and smells of blueberries. Like her dosa batter, her idea of trademark is also unique. She applies for the mark: "A picture of a conical dosa, violet in colour, which smells and tastes of blueberries." She has submitted a sample of the dosa batter for the smell, taste and colour of the mark. Do you think she will be successful, under Indian laws, to get such a trademark? If the trademark registrar asks her to separate the elements of the mark and apply for separate trademark registrations for (i) blue conical dosa, (ii) smell of the dosa, (iii) taste of the dosa, what elements do you think are registrable under Indian laws?
2. What happens in the following circumstances:
 - a. Plaintiff files a case for infringement but defendant pleads the mark was wrongly registered. (1.5 mark)
 - b. The defendant does not do anything 4 months after a Court gives an order in the above case. (1.5 marks)
 - c. The registrar, on his own, initiates proceedings for rectification of register 5 months after the suit in (a) was filed. The plaintiff challenges the proceedings before the High court through a writ petition. Comment on the validity of registrar's act. (2 marks)
3. Mr. Kanishk envisioned a company manufacturing motorcycles. He got a registration for it under the name 'Kenpro' which in 8 years, became the leader in the market. However, with the passage of time, many brands of motorcycles came to the market which are very similar in mechanism to Kenpro. Mr. Ashish is a manufacturer of horns and he markets his horn as 'Ashohorn: Horn for Kenpro' with 'Horn for Kenpro' in extremely large letters and Ashohorn is extremely small letters. Mr. Kanishk sued Mr. Ashish for infringement. Advise the court.
4. Chaitanya is a chain of 5 star hotels spread across different parts of India. They come up with a new Coffee lounge in Bangalore as a part of their hotel there. The lounge is named 'Coorg' but does not serve coffee manufactured in Coorg. One of the authorised users of Coorg coffee, a registered GI, sues Chaitanya Hotel for infringement. Decide.

Section 3

1. Ayyappa Paniyaram is a chain of restaurants based in Tamil Nadu and Kerala, with their mark registered as 'Ayyappa Paniyaram'. They come to know across a restaurant imitating their mark in Gurugram, Haryana. The plaintiffs filed a case before the

Delhi High Court, arguing that the said hotel delivers to pockets of Delhi like Mahipalpur and Kapashera through online food delivery apps like Zomato and Swiggy. Examine if the court has jurisdiction to examine the suit.

2. What, according to you, are major differences between a GI and a Trade Mark? When do you think registration as a trademark is more favourable as compared to GIs, if the goods are manufactured in a particular geography?