

NATIONAL LAW UNIVERSITY, DELHI

LL.M. (Professional), Semester-II (Batch of 2020)

End Semester Examinations, July-2021

Paper: Trademark & Geographical Indications

Total Marks: 100

Instructions:

1. Answer **any five questions** from the following.
 2. Maximum 300 words per sub question is the word limit.
 3. No clarification shall be sought on the question paper.
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Q.1. Answer any 2 of the following: (10 x 2)

- (i) Ms. Asha opened a restaurant delivery service named 'Food.com' and got her trademark registered with the said name. Mr. Vishnu opened another such delivery service named 'Food.org'. When Ms. Asha sued for an infringement, Vishnu alleged that Ms. Asha's mark should not remain on the register as it is too generic in nature. Decide under what circumstances would the opposition filed by Mr. Vishnu fail.
- (ii) Covid Beverages Limited is a multinational corporation with 'Covidnil' as its main brand of beer. It holds a good reputation in the Indian as well as international market. After the Covid-19 pandemic, Dronacharya Pharmaceuticals comes out with 'Covidnil' medicine as an immunity booster for Covid-19. Covid Beverages Limited sues for infringement. What are the possible grounds of defence for Dronacharya Corporation?
- (iii) Mr. Alan wants to register his pictorial mark 'Elephant' for a new brand of mobile phones. Describe the steps that would be involved in doing Trademark search for this mark.

Q.2. Answer any 2 of the following: (10 x 2)

- (i) Rahul, Rajan and Nikhil are 3 manufacturers of Payyanur Pavithra Ring, a registered GI manufactured at Payyanur village in Kerala. Mr. Rajan goes to Chennai and starts manufacturing the ring, marketing it as Rajan rings, without specifying any linkage to his native place. Mr. Nikhil stays in the village but starts mass manufacture of rings using different materials and process, marketing it as Payyanur Pavithra ring. Rahul brings an action of infringement against Rajan and Nikhil. Will Rahul succeed?
- (ii) Tamaton Limited is a manufacturer of Water e-book reader. The company comes up with a new model of covers for these e-book readers which have different smells -smell of new books, smell of a library and smell of ink. It wants to register these smells as a trade mark. Advise Tamaton Limited.
- (iii) Veroit Cuhli is the captain of Indian cricket team. He endorses a particular brand of watches called 'Madonna'. Roy Electronics Limited is an Electronics store in Nagore, Rajasthan. The store does not sell Madonna watches but it has put hoardings all across the town with Veroit Cuhli endorsing Roy Electronics Limited, which is an edited version of his endorsement with Madonna Watches, with the name of Madonna watches edited out. Mr. Cuhli has assigned his rights in the advertisement to Madonna watches. Advise Madonna watches about the remedies they have.

Q.3. Answer any 2 of the following: (10 x 2)

- (i) Critically analyse 'Wines and Spirits' standard in Geographical Indications under TRIPS Agreement? What do you think are implications of such system for Indian GIs in international market?
- (ii) Sike Limited is a multinational firm which manufactures sports goods. It comes to know that counterfeit goods are being imported to India from Vietnam. Discuss the remedy and the procedure for the said remedy. What are the safeguards provided for the abuse of said remedy?
- (iii) What do you mean by dynamic injunctions? Discuss its relevance in the field of trademark law. What do you think are challenges in applying this remedy to most cases?

Q.4. Answer any 2 of the following: (10 x 2)

- (i) Ahirman Enterprises has certain reputation in the field of manufacturing automobile spare parts. It wants to enter into the field of jewelry business and does a trademark search for the name 'Ahirman Jewelers'. It finds out that the mark is registered but has not been used for past seven years. Discuss the remedy available for Ahirman Enterprises.
- (ii) Mr. Shanta Prasad had registered a trademark 'Azizi' in 1997. He assigned this trademark to 3 persons- Mr. Ali, Ms. Tiwari and Mr. Singh in separate assignment agreements. He also licensed his mark to 2 persons- Mr. Shah and Ms. Irani. After death of Mr. Shanta Prasad, Mr. Ali sued Mr. Shah and Ms. Irani for unauthorized use of the mark, as licence agreement had expired after death of Mr. Shanta Prasad. Decide.
- (iii) Banarasi Sarees is a registered Geographical Indication. Landmark Hotels, Lucknow names a saree lounge in their hotel as Banaras. The lounge has sarees and different kind of clothing from different parts of Uttar Pradesh, but does not have Banarasi sarees. Decide if the same is an infringement of GI.

Q.5. Answer any 2 of the following: (10 x 2)

- (i) Opera Gym Services is a famous brand of gyms and fitness centres in Bangalore. It offers its services primarily offline in the Metropolitan area of Bangalore. However, due to lockdown, it started offering these services online, accessible from anywhere in India through an app 'OmegaOne'. A Mumbai based watch company 'Omega' also has an app 'OmegaOne' which allows its consumers to check their fitness from anywhere in India, also providing online sessions of exercise and Yoga. Omega Watches files a case of trademark infringement against Opera Gym Services in Delhi High Court. Decide if the Delhi High Court has jurisdiction to try the case.
- (ii) Indira Farms Limited is a company engaged in manufacture of farm equipment. 'ICombine' is one of its most famous products. Amit Spare Parts LLP produces spare parts for different automobiles. It manufactured blades for use in Combine machines. However, while marketing it, the name 'For ICombine' was seen more prominently than the name 'Amit Spare Parts', although the blade could fit different combine machines. Decide if Amit Spare Parts is involved in Trademark infringement.
- (iii) Ms. Sulekha purchases 10,000 pieces of Lime LED Televisions from Japan, with 'Not for resale' written on the box of the TVs. However, she sells these TVs in Mumbai at a cost lower than the cost of Lime TVs in India. Decide if the act of Ms. Sulekha is protected under Indian law.

Q.6. Answer any 2 of the following: (10 x 2)

- (i) 'Grandma's Choice' is one of the most popular brands of Jams in Karnataka, owned by Ms. Pinto. Mr. Soni has acquired a trademark registration for the name 'Grandma's Choice'. The manufacture and sale of this brand is limited to Himachal Pradesh. Mr. Soni sues Ms. Pinto for infringing upon the mark 'Grandma's Choice'. Ms. Pinto says that she was unaware of existence of any such mark and they were using the mark since 30 years. Decide if this counts as infringement.
- (ii) Discuss the interface between Trademark and Freedom of Speech and Expression with special reference to case law.
- (iii) Ms. Manorama is an entrepreneur in the field of kitchen appliances. She has manufactured a different style of cooker which is pyramidal in shape and cooks 10% faster and more evenly. Do you think Ms. Manorama will be able to get this shape of the cooker registered as a Trade mark?