

**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Law relating to Trademark and Geographical Indication  
Semester-II (Batch: 2017-18)

LL.M. End Term Examination: May 2018

Date: 07<sup>th</sup> May, 2018

Duration: 3 Hours

Max. Marks: 70

**Instructions:**

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write anything on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.

**PART-A**

Marks

- Q.1 Mr. Kishor is a proprietor of a registered trademark 'ABC' bearing Registration No. 338997, in respect of the goods in Class 12 of the Trade Marks Act, 1999. The word 'ABC' is not only a registered trademark but forms the dominant and significant part of Mr. Kishor's group of companies. The companies carrying the name 'ABC' are engaged in industrial and trading activities in multiple fields such as manufacture of cars, jeeps, tractors, motor spare parts, farming equipments, chemicals, hotels, real estate, exports, computer software and computer systems, etc. The annual turnover of Mr. Kishor's group of companies exceeds ₹ 1,00,00,000 crore. The annual expenditure for advertisements and market development for sales promotion by the same group of companies is about ₹ 900 crore. According to Mr. Kishor, the name and trademark of 'ABC' is extremely popular in India and is associated with the products and services of his group of companies since 1985. On 20<sup>th</sup> August, 2017, Mr. Kishor came across a prospectus in respect of its public issue and for the first time he then came to know about the existence of the name which is almost the same as that of his trademark with the only difference in spelling by substituting 'ABC' for 'A&BC'. It is the contention of Mr. Kishor that the words are phonetically, visually and structurally almost identical and in any event deceptively similar. In the prospectus of group of companies run by Mr. Ram, the words 'A&BC' are more prominently written than the rest of the names. According to Mr. Kishor, Mr. Ram wishes and intends to fraudulently and wrongfully deceive members of the public into believing that his group of companies is the associate of Kishor Group of Companies or in some way connected with them and to trade on their reputation. Mr. Ram took the plea that it has used the name of 'A&BC' honestly. In the year 1974, he started his sole proprietary business in the name of 'A&BC Radio House'. After about four years, it started a partnership firm in the name of 'A&BC Seeds Company'. Mr. Ram further averred that on 1st of January, 1982, the said partnership of 'A&BC Seeds Company' was incorporated as Pvt. Ltd Company. In the name of A&BC Seeds Pvt. Ltd. Another proprietary firm by the name 'A&BC Music & Electronics' was started by him in the year 1983. Mr. Ram further stated that his products are, in no way similar to the products and businesses of the appellant. The business carried on by the respondent does not overlap with the business of any of the companies enlisted by Mr. Kishor. Mr. Ram further pleads that his mark has a reputation of its own in the name of 'A&BC' and cannot derive any benefit by the name which is alleged to be similar to that of Mr. Kishor. A suit along with an application of interim injunction is filed by Mr. Kishor against Mr. Ram for infringement.

(7)



On the given facts and circumstances, enumerate the factors to be considered by the court for grant of temporary injunction in case of trademark infringement. Answer by referring to relevant provisions and case laws.

Q.2 Answer any four of the following:

1. Define *well-known* trademark. Critically analyse the criteria for granting status of *well-known* mark along with the remedies available in case of infringement by referring to relevant case laws. (7x4 =28)
2. Explain the following terms and discuss their significance in the law of Trade Marks by referring to relevant provisions and case laws.
  - (a) Trade Dress
  - (b) Trade Description and
  - (c) Honest Trade Practices
3. Goodwill, misrepresentation and damage are the three elements of the tort of passing off, which is often referred to as the 'classical trinity' of passing off. Explain the statement in light of the important judicial decisions.
4. Discuss the concept of deceptive similarity for refusal of registration of a trade mark. Discuss the tests propounded by the courts in deciding the issue of deceptive similarity in trade marks. Can the Registrar register identical or similar trade marks in the name of different persons under the Trade Marks Act, 1999?
5. Assess the correctness of the following statements giving reasons by referring to the appropriate provisions under the Trade Marks Act, 1999:
  - (a) Descriptive words, surnames and geographical names are not *prima facie* registrable.
  - (b) A registered trademark is infringed by any advertising of that trade mark if such advertising takes unfair advantage of, is contrary to honest practices in industrial and commercial matters and also detrimental to the reputation of that mark.

### PART-B

- Q.3 Mr. Gopal Reddy is a fourth-generation weaver from Telangana who weaves a special kind of durries called the *Warangal durries*. He has won the "National Handloom Award" for 2012 and also sells the *Warangal durries* online on Amazon.com. The *Warangal durries* vary in size, the smallest being 2 feet by 3 feet to a massive 60 feet by 90 feet. The *Warangal durries* are made in tie and dye technique, using vegetable color and which are washed through running water. Warangal has been a long-standing center for durries, and according to the Handloom Export Promotion Council, Telangana and 80 % of the handwoven durries sold in Europe and American markets are woven in India. Currently, there are 22 weavers associations and societies, who are actively involved into the business of selling the *durries*. Mr. Gopal Reddy wants to apply for a geographical indications for the *Warangal durries*. (4+4+2 = 10)

In the light of the above facts, answer the following with the help of relevant provisions of the Geographical Indication Act 1999:

1. Advise Mr. Gopal Reddy, on how to apply for registration of geographical indication for *Warangal durries* under Geographical Indication Act 1999.
2. What are the effects of registration under the Act?
3. Which relevant documents will be required to be attached supporting the geographical indication application form?



- Q.4 Explain with the help of relevant legal provisions, the procedure to be followed by the Appellate Board under the Geographical Indication Act 1999. Which legal remedies can be granted for falsely applying geographical indications? (8)
- Q.5 The Paris Convention for the Protection of Industrial Property 1883 applies to patent, trademark, industrial design, utility models, service mark, trade names and geographical indications and the repression of unfair competition. Explain how this convention was a major step taken to protect intellectual work in other countries, with special reference to the enforcement of intellectual property rights. (7)
- Q.6 Write Short Notes on **any the following: (Any two)** (5+5 = 10)
- a) Nice Agreement Concerning the International Classification of Goods and Services for the purpose of Registration of Marks 1957.
  - b) *Tea Board, India v. I.T.C. Limited, CS No. 250 of 2010.*
  - c) Trademark in virtual world.
  - d) Protection of unconventional trademarks.

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