

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law relating to Trademark and Geographical Indication
Semester- II (Batch: 2020-21)

End Semester Online Examination: June 2021 (LLM)

Date: 26th June, 2021

Duration: 8 hours

Max. Marks: 50

Instructions:

- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.

- | | Marks |
|---|--------------|
| Q.1 Examine the correctness of the following statements and substantiate your answer by referring to relevant provisions. (Word Limit: 150 for each) | (3x5=15) |
| <ul style="list-style-type: none">a) The word 'Classic' can be registered for Tea.b) 'Coldmaster' can be registered for Refrigerator.c) A registered trademark is assignable without goodwill in India.d) Rights conferred under the Trademarks Act, 1999 are not absolute.e) Principles of passing off can be applied to domain names as the same could serve as trademarks. | |
| Q.2 M/S ABC Limited (hereinafter referred as 'the Plaintiff') is the registered proprietor of the mark 'MASTROL' and 'ACTIV'. As per their claim they have adopted the mark ACTIV in 1999. According to the Trade Mark Registry (TMR) records, the word mark 'MASTROL' was allotted trademark registration on November 17, 1969; whereas, the design marks (as there were two different logos) for the same was allotted trademark registration on March 10, 2000 and September 18, 2001 respectively. Moreover, the Plaintiff was also successful in procuring trademark registration for the word mark 'ACTIV' and has been using the same since January 25, 1999. In December 2010, the Plaintiff discovered that Narendra Oil Company (hereinafter referred as 'Defendant no. 1') was selling 4T oil under the trademark 'QUMAX ACTIVE'. They were allegedly imitating the get up, layout and features of the packaging of the Plaintiffs by adopting red, white, and green colours on the label in an identical manner, and also the shape and configuration of the bottle. Thus, the Plaintiff alleged that the Defendants were committing trademark infringement and passing off, and hence, they filed a suit before the Delhi High Court seeking a decree thereby restraining the Defendants from selling, marketing, offering for sale any packaging/label/empty container used/re-cycled and reconditioned in respect of the industrial oil, engine oil, lubricants, grease under the trade mark 'QUMAX ACTIVE' or any other trade mark, which is 'identical or deceptively similar' with that of the Plaintiffs' trade mark 'ACTIV'. In light of the above facts answer the following by referring to statutory provisions and minimum three precedents. | (10+5=15) |

- a) Whether the defendant has committed an act of passing off and/or infringed the registered trade mark 'ACTIV' of the plaintiff using the mark 'T4 ACTIV' and the impugned label? (Word Limit: 400)
- b) Explain the concept of deceptive similarity through recent judicial trends. (Word Limit: 200)

Part B

- Q.3 **Shimla Tea**, the plaintiff, is the producer and exporters of tea, which is a statutory body established under the Tea Act, 1953 and a registered owner of both sets of marks. The signs are the word "**Shimla Tea**" and symbolic trademarks are independently registered under the Geographical Indication of Goods (Registration and Protection) Act 1999 and the Trademarks Act 1999. (3+3+4= 10)

The plaintiffs have alleged that the defendant has named a section of its luxury hotel as "ITC Super Deluxe Shimla". The plaintiff supported his case on several levels: first, by arguing that the use of "Shima" constitutes an infringement of the geographical indication. Secondly the use the certification mark, "Shimla" is to misleads for the "Shimla Tea" brand. The defendant claims that his "Shimla Lounge" has been operational, before the entry into force of the Geographical Indications of Goods (Registration and Protection) Act, 1999. The defendant however claimed it to be a lounge only for the Hotel Guests. Only food and drinks are served in the lounge area.

The defendant contends that because the plaintiff was aware of the defendant's "Shimla Lounge" the lawsuit was brought later, the defendant is entitled to the protection afforded by the Geographical Indications of Goods (Registration and Protection) Act, 1999. The plaintiff contends an infringement by the Defendant's by the use of the word "Shimla" in connection with his hotel.

In the light of the above-mentioned facts and circumstance find out is there an infringement of the Geographical Indication. With the help of legal provision and case laws concerning the following. (Word Limit: 400 Words)

- a) Arguments on behalf of the Plaintiff.
- b) Arguments on behalf of the Defendant.
- c) Remedies available to the parties.

- Q.4 **Write Short Notes (Any two)** (Word Limit: 200 Words for each) (2x5=10)
- a) The Nice Agreement (1957)
 - b) The Trade Related Aspects of Intellectual Property Rights (TRIPS)
 - c) Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks 1973.
