

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Intellectual Property Law

Semester- VI (Batch: 2020-25)

End Semester Examination: May 2023Date: 10th May, 2023

Duration: 3 hours

Max. Marks: 50

Instructions:

- Read the questions properly and write the answers in the given answer book.
- Do not write anything on the question paper.
- 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.

Q.1 Answer the following:

Marks(5x2=
10)

- a) Discuss briefly stating reasons whether the following trademarks are registrable.
- 1) Hanuman: Cigarettes (2.5 Marks)
 - 2) Health: Biscuits (2.5 Marks)
- b) The toy company, *Happy Toys*, is a well-known registered brand that has been in the market for over three decades. The company has established a distinctive and memorable logo consisting of a smiling sun with the words "*Happy Toys*" written underneath it. One day, the *Happy Toys* company got to know that a new company, *Playful learning*, has entered the market and they are selling storybooks for young readers. It started using a logo that is almost identical to *Happy Toys*' logo. *Playful learning*'s logo features a sun with a similar smile, with the words "*Playful learning*" written underneath it.
- Happy Toys* is concerned that *Playful learning*'s use of a similar logo will dilute the strength and distinctiveness of its own brand. What is the remedy available with *Happy Toys*? Answer by referring to relevant statutory provisions and case laws.

Q.2 Answer the following:

(5x2=
10)

- a) Critically analyze the doctrine of "*sweat of the brow*" and the later developments in India in reference to the case of *Eastern Book Company v. D.B. Modhak*, 2008 (36) PTC.
- b) Ram is an employee of an NGO namely 'HELP'. One of the activities undertaken by him is to provide education to the orphan children. He wrote a story 'Monkey and Two Cats' to explain the moral to the students as part of his duty. The 'HELP' later on published a book containing compilation of different stories written by employees. Ram wants to hold copyright on his story. Advise Ram on whether he can have copyright on his story while explaining how ownership of work is decided as provided through various legal provisions under the Copyright Act, 1957?

Q.3 Answer the following:

(5x2=
10)

- a) Discuss the changes brought about in the standards of patentability in the Indian Patents Act by the 2005 Amendments.
- b) Define "Ever greening of Patent" and "Incremental Innovations". Discuss whether the invention in the case of *Novartis v. Union of India* is an attempt to promote ever greening.

Q.4 Answer the following:

(5x2=
10)

- a) ABC Ltd. is one of the world's leading manufacturers of home appliances globally and a pioneer in the manufacture and sale of washing machines. It is a pioneer in India for washing machines and manufactures all three types of washing machines viz. semi-automatic, fully automatic (top loading) and a fully automatic (front loading) targeting different segments of consumers. ABC Ltd. came across a washing machine manufactured and marketed by the XYZ Ltd. under the brand name "Lovely Pebble" which had virtually the same and/or similar design and features of shape and configuration as that of ABC's product and the said designs are already registered by the ABC. According to the ABC Ltd. a bare look at the product of the XYZ Ltd. makes it absolutely evident that the same is a complete copy of the product and/or the said designs. Not only were the individual features and/or components copied but even the combination thereof had been replicated. ABC Ltd. wants to take legal action against XYZ Ltd. Advise ABC in view of relevant statutory provisions and case laws.
- b) *Gamgurjari* is a non-profit statutory trust in Gujarat situated in Junagadh district surroundings in a rural area. Employing about 12,000 persons, *Gamgurjari* produces a special kind of *Mohanthal* (type of Gujarati sweet) using resources peculiar to the area and adopting cooking skills particular to the area. The cooks preparing the *Mohanthal* had developed culinary skills, whose descent could be traced to their ancestors over more than 500 years. *Gamgurjari* is also under the obligation to administer and maintain the trust property and to cater to the needs of the cooks and workmen. *Mohanthal* is offered at subsidised rates to the customers and has gained great reputation and distinctiveness over a long period. *Gamgurjari* applied for the registration of geographical indication (GI) for its *Mohanthal* under the Geographical Indications of Goods (Registration and Protection) Act, 1999. After following the procedure laid down, the Registrar of Geographical Indications granted registration sought by *Gamgurjari* in its favour. In doing so, the procedural formalities contemplated under the said Act and Rules made thereunder were strictly adhered to and the genuineness of the product (*Mohanthal*) was verified by duly appointed experts. The product was classified as 'food stuff' under the Act. *Gamgurjari*, thus, became the registered proprietor of the said GI tag. At the time of grant of GI, there were no objections from anyone when the matter was published in the GI Journal. Thus, there was no pre-grant opposition to the grant of GI. But, after the grant of GI, one large foodstuff dealer filed a rectification application alleging that granting of GI tag for *Mohanthal* is in contravention to the statutory provisions of the Geographical Indications of Goods (Registration and Protection) Act, 1999.

Based on the above facts answer the following:

Was the GI registration for *Mohanthal* as per the law? Substantiate your answer by referring to similar case study in India.

Q.5 Answer **any two** of the following:

(5x2=
10)

- a) Discuss the scheme of The Semiconductor Integrated Circuit Layout Design Act 2000 (SICLDA) in India which was passed in compliance with the Trade-related Aspects of Intellectual Property Rights Agreement.

- b) TRIPS is one of the most important and comprehensive international instruments relating to protection of intellectual property rights. Elucidate the provisions prescribed under TRIPS for the protection of Patent and Trademark.
- c) Define Traditional Knowledge and critically analyse the strategies of defensive and positive protection for traditional knowledge in India.
- d) 'The Indian case laws have tried to address various aspects of trade secret protection whether it is defining trade secret/confidential information or the grounds under which trade secrets can be protected or the scope of remedies.' Justify by referring to relevant case laws.
