

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law relating to Trademark and Geographical Indication
Semester- II (Batch: 2023-24)

End Semester Examination: April 2024 (LL M)

Date: 27th April, 2024

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.
- Bare Act is not allowed.

- | | Marks |
|---|----------------|
| Q.1 Examine the correctness of the following statements and substantiate your answer by referring to relevant statutory provisions. | (2.5x4
=10) |
| <ul style="list-style-type: none">a) The word 'Best' can be registered for Coffee.b) A registered trademark is assignable without goodwill in India.c) The life of a trademark depends on its actual use.d) Rights conferred under the Trademarks Act, 1999 are not absolute. | |
| Q.2 Answer any two of the following. | (5x2=
10) |
| <ul style="list-style-type: none">a) Define dilution of trademark and elucidate the statutory provisions as prescribed under the Trademarks Act, 1999 along with landmark case laws.b) Define deceptive similarity and critically analyse the recent judicial trends regarding the same.c) Define Trade dress and discuss its significance in the law of TradeMarks by referring to relevant statutory provisions and case laws. | |
| Q.3 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 Trademark 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 Plaintiff 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 | (10) |

trademark 'QUMAX ACTIVE' or any other trademark, which is 'identical or deceptively similar' with that of the Plaintiffs' trademark 'ACTIV'.

In the light of the above facts, answer the following by referring to statutory provisions and case laws:

Whether the defendant has committed an act of passing off and/or infringed the registered trademark 'ACTIV' of the plaintiff using the mark 'T4 ACTIV' and the impugned label?

- Q.4 The Manipur Organic Mission Agency (MOMA), located at the Directorate of Horticulture, Sanjenthong, Imphal, Manipur, India, is the Registered Proprietor of the Registered Geographical Indication (GI) "HATHEI CHILLI." The application is made by MOMA for the GI named "SIRARAKHONG HATHEI. (3x4=12)

The Sirarakhong Hathei chilli variety thrives exclusively in the remote Tankhul Naga inhabited village nestled amidst the Mahadev hills of Manipur. Situated approximately 70 kilometres from Imphal, the village lies close to the road connecting Mahadeva and Pfuzero via Tolloi in the Ukhrul district. With a village code of 270402, it resides at an elevation exceeding 1100 meters above sea level, where temperatures range between 15 to 25 degrees celsius. The community, comprising around 400 households with a population of 2,200 individuals, is deeply entrenched in chilli cultivation, which serves as the primary economic activity. Annually, the village yields approximately 5000 kilograms of dried chillies, sustaining the livelihood of its residents. Typically, each household harvests between 100 to 300 kilograms of chillies every six months. However, transportation challenges due to the rugged terrain and poor road conditions hinder large-scale delivery to Imphal, prompting most sales to occur locally in Ukhrul, with a significant portion marketed in Dimapur, Nagaland.

The Sirarakhong Hathei chilli, an indigenous variety exclusive to a remote Tankhul Naga-inhabited village nestled in the Mahadev hills of Ukhrul district, Manipur, holds a rich history rooted in its community traditions. Despite lacking written documentation, it is widely believed that the cultivation of this unique chilli began generations ago, initiated by the forefathers of the villagers. According to local lore, an elderly villager stumbled upon the plant during a hunting expedition, unknowingly nurturing it until it bore fruit, revealing its identity as a chilli plant. Dubbed "Hathei" after the Tangkhul term for bitterness, this discovery marked the inception of a longstanding tradition of chilli cultivation in the village, serving as its primary economic lifeline. Beyond its economic significance, the chilli is deeply intertwined with the cultural fabric of the community, immortalized in songs that liken it to a "red cover" draped over the hills. The villagers pay homage to this cherished crop through an annual celebration known as "Hathei Phanit" (Chilli festival), initiated in 2010, honoring its unique qualities believed to be a divine blessing bestowed upon the people of Sirarakhong.

In the light of the above-mentioned factual matrix, relevant provisions and case laws on the Geographical Indications of Goods (Registration and Protection) Act, 1999, the Geographical Indications of Goods (Registration and Protection) Rules, 2002, answer the following questions:

- a) What is the procedure for registering the Geographical Indications under the GI Act 1999?

- b) Elaborate on the points of content and type of applications, jurisdiction, type of applications, the procedure to be followed by the GI Registry, and Documents required.
- c) What are the prohibitions of registration of specific geographical indications, and what constitutes infringement?
- d) Elaborate on the points of offences under the Act, cognizance of offences and procedure of search & seizure.

Q.5 In the context of the origin, history, significance, prominent legal provisions and recent challenges, write short Notes on (**Any two**) of the following: (4x2=8)

- a) The Paris Convention for the Protection of Industrial Property, 1883
- b) The Madrid Agreement Concerning the International Registration of Marks, 1891
- c) Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957)
