

# Printout

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**GUJARAT NATIONAL LAW UNIVERSITY  
GANDHINAGAR**

Course: Law relating to Trademark and Geographical Indication  
Semester-II (Batch: 2013-14)

End Term LL.M. Examination: May-June 2014

Date: 2<sup>nd</sup> June, 2014

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 any thing 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.
- **Bare Acts are not allowed.**

**Part A - Answer all Questions****Marks**

- Q.1 Comment on the following statements with reasons by referring to appropriate provisions under the Trade Marks Act, 1999: **(4x2.5 =10)**
- a. A mark that is devoid of distinctive character, i.e., not capable of distinguishing the goods and services of one person from the other, is not registrable.
  - b. A trademark can be assigned with or without goodwill of the business concerned.
  - c. Rights of action against any person for passing off goods of another person or the remedies in respect thereof are unaffected by the provisions of the Trade Marks Act, 1999.
  - d. The resemblance between two marks may be phonetic, visual or in the basic idea represented by the mark.
- Q.2 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 Rs.1,00,00,000 crore. The annual expenditure for advertisements and market development for sales promotion by the same group of companies is about Rs. 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, 2013, 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 an 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 **(10)**

House'. After about four years, he 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.

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

- Q.3 Answer the following questions by referring to relevant provisions and case-laws: (2x5=10)
- Mr Ram has applied for registration of '7 O' Clock' for tooth paste. The registration is refused. Justify the refusal of registration with reasons on part of the registrar.
  - Two trademarks '555' and '556' have been used for detergent for a period of 10 years. The proprietor of the mark '555' brings an action in the court against the proprietor of the mark '556'. What possible defenses could you suggest to the proprietor of the mark '556'?
- Q.4 Write brief note on any two of the following: (2x5=10)
- International system for trade mark registration
  - Unconventional trademark
  - Offences under the Trade Marks Act, 1999
  - Inherent and acquired distinctiveness

#### Part B - Answer all Questions

- Q.5 Discuss the measures to protect indigenous community's right over Traditional Knowledge. (2x3=06)
- Principle of prior informed comment
  - Principle of fair and equitable benefit sharing
- Q.6 Decide the correctness of the statements, correct it if incorrect and justify your decision. (2x3=06)
- Traditional knowledge necessarily means that the knowledge is ancient and static.
  - Traditional knowledge is necessarily indigenous, but indigenous knowledge is not traditional knowledge.
- Q.7 Define 'geographical indications' and explain the doctrines on the 'protection of indications of geographical origin'. (06)
- Q.8 Can and should 'geographical indication' be used as a tool for the protection of 'traditional knowledge'? (06)
- Q.9 It has been strongly advocated by some academics and NGOs—for the protection of TK, the development of a '*sui generis* regime' in IPRs. Design an IPRs '*sui generis* regime'. (06)

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