

4 MAY 2024

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination April-May, 2024

Semester: UG – VI Sem

Subject: Law of Intellectual Property Rights (Compulsory)

Time: Three Hours

Marks: 100

Instructions:

1. Attempt any five out of six questions.
2. All questions carry equal marks.
3. Use of any reference material such as Bare Acts is not permitted.

Q.1) a). Explain briefly the absolute grounds of refusal of trademark registration, as provided under the Trademark Act, 1999 with the help of relevant examples and cases. Also explain the nature of marks on the basis of 'spectrum of distinctiveness' and suggest what marks are easiest to register.

b). In a recent comparative advertising campaign, Company X directly compared the effectiveness of its toothpaste 'CLOSEUP' to a competitor's product, 'COLGATE' by prominently featuring both product names and trademarks in their advertisement. The advertisement claimed that 'CLOSEUP' has 90% greater effectiveness as a dental cleaning product as compared to 'COLGATE' and displayed a side-by-side demonstration of the two products by a superstar Rohit Kapoor who is shown to have thrown the product 'COLGATE' in the dustbin during the advertisement. The owner of trademark 'COLGATE' files an action of trademark infringement against Company X. Discuss the potential trademark issues raised by Company X's comparative advertising campaign in light of the provisions of trademark law in India and the judicial determinations in such matters.

(Marks: 10 +10 = 20)

Q. 2) *"Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein".*

The above mentioned rule enshrined under the Copyright Act, 1957 is a fundamental principle to decide the question of "who owns copyright?". However, the rule is subject to the provisions of the Act and is appended with a Proviso highlighting and addressing the conundrum of 'Authorship v. Copyright Ownership'.

Explain the various circumstances which fall as an exception to this rule. Cite relevant cases and examples in support of your answer.

(Marks: 20)

Q.3) a). What are the provisions and circumstances wherein a compulsory license may be granted against a patent right granted under the Patent Act, 1970. Explain with the help of decided case laws or application filed seeking the grant of compulsory license in India.

b). Roche held a patent for a drug called flurazepam, which was used to treat insomnia. NATCO Pharmaceutical Co. sought to produce a generic version of flurazepam and conducted research and development activities to achieve this. However, their research activities involved experiments and trials using Roche's patented drug. Roche filed a lawsuit against NATCO Pharmaceutical Co., alleging patent infringement. NATCO Pharmaceutical Co. argued that their research and experimentation fell under the exception to patent rights and would not amount to infringement as they were conducting activities necessary for obtaining regulatory approval for their generic version of the drug, which they intended to market and sell after the expiry of Roche's patent.

Decide with the help of relevant provisions of the Patent Act, 1970 and case laws.

(Marks:10+10=20)

Q.4) Define 'geographical indications' as provided under the Geographical Indication of Goods (Registration and Protection) Act, 1999 and the nature of goods for which such protection is available. Highlight the need and relevance for recognising Geographical Indications and how it differs from the concept of Appellation of Origin. Also explain the possible differences and similarities between Geographical Indications and Trademarks.

(Marks: 20)

Q.5) Manish Malhotra is a Fashion designer, designing and selling unique fashion garments for celebrities and stars from the Bollywood industry. He offers customized fashion garments under his label 'MANISH MALHOTA COUTURE'. He claims to be engaged in high skill and creative artistic creations of designs that he applies to the finished articles through complex industrial processes. He keeps his designs and garments exclusive and limited as he does not engage in mass production for sales in outlets. He ensures not making more than 5 copies of finished articles/ garments to ensure his exclusivity and uniqueness in the market. His designed garments are high-end and high-priced products with finished garments ranging between 4 lakhs to 25 lakhs per garment.

He identifies exact imitation and replica garments of his designs being sold on a website "www.designerhub.com", with the description "*Manish Malhotra Bridal Lehenga*", "*Manish Malhotra Wedding Gown*", etc. As Mr. Manish Malhotra had not obtained design registration under the Designs Act, 2000, he chooses to bring an action of copyright infringement in respect of his underlying artistic works.

Decide with the help of relevant provisions and case laws.

(Marks: 20)

Q.6) Write short notes on *any two* of the following:

- Natural Law and Labor Theory as justification for grant of IPRs
- Protection of Trade Secret and Confidential Information
- Researchers and Breeders Rights under Protection of Plant Variety and Farmers Rights Act, 2001
- Provisions relating to Protecting Biological Resources against Biopiracy under Biological Diversity Act, 2002.

(Marks: 10+10=20)

