NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination November – 2024
Semester: PG I Semester (LLM IPR)
Subject: International IP Law and Policy

Time: Three Hours **Marks: 100**

Instructions:

1) *Answer any 4 out of 6 questions.*
2) *Marks have been indicated against each question.*
3) *Write your answers to the point, brevity will be appreciated.*

Q.1). 'The stance of TRIPS Agreement on not mandating a policy of exhaustion on the WTO member states appears more deliberate than inadvertent.' – Do you agree? Justify with specific domestic instances and supporting reasons. (Marks 25)

Q.2). The Italian ministry of Agriculture describes Prosecco as a wine with a brilliant, more or less intense straw yellow color, with persistent froth in Spumante version or with evident development of bubbles in the sparkling version. The wine is characterized by a peculiar fine and aromatic taste, typical of the parent grapes and with possible hints of bread crust and yeast if bottle-fermented. The flavor is fresh, aromatic, typical and can vary depending on the quantity of sugar contained. Prosecco must be produced only with a specific type of grape called Glera and the operations of vinification of grapes and oenological practices for the froth, stabilization, and sweetening. Glera is grown in the North-East Italian provinces of Vicenza, Belluno, Treviso, Venezia, Padova, Pordenone, Udine, Gorizia, Trieste. This range has a temperate climate with a moderate rainfall and cool winds during the summer which determines the proper vegetative development of the vineyard. Other essential features proper to the area for the quality of the wine are the thermic excursion between the day and the night and the fertility of the soil, which is of alluvial origin. The grape must be manually harvested, in large part, because of the slope of the land. This manual harvesting allows maintenance of the integrity of the grape skin, fundamental for the preservation and the subsequent transfer of flavor to the Spumante wines. The human contribution to the area is even witnessed through the development of a specific practice of making sparkling wine, named the Martinotti method. Prosecco has a longstanding tradition and, because of the changing market economy that extends beyond national boundaries, Prosecco started to be heavily consumed by foreigners and produced in foreign territories. A Spanish wine manufacturer Casa Del Vino SLL, in 2017, started manufacturing their version of Italian win 'Prosario' with the label caption 'con glera de itaiia' meaning 'with glera from Italy.' The wine lacked the aroma or taste of its Italian counterpart and received lukewarm response from the consumers of wine in Spain and Italian tourists in Spain. The export figures were also quite low due to a lack of demand. A survey across Europe showed that 88% of the consumers were not not satisfied with the taste or aroma of Prosario. In Italy, Prosecco's sales took a hit in 2018 registering an alarming drop of 34% in revenue. While conducting an audit, the existence and operations of Prosario came to Prosecco's notice and Prosecco was convinced that Prosario had infringed the registered PDO of Prosecco and adversely affected its goodwill by supplying inferior quality products to the market which mistook Prosecco as Prosario. Based on this belief, Prosecco filed an infringement suit before the ECJ challenging the trademark granted to Prosario as it infringed the GI on Prosecco. In response, Casa Del Vino contended that Prosecco and Prosario were two different words and the possibility of confusion did not arise in two different languages. Decide.

(Marks 12.5+ 12.5 = 25)

Q.3). The early 2000s were marked by intense international research on the genetic foundations of ovarian cancer. In 2010, a research group at the University of California at Berkeley announced that they had located a gene on chromosome 17 that provided the first evidence of the

connection between certain genetic variations and ovarian cancer. That genetic variation would become known as ORCA1. The following year, a group of researchers from the University of Utah's Center for Genetic Epidemiology created a small biotechnology company Mystic Genetics. Mystic sequenced ORCA1 that is identified the nucleotide bases in DNA that together comprise the gene in 2014 and obtained patents covering the sequenced gene, more than 40 mutations or variations of ORCA1, and numerous diagnostic tests and methods for identifying mutations of the gene. Mystic was also successful in creating a synthetic form of ORCA1 called cDNA that contained only the 'working parts' of the gene, those involved in the creation of mRNA, which is essential to protein synthesis. Over the next four years, Mystic created a scientific group in the United Kingdom to sequence another gene implicated in ovarian cancer, ORCA2, eventually filing for patents on that sequence, its mutations, and diagnostic tests based on the gene in 2018. The significance of the work undertaken by Mystic is pathbreaking. For the average American woman, there is a 12 to 13 percent risk for developing ovarian cancer, but for women who possess genetic mutations such as those on ORCA1 and ORCA2, the risk rises dramatically, to 50-80 percent. Having secured the patents on the genes, their mutations, and the tests to identify these genetic characteristics, Mystic aggressively sought to make use of its competitive advantage through the sales of its tests for these genes and their mutations. The company sent cease-and-desist letters to researchers whose work involved isolating the genes and filed patent infringement suits against parties engaging in ORCA testing. Following years of tumultuous relationships with the scientific community, health care organizations, physicians, patient advocacy groups, and individual patients, a lawsuit was filed against Mystic in 2019, challenging its patents on ORCA1 and ORCA2 and other patents stemming from these two genes. the lawsuit claimed that the DNA segments were not separate from nature as they contain the identical protein coding informational content as the DNA in the body, even though differences exist in its physical form. Decide. (Marks 25)

Q.4). '*Well known trademark protection under TRIPS Agreement follows a mix of quantitative as well as qualitative approach to protection of marks.*' – Do you agree? Substantiate with detailed reasons. (Marks 25)

Q.5) Critically comment on the legal issues arising under the international framework due to lack of consensus amongst member states on the extent of enforcement of standards of protection that can be mandated under the TRIPS Agreement. (Marks 25)

Q.6)

a). In February, 2024, the Danish firm Ericsen & Olufsen Associates applied to the European Community Trade Mark Office (OHIM) for registration as a Community trade mark of the following three-dimensional sign concerning their music speaker:

The design was intended to give it the look of a desk pen stand and imply economy of space. The website of the applicant advertises the product as 'a kind of pure, slender, timeless sculpture/shape for music reproduction'. The application seeks to establish distinctiveness of the mark possessing unique, unorthodox and non-functional attributes. As the Trademark Registrar of the OHIM, you need to decide on the merits of the application and approve/reject the mark. Decide.

b). A recent survey by the Department of Health in South Africa has revealed that the country has the largest HIV/AIDS epidemic in the world with 7.2 million people living with HIV/AIDS. South Africa has a HIV prevalence rate of 18.8% amongst ages 15-49, 270,000 new HIV infections and 110,000 AIDS-related deaths annually at present. The Department identified Stocrin, an anti retroviral drug patented by Merck in the US, as the best available medical solution. However, its expenditure estimates were surpassed by the prohibitively expensive nature of the medicine with one pill costing $1.59, whereas the government could only allocate a budget of $0.65 per pill. Left with no other option, the Department is considering importing a generic version of this drug named efavirenz manufactured in India under a compulsory licensing scheme, which would cost the government not more than $0.55 per pill. The Department has written to the Ministry of Justice and Correctional Services seeking its views on how to go about the whole process in compliance with South Africa's obligations under the TRIPS Agreement. As a Research Associate assisting the Deputy Minister of Justice, you have been asked to draft an advisory outlining the steps required to be taken for the execution of a legitimate compulsory licensing scheme. You have also been asked to prepare a supplementary note to the advisory explaining your stance through one supporting case law.

(Marks 12.5+12.5 = 25)