

1 MAY 2025

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination May – 2025

Semester: UG VI Semester

Subject: Law of IPR

Marks: 100

Time: Three Hours

Instructions:

- 1) Answer any 5 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). 'While patents protect the private interests of the inventor, the law and policy makers in India have been mindful in ensuring that they are effectively balanced by the public interest at large.' – Do you agree? Justify with supporting reasons. (Marks 20)


Q.2).

a). The plaintiff is a registered partnership firm engaged in the business of preparing and selling Indian sweets and namkeens since September 30, 1963. The shop of the plaintiff is located in Green Park, New Delhi. The mark "Evergreen" was adopted by the plaintiff in the year 1963 and the plaintiff has been using the same ever since in connection with its business, i.e., the sale of Indian sweets and namkeens. In the year 2023, the revenues of the plaintiff were to the tune of Rs. 38 crores.

The plaintiff also has a registered domain name, <http://www.evergreensweethouse.net>, which has been in use since 2019. The registered mark of the plaintiff (fig. 1) features a unique trade dress including colour scheme, get up and layout. The plaintiff received an email dated May 13, 2024, wherein one of its customers complained to the plaintiff that there is another shop under the name and style "JV Evergreen Sweets & Treats" (fig. 2) operating in Lajpat Nagar, New Delhi, which is also selling products similar to that of the plaintiff. The plaintiff also came to know that the defendant is operating on food delivery platforms like Zomato and Swiggy under the impugned mark and selling products identical to that of the plaintiff, which is causing confusion amongst the customers of the plaintiff. Thereafter, the plaintiff sent a cease-and-desist notice to the defendant calling upon the defendant to refrain from using the word 'Evergreen'. The defendant replied to the aforesaid cease-and-desist notice stating that the mark adopted by the defendant is different from that of the plaintiff and the word 'Evergreen' is a generic name, which cannot be monopolised by anyone. Decide.



b). The plaintiff owns and operates a storytelling platform in which stories of various individuals are uploaded in the form of interviews, write ups, posts, etc. The case of the Plaintiff is that it engages in substantial research, and approaches various subjects who would be interested in narrating their life stories. The said stories are then converted into audio-video works and uploaded on the website on the above stated platforms. The Plaintiff's website is known as 'www.humansofbombay.in'. The grievance in the present suit is that the Defendants have started an identical portal/service having identical content as that of the Plaintiff by the name 'People of India' available on Instagram Platform handle as (@officialpeopleofindia). The Defendants have replicated a large number of images and videos from the Plaintiff's platforms and have used the same on their platforms. It is alleged that the defendants are approaching the very same subjects who are shown on the Plaintiff's websites in order to create an imitative platform. The comparative tables which are annexed with the plaint are set out below. Decide.

Plaintiff's content	Defendants' content
	

(Marks 10+ 10 = 20)

Q.3). The Hamsa is an ancient image that continues to be widely used in the Middle East and North Africa. It consists of a stylized depiction of an open palm. It symbolizes, among other things, protection, fertility, and sexuality. In Islam, it is known as the Hand of Fatima; in Judaism, as the Hand of Miriam; in Christianity, as the Hand of Mary. Three examples of the image are set forth below:



Although the image is conventionally presented as symmetrical, it is widely understood to represent the palm of a right hand. Luke is a second year student at the Massachusetts Art College. In 2008, Luke campaigned actively for Barack Obama. Luke was deeply disappointed, however, by Obama's performance during his first term as President of the United States. In the summer of 2012, Luke decided not to campaign for Obama's reelection. He wanted to express his disillusionment with Obama. For this purpose, he designed a modified version of the Hamsa image available online, depicting the open palm of a left hand. Luke developed a detailed drawing of this design and fabricated out of sterling silver an earring incorporating the image, spending about three months perfecting the design using specialized techniques and chemical formulations learnt during his first year in the college, as shown in the depiction below:

various types of excipients that would be used in the formulation/composition. It provides for a ratio of active ingredient and excipient, and some information on the physical properties of the active ingredient (amorphous or molecular form). The applicant has disclosed in the specification how the solid oral formulation being claimed has improved drug release and increased bioavailability of more than 60%. XYZ, Inc. opposes the application on the ground that Utidelone is a known substance and hence hit by the exception under Section 3(d) of Patents Act, 1970. Decide.

b). In February, 2024, the Danish firm Eriksen & 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 determine the merits of the application and approve/reject the mark. Decide.

(Marks 10 + 10 = 20)

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination May - 2023

Semester UG VI Semester

Subject Law of IPR

Time: Three Hours

Marks: 100

Instructions:

- 1) Answer any 5 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) 'While combining prior art references may make an invention obvious at first glance, courts have been willing to examine secondary considerations to outweigh the apparent lack of inventive step by granting patents to such claimed inventions' - Do you agree? Justify with supporting reasons. (Marks 20)

Q.2).

a) A television commercial by Dabur, the defendant, shows a school race, where a participant sipping defendant's "Glucoplus C" outruns the participant sipping another orange flavoured glucose powder, who, despite consuming her drink was depicted to be tired through the race. After the race, the losing participant's mother asks the winner's mother how her daughter won even though both their daughters consumed an orange flavoured glucose drink. Her response is that it's not the same drink, and she then lists out some specific benefits that Glucoplus C gives. The Plaintiff, Zydus, who are the manufacturers of Glucon-D, an orange flavoured glucose powder drink, approached the court alleging that the gestures of disappointment and frustration on the face of the mother whose daughter lost the race is sufficient to infer disparagement. Furthermore, it alleges that the commercial disparaged the Plaintiff's product (Glucon-D) as it holds majority of the market share in the orange flavoured glucose powder segment. Dabur approaches you for legal assistance. Advise.

b) Discuss the procedure for registering a Geographical Indication in India.

(Marks 10+ 10 = 20)

Q.3). The Las Vegas-based metaphorical-realism artist Vladimir Kush has filed a copyright infringement action in the Nevada District Court shortly after learning that a scene in Ariana Grande's music video 'God is a Woman' depicts Grande as dancing inside a candle flame against a background of clouds (See Figure 2). According to Mr. Kush, this expression of Grande is identical to his painting 'The Candle' (See Figure 1), both made around two decades ago. In his complaint, Mr. Kush states that while there are many ways to depict a woman dancing in the wick of a candle, even with a heavenly background, the defendants clearly copied Mr. Kush's expression of this idea by using the same colour palette, the same background of a cloudy sky, the same ring effect of the clouds around the light flame, the same light beams radiating from the flame and the same colour candle and the light fading to dark. Decide.

Figure 1



Figure 2

(Marks 20)

Q.4). "While the public law jurisprudence in India has interpreted the concept of morality fairly liberally, the same progressive outlook is conspicuous by absence in adjudicating the morality of trademarks." – Do you agree? Critically comment based on the relevant cases and recent instances.

(Marks 20)

Q.5) Can a person 'not interested' challenge the validity of a patent after it has been granted under the Indian law? Discuss the peculiarities of the position of law with reference to supporting authorities.

(Marks 20)

Q.6)

a). The machines manufactured by SNPC Machines Pvt. Ltd. engineer a mechanism and create a design by which the traditional manual system of brick making is converted to a mechanised system with mobility of the machine as an essential feature. In common parlance, the machine employs a chassis with wheels on which it is mounted, a stock compartment to hold raw material for making bricks, which would dispense the raw material to a roller and die assembly which is mounted on a roller wheel. The die cast is itself a sequence of circumferentially arranged bricks which are concentrically fixed to the rotary wheel. This whole contraption is mobile and driven by an operator having a cabin with various controls and the full mechanism is configured to allow the raw material to be dispensed in the mould/ die cast which would then, through a hydraulic switch, eject moulded bricks laying them on the ground in sequential pattern as the assembly moved ahead. The inventiveness is in adding mobility to a rotary system of brick making with geometrically arranged dies programmed to eject a moulded brick in a synchronised manner in order to lay them on the ground as the assembly moved on. This would, therefore, obviate the manual process and instead increase efficiency manifold of creating moulded bricks for the purposes of construction. The plaintiff came across a similar machine published in a product brochure by Mr. Vishal Choudhary, the defendant, and files an infringement suit before the High Court of Delhi. The defendant's machine is a mobile brick laying machine with a raw material stock compartment, roller and die-assembly and a sequence of circumferentially arranged brick frames fixed on the roller wheel which would perform the function of receiving the raw material, moulding the bricks and laying them on ground in an organized line of bricks. This whole assembly is mounted on a frame with a pair of wheels. This aggregate of machine is put on to a tractor by the user and by using the kinetic energy of the movement, the assembly operated and lay bricks on the ground. The issues on which the defendant claims difference are:

(i) Lack of a cabin which was integrated to the assembly and used as an operating and

controlling place; (ii) No steering; (iii) No steered front wheels; (iv) Rear wheels not driven by motor. Decide.

b). In March, 2025, XYZ, Inc. filed a trade mark application before the Trademark Registry, New Delhi, for the words 'going down' for goods including vaginal syringes, biodegradable bone fixation implants, dentures, dental apparatus and instruments, condoms, non-chemical contraceptives, sex dolls, artificial surgical implants, electric dental apparatus as well as medical apparatus and devices, intended to be sold in select metro cities in India. The Registry refused the application because it found that the pronunciation of 'going down' has a certain sexual implication and would cause a negative social influence. XYZ has approached you for legal assistance. Advise.

(Marks 10 + 10 = 20)

NATIONAL LAW UNIVERSITY, JODHPUR
 Mid Term, February - 2025
 Semester: UG VI Semester
 Subject: General Principles of Intellectual Property

Time: One and Half Hour

Marks: 50

Instructions:

1. All questions are compulsory.
2. Please answer all questions to the point. Brevity will be greatly appreciated.

Q.1) The plaintiff No.1 is Hamdard National Foundation (India), a charitable institution registered under the Societies Registration Act, 1860, and the plaintiff No.2 is Hamdard Dawakhana, also trading as Hamdard Laboratories (India) which is a business held in trust, earlier trading as Hamdard Dawakhana (Wakf). The Plaintiffs are engaged in the business of manufacturing and selling inter alia, Unani and Ayurvedic medicines, oils, syrups, and non-alcoholic beverages for over 100 years. The defendant company Sadar Laboratories Pvt. Ltd. since the year 1949, through its predecessor, M/s. Sadar Dawakhana, is also engaged in the business of manufacturing Unani medicines, syrups and botanical products. The present case has been filed on the ground that the defendant was not only infringing the well-known trademark of the plaintiffs in 'Hamdard' and 'Rooh Afza' but was also passing off its products as those of the plaintiffs by using the name 'Dil Afza'. The plaintiffs claim that they had acquired immense reputation and goodwill in relation to 'Rooh Afza' and the value of the sales had reached Rs.16,281.41 lakhs in 2023-24 (till August 2024). Heavy promotional expenses have been incurred by the plaintiffs, as reflected in their spending of Rs.459.10 lakhs in the year 2019-20 in advertisements and Rs. 577.89 lakhs in 2023-24, up to August, 2024. The word 'Rooh Afza' was used in several products of the plaintiffs as listed in the plaint/application. The plaintiffs have also set out in detail, the years since when the trademark 'Rooh Afza' in relation to these products had been registered, the first one being on August 3, 1942. The registration continues to be valid even now. It is alleged that in the month of March, 2024, the plaintiffs came to know that the defendant had issued an advertisement launching its syrup/sharbat, bearing the mark 'Dil Afza'. An application for registration of the mark 'Sharbat Dil Afza' in the name of the defendant was filed on June 10, 2024, on the basis of 'proposed to be used'. Another application was filed on July 4, 2024, claiming 'user' since 1949. The plaintiffs claim that it was due to oversight that this application could not be opposed by the plaintiffs and therefore, the defendant has been granted registrations in respect of the mark 'Sharbat Dil Afza'. The plaintiffs filed a suit before the Commercial Division of the Delhi High Court seeking cancellation of the mark claiming that the word 'Dil' in the infringing mark does not sufficiently differentiate it from the plaintiff's mark. Decide.

Marks 10

Q. 2) On July 5, 2024, the Chilean company The Not Company SpA filed the application for trade mark registration no. 018508169 with the UKIPO, for the figurative sign "NOT MILK" for products in classes 29 (milk substitutes) and 32 (beverages composed of a mixture of fruit and vegetable juices, vegetable juice beverages, vegetable drinks). However, the examiner rejected the mark for being purely descriptive of the quality of the underlying product. The applicant appealed to the UK High Court and argued that the words 'not milk' required cognitive effort by the public in its understanding and could not be considered descriptive. Examine the merits of this contention in light of relevant European cases.

Marks 10

Q. 3) Erik Brunetti is an artist and entrepreneur who founded a clothing line that uses the trademark FUCT, registered in the United States. According to Brunetti, the mark (which functions as the clothing's brand name) is pronounced as four letters, one after the other: F-U-C-T. Brunetti applies for protecting his mark in Trade Mark Registry, New Delhi, after having successfully promoted his clothing line in the metro cities in 2024, resulting in huge pre-orders for his T-Shirts and Hoodies. However, the mark was opposed by local right wing NGO Bharatiya Sanskriti Sangstha, who argued that the mark was deceptively similar to a colloquial expletive in urban English and would appeal to the prurient interests of certain sections of the population prone to such immoral influences. Examine the merits of this contention based on relevant cases in India. Marks 10

Q. 4) *"May be, no party can have monopoly over a particular colour but if there is substantial reproduction of the colour combination in the similar order either on the container or packing which over a period has been imprinted upon the minds of customers it certainly is liable to cause not only confusion but also dilution of distinctiveness of colour combination upon unauthorized used."* – Do you agree? Critically comment based on the relevant trade dress jurisprudence in Indian courts. Marks 20