

NATIONAL LAW UNIVERSITY JODHPUR

End Term Examination May 2024

Semester – UG VIII Semester IPR Hons

Subject: Trademarks, GI and Unfair Competition Law

Time: 3 hours

Mark: 100 marks

*Instructions:*

- iv. *All the questions carry equal marks.*
- v. *Answer any five out of the six questions.*
- vi. *Please substantiate your statement(s)/argument(s) with relevant case laws, whenever necessary.*

Q.1 Write Short Notes on :

1. Comparative Advertising (10 Marks)
2. Domain Name Monetization (10 Marks)

Q.2 *“Sound marks or auditory marks can be anything which is auditory. When compared to other non-conventional trademarks, the sound mark is the most registered and protected one and it is gaining wide popularity in many countries, especially in the US.”*

State the parameters required for the graphical representation of sound marks to be registered under the Indian Trademarks Act. (20marks)

Q.3 *The Plaintiff is a well-known manufacturer and seller of footwear. It was incorporated in 1931 in the name of its predecessor - Bata Shoe Company Private Limited. In the year 1973, it became a Public Limited Company and changed its name to M/S Bata India Ltd. It adopted the mark 'POWER' for footwear in the early 1970s and the same has been in continuous use for almost 50 years. The 'POWER' brand is registered in favour of the Plaintiff, both in word form and logo form and as a combination with other marks. The 'POWER' range of footwear of ..BATA' has been promoted by well-known sporting personalities such as Mr Kapil Dev.*

*Mr Sachin Tendulkar and Ms Smriti Mandana (Player of the Indian National Women's Cricket Team). The sales figures of the footwear under the mark 'POWER' for the last ten years have been mentioned in paragraph 11 of the plaint. In the year 2018, the annual sales of „POWER" branded shoes were over Rs. 480 crores and the publicity expenses are in the range of Rs. 77 crores. The sales for the last decade itself show that 'POWER" branded footwear of more than Rs. 2500 crores has been sold in India and the expenses on publicity are nearly Rs. 300 crores for the last decade.*

The defendant (CHAWLA BOOT HOUSE & ANR) has used the mark 'POWER FLEX' in respect of footwear to promote and sell their footwear line. The same was opposed by the Plaintiff when it came to registration across the trademark application filed by the defendant. Decide whether the plaintiff's mark was infringed and whether the registration to the defendant should be granted. State the answer with the help of relevant laws and cases.

(20marks)

*Q.4 Starbucks a worldwide famous coffee-selling brand recently filed a Delhi-based coffee selling brand for trademark infringement. Its logo displays a long hair green-colored crowned maiden. At the same time, Sardarbuksh's logo depicts a turbaned man with wavy lines appearing from the sides. Sardarbuksh is an Indian coffee brand started in Delhi in 2015 whose name, logo and profession are identical to Starbucks after receiving a letter of demand from Starbucks Corporation in 2017 made necessary changes to their logo and their colour scheme to black and yellow and started trading under the new logo but under the same name. In 2018 Starbucks again filed a case against Sardarbuksh in the Delhi High Court for the use of the name 'Sardarbuksh', claiming that it is very akin to that of Starbucks.*

If Starbucks is a well-known trademark under this case, discuss how categorization of well-known trademarks is done under Indian jurisprudence and what are the legal parameters to adjudge infringement of well-known trademarks.

(20 marks)

*Q.5. "Confusion" word in the literal sense means "to fail to distinguish between, to perplex or bewilder" and in common language it means a state of mind where a person is unable to choose between options. In Trade Marks Law confusion plays an important part in being a mark distinctive or non-distinctive. The word confusion has been used in both grounds of*

*refusal i.e. in 'absolute' as well as 'relative' but both confusions are different from each other."*

In light of the same, discuss legal principles under Section 9 and Section 11 of the Trademarks Act, 1999, that are propounded for looking into the "Use of Mark" which are like deceiving the public or causing confusion amongst the public.

(20 marks)

Q.6 *"In 1910 when the plaintiff (Spalding) made a leather football which is manufactured for football and rugby players. They made a new ball which was moulded, but this was not successful, then in 1912 they made an improved orb football which was sown instead of moulded and had it patented. Sold the 1910 moulded footballs to the defendant (Gamage) who then started to sell the 1910 balls and advertised it as the improved orb football and stated the same patent number as the plaintiff."*

In light of the same discuss the principles and conditions for the establishment of the cause of action of passing off.

(20 marks)