

8 MAY 2024

NATIONAL LAW UNIVERSITY, JODHPUR

End Term Examination April - May - 2024
Semester: PG II Semester (LL.M. I.P.R.)
Subject: Law of Trademark

Time: Three Hours

Marks: 100

Instructions:

- 1) The students are required to attempt four questions in total.
- 2) The paper is divided in two parts: Part-A and Part-B. The students are required to attempt any two questions from Part-A and any two questions from Part-B, respectively.
- 3) Marks have been indicated against each question.
- 4) Use of any reference material such as Books or Bare Acts is not permitted.

PART -A (attempt any two)

Q.1). Aman Ryan, owner and director of Ryan International Schools, files a suit of trademark infringement against "Ryan Institutes" alleging infringement of their registered trademark "Ryan International School" used in relation to educational services. Aman Ryan claims to be the proprietor of the trademark "Ryan International School" since 2003 and alleges infringement and passing off by the defendant. The defendant is a group of education institutions using the unregistered trademark "Ryan Institutes" and is engaged in operating coaching institutes, higher education institutes and colleges under the name "Ryan Institute" since 2001 in Delhi. It is alleged that the defendant was using a similar trademark in connection with its educational services, thereby causing confusion among consumers. The Plaintiff asserts that it has acquired distinct reputation and goodwill in relation to the registered trademark owing to more than 150 branches of the school across the country, extensive advertising and academic excellence in respect of services provided. It is alleged that the use of a deceptively similar mark may lead consumers to believe that there was an association between the plaintiff's and defendant's educational institutions.

However, the defendants assert that they have adopted the family surname "Ryan" in good faith as a part of their corporate name and branding since before the plaintiff's registration of the trademark. They argued that there was honest and concurrent use of the mark by both parties, and thus, they were entitled to continue using it.

In light of the provisions of the Trademark Act, 1999 and the relevant judicial decisions, decide whether the use of trademark "Ryan Institutes" by the defendants amounts to infringement.

(Marks 25)



Q.2). The Trademark Act, 1999 recognizes and protects trademarks as “Well-Known Trademarks”. Explain the meaning of “Well-Known Trademarks” and the degree of protection and recognition provided to the same under the Act in respect of Section 11 as well as Section 29 of the Act. Also highlight the relevant mechanisms through which a mark may be declared as well known and the factors to be considered while determining Well-known status of a Mark.

(Marks 25)

- Q.3). a) Explain the process for obtaining a trademark registration under the Trademark Act, 1999. Highlight the relevance of Advertising and Opposition as important steps in the registration process.
- b) In a recent comparative advertising campaign, Company X directly compared the effectiveness of its cleaning product 'CleanMax' to a competitor's product, 'DirtBuster,' by prominently featuring both product names and trademarks in their advertisement. The advertisement claimed that 'CleanMax' removes stains 50% faster than 'DirtBuster' and displayed a side-by-side demonstration of the two products in action. 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 12.5+12.5 = 25)

PART – B (attempt any two)

Q.4). 'While Article 6bis of the Paris Convention was drafted to override the effects of territoriality of a trademark, the domestic judicial interpretations have not been aligned to the underlying object and purpose of the provision.' – Do you agree? Substantiate with detailed reasons and supporting case laws.

(Marks 25)

Q.5) Compare and contrast the European and Australian legal approaches to interpreting morality in the context of trademarks.

(Marks 25)

Q.6) a) X files an application seeking protection for its trademark in the international registry of the trademark regulator in India, after a successful registration through its basic application in India on April 1, 2019. In its international application, X seeks priority in Thailand, Vietnam and Indonesia under the Madrid System. Upon being notified in the international registries in these jurisdictions, Y comes to know about X's mark and has reason to believe that it shares deceptive similarity with Y's mark which enjoys protection through the passing off doctrine in all these jurisdictions. However, the Board of Directors of Y is unwilling to pursue litigation against X in all these jurisdictions due to budgetary constraints. The Board also recommends to its General Counsel (You) that any course of action against X must be contemplated only after the end of the current financial year on March 31, 2024. As the General Counsel, please draft a response to the

CEO explaining how X's international application should be opposed with proper legal justification.

b) Nagaland Cane Consortium has been established as a cooperative to protect the geographical indications in Nagaland's cane products. Accordingly, the Consortium obtains protections for its cane baskets which come with unique designs and durability through GI No. 4572/2023 and designates the Nagaland Department of Cottage Industries ('Department'), Ministry of Agriculture, as authorized user. Mr. Loyal Lama, who heads and represents the consortium, while accidentally browsing through the internet notices on Amazon.in that Mr. JL Kapoor, based out of Gurgaon, has opened a virtual store on the website, selling his cane baskets under the tag 'Naga Cane Carrier'. He also notices that about 85% of the reviews have rated the products from 1-2 out of 5 due to inferior quality and durability. Immediately, Mr. Lama files a suit against Mr. Kapoor in the Gurgaon District Court. Mr. Kapoor argues that the suit cannot be sustained without impleading the Department as a necessary party and contends that the suit should accordingly be dismissed. Examine the merits of this contention in light of ONE relevant case law.

(Marks 12.5+12.5 = 25)