

Roll No.

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 12

NOTE : Answer **ALL** Questions.

1. Analyze the following case study and answer the questions given at the end :

On a 2009 visit to her ancestral village in Madhubani District in India. Ishitashri Shandilya found that the ‘sanctity of traditional Mithila art’ (Madhubani paintings) was no longer a criterion artists considered worthwhile. In the name of contemporary art, disturbing and sad incidents that reflected sorrow, helplessness and despair were also being painted. Shandilya was taken aback to learn that this tweaking was intentional; someone would narrate an unfortunate incident and the artist would paint it. Artists were willing to switch back to traditional techniques of creating art as long as their livelihood needs were met. On December 28, 2010. Mithilasmitta was set up as a folk art gallery from where artists’ works could be marketed so that they could earn decent money. In May 2012 the organization registered as a private limited firm. This was a start, but a question remained: How could Mithilasmitta capitalize on the pro-artisan initiative of the All India Handicrafts Board and geographical indication rights of Madhubani paintings in building up a sustainable business, preserving traditional art and achieving social objectives ?

Art from the Mithila region had remained one of the most globally recognized art forms of India. These paintings were positive and devotional in nature and created with a free hand and natural colours. The paintings took the observer into times immemorial through beautiful representations of legendary stories, Shandilya, who was born and raised in the Mithila

region, was immensely proud and aware of the beauty of the art. In 2009, after understanding the current situation Mithila region, was immensely proud and aware of the beauty of the art. In 2009, after understanding the current situation of the art, she realized there was a need to find a way to prevent its drift into a different form.

Discussions and meetings with various artists sparked a ray of hope. Shandilya understood that a sustainable livelihood for artists would be the source of motivation in order to ensure that they reverted to the traditional style of the art. Locals and artists told Shandilya that the All India Handicrafts Board had been encouraging them to create paintings on hand paper, cloth and canvas to sell in the market since 1966. The board's intention was to create extra income for the families. Inspired by this, Mithilasmitha was registered as a folk art gallery on December 28, 2010.

MADHUBANI DISTRICT

Madhubani become a district when it split from Darbhanga District in 1972.

The district consisted of a vast, low-lying plain intersected by numerous streams and marshes. The terrain was mostly clay with a negligible portion of sand. This facilitated paddy fields and sugarcane cultivation, as the land had the capacity to retain moisture.

The population of Madhubani was about 3.5 million and was almost entirely rural (3.4 million people lived rurally). It had about 1.2 million workers and 2.3 million unemployed people. The female-to-male ratio was 942 to 1,000 in 2001. The literacy rate in 2001 was 42 per cent compared to the state rate of 47 per cent. Furthermore, the female literacy rate in the district was only 26.25 per cent in 2001 as compared to the state rate of 33 per cent. The socioeconomic indicators did not suggest the district was in a healthy economic condition.

MADUBANI PAINTINGS

Madhubani District was in zone five on the seismic map. A devastating earthquake hit the area in 1934 with a magnitude of 8.3 on the Richter scale. It had been suggested that this was when Madhubani paintings attracted the attention of Britons, as British officers visited the region after the earthquake.

Dating the history of Mithila art was very difficult. The *Puranas* (Indian holy scriptures), which mention this art, could not themselves be dated. On various auspicious occasions, artists painted houses.

One of the examples of traditional art was storytelling through paintings. An illustration of this kind of painting is “*Krishn Leela*” “*Shanti Nritya*” is full of images of various gods and goddess such as *Shiv, Parvati, Ganesh, Hanuman, Saraswati, Brahma, Vishnu* and *Lakshmi*. The images contain great detail and represent long, complex stories with so much life that the observer could learn continuously from the painting. Parents could narrate stories to their children by referring to such paintings. Recognizing the cultural importance of this art, the Government of India awarded a geographical indication patent right to Madhubani paintings. As of July 26, 2012, about 178 items had been granted geographical indications under the Geographical Indications of Goods (Registration and Protection) Act, 1999.

In September 2012, Nitish Kumar, the chief minister of Bihar, announced the establishment of the Mithila Institute of Art. He also stated that it would be given the status of a university. Mithila Museum in Tokemachi-Shi, Niigata, Japan, proved how world-famous the art had become.

HOW THE SCENARIO CHANGED

A drought in 1966 brought misery to the people of Bihar. To restore the lost wealth caused by this natural disaster, the All India Handicrafts Board encouraged artists to create paintings on paper so that an ensuing commercialization of Mithila art would ensure extra income for

local families, the outcome of the initiative did not bring socioeconomic prosperity to the region. It became difficult for artists to earn a living. Thus, in the absence of any incentive for them to remain “traditional artists,” which involved putting in huge efforts and not earning proportional amounts, they started moving away from the traditional methods of creating paintings. Financial needs compelled the artists to produce art in large quantities. Their purpose was no longer to create art by immersing themselves in the process, rather, it was to earn money even if they had to relinquish the traditional techniques. Some artists preferred to switch from the position of a creator of art to a “middleman,” as they could earn more by trading art than creating it.

Shandilya delved deeper in exploring other reasons for such changes. Art experts, artists and social workers in the region highlighted the fact that tweaking the traditional art techniques to embrace contemporary art had begun to create a new market for Madhubani paintings. The market was serving customers, but the artists were still not earning much, even at the cost of the distortion of the traditional art forms. Shandilya felt this was a perfect example of “unethical commercialization.”

A visit to Madhubani, in 2009, with her mother, Sarita Mishra, was a disturbing one for Shandilya. She found that Mithila art was not as it used to be. The most significant change was the use of artificial colours instead of natural colours. Pencils and other supporting mechanical devices had become common and artists did not consider this an aberration of the traditional age-old art. Shandilya came to appreciate what her grandmother Gauri Mishra, a prominent social activist in the region who also worked for the revival of traditional women’s art, meant by the “sanctity of art.”

THE CATCH : TRADITIONAL OR CONTEMPORARY

The act of creating traditional art was similar to the *gurukul* system of education. In this system, women taught their daughters how to make *siki* (boxes with paintings on them) as

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wedding gifts or for other auspicious ceremonies. The paintings were also created on walls to sanctify them, and creation thereby was an integral part of the life of Mithila women. This was similar to *Rangoli* (colourful design patterns on floors) that were created in various parts of India. Once the tweaking of the art started, the artists saw no incentive to put as much effort into their work. They saw such little reward for their work, had no direct access to a market, and made a more reliable living by working as intermediaries; as a result, traditional art started losing out. The artists began to use artificial colours instead of natural colours and used pencils and other supporting mechanical devices to create their paintings. As Shandilya pointed out : “I cannot blame or encourage the artists to revert to traditional art forms unless and until I am able to address their sustenance needs. “The traditional paintings also carried important messages and meanings.

MITHILASMITA ART AND CRAFT PVT. LTD.

Mithilasmitta was founded by a team of social entrepreneurs under the guidance of Gauri Mishra, who was a pioneer in the promotion of Madhubani paintings. The organization changed from being registered under the Karnataka Shops and Commercial Establishments Act, 1961 (in 2010) to being a private limited firm in May 2012. The organization’s focus remained on the traditional art and artists of Mithila to ensure that the authentic folk art of Mithila regained its glory. As such, Mithilasmitta strove to preserve as well as promote the traditional themes of Madhubani paintings. A folk art gallery in Bengaluru was set up in December, 2010 and focused on traditional Madhubani paintings and other art-based items. These items included a range of dress materials and accessories for every age group and featured Mithila art.

Organizations such as Mithilasm could be categorized as social enterprises. Sometimes, delivering public good through a for-profit business model was not workable and non-profit ventures were necessary to ensure social benefits. One such venture was the Barefoot College in India. This organization had the long-term objective of working with the marginalized, exploited

and impoverished rural poor. The organization aimed to lift the poor above the poverty line so that they lived with dignity and self-respect. Barefoot College's primary goal was to establish a rural college in India built by and exclusively for the poor.

There were cases when an organization found that it could not sustain itself without generating funds. In such cases, it was possible to adopt a hybrid non-profit venture that offered services at different prices depending on socioeconomic parameters. Aravind Eye Care in south India was such an example. The organization had identified how avoidable blindness was rapidly escalating. The government alone could not meet the health needs so it had searched for an alternate healthcare model that could supplement the efforts of the government and also be self-supporting; Aravind Eye Care was the result.

Another category was a social business venture. These types of firms did not depend on funds and grants from a donor organization or government. They responded to the needs of the disadvantaged by creating for-profit ventures to drive transformational changes. Profit was utilized to enable access to sustainable livelihoods. Strong leadership skills were necessary in this type of venture. Mithilasmitha fell under this category.

Shandilya was born into an educated Maithil family in Darbhanga. Since her early childhood, she had seen her parents working with Gauri Mishra in the promotion of Madhubani paintings. Gauri Mishra founded the Self Employed Women's Association Mithila (SEWA Mithila) to promote the heritage art of Mithila. The organization was pivotal in the socioeconomic empowerment of rural women.

The SEWA Mithila campus was a second home for Shandilya. She had a cordial relationship with the artists, who were like members of her extended family. She would listen to their folk-tales and play with the children from the *Abhayashram* (SEWA Mithila's home for the destitute people of Mithila). Shandilya's determination to work for the people and art of Madhubani was inspired by her father's passion. Her late father, Samarendra Mishra, had worked for the promotion of art from Madhubani itself, as he believed that promotional

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activities should have roots in the village. To ensure that this aim was maintained, Shandilya regularly visited the village and interacted with artists to address their concerns.

Before setting up Mithilasma, Shandilya worked for seven years in the supply chain industry with global firms. Realizing that it was crucial for an artist to have market access, Shandilya decided to head Mithilasma's marketing department. To bring true value to customers, Mithilasma was in pursuit of ensuring the best practices of management from its quality of customer service to procuring art from artists in Madhubani or displaying them in a gallery in Bengaluru. As the organization had been established with the larger goal of preserving Madhubani paintings, it also aimed "to create awareness about Mithila art", visitors to the gallery were briefed on the history of Madhubani art and its significance. Historical perspectives were displayed on the website. The organization also used social media like Facebook and Twitter to spread the word about Mithilasma.

GOING FORWARD

Some questions that kept Shandilya engaged were :

How could Mithilasma ensure that the pro-artisan initiative of the All India Handicrafts Board and geographical indication rights were capitalized on in building up a sustainable business while preserving traditional art and achieving social objectives ? Furthermore, what mechanism could be put in place to collaborate with government organizations and corporations to achieve a vision set out by Mithilasma ?

What options could Mithilasma explore to retain artists' loyalty in these times of inflation ? Realizing that checking the use of unfair means and unethical practices in the painting business would require stringent authenticity checks for ensuring buyers' trust, what options did Mithilasma have ?

How could Shandilya approach government officials for making amendments in the geographical indication rights awarded to Madhubani painting and include a clause on traditional methods of creating paintings ? Furthermore, how could Mithilasma develop a standard or categorization mechanism that could be presented to the government for consideration ?

Questions :

- (a) Write a comprehensive note on the salient features of the case study.
(10 marks)
- (b) What are challenges that Mithilasmitta is facing ? What recommendations would you give Shandilya for addressing the challenges faced by Mithilasmitta ?
(10 marks)
- (c) How would you assess the initiative of the All India Handicrafts Board ?
(10 marks)
- (d) Does the protect through GIs also extend to traditional knowledge and traditional cultural expression contained in the products under the Geographical Indications of Goods (Registration and Protection) Act, 1999 ?
(10 marks)
- (e) What do you mean by social enterprise ? Would you classify Mithilasmitta as a social enterprise and Shandilya as a social entrepreneur ? Give reasons in support of your answer.
(10 marks)
2. (a) Genuine Helthcare Pvt. Ltd., which had a predecessor-in-interest of the registered trade mark ANAFORTAN, used it extensively and videos for the Medicines manufactured and sold in the market. Since September, 2016 it had been doing so. Thus, Genuine Healthcare had established a goodwill and reputation in the mark ANAFORTAN, it claimed to have sold pharmaceutical products under the said trade mark amounting to ₹ 8.20 Crores between September to December, 2016 and ₹ 24.47 Crores between January and December, 2017. Rameshwar Das carrying on business as a sole proprietor of Himani Pharmaceuticals, was selling pharmaceuticals products contains CAMYLOFIN DIHYDROCHLORIDE

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under the brand name AMARFORTEN. Another firm Helicon Pharmaceuticals Pvt. Ltd. was manufacturing the medical preparation for Rameshwar Das to be sold under the mark AMAFORTEN.

Genuine Healthcare Pvt. Ltd., claims and alleges that Rameshwar Das surreptitiously obtained the registration of the trade mark AMAFORTEN.

It intends to file rectification proceedings.

Will the company succeed ?

Give reasons in support of your answer and refer to case law if any.

(10 marks)

- (b) ABC Systems contended that it has obtained design registration for its water purifiers. It added that XYZ Ltd. sells water purifiers that contained the same design as the one used by it which amount to piracy. It further added that XYZ Ltd. sells these water purifier on E-bay (an intermediary). ABC systems approaches the court to state that if E-bay (the intermediary) does not remove many of the listings that were violative of plaintiff's rights, issue an order for delisting the infringing material as well as a prohibited injunction to prevent such listings from being public in future. E-bay (intermediary) stated that it has no difficulty accepting plaintiff's prayer that all infringing content be removed as soon as it is brought to its notice. The plaintiff argue that E-bay, being an intermediary, is obligated to institutionalise a system to ascertain whether or not the content that it is publishing is of an infringing character and to refrain from publishing the content if the answer to this question is in the affirmative. The plaintiff seek to draw sustenance from rule 3 of the Intermediary Guidelines which imposes an obligation on intermediaries to maintain due diligence and section 79(3) of the Information Technology Act which makes the safe harbour that intermediaries

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enjoy inapplicable in circumstances when they aided abet or conspire or induce the commission of an offence.

In response, E-bay relied on section 79 of Information Technology Act in support of its argument that its action would be covered with in ten four squares of the provisions which shilled from the gauntlet of legal liability the conduct of and intermediary which meagrely surveys as a conduit for the receipt of the information and does not interfere with the information in any way.

Can E-bay (an intermediary) be compelled to screen contents allegedly violative of intellectual property laws on an ex ante, in contradiction and ex-post, bases ?

Give reason in support of your answer.

(10 marks)

- (c) Toyota Jidosha kabushiki Kaisha. (plaintiffs) was using Toyota. Innova and Prius as its trademark. For the first two trademarks were its registered trademarks.

There was a contest with respect to the trademark PRIUS which this plaintiffs claimed that the trademark PRIUS belonged exclusively to it though they had no trademark registration for this mark.

M/s PRIUS AUTO INDUSTRY Ltd., Spain parts supplier, had a trademark registration for PRIUS, a registration dating back to 2000.

Toyota contested this registration by the defendants claiming that it was the first user of PRIUS (and began using this mark as early as 1997) and the defendants had wrongly and dishonestly registered the same in India.

Toyota claimed that PRIUS mark was were well known abroad. It claimed that the year 2001 was the effective date on which a significant cross section of Indian consumers should have known of their mark.

The defendants pleaded that although the mark may be very well known abroad, that by it self was not sufficient and that reputation in the local milieu must be proved

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as well. In the year 2001, Internet was not in wide spread use and therefore not many would have learnt of the mark in India.

The defendants further claimed that they were pioneers in the field of manufacture of add-on Chrome Plated Accessories. They sourced high and low for an appropriate term that would describe their first attempt. After extensive research, they finally found the words PRIUS in the dictionary (a Latin term meaning “to come first” which they picked up and used).

Can the plaintiff claimed that they have a stronger (passing off) claim to mark PRIUS being prior adopters/users of the same.

Give reasons in support of your answer.

(10 marks)

3. Sane Aptech Ltd. was in business of electroplating the internal surface of cylinders of internal combustion engines with a thin layer of nickel silicon carbide. The company employed one Rakesh as a sales engineer March, 2017 to September 2018. Rakesh after resigning started similar business under the name of Ultra Cylinders.

Sane Aptech instituted a law suit against Rakesh for breach of trade secrets and related it to the use of similar type of electroplating apparatus and list of customers. Rakesh pleaded that electroplating process and apparatus was not a novel one and that the contract with the company was very vague about the confidentiality of information.

Will Rakesh succeed ? Give reasons in support of your answer.

(5 marks)

4. Cediff Communications registered the domain name “Cediff.com” with Net Solution on 15th February, 2017. On 31st January, 2018 Syberboot registered the domain name “Cardiff.com” with Net Solutions.

Cediff communications (plaintiffs) incited proceedings under the Trade Marks Act, 1999 alleging that the Syberboot (defendants) had adopted the word “Cardiff” as part of their trading style deliberately to pass off their business services as that of the plaintiffs.

Defendants pleaded that the word “Cardiff” is coined by taking the first three letters of the words catch, information and free. They further contended that the “look and feel” of the plaintiffs website was totally different from that of the defendants website. They added that the users of the internet can never connect to a website by mistake as users of the website are persons skilled in the use of computer and hence there could be no possibility of confusion between the two name.

Are the contamination of the defendants valid ? Can plaintiffs claim trade mark protection of domain names.

Give reasons in support of your answer.

(5 marks)

5. Intellectual property law and competition law are two complementary instruments that promote economic efficiency and are necessary for the efficient operation of the market place. Elucidate.

(5 marks)

6. In the course of conducting an intellectual property audit, the audit team discovers that few employees are subject to written agreements with the company although many have access to highly proprietary information. Moreover, the audit team has discussed with the hue the purchased another company two years ago but has not filled any documents to notify any statutory agencies that it is now the owner of various intellectual property assets.

What should the audit team advise the client with regard to these matters ?

(5 marks)