

Roll No.

OPEN BOOK EXAMINATION

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 10

NOTE : *Answer ALL Questions.*

1. Nestled in the tropical forests of the Agasthyamalai hills of the Western Ghats, a mountain range in Kerala state, India, live the indigenous Kani tribe, traditionally a nomadic people with a population of almost 25,000. The Kani have a rich tradition of using wild plants found in the region for health reasons, and their tribal physicians — known as Plathi — are the exclusive holders of the traditional medicinal knowledge of the tribe. The use of traditional knowledge for herbal medicines among the Kani tribes inhabiting the forests of the Western Ghats region is quite rich. The herbal lore that this community possesses regarding the large number of wild plants in the region has helped them survive for generations. In December 2007, Dr. Swaminathan, director of the Royal Garden and Research Institute (RGRI) in Kerala, was leading a team from the All India Coordinated Research Project on Ethnobiology (AICRPE) on an ethnobotanical expedition to the Western Ghats. Knowing that the Kani knew the area better than anyone, Dr. Swaminathan employed some of them as guides. While traversing through the rough terrain, the team was surprised that after several hours their Kani guides did not feel tired, while they themselves were constantly feeling fatigued. Curious as to why, they observed their guides and saw them continuously

munching black fruits of some plants. Seeing their exhaustion, the Kani guides offered some of the fruit to the AICRPE team. Upon eating the fruit, the team immediately felt full of energy and vitality.

The team inquired about the fruit but the Kani guide were reluctant to tell them because according to Kani tribal customs, only the Plathi (tribal physicians) have the right to transfer and disseminate their traditional medicinal knowledge. Because of this, the Kani guides were reticent to share with the AICRPE team the source of the revitalizing fruit. However after a great deal of pressure, the Kani led the team to a plant known locally as “arogyapacha” (known scientifically as *trichopus zeylanicus* ssp. *Travancoricus*).

With first-hand experience of the medicinal benefits of arogyapacha, Dr. Swaminathan knew that the effect of the plant’s berries was unusual, and that it had significant sales potential if it proved to be safe. He and his team of scientists took the plant back to RGRI’s research facilities and began to analyze it through a multitude of chemical and pharmacological tests. Their research discovered that not only did the plant (particularly the fruit and leaves) have anti-stress and immune-stimulating properties, but it also boosts stamina, relieves fatigue, helps control tumors and activates the body’s natural defenses and cellular immune system.

After seven years, RGRI’s research isolated twelve active chemical compounds in the plant that yielded the effects they experienced. The traditional way in which the Kani used arogyapacha was to eat its fruit. RGRI discovered that crushing the plant’s leaves was the most effective way to get to the twelve compounds. These chemicals were then combined with three other

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plants and RGRI produced a scientifically verified and standardized herbal formulation for its reproduction. With a standardized formulation in hand, RGRI continued its research and development (R&D) program, particularly through clinical trials in which it was administered orally to one hundred human subjects in studies involving either healthy or unhealthy individuals. The research focused on determining the ability of these people to withstand adverse conditions (such as an increased work load), the quality of work completed under stress, athletic performance, any increase in mental alertness and overall work output. Results of the clinical trials were very successful and was found to exert favorable effects in a number of situations. RGRI's research scientifically demonstrated the important medicinal benefits of the arogyapacha plant, and proved that when used alone or combined with other ingredients, it can be more effective and safer than ginseng.

RGRI has applied the success of this project to other R&D projects as it believes that the project is a model for bringing beneficial traditional medicinal plants to the world market. The purpose was to make sure that these valuable plants remain available, and that science into their medicinal uses continues.

RGRI named this formulation "Jeevani," which means "giver of life." The product comes in granules and is mixed with hot water or milk.

"Jeevani" drug, which was developed by scientists at the Royal Garden and Research Institute (RGRI), based on the tribal medicinal knowledge of the Kani tribe in Kerala, South India.

"Jeevani" is a restorative, immuno-enhancing, anti-stress and anti-fatigue agent, based on the

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herbal medicinal plant arogyapaacha, used by the Kani tribals in their traditional medicine. The research technology of RGRI is licensed to the Arya Vaidya Pharmacy, Ltd., an Indian pharmaceutical manufacturer pursuing the commercialization of Ayurvedic herbal formulations. The Arya Vaidya Pharmacy Ltd in order to protect this formulation so obtained from RGRI applied for patent. Ram wants to oppose this application.

Based on the above facts answer the following :

- (a) Advise Ram the grounds on which this application can be opposed.
- (b) Based on the opposition filed by Ram patent application was rejected by the Indian patent office. Advise Arya Vaidya Pharmacy another way to obtain the patent.
- (c) “The Evergreening of patents is a practice of tweaking drugs in order to extend their patent term and thus their profitability. The Indian Patents Act 1970 introduced many provisions to prevent the mischievous practice of Evergreening of patents.” Examine the statement with help of decided cases.
- (d) Enumerate various kinds of patent infringement.

(10 marks each)

2. Gujarat Cooperative Milk Marketing Federation (GCMMF) founded in India in 1946, is engaged in dairy products manufacturing and marketing with an average of 4.85 million liters of milk collection every day. Its AMUL trademark is the largest food brand in India and a famous trademark in India. It says that AMUL trademark is the world’s biggest vegetarian brand of cheese and the biggest pouched milk brand in the world.

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A broad variety of food products like cheese, ghee, butter, ice cream, beverages, yogurts, cream, and associated products (milk powder, buttermilk, condensed milk), coffee, chocolates, sweets, spreads, desserts, and bread are being marketed and sold at Gujarat. The AMUL trademark is a prominent well known trademark in international sphere. For over 60 years in newspapers, magazines, radio & television, and now, online, via its own website as well as Google and YouTube, it has also been widely advertised both in India and internationally. In 2018, GCMMF received several complaints with respect to fraudulent websites using the well-known trademark 'Amul' as part of their domain names. These parties not only deceived the public by offering distributorship, dealership, jobs, etc. at Amul, but were also asked to deposit money to their bank accounts.

- (a) What remedy is available with Gujarat Cooperative Milk Marketing Federation to protect its trademark ?
- (b) Deceptive Similarity is also considered as the ground for not granting a Trademark registration. Elaborate the statement with the help of decided cases.

(6 marks each)

3. In the year 1912, cream-filled sandwich cookies were introduced in the worldwide market by National Biscuit Corporation (NBC) under the brand name OREO. The company is the owner of the OREO brand of biscuits. Oreo was launched in India in 2011 taking its pace into the biscuit category in India. In 2020, OREO came to know that chocolate-vanilla cream biscuits are being sold by Parle in the name of FABIO or FAB! O. NBC filed the suit

for trademark infringement seeking injunction against Parle Products Private Limited from using its FAB! or FAB!O marks which is similar to the plaintiffs OREO mark and from manufacturing and selling its vanilla cream filled chocolate sandwich biscuits.

CONTENTIONS BY THE PLAINTIFF (OREO) :

1. That the defendant Parle Products Pvt. Ltd., has introduced its own range of chocolate-vanilla biscuits under the brand FAB!O in or after January 2020. The plaintiff alleges that, prior to 2020, the defendant was using the brands FAB and FAB! for its biscuits. After 2020, the defendant introduced vanilla cream filled chocolate sandwich biscuits under the mark—FAB! O or FABIO.
2. That the FAB! O mark is being used only for cream filled chocolate sandwich biscuits which were identical to the biscuits manufactured and sold by the plaintiff under the OREO trademark. The plaintiff alleges that the mark on the defendant's biscuit, though written as FAB! O is bound to be pronounced FABIO. Therefore, according to the plaintiff, the defendant's mark is deceptively similar to that of plaintiffs mark.
3. That the design of the defendant's cookied copies all the essential features of the design of the plaintiff's cookie, in which the plaintiff holds trademark registrations. The Plaintiff contended that the defendant's FAB!O range of vanilla cream filled chocolate sandwich biscuits was sold in a package, the trade dress of which was nearly identical or, at the very least, deceptively similar, to the trade dress of the plaintiff's OREO biscuit packages.

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CONTENTIONS BY THE DEFENDANT (PARLE) :

1. That there is no phonetic similarity between—OREO and—FAB! O. The only common letter, between these two words, he points out is—O. Submits that, where the first syllable of the two marks is different, it cannot be said that they are phonetically similar. Also, the defendant submits that the mark FAB! O, as used by the defendant on its biscuit packs is structurally, visually and phonetically dissimilar to the OREO mark of the plaintiff.
2. That the aspects emphasized by the plaintiff as being common to the packaging in which the plaintiff sells its OREO biscuits and the defendant sells its F—AB!O biscuits are all common to the trade. In fact, the defendant submits that the plaintiff is claiming exclusivity on the basis of the overall appearance of its packing which, again, is common to the trade.

Based on the above facts answer the following :

- (a) Based on the above facts will OREO succeed in getting injunction ?
Elaborate your answer with the help of decided cases.
- (b) Geographical indication may be registered in respect of any or all of the goods, comprised in such class of goods as may be classified by a region or locality in that territory. Discuss.

(6 marks each)

4. U.S Company Mars Incorporation filed a case against School Shoe Co. Mars filed a case against School Shoe Co. alleging infringement of registered design. These designs are related to perforated and non-perforated designs. Mars claim that it is the owner of the registered design and School Shoe Co. is imitating the design of the footwear of Mars. Whereas on the other hand School Shoe Co. had contended there could not be any piracy as the disputed design registration is invalid. The School Shoe Co. has argued that registered design of Mars, when it was registered was not new or original design and the design concerning which Mars claims exclusive entitlement was in public domain already on its website since December, 2002 and the registration done by Mars for the design in India and U.S. was done in the year 2004.

Based on the above facts answer the following :

- (a) Based on the above fact do you think Mars Incorporation will succeed in stopping School Shoe Co. to use its design ? Substantiate your answer with case law(s).
- (b) Trade secrets seems to be a neglected field in India, as there is no enactment or policy framework for the protection of trade secrets. This form of Intellectual property is a new entrant in India. How this important form of IP is protected in India ?

(6 marks each)

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5. (a) “Human Rights and Intellectual Property, though two different sets of law with no apparent connection, have gradually becoming intimate bedfellows.” Elucidate the statement.
- (b) In a digital world, where information and data are the currency, protecting one’s Intellectual property becomes even more critical. In the light of this statement explain the importance of IPR in digital era.

(6 marks each)

6. Yash Raj Films (YRF), a renowned production house, is the producer of the Bollywood film, **Band Baja Baarat** which was released on December 10, 2010 in India and other countries. The YRF holds copyright in various original works in this film, including but not limited to the storyline, dialogues, theme, concept, plot, script, music, lyrics and character sketches. YRF had not sold the copyrights of the film to any third party and was the sole owners of the same. Around December 2011, the YRF came to know that Sri Sai Ganesh Productions (SSGP) intended to remake the film in Telugu. The YRF sent two cease and desist notices to the SSGP, one in January 2012 and the other in April 2012 but received no response. Subsequently, the SSGP released a trailer, following that the YRF issued the Third Legal Notice requesting a copy of the Impugned Movie and the Script before the release of the Movie. The SSGP did not respond to the third notice either, and instead released the film titled **Jabardasth** in February 2013. The SSGP had also sold their rights to a Tamil production house for its remake. The YRF filed a copyright infringement suit against the defendants for blatantly copying the plot, theme and character-sketch of their movie.

Based on the above facts answer the following :

- (a) Will YRF succeed in this case of copyright infringement ? Decide based on the judicial pronouncements of the court.
- (b) Education is a basic and fundamental human right enshrined in the Universal Declaration of Human Rights and also under the Constitution of India. Education is considered to be an important means of socialization; it transforms a human being into a social being, and is instrumental in improving the life. How Copyright Act, 1957 has tackled the problem of Access to Education for Visually Impaired Person ?

(6 marks each)

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