

GIRLS' HIGH SCHOOL & COLLEGE ,PRAYAGRAJ

SESSION- 2020- 2021

CLASS -12 –D

LEGAL STUDIES

WORKSHEET-3

CHAPTER- INTELLECTUAL PROPERTY

TOPIC – TRADE MARK AND PATENT

NOTE- Parents please ensure that your ward refers to the Websites to read the topic.

Websites-

- 1 .<http://www.wipo.int>
2. <http://www.wto.org>
3. <http://www.abysinnialaw.com> .
4. [http:// www.wto.org/](http://www.wto.org/).
5. <http://www.indiapatents.org/>

CHAPTER IN BRIEF –

TRADE MARK – Trade and commerce is the lifeline of economy of any nation. In an era of competitive economics, the goods are traded by their names which may indicate their quality and identity distinct from others. Trade mark is, by far, the most commonly used intellectual property right. The importance of trade mark was recognized at global level through Madrid agreement way back in 1891. From Madrid to TRIPs the International legal system in the field of trade mark has developed significantly .In India the trade mark law has undergone major changes with the enactment of new Trade Marks Act, 1999.

Essentials for a good Trade Mark-

- i) It should be easy to pronounce and remember , if the mark is a word;
- ii) The device should be capable of being described by a single word;
- iii) It should be of such character ,which makes it spell correctly and write legibly;
- iv) It should be short ;
- v) It should be attractive to eye;
- vi) It should satisfy the requirements of registration.

Functions of Trade Mark- The functions of trade mark is to give an indication to the purchaser or possible purchaser as to the manufacture or quality of the goods. The goodwill of a product is also reflected through its trade mark .We may classify the functions of trade mark in the following four categories-

- i) It identifies the product and its origin (illustration – trade name “VIDEOCON” signifies the electronic products produced by VIDEOCON company of India.)
- ii) It guarantees its established quality.(illustration – The quality of toothpaste “COLGATE” is well established .A purchaser of Colgate toothpaste is assured of its quality.
- iii) It is a means of advertisement of product .Every company who wishes to popularize his product among public has to give its product a trade name and then create its brand value .(illustration – trade name ‘LUX’ is a popular name for soap .)
- iv) It creates an image of product in the mind of public .(illustration – trade name ‘PARLE’ creates an impression and image about the quality of confectionary and biscuits sold by the company).

TYPES OF TRADE MARKS-

- i) Service Mark
- ii) Collective Marks
- iii) Certification Trade Mark
- iv) Trade Dress
- v) Internet Domain Name

GROUND OF REGISTRATION-(SECTION – 9)

- i) It is of such nature as to deceive the public or cause confusion.
- ii) It contains or comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India.
- iii) It comprises or contains scandalous or obscene matter.
- iv) Its use is prohibited under the Emblems and Names (prevention of Improper use)Act ,1950

INFRINGEMENT OF REGISTERED TRADE MARK (SECTION 29)

- i) The infringing trade mark is either similar or identical or deceptively similar to the already registered trade mark.
- ii) The infringing trade mark must be used in the course of regular trade in which the registered proprietor or user is already engaged
- iii) Using either whole of the registered trade mark or an adopted one by making a few addition and alteration.
- iv) The person is not authorized to use the trade mark.

PASSING OFF ACTION - Section 27 – ‘No action for infringement of unregistered trade mark-

- 1) No person shall be entitled to institute any proceedings to prevent ,or to recover damages for the infringement of an unregistered trade mark
- 2) Nothing in this Act shall be deemed to affect the right of action against any person for passing off goods or service provided by another person ,or the remedies in respect thereof ’

PATENT- A patent is a monopoly right granted to a person who has invented a new and useful article or an improvement of an existing article or a new process of making an article. It consists of an exclusive right to manufacture the new article invented or manufacture an article according to the invented process for a limited period .After the expiry of the duration of patent anybody can make use of the invention.

SALIENT FEATURES OF ACT 1970-

This Act reflects the concerns of a developing country ,balanced with the interest and need of the inventors .Under the Act ,the patents are granted to encourage inventions and secure that the inventions are worked in India on a commercial scale and to the fullest extent reasonably practicable ,without undue delay ; and patents are not granted merely to enable patentees to enjoy a monopoly for the importation of the patented article.

PATENTABLE INVENTIONS- Patent Act 1970 (as amended in 2005) defines invention as “ invention means a new product or process involving an invention step and capable of industrial application.” It further states that ;inventive step means a feature of invention that involves technical advance as compared to the existing knowledge or having economic significance or both and that makes the invention not obvious to a person skilled in the art.

- i) Novelty
- ii) Non – obviousness
- iii) Industrial application.

Non –Patentable Inventions-An invention whose commercial exploitation is contrary to public order and morality or which causes serious prejudice to human ,animal ,plant or the environment is not patentable .Thus a device for housebreaking or a gambling machine cannot be granted a patent.

What amounts to Infringement:

- i) The colourable imitation of an invention
- ii) Immaterial variations in the invention
- iii) Mechanical equivalent
- iv) Taking essential features of the invention

Answer in brief.

- 1) Define patent ?
- 2) What are the various functions of a trade mark?
- 3) Write short notes on
 - a) Domain Names
 - b) Service Marks
- 4) What is meant by passing off under trade mark act?
- 5) Explain briefly patentable invention ?
- 6) What amounts to infringement of a patent ?
- 7) What are the two essential components of a trade mark?
- 8) Explain in brief the remedies given under the trade mark act ?
- 9) Mention any three illustrations of a trade mark?
- 10) Who is patentee in Patent act 1970?

Answer in detail-

- 1) “ A monopoly of the patent is the reward of the inventor “ In the light of above statement discuss the objects of the Patent Act ,1970 and also explain its salient features ?
- 2) Enumerate those categories of inventions which are not patentable ?
- 3) Discuss in detail the importance and provision of Madrid agreement?
- 4) Discuss the various rights conferred by registration of trade marks ?

THE END.