

Name:

Enrolment No:



UNIVERSITY OF PETROLEUM AND ENERGY STUDIES
End Semester Examination, December 2022

Course: IP in Cyberspace
Program: BA/BBA/BCOM LLB
Course Code: CLCB4001

Semester: VII
Time : 03 hrs.
Max. Marks: 100

Instructions:

SECTION A
(5Qx2M=10Marks)

S. No.		Marks	CO
Q 1	What is the TRIPS Agreement?	2	CO1
Q 2	Intellectual Property as an intangible property	2	CO1
Q 3	Cybersquatting	2	CO2
Q 4	Rights of copyright holders	2	CO2
Q 5	Domain names	2	CO3

SECTION B
(4Qx5M= 20 Marks)

Q 6	Analyse cyberspace as a e commerce medium and its correlation with intellectual properties	5	CO4
Q 7	Discuss the need to protect IPs in cyberspace giving suitable and relevant examples and cases.	5	CO3
Q 8	In a suit for infringement of a Trademark what are the possible defenses that can be used by the defendants.	5	CO4
Q 9	Discuss the applicability of “substantive similarity” and “fair use” in cases of copyright infringement.	5	CO5

SECTION-C
(2Qx10M=20 Marks)

Q 10	Explain the principles applied by the courts in deciding the cases of copyright infringement. Give suitable case laws.	10	CO5
Q 11	Online infringement of Trademarks has become a common phenomenon. Analyse two cases where the courts have protected trademarks in the online environment.	10	CO4

SECTION-D
(2Qx25M=50 Marks)

--	--	--	--

Read the below mentioned case and answer the following questions:

The plaintiffs are the owners and operators of various branded television channels whose logo contains the Star Device and its variant, as a prominent part in its family of marks. It is claimed that the plaintiffs have been using the trademark, tradename, and trading style "STAR" since 1991, continuously and uninterruptedly in the broadcasting space, and, in India, when they launched the first TV channel, "STAR TV" in 1992. The plaintiffs claim to have developed a distinct identity when they launched the "STAR SPORTS" channel in 1996. Presently, they have 17 sports channels in varied languages such as Star Sports 1, Star Sports 1 Hindi, Star Sports 1 Tamil, etc. The Star Sports Channels broadcast various sporting events from across the world in the fields of cricket, football, badminton, tennis, hockey etc. including the Indian Premier League, the French Open, the US Open, the Premier League, Formula 1.

It is claimed that since inception, the family of Star Channels contains a distinguishing Star Device. The plaintiffs claimed that this five pointed logo and the star marks in its reiterations has acquired the status of a well-known mark within the meaning of [Section 2\(1\)\(zg\)](#) of the Trade Marks Act, 1999 (hereinafter referred to as 'T.M. Act') and as such the Star Device has become synonymous with the plaintiffs and their services. It is also claimed that the plaintiff No.1 is the prior adopter, prior user, registered proprietor and owner of the trademark "STAR" and a plurality of marks incorporating the word "STAR" and/or the uniquely designed five pointed star device including in its family of marks such as STAR (word mark), STAR & Logo , Star Device ("STAR Device"), STAR SPORTS (word mark), STAR SPORTS Logo , , etc.

The grievance of the plaintiffs is that the defendants have recently renamed their sports channel which was known as DSPORT with the logo of a globe, i.e. to EUROSPORT using the marks , , , and their variants thereof, in relation to their sports television channels. According to the plaintiffs, this usage of the Single Star for the marks and logo of the defendants was deceptively similar to the registered trademark of the plaintiffs and also contained the Star Device in its entirety. It is also submitted that the Star has been positioned prominently in juxtaposition with the letter „E“ which was why the "Star" in "EUROSPORT" was deceptively similar to the various registered STAR Marks in India,

The defendant No.1 is EUROSPORT, defendant No.2 is Discovery Communications, LLC and defendant No.3 is Discovery Communications India. The defendants have filed a common written statement. It is submitted that the suit was a malicious attempt to wrongly obtain a commercial advantage over the defendants. It has been further stated in the written statement that the defendant No.1 is the registered

CO5

proprietor of the impugned trademarks and their variations, not only in India but over 100 jurisdictions around the world such as in Hong Kong, South Korea and Taiwan. It is further stated that the impugned marks have been used globally by the defendants since 2015 without objections including from the plaintiffs.

The further case set out is that the marks were dissimilar, and the suit also suffered from delay, laches, waiver, acquiescence, constructive assent, deemed consent and estoppel.

It is further stated in the written statement that the Ring of Stars that was used by the defendant No.1 when its brand EUROSPORT was launched in 1989 was in reminiscence of the stars used in the logo of the European Union, in turn signifying the jurisdiction of the origin by defendant No.1. However, over the years, the defendant No.1 has used multiple variations of its trademark which comprise an unchanged reiteration of a star or stars, and/or the underline brand and wordmark EUROSPORT.

According to the defendants, a bare perusal of these marks reveals their difference from the marks of the plaintiffs.

It is further stated that in the year 2012, 20% stake in EUROSPORT was acquired by DISCOVERY which then grew into full ownership in 2015 and was a brand to reckon with in its own right. However, the brand EUROSPORT was given a facelift and the impugned mark was resultantly adopted in 2015 in order to enhance and modernize EUROSPORT's visual appeal.

It is further stated that on the basis of registration of the impugned trademark in WIPO Madrid in 2015, the final registration vide the Statement of Grant of Protection under Rule 18ter (1) of Common Regulations was given in India in 2017 (placed at page 85 of the defendants' documents). The defendants claim to have adopted the impugned mark more than 2 years before the plaintiffs and that the plaintiffs were now seeking to misuse the Settlement Agreement dated 26 th February, 2018. The defendants have expounded on the reach and reputation of the defendants in detail which need not be reproduced here.

In short, by way of the written statement, it has been submitted that the adoption of the impugned marks was bonafide and the defendants had a right to use the said marks and the impugned Star marks and device in EUROSPORT marks in general were essential and exclusive to defendants' brand identity and business and have been explicitly adjudicated as "well-known" in multiple jurisdictions. Hence, the defendants have sought the dismissal of the plaint.

	<p>The contents of the reply to the application being on similar terms need not be specifically and separately referred to for the sake of brevity.</p> <p>In the replication filed by the plaintiffs, its case was reiterated with a complete denial of the claims made in the written statement.</p> <p>Mr. Amit Sibal, learned senior counsel for the plaintiffs, has submitted that the plaintiffs were pioneers in cable T.V. and satellite broadcasting in India and had commenced operating its T.V. channels under the name of "STAR" with the Star Device and its variants since 1991. The plaintiffs had more than 500 trademark registrations and applications with this device. The plaintiffs were well-established in India in broadcasting under the said style, name and logo, and also had reputed presence in several other countries.</p> <p>It was pointed out that the defendants had used a star device in the shape of a Ring of Stars but never as a stand-alone star till 2015. By that time the plaintiffs had developed their marks as well-known marks all over the world, particularly in India. The entry of the defendants as DSPORT in India was in 2017 by which time viewers in India identified the stand-alone star device with the plaintiffs. It therefore, did not matter if the defendants had used a Single Star with EUROSTAR in Europe. That the mark and the star device belonging to the plaintiffs did in fact have a well-known character was conceded by the defendants when they entered into an Agreement dated 26th February, 2018 and changed the star device in the logo into a globe with the word "DSPORT". They could not be now permitted to re-enter India with a Single Star Device and the word EUROSPORT on the plea that they used a similar mark in other jurisdictions.</p> <p>With regard to the claim of the defendants that they had obtained the registration of EUROSPORT with a Single Star Device in India, the learned senior counsel submitted that the plaintiffs had filed objections which were pending and the application for rectification had also been filed, as the registration ought not to have been granted to them. However, since the Intellectual Property Appellate Board („IPAB“) did not have powers to issue injunction, the instant suit has been filed for the said relief. Presently, the IPAB has also been disbanded and the application is pending before the IP Division of this Court. Thus, no right could be claimed by the defendants on the basis of a registration which was not valid.</p>		
Q 12	Discuss the principles which are taken into consideration by the court while deciding cases of trademark infringement.		
Q 13	In the light of the facts of the case decide whether Star is entitled to the reliefs against Eurosport.	25+25	