

Total number of printed pages-7

19 (V) IPRL 5-7 (H)

2017

**IPR LITIGATION IN  
TRADEMARK AND DESIGN**

Paper : 5-7 (H-7)

Full Marks : 80

Time : Three hours

**The figures in the margin indicate  
full marks for the questions.**

1. Fill in the blanks with appropriate answer :  
1×10=10
  - (a) The trademarks which are devoid of any \_\_\_\_\_ shall not be registered except upon the evidence of 'acquired distinctiveness'. (*Distinctive Character/ Special Character*)
  - (b) A Trademark is literally a 'mark' that one business uses to distinguish its \_\_\_\_\_ or \_\_\_\_\_ from another.  
(*finished product or manufactured product/product or services*)

Contd.

(c) 'Trademarks' means a mark capable of or being represented graphically, and which is capable of distinguishing the \_\_\_\_\_ or \_\_\_\_\_ of one person from those of others and may include shape of goods, their packaging and combination of colour.

*(machine or services/goods or services)*

(d) The underlying principle of copyright protection is that specific creative expressions are protected but not the \_\_\_\_\_ behind them.

*(human mind/ideas)*

(e) Copyright comes into existence as soon as a work is \_\_\_\_\_.

*(published/created)*

(f) A firm \_\_\_\_\_ be granted patent.

*(can/cannot)*

(g) Infringement of Copyright in a design is termed as \_\_\_\_\_ of registered design. *(copy/theft/piracy)*

(h) An Intellectual Property system is one of the best ways of protecting and thereby preserving human \_\_\_\_\_.

*(mind/discovery/invention/creativity)*

(i) 'Goods' means anything which is the subject of \_\_\_\_\_ or \_\_\_\_\_. *(commerce or industry/trade or manufacture)*

(j) Design has to do with the \_\_\_\_\_, \_\_\_\_\_ appearance of an article.

*(external, tangible/physical, visible)*

2. Write short answers : 2×5=10

(a) Distinction between trademark and propertymark

- (b) Need for Protection of Trademarks
- (c) Assignment and transmission
- (d) Abridgement within the meaning of Copyright Act, 1957
- (e) Protection of Domain Names as Trademarks.

3. Discuss the procedural requirements for Protection of Trademarks. What are the effects of non-registration of Trademarks ?

8+4=12

**Or**

What is the meaning of inherent or acquired distinctiveness ? Explain with relevant provisions of the Trademarks Act, 1999 with case law.

4+8=12

4. "The concept and principle on which passing off action is grounded is that a man is not to sell his own goods under the pretence that they are the goods of another man, that is not the gist of an action for infringement." Discuss the concept of 'passing off' in the light of above statement. Distinguish between 'passing-off' and an 'infringement action'. 12

**Or**

What do you mean by the term 'Design' under the Designs Act 2000 ? What are the requirements for registration of a design under the Design Act ? Can the design once registered be cancelled ? 4+6+2=12

5. 'The protection given by the law relating to designs to those who produce new and original designs, is primarily to advance industries, and keep them at a high level of competitive progress'. Elucidate the statement citing examples. 12

**Or**

Discuss the requirements and procedure for registration of layout design. What is the duration and effect of such registration ?

10+2=12

6. What is the Procedure for obtaining design protection ? Discuss the need and requirement for protection of industrial designs.

6+6=12

**Or**

Define Infringement, Right of Goodwill and Passing Off with examples. What are the different criteria of infringement ? How do you assess the standard of proof in passing off action ?

6+4+2=12

7. What do you mean by 'piracy' ? What remedies are available for Piracy of Copyright in Design under the Design Act, 2000 ?

2+10=12

**Or**

Discuss the principle of law laid down in :

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Geep Flash Light Industries v. Registrar of Trademarks, AIR 1972 Del 179.