

Mumbai University

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**B.Sc.IT: SEMESTER – VI**

**PRACTICAL MANUAL  
QUESTION PAPER**

**[CBSGS – 75:25 Pattern]**

**IPR**

**&**

**CYBER LAW**

# TYBSc (IT): Semester VI

Credit Based Semester and Grading System

# IPR & Cyber Laws

Reference Manual for Instructors for Conducting Case Studies

## Developed & Compiled By

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### **Requirements:**

- Case Studies to be discussed and presented related to all 6 Units.
- At least 8 Case Studies to be discussed on various topics covering the entire Syllabus.

### **How to Answer Case Study Questions:**

- Give the overview of the case.
- Introduce the case related to the relevant Units.
- State the issues in the case.
- Provide Solution to the case.
- State the law-this includes relevant legislation and cases
- Apply the law to the facts
- State the Conclusion

### **Key words used in questions:**

- **Explain:** – Students need to provide a definition and give reasons in their answers. I.e. they must try to answer the question why something happens or give details of the cause of something. An example will demonstrate understanding.
- **Describe:**- Students need to write detail about what they are being asked. This will usually include a definition and an outline of the details.
- **Distinguish:**-Define and compare two things showing that are not the same.
- **Advantages:** - Students write about the benefits or the good things.
- **Disadvantage:**-Students write about the costs or the bad things.
- **How:**-Write about the way something happens.
- **Examples:**-Students provide a case study or real life sample to help explain their answer.

## **Major concepts and definitions to know and understand:**

- Unit I: All Basic Topics related to IPR: - Definitions and meanings of all concepts related to IPR.
- Unit II: - WIPO, Domain Name Protection, TRIPs, UK Data Protection Act 1998, SCPA.
- Unit III: - Patents Act 1970, Copyrights Act 1957, Trademark Act 1999 & Design Act 2000.
- Unit IV: - Enforcement of IPR, Criminal & Civil Remedies, Practical Licensing & Clauses of Licensing.
- Unit V: - Cyber Laws basic concepts, Law of Digital Contracts & Rights of E-Governance.
- Unit VI:- Information Act 2000, All Sections of the Act from Sec 1 TO Sec 94.

## **CASE 1: Cyber Law: (Unit V):-**

In an E-trade agreement, signature is based exclusively on asymmetric methods or techniques. It has been described as a special door, which can be opened with a four key lock. The two keys are on every side of the door, and each of these two keys belongs to a single party. Both the parties stand respectively on each side of the door and both of them have different keys. One of them is coincidental with the key possessed by the other party, since they have agreed on the shape and notches in the key (public key) However, the other party is not, and none of the parties knows exactly ,what kind of notches the other key will have. The only thing is sure that the door can only be opened when the four keys are in it. Once both the parties have locked the keys into the door it is possible to open it and for the parties to be sure that they can negotiate through that open door safely without being afraid that an outsider might interfere in their business.

### **Questions:**

Q1. What is this case study about? How is it related to Cyber Law?

Q2. Discuss with reference to authentication of electronic records using digital signatures.

### **Solution:**

#### **Overview of the case:**

- In an E-trade agreement, signature is based exclusively on asymmetric methods or techniques. It has been described as a special door, which can be opened with a four key lock.
- The only thing is sure that the door can only be opened when the four keys are in it.

#### **Introduction of Cyber Laws:**

- Cyber Law is the law governing cyber space. Cyber space is a very wide term and includes computers, networks, software, data storage devices (such as hard disks, USB disks etc), the Internet, websites, emails and even electronic devices such as cell phones, ATM machines etc.
- Law encompasses the rules of conduct that have been approved by the government, which are in force over a certain territory, and which must be obeyed by all persons on that territory.

- Violation of these rules could lead to government action such as imprisonment or fine or an order to pay compensation.

### **Problems Identified in the case:-**

- Both the parties stand respectively on each side of the door and both of them have different keys.
- One of them is coincidental with the key possessed by the other party, since they have agreed on the shape and notches in the key (public key).
- However, the other party is not, and none of the parties knows exactly, what kind of notches the other key will have.
- The only thing is sure that the door can only be opened when the four keys are in it.

### **Solution to the Problems in the Case:**

- “Asymmetric Crypto System” means a system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature.
- “Certifying Authority” means a person who has been granted a license to issue an Electronic Signature Certificate under section 24 of Information Act, 2000.
- This case tells us about Public keys that are required to open the doors.
- “Cyber Security” means protecting the information, equipments, devices and information stored for modification.
- This case is related to Cyber Laws as it requires electronic mediums to solve the case.
- Electronic Signature is considered reliable and is specified in the second schedule.
- The signature creation data or authentication data at the time of signing.
- The Central Government provides authentication technique that may be specified.
- Certifying Authority means a person who has been granted a license to issue an Electronic Signature Certificate under section 24 of Information Act, 2000.
- Due to the use of Electronic Signature, digital signature can be used for Public Keys so that the both the parties can open the door only when the four keys are in it.

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## **CASE 2: Cyber Law & IT Act: (Unit V & VI):-**

Mr.C.H.Chote installed a website “chahooindia.com”. This resembled another renowned website – “chahoo.com”. The services rendered by Mr.C.H.Chote are similar to the services rendered by the “chahoo.com”. (Plaintiff) M/s C.H.Bade and Company, which had installed “chahoo.com”, claimed that they are global internet media, rendering services under the domain name “chahoo.com” which was registered with the “Net work solution Incorporation”, since 2000. An application for registration of trademark ‘chahoo’ was pending in India. M/s C.H.Bade and company, further, claimed that they are the first in the field to have a domain name ‘chahoo’, and also to start web directory and provide search services. In June 2000, such directory was named ‘chahoo’. Mr.C.H.Chote adopted the domain name ‘chahooindia.com’ which is closely resembling to the renowned name ‘chahoo.com’. It was found that the internet users, who wanted to use ‘chahoo.com’ may reach to the ‘chahooindia com.’ Hence, they claimed that the act of Mr.C.H.Chote is dishonest and was tantamount to ‘cyber squatting’.

Mr.C.H.Chote claims that-

1. Plaintiff’s trademark was not registered in India; therefore, there could not be any action for infringement of registered trade mark.
2. There could not be an action of passing off as the defendants were not offering goods but services.
3. The persons using internet and seeking to reach the internet site were all technically educated and literate persons. As such there is no chance of deception and confusion.

### **Questions:**

Q1. Discuss the claims of the parties and their legal rights with reference to Cyber Laws and I.T. Act.

### **Solution:**

#### **Overview of the case:**

- Mr.C.H.Chote installed a website “chahooindia.com”. This resembled another renowned website – “chahoo.com”. The services rendered by Mr.C.H.Chote are similar to the services rendered by the “chahoo.com”.

- Mr.C.H.Chote adopted the domain name ‘chahooindia.com’ which is closely resembling to the renowned name ‘chahoo.com’.It was found that the internet users, who wanted to use ‘chahoo.com’ may reach to the ‘chahooindia com.’

### **Introduction of Cyber Laws:**

- Cyber Law is the law governing cyber space. Cyber space is a very wide term and includes computers, networks, software, data storage devices (such as hard disks, USB disks etc), the Internet, websites, emails and even electronic devices such as cell phones, ATM machines etc.
- Law encompasses the rules of conduct that have been approved by the government, which are in force over a certain territory, and which must be obeyed by all persons on that territory.
- Violation of these rules could lead to government action such as imprisonment or fine or an order to pay compensation.

### **Claims of Mr.C.H.Chote:**

4. Plaintiff’s trademark was not registered in India; therefore, there could not be any action for infringement of registered trade mark.
5. There could not be an action of passing off as the defendants were not offering goods but services.
6. The persons using internet and seeking to reach the internet site were all technically educated and literate persons. As such there is no chance of deception and confusion.

### **Problems Identified in the case:-**

- M/s C.H.Bade and Company, which had installed “chahoo.com”, claimed that they are global internet media, rendering services under the domain name “chahoo.com” which was registered with the “Net work solution Incorporation”, since 2000.
- M/s C.H.Bade and company, further, claimed that they are the first in the field to have a domain name ‘chahoo’, and also to start web directory and provide search services.
- It was found that the internet users, who wanted to use ‘chahoo.com’ may reach to the ‘chahooindia com.’

### **Solution to the Problems in the Case:**

- Cyber Law is the law governing cyber space. Cyber space is a very wide term and includes computers, networks, software, data storage devices (such as hard



disks, USB disks etc), the Internet, websites, emails and even electronic devices such as cell phones, ATM machines etc.

- The primary source of cyber law in India is the Information Technology Act, 2000 (IT Act) which came into force on 17 October 2000.
- The primary purpose of the Act is to provide legal recognition to electronic commerce and to facilitate filing of electronic records with the Government.
- The IT Act also penalizes various cyber crimes and provides strict punishments (imprisonment terms up to 10 years and compensation up to Rs 1 crore).
- An Executive Order dated 12 September 2002 contained instructions relating provisions of the Act with regard to protected systems and application for the issue of a Digital Signature Certificate.
- Minor errors in the Act were rectified by the Information Technology (Removal of Difficulties) Order, 2002 which was passed on 19 September 2002.
- The IT Act was amended by the Negotiable Instruments (Amendments and Miscellaneous Provisions) Act, 2002.
- This introduced the concept of electronic cheques and truncated cheques.
- Information Technology (Use of Electronic Records and Digital Signatures) Rules, 2004 has provided the necessary legal framework.

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### **CASE 3: Rights of Patents: (Unit III):-**

Mr.X an industrialist, manufacturer of pens, chalks, dusters and other education materials. There has been a persistent complaint from the customers that the chalks manufactured by him, have a lot of dust and it is troublesome to clean the board after writing. The Research and Development division of Mr.X came up with an innovative chalk. The chalks are absolutely dust free and the writing of the chalks gets vanished automatically after certain time. Mr. X applied for registration of the patent for this product and has got the patent. Subsequent to the patent granted, he continued with the production for five years after which he stopped the production. The reason was the lack of demand because of the heavy cost of the product. Mr. Y a College lecturer independently made research on the similar type of chalks and came out with the same quality chalks with much less cost. He applied for Patents which was objected by Mr.X on the ground that-

1. Patent for the same product is registered in his name.
2. The product developed by Mr.Y is not an innovative but it is the imitation of his patented product.

Mr.Y claimed that-

1. The product patented by Mr.X is not in use as he has stopped the production.
2. The product invented by Mr.Y is different than that of Mr.X's product in many respects such as shape, quality, cost, etc.
3. Mr.Y who is a lecturer in a Government college, has carried out the research on this product as a part of his academic work.
4. He wants to produce the chinks exclusively for the Government colleges.

Questions:

Q1. Discuss the rights of Mr.X and Mr. Y as per the provisions of Patents Act 1970.

**Solution:**

**Overview of the case:**

- Mr.X an industrialist, manufacturer of pens, chinks, dusters and other education materials. As there has been a persistent complaint from the customers that the chinks manufactured by him, have a lot of dust and it is troublesome to clean the board after writing, the Research and Development division of Mr.X came up with an innovative chink. Mr. X applied for registration of the patent for this product and has got the patent. However, after five years the production of Chinks was stopped because of lack of demand of the heavy cost of the product.
- Mr. Y a College lecturer independently made research on the similar type of chinks and came out with the same quality chinks with much less cost.

**Introduction of Patents:**

- A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. It provides protection for the invention to the owner of the patent.
- The protection is granted for a limited period, i.e 20 years.
- Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. A patent owner

has the right to decide who may - or may not - use the patented invention for the period in which the invention is protected.

- The patent owner may give permission to, or license, other parties to use
- the invention on mutually agreed terms. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent.

Once a patent expires, the protection ends, and an invention enters the public domain, that is, the owner no longer holds exclusive rights to the invention, which becomes available to commercial exploitation by others.

- All patent owners are obliged, in return for patent protection, to publicly disclose information on their invention in order to enrich the total body of technical knowledge in the world. Such an ever-increasing body of public knowledge promotes further creativity and innovation in others. In this way, patents provide not only protection for the owner but valuable information and inspiration for future generations of researchers and inventors.

### **Rights of Patent Owner:**

- Subject to the other provisions contained in this Act, a patent granted before the commencement of this Act, shall confer on the patentee the exclusive right by himself, his agents or licensees to make, use, exercise, sell or distribute the invention in India.
- Subject to the other provisions contained in this Act and the conditions specified in section 47, a patent granted after the commencement of this Act shall confer upon the patentee, where the patent is for an article or substance, the exclusive right by himself, his agents or licensees to make, use, exercise, sell or distribute such article or substance in India.
- Where a patent is for a method or process of manufacturing an article or substance, the exclusive right by himself, his agents or licensees to use or exercise the method or process in India.

### **Claims of Mr.X:-**

- Patent for the same product is registered in his name.
- The product developed by Mr.Y is not an innovative but it is the imitation of his patented product.

### **Claims of Mr.Y:-**

- The product patented by Mr.X is not in use as he has stopped the production.
- The product invented by Mr.Y is different than that of Mr.X's product in many respects such as shape, quality, cost, etc.

- Mr.Y, who is a lecturer in a Government college, has carried out the research on this product as a part of his academic work.
- He wants to produce the chalks exclusively for the Government colleges.

**Problems Identified in the case:-**

- Mr.X has registered the Patents of Chalks under the Patent Act, 1970. Mr.Y has also registered under this Act.
- As per this Act, Two people cannot register for the same case.
- But both have claimed for the same product.

**Rights of Mr.X & Mr.Y:-**

- To exploit the Patent:  
The patent owner needs to renew his patent rights if it has been expired.
- To give License to another Patent Owner:  
As per section 17 of this Act, one patent owner can give license to another patent owner to make a similar product. As the product of Mr.X & Mr.Y is similar both can be the patent owners.
- Right to sue in case of Infringement:  
The exclusive right of a patentee means to take legal action for protection of his patent rights. In this case, the Mr.X can take legal action against Mr.Y.

**Solution to the Problems in the Case:**

- As Mr.X & Mr.Y are both Patent owners, according to me there are certain limitations to the rights of the patentee.
- Any person making similar innovations for Government use cannot be held as an infringer.
- As a result of this, Mr.Y is producing chalks only for government colleges so he cannot be infringed by Mr.X.
- Hence, Mr.Y cannot be infringed by Mr.X for two reasons:
  1. Making chalks exclusively for Government colleges.
  2. Compulsory licenses of rights are with Mr.Y.

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**CASE 4: Patents Act 1970: (Unit I & III):-**

Hindustan Level Limited (Plaintiff) is the leading manufacturer of various kinds of soaps, detergents, chemicals, etc.The different products of the company are sold under the brand names and the company enjoys considerable good will and

reputation in the market. Godrej Soaps Limited (Respondent) also a manufacturer of the various brands of soaps and detergent and is one of the competitors of the plaintiff company. The plaintiff company holds and owns more than 171 active patents granted by the Government of India under the Patents Act. The company claims that the respondent has access to the specification of Patent number 170171 and they have wrongfully and illegally copied and materially utilized the patented information resulting infringement of the said patent of the petitioner. It is further claimed by the petitioner that – The toilet soap of the Respondent has been sold under the trade mark VIGIL has a wrapper bearing the words “ALL NEW” “LONGER LASTING SOAP” .This misleads and make the trade and public believe that the toilet soap is an improved product. Such wrongful and illegal acts of the Respondent cause to the Petitioner company an irreparable loss, damage and injury.

The Respondent Company claims that-

1. It is a multinational company and a pioneer in the field of manufacturing of toilet soaps in India for the last 60 years.
2. The respondent company has been utilizing various admixtures of various soaps.
3. They did not apply for patent for such admixture, as the substance obtained is not an invention.
4. The patent in question is a new one, the validity of which is under serious dispute of challenge.
5. If the plaintiff is granted an injunction at this stage then, it would enable the plaintiff to appropriate a large chunk of the soap industry to itself and would adversely affect the healthy competition.

Questions:

Q1. Discuss the case with reference to the Patents Act.

Solution:

Overview of the case:

- Hindustan Level Limited (Plaintiff) is the leading manufacturer of various kinds of soaps, detergents, chemicals, etc.The different products of the company are sold under the brand names and the company enjoys considerable good will and reputation in the market.
- Godrej Soaps Limited is the Respondent also a manufacturer of the various brands of soaps and detergent and is one of the competitors of the plaintiff company.

- The Plaintiff says that the respondent company has wrongfully and illegally copied and materially utilized the patented information resulting infringement of the said patent of the petitioner.
- The product developed by the respondent company misleads the public and makes them believe that the product is an improved product.

### **Introduction of Patents:**

- A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. It provides protection for the invention to the owner of the patent.
  - The protection is granted for a limited period, i.e. 20 years.
  - Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. A patent owner has the right to decide who may - or may not - use the patented invention for the period in which the invention is protected.
  - The patent owner may give permission to, or license, other parties to use
  - the invention on mutually agreed terms. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent.
- Once a patent expires, the protection ends, and an invention enters the public domain, that is, the owner no longer holds exclusive rights to the invention, which becomes available to commercial exploitation by others.
- All patent owners are obliged, in return for patent protection, to publicly disclose information on their invention in order to enrich the total body of technical knowledge in the world. Such an ever-increasing body of public knowledge promotes further creativity and innovation in others. In this way, patents provide not only protection for the owner but valuable information and inspiration for future generations of researchers and inventors.

### **Infringement of Patent:**

- A patent has exclusive rights on a patentee to distribute or sale the invention in India.
- Any action when violated leads to infringement.
- If a person copies the patentee in case of invention then he can be sued.

### **Claims that amount to Infringement:**

- Colorful imitation of an invention.

- Immaterial Invention.

**Claims by the Respondent Company (Godrej Company):**

- It is a multinational company and a pioneer in the field of manufacturing of toilet soaps in India for the last 60 years.
- The respondent company has been utilizing various admixtures of various soaps.
- They did not apply for patent for such admixture, as the substance obtained is not an invention.
- The patent in question is a new one, the validity of which is under serious dispute of challenge.
- If the plaintiff is granted an injunction at this stage then, it would enable the plaintiff to appropriate a large chunk of the soap industry to itself and would adversely affect the healthy competition.

**Problems Identified in the case:-**

- The Hindustan Level Limited (Plaintiff) company has not applied for the patent in case of admixture and substance of the soap.
- Injunction caused during the stage of production of large soaps.

**Solution to the Problems in the Case:**

- According to me certain claims cannot be infringed if the claim constructed that the combination of the substances are different in case of invention.
- As a result of the case, the admixtures used by Godrej Company are totally different from the admixtures used by Hindustan Level Limited (Plaintiff) company to produce soaps.
- Hence, Hindustan Level Limited (Plaintiff) company cannot file a case of infringement against Godrej Company.

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**CASE 5: Copyrights Act 1957: (Unit I & III):-**

Copyright is a beneficial interest in movable property in the actual or constructive possession of the owner there of. The right to copy and distribute commercially such material may be transferred or assigned to any other party with certain returns

called as royalty. The intention of the parties whether it was an assignment of a grant of permission to use in the normal course, be gathered from the writing itself and the words used therein. Gramophone Company of India Limited the plaintiff entered into an agreement with Shanti Films Corporation, a film producer. According to the agreement the copyright in the soundtrack of a film produced by the Shanti Film Corporation (Defendant) was assigned by it to the plaintiff. The plaintiff by the agreement got the exclusive right to produce records, tapes etc. of the film and sold the copies thereof.

However, it was found that Shanti Film Corporation has been selling the copies of the soundtrack and of the films. Hence, the plaintiff filed a suit against defendant for permanent injunction against the infringement of the copy right and also filed an application for temporary injunction. The plaintiff claimed that the agreement prima facie reveals that there is an assignment of copyright of the soundtrack in its favor. There are no restrictions to use the copyright. Therefore, the publication of soundtrack of the film in question or reproduction of records without its authority will prima facie be infringement of copyright. However the defendant denied the claim stating that it is their own production and hence, no one can stop them for reproduction.

### Questions:

Q1. Discuss the issue with reference to the relevant provisions of the Copyright Act 1957.

### Solution:

#### Overview of the case:

- Gramophone Company of India Limited the plaintiff entered into an agreement with Shanti Films Corporation, a film producer. According to the agreement the copyright in the soundtrack of a film produced by the Shanti Film Corporation (Defendant) was assigned by it to the plaintiff.
- The plaintiff by the agreement got the exclusive right to produce records, tapes etc. of the film and sold the copies thereof.
- Later it was found that Shanti Film Corporation has been selling the copies of the soundtrack and of the films.



### **Introduction of Copyrights:**

- Copyright is a legal term describing rights given to creators for their literary and artistic works.
- The kinds of works covered by copyright include: literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings.
- Copyright subsists in a work by virtue of creation; hence it's not mandatory to register. However, registering a copyright provides evidence that copyright subsists in the work & creator is the owner of the work.
- Creators often sell the rights to their works to individuals or companies best able to market the works in return for payment.
- These payments are often made dependent on the actual use of the work, and are then referred to as royalties.
- These economic rights have a time limit, (other than photographs) is for life of author plus sixty years after creator's death.

### **Exclusive Rights in Copyrights:**

- To reproduce the copyrighted work in copies.
- To distribute copies of the work to the public.
- In case of sound recording to perform the copyrighted work publicly by means of audio visual aids.

### **Transfer of Copyrights:**

- It is an agreement which is a legal document containing provisions of full or part of copyright from the right owners.
- This agreement also confirms from the right owner for all the materials to be published has not been previously published to limit the problem of duplication.

### **Problems Identified in the case:-**

- Gramophone Company of India Limited the plaintiff filed a suit against defendant for permanent injunction against the infringement of the copy right and also filed an application for temporary injunction.
- The plaintiff claimed that the agreement prima facie reveals that there is an assignment of copyright of the soundtrack in its favor.
- The defendant denied the claim saying that it was their own production and hence, no one can stop them for reproduction.

### **Solution to the Problems in the Case:**

- According to me, defenses to copyright infringement are the fair use of reproduction work without misusing the copyright owner's rights in their publications.
- As the production of the soundtrack of Shanti Films Corporation was their own reproduction, the Gramophone Company of India Limited the plaintiff cannot file a case of infringement.
- In case of infringement the fair use of matter means the privilege to use the copyrighted material in a reasonable manner without the owner's consent.
- As Shanti Films Corporation is not misusing the soundtrack the copyright owner cannot file a suit against this company.
- Hence, activities which can be excluded from infringement are imitating a work for a particular purpose.

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### **CASE 6: Trade Mark: (Unit I & III):-**

Two parties applied for registration of Trade mark. Shri Ghanashyam and Shri Dhanashyam applied for registration of trade mark. They were both rivals. The trades used by these rivals were "Mathura Ghee and Mathurang Ghee" respectively. Shri Dhanashyam started using 'Mathurang' after lapse of five years from the use of trade mark 'Mathura Ghee' by Shri Ghanashyam. He had polarized the trade mark 'Mathura Ghee' by investing huge amounts on advertisement. The two trade names were phonetically similar. There was not much difference in pictorial and monogram that is the trade mark of the rivals. The only difference was the word 'G' registration was granted to neither.

#### **Questions:**

Q1. Discuss in the light of Trade Mark provisions in this case.

Q2. Suggest the plaintiff regarding use of Trade Mark.

## **Solution:**

### **Overview of the case:**

- Shri Ghanashyam and Shri Dhanashyam applied for registration of trade mark. The trades used by these rivals were “Mathura Ghee and Mathurang Ghee” respectively.
- Shri Dhanashyam started using ‘Mathurang’ after lapse of five years from the use of trade mark ‘Mathura Ghee’ by Shri Ghanashyam.
- The two trade names were phonetically similar.

### **Introduction of Trade Marks:**

- A trademark is a distinctive sign that identifies certain goods or services as those produced or provided by a specific person or enterprise.
- It may be one or a combination of words, letters, and numerals. They may consist of drawings, symbols, three- dimensional signs such as the shape and packaging of goods, audible signs such as music or vocal sounds, fragrances, or colors used as distinguishing features.
- It provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or to authorize another to use it in return for payment.
- It helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs.
- Registration of trademark is prima facie proof of its ownership giving statutory right to the proprietor. Trademark rights may be held in perpetuity.
- The initial term of registration is for 10 years; thereafter it may be renewed from time to time.

### **Rights of Trademarks:**

- Statutory Protection: The Trademarks Act was introduced in India in 1999 and came into effect on 15th September 2003. One of the changes that have been brought about by the Act is that it gives statutory protection to well-known Trademarks which were earlier protected under the Common law.
- Before having a look at how the Common law granted protection to well-known trademarks till now, let us first examine the statutory protection conferred by the Act.
- Section 11(6) and 11(7) deal with the facts that the Registrar will take into consideration, while determining that the mark is a well-known mark.

- The knowledge or recognition of the alleged well known mark in the relevant section of the public including knowledge obtained as a result of promotion of the trademark
- The duration, extent and geographical area of any use for that trademark.
- The duration, extent and geographical area for any promotion of the trademark including advertising or publicity and presentation at fairs or exhibition of the goods or services in which the trademark appears.
- The duration and geographical area of any registration of any publication for registration of that trademark under this Act to the extent that they reflect the use or recognition of that trademark.
- The record of successful enforcements of the rights in that trademark, in particular the extent to which the trademark has been recognized as a well known trademark by any Court or Registrar under that record.
- The number of actual or potential consumers of the goods or services
- The number of persons involved in the channels of distribution of the goods or services.
- The business circle dealing with the goods and devices to which the trademark applies

#### **Problems Identified in the case:-**

- Two parties applied for registration of Trade mark. Shri Ghanashyam and Shri Dhanashyam applied for registration of trade mark.
- The trades used by these rivals were “Mathura Ghee and Mathurang Ghee” respectively.
- The two trade names were phonetically similar.
- There was not much difference in pictorial and monogram that is the trade mark of the rivals.
- The only difference was the word ‘G’ registration was granted to neither.

#### **Solution to the Problems in the Case:**

- The Registration of the Geographical Indication confers the right of exclusive use coupled with the right to obtain relief in respect to infringement. Any association of persons, producers, organization or authority established by or under the law can apply for the registration of the geographical Indications and if their application is successful their name is entered in the Register as registered Proprietors.
- The difference between Geographical Indication and Trade Mark are that the former indicates the source of the product, meaning the geographical

jurisdiction from which the product has originated from and the later is a sign which is used in the course of trade and it distinguishes goods or services of one enterprise from those of other enterprises.

- As per the Trademark Act, it is important to determine anyone else has prior rights to the similar mark.
- As a result of this, the only difference was the word 'G' in both the trademarks of ghee.
- Hence, none of them can sue anyone due to prior rights.
- Trademark infringing is a violation of exclusive rights attached to the trademark.
- Trademark is applicable only for a period of 10 years. However, if Shri Dhanashyam started using 'Mathurang' after lapse of five years, it means the trademark must have expired and he must have not renewed the trademark contract.
- Due to this, both the rivals can use the product as only the difference is in the word 'G' in the trademarks of the ghee.

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### **CASE 7: Uniform Domain Name Dispute Resolution Policy (UDRP): (Unit II):-**

On March 20, 2000, Complainant submitted a complaint pursuant to the Uniform Domain Name Dispute Resolution Policy ("UDRP Policy") implemented by the Internet Corporation of Assigned Names and Numbers ("ICANN") on October 24, 1999, under the rules for the UDRP Policy implemented by ICANN on the same date ("UDRP Rules"). On April 10, 2000, Respondent's representative served a Response to the Complaint. On April 28, 2000, the Center issued a Notification of Appointment of Administrative Panel and projected a decision date, setting this Panel's deadline for issuing a decision as May 11, 2000.

Complainant is the owner of several U.S. Trademark Registrations for several variations of the mark WEBER, as detailed in Attachment A hereto. Complainant is the manufacturer of "Weber" grills and related products and services. Respondent is an Illinois hardware store which owns or operates websites under the domain names in dispute. These websites promote sales of Complainant's product. Respondent is an authorized reseller of Complainant's products.

## Questions:

Q1. Examine the domain name dispute of Weber-Stephen Products Co. v. Armitage Hardware.

Q2. What is at issue in the Weber case? Do you agree with the resolution?

## Solution:

### Overview of the case:

- On March 20, 2000, Complainant submitted a complaint pursuant to the Uniform Domain Name Dispute Resolution Policy ("UDRP Policy") implemented by the Internet Corporation of Assigned Names and Numbers ("ICANN") on October 24, 1999, under the rules for the UDRP Policy implemented by ICANN on the same date ("UDRP Rules").
- Complainant is the manufacturer of "Weber" grills and related products and services. Respondent is an Illinois hardware store which owns or operates websites under the domain names in dispute.
- These websites promote sales of Complainant's product.
- Respondent is an authorized reseller of Complainant's products.

### Introduction of WIPO:

- The World Intellectual Property Organization (WIPO) is an international organization dedicated to promoting the use and protection of works of the human spirit.
- These works – intellectual property – are expanding the bounds of science and technology and enriching the world of the arts. Through its work, WIPO plays an important role in enhancing the quality and enjoyment of life, as well as creating real wealth for nations.
- With headquarters in Geneva, Switzerland, WIPO is one of the 16 specialized agencies of the United Nations system of organizations.
- It administers 23 international treaties dealing with different aspects of intellectual property protection. The Organization counts 179 nations as member states.

### **Parties Involved:**

- The Complainant (Plaintiff) is Weber-Stephen Products Co., an Illinois corporation located at 200 East Daniels Road, Palatine, Illinois 60067-6266, U.S.A. The Respondent (Defendant) is Armitage Hardware, 925 West Armitage Avenue, Chicago, Illinois 60614, U.S.A.

### **Complainant (Plaintiff) Claimed that:**

- Complainant (Plaintiff) contends that Respondent's (Defendant) domain names are "identical and/or confusingly similar to trademarks and service marks" listed in Attachment A. Complaint, Par. 11(a).
- Complainant asserts that "Respondent has no rights or legitimate interests" in these marks. Complaint, Par. 11(b). Complainant asserts that "Respondent registered and is using the [disputed domain names] in bad faith." Complaint, Par. 11(c).

### **Respondent (Defendant) Claimed that:**

- Respondent objects to the jurisdiction of WIPO and ICANN, asserting that parallel proceedings in the U.S. District Court are the proper forum. Response, Sec. 1. Respondent denies that its registration or use of the domain names at issue was in bad faith, because Respondent is an authorized sales representative for Complainant and is duly licensed by Complainant to use the WEBER trademark in advertising and sales of Complainant's products.
- Respondent further asserts that Complainant was fully aware of and approved Respondent's use of the domain names at issue. Response, Sec. 2.
- Respondent further asserts that the domain names at issue are not identical or confusingly similar to the WEBER trademarks and that Respondent has a legitimate interest in the domain names.
- Finally, Respondent asserts that Complainant's Complaint amounts to reverse domain name hijacking.

### **Problems Identified in the case:-**

The UDRP Policy requires the Complainant (Plaintiff) to prove each of the following three elements, in order to prevail in this proceeding:

- That the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- That Respondent has no rights or legitimate interests in respect of the domain name;
- That the domain name has been registered and is being used in bad faith.

### **Solution to the Problems in the Case:**

- While the domain names are not identical to Complainant's registered trademarks, this Panel finds that the subject domain names are confusingly similar to the Complainant's registered trademarks. The addition of the word "grills" to "Weber," for example, is an insubstantial difference.
- In addition, Respondent's own web page at WEBERGRILLS.COM repeatedly reproduces Complainant's registered WEBER trademark. Respondent's web page makes an effort to show Respondent is associated with Complainant; not just by using Complainant's exact trademarks, but also by stating that Respondent is Complainant's distributor.
- It is found by the Panel to be proved based upon its evaluation of all evidence presented, shall demonstrate [the domain name holder's] rights or legitimate interests to the domain name
- Before any notice to you of the dispute, your use of, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services.
- You, as an individual, business, or other organization have been commonly known by the domain name, even if you have acquired no trademark or service mark rights.
- You are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.
- This Panel is satisfied that Respondent has presented sufficient evidence to prove that it has used the domain name in connection with the bona fide offering of Complainant's goods or services.
- It is apparent from the Respondent's web page that Respondent is selling Complainant's goods under Complainant's registered trademark. Although it appears that Respondent has also used its web page to sell (directly or indirectly) products other than Complainant's, these instances appear to be minor and Complainant has not controverted Respondent's alleged removal of these items.



- Complainant has failed to disprove that Respondent's use of the domain name in connection with Respondent's sales of Complainant's goods was made primarily in connection with the bona fide offering of goods or services.
- This Panel concludes that Complainant has failed to prove that Respondent's registration and use of the domain names was in "bad faith."
- Complainant does not rebut (or even substantively address) the substantial showing made by Respondent that Complainant was aware of, and repeatedly approved, Respondent's web site over a period of several years (1996-1999).
- Finally, the Panel decides that Respondent has failed to support a claim for reverse domain name hijacking. It appears clear from the limited record before the Panel that both sides had grievances with the other, which are currently the subject of a parallel District Court action.
- In light of this record, the Panel rejects the claim of reverse domain name hijacking.
- As a result of this, the Complaint is denied. The domain names shall remain registered to Respondent.

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### **CASE 8: Patents: (Unit I & III):-**

Dr.P.M Desai. a Doctor in All India Institute of Medical Sciences invents a machines which can delivered a glucose to a patent through the skin by causing the pores of the skin to absorb glucose and deliver it to the blood stream. The claim of the doctor of such an invention is rebuked by medical community as being highly improbable and useless in invention. However, when the invention is put to demonstration it is found to be indeed effective and is claimed by the doctors to be highly useful method of treatment of diabetes by regulating the amount of glucose supply to the blood. Now that the invention has been hailed by the medical community, as being a new useful and non-obvious method of treatment.

#### Questions:

- Q1. Discuss the label of provisions in relation to this case as per Patent law.  
Q2. Can the doctor claim a Patent in the invention?

## **Solution:**

### **Overview of the case:**

- Dr.P.M Desai. a Doctor in All India Institute of Medical Sciences invents a machines which can delivered a glucose to a patent through the skin by causing the pores of the skin to absorb glucose and deliver it to the blood stream.
- Now that the invention has been hailed by the medical community, as being a new useful and non-obvious method of treatment.

### **Introduction of Patents:**

- A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. It provides protection for the invention to the owner of the patent.
  - The protection is granted for a limited period, i.e. 20 years.
  - Patent protection means that the invention cannot be commercially made, used, distributed or sold without the patent owner's consent. A patent owner has the right to decide who may - or may not - use the patented invention for the period in which the invention is protected.
  - The patent owner may give permission to, or license, other parties to use
  - the invention on mutually agreed terms. The owner may also sell the right to the invention to someone else, who will then become the new owner of the patent.
- Once a patent expires, the protection ends, and an invention enters the public domain, that is, the owner no longer holds exclusive rights to the invention, which becomes available to commercial exploitation by others.
- All patent owners are obliged, in return for patent protection, to publicly disclose information on their invention in order to enrich the total body of technical knowledge in the world. Such an ever-increasing body of public knowledge promotes further creativity and innovation in others. In this way, patents provide not only protection for the owner but valuable information and inspiration for future generations of researchers and inventors.

### **Doctors Claimed that:**

- Dr. P.M Desai invents a machine which can deliver glucose to a patent through the skin by causing the pores of the skin to absorb glucose and deliver it to the blood stream.
- When the invention is put to demonstration it is found to be indeed effective.

- It was claimed by the doctors to be highly useful method of treatment of diabetes by regulating the amount of glucose supply to the blood.

### **Medical Community Claimed that:**

- The invention is highly improbable and useless.
- However, the invention was later accepted as a new useful and non-obvious method of treatment.

### **Problems Identified in the case:-**

- All India Institute of Medical Sciences think that the invention is highly improbable and useless.
- The invention can never help to solve any health issue especially in the case to provide glucose to the blood stream.

### **Solution to the Problems in the Case:**

- A patent if invented can be patentable if it is useful and non- obvious.
- Every invention if it has industrial purpose or used in the medical field then it can be patented.
- Every invention should be non- obvious so that a person can improve his skills the fullest.
- This helps an average skilled person to possess specialized skills in those particular areas.
- Thus, anything that is obvious cannot be patented.
- In this case the invention made by Dr.P.M Desai. a Doctor in All India Institute of Medical Sciences is Non- Obvious and Useful.
- Hence, this invention can be patented.
- Yes, as the inventions are the basic principles lying for a patent to be successful, the Doctor can claim a Patent in the invention.

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## Practice Questions:

### **Case 1: (Trade Mark):-**

Chair India Limited is a leading and renowned manufacturer of chairs. The company has a registered trade-mark in Part A of the Register. The company has cross the turnover of Rupees. 5.00 crores. However, during the last five years it has been observed that the sale has started declining sharply. Hence, the company recently initiated a market research to find the causes for the decline in the sales. It was found that two companies – one is at Pune itself and another at Hyderabad, are selling their products under the same trade mark. This type of sale of these two companies has directly affected sale in these two regions. The management is thinking to take a legal action.

#### **Question:**

Advise the management of Chair India Limited as to their rights and remedies along with the provisions in respect on offences and penalties under the Trade and Merchandise Marks Act.1958.

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### **Case 2: (Patents):-**

Shri Sameer Sonar, scientist involved in space research disusses a scientific principle with his colleague. The colleague Shri P.C.Sharma uses the principle and invents working device based on the principle. A third colleague, Shri A.K Bhat who was instrumental in suggesting the manner of putting in place the arrangement of the mechanical devices claims himself to be the true and first inventor and applies for the patent.

#### **Question:**

Q1. Discuss the relevant provision s in relation to this case.

Q2.Is he entitled to apply for the patent?

Q3.In case not, who out of the three, can apply for the patent?

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**Case 3: (Copyrights):-**

A public library gets a copy of a book authored by a foreign author published abroad. Due to high price of the book the library gets 6 copies of the books made.

**Question:**

Q1. Discuss in the light of above case the provisions of copy right law.

Q2.If the library guilty of infringement? If yes? How & why? If no, why not?

Q3.Can it avoid an action of infringement by reducing the number of copies?

If so how many copies are the library authorized to keep without infringing the copyright of the author?

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