

Name:
Enrolment No:



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

Course: IP Laws in Cyberspace
Program: BTech LLB CSE CL
Course Code: CLCB4001

Semester: VII
Time 03
Max. Marks: 100

Instructions:

SECTION A
(5Qx2M=10Marks)

S. No.		Marks	CO
Q 1	Define Intellectual Propert.	2	CO1
Q 2	Write short note on cyberspace as a e commerce medium.	2	CO2
Q 3	Write short note on idea expression dichotomy of copyright.	2	CO2
Q 4	Write short note on invention as a core of patents	2	CO1
Q 5	What are the differences between GI and Trademarks	2	CO2

SECTION B
(4Qx5M= 20 Marks)

Q 6	Write short note on fair use in copyright law	5	CO4
Q 7	What are fanciful trademarks? How distinctive are they?	5	CO3
Q 8	Explain GI with suitable examples	5	CO5
Q 9	Define Domain names and meta tags	5	CO3

SECTION-C
(2Qx10M=20 Marks)

Q 10	“The online environment has emerged as a preferred marketplace for products and services that incorporate various forms of IPs.” In the light of the above statement discuss the importance of protecting IPs in the online environment.	10	CO5
Q 11	“The judiciary has taken an active approach in protecting Trademarks and digital copyrights.” Elaborate in the light of important decided case laws.	10	CO4

SECTION-D
(2Qx25M=50 Marks)

	Read the below mentioned facts and answer the following questions:		
--	--	--	--

. The present suit has been filed by the Plaintiff, who claims to be a manufacturer of luxury shoes. The name of the Plaintiff Company - Christian Louboutin (hereinafter, 'Plaintiff') is based on the name of its founder, namely Mr. Christian Louboutin, a famous designer of high end luxury products. The Plaintiff claims that the name, likeness and photographs of Mr. Louboutin enjoy goodwill and protection under the Trademarks Act, 1999 (hereinafter, 'TM Act'). The products of the Plaintiff are worn and preferred by a large number of celebrities. The Plaintiff claims that it enjoys enormous repute and goodwill in the fashion industry and was rated amongst top 5 prestigious women's luxury shoe brand. The name "Christian Louboutin", in word form and logo form, as also the red sole mark, are registered trademarks in India, and there are various other applications which are also pending registration. The Plaintiff further claims that its products are sold only through an authorized network of exclusive distributors. In India, there are two stores in Mumbai and one in Delhi which are authorized by the Plaintiff.

According to the Plaintiff, the Defendants operate a website by the name www.darveys.com (hereinafter, 'Darveys.com'). It is the Plaintiff's allegation that the Defendants, offer for sale and sell various products on their website, bearing the luxury brands/names of the Plaintiff. The Defendants' website contains the complete "Christian Louboutin" product catalogue. The website further claims that the products are 100% authentic.

As per the plaint, the goods of the Defendants are impaired or are counterfeits. Apart from offering for sale and selling the Plaintiff's products, on the website of the Defendants, the image of the founder of the Plaintiff is also used, and the names "Christian" and "Louboutin" are also used as meta-tags. By using these meta-tags, the defendants attract traffic to their website. According to the Plaintiff, the Defendants' website gives an impression that it is in some manner sponsored, affiliated and approved for sale of a variety of luxury products bearing the mark of the Plaintiff's genuine products. This results in infringement of the trademark rights of the Plaintiff, violation of personality rights of Mr. Christian Louboutin and dissolution of the luxury status enjoyed by their products and brands.

The Defendants have, thereafter, filed their written statement. The plea taken in the written statement is that the customer who comes to the Defendant's website is given a choice of booking products from any of the 287 boutiques/sellers from across the globe. It is categorically averred that the goods offered are completely genuine and are sold directly by the sellers. It is claimed that the Defendants are not selling the goods but they merely enable booking of orders

CO5

through their online platform. It is further claimed that no after sales warranty or service is given from the manufacturer and the terms and conditions do not involve the Plaintiff, who are the manufacturers of the products. The written statement contains some interesting pleadings on behalf of the Defendants which are as under:

- a) That the praise for Mr. Christian Louboutin is not within the knowledge of the Defendants.
- b) That the Defendants are not aware about the various types of goods marketed by the Plaintiff.
- c) The Defendants have not had any direct dealings with the Plaintiff.
- d) The Defendants offer for sale luxury items of different concerns on the website, by booking orders only.
- e) The advertisements for promoting sale are made by the Defendants at their own expense without involving the Plaintiff.
- f) The goods of the Plaintiff were offered for sale on the website of the Defendants but the responsibility was taken over by the sellers, on whose behalf the goods were offered for sale.
- g) That the website Darveys.com offers products of 287 boutiques/sellers from across the globe.
- h) The goods are imported and are based on the understanding that the products are genuine and that the manufacturers are not liable in any manner; the name, address of brand owners are displayed.
- i) There is a disclaimer that the manufacturer does not have any responsibility and involvement in the sale process. There is no imitation because actual name itself is used.
- j) The Defendants do not purchase any articles for sale, only book the orders on behalf of the sellers whose products they display on their platform. The names of the sellers are correctly displayed on the website.
- k) It is denied that the products are fake or counterfeits. The Defendant's website claims that only products of the original manufacturers are being sold.
- l) The Defendants do not change the physical condition of the product and hence there is no impairment.

<p>m) That the orders are booked and sent to the foreign sellers to supply the goods.</p> <p>n) That the Plaintiffs should issue a warning that its goods are not for sale and in that case the Defendant will state that the goods of the Plaintiff will not be offered for sale.</p> <p>o) The advertisement of the product is at the risk, responsibility and expense of the Defendants and that no commercial connection with the Plaintiff is represented.</p> <p>p) That the Defendants offer goods belonging to various other manufacturers also. The Defendants claim that the Plaintiffs should feel happy about the sale of their products in a legalized manner.</p> <p>The Plaintiff, in replication, claims that the Defendants' manner of use, in fact, alludes to a connection with the Plaintiff due to the following features on the website.</p> <p>"i. Use of write-ups of Christian Louboutin on the Defendants' website in which the fame of red lacquered sole and the charm of the Plaintiffs products are acknowledged;</p> <p>ii. The use of the trademark Christian Louboutin in enlarged overly conspicuous font size as opposed to a normal font size, on their website;</p> <p>iii. Use of meta-keyword-tags with a view to increasing the hits which the Defendants' websites obtain from search engines like Google;</p> <p>iv. Use of photographs of Mr. Christian Louboutin on their website;</p> <p>v. Use of photographs of the Plaintiffs products namely, Sweet Charity, Mina Spikes, Body Strass, Miss Loubi, etc, on the website of the Defendants; vi. Use of characteristic model names of the Plaintiffs products namely: Sweet Charity, Mina Spikes, Body Strass, Miss Loubi, etc. in respect of their products, which model names are distinctive of the Plaintiffs products and thus have trademark value;</p> <p>vii. Use of the registered trademarks of the Plaintiff, in particular the CHRISTIAN LOUBOUTIN word mark for tool-tip features on their website, i.e. which appear when the cursor or pointer is placed at specific locations on the website;</p> <p>viii. Displaying pictures of shoes with red soles (which is a registered trademark of the Plaintiff) either with the words "Christian Louboutin" or even without the words "Christian Louboutin".</p> <p>ix. A tie-up or arrangement with boutiques belonging to the exclusive distribution network of the Plaintiff is alluded to in the "About Us" section of the Defendants' website www.darveys.com."</p>		
---	--	--

	In the light of the above facts discuss the following issues:		
Q 12	(a) Whether the Defendants' use of the Plaintiff's mark, logos and image is protected under Section 79 of the Information Technology Act, 2000?		
Q 13	(b) Whether the Plaintiff is entitled to relief, and if so, in what terms? E-commerce platforms and their liability as intermediaries		