



HIMACHAL PRADESH NATIONAL LAW UNIVERSITY, SHIMLA

Semester: I

LL.M. (One Year Programme)

Paper Code: LM-118

Credit: 02

Law Relating to Trademarks

Brief Introduction:

The comprehensive framework within which the trademarks operate is the domain of intellectual property and in the globalized (or modernized) approach of human interactions; these properties have been combined with rights of various forms. This course would discuss the law relating to trademarks whereby rights on various types of marks which are capable of use in the business and market would be discussed. An important aspect of the exploration in this course would be the ways in which the laws strike a fair balance between the interests and rights of the intellectual labourers on the one hand and organized industrial enterprises on the other. Another dimension is a study of the ways in which this regime of laws militates against, or favours, community property in national cultures.¹

Course Objectives:

1. To help the students understand the fundamentals of Intellectual Property;
2. To aware the students understanding the nuances of the international framework related to protection of trademarks;
3. To help the students understand the fundamentals of trademark laws in India;
4. To help the students understand the registration procedure and the rights acquired from trademarks and infringement of the rights; and

Learning Outcomes:

1. The students will be able to appreciate and understand the theories related to intellectual properties.
2. The students will be able to appreciate and understand the nuances of the law related to trademarks in India.

¹ The introduction of the course have been derived and copied from the document developed by the Curriculum Development Committee established by the University Grants Commission vide its report on the Five-Year Integrated Programme in Law in 2001. The University has developed the course keeping mind the objective and rationale thereof.

3. The students will be able to appreciate and understand the registration procedure, cases of infringement, and procedure of claiming the rights in the courts of law.
4. The students will be able to appreciate and understand the emerging trends on newer forms of trademarks and issues of infringement of trademarks in cyberspace.

Module: I

Concept of Intellectual Property & Trademarks

- I.1. Intellectual Property: Concept and Approaches to IPR;
- I.2. TRIPs and Protection of Trademarks;
- I.3. Trademarks: Concept;
- I.4. Types of Trademarks;
- I.5. Rights under Trade Marks Act, 1999.

Module: II

Eligibility & Registration of Trademarks

- 2.1 Eligibility for Trademark Protection – Absolute Grounds of Refusal of Trademark Application;
- 2.2 Eligibility for Trademark Protection – Relative Grounds of Refusal of Trademark Application;
- 2.3 Registration of Well-Known Trademarks;
- 2.4 Process of Registration – National Applications;
- 2.5 Madrid Protocol and Registration of Trademarks: International Application.

Module: III

Infringement of Trademarks

- 3.1 Infringement of Trademark;
- 3.2 Passing Off Action in Infringement of Trademarks;
- 3.3 Special Protection to certain Trademarks: Distinctiveness of Trademarks;
- 3.4 Acquiescence and Use of Registered Trademarks;
- 3.5 Infringement of Trademarks in Cyberspace.

Module: IV

Assignment, Transmission, and Special forms of Trademarks

- 4.1 Assignment & Transmission of Trademark & Procedure;
- 4.2 Use of Trademarks & Registered Users;
- 4.3 Collective Marks;
- 4.4 Certification Marks;
- 4.5 Provisions of Appeals and Court Procedure for Enforcement of Rights related to Trademarks.

A. Prescribed Legislations:

1. The Trade Marks Act, 1999
2. Code of Civil Procedure, 1908

B. International Instruments:

1. The Paris Convention 1883
2. The Madrid Agreement concerning the International Registration of Trade Marks, 1891
3. The NICE Agreement concerning the International Classification of Good and Services for the purpose of the registration of Marks, 1957
4. The Vienna Agreement, 1973
5. The Trademark Law Treaty, 1994
6. The Trade Related Aspects of Intellectual Property Rights (TRIPS), 1995
7. Lisbon Agreement, 1958
8. The Geneva Act, 2015
9. The IUCN Project on the Convention on Biological Diversity and the International Trade Regime

C. Prescribed Books:

1. Amanda Michaels, A Practical Approach to Trademark Law, OUP, 2010
2. Andrew Griffiths, An Economic Perspective on Trademark Law, Edward Elgar, 2011
3. Battersby & Grimes, Trademark and Copyright Disputes: Litigation Forms and Analysis, Aspen, 2003
4. James Mellor, David Llewelyn et.al., Kerly's Law of Trademarks and Trade Names, Sweet & Maxwell, 2011
5. Jayashree Watal, Intellectual Property Rights in the WTO and Developing Countries, Oxford University Press, 2001
6. Peter Drohas, A Philosophy of Intellectual Property (2016)
7. Susan K Sell, Private Power, Public Law: The Globalization of Intellectual Property Rights, Cambridge University Press, 2003

D. Suggested Readings:

1. Moore, Adam and Ken Himma, Intellectual Property, The Stanford Encyclopedia of Philosophy (Fall 2022 Edition), Edward N. Zalta & Uri Nodelman (eds.) available at: <https://plato.stanford.edu/archives/fall2022/entries/intellectual-property/>
2. Mike W. Peng, David Ahlstrom, Shawn M. Carraher, and Weilei (Stone) Shi, History and the Debate Over Intellectual Property, 13(1) Management and Organisation View 15 (2017)
3. Graham Mayeda, Commentary on Fichte's The Illegality of Unauthorised Reprinting of Books: An Essay on Intellectual Property During the Age of Entertainment, 5 U.OTTAWA L. & TECH. J. 141 (2008)
4. Frank D. Prager, A History of Intellectual Property from 1545 to 1787, 26 J. PAT.OFF. Soc'y 711 (1944)

G. Sharma
05/08/2023
Dean Academic Affairs,
H.P National Law University
Shimla - 171014