

POSSIBLE QUESTIONS WITH ANSWERS - WRITTEN
INTELLECTUAL PROPERTY RIGHTS (IPR) BY - 05/02/2020
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Q1) What do you mean by unfair trade practices? Give at least examples relating to unfair trade practices adopted by companies.

Ans - Any act or practices, carried out in the course of industrial or commercial activities contrary to the honest practices, constitute an act of unfair trade practices.

Article 10bis of the Paris Convention (Paris Convention for the Protection of Industrial Property) classifies unfair trade practices as:

- I. Acts causing Confusion
- II. Acts that are misleading
- III. Acts Damaging Goodwill or Reputation.

Hence unfair trade practices are basically deceptive, fraudulent, dishonest trade practices born out of rivalry in trade and commerce which are prohibited by Statutes, Regulations, Common Law & Federal Law.

Unfair trade practices occur through acts like word and are essentially deceptive or wrong trade practices, which harm the interests of consumers as well as business entities.

Unfair or Unhealthy trade practices continue to occur in various forms:

1. Trade Infringement
2. False Advertising
3. Unauthorised Substitutions
4. Bait and Switch Tactics
5. Misappropriation of Trade Secrets
6. Below Cost Selling.

7. Dumping

8. Rumors Mongering.

(2)

Examples of Unfair Trade Practices:

1. Using Coca-Cola trademark on a Soda Container, manufactured by a local beverage maker.
2. A company making false claims about a drug abilities to cure Covid-19 (Corona) when such claims had never been proven medically or ICMR or WHO.

Q) Write a note on Trade Secret Laws?

Ans - Depending on the legal system of a country, the legal protection of trade secrets or trade secret laws are based on:

1. Breach of Contract (ii) Breach of Confidence (iii) Industrial or Commercial espionage

Trade Secrets are legally protected through

- 1) Specific State Law (ii) Case Laws of the Courts.

Trade Secret Law in USA: 1) State Common Law:
Because of the adoption of the Uniform Trade Secrets Act (UTSA), trade secrets are protected in 48 states out of 50 states.

2. State Criminal Law: Trade Secrets are protected in terms of State Criminal Law of concerned States.

3. Economic Espionage Act, 1996: A Federal Law, protecting trade secrets.

4. Amended Defend Trade Secrets Act (DTSA) 2016.

Trade Secret Law in India: There is no specific law/act legislation in India to protect Trade Secrets and Confidential information.

Indian Courts have upheld trade secrets protection under Old Common Law Principles:
(i) Contract Law (ii) Copyright Law (iii) Principles of Equity.

(IPR)-INTELLECTUAL PROPERTY RIGHTS- 7TH SEMESTER- ③
Possible Questions with Answers. Written By -

③) What is INTA ? MANOJ KUMAR BEHERA
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07.12.2020

INTA stands for The International Trademark Association (INTA)

INTA is a non-profit making organisation for supporting & advancement of Trademarks

Its Head Quarter in New York City, offices in Shanghai and Brussels.

It has more than 190 countries membership throughout the world.

It offers wide range of Complimentary resources and information of Trademarks

What is USPTO?

④) USPTO → stands for The United States Patent and Trademark Office

USPTO is the federal agency for granting US Patents and registering Trademarks with reference to Article I, Section 8, Clause 8 of US Constitution.

The USPTO advises the President of USA, Secretary of Commerce and US Govt Agencies on IP Policy, Protection and enforcement

The USPTO also offers protection for US innovators and entrepreneurs worldwide

i) What do you mean by Right to Perform
in Public?

The Right to Perform in Public is contained in Copyright relating to music-literary works - Song lyrics musical works - melody, tunes on CD, record or cassette

The Public Performance includes any mode of visual or aural (connected to listening) presentation by means of wireless telegraphy apparatus, cinematography films, or by record or by any other means. Public Performance can be done before more than one person, not in private or domestic circumstances.

(6) Which things are protected by Copyright Protection in India with reference to Copyright Act, 1957, Compliance with WIPO, WCT & WPPT are as follows:

Original Literary, Dramatic, Musical, Artistic works, Cinematography films, Sound Recordings

Copyright in USA vide Copyright Act, 1976 covers

- (1) Literary works (2) Musical works (3) Dramatic works, (4) Pantomimes, Choreographic works
- (5) Pictorial graphic (6) Motion Pictures & Audio Visual Works (7) Sound Recordings
- (8) Architectural Works (9) Works for hire.

7) Mention types of Intellectual Properties } (5)

Ans - Intellectual Property covers a wide range of intangible Assets, that does not exist as a Physical Object, but remains till the existence of a Company / Concern / Branch, which ~~are~~ is as follows:

1. Patent 2. Trademarks 3. Copyright 4. Trade Secrets

Patent includes - Utility Patent, Design Patent, Plant Patent
Trademarks include - Service Mark

Trademarks — Protects Brands. Ex- Apple for Cell phone

Patents — Protects functional or ornamental features

Ex - Swipe features or iPhone design

Copyrights — Protects works of authorship

Ex - books, movies, drawings

Trade Secrets — Protects Secret Information

Ex - New Invention, Coke formula

8) Write the roles of TRIPS?

The World Trade Organisation (WTO) agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) is adopted on 15th April, 1994 at MARRAKESH and came into force on 1st Jan, 1995.

TRIPS Agreement covers — Copyright, Trademarks, Service marks, Industrial designs, Patents, Geographical Indications, Layout designs of ICs, Trade Secrets -

It provides extensive protection to member countries; if they desire to avail.

It also mandates detailed Civil, Criminal, and border enforcement provisions relating to IP.

(9) What is the role of NAFTA?

The North American Free Trade Agreement (NAFTA), came into force in Jan, 1994. It is the first International trade agreement to include obligations to protect IPR.

NAFTA performs three roles:

1. NAFTA establishes minimum standards of IP Protections based on International Conventions.
2. NAFTA facilitates effective enforcement at the borders of NAFTA states of IPR.
3. NAFTA establishes a dispute settlement with trade related sanctions.

(10) What is Lanham Act?

The Lanham Act, also known as the Trademark Act of 1946, is the Federal Statute that governs trademarks, service marks and unfair competition. It was passed by US Congress on 5th July, 1946 and signed into law by President Harry Truman. The Act became effective from 5th July, 1947.

The purpose of the Lanham Act is to ensure trademarks are exclusive to their users and consumer confusion when identifying well-known

Why Paris Convention performed? ⑦

The Paris Convention for the Protection of Industrial Property, signed in Paris, France on 20th March, 1883, was one of the first treaties of IP. Industrial Property covers Patents, Trademark, Tradenames, but doesn't cover Copyrights.

The Paris Convention highlights three main categories —

1. National Treatment — Each member country must extend the same protection for covered IP that it gives its own nationals, to nationals of other member countries.
2. Right of Priority — An applicant for Patent, Trademark, industrial design or utility model, where protection in one member country may use that application for application of IP in other member country and deemed to be considered as same date as the first application if it is filed within:
 - i) Six Months of the earlier application for Trademark and industrial design
 - ii) 12 Months of the earlier application for patent and Utility model.
3. Common Rules — Member Countries must follow certain other rules the Convention sets out for particular type of IP.

What Madrid Protocol was performed ? 8

The Madrid System for the International Registration of Marks is governed by the Madrid Agreement, concluded in 1891 and the Protocol relating to that Agreement concluded in 1989.

The Madrid System makes it possible to protect a Mark in a large number of countries by obtaining an International registration that has effect in each of the designated contracting parties i.e Member countries.

Advantages:

1. Instead of filing separate national application in each country of interest with fees, one International registration can be done in the International Bureau office of the home country by paying one set of fees only.
2. The same rule is applicable for renewal of registration.

Write short note on TEAS?

The Madrid System allows to have Trademark protection in several countries by filing one application may be paper form or electronically using United States Trademark and Patent Office (USPTO) & Trademark Electronics Application System (TEAS) may be - TEAS Plus, TEAS RF, TEAS Regular Application forms.

(14) What are Certification mark and Collective marks?

A Collective mark or Collective trademark is a trademark owned by an organization/association used by its members to identify themselves with level of quality, or accuracy, geographical origin or other characteristics set by the organization.

A Certification mark is a type of trademark that is used to show consumers that particular goods and/or services, or their providers, have met certain standards.

The main difference is that Collective trademark may be used by a particular members of the organizations which owns them, while Certification mark may be used by anybody who complies with the standards defined by the owner of the particular Certification mark.

(15) Describe the issue of copyright ownership?

The author under copyright is the owner of copyright and in case of literary, dramatic, musical works, the name of the author or publisher is presumed to be the owner of the work. But in works for hire joint ownership, it varies. Generally, copyright ownership gives the holder of the Copyright six exclusive rights:

1. The right to reproduce and make copies of an original work.
2. The right to prepare derivative works based on the original work.

- (3) The right to distribute copies to the public by sale or rental or lending etc.
- (4) The right to perform publicly
- (5) The work.
- (6) The Right to publicly display the work.
- (7) The right to perform sound recordings publicly through digital audio transmission.

(16) What is misappropriation in the context of trade secrets?

Trade Secret infringement is called "misappropriation". It occurs when someone improperly acquires a trade secret or improperly discloses or uses a trade secret without consent or breaching duty of confidentiality or by hacking.

Trade secret includes formulas, pattern, compilation, programme, devices, methods, techniques processes, customer lists, manufacturing process etc.

Trade secrets are protected without any registration and without procedural formalities as contained in Article 39 of TRIPS Agreement.

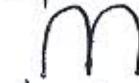
(17) What is a Trade Mark? Give two examples.

(11)

Ans - Trade mark is a name, word, slogan, design, symbol, device, heading, label, ticket, signature, letter, numeral, shape of goods, packaging or combination of colours that identifies a Product or Services or Organisation / Company.

Trademarks are words, phrases, symbols which represent a company or product and distinguishes the source of product (Trademark) or service (Service marks) of one business from its competitors

Examples of, Trademark -

1. McDonald's - 
 i'm lovin' it

2. NIKE - Atheltic footwear.



3. CocaCola - 

8) What does GATT stand for?

Ans - GATT stands for - General Agreement On Tariffs And Trade.

The GATT was formed in 1947 and became international law on 1st January, 1948. The main objective of GATT was to lower trade barriers and encourage international trade.

The GATT was introduced after World War-II with 23 original members and it was superseded by the World Trade Organization (WTO) in 1995.

19) What is a Patent?

Ans - A Patent is a prominent form of IP, that allows the owner / Patent holder to prevent or exclude others from making, using, or selling an

Invention for a limited period of years in exchange (Q3) of publishing or disclosure of the invention, product, process, design or improvements on such items.

The procedure for granting Patents and the extent of the exclusive rights vary widely from country to country in accordance with National Laws and International Agreement/Treaties.

Key Characteristics of Patents:

- i. The Invention must be New / Novel.
- ii. The Invention must be Useful.
- iii. The Invention must be Non-Obvious.

(Q3) What is a Trade Secret? Give an example.

Ans - Trade Secret is a type of valuable IP that consists of - formulas, practices, processes, designs, instruments, patterns, plans, compilations, programmes, methods, techniques, procedures, codes, techniques, list of customers etc.

Trade Secrets have three vital components -

- i. Secrecy - The information must be secret and are not for public information.
- ii. Commercial Value - Their Secrecy provides an economic benefit to the holder.
- iii. Reasonable Effort to Maintain Secrecy - Their Secrecy is actively protected by the holder.

Example - KFC - Kentucky Fried Chicken.
Coca Cola.

(Q3) Can Patent be transferred under law?

Ans - Yes, Patent can be transferred under Law.

A Patent is considered as transferable property that can be transferred from the original Patent holder/owner (Patentee) to any other persons
i.e.: (i) Assignment (ii) Licenses (iii) By Operation of Law.

(i) Assignment - Assignment is an act by which the original patent owner (holder) assigns whole or part of his patent through - a) Equitable Assignment
b) Legal Assignment (c) Mortgage

(ii) Licenses: A patentee/patent owner by way of granting a license agreement/contract may permit a licensee to make use or exercise to invention.

(iii) Transmission of Patent by Operation of Law: Transfer of Patent by operation of law (Court Order) occurs in the following ways:

- When a Patent holder dies, his interest and rights are passed on to the legal heirs or legal representative
- In case of dissolution or winding up of a company
- In case of bankruptcy

Q) What benefits do you derive from patenting inventions?

Ans - Patenting inventions impart lot of benefits not only for the whole mankind, but also act as an eye opener for the upcoming patent holders.

The benefits are as follows:

- Helps to determine the particular invention is new/novel.
- Helps to find out the particular invention is useful.
- Assists in determining the invention is non-obvious.
- Helps to find out the validity period of already existing issued patents.

5. Helps in finding one's own invention, which is going to be patented, is already patented or not.
6. Identify, which aspect of the Patent is Patented, so that own patent can be improved.
7. To see similar inventions with further scope of improvement of own invention without Patent Violation / Infringement.

Q) Which items are not Patentable?

Ans - Any new inventions can be patented based on certain conditions and there are also few exceptions, where certain items cannot be patented, in terms of the Patent Act:

- i) A Discovery, Scientific Theory or Mathematical Method
 - ii) An aesthetic creation
 - iii) A Scheme, rule or method for performing a mental act, playing a game or doing business or a Computer programmed.
 - iv) A Presentation of Information
 - v) A Procedure for Surgical or therapeutic treatment, or diagnosis, to be practised on humans or animals.
 - vi) Law of Nature
 - vii) Naturally occurring substances
 - viii) Abstract Principles
 - ix) Fundamental Truths.
- Items cannot be patented are guided by basic principles: 1) Abstract Ideas 2) Already been Patented.