

Roll No. \_\_\_\_\_

**Trade Marks Agent Examination 2024  
(Under Rule 144 of Trade Marks Rules, 2017)**

**Paper-II**

**Time: 2 pm to 5 pm (Three Hours)**

**Total Marks-100**

**Instructions:**

1. This paper consists of 3 parts- Part A (20 Marks), Part B (30 Marks) and Part C (50 Marks).
  2. All questions in Part A, B and C are compulsory.
  3. Candidate should read the questions very carefully before answering.
  4. No clarification will be provided during the course of examination.
  5. All references to "Act" and "Rules" may be read as The Trade Marks Act,1999 and The Trade Marks Rules, 2017.
  6. Candidate is expected to quote relevant sections and rules as well as prescribed fees and forms in the answer.
  7. No candidate should leave or will be allowed to leave the Examination Hall (i) without signing the Attendance Sheet; and (ii) without properly handing over her/his OMR sheet/Answer Booklet to the Invigilator.
  8. If any candidate wants to leave the Examination Hall after the completion of the half time but before the paper completion time, she/he can do so by surrendering the question paper.
  9. After the completion of the paper time, the candidate can take the Examination Paper with her/him.
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**Part A**

**4 questions \*5 Marks=20 Marks**

1. Since Trademark protection is jurisdictional, one of your client wants to seek Trademark protection beyond the jurisdiction of India. Kindly, explain the options that are available for your client to expand his Trademark protection in other countries. Explain the advantages and disadvantages of Madrid filing system.
2. An NGO who works towards to the welfare and well-being of the immigrants and refugees approaches you for registration of their mark "TIRANGA" which is being used by them since 2005 for class 45- social services and they have been using it as word mark. What will you advice your client about its registrability being his Trademark Agent?
3. LIC Company applied for a slogan **Zindagi Ke Saath Bhi, Zindagi Ke Baad Bhi** for life insurance policies in class 36. During the examination stage, same is objected by the examiner

under section 9(1)(a) and 9(1)(b) of the Trade Marks Act, 1999. Draft a reply against the examination report citing relevant provisions and case laws, if any.

4. As per records of the Trade Marks Registry, a particular trade mark is registered in the name of XYZ & Co. which is a proprietorship firm represented by an individual namely Mr. A who is recently dead. He is survived by his wife Mrs. W (Age: 55 yrs.), a son Mr. S (Age:28 yrs.) and a daughter Ms. D (Age: 22 yrs.). Considering you are approached by Mr. S who wants you to file for change in the proprietorship of the trade mark in his favour. He informs that his mother is a house wife and sister is a college going girl and both not keen to join the father's business.

Suppose you are to file a request before the Trade Marks Registry for change of proprietorship of the Trade Mark in favour of Mr. S. How would you advise him regarding requirements? Advise him in terms of prescribed form, prescribed fee and supporting documents, required if any, at the time the request is filed before the Trade Marks Registry.


### **Part B**

**3 questions \*10 Marks=30 Marks**

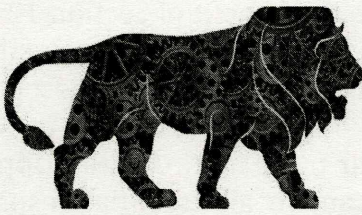
5. Swat AG is a German athletic apparel and footwear corporation headquartered in Germany. The corporation is one of the largest sportswear manufacturers in Europe, and has sales in many countries beyond Europe. They widely advertise their mark and have huge sales for their products in different parts of the world. Their annual sales turnover is in billions. They have their trade mark 'SWAT' registered in relevant class in EU and 16 other countries and also have pending applications in several other countries. Although their products find presence in Indian market, the corporation has no Trade Mark registered or pending application in India.

The corporation approaches you to file an application before the Registrar of Trade Marks for determination of 'SWAT' as a well-known Trade Mark in India. Under the circumstances, do you see absence of a registered or pending Trade Mark application with the Registrar of Trade Marks in India will be a hurdle in filing an application before the Registrar of Trade marks for determination of 'SWAT' as a well-known Trade Mark? Explain in the light of requirements as per relevant statutory provisions under Indian Trade Marks Law.



6. Mango Pvt. Ltd. a company applied for a device mark  for mobile phones in class 09. In the application the company claimed to be the user of the applied trade mark since 01.08.2022. During the examination stage, same is objected by the examiner under section 9(1)(a) of the Act and called for to prove the claim of use. Draft a reply against the examination report along with the affidavit to prove claim of use.

7. A client approaches you with his idea of adopting and registering “



**MAKE IT HAPPEN**

” as his trade mark for manufacturing and marketing of Indian Ethnic Wear. He states that he has the feeling of love, devotion, and a sense of attachment to one's country since his childhood, hence the adoption. What is your opinion regarding registrability of the proposed mark. Support your opinion with relevant statutory provisions.

**Part C**

**2\* 25 Marks =50 Marks**

*Amrutha*

8. An application for registration of mark AMRUTHA (DEVICE) was filed by M/s. New India Pvt. Ltd. (hereinafter referred to as the Applicant) on 13<sup>th</sup> March, 2018, under Application no. 366XXX in respect of 'Salt spices, instant mix, all types of flour and rice' in class 30, claiming use of the mark since 12<sup>th</sup> April, 1998. Eventually, the said Application was examined and advertised before acceptance under Section 20(1) proviso of the Act. The said mark was published in Trade Marks Journal No. 1422 dated 1<sup>st</sup> March, 2019 and made available to the public on the same day, that is, on 1<sup>st</sup> March, 2019.

M/s. Amira Foods (India) Ltd. (hereinafter referred to as the Opponent), opposed the registration of the said Application on 26<sup>th</sup> May, 2019, by filing Notice of Opposition objecting to the registration of the impugned Application under Sections 9, 11 and 18 of the Act. The Opponent in their Notice of Opposition dated 26<sup>th</sup> May, 2019 have contended that they are in the business of manufacturing and marketing of wide range of edible goods including food grains, rice and pulses, under the trade mark AMIRA. Further, that their predecessors adopted



the mark AMIRA (Label) in the year 1986 and their goods under the mark AMIRA are distributed in major parts of the country and exported to various foreign countries in large quantities. That their mark AMIRA under application no.634XXX in Class 29 and application bearing nos. 578XXX, 580XXX, 624XXX and 713XXX in Class 30 are duly registered in favour of the Opponent or their predecessor. Further, that they have secured registration for the mark AMIRA in class 30 in other jurisdictions and have copyright registration for artistic label bearing the word/mark AMIRA in India. The Opponent's primary contention is that the Applicant is not the proprietor of the applied mark as he has dishonestly adopted the same from the Opponent's mark to cause confusion, deception and facilitate

passing off their goods as those of the Applicant. Further, that the applied mark has been blatantly copied and inspired by the repute and goodwill of the Opponent's AMIRA Label mark. Opponent further contends that the Applicant is not entitled to the benefit of Section 12 of the Act as there is no honest or concurrent use or any other special circumstance to justify the registration of the applied mark. Further, that there is likelihood of confusion and deception in the minds of public and members of trade as impugned mark would lead them to relate and associate the source and origin with that of Opponent and their trade mark AMIRA. Opponent has further contended that the mark applied by the Applicant in all essential respects is identical with or deceptively similar to the Opponent's trade mark and that the goods are also of the same description. The Opponent submits that the registration of the mark under Application No. 366XXXX is barred by Section 9, 11 and 18 of the Act.

Based on the given facts, draft a counter statement, and take all the possible pleas in your pleadings to rebut the statements of the Opponent, also cite relevant sections, rules, and case laws therein.

9. One 'Medimine Industries' happens to be a manufacturer and merchant of N95 face masks/respirators under brand '**MEDIMINE**'. Their products are commonly available on various e-commerce websites. They claim to be manufacturing and selling N95 masks in India since year 2018. Very recently, they received information from one of the prominent e-commerce website stating that their face masks have been taken down from the sale on the website as they received a legal notice from another manufacturer of face masks namely 'Adwait Healthcare Products' who claims to be registered proprietor of trade mark '**N95**' with Indian Trade Marks Registry under number 56XXXX Class- 10 on "proposed to be used basis" for Surgical, medical, dental, veterinary apparatus and instruments. Medimine Industries are very clear in their stand that they are using N95 purely as descriptive term specifying the category of respirators they are manufacturing and selling. Their main brand '**MEDIMINE**' is prominently displayed on their products and sold as such. On being contacted, the 'Adwait Healthcare Products' responded that they shall only allow using the term N95 products with the entities who share their profit with them stating "their company is the owner of the said trademark (N-95) and any other entity using trademark should alter their product packaging, name, image or label and take License from the holder which starts from Rs. 50,000/- per month".

Medimine Industries approaches you requesting to initiate a rectification proceeding against Adwait Healthcare Products' registered trade mark. How would you advise your client regarding appropriate forum to file a petition? Draft a rectification petition on behalf of your client. You are at liberty to cite all relevant statutory provisions and take all pleas and assumptions in your pleadings to make out a strong case of cancellation of the registered trade mark.

**- : End of Question Paper: -**