

TABLE OF CONTENTS

1.	INDEX OF AUTHORITIES.....	<i>i of viii</i>
	▪ CASE LAW.....	<i>ii of viii</i>
	▪ BOOKS REFERRED.....	<i>iii of viii</i>
	▪ DICTIONARIES.....	<i>iv of viii</i>
	▪ STATUTORY COMPILATIONS.....	<i>iv of viii</i>
	▪ ARTICLES.....	<i>iv of viii</i>
	▪ INTERNET SITES.....	<i>iv of viii</i>
2.	STATEMENT OF JURISDICTION.....	<i>v of viii</i>
3.	STATEMENT OF FACTS.....	<i>vi of viii</i>
4.	STATEMENT OF ISSUES.....	<i>vii of viii</i>
5.	SUMMARY OF ARGUMENTS.....	<i>viii of viii</i>
6.	ARGUMENTS ADVANCED.....	1 of 6
	1. WHETHER THE GRANT OF PATENT TO THE DEFENDANT WOULD BE IN CONTRAVENTION OF PLAINTIFF’S PATENT RIGHTS?	
	2. WHETHER THE ONLINE GAME OF THE PLAINTIFF AMOUNTS TO A LIBELOUS UNILATERAL ANIMATED REPRESENTATION DESIGNED TO DEFAME THE PLAINTIFF’S PRODUCT?	
	3. WHETHER THE DEFENDANT HAS INFRINGED THE LAWS RELATED TO TRADE SECRET?	
	4. WHETHER THE DEFENDANT IS LIABLE FOR TRADEMARK INFRINGEMENT?	
7.	PRAYER	

INDEX OF AUTHORITIES

A. CASE LAW

- *Ackroyds (London) Ltd. v. Islington Ltd* [11962] RPC 97.
- *Biogen v. Medeva Plc* (1997) RPC 1.
- *Birmingham Sound Reproducers v. Collaro* (1956) RPC 232.
- *Chevron Chemical Co. v. Costle* 443 F. Supp. 1024.
- *Dewey & Almy Chem. Co. v. Mimex Co.* 124 F. 2d 986, 52 U.S.P.Q. 138 (2d Cir. 1942).
- *Dodwell & Coy Ltd. & S. Gutterman & Co. Ltd.* (1958) RPC 387.
- *Elanco Products Limited v. Mandops Limited* [1979] F.S.R. 46.¹
- *Fife Manufacturing Co. v. Stanford Engineering Co.* D.C.III.193 F. Supp 226.
- *Harry Reynolds v. Laffeaty's Ltd.* (1958) RPC 387
- *Inc's Patent* (1989) RPC 147.
- *Insecticide v. Herbon* (1972) RPC 197.
- *John- Melville Corporation's Patent* (1967) RPC 479.
- *King-Seely Thermo Co. v. Refrigerated Dispensors, Inc.* C.A. Okl 354 F.2d. 533.
- *Marconi v. British Radio Telegraph & Telephone* (1911) 28 RPC 181.
- *Mobay Chemical Corp. v. Costle* 447 F. Supp. 811.
- *Montari Overseas Ltd. v. Montari Industries Ltd.*, 1996 PTC (16) 142.
- *Novartis AG and Anr. v. Adarsh Pharma and Anr.* 2004 (29) PTC 108 (Mad).
- *Parfums Christian Dior v. Evora BV* [1997] ETMR 286
- *Peshawar Soap & Chemicals Ltd. v Godrej Soap Ltd.* 2001 PTC 1 (Del).
- *Quantel v. Spaceward* (1990) RPC 83.
- *RCA Photophone v. Gaumont British-Picture Corp.* (1936) 53 RPC 167.
- *Ruckelshaus v. Monsanto Co.* 467 U.S. 986.
- *Ruston & Hornby Ltd. v. Zamindara Engineering Co. Ltd.* AIR 1970 SC 1649.
- *S.M. Dychem Ltd. v. Cadbury (India) Ltd.* AIR 2000 SC 2115.
- *Saltman Engg. Co. v. Campbell Engg. Co. Ltd* [1978] 3 All E.R. 193.
- *Seaver v. Wm Filene's Sons Co.* DC Mass 37 F.Supp. 762.
- *Sri Swarn Singh Trading Appliances Emporium v. Usba Industries New Delhi*, AIR 1986 Del 343.
- *Torrent Pharmaceuticals Ltd. v. The Wellcome Foundation Ltd.* (Guj) 2001 (2) CTMR 158. ¹
- *Van der Leij N.V. v. Bamfords* (1963) RPC 61.
- *Weir Pumps Ltd & Others v. CML Pumps Ltd* [1984] PSR 33.

B. BOOKS REFERRED

1. A.E. TURNER, THE LAW OF TRADE SECRETS, (London 1962).
2. AMANDA MICHELES, A PRACTICAL GUIDE TO TRADEMARK LAW, (3rd edn., Sweet and Maxwell, London, 2002).
3. B.L. WADEHRA, LAWS RELATING TO PATENT TRADE MARK COPYRIGHT DESIGNS & GEOGRAPHICAL INDICATIONS, (3rd edn., Universal Publishing, New Delhi, 2004).
4. CATHERINE COLSTON, PRINCIPLES OF INTELLECTUAL PROPERTY LAW, 99, (Cavendish Pub Ltd, Sydney, 1999).
5. CHISUM DONALD, CHISUM ON PATENTS, Lexis Publishing, Vol 1, §3.04, p. 3-44.
6. DAVID AAKER, MANAGING BRAND EQUITY, (7th edn., Macmillan, N. York, 1991).
7. DAVID KITCHIN, KERLY, LAW OF TRADE MARKS AND TRADE NAMES, 14.21 (11th edn. London, Sweet & Maxwell, 1983).
8. ERNEST BRAINBRIDGE LIPSCOMB III, WALKER ON PATENT, (3rd edn., Clarck Broadman Callaghan, New York, 1984).
9. MARGRET BARRET, INTELLECTUAL PROPERTY: CASES AND MATERIALS, (2nd edn., West Publishing Co, Minnesota, 1995).
10. MARTIN J. ADELMAN ET AL., CASES AND MATERIAL ON PATENT LAW, (West Group Publishing, Minnesota, 1998).
11. P. NARAYANAN, LAW OF TRADEMARK AND PASSING OFF, (5th edn., Eastern Law House, Calcutta, 2000) (1971).
12. P. NARAYANAN, PATENT LAW AND PROCEDURE, (Eastern Law House, Calcutta 2000).
13. P. NARAYANAN, INTELLECTUAL PROPERTY LAW, 149 (2nd edn., Eastern Law House, Calcutta, 2000)
14. R. MILGRIM, TRADE SECRETS, (New York, 1967).
15. RODNEY D RYDER, BRANDS, TRADEMARKS AND ADVERTISING, (LexisNexis, Butterworths, New Delhi, 2003).
16. V. VASHISHTH, LAW & PRACTICE OF INTELLECTUAL PROPERTY IN INDIA, (Bharat Law House, New Delhi, 2002).
17. W.R. CORNISH, CASES AND MATERIAL ON INTELLECTUAL PROPERTY, (3rd edn., Sweet and Maxwell, London, 1996) (1990).

C. DICTIONARIES

- BLACKS LAW DICTIONARY (6th Ed., Centennial Ed 1891-1991).
- CURZON L.B., *DICTIONARY OF LAW*, 4th Ed., Pitman Publishing, New Delhi (1994).
- JUSTICE DESAI M.C., *AIYAR SUBRAMANYAM, LAW LEXICON & LEGAL MAXIMS*, 2nd Ed., Delhi Law House, Delhi (1980).
- OPPE A.S., *WHARTON'S LAW LEXICON*, 14th Ed., Sweet & Maxwell, N. Delhi (1997).
- YUDHISHHIRA, *JUDICIAL DICTIONARY*, 9th Ed., Law Book Co., Allahabad (1984).

D. STATUTORY COMPILATIONS

1. CODE OF CIVIL PROCEDURE, 1908.
2. THE TRADEMARKS ACT, 1994.
3. THE PATENTS ACT, 1970.

E. ARTICLES

1. ANUBHA CHARAN, *Price of Defame*, www.rediff.com/netguide/2001/nov/01fame.htm
2. BRUCE D. FISCHMAN, *Protecting the Value of Your Goodwill from Online Assault*, www.fndlaw.com/html/bruce_article.htm
3. COREY B. BLAKE, *Ghost of the Past: Does the USPTO's Scientific and Technical Background Requirement still make sense?* 82, Texas Law Review, 740
4. JUSTICE (DR.) A. S. ANAND, *Intellectual Property - Indian Experience*, (1997) 6 SCC J.1
5. P. DUGAAL, *Cyber Defamation*, www.indiaonline.com/cyva/colu/cybe/padu4.html

F. INTERNET SITES

1. www.encyclopedia.laborlawtalk.com/Game (visited on July 24th 2005).
2. www.encyclopedia.laborlawtalk.com/Computer_game. (visited on July 28th 2005).
3. www.fndlaw.com/html/bruce_article.htm (visited on July 24th 2005).
4. www.indiaonline.com/cyva/colu/cybe/padu4.html (visited on August 1st 2005).
5. www.lsbu.ac.uk/biology/enztech/biosensors.html (visited on July 27th 2005).
6. www.msc-nanoscience.tudelft.nl/nanotimeline.html. (visited on July 18th 2005).
7. www.ornl.gov/info/ornlreview/rev29_3/biosens.htm, (visited on July 27th 2005).
8. www.rediff.com/netguide/2001/nov/01fame.htm (visited on July 20th 2005).

STATEMENT OF JURISDICTION

The Plaintiff has approached this Hon'ble Court under Section 104 of the Patents Act, 1970 read with Section 20 of the Civil Procedure Code, 1908. The plaintiff humbly requests this Hon'ble Court for joinder of causes of action under Order II rule 3 of the Code of Civil Procedure, 1908.

Section 104 of the Patents Act, 1970 read under as:

Section 104: Jurisdiction

No suit for a declaration under Section 105 or for any other relief under section 106 or for Infringement of a patent shall be instituted in any court inferior to a district court having jurisdiction to try the suit:

Provided that where a counter-claim for revocation if the patent is made by the defendant, the suit, along with the counter-claim, shall be transferred to the High Court for decision.

STATEMENT OF FACTS

I

Philthkleen Systems Ltd. (hereinafter referred as the plaintiff) is a company based in Nanopore. The company developed a dust cleaning system, based on nanotechnology that used nanobots for cleaning dust.

II

Patent for the dust cleaning system was granted in Nanopore, US, EU Japan and other countries. The product was named DUSTNIBBLER and a Trademark for the same was granted in Nanopore.

III

Dubot Inc.(hereinafter referred as the defendant), a company started by former employees of the plaintiff started manufacturing dust and dust mite cleaning system using nanobots.

IV

This product was named DUSTMUNCHER for which a patent and trademark application is pending in Nanopore.

V

The defendant launched an online game where it was advertised that if a player accumulated 100,000 points using an icon NIBLERR, he/she would get a discount on DUSTMUNCHER.

STATEMENT OF ISSUES

1. WHETHER THE GRANT OF PATENT TO THE DEFENDANT WOULD BE IN INFRINGE PLAINTIFF'S PATENT RIGHTS?
2. WHETHER THE ONLINE GAME OF THE PLAINTIFF AMOUNTS TO A LIBELOUS UNILATERAL ANIMATED REPRESENTATION DESIGNED TO DEFAME THE PLAINTIFF'S PRODUCT?
3. WHETHER THE DEFENDANT HAS INFRINGED THE LAWS RELATED TO TRADE SECRET?
4. WHETHER THE DEFENDANT IS LIABLE FOR TRADEMARK INFRINGEMENT?

SUMMARY OF PLEADINGS

1. WHETHER THE GRANT OF PATENT TO THE DEFENDANT WOULD INFRINGE PLAINTIFF'S PATENT RIGHTS?

- 1.1 That the claims of the plaintiff have been incorporated, *in toto*, in the defendant's claims.
- 1.2 That the claims of the defendant are in want of novelty.
- 1.3 That the claims of the defendant as to dust mite detection and destruction capability lack inventive step.

2. WHETHER THE ONLINE GAME OF THE PLAINTIFF AMOUNTS TO A LIBELOUS UNILATERAL ANIMATED REPRESENTATION DESIGNED TO DEFAME THE PLAINTIFF'S PRODUCT?

- 2.1 That the online game of the defendant is a mere unilateral animated representation.
- 2.2 That the use of the deceptively similar name NIBLERR upon the icon is misleading.
- 2.3 That the shape of the icon employed in the game resembles with plaintiff's product.

3. WHETHER THE DEFENDANT HAS INFRINGED THE LAWS RELATED TO TRADE SECRET?

- 3.1 That the TRIPS provisions mandate protection of "Undisclosed Information".
- 3.2 That the technical know-how underlying the product is a trade secret.
- 3.3 That mere publication does not amount to disclosure of confidential information.

4. WHETHER THE DEFENDANT IS LIABLE FOR TRADEMARK INFRINGEMENT?

- 4.1 That the use of trademark in advertising amounts to direct infringement
- 4.2 That the use of synonymous suffix in word mark does not save the defendant's mark from infringing the plaintiff's trademark.
- 4.3 That the use of device and common elements amounts to copying of trade dress.