1. What is the purpose of Trademark Licensing? Discuss the procedure for registration as a registered user.

Ans: The licensing of a mark is to allow others to use the mark without assigning the ownership and the same may be done for all or some of the goods and services covered. The Trademarks Act does not mention the term 'License', the concept under the Act is mentioned as that of a 'Registered User'.

Trademark licensing is advantageous to both the parties. While the licensor enjoys its rights to the mark by getting the royalties for its use, the licensee is able to expand its market operations by using the brand and developing its reputation.

In case of Licensing, the licensor is open to license the rights over the trademark in manner it may like. The Licensor can restrict the rights of the licensee in a trademark or brand with respect to the products or services wherein the licensee can use such brand, with respect to time for which it can use such mark, with respect to area within which it can use such mark etc.

Trademark application procedure and prosecution in India involves the stages of filing, examination, publication or advertisement, opposition, registration and renewal.

1. Filing- A trademark application can be filed for a single or multi class. Application claiming priority from a convention country can also be filed in India within six months from the priority date.

2. Examination Report- After an application is filed the same is then examined by the Registrar in accordance to the provisions of Trademark Act. If an objection to registration of the mark is raised, an official examination report will be issued by the Registrar within 3 months to 1 year of filing depending on the backlog of Registry.

The Registrar may accept or refuse the application subject to the provisions of the Act. An application can be refused / objected by the Registrar on relative or absolute grounds:

a. Relative Grounds:

The relative grounds for refusal of a trademark are provided under Section 11 of the Trademark Act, 1999.

- That a trademark cannot be registered if because of:
  1. Its identity with an earlier trademark and similarity of goods or services;
  2. Its similarity to an earlier trademark and the identity or similarity of the goods and services, there is likelihood of confusion.

b. Absolute Grounds:

Section 9 of the Trademark Act, 1999 provides for the absolute grounds for refusal of a trademark. The absolute grounds of refusal are:

- If the trademark is devoid of any distinctive character, that is to say, not capable of distinguishing the goods or services of one person from those of others;
- If the trademark consists exclusively of the marks or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, values, geographical origins or the time of productions of the goods or rendering of the service or other characteristics of the goods or services;
- If the trademark consist exclusively of marks or indications which have become customary in current language or in the bona fide and established practices of the trade.

The trademark is of such nature so as to deceive the public or cause confusion;

The mark comprises of any matter likely to hurt the religious susceptibilities of any class or section of the citizens of India;

The mark comprises or contains scandalous or obscene matter;

Use of the mark is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950;

If the mark consists exclusively of:

1. The shape of goods which results from the nature of the goods themselves; or
2. The shape of goods which is necessary to obtain a technical result; or
3. The shape which gives substantial value to the goods.

However, a trademark which may be initially refused on absolute grounds can be registered if it acquires a distinctive character/ secondary significance as a result of extensive and continuous use.

Grounds for refusal of registration of trade mark

Absolute grounds for refusal of Trade Mark

1. The trademarks that are:
   - Incapable of distinguishing the goods/services of the applicant with those of others;
   - or may serve in trade to designate kind, quality, purpose, value, geographical origin;
   - or have been commonly used in the current language or established practices of trade;
   - shall not be registered.