

**Entrepreneurship and IP Strategy**  
**Professor. Gouri Gargate**  
**Rajiv Gandhi School of Intellectual Property Law**  
**Indian Institute of Technology, Kharagpur**  
**Lecture No. 11**  
**Trademark – Definition**

A very warm welcome in the first module of the week 3 of the course, Entrepreneurship and IP Strategy, titled Trademark – Definition. We have now understood what is entrepreneurship. In knowledge economy, we know that there is a importance of intangible assets and IP is one of the intangible assets. So, we have seen this in earlier module. Now next 4 modules including this one and the 4 next models, we will concentrate on the trademark. So, that will be the this week we will concentrate on the trademark.

Next we are concentrating on patent, then copyright and then industrial design. So, this 4 important types of IPs, we will go in little bit what we can say the the introductory part or some introduction about this 4 types of IPs we will see week wise so that you can get the idea that what is this different types of IPs are. Now each of this type is in itself a very vast subject and it is not possible to go in details. However, we will make sure that we will go through the details you need when you will start your entrepreneurial activity. So, that much details we will definitely share with you.

These all 4 types are important when we are entering in the entrepreneurship model. As mentioned earlier it is necessary to go through these 4 types before entering into what is IP strategy. Entrepreneurship, then we should know what is IP and then we will know how you can handle that IP. So, in this 3 what we can say steps, we will go through these 8 weeks. First we have already seen what is entrepreneurship, what is knowledge economy, what is the importance of IP in entrepreneurship. Now, we will go in a 4 that is what is IP and then next modules we will concentrate on how you are going to use IP effectively for your venture.

This way it will be easier for you to appreciate particular type of IP and there are chances that all 4 types of IP probably you may have or at least 1 type it may be but I am sure that at least 1 type will be there but the chances are that if you are technology-driven a venture probability is that patent and trademark and copyright will play important role along with industrial design. If you are a publishing or film industry related activities is there then definitely copyright will play

important role along with a trademark and sometimes obviously industrial design also play important role. So, in that in that way the importance of IP will change that which IP will be more important in your venture but one of the IP definitely you will deal with.

So, so it is a quicker exposure and in short time we will try to give you the relevant whatever the subject knowledge you will require regarding IP. So, let us start. Now in this module we will try to understand what is trademark. Many people use trademark and brand, these two words interchangeably. You have also probably have seen that people use patent, trademark, copyright and industrial design these 4 words interchangeably. This is the biggest blunder we can have. These 4 are very different areas of IP and each area is a vast subject.

So, patent itself is a big law. That law is there and then you are going through either the drafting, prosecution and then the litigation part it involves. So, it is a big area actually. Then trademark again the separate act is there, for copyright separate act is there, for design there is a separate act. So, we cannot use these words interchangeably. So, you will when you will go through the details of this you will appreciate what that difference between these 4 types of Ips are. So, similarly now when we are concentrating on trademark, many times you will see that people use word trademark and brand interchangeably.

There is a difference in between these two words. Here we are connecting, concentrating mainly on trademark and we should know that trademark is the out of these 4 IPs, whatever we are dealing with, this trademark is the oldest IP means you if you see the history of IP development, you will find that trademark is the oldest form of IP. And in this week, we will fully concentrate on what that trademark is and how that trademark registration is done or what is trademark infringement and we will see one case study about a trademark related case study also.

(Refer Slide Time: 05:22)



So, probably now if you see, you have seen the words like Tata or Oracle or HP or this IBM. So, these words you have seen, these names you are well aware of well aware about these words. Now these words these are nothing but are trademarks. So, you have seen the this word that is a trademark. So, this word trademark or a TM or a R that is trademark R is for registered. So, these words are like when you do the registration, that when you take the when you do the registration you will get the number we say that trademark is registered and once that examination will happen you will get that that complete procedure is followed, examination is over and then you will get the your trademark like accepted and at that time you will say that it is a R.

So, that what we can say that procedure is, then we will see what procedure is there, but we will try to understand what that trademark is in this module. Now, what is a value of that trademark whether how much what is the amount or what is the cost of trademark?

(Refer Slide Time: 06: 39)



Now if you see the value of that when you do IP valuation, IP valuation is one of the important area of IP when you are dealing with IP management, IP valuation, IP audit these are the very important areas IP insurance. So, if you see the valuation of Microsoft, it is a 56 billion dollar or if you see the IBM it is a 50 billion dollar or if you see Google it is a 47 billion dollar. So, you can imagine the valuation.

So, when we say trademark is intangible assets, this is a cost of trademark and you should be aware that or this is the information probably you might be knowing that this trademark, just like a you keep your assets, it may be a flat, it may be a gold you keep that assets and in turn you get that mortgage and then you get the money as a loan means whenever you are dealing in the bank loans, you keep something like that as a mortgage and against that you get the loan. So, similarly this IP as it is a asset and you have already seen the valuation against this trademarks, if your trademark is built properly, you can get the bank loans also.

(Refer Slide Time: 08:00)



Now what that trademark is? Whether I need a trademark, what is the life of trademark, probably these questions might be pondering in your mind.

(Refer Slide Time: 08:05)



Now this trademark when we are talking about a trademark, this trademark according to the Act, it is a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of good, their packaging and combination of colours. So, in short I say, that this is the trademark is nothing but a either it may be a related to goods or it may be related to a surface. Now, what it does? This

mark capable of being represented graphically. Something you can see that shell or you can see that BMW, so some Apple, so McDonald's, so it is presented in some particular way.

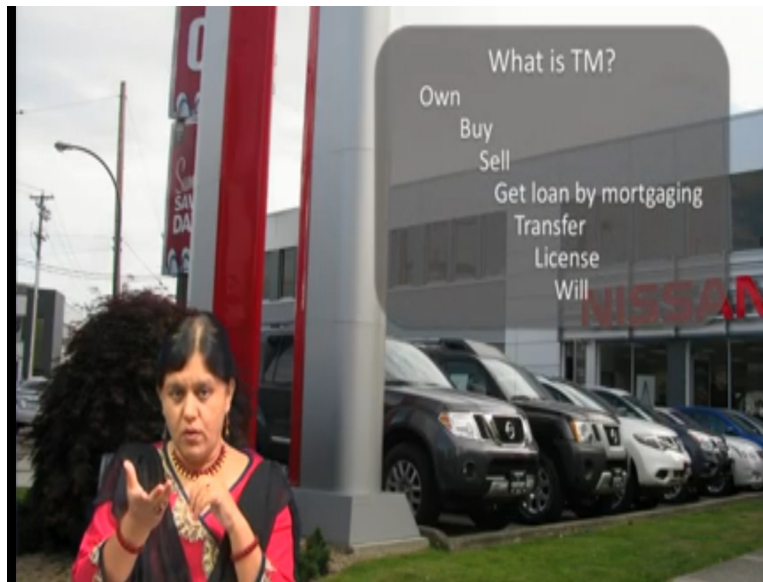
Now what it does is capable of distinguishing goods or services of one person from those of all others. Now it indicates either goods or service and marks what that marks is. It may include device, then heading, then label. It may be a ticket. It may be a name. It may be a signature. It may be a word. It may be a single letter. It may be a numeric. It may be a shape of good. It may be a packaging or it may be a combination of colours or any combination of any of this. So, anything like device, heading, level, ticket, name, signature, word, letter anything and colours particular colours all the combination of that and you can see that various brands with that particular design and immediately you can relate it with one organization.

Now, when you see that trademark, what exactly is it represent, it represents. Obviously, we have seen that it is a either a goods or a service offered by that particular organization. That is one thing. The next is like if that trademark is registered if somebody says that that TM is written or R is written obviously it is deterrent to infringer. So, people who are in the same business or organizations who are in the same business, they will be aware that this is something which is protected and it is not good to use that particular protected trademark for the business. So, it is like a detail. Then it gives a statutory right obviously to the trademark owner that statutory rights is like nobody he can sue people who are using that trademark.

Then you can remember that particular qualities of that product or organization when you see that particular trademark. So, suppose I say Tata or if I say Reliance, immediately something comes in your mind. So, it is like a giving the quality of that product or something about that organization and then you can have a particular calculations. If it is a Tata product what will be there, if it is a Reliance product what will be the what you are expecting? So, that expectations are set with that single word.

Now it creates a good will obviously. When you see the words like Tata or Reliance that big goodwill is associated with this trademark. Now, what you can do with the trademark. If you do register the trademark what exactly you can do?

(Refer Slide Time: 12:01)



So, you can own that particular trademark. You can buy that trademark, you can sell the trademark, you can get loan, already we have discussed, you can get loan by mortgaging, you can transfer that trademark, you can license that trademark and you can decide that to whom you are going to transfer or to whom you are going to who can use that trademark when that trademark owner is, what we can say, after him who will be using that particular trademark. So, the thing is that it is like a property. Trademark is like a property. Obviously it is type of intellectual property. So, whatever you can do with the property, all things you are doing with a trademark.

So in simple sense, if you take example of a flat what you can do you, you buy flat, you sell flat, you get loan against that, you can transfer that flat to someone else, you can lease that flat and take rent and some considerations against that and in the will you can decide that to whom this flat will go after you. So, that you have decided. Same thing you are going to do or you will able to do with a trademark. Now, what a trademark is?

(Refer Slide Time: 13:18)



We will go little details about that. Now you can see that Canara bank, or you can see Pepsi. We have already discussed that this trademark is nothing but it may be a device. It may be a brand. It may be a heading, label, ticket, name, it may be a signature, it may be a word or it may be a single letter or a numeric or it may be a shape of a good or it may be a packaging or combination. So, any kind of this if you can use for a representing your business and once you register that through the procedure, you will get that trademark. What you are going to protect or what we can say with the trademark what you are doing? It may be for a goods or it may be for a services.

Now what kind of services and what kind of goods. Goods may be a subject of a trade and it may be a subject of manufacture and service, it may be like a it may be like what we can say, a banking services there, a provision of services in connection with a business of any industrial or commercial matter. So, it may be education, it may be a banking service or it may be like a financial consultation. Any kind of that services there. Now, 3 distinctive characteristics are there when we are talking about a trademark.

It should be distinct. That trademark should be distinct. Second thing, it should be it should not be deceptive. It should not be deceptive and third, it should describe the quality, quantity that purpose, values sometimes geographical origin, not everything but sometimes it will describe the quality. Sometimes it will describe the quantity or purpose or it may indicate the geographical origin. So, some kind of indications you are getting by reading that particular word. So, that way



like if you give that particular word say Canara Bank or Pepsi when you think of that kind of word, immediately you imagine what might be the Pepsi, you know that product.

Then, you know the taste of that product and then probably you know, who is owning that particular thing. So, this kind of what we can say, the immediate calculations you do when you see that particular word or when you say Canara, you just try to imagine or try to relate it with that banking service, which is offered by Canara bank. Now, it is like a trademark is like if you see the see that the letter the sentence it is like capable of being not capable of distinguishing goods and services of one understanding from those of another. In short, it is like a (distinctive) distinctive in nature and it is like a unique to that particular business. So, whatever n number of businesses are going on, trademark is unique to your particular business.

(Refer Slide Time: 16:28)



Now, famous one case I will just cite it here. Mercedes-Benz case is very popular case. Now Mercedes Mercedes Benz it is a popular brand, it is a it is a well-known trademark. It comes under a well-known trademark. Now this 3 pointed star in the ring is a trademark of that particular organization. That is a Mercedes-Benz. Now what exactly happened that somebody copied that 3 pointed star in the ring and started a business of undergarments. Company, this organization sued that particular company who had started a business of undergarments and court granted that decision in favour of a Mercedes-Benz.

So, once it is a like a established market, is a well-known well-known market. We will see what are the different types of marks in that well-known mark, we will see in details. Mercedes-Benz is a well-known mark, how how that what is a test or a litmus test for that how it is determined what is a well-known mark that we will see when we will see the types of a trademark, but just for this case you remember that Mercedes-Benz is a well-known mark and if somebody copies anybody anywhere in the world, if copies that particular 3 pointed star that is a infringement and Mercedes-Benz will sue that particular infringer.

So, you can imagine that one simple single kind of a what we can say, it may be a word or it may be a some design and that that represents the whole organization and that gives you immediately what that organization is. So, this is what can we can say the power or use of that trademark is.

(Refer Slide Time: 18:27)



Now the most important thing is that trademark never expire. Now other IPs, if you see you say patent, if you say copyright, if you see industrial design, these IPs have a limited life. So, their life is limited 20 years or 60 years or 25 years, 50 years, 15 years, so this kind of life that life is fixed. But for a trademark, this is the only IP which is like a indefinite life and how you can get that indefinite life. After certain period, that is 10 years after 10 years, you have to renew that trademark, here to give fees to the government and you have to renew your trademark. So, it is like an example if you see, you can see that Mercedes-Benz we have already has just now see that seen that case.

It is registered in 1900. So, it is like a 100 years, more than a 100 year old trade marketers or Pepsi-Cola, it was registered in 1896. Still you are using that Pepsi. So, this trademark is like an indefinite lifetime is there and only thing is that you have to register it after means renew it after every 10 years.

(Refer Slide Time: 19:30)



Now we will have watch a small video here. Now this video is regarding the Mercedes only. You can see little bit history about that Mercedes-Benz and how that name given that Mercedes and Benz, you can see that how that the how trademark is coined. So, probably this will give you idea. When you will start your venture, you will also require a trademark. In India, I can just put the point here that in India you can do trademark register after just like in a patent it is mandatory that you have to do a file that patent first and then you can start what we can say practicing it or public display or something like that you can do after filing.

In trademark, in India, you can use that trademark and after that also if you want to register, you get do register. You can do the registration, but how to coin that trademark and what can be the best trademark so you may get some little bit idea with this care this video that Mercedes case. Now you just watch this video.

You can watch this video later, but the voice quality is not that good, but I thought that this will be very helpful for you that how big big trademark like Mercedes-Benz is made. Now now you know, what is trademark and then what is the life of a trademark. Now what is trademark? It is

like a device or word or a letter that we have seen anything out of that and what is the life? It is indefinite. Now, how you how you can coin that how you will design trademark.

Probably this small video may help you but the ways is like you can just see the different kinds of a trademarks available and based on for example, if I want to give example Ola or Uber Apple, these are the good trademarks. Now what are types and how that whenever we will see the types of a trademark, we will see that 4 types are there, which type or under which category you can just decide that my trademark will be you will get idea about that particular thing in coming modules.

(Refer Slide Time: 22:56)



Now the question is whether I need trademark. So, I understood what is trademark is or I understood that trademark is having indefinite life but whether when I am starting my venture whether I need a trademark, so definitely you need a trademark. If you are doing any business you require a trademark. There may not be a patent involved, if you are not a technology driven company, there may not be involvement of a patent or if you are what we can say, you are in a sometimes you may not require a copyright but probability is very high that 90 percent to 95 percent, you will require a trademark. So, why you will require? What is the use of the trademark? How it will be differentiating you or what benefits you will get from a trademark?

So, first thing is like it is a best communication tool. We will go little details, but we will just see what benefits you can get. It will give you identification. It will be very useful when you are

having any online business or even the if business is like a not online but for your advertisement on social media that will be very helpful. It will be valuable asset. We have already seen the valuation of few trademarks and it will help you to attract talent. We will see how it is how that attracts the talent.

Now why we can call it as a communication tool? Now if I say just Tata, I am just taking 1 example, or if you take a Ola or if you take an example like a Reliance. Now, it is like a single word, and that single word is communicating something and that is giving you the idea or Swiggy. So, whatever trademark you just bring in front of you Woodland, so whatever it may be Decathlon, you just imagine that if I say that particular word immediately, you have an immediate that picture comes in front of you that, Decathlon, sports and then good quality what we can say the sport shoes and all that thing I will get in that particular shop or that chain that is for that particular thing .

If you say something like on what we can say, IIT. It is a it it gives you the idea that what that you can have some calculations behind you immediately when somebody says IIT. So, in that way that single word is presenting or giving you communicating something, it is giving you the information about that particular organization and then probably you you may get connected with intellectually or emotionally with that trademark and you you have probably have experienced that particular thing that you may use particular products from a particular company only. So, you make yourself associated with that particular trademark.

Now, if you are talking about your company so you can build, it is a building it is not like a today you have registered trademark and immediately you are getting the what we can say some returns out of that. It is not the case. Obviously you are building that particular trademark and once that brand that trademark is registered and you are building your business, then you are getting the recognition. Like Mercedes, it is more than 100 years old but once we say Mercedes something comes in your mind. So, that one word communicate so many things about the products, the quality. Right?

Now further, if you see that somebody uses, somebody says that I am user of Apple. So, Apple and Microsoft or Canara bank and Bank of India, I am just connecting with that that way or if you say the Canara bank, they they will give you the punchline like “together we can” or Bank of India give you the punchline is like “relationship beyond banking”. So, in that way in that one

word, Bank of India relationship beyond banking, something is conveyed and you experience. That experience obviously, you will get and then based on that experience obviously based on that service or based on the quality of good, obviously that particular trademark will be built.

So, that particular communication is done by that single word. That is a trademark. Now next is like identification of you. So, customer will know that when when we say particular trademark is that trademark will will make you as that customer will identify with that particular trademark. So for example, if any person have a particular name, with that name that person is identified. Similarly that organization, the venture and the activity which you are starting that is that venture it require that name and that name is nothing but a trademark and with that name that single name that whole organization will be represented in the business world in the market.

So, it is like a commercial communication and it will capture that customer whatever that customer attention is there, that will captured by that particular word only. Now further if you see that how internet and social media and that trademark is connected? Now customer center that in the search engine, if you see that in the search engine or the social media like Facebook or Twitter, they will see that if we enter that particular name.

Suppose your trademark is X and that X is entered in that search engine, nowadays that Just Dial is there and so many other what we can say your advertisement is there so with that single word that what will happen that on the social media on or on that platforms customer can get information about you and that way your presence will be what in the market or in the business world your presence, you can keep your presence with that single word. Now, it is a valuable assets.

We have already seen that Microsoft 56 billion dollar or IBM that 50 billion dollar. So, if that valuation is there, if you build our trademark value definitely that that will be like in the audit it is not that much compulsory in India, but Article 26 in the when we are talking about audit accounting, that article 26 is dealing with intangible assets. So, that valuation, goodwill valuation is also that trademark elevation so you can just or if you require some fundraising at that time if your valuation you have to do the valuation of your business. If you if you have that good valuation, then you will get a good bank loan also or that fundraising will be very easier for you.

Now, for example, I can give a simple example of Bombay Dyeing. We use bed sheets of Bombay Dyeing till date, but I had such that company is not existing. That trademark is existing. They have sold that trademark and based on that only by using that name now that trademark using the other company which is manufacturing now they they are maintaining obviously the quality and quantity not quantity, quality. So, that quality is maintained by Bombay Dyeing and you can see that Bombay Dyeing is still what we can say that product is still available in the market. Now it can attract or retain the talent. How that is useful? So, example is like this.

If brand is built with that particular trademark, if you build a business what the thing is happening is that it will create some feeling in people's mind. Now, it depends on the experience what they are getting by using your product or by using your services. So, that that particular trademark will create some what we can say, the image in the customers or people's mind. Now, this building makes the standing makes it easier for you to attract a talent because if your trademark is built properly, probability is that you can attract a good talent in your organization and probably this will help you to build your business further and expand.

So, if the trademark is built properly, you can attract a good talent also. So, sometimes it happens that companies like Mercedes-Benz they can give a low salary and if you take an example of a placements in the engineering colleges, if that kind of scenarios is there that if Mercedes-Benz is there and some other companies there and if Mercedes-Benz is giving some low package compared to the other but which is not having a what we can say that trademark is not that much valued in the market.

Probability is very high that a student or a candidate who is aspiring aspirant who is attending that placement, probably he will go to or of that Mercedes-Benz because it is a well-built brand, well-built organization and instead of opting that extra amount or pay package which is offered by the other company, which is not having that much what we can say, the brand value or trademark building is not done by that organization.

So, that way it will help you to attract a talent. So, if you see if you do the due diligence and if you find out that how like lot of time and money in launching venture you are doing that full activities, you are doing investing your time, investing your money in launching venture. So, you do proper due diligence and find out the correct or right word or whatever your letter or

whatever, it may be that you feel that in future this can act as a good representation of my organization.

So, if you can think in that direction that will help you to choose a correct trademark for your organization. Also, in this case when you are doing the trademark registration, you can consult with your trademark attorney if you are taking help of trademark attorney then or trademark agent and you can select the trademark and then you can register that trademark. So in short, you have to check that once you decide on that particular trademark, it is like a permanent.

It is a lifelong thing and therefore you should be very careful when you are choosing a trademark because you are building your organization around that particular theme. So, you may not be knowing the future and how it is and how the brand will be, how that your organization is building but you have to be very careful when you are choosing your trademark. So, how that procedure is followed, how the clearance and what that search report how that search report is how that search should be done that we will share in the upcoming module.

Now, I will give you simple what we can say the exercise here that can you find out difference between we are just starting now with the trademark, but before going into the further what we can say modules, can you just find out this 4 types that is a trademark, copyright, industrial design and patent. Now you just find out that in your venture you are working in whether trademark is required? That first thing and probably what probably the trademark will be. Then you just find out we will be going to detail but you just find out what that copyright is, what is that industrial design and what is that patent is, you just find out.

In upcoming models we are going to see that thing but to go into that now we are starting with that IP, you just find out this 4 types of IPs are there and if you get little information about that 4 types of IPs and if you try to relate it with your venture probably by when we will go through that modules, it will be easier for you to relate your venture and then this types of Ips. So, you just do this small exercise that 4 types of IPs, what is that and my venture is whether require any of this IPs?

Now further, I have told you that trademark and brand is different. There is a difference. So, I will suggest you to find out what is the difference between a trademark and a brand. You just try to find out if there is any difference between trademark and a brand. Now these two small



exercises, I have given you just try out these exercises. Obviously, we will go into the detail. If you come across any query you are going to use a forum or in the live session, you can ask that question. We will try to give that but just try these two exercises. So now you you know, what is trademark, whether I need trademark and what is the life of a trademark? These 3 things I guess probably you are very clear on this thing. Next session, we are going to see what are the types of a trademark? So, here we will stop and just go through these two exercises and see you in the next module. Thank you.