

**Intellectual Property Rights, and Competition Law**  
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**Lecture - 02**  
**Trademark**

Dear students, we will discuss Trademark in this particular class. This is second category of intellectual property law and we will see the basic principles of trademark.

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The slide features a yellow and orange background. On the left, the word 'CONCEPTS' is written vertically in blue. In the center, a list of intellectual property categories is shown, with 'Concept of Intellectual Property' at the top and seven numbered items below. On the right, there is a circular logo with a flower-like design and the text 'NPTEL'. At the bottom left, the Indian Institute of Technology Kharagpur logo is visible, and at the bottom right, a small video inset shows a man in a white shirt. The text 'INDIAN INSTITUTE OF TECHNOLOGY KHARAGPUR' and '02/IPR-2019' are at the bottom.

**CONCEPTS**

- Concept of Intellectual Property
- 1. Patents
- 2. Trademarks
- 3. Geographical Indications
- 4. Copyright
- 5. Designs
- 6. Integrated circuits
- 7. Trade secrets

NPTEL

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As I already told you that we are going to discuss it out of these seven categories of intellectual property law.

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**What is Trademark?**

A trade mark is a unique way of identifying a product or service to distinguish it from its competitors.

It is not necessary to register a trade mark to use it, but registration provides an exclusive right to use, license or sell that particular trade mark.

The slide features a purple header box with the title, two blue text boxes with definitions, and a bottom section with logos for IIT KGP, NPTEL, and a speaker in a white shirt. The background is a light green to yellow gradient.

And what is the trademark? Trademark is nothing, but a unique mark which identifies a particular company or a service and distinguishes it from its competitors. And also this particular intellectual property has to be registered or by usage they get the trademark registration. And, it provides exclusive right to use, to license, to sell this particular mark and again this particular mark is protected for a limited period of time i.e. 10 years and which can be renewed from time to time.

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This slide displays several well-known trademarks arranged in a grid. The logos include Amul (a woman carrying milk cans), Airtel (the word 'Airtel' in a red box), Make in India (a tiger silhouette), Vodafone (a red speech mark), GM (the letters 'GM' in a blue box), Lacoste (a crocodile), and the Indian national flag. At the bottom, there are logos for IIT KGP, NPTEL, and a speaker in a white shirt. The background is a light green to yellow gradient.

So, these are some of the trademarks which you can find and in which you can easily identify the company which it belongs to and even the products or services which they are offering.

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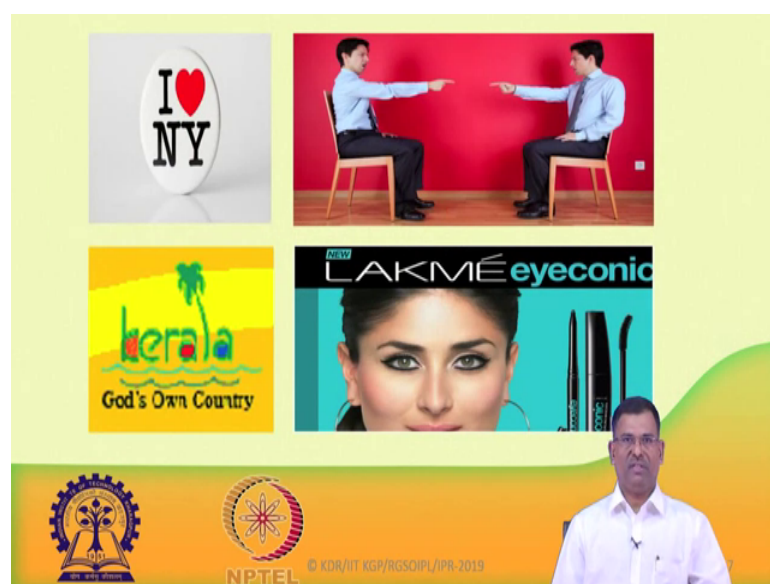
And, when we are looking specifically into these registered trademarks, it is a matter of reputation of each company, at the same time it even points to the category of goods which they sell. For e.g., the Nike everybody knows that it is sports goods and sports apparels which they are specialised in. So, it means that if you can identify a particular service or particular goods or particular company with the registered trademark that is the objective of the trademark.

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And, you can find a number of trademarks; registered trademarks which belongs to different companies and these trademark, the registration of the protection of this particular category of intellectual property add to the reputation, add to the intellectual property of those goods companies. For e.g., Coca Cola says its trademark is worth about 60 billion US dollars(\$). So, the trademark valuation can add value to your company, add value to reputation of the company, add value to the reputation of your product.

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And, definitely we can find some of them. There are different kind of trademarks which you can find, the products you can brand in such a way.

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At the same time why we have to register the trademark? So, you can see these two pictures and phrase. “Coca Cola” is a famous brand, is a soft drink. But, you can find these we call it its “duplication” or “deceptively similar” which the other companies can come up with, the trademarks which are similar, “deceptively similar” and so that they can leeway the reputation of “Coca Cola”, the existing product.

And the second picture you can see that the “Starbuck” the famous coffee you know changes all over the world. So, it can be you know “Chica cola” or it can be these other coffee, the Starbucks can be some other bucks. So, the similar appearance is, once it is a registered trademark you protect your intellectual property, deceptively similar or similar trademarks are not allowed under the trademark law.

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So, you can find what is the menace of the famous brands once your brand become famous. Others also want to take economic advantage of your brand, branded product. So, whether it is a water bottle or whether it is a famous brand, whether it is a product it depends upon market of the product as well. So, once it is registered it is your intellectual property.

So, simply by registering its trademark you can avoid these kind of duplication by “deceptively similar trademark” by others and also sue others for “Damages” for using the deceptively similar trademarks.

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So, you can see why the similarity between these two trademarks? So, everybody knows about “adidas” and what is the brand all about, but you can see the *abibas* as well.

So, always people would want to take advantage of the famous brands. So, if it is a registered trademark then definitely you can file suits against those who are duplicating your trademark and trying to get economic benefits out of your trademark.

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So, I am just showing some of them and it is interesting to see all these, all these are happening in the markets. So, in order to avoid you have to register your trademark.

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The slide features a purple header box with the title "What can be registered as a trade mark?". Below it are three blue text boxes containing the following text:

- A trade mark can comprise letters, numbers, words, colours, a phrase, sound, smell, logo, shape, picture, aspect of packaging or any combination of these.
- Words that competitors might legitimately use to describe their goods or services, such as the name of a place or a generic term, may be difficult to register.
- For example, a plumber based in Mumbai would have difficulty registering the words 'plumbing' or 'Mumbai' as Trade marks.

At the bottom of the slide, there is a video feed of a man in a white shirt. To the left of the video are the logos of IIT Kharagpur and NPTEL. The NPTEL logo includes the text "© KDR/IIT KGP/RGSOIPL/IPR 2019".

So, what can be registered as a trademark? Basically trademark can be *letters*, it can be numbers, it can be *words*, it can be *colours*, it can be *phrase* and it can be a *sound*, it can be a *smell* and it can be a *logo*, it can be a *shape*, it can be a *picture* and also it can be an *aspect of packaging* or *any combination of all these* whether it can be *letters*, *pictures* and *smell* and *sound* and all *combination* also can be a trademark.

Then you can see that these trademarks can be registered for *Goods or Services*. So, the *generic* terms are not permitted to be trademarked. For e.g. , the names of the *places* are prevented from being trademarked. So, registering names are prohibited to this class trademarks.



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And, we can see the kinds of trademarks. There are different kind or different categories of trademarks which you can find, i.e. the *marks on Goods*, then you can find *Service marks*, you can find *certification marks*, you can find *collective marks* and you can find *well known marks* and also you can find *trade names*. All these are the subcategories of trademarks.

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You can see the example of different service marks. Definitely these marks shows the service which they provide, for e.g. VISA. Everybody knows what service VISA provides. These are specifically known as the service marks.

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Then you can see the certification marks, for e.g., the BIS marks, the BIS hallmark. Everybody knows that it is a certification mark for gold. Also you can find the ISI marks for different products. The food products order mark, it is AGMARK for agriculture products. All these are certifications, subcategory of certification marks.

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## Collective marks

Trademark  
**Other Kinds of Marks**

- Collective mark 
- Certification mark 



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And, you can see the collective marks which includes for e.g., the collective marks of lions club which you can find. And, then wool mark which you can find it as a certification marks.

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## WELLKNOWN MARKS

- *Coca Cola* for soft drink
- **Toberone** (Triangular-shaped chocolates)



### Trade Names

- Godrej- Furniture, Refrigerators, Storewell, Compactor etc

GE- Bulbs



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And then the other category is the well known marks, it is so because that particular products are well known in the market, for e.g. Coca-Cola and Toblerone i.e. the triangular chocolates. Then names also you can find. The famous trade names of Godrej

which is very famous for furnitures, refrigerators, storewell. And also the GE, we can find the electric products of GE. So, all these are well known marks which is known as well known marks. And you can find sound marks.

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So, the famous mark, the sound mark. So, you can find it as another category of trademarks.

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Then, the new categories are also coming up which is smell marks. So, for e.g., the perfumes. Perfumes you know are identified specifically on some smell marks. So, these are also subcategories of the trademarks.

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The slide features a purple header with the text "TRADEMARK, SERVICE MARK, and TRADE NAME". Below the header are four blue text boxes containing the following definitions:

- Distinctive symbols, signs, logos that help consumer to distinguish between competing goods or services.
- A trade name is the name of an enterprise which individualizes the enterprise in consumer's mind.
- Legally not linked to quality.
- In fact, linked in consumer's mind to quality expectation.

The slide also includes the logos of IIT Kharagpur and NPTEL, along with the copyright notice "© KDR/IT KSP/RGSOIPL/IPR 2019". A presenter is visible in the bottom right corner of the slide.

Then, you can find some of them in the name of trade names, i.e. the distinctive symbols names. So, that helps the consumer to distinguish between the competitor goods and services and the trade name. So the enterprise name is always in consumers mind for example, the name of Tata. So, always the company's name is in the consumers mind.

So, this has actually nothing to do with the quality, but it is directly connected with the name of the company which holds the reputation in the market. At the same time the consumers expect a particular quality of products from these particular companies as well.

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**Forms of TM**

Visual: Words, letters, numerals, devices including drawings and symbols or 2-D representations of object or a combination of two or more of these, colour combinations or colour *per se*, 3-D sign as shape of goods or packaging.

Audio: Sounds, Musical Notes

Olfactory: Smells

The slide features a green and yellow background with a purple header box. It includes three blue text boxes for the different forms of trademark. At the bottom, there are logos for IIT KGP and NPTEL, along with a copyright notice: © KDR/IIT KGP/RGSOIPL/IPR-2019. A small inset video of a man in a white shirt is visible in the bottom right corner.

At the same time if you look into these *forms* which we have already said that we can find it in form of visual marks, you can find in the words, letters, numerals or a combination of all these together in the form of *2D* as well as in the form of *3D* signs.

I already said that even though audios in the sound mark and musical notes can become a part of trademark. Olfactory is a subcategory on smells which you can find as a smell marks.

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**What is protected?**

Right to use TM in relation to goods/ services as registered are **protected** (If TM consists of several parts, protection is for TM as a whole)

State Emblems, Official Hallmarks, Emblems of Intergovernmental Organizations **cannot** be used as TM.

The slide features a green and yellow background. It contains two blue text boxes. At the bottom, there are logos for IIT KGP and NPTEL, along with a copyright notice: © KDR/IIT KGP/RGSOIPL/IPR-2019. A small inset video of a man in a white shirt is visible in the bottom right corner.

And, also what is actually protected in trademark? The trademark which gives an exclusive right to the trademark holder of Goods or Services which are registered and protected. So, this can be licensed, this can be sold, this can be assigned. So, from any other intellectual property you can make economic benefits out of this protection of these particular marks. And there are exclusions as well. You can find it as, the state emblems, official hallmarks, emblems of intergovernmental organisations, these cannot be marked, these cannot be registered as the trademarks.

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The slide is titled "CRITERIA OF TM PROTECTABILITY" in a purple box at the top. Below the title, the text lists the following criteria:

- Distinctive (basic function):
  - inherent (e.g. RIN), or
  - acquired by usage (e.g. TATA)
- Non-deceptive (to avoid misleading)
- Not contrary to public order, morality

Under the heading "Special Requirements", it states: "❖ A mark is registered for specified classes of goods or services."

The slide also features logos for IIT Bombay and NPTEL, and a small video inset of a man in a white shirt in the bottom right corner. The copyright notice at the bottom reads "© KDR/IT KGP/RGSCHPL/IPR-2019".

And then you can find some of the criteria of the protectability, the basic functions. And also the trademark need not be always registered, but it can also be acquired by use as well. And the trademark should not be deceptive, it must be non-deceptive. It simply means that it should avoid misleading. It should not be misleading and not contrary to the public order or morality.

And, There are special requirements as to the specific categories of trademarks as well for example, in the case of smell marks. So, there is a specific requirement there.

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## Functions of Trademark

- Indicates the source or origin of goods or services.
- Assures consumers of the quality of goods bearing the mark.
- Creates business goodwill and brand awareness.

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And, you can find that the functions of trademark is to source the origin of Goods or Services or to the reputation of the company which shows its trademark. And, Also trademarks assures the consumers of certain quality of goods by that particular mark. Because in the consumers mind particular trademark belonging to a particular company produces certain quality of products. So, the expectation is pretty high by the consumers.

And in a period of time it creates the business goodwill and also the brand awareness. It is the tool of marketing as well. The trademarks is a tool of marketing as well. So, trademark is an intellectual property of multifarious functions. It performs. It not only directly relates with the reputation of the company product, its goodwill, its brand but many more is related with the trademark.



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## Innovative branding - with a sense of humour

- Put the trade mark onto T-shirts, web sites, and presentations
- Not just the trade mark – but some mouse characters as well






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Now, the companies have started innovative branding with the humour sense for different products. So, you can find these some of the marks with which the companies have started new marketing strategies with pictures. So, you can find like cartoons, they are using it with different trademarks as a tool of marketing. So, it means that all these intellectual property is contributing to the trademark and contributing to the company.

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## Ozgene's sense of humour



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And, some of the companies like Ozgene's, one of the advertisement they give with a matter of humour, they advertise their trademark, they are advertising it with a sense of humour.

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Innovative advertising  
in scientific publications

- Promoting viral delivery technology



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So, now the companies are using trademark in different ways to market their products as well as for innovative advertising in different publications so that they can promote their particular products with a touch of trademark. And, So you can find this particular company Ozgene. How they advertise the trademarks in different ways, they can advertise their trademarks.

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**Cases**

- SONY for "nail polishes" was not held to violate the rights of "SONY" of Sony Electronics (see AIR 1985 Bombay 327).
- SONY for "frames for spectacle and goggles" from Sony Corporation (see 1989 IPLR 92).
- AB Textiles v. Sony Corporation 2007 (35) PTC 288, Sony Corporation could not defend the use of the trade mark SONY by AB Textiles for ladies undergarment.
- SONY is not an invented word, but is a "feminine name" as well as a surname in India.

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So, if you look into these some of the cases. There are, you can find a number of cases in different jurisdictions. I thought that I will cite some of the cases from India. So, you can find these cases. SONY; SONY is a trademark for, everybody knows that SONY makes Good for different categories of products, but what about other products? For example, the name is put for somebody or the SONY name which is not related to that particular product at all. For example, the SONY for nail polish or SONY name for the frames or spectacles or goggles or so, the other names, whether it is the name actually, whether it is a surname. It is the common surname in India. Whether SONY can sue?

So, in most of the cases the court said that SONY cannot sue the Indian, other products with the name SONY this is mainly because this particular company is producing a category of products, various specific products. If it(SONY) has nothing to do with it they cannot claim that particular name as such because once it("Sony") has become a generic name and if it is a generalised name, it is very difficult to preserve it as a trademark but they can preserve it.

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But, the advantages you can see from these particular pictures. What are advantages of trademark if it is a registered trademark? So, many “fair and lovely” will be produced by the competitors with similar names, deceptively similar names.

So, if your trademark is registered, so you can protect your intellectual property against others and claim a huge Damages. So, it is very important that you should register your trademarks. So you can find a number of products.

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So, once if there is any kind of confusion in the mind of the consumer then definitely you can sue the other, your competitor's product by protecting the trademark as intellectual property.

So, trademark is a very important category of intellectual property to be protected because it protects your company from the deceptors, it protects your companies reputation of your brand, it protects economic benefits and you can assign it, you can sell it, you can lease it. You can say that a bundle of rights are associated with the trademarks. This is another case which has come up before the Indian court.

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So In India you can see one of the undergarment put their name as “Benz” and you know that the Benz is very famous for what? it is definitely a very luxurious vehicle. So, the Benz has sued this particular company, the undergarment manufacturing company. What happened in this particular case is that the Delhi high court very clearly said that this is deceptively similar.

Because you can find the similarity in their appearance, the products, it has absolutely nothing to do with the original Benz, but it is used for an undergarment. So, the court in this particular case said that this is deceptively similar and the company, its products cannot use this particular trademark for marketing this particular undergarment.

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The slide is titled "Cases" in a large, bold, black font at the top center. Below the title, there are two blue rounded rectangular text boxes. The first box contains the text: "Toyota Jidosha Kabushiki Kaisha v. M/S Prius Auto Industries Ltd. : In a notable development for Indian trademark law, the Supreme Court reiterated that IP rights are "territorial" and not "global".". The second box contains the text: "The court refused to grant an injunction restraining the defendant from using its registered trademark 'Prius' even though Toyota was a prior user of the mark.". At the bottom of the slide, there is a video inset of a man in a white shirt speaking. To the left of the video are two logos: the Indian National Emblem and the NPTEL logo. Below the NPTEL logo is the text "© KDR/IT KGP/RGSOIPL/IPR 2019".

So, you can see these cases also tells and you can find a number of cases, but these cases shows the jurisprudence, the resembled jurisprudence from India and other jurisdictions on trademarks. It clearly says that the trademarks are territorial in nature and the trademark protection, like any other intellectual property law, is not global in nature, every intellectual property is territorial in nature not global in nature at all. So, the protection is confined to the territory, the specific territory and so it means that the courts will give/grant injunctions very specific to the territory at question.

So, what I want to say is that the trademarks are very important category of intellectual property and definitely it contributes to the business and it contributes to the reputation of the company, it contributes to the whole economic benefit to the company. So, I hope that the trademark protection is also as important as in protecting the general intellectual property.

And, definitely we will stop here and in the next class we will go to the next category. The next category is the geographical indications.

Thank you.