

Introduction on Intellectual Property to Engineers and Technologists
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Lecture - 26
Trademark and Internet

So last module we discussed about, industrial design, and trademark. There I told that for engineers and technologists, although with reference to the technical function, industrial design, does not give any production but, how you can be a entrepreneur with the knowledge of industrial design, that I have highlighted, that may be the lessons, that you have learned concentrating applicability of this specific type of courses just like say, that industrial design that, just like say how can you give some production. And sometimes you I told you, that aesthetic features and functional features may be embedded, then say, if you able to not separate out the functional features and aesthetic features, that issue, related to that.

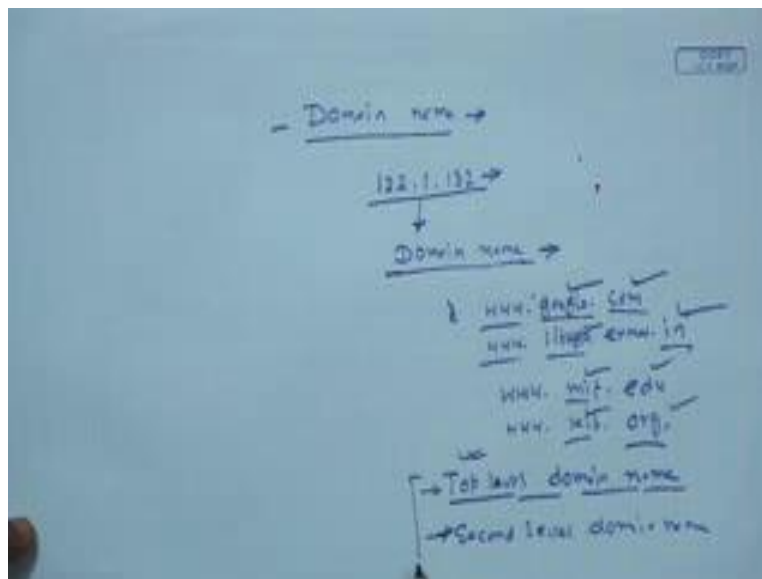
But I think, industrial design and it is importance for the that, in the engineers and technologists specifically as technical function is not there but say, aesthetic features is the important parameters, but how can you be a value adders of an article, that part on the, but now even trademark also, I discussed about that, because you will be a successful entrepreneur or say maybe, you looks you ultimately establish some company, then how you do the trade on that regard trademark, and it is role I have highlighted. And also, if you are working in the organization, then how to create a good trademark that is also the skill you may, may require to be adopted. Because that your trademark will be the important brand for the organizations, and that part again I will discuss about the management of your trademark. Now this modules, I will again highlight, one important forms of IP for economical development, that geographical indications and also part of that module 5, that I have not able to finish, that trademark and internet, that is may be very useful for the for engineers and technologists and also any users, because todays

world is virtual world. So, on that context, I will start this week discussions with the trademark and internet.

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So, now everybody is aware of different types of name we used, just like say, a domain name. So, domain name also like that. So, you are you use different types of, said domain name, just like, can you tell, what is domain name? Or what is the significance of domain

name? So, just like, say, domain name, if you say sometime, on the, if you development of internet and its history is also, if you know, that a parant to internet, that initially, it was, it has been developed for a different purpose, then now you know that, we cannot move without internet. So, now in the internet, if you particular site, generally can be identified by say some number, one, let say 122.1.132, so that numeral, sometimes very difficult to remember the numeral and that numeral is replaced by a some name, that is called domain name. So, just like say, this I am call this, that stream correct are using some numeral have been replaced, this is a very good creation for a internet world, you may consider. So, you can locate a particular site, organization by the means of a domain names.

Let us say then, let us say the I am using, www, the well, www dot, let us say Google dot com, again I am using www dot, let say IITKPG dot, er, net dot in, then I will let us say, I am further different ways, let say dot com, dot in. So, here you understood what is the significance of this one, or the significance of this one. Let say, we will try to highlight that part. So, consider that, say domain name, like it is identification of a particular site, or organization in the virtual world, that is why, we call a world wide, and that was, internet world, world wide, www, World Wide Web. So, this is indicating that. Now, that that way now, what I want to message that you see that, that dot com, dot in. So, this is we call, dot com, or dot in, is also significance of some thing. So, dot com, what it indicates something one commerce. So, sometime you show that, www dot MIT dot edu, edu. Then let say, the www dot, let say, let say something, something like KKIT dot org. So, see that different, different character we are using, at the end. So, in domain name context, we call them TPLD, top level domain name, top level domain name, domain name, top level domain name.

So, top level domain name you find, based on the activities of the organization, they suppose to get a particular domain name, top level domain name, dot com, indicating commerce dot India, you can consider in Indian educational institute or some other institute, they given NIC dot in, in all India edu for educational institute in USA, they give it edu, then organization, that KKIT dot organization, some organization you can dot org. So, different level or top level domain name, based on the activities of the

organization, they have been provided. So, this is the top level domain dot com, dot in, dot edu, dot org.

So, then, another part we are getting Google, IITKPG, MIT, KITS. So, we call in the domain name context, just like say, what it indicate this first of level domain name indicating, what is the nature of organization, but you do not know, say, which is that organization. Which is that organization and by some domain name, you are linking that organization. So, they are we call, let say, second level domain name, level, second level domain name, second level, let say level domain name, second level domain name, dot MIT, dot Google, dot IITKPG, dot MIT is second level domain name. So, second level domain name is somehow, we found, related to the organization.

It may be some cases, it is a company. So, it may be the company name, organization name, stand out, MIT IITKPG Google. So, they are like the issue, may be here, another domain name, let say, insider let say inside given. So, let say a particular domain name, let say, computer science, CCE dot, IITKPG dot, r net dot, sometimes we may call second second level domain name, second second level domain name, after second level domain name. Further, left side character, may second level domain name, top level domain name, second level domain name. In that way, that domain name has been created or domain name thing decided who monitor this one? ICANN Internet Corporation of assign, name and number - ICA double n ICANN, generally monitor the domain names systems d n s domain name we call is d n s domain name systems. Who monitor? ICANN, their head quarter in Geneva, ICANN monitor the domain name and WIPO, they have body called domain name dispute resolution, I will discussed on that part. So, the issue is now coming up, that fine Google, IITKPG, MIT dot, kit.

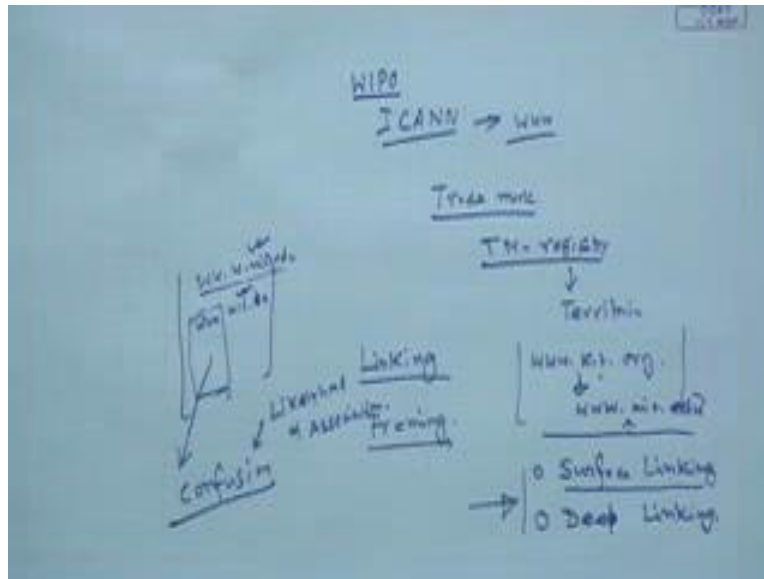
So, they are in the third domain name can be the company name, domain name can be somebodys personal name, domain name can be organization name, domain name like this way now, when I am discussing the trademark and internet. So, that say second level domain name, may be, say somebody trademark also, company name, company name can be trademark, personal name can be also trademark, organization name can be also trademark or say some product name, based on that you are trying to create a second

level or second, second level domain name. So, just like say Glaxo, and particular product, that be including that. So, that way, a second, second level domain name may be somehow associated with a trademark. So, they are lies the issues, how you are linking a virtual world with the traditional world.

So, you are using trademark of the traditional world that what is called in as domain name of the virtual world. Now, let say Google or say a particular consider, apple, apple w w w dot apple, dot org. Let us, I put it in org, this is already org. Let us say, apple dot org, so, how apple may be somebodys trademark. So now, you know that, the Yahoo Inc verses Akash Chopra, the important case in Indian context. You Yahoo Inc versus Akash Chopra, what was thus the issue, you know that Yahoo Inc, the case is Yahoo Inc verses Akash Chopra, Chopra Akash Chopra. So, Akash Chopra tried to use Yahoo domain name. Now you know, Yahoo is a, Yahoo is a well known trademark also you may consider, because it is a reputed things. So, now, let say somebody want to use that. So, then, say, or somebody some let see you have not taken that particular domain name, but you have a well known trademark, but you are both of you are considering that is a traditional world thing, you are not considering the virtual world thing.

Now somehow, that another company or another person is registering your mark as a domain name, then you understood, nowadays traditional world verses virtual world, there is intermingle and inter mixing. So, people will thought about, that oh traditional online person, is the virtual owner, domain name owner, and traditional trademark owner, is the virtual, virtual trademark owner, virtual domain name owners. So, there will be confusion. So, similarly in this case, understood that Yahoo, Akash Chopra although try to use that domain name, registered that domain name, but Yahoo try to stole that, because if they do not enforced immediately, then there will be a confusion in the virtual world also and that may super (Refer Time: 13:44) to the traditional world, like this way. That will lead to the erosion of the particular brand, well value of Yahoo or that organization, because that confusion lead to dilutions, see the confusion lead to dilutions. So, that way, that domain name, part, that is like a domain name and a trademark, intern, trademark interrelationship. So, what is the problem is coming up.

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So, domain name administered by, let say, I put it out WIPO, or ICANN, specifically, CA double n. Trademark who administers and enforce, let say trademark that administer physical trademark was base (Refer Time: 14:33) and administered, not enforced trademark register. Now, two body, territorial and territorial, territorial, this is I put it out, w w understood. So, now the problem what problem the confusion between the traditional world, verses virtual world, and you understood that, now two world is, say, in inter mixed together. So, that confusion in virtual world, super flows in the traditional world. All traditional worlds to virtual world and that lead to confusion already repeating same thing, that way, that lead to the domain name and subsequent trademark, and domain name issues.

So, 2, 3 things here, just like say sometimes you call, now understood what is domain name, now what is the issues of domain name along with the a trademarks, means the situation is somebodys trademark, another person is using as a domain name, that lead to the confusions. Sometime domain name registers based on the first come first serve basis. So, can let say, you have a well known trademark, now your well known trademark, you have not registered as a domain name. So, another person trying to consider that, based on what are the domain name is available, he will search it first. If that domain names that well known trademark domain name available, then immediately you will go for that,

registration of that domain name, or somehow you may consider a domain name. So, then what will be the problem? That if you register that domain name, then say that, that you have trademark right, but you do not have a rights over the domain name, then I look confusion.

So, now, what peoples are started, that they want to register well known domain name, well known trademark, as domain name. So, then, they want to consider that is a important business opportunity for them it is. So, then that what I am using the cyber squatting, means well known trademark they are well known trademark they registering as a domain name, and then later on what they do, they themselves, you know that this is a bad, bad property right, if you consider the domain name, as a within the preview property and right that property right. So, they try to sell on that to some other person, on getting money out of that.

Now the person who he has acquired that, or acquired the rights over that domain name, he has to bothers now. So, that lead to the cyber squatting or cyber squatting, that although are not legal type of business, lead to the, we may consider that illegal type of business, in the virtual world, and that lead to the potential dilutions, of the well known trademark owners. So, how to prevent that is the issues. So, just like your WIPO, they created uniform domain name dispute resolution policy. So, that they try to it, is a arbitration forum, that they try to with the policy, if you read that is a policy resolution also resolution policy, they have highlighted that what are the situations based on that, how they will dispute will be resolved.

So, domain name trademark, and cybersquatts, cybersquatting you little bit understood on that part. Lets take a somebody's domain name, somebody's trademark, you are using in the domain name, or let say vice versa may happen, but rare, (Refer Time: 18:20) well known domain name you are using as a trademark. Now they are the trademark that type of situation may also emerge, another situation is domain name is a now, we consider is a visible throughout the w w w. So, different jurisdictions, then issues of the jurisdictions, and availability of that thing, in that particular jurisdiction, that is the some of knowledge use, of that particular trademark in another jurisdictions, that is the issues may be, may

come in respect of use operated trademark in a particular jurisdictions, over that domain name lead to the use of that trademark in that jurisdictions or not, or domain related to the knowledge of that trademark in the jurisdiction or not, to establish the well known trademark that is the different issues.

So, the domain name and the trademark, the what are the issues may come up, and what are the different types of domain name, and what is cybersquatting, and cybersquatting that that peoples are using, that is a is a business of opportunity, of all domain name, and subsequently Yahoo verses Inc verses Akash Chopra, Akash Chopras use of the domain name of Yahoo, the Yahoo ultimately, ultimately prevented him to use that thing, considering that Yahoo is a well known trademark, in India and that lead to the confusion and dilution, and that lead to the passing of, passing of that is a. So, they try to establish the passing of, of valid passing of thing, and somehow it will do prevent the use of the Yahoo domain name Yahoo domain name. So, that is the, that is conflict within the domain name and trademark.

So, if you see, that whether domain name is a trademark of traditional world, yes somebody's trademark you are using or a domain name and your trademark also, you can use as a domain name, there is no problem, there is no confusion, there is no dilutions. Even the domain name will try to give you the freedom to move, advertise your traditional trademark, trademark. So, promotion advertisement will happens through that domain name also, understood. So, domain name also. So, this is the issues demonstrated in trademark, a, and domain name. So, then similarly, the issues of the metatagging keyword, you know that, when you use a particular websites, meatadata, meta element, metatag, also these are the things you have to create, basically you try to create a search site, or search almost search websites, like say Google, like a, if you try to particular keyword, or metadata, or meta elements, how they are linking with the different world, world wide contents.

So, that way, now, if you use somebody's trademark, in that meta data, meta data, or the keyword, during the creation of your search website, then also, then mail it to the confusion with reference to the particular trademark, that people may think about, that the

real trademark the owners, is that the particular sites or not. So, then there is also a confusion, and confusion, confusion lead to the dilution with reference to the trademark. So, this is the issue of confusions with reference to the use of somebody's trademark, as keyword or meta tagging, similar way that one. So, these are the issue, and I already told domain name dispute resolution, for WIPO, they created domain name dispute resolution arbitration panel, arbitration, arbitration kinds of thing, based on that, that data that, will known situation, goodwill, all those part they will decide, that is uniform domain name, this would UDRU, UD, resolution policy, dispute resolution

Then this, is the along with that two other issues are, are also now recently coming, see it is like this, linking and framing, let's say. So, you understood, that linking, what do you mean by linking, what do you mean by framing. So, just like say, in a particular website, sometime, let us say you are w w w dot, dot kit, dot org, and in your website, you are providing a link of w w w dot MIT, dot o r edu. So, linking, linking may happen, in different way or, linking happens that is, surface linking. Then surface linking means is the main website itself, main website point page of the website, when you click, that website point page, you get the link of another website, surface linking it may happen in deep means, after, going inside of the, just like opening of the door, after going inside of the particular site. If you click that, that may be the first page, second page, someone you are providing getting a link of MIT dot edu.

So, then, what is coming up, then issue is coming up, people will may think about this two organization have some relationship. Then if you do not take without the permission of, without the agreement, without an understanding, you are providing the link that lead to, that may be the people may be confused, confusion, confusion and regarding the association, likely hood of association, sometime in trademark, likelihood of people will think, there is association, likelihood of association, between the two organization. So, that leads to again confusion, confusion leads to dilutions. So, that way surface linking are, surface linking may be lead to the confusion and dilution, but somehow some peoples are not bothers about that surface linking, because it some besides (Refer Time: 24:33), part of business model of the based, on the number of hit or number of click. So,

people may thought about just like when they are hitting this site, at least they are getting a hit for this sites, also chance probably getting a hit of this site also.

So, then automatically you may consider that, they are not losing potential revenue, based on the number of hits. So, they do not bothers about that, some cases, but if the deep link situation, that definitely lead to that, that potential revenue loss. So, then you understood (Refer Time: 24:59) enforcement that potential revenue loss. So, then definitely, they will bother about that. So, that way surface linking, and deep linking, and trademark all that although Indian context, not much cases have been involved in that regards, but US jurisdiction some cases are there, with reference to the deep linking and surface linking, just dig it masters case. So, that way deep linking and surface linking also, both reference to the particular trademark, and confusion, and dilutions happens, so deep linking surface linking, another part.

Now another part is called framing. So, in your particular website, lets say www dot, dot MIT, dot edu, or in, in that website also, you are framing, then another website, website dot, dot, lets secure edu dot, in both are framing, framing of that that led to the, led to the confusion, forming led to the confusions with reference to this, maybe this, or somebodys trademark, this is may be somebodys trademark, second level domain name with reference to trademark, then the framing of particular website may lead to the confusions, or likelihood of association of confusion is how coming, that likelihood of association likelihood of association, likelihood of association, association, likelihood of association lead to the confusions. So, then this is the issues, with reference to the trademark. trademark and framing may be, just like somebodys trademark, domain name.

Just you may ask me, whether I am using that thing as a somebodys domain name, also that may lead to the confusions, with reference to the trademark used, in respect of domain. So, what are the issues of a traditional world trademark, versus virtual world domain name, and trademark well known in domain name cybersquatting, then meta tagging, meta element, meta data, you know that, that meta tagging, and keyword part, and trademark u r and trademark, then linking and trademark, framing and trademark. So, these are the various issues, and these are the different names in respect of, different

these, different part is coming in respect of trademark specifically. So, let's say, I am giving you a word view, with reference to the trademark and internet, but say, why it is important for you people. Just like say you know that if you use somebody's purchase, or particular, or take a license particular domain name, for a particular organization, particular say, then say then you have to be cautious about that, that over that, he is cybersquatter, whether he is cybersquatter or not, then may last, then may some liability may come up in respect of that, although it is now a part of, it is domain dispute resolution policy is a advertising panel arbitration part.

So, it will simply stop, there is no somehow damages, or others they do not have that enforcing authority, but it will be issue is coming up, regarding the decision of arbitration panel, how it will be enforced in the particular jurisdiction, or now they can establish the different, or so that would it the rights by virtue of let's say, passing of, or may be trademark infringement, they try to enforce their rights, in different jurisdiction by this way. So, it does not like that, should not be knowledge with reference to that. Now you should know that what type of domain name will register, you see that what type of domain name is available, what are domain names are, what is the domain name register based on, first come first serve basis, who are the organization they are helping to register the domain name in India, specifically what is the ICANN? All those things, also you should have knowledge, I am just given you a linkage with reference to the internet, and this is a huge things, definitely, that how you are linking that a particular numeral, into that domain names, all those kinds of things.

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Trademark and Internet

- Domain names are the addresses of the computers connected to the Internet
- Just as every office or residence in the real world has an address, each server connected to the Internet has a unique identification number called the Internet Protocol address
- In order to make the Internet address system user friendly, the numeric IP Address system has been overlaid with a system of domain names, which can be easily remembered
- Thus when an internet user enters an easy to remember domain name like **www.iitkgp.ac.in** the computer converts that into a unique numeric address that corresponds to **iitkgp.ac.in**, i.e. 102.53.64.243

The diagram shows the domain name **www.ind.google.com** with arrows pointing to its components: **www** (Third level Domain Name), **ind** (Second level Domain Name), **google** (Second level Domain Name), and **com** (TLD).

So, now let's wind off this module, let's say that already just giving that for top level domain name, second level domain name, say a second second level domain name, say ind in this, ind is not www, this is in ind is a second level domain name, not www, forget about that, ind is the second second level domain name just of the computer connected to internet, just every office has the world wide as the address, similarly server connected to the internet and has the unique identification is a number called internet protocol address. Now internet protocol address is in turn converted into a particular domain name, that I already highlighted that part.

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- Domain names were originally intended to perform only the function of facilitating the connectivity of computers through Internet
- But at a later stage they began to be used as a form of business identifier, simply because they are easy to remember and use
- Businesses started to realise the significant potential of web sites as an important medium of facilitating e-commerce
- By using trade and service marks as their domain names, businesses hope to attract potential customers to their websites and increase their market visibility
- At this stage conflicts began to arise between trademarks and domain names



Similarly, domain name were originally intended to perform only a function of facilitating in the connectivity of computer through internet, but later stage they began to be used as a form of business identifier, simply because they are easy to remember and use. Business started to realize the significant potential; ecommerce has come up by using trade and service mark as their domain name. Businesses hope to attract potential customers. So, that that is the problem of potential customer at these stage, that lead to the confusion regarding trade mark and domain name.

So, these about I discussed now. So, now, I stopping, stop, I just I will stop here. And you should read these things although no specific books are available you should read Rodney Dire books or different contents from the WIPO sites. Sites regarding domain names intelligent domain name. So, if you have asked what the domain name is intelligent property, definitely domain name in the formal trademark is intelligent property. So, whether domain name can be registered as a trademark, there is no problem, domain name registering is a trademark. All trademark can be used as a domain name, definitely this is the cybersquatting, all those situation. So, I will stop here now.