

THE GROWING MENACE OF CYBERSQUATTING IN INDIA AND PROTECTION OF DOMAIN NAME DISPUTES

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ABSTRACT

The practice of “Cybersquatting,” which involves registering Domain Names with the intention of making money off the goodwill associated with another person’s trademark, is still very difficult in India. This abstract explores the current trends in cybersquatting, their negative effects on businesses, and the legal defenses put in place to deal with this threat. The suitability of these measures and their conformity to global best practices are also examined. The judicial process in India’s legal system has been crucial in determining how Domain Names are protected as trademarks. In the age of digital globalization, protecting Domain Names as trademarks in India has become a complex legal and regulatory challenge. With a focus on the roles played by the Internet Corporation for Assigned Names and Numbers (ICANN), the ongoing issue of cybersquatting, and the changing judicial endeavors within the Indian legal system, this abstract offers a succinct overview of the critical analysis of this complex issue. The protection of Domain Names as trademarks in India is significantly influenced by ICANN, the International Organization in charge of regulating the domain name system. This study looks at how ICANN’s policies and procedures affect Domain Name registration, management, and dispute resolution, as well as how these international standards interact with India’s domestic trademark laws. This Paper examines significant legal decisions and developments that have helped to clarify the duties and rights of trademark owners, Domain Name owners, and the public. It highlights the changing legal landscape of Domain Name disputes and its implications.

Keywords- Domain Name, Trademark, ICANN, Cybersquatting etc.

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I. INTRODUCTION

Intellectual property rights have expanded due to the increased use of Domain Names. A domain name is an asset that can be directly linked to a brand's identity and reputation because it acts as a virtual address for enterprises in the internet world. India, a rapidly expanding center for internet trade and innovation, has realized the value of protecting domain names like trademarks. To shed insight on the legal framework, difficulties, and opportunities connected with this developing field of intellectual property law, this critical analysis investigates the complicated terrain of domain name protection in India. Historically, trademarks have been associated with tangible products and services, but the digital era has changed the definition of trademark protection, expanding it to domain names that are essential to a company's online identity. The examination gets started by exploring the Indian legislative framework for domain name protection. The registration and protection of trademarks, including domain names, are governed by the Trademark Law.¹

The exact status of domain names as trademarks, however, is subject to a large legal gap. Due to this gap, the courts have made different rulings regarding the registrability and enforceability of domain names as trademarks, which has caused uncertainty and ambiguity. The report also examines the requirements for trademark registration of a domain name in India. Distinctiveness is the essential need for trademark registration, which presents a special issue for domain names. It might be challenging to demonstrate the distinctiveness of domain names as trademarks because many of them are descriptive or generic. When assigning trademark status to domain names, the Indian Trademarks Registry has been careful, frequently requesting detailed proof of secondary meaning and consumer familiarity. Potential conflicts with existing rights are one of the major problems with India's trademark law governing domain names as trademarks.

When a new registrant purchases a domain name that is like or identical to an existing trademark, domain name disputes frequently result. It has been difficult to properly resolve these disagreements due to the absence of defined norms, which can lead to expensive court fights. Additionally, the enforcement of trademarks for domain names in India is taken into account in the critical examination. Although registered domain name trademarks are technically protected by the law, the realities of enforcement can be challenging. Due to the

¹ Section 18 of *The Trademarks Act, 1999*.

decentralized nature of the internet, domain registrants can frequently conduct business from locations outside the jurisdiction of Indian courts. Due to this issue with jurisdiction, domain name trademarks against infringing parties outside of India have been difficult to enforce. The report also looks at the legal options open to trademark owners who experience domain name infringement. The Indian legal system provides redress in the form of domain name transfers, damages, and injunctions.

However, there is still disagreement regarding how well these remedies work to prevent infringement and safeguard the rights of trademark owners. The critical analysis also discusses how domain name conflicts have changed over time in India, with a focus on problems with cybersquatting and domain name hijacking. In India, cybersquatting the malicious registration of domain names with the intent to capitalize on the goodwill of well-known brands is becoming a bigger problem. Cybercasters have been able to take advantage of the system due to unclear restrictions and a poor speed of dispute resolution methods.

This analysis also considers global best practices for the protection of domain names as trademarks to provide a comprehensive view of the issue. To effectively resolve domain name difficulties, nations like the United States and the European Union have created thorough legal frameworks and dispute resolution procedures. To improve its own defenses, India can learn a lot from these models.

Research Questions

In this order to achieve the purpose of this study, the following research questions will be answered:

- a. What is the legal framework in India for protecting domain names as Trademark; and how has it evolved over time?
- b. What are the key differences between Domain names and Traditional Trademarks?
- c. What are the Challenges and benefits associated with protecting Domain names as a trademark in India?

Research Hypothesis

The Protection of Domain names as Trademark in India, face challenges due to the insufficient legal framework and lack of enforcement machinery to handle Domain Names dispute arising in India.

II. WHAT IS DOMAIN NAME?

A domain name is a unique identifying string that identifies a sphere of administrative autonomy, authority, or control on the internet. Just like every person has a name and a telephone number, every computer connected to the internet has an Internet Protocol (IP address) of its own². The domain name system's (DNS) rules and outputs help to create domain names. A domain name is any name that is listed in the DNS. A domain name often denotes an internet protocol resource, such as a personal computer used to access the internet, a computer that hosts a website, the website itself, or any other service that uses the internet to communicate. Only a small handful of such domains exist. For instance, gov denotes government organizations, edu denotes educational facilities, org denotes organizations (non-profit), com denotes commercial enterprises, etc.

Simply put, a domain name is the name of a web address that is meant to be simple to remember and easy to identify, like yahoo.com. These accessible website URLs facilitate communication between computers and users online. Domain names have evolved into business identifiers and increasingly, trademarks for the domain names since they are simple to remember and use. Businesses utilize domain names like sony.com to draw potential clients to their websites.

What is Trademark?

According to Trademarks Act, 1999,³ Trademark “means a mark capable of being represented graphically and which is capable of distinguish the goods or services of one person to another person”. Any combination of words, phrases, symbols, or designs that identify and distinguish the source of a commodity or service is referred to as a trademark. Competitors are forbidden from using the same or a similar mark to market goods or services that are similar to those of the owner of an established trademark, who retains exclusive rights to use the mark. By allowing customers to connect a particular mark with the goods and services they value, trademark rules assist businesses in marketing their goods and services. The trademark serves as a promise to customers that the things they buy will remain consistent and of high quality.

A rising demand for domain names that are connected to specific businesses, products, or services is a result of the quick expansion of online business and advertising. There have been a number of trademark infringement cases resulting from the rush to reserve domain names.

² Pankaj Jan and Pandey Sangeet Rai, “Copyright and Trademark Laws relating to Computer,” p-89.

³ Section 2(10)(zb) of Trademark Act, 1999.

Some companies, for instance, found that their desired domain name for their well-known trademark was already taken. After selecting a domain name, the owner may be able to apply for trademark protection to stop others from using the name. However, compared to trademark rights in other contexts, commercial domain name trademark rights are more constrained.

Cybersquatting Laws in India

There is no domain name protection regulation or process in India for cybersquatting under the Trademark Act, 1999. The Uniform Domain Name Dispute Resolution Policy (UDRP) procedure, designed by ICANN, is primarily used to settle disputes concerning registrations made in bad faith. WIPO was created as a means of promoting the protection, use, and distribution of intellectual property around the world and is the top organization accredited by ICANN to conduct domain name dispute resolution services under the UDRP. India is one of the 171 nations that make up the WIPO.

A person may file a grievance with one of the administrative dispute resolution service providers that ICANN has approved under Rule 4(a) that:

- It is required that the domain name be “identical to or confusingly similar to a trademark or service mark” that the claimant owns.
- The domain name's owner or registrant has no legal or genuine claims to the name.
- The domain name has been registered and used dishonestly.

India has also established its own registry with the name in Registry under the control of the National Internet Exchange of India (NIXI), where the In Dispute Resolution Policy (INDRP) governs the resolution of domain name disputes. The Indian Information Technology Act of 2000's pertinent provisions and generally accepted concepts were taken into consideration when developing the strategy. The IN-Domain Name Dispute Resolution Protocol or INDRP are the protocols that govern how disputes are resolved under the IN Registry. These rules outline the way a lawsuit, associated costs, correspondence, and the relevant process will be filed.

The Hon'ble High Court of Delhi held in *Aqua Minerals Limited vs. Mr. Pramod Borse*,⁴ that there will be no interference drawn that the aforementioned person preferred to trade under the name of the trade name he had picked up for registration or as a domain name because it was

⁴ 2001 PTC 619(Del)

an existing name with a common prestige and popularity at immense levels unless and until an individual has a valid reason as to why he wants a specific domain name for registration until then there will be no interference drawn.

Trademark v. Domain Name

Only in those national and international countries where they are validly registered do trademarks receive recognition and protection; they may not be protected globally. Only one organization, ICANN [Internet Corporation for Assigned Names and Numbers], registers and supremely protects domain names as trademarks or service marks, in addition to receiving national and international protection under the relevant nation's trademark law and various international trademark treaties. A domain name cannot be fully protected by any national or international trademark law everywhere in the globe. A stringent and censorious system of domain name registration with accredited registrars by ICANN and an effective and efficient dispute resolution policy, known as the Uniform Domain Name Disputes Resolution Policy (UDNDR Policy), were prescribed by the ICANN with the support of the WIPO (World Intellectual Property Organization).

A person or entity may formally complain to the qualified administration-dispute-resolution service providers [listed by ICANN under Rule 4(a)] regarding a dispute under the UDNDR Policy of October 1999 if:

- Any specified domain name is strikingly or confusingly like a domain name or trademark of the complainant that has already been registered.
- Each alleged domain name has been registered and is obviously being used maliciously.
- There is evidence that the claimant has violated a trademark.

To provide an effective and strict remedy against the bad faith and abusive registration of domain names which breach the complainants' trademark rights, the domain name registrars that have been officially authorized by the ICANN operate a dispute resolution system under the UDNDR Policy.

The following four situations are given in Rule 4(b) as examples of when a domain name was registered and used in bad faith:

- Situations that suggest the domain name owner/registrar registered the domain name or acquired it primarily with the intention of renting, selling, or otherwise transferring

the domain name registration to the complainant, who is the owner of the trademark or service mark, or to a rival of that complainant, for valuable consideration above its substantiated out-of-pocket costs directly related to the domain name; or

- If the domain name registrant has participated in a pattern of such behavior, they may have registered the domain name to prevent the owner of the trademark or service mark from reflecting the mark in a comparable domain name; or
- The primary reason the domain name owner/registrator registered it was to interfere with a rival's business; or
- By using the domain name, the domain name owner/registrator has purposefully tried to draw internet users to their website or other online location for commercial gain by raising the possibility of confusion with the complainant's mark as to the origin, sponsorship, affiliation, or endorsement of their website or location or of a good or service offered there.

Given that there are no geographical restrictions on access to the internet, a domain name may be reachable regardless of the consumers' locations. A domain name would need to have global exclusivity because of the possibility of universal connectivity, and state rules could not be sufficient to successfully protect a domain name.

In Rule 4(c), the defense to such a complaint has been specifically stated "but without limitation" as follows:

- The use of, or evident plans to use, a name that is like the domain name in conjunction with a genuine offer of goods or services prior to any notice to the domain name owner/registrator; or
- Even without owning any trademark or service mark rights, the domain name owner or registrator (as an individual, company, or other organization) has been well known by the domain name; or

To avoid deceiving consumers or tarnishing the concerned brand or service mark, the domain name owner/registrator is using the domain name in a genuine non-commercial or fair manner.
