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International Journal of Advance Research in Education, Technology & Management
(Scholarly Peer Review Publishing System)

“Domain Name Disputes and Resolution Mechanism”

Prof. Raghuvinder Singh *, Ravinder Kumar **

* Professor of Law, Department of Law, H P University, Summer Hill, Shimla-05.

** Research scholar, Department of Law, H P University, Summer Hill, Shimla-05.

Abstract

The dispute of domain name is concerned as long as when the internet user increased and they use internet at large scale. The conflicts of domain name with the trade mark increasing day by day. In real the domain name is only an address of internet which is provide by “ICANN” Internet corporation assigned name and number on the other hand trade mark is service provide by the “As far as India is concerned, there is no legislation which explicitly refers to dispute resolution in connection with domain names. But although the operation of the Trade Marks Act, 1999 itself is not extraterritorial and may not allow for adequate protection of domain names, this does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing off.”

The Information Technology Act 2000 of India addresses numerous cybercrimes and has set up a special cybercrimes cell however the Act oddly ignores the problem of domain name disputes and cybersquatting. The only saving grace for victims of such offences is that domain names may be considered trademarks based on use and brand reputation and so fall under the Trade Marks Act 1999. However not all domain names are trademarks.

KEYWORDS:

Domain name disputes, Cybersquatting, ICANN, WIPO Arbitration, Mediation Centre, Arbitration, Panel, Decisions, Trademarks.

Concept

Unique address of a computer on the internet, made up of three parts. Domain names provide an easy way to remember internet address which is translated into its numeric address (IP address) by the domain name system (DNS). A trademark identifies goods or services from a particular source, or of a defined quality. If a trademark owner would like to use its trademark as its domain name, the owner must apply for a domain name registration with an ICANN-accredited registrar. A domain name is an Internet address identifying a computer site connected to the Internet in the same way that a telephone number uniquely identifies a telephone line connected to the global telephone network. Therefore a domain name is no more than data, a reference point in a computer database.

The domain name can be a trademark but always it is not necessary. A trademark is not the same as a domain name because trademark identifies goods or services from a particular source, or of a defined quality. If a trademark owner would like to use its trademark as its domain name, the owner must apply for a domain name registration with an ICANN-accredited registrar. So the conflicts are regarding business and use of their name.

Research Problem

The researcher has identified some issues to dealt with in his research work as below.

1. Is domain name a trade marks?
2. Whether it can be registered and protected as trade mark?
3. What are the laws and policies regarding conflict between domain name and trade mark.



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Is trade mark and domain name are same or not? It creates a problem. That conflict between the two arise the problem and to solve these problem there are many authority which deals on that problem.

Introduction

Intellectual property patent gives permanent protection to technological inventions and design rights to the appearance of mass produced good; copyright gives longer - lasting rights in, for instance, literary, artistic and musical creation; trademarks are protected against instance so long as these continue to be employed in trade. These and similar rights in United Kingdom law are the subject matter. The term scarcely describes trademarks and similar marketing devices; but it has now acquired international acceptance intellectual property "IP" or intellectual property rights "IPR" is indeed becoming a fashionable description of research result and other original ideas whether or not they fall within the ambit of what law protects.

The emergence and growth of Information Technology (IT) has revolutionized the entire globe. It has changed the way we think and the way we act in our day-to-day life. Such has been the impact of technological advancements and innovations today that we cannot simply imagine our lives without them. The modern technology has shrunk distances around the world and made the inflow and outflow of information across the borders much easier than ever before. Today there is an estimated 19 million domain names registered, with forty thousand more registered every day. The Internet continues its unprecedented growth into the stratosphere and there is really no end in sight.

This growth only serves to underline the benefits of moving registration from government control to private sector control, benefits that are embedded within the spirit of the Internet itself: accessibility, freedom, competition. In modern time it is a question "whether Domain Name is a trade marks or not?" If it is a trade marks then it should be protected in the Trade Marks Act of the country. The second question again arises that if it is trade it should be registered under trade mark law. Then why their registration authorities are not same? When their registration authorities, the governing authorities are also different then how it can be governed by the trademark law of the country? The internet and Domain name are governed by International Corporation for Assignee Name and Number ICANN head office is in USA.

National Aspect

In India, as per the statutes on trademarks, district courts high courts have the powers to adjudicate. Like ICANN, WIPO, UDPR at the international level to adjudicate the issues relating to domain name. At national level here are some important cases relating to the point decide by the hon'ble Supreme Court of India and the other high courts.

In the Indian case of **Satyam Infoway Ltd. v/s Sify Net Solution Pvt. Ltd 2004 6 SCC**

145 the Supreme Court has that the domain names are not merely website address but they are also specific web sites. Domain name where pertaining to the provision of goods and services are words or names capable of distinguishing the subject of trade and services made available to potential user of the internet.

The distinction between 'Domain Name' and 'Trade Name' though not relevant to the nature of the right but is material to the scope of the protection of that right a trade mark is protected by the laws of a country where such trade mark may be registered. Consequently, a trade mark may have multiple registrations in many countries throughout the world. Section 1(1) of The Trade mark Act, 1994 defines a trade mark in the following words: "Any sign capable of being represented graphically which is capable of distinguishing goods or services of one



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undertaking from those of other undertakings. On the other hand, since the internet allows for access without any geographical indication a domain name is potentially accessible irrespective of the geographical location of the consumers. The outcome of this potential for universal connectivity is not only that of a domain name would require worldwide exclusivity but also that national laws might be inadequate to effectively protect a domain name. The registration of domain names is based on the principle of “First-Come-First-Served”. Lastly we can say about that both domain name and trademarks are different. Their registration authority is also different. Domain name is subject of international level and trademark is subject of Country.

In another Indian case of **Rediff Communication LTD v/s Cyberbooth Bombay High court** held that the domain name serves function as the trade mark and is not a mere address or link finding number on the internet and therefore, it is entitle equal protection as a trade mark. Domain name is more than mere internet address for it also identifies the internet site to those who read it, much like a person’s name identifies a porticoes person or more relevant to trade mark disputes. A company’s name identify specific company

Different country courts will give the decision according to their own. But what is the real international law and treaties on that, how it should be deal if such type of conflict arise in that type of area. It should be protected by trade mark law or should refer to direct ICANN, WIPO authority.

International aspect

United Nation has provided one forum for the discussion of such claims in particular, World Intellectually Property Organization (**WIPO**) with the effect of competition in the national or international level (***with the common attitude of America or Japan***) the General Agreement on Tariffs and Trade (**GATT**) as show intellectual property has become one important factor in the demand for greater mutual access to markets in international trade of administer and fosters, the Paris Convention on Industrial Property for the Protection of Industrial Property (**PIP**), after ratification the **United Kingdom has** become part of all, the Patent Cooperation Treaties, the **Berne and Rome Conventions on Copyright** OR neighboring rights, and the **Madrid** Agreement on trade marks registration as well as various other, which are in existence or in the making.



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All nations have their own laws and policies regarding domain name and trade mark and related issues but when the conflict comes on international level then they are not governed by their trademark act, at that time they are governed by the WIPO, ICANN, (Uniform Domain-Name Dispute-Resolution Policy) UDPR etc. so that it is very clear there is something different and this study try to find out the conflict and confusion between them.

Originally domain name provides an address for computer on the internet. In other words a domain name is the address of a website that is intended to be easily identifiable and easy to remember, such as yahoo.com, or wipo.net. The Internet Domain Name System (DNS) is the address regime of the virtual words – it lets the rest of the world know where you are located on the internet. A domain name is human friendly' address of a computer that is usually in the form which is easy to remember or to identify such as www.shaddi.com and an (Internet Protocol)IP address such as 302.199.133.115 is corresponding IP number for domain name www.shaddi.com.

General Objective of Study

All this shows that it is necessity of time that all the scattered provisions relating to intellectual property offences should be bound in a bundle. In this research work/study the researcher will try to do his best in collecting all the relevant data about the conflict between domain name and trademark, try to reach a solution about the problems in this new area of confusion where every person use internet day by day and deals with internet. The existing law and the real practice have been dealt together so as to identify the contradictions and deficiencies involved which forms the basis of this study.

It will not be out of context to say that on the basis of this study other researchers and students could do research further. The researcher has put his best to probe the intensity of increasing intellectual property offences and how to put check on it.

When the internet first comes into the use, people were not aware about business opportunities available over the internet. However, the evolution of information technology has led to an increase in various electronic transactions. The corporate entities have now commenced with new trading activities and marketing their products on web and have started using domain name to make others locate easily on cyber space. Due to this emerging trend of market a lot of disputes arise in cyberspace.



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Methodology of Research

Doctrinal research of course involves analysis of case law, arranging, ordering and systematizing legal propositions and study of legal concepts. So the focus is on literature, survey and case law review, review and decision of different courts of countries and organization like ICANN, WIPO, UDPR, etc. for completing this study, the literature available on this topic will be surveyed and evaluated on the basis of judicial interpretation. The literature will be collected from the law libraries, cyber cells situated in various states of different countries, criminal investigations, Bureau of Police Research and Development, New Delhi. Besides various cases relating to the validity of application of scientific tools in criminal investigation by High Courts, Supreme Court and Foreign Courts will also be analyzed and evaluated.

Moreover the opinions and philosophies of eminent jurists will also be evaluated. Ample literature contained in various Law Journals, Magazines in the form of Articles, scholars works, conferences, Commentaries and Notes will be collected and used in this research work on International treaties. Moreover, Law Websites will be accessed in order to get relevant information related to domain name / domain name protection in trade mark. The recommendations of various Committees and Law Commission of India, and different international organization related to Domain name shall also be considered and analyzed for this research study.

Disputes and Resolution Authorities

National level

High Court

Supreme Court

INDRP (IN Domain Name Dispute Resolution Policy): India has in a very limited way made some use of ICANN's UDRP Policy by implementing the **INDRP**.

International level

ICANN

WIPO

UDPR



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Conclusion

In conclusion it can be said that both domain name and trademarks are different. Their registration authority is also different. Domain name is subject of international level and trade mark is subject of Country. The registration of trade mark doesn't base on the principle of "First-Come-First-Served". The trademarks are deal with the law of land. A trade mark can be resisted in many countries. Registration authorities are different and according to the conditions of the countries. The potential for conflicts inherent in the two different systems of registration has been exploited by persons who have made it a practice to register, as domain names for themselves, the trademarks of other persons or enterprises ("cybersquatting").

Again the conflicts between trademarks and domain names, their causes, kinds and the attempts made to resolve the conflicts. The registration process of domain names started with the 'first-come-first-served' principle, which is still followed and can be considered as the root cause of the conflicts. There is no specific law dealing with the domain name. All that is required is exclusivity of Second Level Domains (SLDs). All these factors give rise to cybersquatting, typo squatting and reverse domain name hijacking. UDRP was formed to handle to disputes, but was criticized on various grounds. This has left the problem unanswered. If the present scenario is considered, neither the trademark law nor the ICANN is capable of protecting the domain names. Another drawback to the scenario is the fact that internet is accessed worldwide and any domain name would resemble some trademark used in some corner of the world, and therefore is capable of being challenged. The lack of stringent laws always makes the situation worst. The grounds mentioned by the UDRP to initiate a claim are so ambiguous that it would be difficult for the claim to sustain. Even if the claim sustains, the further criticisms laid down by critics (mentioned in chapter 6) do not guarantee justice. Considering this scenario, it is hard to the present laws, the situation seems impossible to deal with and the world is yet to see a stronger, effective and non-biased law with enough protection towards the trademark owners and domain name holders.

The cybersquatting and domain name related disputes in the Information Technology Act 2000 and the Cyber Appellate Tribunal should be used for such offences as well.

All arbitration decisions of the WIPO Arbitration and Mediation Centre should be made binding in India under the Arbitration and Conciliation Act 1996. This amendment can be made in the Information Technology Act 2000 stating that WIPO decisions can go to appeal before the High Court just like other arbitration decision considered as decrees under the Arbitration Act and execution petitions can be filed to enforce them accordingly. So that we can says that ICAAN and WIPO decisions will ease the overburdened Indian court system.



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After that With regard to the .IN registry the INDRP policy is already in place protecting the domain names through the arbitration procedure in force. This can thus be extended to all TLDs through the above mentioned amendments reaching a practical working solution. India should use the WIPO and ICANN mechanism of dispute resolution and set a precedent for other countries across the world.

Further, ICANN's Governmental Advisory Committee (GAC) is a useful tool for national governments to understand, adopt and contribute towards ICANN policies pertaining to specific government interests. Governments must take a contributory proactive interest in the GAC, keeping the best interest of the national and global economy in mind. This is where India should step up its contributions, become a more active member of ICANN's initiatives and pave the way for a virtually sound cyber India.

Suggestions

Clearly, the present laws are incapable of dealing with the issues of trademarks and domain names. The very basic principle of 'first-come-first-served' needs reform and new laws need to be framed at domestic level with the consultation of International agencies like ICANN, WIPO etc. Some new authorities need to be established with the help of legal institutions and furthermore there is a need to build the capacity of the personnel's involvement of the governing body. We already discussed that both are governed by different authorities. One is governed by state law and another is governed by international level in the field of the protections of such types of issues.

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