

## **CYBERSQUATTING: UNVEILING A HIDDEN CYBERCRIME**

### **ABSTRACT**

The development of the internet at such an enormous pace has established a new kind of economy that has already reshaped the very concept of carrying on a conventional business. In an era of cut-throat business where everyone aims for the sky, a registered domain name protects unauthorized use by any entity or person. As a consequence, domain names have now emerged as valuable business assets and many domain name registration authorities have been observing an increase in the number of domain names registered. This creates an evident threat of cybersquatting or domain squatting practices. Cybersquatting is the most prevalent domain name dispute around the globe.

The Indian judiciary while settling conflicts regarding domain names has been proactive in granting relief under the umbrella of the Trade Marks Act of 1999. However, the absenteeism of a law explicitly dealing with cybersquatting or other domain name disputes creates an impediment in providing adequate protection to domain names.

The paper focuses on exploring the current legal scenario along with the judicial rulings on cybersquatting in India and highlights the need for comprehensive legislation in this regard. Furthermore, the paper compares the legal framework in connection with cybersquatting in the United States with that of India.

***Keywords: Domain Name, Trademark, Cybersquatting, Internet, Cybercrime***

### **INTRODUCTION**

The internet is a unique information exchange and dissemination medium, which changes the dynamics of business continuously. In today's time e-commerce has grown rapidly replacing the traditional method of commerce. To distinguish the products in the market, domain names and trademarks came into cyberspace. It has been a long-time issue of Intellectual Property and the Internet, and the major dispute related to domain names is the practice of Cybersquatting. It not only infringes the rights of the owner but also deceives the e-commerce business. The cybersquatters allow the rivals to get benefitted from the goodwill and stature of the actual owner.

In India, no specific legislation has been enacted to deal with cybersquatting, the victim can either file a lawsuit or register a complaint though. In Domain Name Dispute Resolution Policy. The remedy available with the aggrieved party is the cancellation or transfer of the domain name to the actual owner. A particular solution is yet to be found to address the issues of domain names and cybersquatting.

### **WHAT IS A DOMAIN NAME?**

To make the internet user-friendly, **Paul Mockapetris** expanded the scope of the Internet beyond its academic origins by inventing the **Domain Name System (DNS)** in 1983. The rules and procedures laid by DNS led to the formation of Domain Names, any name registered in the DNS is a domain name. After the official establishment of the Internet Engineering Task Force (IETF) in 1986, DNS has become one of the original Internet standards.

It is a name that people type in a browser to reach a site. Every domain name is unique and specific to a particular website accessing the Internet Protocol (IP), an online locator of a website. An IP address is a set of numbers assigned to each computer and consists of four decimal numbers from 0 to 255 separated by periods. These seemingly random strings of numbers are great for computers, but it's much easier to use words to represent a particular website as it becomes easier for humans to remember<sup>1</sup>. For Instance, rather than remembering **162.241.123.152** one can easily remember **www.edumound.com**.

The registrations of Domain Names are overseen by the **Internet Corporation for Assigned Names and Numbers (ICANN)**. The ICANN allocates as well as assigns IP addresses, maintains the database for all the domain names and their IPs. It also has the power to approve, manage and remove (if the rules are not followed) the domain extensions.

One shall remember domain names are referred to as URL (Universal Resource Locator) or web address. The basic elements of a domain constitute its name and extension. In the above-mentioned case “edumound” is the name and “.com” is the extension.

Owning a domain name is a common practice that businesses follow these days, to get their trademark easily identifiable. There are many companies that consumers want to associate with, but this is physically impossible. The domain name allows consumers to identify and contact the company. Trademarks and domain names are inter-linked.

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<sup>1</sup> Satyam Infoway Ltd. v. Sifynet Solutions (P) Ltd., (2004) 6 SCC 145

## **WHAT IS CYBERSQUATTING?**

“Cybersquatting” or “Domain squatting” is the term most often used to portray the conscious, bad faith abusive registration of a domain, disregarding the intellectual property rights. It alludes to the unauthorized registration and utilization of domain names that are identical or similar to the trademarks of a company name or personal names, confusing the consumers or the public at large. At times, even selling the domain names to the legitimate owner at an advantage.

Yet, the term has various implications for various individuals. Certain individuals, for instance, recognise the terms ‘warehousing’ and ‘cybersquatting’ similar or ‘cyberpiracy’ to be tradable with ‘cybersquatting’. However, these terms are different and give a different interpretation of the text<sup>2</sup>.

Simply put, it is an act of registering names, particularly of a notable organisation or brand names, as web domains. In the expectation of exchanging or reselling them at a benefit i.e. with the motive of earning profit from the goodwill of someone else’s trademark.

One of the prevalent domain name crimes is said to be cybersquatting, where the WIPO recognised this term as abusive registration of a domain name.

The Delhi High Court defined the term ‘Cybersquatting’ as *“an act of obtaining fraudulent registration with an intent to sell the domain name to the lawful owner of the name at a premium”*<sup>3</sup>.

## **TYPES OF CYBERSQUATTING**

Presently, cybersquatting can be categorised mainly into four types:

- 1. Typosquatting:** Typosquatting is the most common type of cybersquatting also referred to as ‘URL Hijacking’. The cybersquatters make changes in the word so that it seems to be identical or similar to the domain name, it also confuses the users, thus against the public interest.

Like, if there's a site “edumound.com”. The cybersquatter can make it: “*edumount.com*”, “*eduumound.com*”, “*edumond.com*”, “*edmound.com*”.

These sites are generally made to hack a person's device or to create an exact copy of the original site and divert the audience, creating losses for the business owner.

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<sup>2</sup> Pen Books (P) Ltd. v. Padmaraj, 2004 SCC OnLine Ker 493

<sup>3</sup> Manish Vij v. Indra Chugh, 2002 SCC OnLine Del 104

2. **Identity Theft:** In this type of cybersquatting, the cybersquatter purchases a website that was not renewed by the previous owner. With the assistance of unique programming or software, effectively invigilate the expiration dates of the targeted domain names. After the registration of domain names that are lapsed, the squatters might link them with sites that are similar to the website of the previous owner.
3. **Name-Jacking:** When a domain name is registered in the name of a person, generally a public figure who is well known. It increases the web traffic connected with the domain built in the name of that specific renowned person. With the introduction of various social media platforms, cybersquatters register trademarks on mainstream platforms. In the light of the fame of such websites, it initiated the verified tags to notable individuals, so that they can build a strong reputation and goodwill.  
*La Russa v. Twitter Inc.*<sup>4</sup>, Twitter was accused of cybersquatting by La Russa. Where using his picture and statement of joining, Twitter urged numerous people to join in. The matter in hand diverted the traffic to this site and made a profit from the harm caused to La Russa through his remarks. The case was settled later.
4. **Reverse Cybersquatting:** Domain name hijacking or usually curtailed as RDNH, is a legitimate solution to thwart the practice of cybersquatting. It guides to attempt a domain name legally, possessed by someone else. It forces and pressurizes the individual or association that claims a certified brand name reflected in the domain name to transfer the authentic ownership of the domain name.

## INTERNATIONAL PERSPECTIVE ON CYBERSQUATTING

### **Anti-Cybersquatting Consumer Protection Act**

In the year 1999, the United States enacted the ‘Anti-Cybersquatting Consumer Protection Act’<sup>5</sup> in addition to the Lanham Act, a primary federal trademark statute. The Act was enacted to prevent cybersquatters from registering or trafficking or using a domain name that is either

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<sup>4</sup> Case No. CGC-09-488101:2009 WL-1569936, <Citemedialaw.org>

<sup>5</sup> Anti-Cybersquatting Consumer Protection Act, 1999, 15 U.S.C. § 1125(d)

similar or dilutive of a trademark to sell the domain name back to the owner of the trademark. The Domain names are registered on a first come first serve basis.

If the trademark owner is the first user of the trademark in commerce then to qualify under this act it must show that:

1. The trademark owned by him was unique and well-known,
2. The domain name registered by the defendant is identical or similar to the trademark of the owner,
3. The defendant has an intention of making a profit under bad faith (**Section 43(d)** of the Act lays down the factors determining whether a domain name has been registered in bad faith or not)

The court in this matter shall award statutory damages of \$100,000 for every domain name or can even instruct to revoke or transfer the domain name to the actual and rightful owner.

However, the defendant or the person who is accused on its defense can demonstrate its reason for owning that domain name, without any intention to earn profit by selling the same to the actual owner, the court if satisfied may allow the accused to keep the domain name without any penalty.

### **Internet Corporation of Assigned Names and Numbers**

The Internet Corporation of Assigned Names and Numbers<sup>6</sup> (ICANN) in 1999, established an International Arbitration System. A trademark owner has the option of either filing a lawsuit in court or filing UDRP proceedings. The arbitration system is believed to save time and cost for both parties rather than following the practice of litigation under the ACPA.

### **Uniform Domain Name Dispute Resolution Policy**

ICANN implemented the Uniform Domain Name Dispute Resolution Policy (referred to as UDRP) for resolving the disputes in the matter of Domain Names. It is based on the recommendations made by the World Intellectual Property Organization in its report which focused on the problems created due to conflict between trademarks and domain names. When a domain name is registered from websites like GoDaddy or others, a registration agreement has to be agreed electronically which is a part of UDRP. This policy operates internationally and is

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<sup>6</sup> ICANN, <https://www.icann.org/> (last visited Mar. 14, 2022).

provided online, resulting in efficient cases as well as being less expensive than litigation in the court of law.

To begin the proceeding under UDRP, the complainant first has to identify the authorized service provider, such as; Asian Domain Name Dispute Resolution Center (ADNDRC), Canadian International Internet Dispute Resolution Center (CIIDRC), WIPO, etc. Under this resolution policy, an action is brought by the complainant, which shall include certain essentials to proceed with the argument. Firstly, the domain names to be identical or confusing that is similar to the trademark on which the complainant has the rights; secondly, the owner of the domain name has no legitimate right or interest in the domain name, and lastly, registration of domain name was done in bad faith i.e. to earn profit<sup>7</sup>. The complainant initiates the complaint at icann.org. The applicant has to show that the domain name registration does not violate the rights of the third party<sup>8</sup>.

The remedies which are available to the complainant:

1. The domain name shall be canceled or transferred to the owner, and
2. No financial remedy is available with the complainant.

### **.IN Domain Name Dispute Resolution Policy**

.In Domain Name Dispute Resolution Policy (INDRP) applies to domain names having '.in', it is similar to UDRP. According to this policy, if the trademark owner believes that a domain name has been registered to infringe a legitimate right, can file a complaint in the registry by paying the fees. The same criteria shall be met by the complainant as in the case of UDRP Policy. India established its registry the INRegistry under the authority of the National Internet Exchange of India (NIXI), wherein the dispute related to the domain name is resolved under this policy.

### **World Intellectual Property Organization**

Since the year 1999, the *World Intellectual Property Organisation*<sup>9</sup> has provided for arbitration and mediation center accredited center to address cybersquatting. Here, the owner of the trademark claims the right of the site bought in bad faith. With the advent of COVID-19 the pandemic, the authorities reported an increase in the registration of domain names across the

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<sup>7</sup> Para 4(a) of Uniform Domain Name Dispute Resolution Policy

<sup>8</sup> Pen Books (P) Ltd. v. Padmaraj, 2004 SCC OnLine Ker 493

<sup>9</sup> World Intellectual Property Organization, [www.wipo.int](http://www.wipo.int) (last visited on Mar. 14, 2022).

world. Increasing abuse towards the business owners along with consumers, many cases have been filed with the WIPO. Especially in the industries of Biotech/ Pharma, IT, Banking, and the list continue. To name a few, “tokyo2021.org”, “facebookcovid19.com”, “dettolhandsanitizer.com”, etc. By far the center has processed 50,000 cases and 797 cases in the year 2022 by February and January.

## **LEGAL POSITION OF CYBERSQUATTING IN INDIA**

India being a developing country has been seeing continuous changes in the internet and its usage. The country has a different legal perspective to deal with cybersquatting from that of the developed countries. Domain protection has become very challenging as India does not have any legal enactment to deal with Domain Name Protection Law or the Cybersquatting Law. In India, all the cases of domain name squatting are dealt with the provisions of the Trademark Act, 1999<sup>10</sup>. But unfortunately, the Information Technology Act of 2000<sup>11</sup> does not provide any provision or remedy for cybersquatting. Cybersquatting can only be held, when the aggrieved party proves the accused to have acted in bad faith. With no proper statutory protection, decisions by the courts are taken on the Principle of Natural Justice i.e. justice, equity and good conscience to decide the chance of domain infringement.

The remedies which are available to the victim of cybersquatting in India:

### **A. Trademark Act, 1999,**

The Indian Courts while deciding upon cybersquatting cases relies on the provisions of the Trademark Act, 1999. The Trademark Law primarily deals with the registration and protection of trademarks along with the prevention of fraudulent use of the mark.

- **Remedy of Infringement**

Under the act, the legitimate owner of the trademark can file a lawsuit, either a civil or criminal complaint about taking action against the infringement of the trademark. The court in such matters puts a stay by giving cease and desist order to the accused or the cybersquatter. With that being said this remedy can only be availed only when the trademark has been registered.

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<sup>10</sup> Trademark Act, 1999, No. 47, Acts of Parliament, 1999 (India)

<sup>11</sup> Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India)

- **Remedy of Passing-Off**

To protect and enforce the unregistered trademarks, the Indian courts generally resort to the principle of Passing Off. It is to be noted that this remedy can be availed even when the trademark is not registered. It is a remedy to safeguard the goodwill of the aggrieved party along with that of the public by restraining the cybersquatters from using the domain name identical to that of the owner<sup>12</sup>.

## **B. Initiation of Arbitration Proceeding**

Aggrieved parties can file a complaint using the Uniform Dispute Resolution Policy developed by ICANN for resolving the registrations of domain names in bad faith. WIPO is the key organization whthatromotes the protection, dissemination, and utilization of intellectual property throughout the world. This remedy is less expensive and time-consuming than filing a lawsuit in a court of law.

***Yahoo! Inc. v. Akash Arora***<sup>13</sup>, it was the first case in India pertaining to cybersquatting where the defendants made an attempt to use the domain name <yahooindia.com> for providing similar internet related services as against domain name i.e. <yahoo.com>. The Court observed that it was an obvious effort to trade on the fame of yahoo's trademark and passed an order which restrained the defendants from dealing with the domain name <yahooindia.com> or any other trademark similar to it.

***Rediff Communication Limited v. Cyberbooth***<sup>14</sup>, the defendant, in this case, had registered a domain name "radiff.com" which was identical to the established website i.e. rediff.com. The Bombay High court observed that a domain name registrant could be liable for trademark infringement and is not entitled to obtain any legal right to use that particular domain name solely on the basis that he has registered the domain name. It was noted that a domain name is like a corporate asset of a company.

***Tata Sons Limited v. Manu Kosuri***<sup>15</sup>, in this case, the defendant had registered several domain names bearing the name Tata. The court relied upon *Yahoo Inc! v. Akash Arora*, and it was

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<sup>12</sup> Satyam Infoway Ltd. v. Sifynet Solutions (P) Ltd., (2004) 6 SCC 145

<sup>13</sup> 1999 SCC OnLine Del 133

<sup>14</sup> 1999 SCC OnLine Bom 275

<sup>15</sup> 2001 SCC OnLine Del 250



expressly held by the court that the domain names are not only addresses but are also trademarks of companies and that they are equally important.

### **CYBERSQUATTING AND THE INFORMATION TECHNOLOGY ACT, 2000**

However, the above-mentioned remedies are not that concrete when it comes to providing relief to the aggrieved party. The IT Act, 2000 deals with cybercrime and electronic offences, but interestingly it remains silent on cybersquatting. The recent amendment of the Act in 2008<sup>16</sup> included the provision of **Section 66D**<sup>17</sup> providing punishment for cheating by personation using any computer resources.

*Whoever, by means for any communication device or computer resource cheats by personating, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.*

The remedy contained in the above-mentioned section can be applied to cybersquatting cases, provided that the aggrieved party knocks on the door of Indian courts.

### **CONCLUSION**

It has now become a widespread practice for organizations or proprietors to ripen their businesses using the internet. Giving rise to issues relating to unresolved fundamental problems of the domain name as discussed above. Cybersquatting is certainly a cybercrime, which violates the owner's trademark. To curb cybersquatting, it is obvious that a new specific legal regime shall be introduced using the current technology which will protect the owner of a domain name in cyberspace. Due to the dearth of proper mechanisms and the dynamics of the internet, many businesses have been a victim of cybercrime which also hinders international economic development. However, one must keep in mind if the laws are too rigid, it would again create a problem for such businesses expanding in the scope of e-commerce.

UDRP can be said to be one of the best solutions in India, as it provides a solution out of the court. Saving time as well as cost as compared to litigation. Although one can adopt both the remedies either litigation or dispute resolution policy.

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<sup>16</sup> Information Technology Amendment Act, 2008

<sup>17</sup> Information Technology Act, 2000, S-66D, No. 21, Acts of Parliament, 2000 (India)