# Critical Analysis of the Concept of 'First Come First Serve' along with its Domain Name regime– Glance

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Abstract- The development of science and technology enlighten the Commercial Activities on the Internet. Such technology makes Domain Names as a valuable business asset and a Trademark in the internet world. Due to the rapid growth, domain name disputes have increased in India. There have been increasing instances of domain name abuse and misuse in the form of cyber-squatting. Indian Courts have held the domain names as online trademarks and business identifiers. However, due to the absence of a specific law, the courts have not been consistent in imposing fines and giving relief to the offenders. Therefore, a comprehensive law against cyber-squatting that grants adequate protection to domain names is the need of the hour in India as well as world. Because we never concluded that as the cyber squatters and the domain name holders are always available in the same country, in these circumstances they escaped from the eye of law for the gap of non-availability of legislations to control the squatters. Because each and all countries have different legislations to tackle various offences made in their jurisdiction but cybersquatting made between inter-state since one country tries to punish the offender means how will take the plea as he belongs to other national. In this stage that offender will be punished by following which legislation and the victim claim compensation before which court and the offender is having binding nature by following which country code all are highly questionable. It also gives a global perspective on Cyber Squatting laws and international framework. At the same time, the research paper highlights the need for a specific Domain Name Protection Law in world because these are offences made between inter-state also this Research Paper Aims to find what are the laws that are currently in place in India as well as world that protect Domain Names, the issues with them, understanding the International Framework and understanding the need for a specific Domain Name Protection Law in world by way of conventions.

Key words: Background of cyber-squatting, First come first serve, judicial activism

## INTRODUCTION

A domain name is played a vital role in business by way of its typographic characters used to describe the location of a specific location online. Formally known as the Uniform Resource Locator or URL, it is often considered to be the address of a certain website. A domain name is a unique name that identifies a website. The existence of domains without specific requirements for the registration brought a concept of "first come, first serve". This has created many disputes with trademark owners. Since the 1990s, many speculators have started to register domain names in order to resell them for a much higher price to trademark owners and new businesses. Problems arose with trademark owners because of their entitlements to IP rights which make them feel ripped off by this new practice called "cybersquatting".

## BACKGROUND OF CYBER SQUATTING

The well-known practice of cybersquatting comes into the picture when most business organizations were not aware of the scope of their business on the online platform. At that time cybersquatters took advantage of it and registered the names of well-known companies as domain names, with the intent to sell those domain names back to the companies at a very high profit. Some companies which are the victims of cybersquatting are Whirlpool[1], Bisleri[2], LG, TATA, Panasonic, Avon, Hertz, etc. But now the opportunity of cybersquatting is diminishing because most of the companies now know the value of domain names and treat them with high priority. The Internet Corporation of Assigned Names and Numbers (ICANN) a domain name regulatory authority is responsible for the administration of top-level domain names[3]. To acquire a domain name the person first has to contact the administrator of the TLD

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[1] N.R. Dongre and others v. Whirlpool Corporation and another,1996 PTC (16) 583 (SC)

[2] Aqua Minerals Limited v. Mr. Pramod Borse and another, AIR 2001 Delhi 463, 93 (2001) DLT 203: MANU/DE/0642/2001

[3] Ashwani Kumar Bansal, *Law of Trade Marks in India with Introduction to Intellectual Property*, Third Edition, Published by Thomson Reuters, New Delhi.

and if the identical requested domain name has not already been assigned to any other person, only then the name will be approved by the administrator. There is a specific registration process involved. The IANA is the Central Internet Authority that allocates IP addresses and domain names through the INTERNIC.

## CYBER SQUATTING IN GENERAL

Obtaining fraudulent registration with an intent to sell the domain name to the lawful owner of the name at a premium price is called "Cyber-squatting". Cybersquatting has been an active threat since the early 1990's and has increased in severity ever since. Cyber-squatters sometimes register variants of popular trademarked names, a practice known as typo-squatting. This is a type of cybersquatting which relies on typographical errors internet users[4] make while entering website address into a web browser. Typo squatters takes benefit of misspellings. In such cases they divert the traffic of the target site to their website and in course of an electronic transaction, the potential customer might end up making an alternative purchase from competitors[5] company. Not only this, they also tarnish the image of the company. For e.g. PETA used by cyber-squatter as "People Eating Tasty Animal"[6]. People believed that as PETA is an association established for the welfare of animals but when fake domaain name created by cyber squatters means the reputation of that association might gone. This is the difficulty faced by the first holder of domain name.

## FIRST COME FIRST SERVE POLICY

Domain names present a unique circumstance when determining the likelihood of confusion caused by possible trademark violations. With regard to domain names, however, only one party can hold any particular domain name. Who has access to that domain name is made even more important by the fact that there is nothing on the Internet equivalent of a phone book or directory assistance. A customer who is unsure about a company's domain name will often guess that the domain name is also the company's name. Thus, a domain name is more that a mere Internet address. It also identifies the Internet site to those who reach it, much like a person's name identifies a particular person, or, more relevant to trademark disputes, a company's name identifies a specific company[7]. Domain names hold an elevated level of importance for the reason that there can be only one user of a domain name unlike two or more users of a same or similar trademark under the trademark law, for various classes of goods/services or under honest concurrent use. The domain registration system follows the "first come, first serve" policy. So, once a person registers a domain name similar to a trademark, any other person using a similar mark is denied registration of another domain name similar to that trademark.

## JUDICIAL ACTIVISM ON CYBER SQUATTING

In India, there is no legislation which explicitly refers to dispute resolution in connection to Cybersquatting or other domain name disputes. There is no provision in the current Information Technology Act to punish cyber-squatters. Therefore, in India the issues of cybersquatting are mainly governed by principles of passing off[8]. However, it has also adopted a policy, called INDRP in line with the UDRP. Yahoo!, Inc. v. Akash Arora & another[9] – This was the first case on domain law protection in India. The plaintiff was the owner of the trademark YAHOO!. It filed a suit against the defendants, with the remedy of permanent injunction, in order to restrain the defendants, from carrying any business related to services or goods, under the domain name "yahooindia.com", on the ground that the name incorporated was deceptively similar to the plaintiff's trademark. The plaintiff's domain name "yahoo.com" was registered with the Network Solutions Inc. and was registered in 69 countries. The Delhi High Court held that the marks were confusingly similar with the well-known trademark of the Plaintiff. Satyam Infosway Ltd. v. Sifynet Solutions Pvt. Ltd[10] – The Respondent had registered domain names www.siffynet.com and www.siffynet.net which were similar to the Plaintiff's domain name www.sifynet.com. Satyam (Plaintiff) had an image in

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[4]Jews for Jesus v. Brodsky, , 993 F. Supp. 282, 46 U.S.P.Q. (BNA) 2d 1652 (D.N.J.)

[5]Ellora Industries v. Banarsi Das Goela and others, AIR 1980 Delhi 254
[6]People for the Ethical Treatment of Animals (PETA; used as PeTA).
[7]Card Service International Inc. v. Mc Gee, 950 F. Supp. 737 (E.D. Va. 1997) January 16, 1997

[8]Lord Halsbury's definition of tort of 'Passing off', which was stated in, Reddaway v. Banham, [1896] AC 199, and added the observation of Lord Greene M.R which is as follows: "Passing off may occur in cases where the plaintiffs do not in fact deal with the offending goods".

[9]Yahoo! Inc. v. Akash Arora
MANU/DE/0120/1999:(1999) 19 PTC 201 (Del)
[10]AIR 2004 SC 3540

the market and had registered the name Sifynet and various other names with ICANN and WIPO. The word Sify was first coined by the plaintiff using elements from its corporate name Satyam Infoway and had a very wide reputation and goodwill in the market. The Supreme Court held that "domain names are business identifiers, serving to identify and distinguish the business itself or its goods and services and to specify its corresponding online location." The court also observed that the domain name had all the characteristics of a trademark and an action of Passing off[11] can be found where domain names are involved. The decision was in favor of the plaintiff.

## DISPUTES RESOLUTION POLICY

The disputes involving the registration of ".in" domain name is resolved in accordance with the .IN Dispute Resolution Policy (INDRP) and the INDRP Rules of Procedure. As per INDRP, if a person considers that a registered domain name conflicts with his legitimate rights or interests, he may file a complaint with the .IN Registry on the following premises: Registrant's domain name is identical[12] or confusingly similar[13] to a name, trademark or service mark in which the Complainant has rights, Registrant has no rights or legitimate interests in respect of the domain name, Registrant's domain name has been registered or is being used in bad faith.

To bring a proceeding under the INDRP, Complainant needs to file the complaint with the .IN Registry along with the relevant fees. .IN Registry then appoints an Arbitrator out of the list of Arbitrators maintained by it. The complaint and documents are forwarded to the Respondent and the Arbitrator by the .IN Registry. Arbitrator then conducts Arbitration proceedings in

accordance with the Arbitration and Conciliation Act 1996, Rules thereunder, and the Dispute Resolution Policy and Rules. Arbitrator is required to pass an award within 60 days of the complaint and forward a copy of the same immediately to the complainant, respondent, and the .IN Registry[14].

## INDRP MECHANISM OF DISPUTE RESOLUTION

The INDRP mechanism of dispute resolution through arbitration would fall within the description of an arbitration agreement under Section 7[15] of the Arbitration and Conciliation Act, 1996. Therefore, awards made under the INDRP framework are to be tested in the light of the law applicable for Section 34[16], which means that the courts have narrow and circumscribed powers to interfere was arbitral tribunal's determinations: if only the findings are based on patent legal errors, or contrary to terms of contract, or are so unreasonable that no reasonable man could have reached the conclusions that an arbitrator did, would interference be called for[17]. It recognizes the enforcement of the awards passed by the Arbitrator by recognizing that the NIXI INDRP mechanism of dispute resolution through arbitration would fall within the description of an arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996 and therefore, awards made under the INDRP framework are to be tested in the light of the law applicable for Section 34 of the Act. Going through the majority of INDRP cases, it can be assessed that the arbitrators, in substantial number of cases have gone in the favour of the trademark holders[18].

## OUSTER THE JURISDICTION OF CIVIL COURTS

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[11]Reddaway v. Banham, [1896] A.C. 199

[12]Montari Overseas Limited v. Montari Industries Limited, 1996 (16) PTC 142 (Del)

[13]Marks & Spencer v. One-in-a-Million, [1998] F.S.R. 265

[14]Robert A. Badgley, *'Internet Domain Names and ICANN Arbitration: The Emerging "Law" of Domain Name Custody Disputes'*, Texas Review of Law & Politics, Vol. 5, No. 2, 2000-2001, pp. 343 - 392 at p. 368

[15] Section 7 Arbitration agreement:1.In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.2.An arbitration agreement may be in the form of an arbitration clause in a contract or in the

form of a separate agreement.3.An arbitration agreement shall be in writing.4.An arbitration agreement is in writing if it is contained in-(a)a document signed by the parties;(b)an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or(c)an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.5.The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

[16] Section 34 Application for setting aside arbitral award

[17] *Stephen Koeing v. Arbitrator NIXI and anr*, 2015 (64) PTC 406 (Del)

[18]Aqua Minerals Limited v. Mr. Pramod Borse and another, AIR 2001 Delhi 463, 93 (2001) DLT 203: MANU/DE/0642/2001

It is also important to note that both UDRP and INDRP does not ouster the jurisdiction of civil court and, therefore, if the aggrieved party intends to seek compensation, then the complaint can be filed with the appropriate civil court as the remedies available under common law are exhaustive. In the light of the above, in India, in order to settle dispute relating to domain names in the generic Top-Level domain like .com, .org, .net etc. you have the option to resort to UDRP. In case of dispute relating to registration of ".in" domain name, a person may approach INDRP. Indian companies may also resolve their grievances relating to domain names by filing a suit in a civil court of competent jurisdiction[19]. The civil court may pass an order under the Common law of passing off and grant a permanent injunction against the wrongful user of the domain name. Such judgments are mostly in favor of the trademark owners discouraging cyber-squatters from hoarding domain names for their benefit. In the case of *American Civil Liberties Union v. Reno*20, Judge Mokena has explained the Internet address system, as follows; each host computer providing Internet services (site) has a unique Internet address. Users seeking to exchange digital information with a particular internet host require the host's address in order to establish a connection.

## CONCLUSION

There is an imperative role to be played by the Trademark Law in India to give uniform safeguard to domain names as that of the trade mark. Though the revealing of infringement of Intellectual Property Rights in cyberspace is easy, effective law enforcement poses a task. There is a need to upsurge the awareness of Intellectual Property Rights through different activities such as seminars, conferences, workshops, etc. There needs to be an Intellectual Property Assistance Centre at every district level. Industry Associations like, BLLOMBERG[21], CII, and NASSCOM can play important role in the dissemination and awareness of the benefits of adopting a strong IP protection strategy for all e-businesses. The other mechanisms that can be well-thought-out to register the domain names are to give powers to registrars of domain names to scrutinize the objects with which domain names are registered and to control and administer their use through periodical checks. With regard to the domain, name dispute resolution by the UDRP areas such as freedom of speech, choice of law, the impartiality of panelists, the

ineffectiveness of the panelists, and elusive definitions are anticipated to create problems in the smooth running of what would otherwise have been a comprehensive mechanism for the settlement of domain name disputes. The other problems include whether the method is as fair and operative as it should be, and the answer is indefinable. UDRP is considered to be a better resolution compared to any other resolution. The domain name dispute made between the parties have no jurisdiction limits because offender and the victim might be hails from different countries in these circumstances need to punish the offender and give stringent effect to the cyber squatting there must be a treaty to be enacted by convention participated by all countries which has to organised by world sectors, like WIPO, otherwise the guily will be escaped and the victim rate will be increased and it could be blemished. Eventhough the availability of authorities unable to control the cyber squatting since some more stringent efeects has been take against the offenders by way of enacting legislations with the support of international treaties.

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[19]Ashwani Kumar Bansal, *Law of Trade Marks in India with Introduction to Intellectual Property*, Third Edition, Published by Thomson Reuters, New Delhi.
[20]  521 U.S. 844, 117 S.Ct. 2329 1997.

[21]INDRP Dispute Case no: INDRP/110, dated 09.08.2009 - Bloomberg Finance L.P., United States of America v. Kanhan Vijay V, India.