

Addressing Domain Name and Trademark Infringement: Challenges of Cybersquatting in the Digital Age

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Abstract- In the of digital age, public identify the company or a brand by its trademark and domain name particularly in E-commerce as well as hand to hand business. The cybersquatting is one of the prominent forms of domain name and trademark infringement globally. There are many policies in country level and global level such as Indian domain name dispute resolution policy and Uniform domain name resolution policy these help the owners of company to protect their domain name and trademark. Although there is still increase in the cybersquatting through e-commerce and social media. The present deals with Cybersquatting impact economic standards and brand value and reputation, particularly in E-commerce sector and the role of Internet Corporation for Assigned name and number (ICANN) and their Uniform Domain Name Dispute Resolution Policy in Domain name and trademark infringement. To increase reliance on IT services, regulatory norms and policies need to be developed accordingly Technological development One of the most important aspects is the growing role of domain names important in the e-commerce industry. It also discusses about the legal framework in India and globally in relating to the cybersquatting. The legislation like Information Technology Act,2000, Arbitration Act, 1996, and also the Trademark Act, 1999, these legislations are analysed to make significant research on the study of cybersquatters in the digital age. In this paper the menace of cybersquatting has been analysed and provided the protecting measures for preventing and mitigate the abuse of cybersquatting in digital age. It also been provided the reasons for protection of domain name as a trademark in the legislation. Also, how the ICANN policy frameworks in resolving the dispute of domain name and trademark infringement which resulting in cybersquatting.

Keywords: cybersquatting, E-commerce, Internet Corporation for Assigned name and number (ICANN),

Uniform Domain Name Dispute Resolution Policy (UDRP), the Trademark Act, Indian domain name dispute resolution policy (INDRP), domain name, trademark.

INTRODUCTION

Domain name and trademark of the company, are very significant in terms of people's identification of a company. In the digital age, the infringement of trademark and domain name creating a arena where the misusing of internet for their personal gains and cyber squatting also taking place through internet and advertisements. The cyber-squatting is one of the most triggering issues in the arena of domain name and trademark infringements whereas, the social media platforms are the primary space for this kind of Intellectual property rights infringements.

The development of e-commerce and social media platforms in the contemporary era which results not only modernization and socialization but also resulted in e-trade scams, misleading advertisements, and cyber-squatting. But here the question arises is that how we can protect our innovation or our marketing product from cybersquatting. The copyright act and the patent act are two existing legal solution for the infringement of trademark and domain name. The increase in use of technology and social media platforms it made much more easier to find and identify business image of a company or product, in result to that there is conflict of domain name arises as consequence of the practice of cybersquatting in the digital age¹.

In order to capitalize on the prestige and reputation of these third parties, cybersquatters register trademarks,

¹ Harsh-Karote,Cybersquatting And Trademark Issues - Uniform Domain Resolution Policy. (2021). In *Journal of Legal Research and Juridical Sciences: Vol.*

VOL. 1 (Issue ISSUE 3, pp. 57–59) [Journal-article]. <https://jlrjs.com/wp-content/uploads/2022/02/9.-Harsh-Karote-1.pdf> (last visited: 18, September 2024)

company names, and other similar spelled terms. They may do this by deceiving current or potential customers or by selling the domain name to the legitimate owner for a hefty sum of money.²

There are differences between how a domain name and a trade mark are registered. While registering a domain name just costs a few dollars and takes less than an hour, registering a trade mark requires a more involved process that takes time. What puts the problem of cybersquatting into reality is the domain name registration procedure.

It is also significant to understand about the domain name and trademark, in which these terms are different from the legal and technical part. A Domain name is a unique name through which can public easily identify them, and also domain name can be mixture of letters, numbers or special characters which results in the formation of a unique name³. The domain name is used in the URL of the webpage of the e-commerce platform. Each website has a unique domain to get access through the URL. At digital age through the URL hijacking many companies have witnessed the infringement of their domain name,

Under the Trademark Act, 1999 the word trademark is defined “trade mark” means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours⁴

In general trademark is a identical picture which people can recognize and they can vary other’s good and services from a specific trademark. And trademark is seen an exclusive identity of the services and goods provided by owner or a company. It is also respect towards the services availed and good provided by the owner.⁵

The cyber-squatting is more often witnessed in the digital platform through infringement of domain name

and trademark and these both are unique and also these are the identifier of the products or services given by a company or owner.

1.2 Research Problem

This paper deals with a research problem how the cybersquatting of domain name using the unique identifiers like trademark impact the consumer trust and its create confusion. In India there is no such law which exclusively deals with the domain name whereas the countries like USA have a proper legislation on domain name infringements. And does these loopholes like absence of a legislation on domain name and cybersquatting leads to the increase in the infringements of domain name and trademark infringements through the cyber-squatting.

1.3 Literature Reviews

1. Deshpande, S. (2020). Cyber Squatting: -A study of Legal framework in India. In *International Journal of Law Management & Humanities, International Journal of Law Management & Humanities* (Vol. 3, Issue 3, pp. 1825–1835) [Journal-article].

Deshpande, the author of the paper explains how the rapid increase of commercial activities has led to an growth in the domain name and trademark infringement in India. The research paper also focused on how judicial frameworks and legislation helped us to figure it out whether there is need for a exclusive enactment for domain name protection.

2. Gasimova Chinara, Domain Name and Trademark Infringement (Cybersquatting) in the Digital Age (June 3, 2022).

In this paper, the unfair and unauthorized use of someone’s trademark as a domain name (cybersquatting) which results infringement of domain name and trademark, the impact of the high use

<https://doi.org/10.2139/ssrn.4344891> (last visited: 18, September 2024)

² The Trademark Act, 1999.

⁵ Mercer, J., D. (n.d.). *Cybersquatting: blackmail on the information Superhighway*. [https:// www.bu.edu/law/journals-archive/ scitech/ volume6/ mercer.pdf](https://www.bu.edu/law/journals-archive/scitech/volume6/mercer.pdf) (last visited: 18, September 2024)

² Manupatra. (n.d.). *Articles – Manupatra*. [https://articles.manupatra.com/article-details/ Cybersquatting-and-Trademark-Issues-An-analysis-with-reference-to-India](https://articles.manupatra.com/article-details/Cybersquatting-and-Trademark-Issues-An-analysis-with-reference-to-India) (last visited: 18, September 2024)

³ Gasimova, C. (2023). Domain name and trademark infringement (Cybersquatting) in the digital age. *SSRN Electronic Journal*.

Internet and social media platforms on cybersquatting and most possible measures to solve it will be analysed. This research papers to address trademark and domain name infringements (cybersquatting) on internet and social media platforms and emphasize the importance of combating cybersquatting in the contemporary world.

3. Sangeetha Lakshmi V, The Menace of Cybersquatting and The Available Legal Measures to Mitigate Abuse of Domain Names, *Indian Journal of integrated research in Law*, Volume II Issue I | ISSN: 2583-0538.

The author of this paper mainly focused on the cybersquatting and mitigating measures for the domain name and trademark infringement. It also includes various types of cybersquatting in the digital age through third party websites and social media platform. This paper primarily contributes for identifying what are the major factors for emerging cyber-squatting in the digital age. One way is to strengthen laws on the brand protection field, which leads to greater confidence among the Foreign investors and it will help India.

4. Aisha Saleem Khan, Cybersquatting in India: Jeopardy to Cyberspace, *International Journal of law, management, and humanities*, [ISSN 2581-5369] Volume 3 | Issue 6 2020.

Aisha Saleem khan, author of this paper primarily discusses about the cyber-squatting in cyberspace which is a highly significant domain dispute that is rampant around the world. From an Indian perspective, cybersquatting has become widespread since the advent of the internet in the subcontinent. Courts in India have handled cases related to cybersquatting and are currently ongoing. There is no law prohibiting cybersquatting in India. India needs radical measures to rethink.

5. Rupal Jaiswal, "The Web of Cybersquatting: Do we need a Law to clean it?", *Pen Acclaims: Multi-disciplinary National Journal*, Volume 6, July 2019 ISSN 2581-5504.

In this research paper, author mainly focused on the urgency of Indian Legislation to combat the cyber-

squatting and to analyse law in other jurisdiction against cyber-squatting. It pinpoints the scope and limitations in the international frameworks for regulating and combating the cyber-squatting in the digital age and across the social media and online platforms. This paper also provided the measures and suggestions and possible solution toward the prevention of cyber-squatting.

6. Kumara. N. H., Protection of Domain Name as A Trademark, *International journal of creative research thoughts(IJCRT)*, Volume 6, Issue 2 May 2018 | ISSN: 2320-2882.

The author of this research paper primarily focused about, in the era of modernization and advancement of E-commerce and internet how it is reflects in the cybersquatting and infringement of trademark and domain name. And discussed about the importance of holding registered domain and trademark and the significance of understanding its protections and legal issues article.

1.4 Research questions

1. Whether the cybersquatting impacts economic standards and brand value and reputation, particularly in E-commerce sector?
2. How effective are the ICANN policy frameworks such as uniform domain name dispute resolution policy (UDRP) in combatting cybersquatting globally?

1.5 Scope and limitation.

The present research paper deals with the concept of cybersquatting by primarily focusing on the e-commerce trade and its implications. Also how the ICANN policy frameworks in resolving the dispute of domain name and trademark infringement which resulting in cybersquatting. By looking into major cybersquatting cases which was resolved by Indian Court in contemporary era.

1.6 Research objectives

- To understand the phenomenon of cybersquatting.
- To understand the importance of dispute resolving policy in domain name and trademark infringements disputes.

- To analyse the drawbacks of cybersquatting in resulting economic loss particularly in E-commerce.
- To understand the role of ICANN in domain name and trademark infringement globally.
- To analyse significance of dealing with the issues of cybersquatting and trademark infringements through a proper legislation.

1.7 Hypothesis

In the modern era of digital age where the chances of cybersquatting through e-commerce rapidly increasing and there is a significant need for the awareness on cybersquatting and trademark issues since it is a alarming issues in trademark law and consumer protection. And promoting the UDRP policy approach for limited and breaking the strike of cybersquatting in digital age through E-commerce.

1.8 Research methodology.

Throughout the paper a descriptive and analytical method is used for course of the paper. The study is primarily based on Primary and Secondary Data. Primary sources consist of Statutes, Cases and Books. And the Secondary sources include various articles and journals that have been referred to for the purposes of this paper. All the information so gathered has been studied analytically to deal with the Research Questions. The descriptive research method is used to obtain information concerning the current scenario with respect to the research problem. All the necessary and relevant materials which form a part of the study are collected from a wide range of sources that include books, articles, journals, newspapers, and various reports.

Chapter-II

Cybersquatting impacts economic standards and brand value and reputation, particularly in E-commerce sector

In the digital age though the e-commerce, the cybersquatting is primarily including of trademark and domain name infringement. At the contemporary era the infringement of domain name which means a unique name which is required to recognize the company website is counterfeited and developed as replica to the original domain name by making minimal changes in order to using the brand or company identity to make a business by trading with the similar and fake product or offering the services in the name of original company. And the trademark mark which is basically an image by which an individual can identify the brand or company product.

There are some categories of cybersquatting which are recognized as the omission of the dot in the domain name, a common and slight misspelling of the intended company site, a differently phrased domain name, a different top level of domain name in website or URL, and misspelling in the logo, similar structure of the trademark. These are the primarily identified categories of how the cybersquatting take place⁶.

And these could lead to the misleading of public by counterfeiting the product and infringement of domain name. The primary motive behind the infringement of domain name and trademark is that make trade with fake products in the name of original company by using the similar domain name or trademark and availing the services in the name of original company through infringing of trademark or domain name of a reputed company for the sake of profit or business generating revenue⁷.

As it is not only related to the trademark or domain name infringement but also the consumer protection is also involved when a consumer purchased a counterfeited or fake product from the cybersquatters through the replicated URL or misled by the infringed

⁶ Komal_Kapoor F, Propertisation Of Domain Names, Cybersquatting: A Comparative Study On The Udrp And Indrp. (n.d.). In *ILI Law Review Summer Issue 2022* (pp. 120–123) [Journal-article]. https://ili.ac.in/pdf/6_Komal_Kapoor_F_.pdf (last visited: 20, September 2024)

⁷ Balaji, G. (2024, August 13). Brand vs. Trademark: Understanding the Difference and Why It Matters. *De Penning and De Penning*. <https://depenning.com/blog/unveiling-the-brand-and-trademark-difference-what-they-are-and-why-they-matter/> (last visited: 20, September 2024)

or similar trademark of original company⁸. Technically they got misled and purchased the products or availed services from cybersquatters but in actual they are in the sense that consumers purchased the original product from company. For, instance if they approach the Consumer court for the deficiency in service or defect in the product which they got it from the cyber squatters but there if they sue the original company for such deficiency the reputation of the company is degraded⁹.

Whereas the economic standards of company are depended on the brand value and reputation. In the case of such cybersquatting, cybersquatters are allegedly using the company's similar or replicated logo or domain name by which they are making revenue or profit by selling unlicensed and unauthorized copy product through e-commerce¹⁰.

Nowadays, through the social media usage there are many channels and pages which are spoofing the original brand and creating a unauthorized product of such original company product. And also misleading the consumers by their advertisement as original product which harming the brand reputation and probably making a chance for lowering the economic standards of the company brand¹¹.

In India, Amul dairy farms are one of the largest dairy products selling company from decades and which has

a annual turnover of 72,000 crores. Even this company also became the victim of the cybersquatting which is resulted from the unauthorized domain names like amuldistibutor.com, amulboard.com, and amuldistibutorindia.com¹². Through such activities by cybersquatters, not only the company got economically loss but individuals are suffered losses by making payment to such unauthorized domain name for the franchise or distribution unit. Not only Amul company but also many platforms such as TikTok, Yahoo, and Microsoft have also being victims for cybersquatting¹³.

Domain name infringement v. domain name investing

At the digital age there is also a practice of domain name investing, whereas the individual buys domain name before company or such organization recognize it. And such individual demands for money in-order to withdraw or transfer the rights of such domain name to the original company¹⁴.

For example, Tik Tok app when it was anticipated to be a developing app someone was brought the TikToks.com domain name for 2000 dollars, later Tiktok parent company offered \$ 145000 for domain name¹⁵. Even those domain holders were refused to sale the domain name, eventually tiktok company filed a complaint of cybersquatting. Finally, the WIPO administrative panel held that the created domain

⁸ Khurana, T. (2024, April 16). *Trademark infringement in E-Commerce in India*. Khurana and Khurana. <https://www.khuranaandkhurana.com/2024/04/16/trademark-infringement-in-e-commerce-in-india-challenges-in-digital-era/> (last visited: 20, September 2024)

⁹ Thomas J. Curtin, "The Name Game: Cybersquatting and Trademark Infringement on Social Media Websites" *Journal of Law and Policy*, Vol. 19, Issue 1, p.360 (2010). (last visited: 21, September 2024)

¹⁰ Shine Joy, Domain Name, Cybersquatting and Domain Dispute Resolution, www.legalservices.com (last visited: 21, September 2024)

¹¹ John D. Mercer, "Cybersquatting: Blackmail on the Information Superhighway", 6 *Boston University Journal of Science and Technology Law* 11 (2000). <https://www.bu.edu/law/journals-archive/scitech/volume6/mercer.pdf>(last visited: 21, September 2024)

¹² Editor_4. (2021, July 14). *Amul Dairy secures major win in a trademark infringement case in Federal Court of Canada* | *SCC Times*. *SCC Times*. <https://www.scconline.com/blog/post/2021/07/14/amul/> (last visited: 21, September 2024)

¹³ Ahmed, Slahudeen, *Cybersquatting: Pits and Stops*. *Indian Law Institute Law Review*, Vol. 1, No. 1, p. 79, 2010, Available at SSRN: <https://ssrn.com/abstract=1597866>(last visited: 21, September 2024)

¹⁴ Dahiya, N. (2024, July 22). *Domain Name Disputes: A Comprehensive Overview. Trademark - Intellectual Property - India*. <https://www.mondaq.com/india/trademark/1495376/domain-name-disputes-a-comprehensive-overview> (last visited: 30, September 2024)

¹⁵ DiGiacomo, J. (2021, July 20). *TikTok's legal team exposes current forms of international "Cyber squatting."* *Revision Legal*. <https://revisionlegal.com/internet-law/tiktoks-legal-team-exposes-current-forms-of-international-cyber-squatting/> (last visited: 30, September 2024)

names in the name of TikTok shall be transferred to the complainant.

In the case of Starbucks corporation v Mohanraj (2009), the complainant domain name is starbucks.co.in and the respondent domain name is starbucks.in. Eventually, complainant filed a complaint against the infringed domain name holder on the basis of similar and identical appearances of both domain names which led to confusion and misleading the consumers. The hon'ble court held that the domain name holder had no relation to the domain name namely starbucks and no formal business have took place by such domain name holder in the domain name. hence order the respondent to surrender the domain name to the complainants¹⁶.

Rediff Communications Ltd. v. Cyberbooth¹⁷, the Hon'ble Bombay High Court acknowledged that the domain names as valuable assets. According to the court, a domain name is an significant character of any organization since people connect it with both the owner and the enterprise. Therefore, the court pointed out that the registration of the defendant for the domain name "Radif" resembles a voice and obviously similar, and the applicant's domain name "Rediff" is only an attempt to make too many surfaces. Good will from the applicant. In addition, the court declined that the bill was illegal and prohibited¹⁸.

In the digital age, especially in e-commerce the cybersquatting had an impact which could lead to the economic loss to the company. Such as when an cybersquatter used the domain name or trademark and modified it as a replica which is apparently an original but in legally there is no authorization for the services and goods produced and used as a profit gaining

machine could be a primary cause for the economic loss¹⁹.

And one of the practice of the cybersquatters is announcing the job recruitments, offers, notification, and advertising about unauthorized payments for franchise or any company dealing to mislead the consumer or customers. This said activities could lead to an reputation damage or down wall of the company due to such fraud activities of cybersquatters.

The defendant chose the domain names www.siffynet.com and www.siffynetnet in the Satyam Infoway Ltd vs. Sifynet Solutions case²⁰, which were quite similar to the plaintiff's web address, www.siffynet.com. The plaintiff in this case had a stellar business record and was awarded several domain names with ICANN and WIPO, including Sifynet. So the applicant initially accepted a useful handle. In this case the Supreme Court gave the domain name it helps to classify and distinguish business and helps set it online. The Court also declined that "evacuation" could be used in cases involving domain names the name is controversial²¹.

Whereas in E-commerce platforms in India used by public due to the availability, affordability, and time saving, but unfortunately these are the main targets of the cybersquatters in-order make their aims achieved. Like, making the fake product available for customer in the name of original company. And showcasing them as a dealers of the respective brands in the e-commerce portals or platforms for misleading consumers in the way of selling their own

¹⁶ Iplf. (2021, April 29). *Domain name disputes and India's cybersquatting – Part II*. IPLF. <https://www.ipandlegalfilings.com/domain-name-disputes-and-cybersquatting-in-india-part-ii/> (last visited: 30, September 2024)

¹⁷ AIR 2000 BOMBAY (27).

¹⁸ Rastogi, A. (2015, July 15). *Rediff Communication Limited v. Cyberbooth & Anr*. Indian Case Law. <https://indiancaselaws.wordpress.com/2015/07/15/rediff-communication-limited-v-cyberbooth-anr> (last visited: 30, September 2024)

¹⁹ Guo, J., & Wai, K. T. (2024, April 30). *Impact of cybersquatting on businesses*. Lexology. <https://www.lexology.com/library/detail.aspx?g=c4be6a31-43fc-46a5-8aa8-4656ef533d5e>(last visited: 1, October 2024)

²⁰ 2004 (6) SCC 145

²¹ Manara, Cédric (2005) "A Foreign Outlook On Satyam Infoway Ltd. v. Siffynet Solutions Pvt. Ltd.," Indian Journal of Law and Technology: Vol. 1: Iss. 1, Article 5. DOI: 10.55496/FHUO6458 Available at: <https://repository.nls.ac.in/ijlt/vol1/iss1/5> (last visited: 1, October 2024)

unauthorized product which apparently seems like original product²².

Nowadays particularly in social media there are many accounts which are selling unauthorized and spoofed products of a brand such as footwear of Crocs, Birkenstock, and many other products which are offered in online to make them available to consumer in order to gain profit through the fake and spoofed products of the original brand.²³

In increase in the e-commerce platforms, there is a emerging confusion in product identifying due to the domain name and trademark infringement by the cybersquatters. As there are many multinational company and organizations are victims for the cybersquatting through their domain name infringement and trademark infringement²⁴.

One of the real life example Adivasi hair oil which is trending in the e-commerce as well as social media. There are numerous of website and domain registered on the Adivasi hair oil which create a confusion to the consumer in order to purchase of these products. Whereas Adivasi hair oil is an authentic product sells by the recognized Hakki Pikki tribe but the cybersquatting in e-commerce and social media are replicating and selling the duplicate oil to the consumers. By making and selling of similar and counterfeit product of oil to mislead the customers into thinking that they are purchasing and using the authentic Adivasi hair oil product.

Due to the unauthorized products by cybersquatters, offering to the consumers which create confusion in identification and it made the company liable for the defect in the product which is created by the cybersquatters. And, also the deficiency in service and

defect in product of cybersquatters which is a spoofed product of a branded company, it creates a question of standards and brand value in public opinion at large which results in the challenges to the company which implies in reputation and brand value of the company particularly in E-commerce.

Chapter-III

The role of Internet Corporation for Assigned name and number (ICANN) and their Uniform Domain Name Dispute Resolution Policy in Domain name and trademark infringement.

The ICANN is the non-profit private agency and it has function of allotting the unique name and numbers, which it also manages the Domain name system and itself it is a managing and regulatory body it gives an IP address and unique identification number or name to a company. Then ICANN follows a complicated procedure as three criteria for assessing the possibility of cybersquatting allegation. And there are firstly examining that whether a domain name is identical and similar which creates a confusion to the trademark of a business or an organization²⁵.

Secondly, it also has the criteria of examining the cybersquatters, whether the individual holding a domain name of a brand or company has a permitted ownership or not. Finally they checks that whether it has been registered in unauthorized and fraudulent manner or they had device the trademark owner and gain profit from the sale of such domain name to the owner in future²⁶.

²² Singhanian & Partners, *Domain name squatting in India*. (n.d.). <https://singhanian.in/blog/domain-name-squatting-in-india>(last visited: 15, October 2024)

²³ Invtreetpatent. (2019, April 11). *Crocs' litigation brings clarity about the overlap between rights conferred by design registration and rights against passing off*,<https://www.invtreet.com/blogs/crocs-litigation-brings-clarity-about-the-overlap-between-rights-conferred-by-design-registration-and-rights-against-passing-off> (last visited: 15, October 2024)

²⁴ ESQwire. (2023, October 23). *Cybersquatting: Protecting your brand online*. ESQwire.

<https://esqwire.com/cybersquatting-protecting-your-brand-online/> (last visited: 15, October 2024)

²⁵ ICANN | Archives | ICANN - English. (n.d.). <https://archive.icann.org/tr/english.html#:~:text=The%20Internet%20Corporation%20for%20Assigned,name%20system%20management%2C%20and%20root> (last visited: 17, October 2024)

²⁶ Froomkin, A. M. (n.d.). *ICANN's "Uniform Dispute Resolution Policy": - Causes and (Partial) Cures*. BrooklynWorks.

<https://brooklynworks.brooklaw.edu/blr/vol67/iss3/1/> (last visited: 17, October 2024)

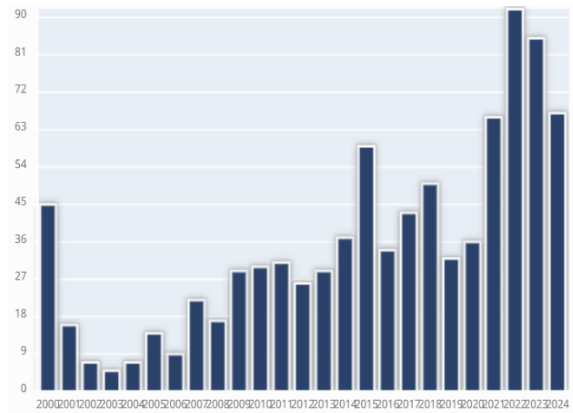
UDRP (uniform domain name dispute resolution policy)

The ICANN has executed a policy named Uniform domain name dispute resolution policy (UDRP) on October 24, 1999. Through this policy it has been authorized to deal with the domain name dispute resolution in E-commerce. In this digital age the domain investment has a prominent drawback for registrants of the domain name holder and UDRP deals with this conflicts such as between the domain name registrants and the third parties who has prior existing stake in the domain name²⁷.

WIPO experienced another record year in domain dispute cases, managing nearly 6,200 complaints in 2023, an increase of more than 7% from 2022 and a 68% increase since the start of the Covid pandemic²⁸.

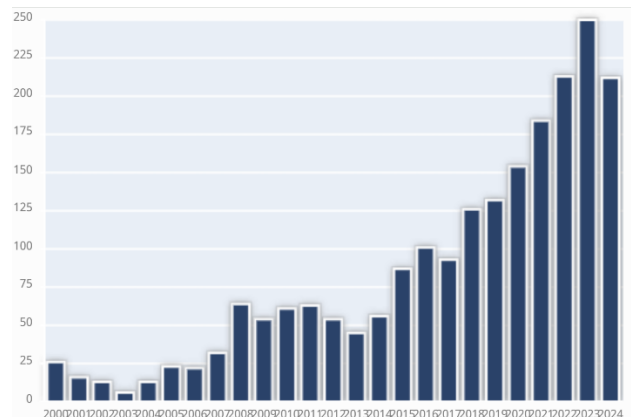
These case numbers show that WIPO's UDRP remains an important tool for brand owners to combat abuse on the Internet²⁹. In 2023, trademark owners worldwide filed a total of 6,192 cases under the UDRP and country-by-country amendments. The countries with the most applications are the United States, France and the United Kingdom³⁰.

The statistics of India in UDRP is constantly increasing complaints compared to other countries like USA and European union. Though the cases are less but the usage of UDRP is increased compared to last ten year of India. Mainly, the e-commerce sector industrial sectors are primarily involved in the domain name dispute and infringement of trademark through domain name.



(i) Complainant Filing by the Country: India's statistical data of complaint filing in UDRP

Source: WIPO domain name dispute resolution statistics³¹



(ii) Respondent Filing by Country: India's statistical data in UDRP

Source: WIPO domain name dispute resolution statistics³²

²⁷ Uniform Domain-Name Dispute-Resolution Policy - ICANN. (n.d).

<https://www.icann.org/resources/pages/help/dndr/udrp-en> (last visited: 17, October 2024)

²⁸ WIPO ADR Highlights 2023. (n.d). <https://www.wipo.int/amc/en/center/summary2023.html#:~:text=The%20WIPO%20AMC%20saw%20another,onset%20of%20the%20COVID%20pandemic.&ext=This%20chart%20illustrates%20the%20number%20of%20WIPO%20Domain%20Name%20cases,in%20the%20last%2010%20years.> (last visited: 18, October 2024)

²⁹ Record Number of Domain Name Cases filed with WIPO in 2023. (n.d.).

<https://www.wipo.int/amc/en/domains/caseload.html> (last visited: 18, October 2024)

³⁰ Jackson, K. (2024, February 19). Record-breaking number of domain name disputes in 2023: A sign of the times? Abion. <https://abion.com/record-breaking-number-of-domain-name-disputes-in-2023-a-sign-of-the-times/> (last visited: 18, October 2024)

³¹ India Country in WIPO. (n.d.). https://www.wipo.int/directory/en/details.jsp?country_code=IN (last visited: 18, October 2024)

³² India Country in WIPO. (n.d.). https://www.wipo.int/directory/en/details.jsp?country_code=IN (last visited: 26, October 2024)

In comparison of complainants and respondent of the our country India, there are larger number of respondents than the complainants which results in that the domain name infringement have take place much higher than being victim of the domain name infringement.

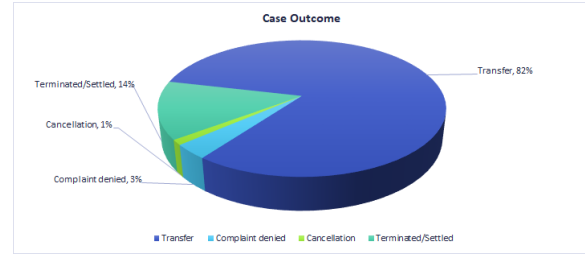
And there are some landmark case dealt by UDRP in the subject of domain name dispute and trademark. First cybersquatting case, world wrestling federation case it was the first case decided by the UDRP under WIPO, in this case the respondent created a domain name worldwrestlingfederation.com and this suit is brought by US based WWF. The WWF alleged that the domain name create by the respondent was in bad faith and it is clear violation of WWF's trademark. It was held that the domain name created by the respondent is identical and similar to the WWF's trademark which creates confusion. It has been ordered to the respondent to transfer the registration of a domain name to the complainant³³.

And in the case of Software company Google Inc v. Herit shah (2009)³⁴, World Intellectual Property Organization (WIPO) ordered Indian teenager Harita Shah to transfer the Use the domain name "Googblog.com " to Domain-Google Inc. (Google). Industry observers have seen and this is a case of cybersquatting, saying that Google was capable of protecting his intellectual property rights (DPI).

In the case of TATA sons v. Advanced Information Technology Association (AITA)., the present case, the defendant were registered a domain name of tata.org., the complainants alleged that the domain registered by the respondent creates the confusion and violates the trademark of the company's identity. It was held that the ICANN ordered the respondent to transfer the domain name to the TATA sons³⁵.

The case outcomes overall from the UDRP is not that satisfying in matters of domain name and trademark

infringement globally. According to the statistical available in the WIPO about the overall outcomes of the case dealt by the UDRP.



Source: Record Number of Domain Name Cases filed with WIPO in 2023³⁶.

In the overall case outcomes, there are major portion of the cases are transferred as it is stated from the statistical data. And the settled or terminated cases are 14% and it increasing from the past 10 years. The efficiency of UDRP is eventually growing and their ratio in settling the cases were also making changes.

While the registrant must demonstrate that the domain name is within a reasonable interest, the complainant must demonstrate that the registrant enrolled the domain name in bad faith. Despite the fact that the policy defines phrases like "bad faith," These phrases, along with "rightful interest," are sometimes not all-inclusive. It provides the panel with levy. and the freedom to interpret rulings on the same matters.

Achieving a unified worldwide dispute settlement process is hampered by the UDRP's limited application. Issues pertaining to ccTLDs and those arising from newly launched alternative service providers, such as new.net, are not covered by the UDRP.

Furthermore, because the UDRP is still not in effect as a legislation in a number of nations, it fails to incorporate any preventative regulatory award of

³³ Arbitration and Mediation Center. (2000, January 18). *WIPO Domain Name Decision: D1999-0001*. <https://www.wipo.int/amc/en/domains/decisions/html/1999/d1999-0001.html> (last visited: 26, October 2024)

³⁴ Arbitration and Mediation Center. (2009, May 15). *WIPO Domain Name Decision: D2009-0405*. <https://www.wipo.int/amc/en/domains/decisions/html/2009/d2009-0405.html> (last visited: 26, October 2024)

³⁵ Arbitration and Mediation Center. (2000c, April 10). *WIPO Domain Name Decision: D2000-0049*. <https://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0049.html> (last visited: 27 October 2024)

³⁶ *Record Number of Domain Name Cases filed with WIPO in 2023*. (n.d.-c). <https://www.wipo.int/amc/en/domains/caseload.html> (last visited: 28, October 2024)

"exemplary damages" to aggrieved party whose intellectual property was allegedly breached by the cyber-squatter. The possible remedies offered to an aggrieved party consists of cancellation of the cyber squatter's registered domain name or transferring the website's domain name authorization to the plaintiff.

CONCLUSION

Cybersquatting is one of the menace which has growing constantly in the era of digital ages with the advancement of technology. It has lot effect in the field of business both economically and the reputation of the company through the infringement of domain name and cybersquatting. In E-commerce expansion it creating a room for the cybersquatters to make their product available through the infringed domain name and trademark with the duplicated and counterfeited products to the consumers. India's regulatory framework for cyberspace is still evolving, but as the industry grows. To increase reliance on IT services, regulatory norms and policies need to be developed accordingly Technological development One of the most important aspects is the growing role of domain names important in the e-commerce industry. To do this, several changes are recommended according to the Trade Marks Act 1999. Regulatory norms and policies must be followed to keep up with technological developments develop accordingly. The domain name system is becoming more and more important, especially as there is an increase in e.g trade. Domain words are of great value as they allow the user to differ only from the trademarks If two or more users can use the same or similar trademarks for goods and services then there is this rule does not apply to the domain name which follows the first come first reserve basis. As traditional industries and new industries are increasingly dependent on IT based services, it is imperative to update Indian laws related to cyberspace while they are still in force in their early stages.

SUGGESTIONS

- There is need for the legislation in order to control the cases of cybersquatting. Like USA has a prominent legislation named Anti cybersquatting consumer protection act (ACPA) which as significantly controlled the cybersquatting by

making mandate rules and imposing fines with strict regulation.

- The changes in the Indian Domain Name Dispute Resolution Policy (INDRP) which impacts the cybersquatters and makes the rules stricter in nature in order to minimize the rate of domain name and trademark infringements in India. Also align the procedure, rules and regulations of INDRP with UDRP (Uniform Domain Name Dispute Resolution Policy) rule and regulation for the betterment and proper implications of law which helpful for the domain name and trademark holder protection.
- There is requirement of expanding the scope of the existing legislation like Information Technology Act,2000 , Arbitration Act, 1996, and also the Trademark Act, 1999. At present there is no proper definition or word "cybersquatting" in any legislation which creates a absence and silence of legislation on ongoing and growing problem in Infringement of domain name and trademark. Including the word "cybersquatting" in legislation could help the Judicial system as well as victims of the cybersquatting.
- The specifying "domain name" in the Trademark Act, 1999 under section 2 (m) in the definition of Mark and there is need to explicitly mention the domain name and include it under the said section might help for implementation of law in the digital era particularly in E-commerce.

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