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Cybersquatting in India: Jeopardy to Cyberspace

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ABSTRACT

Cyber-squatting is a general practice where companies desire to obtain domains names which are easily identified with their established trademarks. It is an extremely crucial domain dispute prevalent across the globe. Looking from the Indian perspective cyber-squatting has been prevailing since the rise of internet in the subcontinent. Courts in India has dealt with cases related to cyber-squatting, as of now there is no such law in India which prohibits cyber-squatting. India needs drastic measures for reframing the laws in order to bring into account the internet reality. One way is by strengthening the domain dispute and brand protection laws which result in greater confidence among foreign investors and will led to go a long way in affording greater development for India.

I. LITERATURE REVIEW

Jagdish, “A critical study on the Menace of Cyber-squatting and the Regulatory Mechanism”.

This Article mainly focus on the understanding of the trademark protection over the internet along with landmark cases of cyber-squatting, Indian trademark law and legal remedies prevailing.

Jaiswal Rupal, “Do we need a law to clean Cyber-squatting”.

This paper highlighted the importance and urgency for a law in India against cyber-squatting.

Dr. Singh Harman Preet, “Cyber-squatting and role of Indian Courts: A Review”.

This paper highlighted the legal scenario of cyber-squatting in India and the role of Indian judiciary.

II. OBJECTIVES

- To throwing a light on the issue of cyber-squatting in India.
- To analyze the impairment arising due to cyber-squatting.
- To analyze the need for cyber-squatting laws in India.

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- To highlight the urgency of an Indian legislation to combat cyber-squatting.
- To provide suggestions towards prevention of cyber-squatting.

III. METHOD

The study follows doctrinal research method in collection, compilation, organization and systematization of the data. The data has been collected from various sources primary and secondary.

IV. PURPOSE AND LIMITATION

This paper is an attempt to understand the cyber-squatting in India and the menace that it has arise. It involves the analysis of cases relating to cyber-squatting and demand for law in order to combat cyber-squatting in India. Every research has its limitations and since the topic of cyber-squatting is vast in itself, it is difficult to study each and every factor related to it, considering the fact that the global pandemic of COVID-19 has made universities and colleges go virtual and therefore resulting in access to limited resources and data.

Hypothesis

Cyber-squatting is a crime without procedure of law.

V. INTRODUCTION

Cyber-squatting means unauthorized registration and use of internet domain names that are identical or similar to that of trademarks, service marks, company names, or personal names. For example, using a brand name to increase search results for another product is a traditional infringement, pretending to be or represent a brand however is cyber-squatting. Cyber-squatting in India has increased drastically in the last few decades and has put adverse effects on the rights of Intellectual Property holders. Cyber-squatters can severely damage the brand and trademark owner simply by using the domain name of their brand. In India in the absence of requisite cyber laws it is difficult to prevent cyber-squatting. The cases of cyber-squatting are decided under the relevant position of trademark laws.

VI. CYBERSQUATTING

Cyber-squatting is a practice of registering the domain name that is likely to be wanted by another person, business, or organization in the hope that it can be sold to them for a profit in the Internet. It involves the registration of trademarks and trade names as domain names by the third parties, who do not possess any rights over such domain names. Cyber-squatters or bad faith imitators register such trade-marks belonging to third parties with the common

motive of trading the reputation and goodwill of such third parties by either confusing potential customers and later selling the domain name to the rightful owner at higher profit.

Domain Name

Every resource over the Internet such as web page or a file of information has its own address known as Uniform Resource Locator (URL). A domain name is part of that address which is assigned to each computer for the service in the Internet. Domain name take the names to a series of number known as IP address. These numbers are then linked with an easily read and remembered address known as the domain name. The domain name need not change even if the computer or services are change, whereas the series of numbers get change. The domain name is intended to be more meaningful to human beings than the series of numbers. People who are using the domain name can therefore choose easily recognizable names in cyberspace.

VII. HISTORY OF CYBERSQUATTING

The practice of cyber-squatting originated from the time when most business was not savvy about the commercial opportunities over the Internet. Some enterprises registered the names of well known companies as domain names with an intention of selling the names back to the companies when they finally woke up. Panasonic, fry's electronics, Hertz and Avon were amongst the victim of cyber-squatting. Opportunities for cyber-squatters are rapidly diminishing as most the company are now know that nailing down domain names is their higher priority in order to survive in the global market.

VIII. TYPES OF CYBER SQUATTING

Typo Squatting: It involves registering the domain name similar to that of popular trademark by misspelling intentionally the original trademark. These cyber-squatters bet on the chances that users will misspell the original trademark and will be directed to their webpage site.

Identity Theft: It is perpetrated by monitoring the expiry date of the famous domain names by online applications and then registering them in the name of the monitors as soon as the previous registration expired. This is done in order to cheat the visitors of the previous website who visit them under the impression that it still belongs to the true owner.

Name Jacking: This is an act of registering the domain name having a goodwill of its own which is reflective of endorsement by the person whose name is included in the domain name. These cyber-squatters take advantage of the diversion of traffic to target the person whose name the domain is register.

Domain Name squatting: It refers to the practice of registering an already registered domain name in order to extort the money from the original owner of the trademark.

IX. CYBERSQUATTING IN INDIA

There has been lot of instances of cyber-squatting in the past few years in India. The courts always dealt with matters related to domain name dispute and cyber-squatting. Unlike many developed countries, India does not have any domain name protection related law and the cases are decided under Trade Mark Act, 1999.

In India one of the judgments on cyber-squatting was from the Bombay High Court in case of Rediff Communication versus Cyber booth. In which the court was in the opinion that the value and importance of a domain name is just like a corporate asset to the company. In this case the defendant had registered their domain name radiff.com which was similar to rediff.com. The Court was on the opinion that internet domain names are of same importance as a valuable corporate asset and such domain name is more than an Internet address and is entitled to get equal protection to that of trade mark. The court gave the decision in the favor of the plaintiff.

Case Study

The following are the notable cyber-squatting cases that has taken place in India.

- **Yahoo Inc. v Akash Arora & Anr.²**

The famous Yahoo case, yahoo Inc. the U.S. based company sued the defendant in India who has register the similar domain name Yahooindia.com and used their trademark. The whole content over the website Yahooindia.com was very much similar to that of Yahoo Inc. The High Court of Delhi passed an order restraining the defendant from using Yahoo as their trademark or the domain name as they infringe their copyrights. In this whole matter Indian Courts held that a domain name is very much entitled to the same protection as the trademark and observe that the law of trademark is applied to the virtual world as well. This practice is known as cyber-squatting which starts when most of the organizations were unaware about the business on the Internet platform.

- **Rediff Communication Limited v Cyber booth³**

Another judgment in related to cyber-squatting was by the Bombay High Court in Rediff Communication Limited v. Cyber booth and another.

² Yahoo!, Inc. vs Akash Arora & Anr. on 19 February, 1999 Delhi High Court.

³ AIR 2000 Bombay 27.

Under this case, the defendant had registered their domain name as 'radiff.com', which was similar to the plaintiff domain name 'rediff.com', court delivered in favour of the plaintiff where the court was in opinion that the domain name contains same value just like corporate asset as the brand value are attached to it. It went that the domain name is much more than an internet address and entitled to get protection equal to that of registered trademark.

X. NEED FOR DEFINITE CYBER LAWS IN INDIA

1. To combat cyber-squatting and to punish the offenders there is an immediate need to bring a definite and strict laws.
2. The new law should contain legal solutions for trademark owners against the defendant so that it will be easy for the plaintiff to obtain statutory damages and claim compensation for the damages for registering in bad faith.
3. There is a need for the law which would act as a weapon for protection of the intellectual property for the trademark holders in the virtual world.

XI. SUGGESTIONS AND CONCLUSIONS

Various laws can be amended to introduce cyber-squatting as an offence in India. These laws include the Information Technology Act, 2000, the Trade Marks Act, 1999, and the Indian Penal Code, 1860. Alternatively, it can be added as a criminal offence under the Information Technology Act 2000 or the Indian Penal Code 1860 or as a civil offence under the Indian Trade Marks Act 1999. India can also draw an inspiration from Nigeria to establish a regulatory authority similar to what has been envisioned in Chapter VI of the Information Technology Act 2000. This regulatory authority can be granted powers to adjudicate disputes related to domain names and cyber-squatting.

Regulatory norms and policies need to keep evolving with technological advancements. All the traditional industries, along with upcoming sectors, are becoming increasingly reliant on IT-based services. While the Indian laws on issues pertaining to cyber space are still in their embryonic stage, it is easier to bring in significant changes at this point so that we can quickly sync with the advancements.

The reason of growing importance in domain name system is the e-commerce. Domain name hold importance because there can be only one user of a domain name unlike that of trademark law where there can be two or more users of a same or similar trademark for the goods and services causing confusion or dilution. But this kind of provision is not applicable

in the case of domain names. Since, the domain system follows the first come, first served policy. Once a person registers a domain name similar to a trademark, any other person using a similar mark is denied the registration of another domain name similar to that trademark. That means only one user is allowed to use a particular domain name. This is the main reason why trademark owners prefer to get their trademarks registered as their domain names for the business.

Using the ICANN⁴ Procedure

In 1999, ICANN started to implement the Uniform Domain Name Dispute Resolution Policy (UDNDRP)⁵ a policy to resolve domain name disputes. This international policy results in an arbitration of the dispute not litigation. An action can be brought by any person who complains regarding the issue:

A domain name is identical and confusingly similar to that of trademark in which the complainant has rights over the domain name and owner has no rights or legitimate interests in the domain name.

The domain name has been registered to be use in bad faith. All of these elements must establish in such order where the complainant prevail. If the complainant prevails, the domain name will be canceled and transfer to the complainant. However, financial remedies are still not available under the UDNDRP. Information about initiating a complaint is provided at the ICANN website.

⁴ The Internet Corporation for Assigned Names and Number.

⁵ WIPO Guide to the Uniform Domain Name Dispute Resolution Policy (UDRP).