



NAVIGATING DOMAIN NAME DISPUTES: UNDERSTANDING THE RESOLUTION MECHANISM

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ABSTRACT:

The surge in internet users has amplified domain name disputes, particularly with the escalating conflicts between domain names and trademarks. While a domain name primarily serves as an internet address allocated by ICANN (Internet Corporation for Assigned Names and Numbers), trademarks signify a service or product origin. In India, legislative gaps exist regarding explicit domain name dispute resolution, despite the potential overlap with the Trade Marks Act of 1999. The Information Technology Act of 2000, focused on cybercrimes, curiously omits provisions for domain name disputes and cybersquatting. Victims might find recourse under the Trade Marks Act, considering domain names as trademarks based on usage and brand recognition. However, not all domain names enjoy trademark protection. A domain name, comprising three parts, stands as a unique internet address, simplified for human memory and translated to an IP address through the Domain Name System (DNS). Conversely, trademarks distinguish goods or services' origins or defined qualities. To utilize a trademark as a domain name, owners must register it with an ICANN-accredited registrar. While a domain name functions as an internet identifier, it isn't inherently a trademark. The conflict often arises between business interests and the use of names.

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

Introduction:

The landscape of intellectual property rights encompasses a spectrum of protections, from patents shielding technological innovations to copyrights preserving the artistic and creative realms. Trademarks, guarding brands and market identities, persist as essential components of this legal framework¹. In contemporary United Kingdom law, the concept of intellectual property, often referred to as "IP" or "IPR" (intellectual property rights)², extends beyond conventional legal boundaries. It has emerged as a catch-all term encompassing various original ideas, irrespective of their legal protection.

The unprecedented evolution of Information Technology (IT) has redefined the global paradigm. Technological advancements have become ingrained in our daily lives³, altering our thinking and actions. This technological leap has bridged global distances and facilitated an unimpeded flow of information across borders⁴. Currently, there are an estimated 19 million registered domain names, with an additional forty thousand being registered daily⁵. There are more than 350 million domains

¹<https://www.wipo.int/about-ip/en/> 15/05/2021 at 16:52

²Neeraj Pandey, *Khushdeep Dharni, Intellectual Property Rights*, Phi Learning Pvt. Ltd., 2014, P1.

³ Khosrow-Pour, D.B.A., *Mehdi, Collaborative Information Technologies*, Idea Group Inc (IGI), 2001, P 86.

⁴ World Economic Outlook, *Cyclical Upswing, Structural Change 2018* Chapter 4, P.1

⁵<https://www.imf.org/en/Publications/WEO/Issues/2018/03/20/world-economic-outlook-april-2018> visited on 15/07/2021 at 17:26

⁵National Research Council *Division on Engineering and Physical Sciences Computer Science and Telecommunications Board, Committee on Internet Navigation and the Domain Name System: Technical Alternatives and Policy Implications, Signposts in Cyberspace: The Domain Name System and Internet Navigation*, National Academies Press 2005, P114.



registered worldwide, which equates to one domain name for every 22 people on Earth!⁶ The internet's exponential expansion continues unabated, emphasizing the necessity to shift domain name registration from governmental control to a private-sector domain. This transition aligns with the fundamental principles of the Internet: accessibility, liberty, and healthy competition.

In the contemporary era, the crucial question arises, Is a domain name tantamount to a trademark?⁷ It should logically find protection under the country's Trade Marks Act if classified as a trademark. However, this prompts a subsequent query: Why do these entities not share the same registration authorities if a domain name qualifies as a trademark? The divergence in governing bodies, notably the Internet Corporation for Assigned Names and Numbers (ICANN) headquartered in the USA, further complicates this intersection between Internet governance and trademark laws within individual countries.

Domain names encompass a bundle of rights, with some considerations positioning them as intellectual property. They bear resemblances to other forms of property, such as a bank account or even a physical address like that of a house. Their intellectual nature and functional role place them within the realm of property ownership, where certain protections and rights are vested.

In situations where a domain name exists but isn't registered as a trademark, it still holds a distinct identity and value, akin to an unregistered bank account or a property without official ownership records. However, when a conflict arises between a registered trademark and an unregistered domain name, precedence and priority typically lean towards the registered trademark. This approach emphasizes the significance of established trademarks in determining rights and priorities, particularly in legal conflicts or disputes.

Research Problems

1. Evolving nature of domain names and re-evaluating their status as trademarks
2. Legal feasibility and protection of domain names as trademarks contemporary perspectives
3. Contemporary legal frameworks analyzing policies addressing domain name and trademark conflicts

Objective:

The objective of this research is to comprehensively explore the intersection between domain name disputes and trademark laws, specifically focusing on the following key aspects:

Classification of Domain Names: Investigate the evolving nature of domain names and their classification as trademarks, analyzing their functional resemblance to trademarks within the legal framework.

Legal Status and Protection: Explore the feasibility and mechanisms available for the registration and legal protection of domain names as trademarks, examining recent legislative adaptations or precedents that support or challenge their classification.

Legal Framework and Conflicts: Analyze the current legal frameworks and policies governing conflicts between domain names and trademarks, assessing their efficacy in resolving disputes within the evolving landscape of online branding and commercial practices.

⁶<https://diggitymarketing.com/web-hosting/how-many-domain-names/> visited on 16/07/2021 at 08:26.

⁷*International Association for the Protection of Industrial Property*H. Le Sodier, 1998, P 102.



Status of Domain Name in Indian Context:In the context of India, the legal landscape surrounding trademarks and domain names is governed by the statutes defining the jurisdiction of district and high courts. While international bodies like ICANN, WIPO, and UDRP handle domain name disputes globally, India has seen pivotal cases decided by its Hon'ble Supreme Court and various high courts.

In the case, the Supreme Court held that domain names transcend being mere website addresses, also serving as specific websites distinguishing goods and services. This distinction between 'Domain Name' and 'Trade Name' impacts the scope of their protection. A trademark, governed by the laws of a specific country, allows multiple registrations worldwide, as per Section 1(1) of The Trademark Act, 1994⁸.

Contrastingly, the universality of internet access challenges the effectiveness of national laws in protecting domain names, considering their global accessibility regardless of geographical boundaries. The registration principle of "First-Come-First-Served"⁹ for domain names amplifies this complexity.

In the case of, the Bombay High Court recognized domain names as more than mere internet addresses, equating them to trademarks. They are identifiers of internet sites, much like a person's name identifies an individual, warranting an equal level of protection as a trademark¹⁰.

The case of brought significant clarity to the treatment of domain names within the legal framework. The High Court of Calcutta emphasized the essentiality of a domain name being unique and distinctive, integral to establishing a singular brand identity. Acknowledging domain names as crucial elements of commercial endeavors, the court recognized their role in identifying and distinguishing businesses, their goods, services, and specific locations. These judicial interpretations have significantly impacted India's legal landscape, specifically concerning the registration and protection of domain names as trademarks¹¹.

Regarding the procedure for registering a domain name, it initiates with the selection of the desired domain name, subsequently submitting it to the trademark registrar. The essential information required includes the preferred terms for the domain name, relevant payment details, and personal details of the registrant, encompassing their name, address, and company information if applicable. Once this data is provided to the registrar, the registration process commences. The registrar files this information on the master server. If no objections surface during this process, the domain name gets registered in the applicant's name, thus solidifying it as the exclusive intellectual property of the holder.

However, the divergence remains clear: domain names and trademarks differ in their registration authority and jurisdiction. While national courts handle trademark disputes, the global nature of domain names prompts the question of international laws and treaties governing conflicts. Should such conflicts arise, the dilemma persists—should they be protected by trademark laws or referred directly to international authorities like ICANN and WIPO? This raises the necessity for a clearer understanding and delineation of the role of international law and treaties in resolving domain name disputes, especially in scenarios where conflicts transcend national borders. The integration of global and national legal perspectives becomes imperative in navigating these intricate intersections between trademarks and domain names.

Domain name status internationally:

⁸ Satyam Infoway Ltd. v/Sify Net Solution Pvt. Ltd 2004 6 SCC 145

⁹ Alison Clarke, Paul Kohler *Property Law: Commentary and Materials* Cambridge University Press, 2005, P 103.

¹⁰ Rediff Communication LTD v/sCyberbooth 1999 (4) Bom.CR 278 Bombay High Court

¹¹ Rajat Agarwal v. Spartan Online GA 2783 (2017) CS 35



The concept of domain names has transcended mere internet addresses, evolving into a bundle of rights that some countries regard as intellectual property. The United Nations, particularly through the World Intellectual Property Organization (WIPO), serves as a crucial forum for discussing these claims. As the demand for greater market access in international trade surged, the General Agreement on Tariffs and Trade (GATT) recognized the critical role of intellectual property. The Paris Convention on Industrial Property, the Patent Cooperation Treaties, the Berne and Rome Conventions on Copyright, the Madrid Agreement on trademarks, and other evolving international agreements highlight the growing significance of intellectual property in global trade.

While individual nations have their distinct laws and policies governing domain names and trademarks, conflicts at the international level are not governed by domestic trademark acts¹². Instead, bodies like WIPO, ICANN, and the Uniform Domain-Name Dispute-Resolution Policy (UDRP) step in to resolve these conflicts¹³. This distinction underscores the difference between national and international jurisdictions, forming the core inquiry of this study: navigating the conflicts and confusions arising between these differing levels of governance.

Fundamentally, a domain name acts as an address for a computer on the internet. It's intended to be easily identifiable and memorable, such as yahoo.com or wipo.net. The Domain Name System (DNS) governs this addressing system¹⁴, providing human-friendly identifiers to internet locations. For instance, www.shaddi.com is a recognizable domain name, corresponding to an Internet Protocol (IP) address like 302.199.133.115, serving as its digital equivalent. The consideration of domain names as intellectual property varies globally. For instance, Iran recognizes domain names as intellectual property, while other nations hold diverse perspectives on this issue. This diversity in national approaches forms a crucial backdrop against which the study seeks to explore and untangle the complexities and discrepancies in the treatment of domain names as intellectual property across the world.

National-level Authorities to Dispute Resolution:

At the national level, domain name disputes are addressed and resolved through a variety of authorities, including the High Court and the Supreme Court, which play pivotal roles in interpreting and applying the law within a country's legal system¹⁵.

High Courts:

The High Court, an esteemed judicial body, plays a crucial role in resolving domain name disputes. With its extensive jurisdiction and authority, the High Court often deals with complex legal disputes, including those related to intellectual property and commercial law. Through significant cases and rulings, the High Court sets legal precedents and provides interpretations crucial in resolving domain name conflicts¹⁶.

Supreme Court:

The apex judicial authority, the Supreme Court, often intervenes to provide final and definitive decisions in domain name disputes. Its interpretations and judgments set binding legal precedents

¹² Myriam Dunn Cavelety, Sai Felicia Krishna-Hensel, Victor Mauer, *The Resurgence of the State: Trends and Processes in Cyberspace Governance* Ashgate Publishing, Ltd., 2007 P 105

¹³ *The Journal of Small and Emerging Business Law* Volume 6 Northwestern School of Law of Lewis & Clark College, 2002 P206.

¹⁴ Mariana Hentea *Building an Effective Security Program for Distributed Energy Resources and Systems* John Wiley & Sons, 2021 P 274

¹⁵ Dispute resolution process in india, Indian Law Institute, Institute of developing economies (IDE-JETRO) March 2002. P26.

¹⁶ Dr. J.N Pandey *Constitution of India* Central Law Agency 2016 P592



and offer conclusive decisions on contentious issues, ensuring uniformity and stability in the legal system¹⁷.

INDRP (IN Domain Name Dispute Resolution Policy):

India, in its approach to resolving domain name disputes, has implemented the INDRP, modeled after ICANN's UDRP (Uniform Domain-Name Dispute-Resolution Policy)¹⁸. INDRP outlines a structured mechanism for resolving disputes related to domain names registered under the .IN domain. It offers a streamlined process for handling conflicts, ensuring fair and efficient resolution.

Dispute Resolution under INDRP:

The INDRP operates as a mechanism to swiftly and effectively address disputes concerning domain names under the .IN domain. It typically involves a structured arbitration process where disputing parties present their cases before an appointed arbitrator or panel. This panel reviews the evidence, considering aspects such as trademark infringement, bad faith registration, or cybersquatting, and issues a decision to resolve the dispute. The INDRP aims to provide an accessible and efficient process for resolving domain name conflicts, aligning with international best practices and principles outlined in the UDRP. Through these national-level authorities and policies like the INDRP, India has established a structured framework for resolving domain name disputes, ensuring fairness, efficiency, and alignment with global standards in dispute resolution¹⁹.

International-level Authorities to Dispute Resolution:

At the international level, domain name dispute resolution involves influential bodies like ICANN, WIPO, and mechanisms such as the Uniform Domain-Name Dispute-Resolution Policy (UDRP). These entities and policies serve as global authorities, instrumental in addressing and mediating conflicts that transcend national boundaries, ensuring uniformity and fairness in resolving domain name disputes.

ICANN (Internet Corporation for Assigned Names and Numbers):

ICANN stands as a paramount global authority governing the internet's domain name system. It oversees the allocation and management of domain names, IP addresses, and protocols essential for the Internet's operation. Additionally, ICANN formulates policies that guide the domain name registration process, ensuring stability and coordination in the global domain name system²⁰.

WIPO (World Intellectual Property Organization):

WIPO operates as a significant international forum dealing with intellectual property matters, including domain name disputes. It provides a platform for mediation, arbitration, and other dispute resolution services, fostering collaboration among parties involved in domain name conflicts. WIPO's Arbitration and Mediation Centre offers specialized expertise in handling intellectual property disputes, including those related to domain names²¹.

UDRP (Uniform Domain-Name Dispute-Resolution Policy):

¹⁷ Id, 530

¹⁸ [https://www.registry.in/domaindisputeresolution#:~:text=IN%20Domain%20Name%20Dispute%20Resolution%20Policy%20\(the%20%22Policy%22\),IN%20or%20](https://www.registry.in/domaindisputeresolution#:~:text=IN%20Domain%20Name%20Dispute%20Resolution%20Policy%20(the%20%22Policy%22),IN%20or%20). Visited on 16/07/2021 at 12:12 pm

¹⁹ Yatindra Singh, *Cyber Laws: A Guide to Cyber Laws, Information Technology, Computer Software, Intellectual Property Rights, E-commerce, Taxation, Privacy, Etc. Along with Policies, Guidelines and Agreements* Universal Law Publishing, 2010 P103.

²⁰ David Lindsay *International Domain Name Law: ICANN and the UDRP* Bloomsbury Publishing, 2007 P 53.

²¹ https://www.wipo.int/portal/en/index.html?gad_source=1&gclid=CjwKCAiA9dGqBhAqEiwAmRpTC3NXHzmaJ3AUTL3hG076ZgRMn-giUjn8buwmQx9r8Yoyd00cVahaqxoCgXEQAvD_BwE



UDRP, established by ICANN, is a widely recognized and adopted policy for resolving domain name disputes. It provides a streamlined, cost-effective mechanism for addressing conflicts concerning domain names. Under UDRP, an aggrieved party can file a complaint against a domain name registrant, citing instances of bad faith registration, trademark infringement, or cybersquatting. An impartial panel evaluates the evidence and issues a decision to resolve the dispute, which might involve transferring or canceling the contested domain name²².

Conclusion and suggestion

In conclusion, the complexities and ambiguities surrounding domain name disputes, particularly in the context of trademarks, reflect the evolving landscape of intellectual property rights within national and international frameworks. The dichotomy between domain names and trademarks persists, emphasizing the need for comprehensive understanding and alignment within legal systems.

The Indian legal landscape, as evidenced through significant cases and judicial interpretations, underlines the transformative role of domain names beyond mere internet addresses. The impact of these decisions, including the recognition of domain names as distinctive elements of commercial identity, highlights the growing need for robust legal frameworks that explicitly address the intersection between domain names and trademarks. While both domain names and trademarks share similarities as distinct identifiers, the nuances between them warrant unique considerations. The inadequacy in explicit legislative provisions for domain name disputes, particularly in India, underlines the imperative for legal adjustments to bridge the gap between domain name regulation and trademark laws.

International mechanisms and institutions, such as ICANN, WIPO, and the UDRP, offer invaluable support in addressing disputes transcending national boundaries. However, the varying treatment of domain names as intellectual property across nations signifies a need for comprehensive international agreements and forums to resolve conflicts uniformly.

Suggested avenues for further exploration include:

Legislative Adjustments: Urgent revisions or amendments within national legal frameworks to explicitly address domain name disputes and their integration with trademark laws.

Clarification on Domain Name Status: Uniform international agreements or guidelines clarify the status of domain names as intellectual property, resolving disparities between national laws.

Enhanced International Collaboration: Strengthened collaboration among international bodies like WIPO, ICANN, and local authorities to create standardized protocols for resolving domain name disputes and aligning them with trademark laws.

Increased Awareness and Education: Greater education and awareness programs regarding the nuances between domain names and trademarks for businesses, legal professionals, and the public to minimize conflicts and ensure better compliance.

Finally we can say, the harmonization of laws, frameworks, and global agreements becomes imperative to navigate the evolving intricacies in the domain name landscape and its intersection with trademark laws. Such adjustments and unification are essential for the equitable resolution of domain name disputes on both national and international platforms. Domain name has bundle of rights it can also consider as an intellectual property.

²² Id, 99