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LAWS AND CRIMES IN CYBER WORLD WITH REFERENCE TO CYBER-SQUATTING OF DOMAIN NAME: INDIAN PERSPECTIVE

MS. MAYURA BORDE

Assistant Professor,
Dept. of Law,
Tilak Maharashtra Vidyapeeth, Pune

Abstract:

As society goes on changing the nature of crime also changed. In this 21st century cyber crime is emerging concept of crime. In this present context to tackle this cyber crime legislation is of utmost importance. For this various issues are unanswerable like Issue of Jurisdiction, Investigation, lack of Proper authority, etc. In India Information Technology Act, 2000 is the only legislation on cyber crime, wherein no specific provision has been made for Cyber-squatting. In this Paper the concept of Cyber-squatting, Domain Name, Policies for resolving Domain Name Dispute has been made.

Introduction:

The business world was resisting the need for the Internet as a tool for success before 1999. They didn't find the need to register their trademarks as domain names. However, cyber squatters did see the increasing importance of the Internet, and saw the businesses making. This results into practice of cyber-squatting. Cyber squatters took advantage of those companies by registering domain names identical or similar to the business trademarks. Domain name registrars accept all applications for domain names by applicants unless that exact identical name is in use. After the cyber squatter has the domain name registered, the company can no longer have their trademark as their domain name. This causes a problem since customers and clients frequently try to find businesses online. We will discuss cyber crime with respect to cyber-squatting, laws in dealing with it and policies to resolve Domain Name Dispute.

Cyber Offences :

Cyber offences are the unlawful acts which are carried in a very sophisticated manner in which either the computer is the tool or target or both. Cyber crime usually includes:

(a) Unauthorized access of the computers
(b) Data diddling
(c) Virus/worms attack
(d) Theft of computer system
(e) Hacking
(f) Denial of attacks
(g) Logic bombs
(h) Trojan attacks
(i) Internet time theft
(j) Web jacking
(k) Email bombing
(l) Salami attacks

(m) Physically damaging computer system.

The offences included in the IT Act 2000 are as follows[1] :

1. Tampering with the computer source documents.
2. Hacking with computer system.
3. Publishing of information which is obscene in electronic form.
4. Penalty for misrepresentation
5. Penalty for breach of confidentiality and privacy
6. Penalty for publishing Digital Signature Certificate false in certain particulars
7. Publication for fraudulent purpose
8. Act to apply for offence or contravention committed outside India
9. Confiscation

Concept of Domain Name:

Domain names are host names that identify Internet Protocol (IP) resources such as web sites. Domain names are formed by the rules and procedures of the Domain Name System (DNS). An important purpose of domain names is to provide easily recognizable and memorisable names to numerically-addressed Internet resources. This abstraction allows any resource (e.g. website) to be moved to a different physical location in the address topology of the network, globally or locally on an intranet. Such a move usually requires changing the IP address of a resource and the corresponding translation of this IP address to and from its domain name. The original role of a domain name was to provide an address for computers on the Internet. The Internet has, however, developed from a mere means of communication to a mode of carrying on commercial activity. With the increase of commercial activity on the Internet, a domain name is also used as a business identifier. Therefore, the domain name not only serves as an address for Internet communication, but also identifies the specific Internet site. In the commercial field, each domain name-owner provides information/services, which are associated with such domain name

Every business or an individual tries to identify itself to its users through its unique brand name and its symbol. With the growth of internet as a platform for business to market and sell their products the companies trading online try to acquire a domain name which is easy to remember and relates to their product or trademark. It is an alphanumeric address given to a business or an individual

In case of Travel India times vs. India times Travel[2] Hon'ble Supreme Court observed that a *"Domain name is chosen as an instrument of commercial enterprise not only because it facilitates the ability of consumers to navigate the internet to find websites they are looking for, but also at the same time serves to identify and distinguish the business itself or its goods or services and to specify its corresponding online internet location. Consequently a domain name as an address must of necessity be peculiar and unique and where a domain name are used in connection with a business the value of maintaining an exclusive identity becomes critical"*

Cyber- squatting:

Cyber-squatting is registering, selling or using a domain name with the intent of profiting from the goodwill of someone else's trademark. It generally refers to the practice of buying up domain names that use the names of existing business with the intent to sell the names for a profit to those

businesses.

The word "cyber squatting" is not defined under the Indian Laws. However, Cyber squatting (also known as domain squatting), according to the United States federal law known as the "Anti cyber squatting Consumer Protection Act", Cyber-squatting *is registering, trafficking in, or using a domain name with bad faith intent to profit from the goodwill of a trademark belonging to someone else"*. The cyber squatter then offers to sell the domain to the person or company who owns a trademark contained within the name at an inflated price.

Under Indian context, If Cyber-squatting has been committed then in Information Technology Act, 2000, no specific provision has been made to deal with it so that Indian Judiciary by Interpreting provisions of Trademark Act applies law of Passing off to the cyber-squatting cases.

Cyber-squatting as an offence:

One common definition of cyber crime is *"any activity in which computers or networks are a tool, a target or a place of criminal activity*"[3]. One example for an international approach is Art.1.1 of the Draft International Convention to enhance protection from cyber crime and terrorism (CISAC) [4]points out that cyber crime refers to an act in respect to cyber systems.

Considering the nature of cyber-squatting and the means to it, it can be said that it is not less than blackmailing or extortion[5]. Mercer, 2003, opines that cyber-squatting can be stated to be "*commercial research blackmail*" which occurs when the blackmailer specifically conducts research in order to blackmail the victim who researches those domain names corresponding to popular trademarks.

Under Indian context same analogy can be imported wherein cyber-squatting can be qualified to be an offence of criminal intimidation under section 503 of Indian Penal Code, 1960. Though it might neither straight way apply with respect to competitor grabbers who receive independent benefit from the victim and can only be guilty for unfair competition practice which is a civil wrong[6] or with respect to sentencing[7]. But for ransom grabbers whose main motive is to sell the domain name for money this offence may very well be attracted. Blackmail as criminal intimidation is threat as to influence the mind of a person with intend to cause that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat[8]. The gist of offence is the effect which the threat is intended to have upon the mind of the person threatened. The courts can prescribe criminal punishment to cyber-squatters so as to create a deterrent effect.

There are number of cases has been registered with the courts in relation to abuse of domain name. One such case is the Yahoo case. In this case the Yahoo, an American Public Corporation popular for its search engine and email services, sued a party for using the domain name yahooindia.com and passing off itself as an extension of yahoo in India by providing directory services with information specific to India. Delhi High Court granted a permanent injunction against the defendant preventing him from using yahoo as a domain name or a trademark and from copying anything from the plaintiff's website and thereby infringing its copyright[9].

Domain Name Dispute Resolution Policies:

There is difference between traditional law and cyber law. Therefore it is difficult for courts to deal with the cybercrimes. ICANN (International Corporation of Assigned Names and Numbers) was formed in 1998 as a response to concerns regarding DNS(Domain Name System) by the US govt. Ira Magaziner, the presidential senior Advisor, proposed a plan called 'The White Paper' according

to which a private nonprofit organization should be created to assume responsibility of domain name System. As a result ICANN was created as a private, non-profit organization situated in California.[10]

UDRP (Uniform Dispute Resolution Policy) is a "Dispute Resolution Service Provider" approved by ICANN on 24th October 1999 as a dispute resolution Policy. It provides procedure for the victims of abusive registration of domain names to file their complaint. It applies to top level domain names, viz., ".com", ".net" and ".org" Besides these WIPO (World Intellectual Property Organization) is another significant "Dispute Resolution Service Provider" was approved by ICANN in December, 1999. These service providers rely on the bad faith criteria to provide relief to the complainant. There have been many dispute regarding companies that have been solved by WIPO like the "tata.org" case and the "tridenthotels.com" case. Other dispute resolution service provider are e-Resolution Consortium, The National Arbitration Forum(NAF), Centre for Public Resources Institute for Dispute Resolution(CPRIDR), Asian Domain Name Dispute Resolution Centre.

By this mode of resolving the dispute the complainant have to establish the following three elements for filing a dispute resolution procedure:

- The domain name is identical or confusingly similar to your trademark;
- The defendant has no rights to, or legitimate interests in the domain name; and
- The domain name has been registered and is being used in bad faith.

IN Domain Name Dispute Resolution Policy for India has decide several cases on domain Name. Some of them are as follows.

Starbucks Corporation v. Mohanraj[11],*Morgan Stanley v. Bharat Jain*[12],*Google Onc v. Gulshan Khatri*[13],etc.

Hon'ble Indian Judiciary in absence of Specific Law on Cyber-squatting plays very dynamic role to curb this menace. Some cases are as follows:

Yahoo! Inc. v. Akash Arora nad Anothers[14], Tata Sons Limited and AnrVs fashion ID Limited [15]

Dr Reddy's Laboratories Limited Vs Manu Kosuri and Anr[16]

Conclusion:

Cyber Law is a emerging concept of crime and to tackle this problem in the line of U.S.A. or other countries though no specific law has been made in India, Indian Judiciary successfully has decided these cases. Virtual world of cyberspace needs a law for itself. Bringing cyber piracy within the framework of the Trade Marks Act would result in granting trademark holders more extensive protection than what the legislature originally intended. The development may not be healthy because, although the intention of the Court may be to discourage cyber

Squatting and trade mark infringements in cyber world to curb a social evil, it may result in dangerous precedents, where even genuine registrants of domain names may be adversely affected.

(Endnotes)

1 Information Technology Act,2000

2 http://www.cyberlawconsulting.com/cyber-cases.html

3 Carter, 1995, 21; Charney, 1994 p.489 et. Seq.; Goodman, 1997, p.469

4 GOODMAN and BRENNER, 2002, 70; ABA International, 2002, p.78; Sofaer, 2001, 225

5 Gervaise, 1997, 649,656; Friedman and Siebert, 1997 635-36

6 Intermatic Inc. v. Toeppen 1996 at 1234 et. Seq.
7 Murphy, 1980
8 Amulya Kumar Behra v Nagbhushan Behra, 1995
9 Ryder, 2007
10 www.icannwatch.org
11 Decided on 26th November, 2009
12 Decided on 28th Ocober,2010
13 Decided on 6th May, 2011
14 1999 II AD (Delhi)
15 (2005) 140 PLR 12
16 2001 (58) DRJ241