

METHODICALNESS OF CYBER SQUATTING IN LEGAL BAILIWICK

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ABSTRACT

The Internet is one of the greatest platforms ever made to share, market and quite probably even sell one's creation to every other human being in the world. It is a virtual space for deploying any and every conceivable creation ranging from the most scientific research paper to a regular photo taken by a mundane man. The ease of selling one's products or services to customers across the entire world in a matter of seconds has made it the most widely used tool. But just as there are pros there are also many cons. Many people thus use the Internet to take advantage of susceptible sellers. They use various ways to profit from others creative ideas or legally termed 'intellectual properties'. Cybersquatting is one of the many means that is used to profit from others intellectual properties. This article aims to elucidate on cyber squatting, the issues arising due to cybersquatting, the regulation of such crimes, the current legal framework of these laws, and the outlook of cybersquatting in India.

Key words: cybersquatting , platforms, frame work, ease, properties.

INTRODUCTION

Cybersquatting, a word that has its roots in the word "Squatting" is a term for the activity of occupying a neglected or unused land or buildings that the person or squatter doesn't own and "Cyber" refers to any and every computer/Internet related aspect. Therefore Cybersquatting is the act of buying or registering the domain names of existing trademarks in the name of oneself or a group with an intent to resell the same domain to the existing trademarks/businesses at higher prices.

EXEGESIS OF CYBERSQUATTING

Cybersquatting is defined as the action of taking over neglected and unused domains with the same or similar name as a business/person and then reselling them in bad faith to the said

business to earn a hefty profit. The domain names are unique identifications to help locate a particular website. It can be considered analogous to the physical address in real life and informs the computer on where to send the emails or where to access the webpage. Cybersquatting is quite literally the act of squatting on internet domains to resell the domain to the original owner of the said trademark name. Thus the cybersquatting is basically the act of buying a trademark home address and later reselling it to the trademarks and they are forced to buy it or risk a loss in reputation and credibility which ultimately results in loss of customers and finance. Thus it is essential to safeguard these property rights in the virtual world

PROTECTION OF PROPERTY RIGHTS IN THE VIRTUAL WORLD

Intellectual Property rights are the essence of commerce on the Internet. However, the increasing reliance on the internet to sell modern goods has created a detrimental side effect namely, the infringement of IPs. Detection of infringement and protection from such infringement of the aforementioned intellectual property (IP) in the virtual space is a confounding problem as the dilemma lies in securing IP rights and preventing illegal usage of the IP. It is easier to violate the rights in virtual space thanks to the ease of access, transmission, and most of all the anonymity provided by the Internet compared to safeguarding one's IPs.

There have been innumerable ideas provided to safeguard IP all over the world but some of the most common denominators in these ideas are the necessity to protect, reward and encourage the creativity and innovation of creators. The freedom and anonymity of the internet are regularly abused to exploit and thus Rules and regulation are made to diminish this exploitation of creators. National Laws have played a major role in reinforcing IP rights and harmonizing the IP laws across Earth. This has been achieved through treaties, conventions, and various means. Jurisdiction of cyber security is nonetheless a monumental task as the border of Virtual Space is blurry.

The trade-related Aspects of Intellectual property rights (TRIPS) Agreement is one of the major treaties that has been widely accepted and has set the basis for the protection of IP rights. It has sanctioned that every member of this treaty must apply the most-favored-nation concept of IP protection to their jurisdiction. This agreement includes Article 10 describing computer programs and compilations of data and Article 11 which protects the rights of

authors and their successors in title from commercial renting of their works by others. Although it has succeeded in many aspects, it failed in bringing around national harmonization and standard protection among IP systems.

INFRINGEMENT TRADE MARK IN CYBER SQUATTING

Trademark or the identity of a company or product has been many times violated by cybercriminals. It is a critical issue in cyberspace infringement of IPs.

The famous landmark case of “Yahoo! Inc v. Akash Arora & Anr” can be quoted as an example wherein the defendants were using yahooindia.com for providing internet services. Here the domain with the name yahooindia.com had been registered and owned by Akash Arora & Anr. which could have been mistaken as one of the subdomains of Yahoo!. It was held that Domain names are the same as trademarks and are not just a simple address, and thus the laws regarding trademarks were extended to the domain names. The High court of Delhi, therefore, regarded this as a case of passing-off and granted an injunction restraining the defendants from using the domain name.

Other cases include Oppedahl & Larson v. Advanced concepts wherein, the law firm of Oppedahl & Larson, owner of the domain name, had filed a trademark infringement action against 3 different companies and the corresponding ISPs as these companies had inserted the words Oppedahl and Larson in keywords field of web pages to divert the traffic of the law firm to their sites.

These types of cybersquatting infringes on another companys trademark to benefit themselves. These are only some of the many ways infringement can occur and cause a loss in terms of finance, customer, etc.

TRADEMARK OF CYBER SQUATTING IN THE LEGAL FIELD

Infringement of trademarks as seen is a very serious issue and can cause irreparable harm to the individual or company, their reputation, and their economy. To dampen the damage and

reduce further destruction, legal laws and regulation have been made such as TRIPS, Trademark Act 1999, etc. The protection of the trademarks has had a keen focus on three major aspects namely

- 1) Conservation of the goodwill of a trademark holder ;
- 2) Consumer Protection
- 3) Efficiency of the economy

These aspects were identified from the case of Marks & Spenser wherein it was held that “any person who intentionally registers the name, brand-name or trade mark of a different commercial organization, will face opposition and will be at fault to passing-off. On these occasions, the court will assume that the public would be deceived as the name solely consists of the trademark of other organizations. “

The Internet Corporation of Assigned Names and Numbers (ICANN) is also another regulatory authority for domain names and supervises the administration of top-level domain names. This regulatory body has adopted the Uniform Domain name dispute resolution Policy (UDRP) for dealing with cybersquatting and this policy sets out the terms and conditions for a case of the Internet domain name. However, The UDRP administrative procedure to handle these disputes is applicable only for cases related to abusive registration of domain names. For a registration to be considered abusive, some criteria have to be satisfied namely,

- The registered domain name by the defendant must be identical or near similar to the trademark of the plaintiff to which he/she has the trademark rights.
- The defendant has no rights or legitimate interests concerning the domain name in question.
- The domain name must have been registered by the defendant and being used in bad faith.

If these criteria are met then the Case can be purveyed under UDRP and resolved accordingly.

CYBER SECURITY UNDER IT ACT 2000

In the Indian Legal system, The Information Technology Act 2000 (IT act 2000) is the go to solution for all cyber security cases. Unfortunately this act does not purview the act of cybersquatting. There is no law particularly for this as such and the best case scenario of such

cases would be when the domain name of the website is taken back. Many cyber squatters work under dubious names and it is difficult to stop further thieving of domain names. Despite this, efforts have been made by the .in registry to reduce this and try to provide compensation.

The lack of proper legal regulation for cybersquatting has led the Trademarks Act to play a crucial role in the verdicts of the court. The Trademark Act 1999 is used to make marks that categorize the different types of trade. They are then used to separate trades of a similar kind. It is important to note that cybersquatting cases are often chosen on the principle of either passing off or Infringement under the Trademark Act 1999

SEQUELS OF CYBERSQUATTING IN THE JUDICIARY

There is no specific law to deal with the cases of cybersquatting in India and therefore these cases are handled under the Trade Mark Act 1999. Thus the reliefs provisioned under the Trademark act, 1999 as mentioned before are:-

- Remedy of Infringement - A type of remedy that can be availed under the Trademark Act 1999 by the owner of the trademark only when the trademark has been registered by the original owner under this act. This consists of civil remedies, criminal remedies, and managerial remedies.
- Remedy of passing-off – The other type of remedy that can be availed by the owner with no need for prior registration of the trademark. It consists of an injunction by the actual owner to avoid the utilization of their trademark by any other individual, business, or company.

Some cases where such remedies have been provided are:-

1. AQUA MINERALS LIMITED VS MR. PRAMOD BORSE& ANR

This case has the plaintiff 'Aqua Minerals Limited' suing the defendant Mr.Pramod Borse& Anr. In this case, the plaintiff was a registered owner of the trademark "Bisleri" in India but the defendant had registered the domain www.bisleri.com to themselves. The Delhi High Court judged the defendant to be guilty of infringement of trademark under

the Trademark Act 1999 and passed the remedy of infringement which allowed the plaintiff to obtain the transfer of the ownership of the website in their name.

2. REDIFF COMMUNICATION LIMITED V. CYBER BOOTH AND ANR.

This case has the plaintiff 'Rediff Communication Limited' suing the defendant Cyber booth and Anr. In this case, the defendant owned the domain name of "RADIFF" which was similar to the name Rediff. Thus the High court of Bombay granted an injunction restraining the defendant from using said domain or any name akin to Rediff as there is a chance that an unknowing internet user might be misled into believing that the similar names belong to the same organization

CONCLUSION

Cybersquatting is a major crime destroying the credibility of numerous companies and causing irrevocable harm. This kind of crime has to be carefully regulated to prevent unnecessary damage. Although major steps are being taken it has yet to be widespread in every part of the world. India has a cybercrime division and the IT act 2000 to combat and regulate cybercrimes yet cybersquatting has escaped its grasp. This has caused the judiciary to use the Trademark Law act which does not always provide appropriate compensation or relief to the plaintiff. Cybercrimes are fast evolving and require constant regulation as cybercriminals are constantly coming up with new ways to evade the law. Hence it is hoped that India can improve its IT act to leave no means of escape for these cybercrime offenders.

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