

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 6 | Issue 2

2024

© 2024 International Journal of Legal Science and Innovation

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for free and open access by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at International Journal of Legal Science and Innovation, kindly email your Manuscript at editor.ijlsi@gmail.com.

Pursuing Cybersquatting as a Trademark Infringement under the IP Regime

YASH BAJPAI¹ AND ALOK RANJAN JHA²

ABSTRACT

The paper delves into the legal intricacies and challenges posed by cybersquatting within the Indian intellectual property framework, particularly focusing on its implications for trademark protection. Cybersquatting involves the registration of domain names that closely resemble well-established trademarks, exploiting their goodwill for financial gain. This raises significant legal dilemmas due to the absence of tailored legislation in India. The study explores various manifestations of cybersquatting, such as typosquatting and identity theft, emphasizing their detrimental effects on brand integrity and consumer trust. The analysis evaluates the adequacy of existing legal mechanisms, including the Indian Penal Code and the Information Technology Act, which currently fail to comprehensively address the complexities of cybersquatting. Through a series of case studies, the paper illustrates the evolving perspective of Indian courts, which have begun to treat domain names as part of trademark protection.

In addressing these challenges, the paper highlights the importance of successfully resolving disputes arising from cybersquatting to facilitate ease of business. It argues for the necessity to thoroughly analyze and discuss the regulation of cybersquatting under the trademark regime in India and explores potential remedial measures to enhance the trademark legal framework governing cybersquatting.

There is a need for legislative reforms to improve the protection of both registered and unregistered trademarks against cybersquatting. A robust policy designed to navigate the digital domain is needed to ensure comprehensive legal protection for domain names as crucial assets of business identity and intellectual property. This contribution aims to advance the discourse on enhancing intellectual property rights protection in the digital age, proposing a framework for legal reforms tailored to the unique challenges of the digital marketplace.

Keywords: *Cybersquatting, Trademark infringement, Domain names, Intellectual Property (IP), Trade Marks Act 1999, Brand dilution, Typosquatting, Combosquatting, Identity theft, Reverse cybersquatting, Jurisdiction issues, UDRP (Uniform Dispute Resolution Policy), INDRP (IN Domain Name Dispute Resolution Police).*

¹ Author is a Junior Legal Associate at Blancco Technology Group, India.

² Author is an Advocate in India.

I. INTRODUCTION

The creation of a website is not as difficult as it once was before, with countless domain names being provided for free and with access to the required software available to all. With this ease of access to available domains, the tendency to copy the domain names of popular websites and use them for personal profit has also increased. This process is called Cybersquatting.³ It is truly a menace for those engaging in businesses, especially digital business. It is a deceptive practice; wherein registered domain names are created which resemble or are similar to those of established brands with a malicious intent to profit out of the existing popularity of the established brand. The impact of cybersquatting on a domain name is detrimental in the form of brand dilution, creation of confusion for the consumer and eventually loss of revenue. The Indian legal regime has extended its recognition of cybercrimes to cover Cybersquatting and thus, it may be prosecuted as a criminal offence punishable with penalty.⁴ However, there is no specific law that governs cybersquatting in India and its prosecution (if found with a malicious intent) is covered under the Information Technology Act 2000- Section 66, 66A and under the Indian Penal Code, 1860 sections 405,406, 420, 468, 469.⁵ There is also another angle to seeking remedies against cybersquatting, which is through the trademark regime. The use of a similar domain name that causes detrimental impact on business is perceived as a trademark infringement in many countries and even in India, disputes related to cybersquatting are dealt with under the Trade Marks Act, 1999.⁶ This is an important area of discussion since not all domain names qualify as trademarks and thus create serious limitations to resolving issues arising out of alleged cybersquatting activities. The difference between a domain name registered as a trademark and a domain name which does not qualify as a trademark is recognised by the Indian Judiciary.⁷ The successful resolution of disputes arising from cybersquatting is crucial to ease of business and thus, this makes it imperative to analyse and discuss the regulation of cybersquatting under the trademark regime in India while also exploring any possible remedial measures to enhance the trademark legal regime regulating cybersquatting.

³ Piyush C, 'A Survey of the Prominent Effects of Cybersquatting in India' (2015) 4 International Journal of Information Security and Cybercrime 47

⁴ *Manish Vij v. Indra Chugh*, AIR2002DELHI243

⁵ Majhi DrR, 'Cyber Crimes in Banking Sector in India: A Critical Analysis' [2022] Cyber Crime, Regulations and Security - Contemporary Issues and Challenges 115

⁶ Ibid 116

⁷ *Satyam Infoway Ltd vs Sifynet Solutions Pvt Ltd* AIR 2004SC3540

II. THE DANGERS OF CYBERSQUATTING AND ITS LEGAL POSITION IN INDIA

(A) Domain names

Domain names are an integral element while establishing a business online since they create a unique address for any website. A domain is an alphanumeric string which the users type into their web browser to access a specific web page. Some examples are “mynta.com” and “wikipedia.com”. These domains are considered to be trademarks by many countries since they act as source identifiers and associate a particular service with their name. They are repositories of goodwill and faith in the reputation of the business. It is therefore very important to create a simple yet memorable name for a domain which also signifies the relevance to the service that the business is providing through its website.⁸ A creative domain name is integral to establishing brand recognition and attracting potential customers. Since the customers are influenced by prior reputation, an established domain name is often looked at as a corporate asset and thus acts as the company’s trademark. This is the reason why cybersquatting on someone’s domain can be such a challenge to overcome.⁹

(B) Legal definition and recognition of cybersquatting

In *Manish Vij v. Indra Chugh*¹⁰, the Delhi High Court defined cybersquatting as follows “an act of obtaining fraudulent registration with an intent to sell the domain name to the lawful owner of the name at a premium”. Cybersquatting is not uncommon and is prevalent all around the world, wherein people tend to register new domain names despite their being existing trademarks associated with either a part of their domain name or the entire domain name itself.¹¹ Sometimes cybersquatting may be unintentional but in most cases, the intention to profit from the existent market reputation of a domain name or even profiting from selling the same domain name back to its original owners is quite evident. It is considered an unethical practice in every country. There is no denial about the significant threat that it poses to the reputation of the business and to the trust of customers.¹² The creation of fake websites misleads and creates confusion and frustration for the consumers by having the brand being associated with malicious or low-quality products or services which in turn damages its image and erodes the confidence of the customers and their loyalty. It eventually leads to a loss of revenue when

⁸ Unni VK, ‘Transnational Influences in Trade Mark and Domain Name Protection: The Indian Experience’ [2018] *Locating India in the Contemporary International Legal Order* 185

⁹ Bettinger T, ‘Rights Protection against Applications for New Gtlds (Pre-Delegation Dispute Resolution)’ [2015] *Domain Name Law And Practice*

¹⁰ *Manish Vij v. Indra Chugh*, AIR2002DELHI243

¹¹ *Ibid*

¹² Deo S, ‘Cybersquatting: Threat to Domain Name’ (2019) 8 *International Journal of Innovative Technology and Exploring Engineering* 1432

customers unknowingly visit fake websites and make purchases from unoriginal sources which deprives the original brand of its sales. Thus, regulation of cybersquatting by stringent legal measures is extremely important.¹³

In India, unlike in the United States or Australia, there is no specific law that protects against unlawful infringements of domain names and any disputes between two parties on cybersquatting is usually resolved as per the Trademarks Act 1992. However, the Trademarks Act also does not directly deal with domain names and thus falls short of providing sufficient protection to victims of cybersquatting.¹⁴ Thus, the Indian judiciary is limited in terms of approaching cybersquatting as a trademark violation while also being given an ambit of freedom to interpret every case on its individual basis to determine whether an act of cybersquatting amounts to trademark infringement or not. For instance, in the case of *Yahoo! Inc. vs Akash Arora & Anr*¹⁵, Yahoo Inc. got into a dispute with an individual (Akash Arora) which was submitted before the Delhi High Court. The case involved the usage of the domain “YahooIndia.com” which was a domain created by Akash Arora and closely resembled the trademark “Yahoo”. Yahoo.Inc argued that the creation of such an identically similar website was deceptive and detrimental and amounted to ‘combosquatting’ which is a form of cybersquatting. The court agreed with Yahoo Inc’s position and determined that ‘Yahoo’ and ‘YahooIndia’ could indeed be misleading to users and create market confusion. The defendant was restrained from using the misleading domain and copying the content of Yahoo.Inc. The Yahoo case was one of the first cases where the Indian judiciary determined a registered domain name to amount to a trademark and offered it the same protection.¹⁶

Today, other than combosquatting, there are multiple other forms of cybersquatting which are either recognised in Indian courts or in foreign courts.

(C) Types of cybersquatting

Currently, the following forms of cybersquatting are either recognised in the legal regime in India or in foreign legal regimes:

(i) Typosquatting

Typosquatting is one of the most prevalent forms of cybersquatting and they prey on users who have mistyped their domain. For instance, a person purchases a number of domain names of

¹³ Ibid

¹⁴ Piyush C, ‘A Survey of the Prominent Effects of Cybersquatting in India’ (2015) 4 International Journal of Information Security and Cybercrime 47

¹⁵ *Yahoo! Inc. vs Akash Arora & Anr*, 1999IIAD(DELHI)229

¹⁶ Arora H, “‘Jurisdiction’ and ‘Lex Causae’ Issues in Cross-Border IPR Infringements and Crimes in Cyberspace – a European Perspective’ [2019] SSRN Electronic Journal 34

websites that have misspelt common domain names.¹⁷ Example: A person has registered a website titled “wikipedia.com” when the original website is “Wikipedia.com”. In such cases, the typosquatter purchases the correct domain name and then resells it back to the owner of the misspelt domain name.

(ii) Combosquatting

This process involves registering domain names that are similar to the ones which are popular. They are intended to be deceptive and usually contain uniform source locators (URL) that are quite close in resemblance to the legitimate ones wherein certain prefixes or suffixes are added to make them sound authentic.¹⁸ For instance, “Accessorizelondon.com” was once fraudulently combosquatted by the creation of “Accessorizelondonsupport.com”. This gives the impression that the second website is a part of the first one. Such domain names are used to either have the original owner buy it for their own benefit or even to carry out any further fraudulent activities. It is most definitely considered a trademark infringement in India.¹⁹

(iii) Identity theft

Cybersquatters exploit domain names by either purchasing a domain name or by creating a cloned website which is similar to the existing domain name. Any unsuspecting customer or visitor to the website is often deceived into trusting such fake websites, while also falsely believing that they are on the original website. This is an identity theft of the original website done through cybersquatting. It is very easy to mislead users in this manner and also amounts to fraud.²⁰

(iv) Namejacking

In this form of cybersquatting, a personal name of a notable individual such as a celebrity or any other popular figure is used for the creation of fake websites or social media profiles. It is challenging to prosecute this type of cybersquatting as a trademark infringement since the name of a person may or may not be registered as a trademark.²¹

(v) Reverse cybersquatting

Reverse domain name Hijacking which is also called as reverse cybersquatting is when a trademark owner themselves falsely accuses the rightful owner of a domain name of engaging

¹⁷ Sachdeva R, ‘Critical Study on Trademark Infringement Related to Domain Names and Cybersquatting’ (2023) 4 Indian Journal of Law and research 1

¹⁸ Kumar N and others, ‘When Diversity Meets Hostility: A Study of Domain Squatting Abuse in Online Banking’ [2021] 2021 APWG Symposium on Electronic Crime Research (eCrime) 23

¹⁹ Ibid

²⁰ Ibid 26

²¹ Ibid

in cybersquatting through legal mechanisms. It is a tactic used for intimidating domain owners and bullying owners of small organisations or companies into relinquishing their domain names.²²

(D) Bringing cybersquatting under the intellectual property regime in India

a. Difference between domain name and trademark

In *Hindustan Unilever Limited v. Endurance Domains Technology LLP & Ors*²³ the Bombay High Court held “a domain name is simply an easy-to-remember or mnemonic for an internet protocol address. The IP address is a string of numbers in four sets separated by a period.”²⁴ A domain name is a string of characters that consists of letters, underlines and numbers which form a part of the URL, used for accessing web pages or any other source online. Each website has its own unique domain that dictates how a user will be able to access it. Each domain begins with the common set of words “www” which is then followed by its own unique name and then finished with an extension that signifies its own accessibility.²⁵ For instance, if a domain ends with ‘.com’ then it implies that it is of international nature, if it ends with ‘.org’ then it implies the domain is owned by an organisation and similarly so on and so forth. Each domain is characterised by the words it uses and the way it is placed. The function of a domain has developed from just being an internet address to also being terms as a business identifier.²⁶

b. Domain names are protected as trademarks.

A trademark is a form of identification for specific goods or services and signifies exclusivity. It is defined as “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 the shape of goods, their packaging and combination of colours.” When a trademark is registered, it distinguishes the goods and services of its owners to be different from others while also conferring several benefits to the business it is identified with against its competitors.²⁷ A trademark is directly associated with the goods and services provided by its owners and it is in this manner that a domain name can be considered a trademark. For instance, ‘Wikipedia.com’. The term Wikipedia is synonymous with a page on the internet that provides information about

²² Majhi DrR, ‘Cyber Crimes in Banking Sector in India: A Critical Analysis’ [2022] Cyber Crime, Regulations and Security - Contemporary Issues and Challenges 116

²³ *Unilever Limited v. Endurance Domains Technology LLP & Ors* (2020) SCC Online Bom 809

²⁴ *Ibid*

²⁵ Buchmann JA, ‘Privacy Threats and Their Impact on the Core Values’ [2013] Internet Privacy 63

²⁶ Banerjee S, ‘Are Domain Names Protected as Trademarks’ (*iPleaders*, 6 June 2021) <<https://blog.ipleaders.in/domain-names-protected-trademarks/>> accessed 13 April 2024

²⁷ ‘Asian Domain Name Dispute Resolution Centre’ (2002) 14 World Trade and Arbitration Materials 45

a wide array of topics.²⁸ This term cannot be used in any other manner or by anybody else. Thus, a trademark and a domain name are interlinked so long as the domain satisfies the criteria of being a trademark which is to be able to distinguish the goods and services from others.²⁹ Domain names can therefore be registered and protected as a trademark. An application for a domain name to be perceived as a trademark must in addition to proving that unique, distinctive and distinguishes the goods and services offered by its owner from others, must also prove that it is not misleading, confusing or deceiving to consumers of other corporations engaged in similar business course.³⁰

With respect to the registration of domain names as Trademarks, a question was raised in the case of *Satyam Infoway Ltd. v. Sifynet Solutions*³¹ which is as to whether a domain name which has only words or a name can be capable of distinguishing the subject of trade or service available to potential users on the Internet. The Supreme Court of India answered in the affirmative and stated that “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. Thus, a domain name may pertain to the provision of services within the meaning of Section 2(z).”³² Therefore, a domain name is just as subject to be licensed and protected as a trademark where it is shown that it relates to the provision of services discussed under the Trade Marks Act, 1999 section 2(z). After being successfully registered, the trademark owner will be granted all privileges and rights afforded to a trademark owner in India. Some of these rights are inclusive of but not limited to the following³³:

(i) Right to sue for infringement:

Any trademark owner will have the exclusive and primary right to use the trademark in any manner with respect to the product or services for which the license has been granted to the trademark. The owner will also have the right to seek redressal or remedy in cases of any trademark infringement. If any other person besides the owner of the trademark uses the domain name which has been successfully registered as a trademark in the absence of any express permission, the entity will be found liable for infringement of trademark as provided under Trade Marks Act, 1999 section 29.³⁴

²⁸ Ibid

²⁹ Trade Marks Act 1999, s.2(zb)

³⁰ Ibid

³¹ *Satyam Infoway Ltd. v. Sifynet Solutions*, 2004 (3) AWC 2366 SC

³² Ibid

³³ Trade Marks Act, 1999, s. 2(z)

³⁴ Trade Marks Act, 1999, s. 29

(ii) Rights of action against any person for passing off

Under specific circumstances, even an owner whose domain name has not yet been registered as a trademark can also benefit from simply showing that his domain name is unique and bears the characteristics of a trademark. To do this, the owner of the trademark has to show that his domain has obtained the required goodwill and the reputation as required for a unique trademark.³⁵ The owner of the trade mark must also show that another entity has misrepresented the products and has either shown them to be misleading or that the existence of a similar domain will be misleading to the public. Lastly, the owner of the trademark must also show that a loss or damage has been caused as a result of the use of a similar or misleading domain name and the loss is attributed to a diminishment of reputation or sales.³⁶

c. Trademark regime governs cybersquatting in India.

As aforementioned, in India, unlike several developed countries there are no specific laws which exclusively govern domain names. The disputes arising from allegations of cybersquatting are thus discussed under the Trade Marks Act, of 1999. The Indian judiciary has over the course of several courses acknowledged the gap in law discussing domain names under the real of trademarks and sought to expand on the same by contributing to its jurisprudence. For instance, in the case of *Satyam Infoway Ltd. v. Sifynet Solutions Pvt Ltd*³⁷, the Supreme Court held as follows “As far as India is concerned, there is no legislation which explicitly refers to dispute resolution in connection with domain names. But although the operation of the Trade Marks Act, 1999 itself is not extraterritorial and may not allow for adequate protection of domain names, this does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing off.”³⁸

i. IN Domain Name Dispute Resolution Policy

The IN Domain Name Dispute Resolution Policy (INDRP) adopted by India in 2020 also states that there is no exclusive rule for the protection of domain names in India. Any concerns with respect to country-level domain concerns which also includes domain extensions such as ‘.in’ will be settled in accordance with the IN Domain Name Dispute Resolution Policy, introduced exclusively for discussing and regulating domain names under the Trade Marks Act by the

³⁵ Agrawal S, ‘Domain Names as Trademarks: Beyond Urls - Trademark - India’ (*Domain Names As Trademarks: Beyond URLs - Trademark - India*, 13 December 2023) <<https://www.mondaq.com/india/trademark/1400976/domain-names-as-trademarks-beyond-urls>> accessed 13 April 2024

³⁶ Ibid

³⁷ *Satyam Infoway Ltd. v. Sifynet Solutions*, 2004 (3) AWC 2366 SC

³⁸ Ibid

National Internet Exchange of India.³⁹ Even though India has not yet accepted the UDRP (Uniform Dispute Resolution Policy) which was published by the Internet Corporation for Assigned Names and Numbers (ICANN), complaints with respect to domain name usage can still be filed under the IDRP. The grounds to file a complaint or a concern are the same as that provided under the UDRP. Even the settlement procedure of the IDRP is the same as that of the UDRP. The domain name of the person registering can even be cancelled or transferred if it is provided that an existing domain name was being infringed. The only difference is that, unlike the UDRP, an arbitrator can award costs as is considered appropriate under the INDRP.⁴⁰

ii. Contribution to Indian Jurisprudence on domain name being considered as trademark through case laws.

The *Yahoo Inc. v. Aakash Arora & Anr*⁴¹ as already discussed in the aforementioned paragraphs was probably the first case that was brought before the Indian Judiciary through which extensive discussion was brought forth on what amounted to cybersquatting and answered the question of how exactly could domain name be considered as a form of trademark that could be infringed because of an alleged act of cybersquatting. The MCN 'Yahoo' had already begun its registration process of its domain name as 'Yahoo.com' in the United States. However, the defendant who was a resident of India, had created 'YahooIndia.com' and had registered the same in India. Furthermore, even the services provided by YahooIndia.com were similar to a great extent to the Yahoo.com website. On being apprised of the same, the MNC filed a suit in the Delhi High Court and sought a permanent injunction as a remedy for passing off and also sought an ad interim injunction against the owner of YahooIndia.com, Akash Arora as well as other potential defendants from carrying forth any commercial activities on the internet either under the referred domain name or any other domain name of a similar nature which could be analogous to the term 'Yahoo'. The Delhi High Court observed that it was very clear that the defendant Akash Arora was trying to take advantage of the existing market reputation of the Yahoo domain and profit off of the trademark of the MNC and declared that even if a domain name is not registered, its presence on the web platform will be deemed to grant the lawful rights to use the registered domain as though its registered and that no such right will be denied simply because its registration has not yet happened. This, the registrant can still be found liable for infringement of a claimant's domain name.⁴²

³⁹ Goyal R, 'A Brief Analysis of the .in Domain Name Dispute Resolution Policy' [2017] Journal of Intellectual Property Law & Practice

⁴⁰ Ibid

⁴¹ *Yahoo! Inc. vs Akash Arora & Anr*, 1999IIAD(DELHI)229

⁴² Ibid

Similarly, in yet another case, *Aqua Minerals Limited v. Mr Pramod Borse & Anr*⁴³, the Delhi High Court made some landmark observations about cybersquatting within the domain of trademarks. In *Aqua Minerals*, the term 'BISLERI' had been registered as a trademark and the trademark was owned by the Plaintiff Aqua Minerals Ltd and had also obtained copyright for the very same term 'BISLERI'. Post making an application for registering 'bisleri.com' the plaintiff became aware of the fact that another company had illegally registered the referred domain name. The Delhi High Court observed that the defendant's registration of the referred domain name was done so in bad faith and found that it amounted to an act of cybersquatting. In response, the Defendant submitted a reply stating that they would cancel the registration of their registered domain name if Aqua Minerals was willing to pay them for the amount spent to develop the website. The Delhi High Court found this to be an attack on the goodwill and reputation of Aqua Minerals and that Plaintiff had a right to request a transfer of the domain name for free of cost.⁴⁴

Along the same lines, another case which broadens the court's interpretation of domain names is that of *Ms. Barkha Dutt v. Easyticket, Kapavarapu, Vas*⁴⁵. In the *Barkha Dutt case*, the respondent registered a domain under the name 'barkhadutt.com'. Barkha Dutt is a very well-known figure and an eminent personality of the media and was specially recognised for being a news reporter. The case was brought forth under UDRP before the World Intellectual Property Organisation's Arbitration and Mediation Centre by Ms. Barkha Dutt and sought a transfer of the domain name involving her name. The complaint was successfully brought for administrative proceedings wherein it could be clearly proved that the required elements to prove that her name indeed constituted a trademark were satisfactorily present. The tribunal thus found that usage of that domain name was a trademark infringement and permitted the plaintiff to transfer the referred disputed domain name to herself.⁴⁶

(E) Enhancing the Indian IP regime to better address and govern cybersquatting

Even though India has indeed made significant progress in terms of addressing the topic of cybersquatting both under the existing legal framework on trademarks, as well as through various case laws, it is quite evident that there is still scope for improvement. As discussed in the aforementioned paragraphs, there is a clear lacuna in the form of a comprehensive and specific law to address the issue of cybersquatting.⁴⁷ As a result of this absence, there are a lot

⁴³ *Aqua Minerals Limited v. Mr Pramod Borse & Anr*, AIR2001DELHI463, 93(2001)DLT203

⁴⁴ Ibid

⁴⁵ *Ms. Barkha Dutt v. easyticket, Kapavarapu, Vas*, Case No. D2009-1247

⁴⁶ Ibid

⁴⁷ Mishra N and Sharma D, 'Cybersquatting and Trademark Issues: An Analysis with Reference to India'

of inconsistent judgements and issues related to the jurisdiction, which in turn limits the protection offered to many unregistered but popularly acknowledged trademarks. A primary concern identified with the Indian legislative perspective of cybersquatting is the dichotomy of the issues related to establishing jurisdiction. Domain names are accessible globally and as a result, may create cross-border issues. In such instances, it becomes difficult to clearly establish the jurisdiction to try the issue.⁴⁸ Thus, it is imperative to bring in a clear regulatory parameter to determine how jurisdiction will be established with respect to cross-border disputes as already stipulated under the UDRP, Art.3.⁴⁹

Yet another issue which has not been adequately addressed is the paucity in protection offered to unregistered but widely acknowledged trademarks. Despite the fact that the Trade Mark Act 1999, sections 11(6) to 11(9) clearly lay down the required standards for protecting well-known trademarks, there is no specific provision to govern and protect unregistered trademarks in disputes involving cybersquatting, which creates an inconsistent application of law and scope for ambiguity.⁵⁰ This gap can only be bridged if the required provisions similar to that of the UDRP are adopted which recognises the protection to be given to unregistered trademarks, so long as they bear the distinctive character required for a trademark.⁵¹

The absence of a uniform standard to govern cybersquatting disputes, especially related to assessment and obtainment of evidence also further heightens the existent ambiguity on the subject. Therefore, it is suggested that a three-pronged which is present under the UDRP be adopted. The three-pronged test is used for the assessment of the rights of the registrant and the legitimate interests of the domain name, the involvement of any bad faith, and any possibility of the confusing similarity of the domain to the trademark.⁵² There is no doubt that India clearly requires a specific law or set of provisions to specifically address cybersquatting. They can be brought forth in the following suggested manner:

(Articles) <<https://articles.manupatra.com/article-details/Cybersquatting-and-Trademark-Issues-An-analysis-with-reference-to-India>> accessed 13 April 2024

⁴⁸ Ibid

⁴⁹ Naik A, 'An Analysis of the Concept of Cybersquatting & Legal Issues Pertaining to Trademarks in India - Trademark - India' (*An Analysis Of The Concept Of Cybersquatting & Legal Issues Pertaining To Trademarks In India - Trademark - India*, 18 December 2023) <<https://www.mondaq.com/india/trademark/1402068/an-analysis-of-the-concept-of-cybersquatting--legal-issues-pertaining-to-trademarks-in-india>> accessed 13 April 2024

⁵⁰ 'Cybersquatting and Indian Trademark Law' (*IP Bulletin*, 18 July 2022) <<https://ipbulletin.in/cybersquatting-and-trademark-law/>> accessed 13 April 2024

⁵¹ Naik A, 'An Analysis of the Concept of Cybersquatting & Legal Issues Pertaining to Trademarks in India - Trademark - India' (*An Analysis Of The Concept Of Cybersquatting & Legal Issues Pertaining To Trademarks In India - Trademark - India*, 18 December 2023) <<https://www.mondaq.com/india/trademark/1402068/an-analysis-of-the-concept-of-cybersquatting--legal-issues-pertaining-to-trademarks-in-india>> accessed 13 April 2024

⁵² Skazko OM, 'Prospects of Implementation of Legal Responsibilities for Cybersquatting' [2020] Legal position 77

- (i) By defining and clearly outlining what is cybersquatting under either the Trade Marks Act 1999 or the IT Act, 2000.
- (ii) By bringing in guidelines to establish the jurisdiction of courts in disputes arising from domain names.
- (iii) By introducing provisions that recognise and protect unregistered and well-known trademarks.
- (iv) By bringing in uniform, as well as a clearly articulated standard of evidence in cybersquatting cases.

III. CONCLUSION

Cyber law in India is constantly evolving and is continuing to expand as is the case with several developing and developed countries. This makes it imperative to bring forth discussion on promoting an exclusive law or a legal standard that makes cybersquatting illegal and strictly prohibits any practices related to obtaining monetary benefit from registering the domain names and then selling them back to the original trademark owners. The discussion in the aforementioned paragraph shows that the only way domain names can be protected within the legal regime in India is if they are registered as Trademarks. However, trademark registration takes time and involves a lot of complex procedures, which are to be fulfilled prior to obtaining an order granting trademark. However, what happens if a corporate has not yet obtained a trademark or is in the process of obtaining one? Fortunately, under the Indian legal regime, even the unregistered marks can be protected and remedies like passing off exist so long as the required conditions are met. Some of the other ways through which the disputes and conflicts of domain names are resolved is by approaching through the UDRP. Under the UDRP, the disputes and conflicts of domain names can be resolved, and the judgement will be brought forth engaging in the process of arbitration provided by institutions like WIPO. Even though India does not directly follow UDRP, the disputes related to domain names can still be brought before the IN Domain Name Dispute Resolution Policy which has been adopted by the National Internet Exchange of India (NIXI) which has the same grounds and types of remedies and process of resolution as the UDRP.
