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Combating Cyber Squatters in the Internet Trade Arena

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Abstract: With the march of civilization, "living law" has been in continuous search for answers to the upcoming challenges. In the digital age, we are a witness to yet another technological unfurling-the technology of the Internet. The Web is a territory where caveat emptor is the rule and, as a result, consumers increasingly rely upon strong brand awareness and brand and brand performance for the confidence to engage in e-commerce. While trademarks are of greater importance in this virtual environment, they are also more vulnerable to infringement, dilution and anti-competitive practices. Trademark owners expend vast resources, engaging automated "web crawling" software and cyber surveillance firms, to monitor the billions of web pages and protect their intellectual property rights. Identity on the Internet also goes beyond the trademark system, because of the role played by the internet domain name system, which facilitates users' ability to navigate on the network. Domain names are user friendly addresses that correspond to the unique Internet Protocol numbers that connect our computers to the Internet and enable the network routing system to direct data requests to the correct addressee. Domain names were originally intended to perform a purely technical function in a user friendly way, but because they intuitive and easy to remember they now perform a function as business or personal identifiers. Most businesses, whether e-commercial or not, advertise their domain name to signal a Web presence. In this way, although, as such, not a form of intellectual property, domain names now perform an identifying functions similar to that of a trademark. Because of the way in which people and search engines operate, most businesses use their trademark or trade name as their domain name and this has caused conflict with the advent of predatory practices, known as 'cyber squatting'. In this paper best effort made to limelight the trade mark issues in the cyber space and reforms yet to be in inquest.

Keywords: living law, technology, Internet, Trademark, web crawling.

INTRODUCTION

Law is a response to social challenges. Many times such challenges have surfaced because of the emergence of new technologies. Technologies are developed through the scientific process which is often independent of its social and cultural implication. Law, while responding, answers such challenges and in the process develops itself. Such is the relationship between law and technology [1].

With the march of civilization, "Living Law" has been in continuous search for answers to the upcoming challenges. In the digital age we are a witness to yet another technological unfurling-the technology of the Internet. The copy right industry is at crossroads once again in this digital age and faces yet again a challenge which is unprecedented in magnitude and consequence. This junction is, in many ways, a defining moment in the long and chequered history of copyright [2].

With the flourishing online business era it is used in a big way by the businessmen for not only advertising and promoting their products, but also for selling them and so the principles of trademark, infringement of trademark and passing off are being applied even in the online environment. But the Law is still learning do with cyber squatters.

Registration of Domain Names as Trade Marks

A few applications have been filed for the registration of domain names as trade marks and in all probability, the Registrar would follow the UK guidelines for Examination, including:

- Domain names may constitute trade marks subject to the usual criteria for the registration of trade marks;
- The domain name must appear prominently on the web page offering goods and services for sale to constitute trade mark use;

- The registrar will disregard non-distinctive elements such as <http://www.@,etc>. In a real life department store, goods are displayed in a three dimensional form on shelves and racks with distinctly shaped containers and colorful labels and wrappers while on the Net, they are displayed on a flat screen, where brands are barely visible and this might also add to confusion. On the other hand, online shopping gives the users a second opportunity when the goods actually arrive to judge whether they have in fact received the right goods and to scrutinize them for their authenticity. The user may suffer from a certain degree of inertia and even upon realizing that there is a difference in the goods, might not wish to go through the labour of returning them.

As regards services, there may well be situations where the user achieves the whole transaction online. Online users have a certain degree of impatience, illustrated by the mistakes that people make while quickly responding to an e-mail. The impatience might contribute to confusion, especially in the case of services.

Time alone will tell the impact of the Internet on which of these consumer habits prevail and how they affect trademark standards.

Brands and Trademarks On the internet:

The Web is a territory where caveat emptor is the rule and, as a result, consumers increasingly rely upon strong brand awareness and brand and brand performance for the confidence to engage in e-commerce. While trademarks are of greater importance in this virtual environment, they are also more vulnerable to infringement, dilution and anti-competitive practices are. Trademark owners expend vast resources, engaging automated "web crawling" software and cyber surveillance firms, to monitor the billions of web pages and protect their intellectual property rights. Identity on the Internet also goes beyond the trademark system, because of the role played by the internet domain name system, which facilitates users' ability to navigate on the network [3].

Domain names are user friendly addresses that correspond to the unique Internet Protocol numbers that connect our computers to the Internet and enable the network routing system to direct data requests to the correct addressee. Domain names were originally intended to perform a purely technical function in a user-friendly way, but because they intuitive and easy to remember they now perform a function as business or personal identifiers. Most businesses, whether e-commercial or not, advertise their domain name to signal a Web presence. In this way, although, as such, not a form of intellectual property, domain names now

perform an identifying functions similar to that of a trademark. Because of the way in which people and search engines operate, most businesses use their trademark or trade name as their domain name and this has caused conflict with the advent of predatory practices, known as 'cyber squatting'.

What is cyber squatting

The domain name gained importance over the years as business entities realized that Internet could be a convenient mode for not only imparting information but also using it for gaining access to a world-wide market and selling its products. It serves as an identity on the Internet. With the growing e-commerce and its future potential, domain names today are serving as trademarks, or brands and carry with them the goodwill and reputation of the owner of the websites they represent. They can be closely identified with the company itself in the sense that customers believe that a domain name reflects the company's name, as the courts suggested in *Card-service International vs. Mc Gee*, "A customer who is unsure about a company's domain name will often guess that the domain name is also the Company's name" and in *MTV Networks Inc v. Curry*, that "A domain name mirroring a corporate name may be a valuable corporate asset, as it facilitates communication with a customer base" A cyber squatter identifies popular trade names. Brand names, trademarks or even names of celebrities, and registers one or more of them in his name with the malicious intent of extorting money from those who are legitimately interested or associated with such domain names. In that sense, cyber squatters can be said to be modern day extortionists. Another motive of cyber squatting includes appropriations of goodwill, attraction of web traffic, selling the domain names for profit in the market, etc. As long as the cyber squatter own the domain name, the trademark owner cannot register its own trademark as a domain name. In this sense, the cyber squatter breaches the fundamental rights of the trademark owner to use its trademark [4].

Tools of the Digital Brand Management Trade

The ultimate brand management system has yet to be created. Sound management usually involves human interaction, training and a dose of commonsense. Some of the shelf tools can make the task a little easier. Digital asset management systems from companies such as Bulldog Networks (recently acquired by Documenter, Media-Bin, Artesia Technologies, and Art machine, help organize and store brand assets. These systems enable companies to repurpose digital media, including page templates, logos, images, photographs, and video, for marketing purposes. A great service if you want to protect your digital trademarks. Digital brand management is a broad topic. As such E-business becomes and everyday part of

business, the subject will become vital for most of companies.

Brand protection and trademark

Trademark is the strongest form of brand protection. Though most of the countries have their own system for trademark protection and registration, there exist also European and international systems of protection. However, most business can afford to consider only the markets that are important to them. Online marketing and development strategies as a rule stretch brand management ability. The proliferation of dedicated portals addressing everything from alliances to training poses a huge challenge for companies that want to ensure consistent brand representation on the web [5].

The strongest form of brand protection is a registered trademark. Trademarks, however, do not have to be registered. Simply by placing the letters 'TM' after a business's products or services denotes a non-registered trademark. The symbol ® after a business's products or services denotes a registered trademark. If a trademark is registered, special rules apply which make it easier to protect.

Practical difficulties with traditional litigation

In Court systems can also be used to sort out claims of cyber squatting, but jurisdiction is often a problem, as different courts have ruled that the proper location for a trial is that of the plaintiff, the defendant, or the location of the server through which the name is registered. People often choose the (UDRP UNIFORM DISPUTE RESOLUTION PROCESS) created by ICANN because it is usually quicker and cheaper than going to court, but courts can and often do overrule UDRP decisions.

Attempts to face the challenge's internationally

Internationally, the United Nations agency called WIPO World Intellectual Property Organization has, since 1999, provided an arbitration system wherein a trademark holder can attempt to claim a squatted site. Realizing the problem of cyber squatting, on October, 24, 1999, ICANN (The Internet Corporation for Assigned Names and Numbers) approved its Uniform Domain Name Dispute Resolution Policy (UDRP). This international policy results in an arbitrational policy results in an arbitration of the dispute, not litigation. An Action can be brought by any person who complains (referred to by ICANN as the "complainant") that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights and the owner has not. Disputes are decided by independent panels drawn from the Center's list of 400 trademark specialists from over 50 countries. The domain name in question is frozen (suspended) during the proceedings. After

carefully reviewing each case, panels submit their decisions within a period of about 14 days. Some countries have legislated specific laws against cyber squatting the U.S. Anti-cyber squatting Consumer Protection Act (ACPA) of 1999 [6].

The Judicial Approach in India

The courts in India, realizing the importance of domain names, have responded strongly against cyber squatting and legal principles have been formulated in regard thereto. Probably the first reported Indian Case is *Yaoo! Inc. vs. Akash Arora*. Wherein the defendants were restrained from dealing in service or goods on the Internet or otherwise under the domain name "yahooindia.com" as being deceptively similar to the plaintiffs trademark "Yahoo" is a dictionary word. Yet, it has acquired uniqueness and distinctiveness and are associated with the business of the concerned company and such words have come to receive maximum degree of protection by courts. In another case *Acqua Minerals Ltd. vs. Pramod Borse*, Court observed that "the same principles and criteria are applicable for providing protection to the domain name either for action for infringement if such a name is registered under the Trade and Merchandise Marks Act or for a passing off action as are applicable in respect of trademarks or name. " it was held in *Info Edge (India)(p) Ltd. versus Shailesh Gupta* that the website using the domain name, similar to that of the plaintiff, for commercial purposes, would lead to an inference that the domain name was chosen intentionally to attract Internet users of the plaintiff. The very first case in the Apex Court dealing with the legal protection of domain names came up as late as 2004. In *Satyam Infosys Ltd. vs. Sifynet Solutions (P) Ltd.* This judgement of Supreme Court approved that the domain names are entitled to legal protection equal to that of a trademark. The Supreme Court observed as under. Ordinary consumers/users seeking to locate the functions available under one domain name may be confused if they accidentally arrived at a different but similar website which offers no such services. Such users could well conclude that the first domain name owner has misrepresented its goods or services through its promotional activities and the first domain owner would thereby lose its custom. It is apparent, therefore, that a domain name may have all the characteristics of a trademark and could found an action for passing off" [7].

Legislative and other Moves against cyber squatting.

The National association of Software and Service Companies (NASSCOM) in India has recommended that the Copyright Act, should be amended to include cyber squatting as an offence. Currently, cases relating to cyber squatting come under the tort of passing off and infringement of trademarks, which is not exactly conducive to speedy trials and arrests. The information Technology Act, 2000 has also

been recommended to be amended to book cyber criminals for such new crimes [8-12].

CONCLUSION

The process of registration of a domain name is not as stringent as that of registration of a trademark. Anyone can approach a Domain Name Registrar and register any available domain name. Hon'ble Delhi High Court, In *Acqua Minerals Limited. vrs. Promod Borse* observed that "If any person gets the domain registered with the Registering Authority which happens to be trade name of some other person, the Registering Authority has no mechanism to inquire into it to decide whether the domain name sought to be registered in is in prior existence and belongs to another person". Such mechanisms to inquire into it are required. All trademark owners as a matter of policy should decide not to accede to cyber squatters' demand. Unless the economic incentives for cyber squatters can be eliminated, more creative solutions may be necessary, as cyber squatters are likely to remain in a throne in the side of intellectual property owners in the future.

While WIPO's experience shows that UDRP disputes are heavily concentrated in the .com domain, attention must also be paid to the establishment of robust preventive mechanisms against abusive registration in new generic top-level domains gTLDs (for example in 2005, the Internet corporation for assigned Names and Numbers approved the creation of new gTLDs. Such as .travel and jobs). If domain names are randomly attributed in new domains, intellectual property owners will be forced to compete with cyber squatters for their own trademarks-unless additional preventive safeguards are introduced.

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