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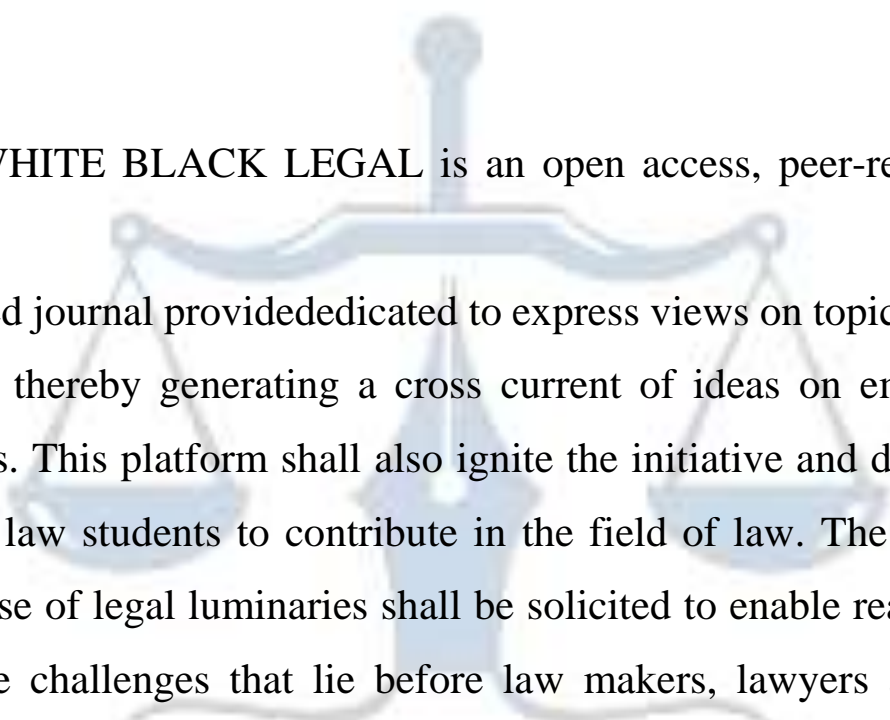


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **TRADEMARK AND DOMAIN NAME DISPUTES:** **UDRP AND LEGAL STRATEGIES**

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## **ABSTRACT**

The article explores domain name disputes, emphasizing the value of domain names as trademarks and the Trade Marks Act of 1999's protection. It looks at global protection for registered trademark domain names, dispute resolution procedures including UDRP and INDRP, and typical infringement techniques like cyber-squatting, linking and framing, and meta-tagging. To address concerns about unlawful or abusive registrations, the UDRP seeks to provide justice and uniformity by offering a streamlined and effective procedure for resolving domain name disputes. People who are involved in Domain Name Disputes can seek resolution in a way that allows for fair treatment regardless of the parties' locations by following this globally recognized guideline. Due to the international reach of enterprises and the borderless nature of the internet, domain name infringements can happen in several nations from the country of registration. If there are transnational violations, people can use the Uniform Domain Name Dispute Resolution Policy. When it comes to handling domain name disputes, this policy offers a clear and standardized structure that is more consistent than negotiating different domestic regulations that differ throughout jurisdictions. International protection for registered trademark domain names is provided by entities such as the Internet Corporation for Assigned Names and Numbers (ICANN). Instances of abusive registrations or intellectual property rights infringement may give rise to a complaint. These procedures provide equitable treatment for all parties involved and aid in the efficient resolution of issues on domain names. With a focus on arbitral proceedings, civil remedies, and out-of-court settlements, the discussion provides a thorough overview for people and companies negotiating the difficulties of online identity protection in India and around the world.

**KEYWORDS:** ICANN, UDRP, INDRP, DND, Trademark Act.

## **INTRODUCTION**

Throughout human history, the introduction of new technology has made certain aspects of society— like human beliefs, an industry's infrastructure, or how work is organized. Domain name disputes are a prime illustration of this deficiency. Domain names are essential to the smooth and effective functioning of the Web and the Internet. A DND occurs when two or more people or organizations use the same domain name. DNDs initially emerged because technology advanced faster than the legal system, especially trademark law. Domain name trading has grown to be a profitable industry on its own and has a big influence on e-commerce. In 2007, the domain name was sold for US\$345 million by e- Companies who previously purchased US\$7.5 million for this domain name in 1999 from a vendor who bought this domain name for US\$150,000. DNDs and cyber squatters have become more prevalent as a result of the domain name industry's rapid expansion. Cyber squatters typically offer to sell the name back to the trademark owner for a heavy sum of money or profit.

Furthermore, the World Intellectual Property Organization reports that the number of Internet domain name disputes is handled and increased by 25% in the previous year. Such a study will be helpful to practitioners as well as researchers because it will lay the groundwork for future efforts to prevent it. First, background information on the development of domain names and domain name disputes is given in this paper. We next go over Congress's initial attempt to pass legislation to address DNDs, which is known as the Federal Trademark Dilution Act of 1995. The topic of the 1995 legal framework's extension for this domain is the Anti-Cybersquatting Consumer Protection Act 1999. The following two acts discuss the Uniform Domain Name Dispute Resolution Policy, an international framework for resolving DNDs, and some of its drawbacks. At the final, we address methods for stopping, identifying, and going after online squatters.

## **BACKGROUND AND DISCUSSION**

Domain names started to be used in the middle of the 1980s. Before domain names, an Internet Protocol IP address was the only way to identify a computer's location on the network. Alphabetic characters make a domain name easier to remember and can be used to identify a company, organization, trademark, or other type of entity. Since IP addresses and domain names, both designate a particular computer on the Internet, they both need to be unique. Given that each unique domain name can only have one owner, this quickly became an issue.



Trademark law, which predicted the Internet, naturally allowed companies in different industries to have trademarks that were quite similar. Every business desired a domain name that bore a strong resemblance to its trademark, several businesses might be interested in obtaining the domain name. Apart from the rivalry between trademark holders for domain names, organizations without trademarks also aimed to get domain names for different purposes.

Some were participating in "cybercrime," seeing the business possibilities of the Internet earlier than many trademark owners. Speculation by registering domain names for which they lacked trademark protection to profitably sell the names. Some people registered domain names intending to make money by tricking Internet users into visiting websites that would compensate them. A small number of people and institutions registered domain names for personal, non-commercial use. Some people purchased domain names that were identical or similar to trademarks to openly voice their disapproval of the trademark holder. These actions did not always violate the law that was in place. Colorful labels were immediately coined by society to characterize these practices and their practitioners. The centuries-old notion of a "squatter" serves as the foundation for two phrases described as "one who settles on a property without payment of rent, without right, or title". The first term is "cyber-squatting," which was defined as "the deliberate, bad faith, and abusive registration of domain names in violation of the rights of trademark owners" in a United States report years later. "Typo-squatting" is another term for cybersquatting that describes a kind of it where the cyber-squatter misspells the trademark in the hope that it will be a widespread mistake.

"Cyber-griper" is the third phrase; this person uses a domain name to criticize the owner of a trademark. Some of the consequences of cybersquatting and associated practices on trademark holders included:

- Not being able to profit from registering the trademark as a domain name.
- Being forced to decide between not being able to use a domain name or paying a heavy sum for it.
- Experiencing a redirection of the Internet, frequently to websites that advertise goods or services provided by rival companies.

## **OBJECTIVES OF THE STUDY**

- To identify the various kinds of abuses of domain names.
- To appreciate the role of UDRP in resolving domain name disputes.
- To study cases of various domain name disputes resolved by WIPO.
- To examine the limitations of UDRP to resolve domain name disputes.

## **RESEARCH QUESTION**

How effective are the current legal strategies employed by trademark holders in resolving domain name disputes under UDRP and What are the challenges in harmonizing international trademark laws and domain name policies

## **RESEARCH GAP**

While extensive research has been conducted on the UDRP process and its application to domain name disputes, there is a significant gap in understanding how trademark holders can more effectively leverage legal strategies under the UDRP framework, especially considering the complex intersection of international trademark laws, jurisdictional issues, and the rapidly evolving digital marketplace.

## **LEGAL FRAMEWORKS IN INDIA FOR DOMAIN NAME DISPUTE**

It is interesting to note that India has no laws that particularly address cybersquatting. Indian victims of cybersquatting can put an end to this illicit practice in several ways. One tactic is to send cease and desist letters directly to the cyber-squatters. These letters are the first step; they demand that any unauthorized use of domain names be promptly halted and sometimes contain a warning about potential legal consequences if the violation persists. Stop and desist letters are a pro-active, non-litigious approach to dealing with cybersquatting issues. Another option available to victims is to start arbitration procedures through the Internet Corporation for Assigned Names and Numbers. One of the dispute resolution procedures provided by ICANN is the Uniform Domain Name Dispute Resolution Policy (UDRP). Arbitration is a simple and efficient process that can speed up the resolution of domain name disputes. If cybersquatting victims in India decide to take legal action, they can do so by filing a claim under the Law of Passing Off and the Trade Marks Act, 1999. It must be demonstrated that using a domain name without permission raises the risk of confusion or misrepresentation, which in turn impacts the victim's rights, under the Law of Passing.

Furthermore, the Trade Marks Act of 1999 provides a solid legal foundation for the defense of registered trademarks, enabling infringement victims to take legal action. Additionally, victims might choose to report the occurrence via the INDRP stands for Indian Domain Name Dispute Resolution Policy. This regulation, which is overseen by the National Internet Exchange of India (NIEI), specifically addresses domain name conflicts relating to the top-level domain.

### **STATUS OF DOMAIN NAME DISPUTES IN 1990**

To begin with, the legal system lacked status that was sufficient to resolve DNDs. Regarding trademark infringement, the Lanham Act was the most prevalent law. Nearly all DND lawsuits filed before 1995 did so under the Lanham Act. This was ineffective for several reasons. Owners of trademarks are not granted unlimited rights to use their marks in any way by trademark law. A lot of DND cases lacked explicit trademark infringement, and the defendant frequently did not sell goods or services that were comparable to those of the plaintiff.

In actuality, the defendant frequently did not use the domain name for any kind of business purpose. These problems made it challenging to choose whether employing the contested domain name would diminish the trademark's value or create misunderstanding about it. Aside from the ambiguity surrounding the connections between trademarks and domain names, the geographic location of DND concerns rendered the judicial system unprepared. Internet usage is not limited to a single state or even nation. Political divisions city, county, state, and federal, in the US—serve as the foundation for legal systems. In a federal district court in California, a state that Tippen did not reside in—some of his victims filed lawsuits. The court had to determine whether or not he was subject to Californian jurisdiction before deciding on the DND concerns.

In the 1990s, John was a well-known typo-squatter. It has been stated that he made up to \$1 million a year and possessed over 3,000 domain names. He was eventually forced to pay hundreds of thousands of dollars in damages after a successful lawsuit. He received a prison term for tricking kids into visiting pornographic websites while searching Disney sites. This quote from a website run by a cyber-squatter demonstrates the mindset and tactics of a typical cyber-squatter. Consequently, there is a legal avoidance of any tax liability, and no damages are paid to anyone who would believe they are entitled to ownership. To legitimately purchase a

domain name from someone else, it would cost at least \$3,000, and Without a second thought or attorney, the majority of entities would pay up to \$5,000 in the event of damages or fees.

### **THE FEDERAL TRADEMARK DILUTION ACT, 1995**

The United States Congress's first attempt to update the legal system for the Internet era was the Federal Trademark Dilution Act of 1995 (FTDA). The idea was to give cybersquatting cases a legal foundation that was more appropriate for them than trademark infringement cases. A trademark owner may file a case under the FTDA against a purported cyber-squatter. If the cyber-squatter interferes with the trademark's ability to differentiate the products or services that are advertised under it. Proof of misunderstanding caused by the defendant's activity or of commercial competition between the defendant and the plaintiff was no longer required. As the FTDA was used as a legal foundation and judges started interpreting it, the outcomes differed. Courts have occasionally agreed with the claim that a trademark holder's inability to use their mark as a domain name reduces the value of their mark and makes it harder for them to differentiate their products or services on the Internet. However, because some defendants were able to persuade the courts that their acts did not break any laws, filing a lawsuit under the FTDA remained risky for the plaintiff.

### **THE ANTI CYBERSQUATTING CONSUMER PROTECTION ACT, 1999**

The United States Congress continued to give trademark protection with the Anti-Cybersquatting Consumer Protection Act of 1999 (ACPA) holders offering protection against cybersquatting. The Lanham Act, which now oversees trademark law and unfair competition, was amended to include the ACPA. While the Lanham Act's authority to control DNDs was strengthened by the ACPA, filing a lawsuit under the ACPA was frequently costly and time-consuming. Since it was still sometimes difficult or impossible to bring legal action against overseas defendants, the ACPA was insufficient in addressing geographic difficulties. Congress intended to exempt reasonable criticism from the ACPA's restrictions and penalties.

This goal was not always achieved in several instances, the court's rulings were unduly harsh in penalizing the conduct of cyber-squatters whose acts were not under the ACPA should it have been actionable. This exemption was largely tempered by court decisions in ACPA cases in 2004 by creating a haven for legitimate criticism websites. Criticism sites should refrain from several actions to preserve this security, posting offensive content, registering multiple sites,

providing incomplete or misleading information when registering the domain name, linking to websites that sell goods or services or otherwise promote economic activity, and making offers to sell the domain name or settle the lawsuit. To succeed under the ACPA, the plaintiff must establish three requirements.

First, the defendant's domain name registration must match the plaintiff's trademark exactly or confusingly close to it. It must also be demonstrated that the defendant has no rightful claim to the domain name. Thirdly, the domain name must have been registered or utilized in bad faith by the defendant. The third component, bad faith, is arguably the most exclusive and challenging to establish of the three. Courts assess the bad-faith component based on seven criteria:

- Whether the defendant has any trademark rights or other intellectual property rights in the domain name.
- The connection between the defendant's name and the domain name.
- Any past instances in which the defendant has used the domain name to market products or services.
- The defendant intended to mislead the trademark owner's customers about the use of the domain name.
- Offers made by the defendant to sell the domain name.
- Use of a false name or other misleading information during the domain name registration process.
- Any prior instances of cybersquatting by the defendant.

### **REMEDIES FOR ABUSES OF DOMAIN NAMES**

In case of abuses of domain names, the following remedies are available to the affected party:

- Trademark holders can try to buy the domain name from the cyber-squatter. However, this is expensive. Also, it is unprofessional as it involves giving in to malpractices.
- Trademark proprietors can file a lawsuit in a court of law based on national legislation for trademarks, unfair competition, and other related legislation. However, this is an expensive and slow process.
- Trademark proprietors can go for arbitration proceedings under the Uniform Domain Name Disputes Resolution Policy developed by ICANN.

## **THE UNIFORM DOMAIN NAME DISPUTES RESOLUTION POLICY**

The Domain name registration agreements between registrants and registrar corporations are the source of the UDRP's authority. A clause requiring that DNDs be arbitrated is included in these registration agreements. It is not a treaty or legislation. The UDRP can somewhat address the geographic component that contributed to the failure of earlier attempts to govern DNDs because it is neither a statute nor a treaty. A complainant may use the UDRP in one country since it is not derived from that country's legal code against a respondent who lives abroad. The UDRP does not, however, totally resolve the geographical problem. The laws of the nation mentioned in the contested domain name's registration contract are used to settle disputes. The complainant may be at a significant disadvantage because the registrar and respondent often reside in that nation. Three primary objectives guided ICANN's implementation of the UDRP.

- To create consistent global guidelines for DND resolution.
- To lower the cost of DND resolution.
- To expedite the DND resolution process.

The UDRP has been effective in offering a rapid and reasonably priced solution. A DND may result in one of three things under the UDRP. First, the registrar may be ordered to cancel the domain name by the arbitration tribunal. A second option is for the panel to order the registrar to give the complainant the domain name. Rejecting the complaint is the third option. In contrast to the potential result of litigation, the complainant is not entitled to damages or legal fees under the UDRP. Over 80% of all cases that are filed end up being decided in the trademark owner's favor. The Uniform Domain Name Dispute Resolution's shortcomings include: The most popular forum for resolving DNDs is the UDRP. Non-commercial free speech issues remain challenging, just as they were under the ACPA. The UDRP has a significant issue with ambiguity. Ambiguity like that found in the UDRP would be problematic in a setting like the US legal system or the majority of other countries diminished over time as a result of precedents being set. Regrettably, there is no way to determine which decisions ought to be regarded as precedents within the UDRP procedural framework.

- Relying too much or too little on earlier UDRP rulings in the lack of a framework to set precedents;
- Under-relying on legal principles.
- An over-reliance on the UDRP as a policy, which may give rise to the perception of having the authority to merely "do justice" in every situation.

A geographical problem may also be a weakness, in addition to the previously stated one that DNDs under UDRP would be settled under the laws of the nation designated in the domain name registration agreement. Unless all parties to the DND agree differently, the language of the administrative procedure will be the language of the registration agreement, according to Article 11 of the UDRP. This may significantly disfavor one party in carrying out the procedure, which is typically the complainant.

The UDRP's failure to apply negative incentives to unwanted activity is one of its two other flaws. First, UDRP regulations allow the panel to discover that an effort at reverse domain name hijacking was the reason for the complaint. Regretfully, the only consequence for the complainant is the loss of the dispute; the UDRP makes no mention of any penalties. For those who misuse the UDRP procedure in this manner, this eliminates the majority of the risk and expense. The variety of events that could happen to a respondent who loses a dispute is a more significant flaw in the absence of negative incentives. The awarding of damages or legal fees to a complainant who wins the dispute is prohibited by the UDRP.

The UDRP has ordered the return of such sites to their respective trademark owners in 70% of instances involving trademark owners and the owners of domain names similar to the trademark, according to an analysis of previous UDRP dispute resolution. However, a US court recently rejected to do so. It contended that as the registered website was not a business, it could not be claimed that the rights of the trademark owner were being violated. Confusion may result from this different perspective from that provided by the UDRP.

### **ADEQUACY OF EXISTING LEGAL FRAMEWORK**

This automatic advertising system displays links to websites and advertisements on Google's search results page based on keyword matches. When advertisers use keywords to exploit other people's trademarks without their consent, it is known as trademark infringement. Courts are working to control these activities despite the absence of a clear legal framework, acknowledging the need to stop secret trademark infringements made possible by Google. Given Google's practices, it is necessary to respond appropriately to concerns regarding the company's alleged dishonesty and double standards. Restricting Google and its policies by themselves might not be sufficient to prevent unfair online practices. Proponents contend that to successfully address trademark infringements, stricter restrictions ought to be implemented.

Notably, the Indian legal system solely considers the interests of business organizations and not those of consumers when addressing trademark infringement on online portals.

## **CONCLUSION**

The study highlights that governments and the Internet community have not fully addressed the challenges posed by the slow adoption of Internet technology in the legal system. There is no clear agreement on which issues need to be fixed or are already covered by existing law. These challenges are also present in other technologies, such as bioinformatics, where there are unresolved patent and privacy concerns. While progress has been made in resolving domain name disputes (e.g., through ACPA and UDRP), many decisions are still needed on the best approaches. Regional issues remain, as the Internet's global nature causes conflicts that require national legal systems to address. Businesses should take a defensive approach and carefully consider the recommendations made to minimize risks.

## **SUGGESTION**

1. **Strengthen Global Consensus on Dispute Resolution Frameworks:** One of the main challenges in trademark and domain name disputes is the lack of uniformity across jurisdictions. While the Uniform Domain Name Dispute Resolution Policy (UDRP) provides a framework, its application can vary by region, making it harder to resolve disputes consistently. To address this, efforts should be made to align regional policies and make the UDRP more globally accepted, ensuring that disputes are handled uniformly regardless of the country involved.
2. **Improved Education and Awareness:** Many businesses and domain owners are unaware of the intricacies of trademark and domain name law, leading to inadvertent violations or missed opportunities for defense. Educational initiatives aimed at helping businesses understand how the UDRP works and how to protect their trademark rights can prevent unnecessary disputes. Training on proactive legal strategies, such as registering relevant domain names and monitoring online trademark use, can also reduce conflict.
3. **Enhance Preventive Measures:** A key remedy for trademark and domain name disputes is prevention. Businesses should adopt a proactive approach by registering trademarks in multiple jurisdictions and securing relevant domain names early. By being proactive in both trademark filings and domain registration, businesses can avoid



the costs and risks associated with domainname disputes.

4. **Clearer Guidelines and Transparent Processes in UDRP:** The UDRP process, while effective in many cases, can sometimes lead to ambiguous decisions. Clearer guidelines regarding "bad faith" registrations and the scope of trademark infringement could help reduce confusion. Additionally, the UDRP could benefit from more transparent procedures for filing complaints and appealing decisions, helping parties feel more confident in the system's fairness.
5. **Introduce Mediation as a First Step:** Before moving to arbitration or legal proceedings, the introduction of mandatory mediation as the first step in the dispute resolution process could help resolve issues more amicably and efficiently. Mediation allows parties to reach a compromise without the need for costly and time-consuming litigation.
6. **Strengthen Enforcement Mechanisms:** While the UDRP provides a mechanism for resolving domain name disputes, enforcing UDRP decisions, particularly when it comes to transferring domain names, can be challenging. Strengthening the enforcement mechanisms of UDRP decisions, and encouraging international cooperation for enforcement in cases where domain owners are in different jurisdictions, could ensure that decisions are implemented more effectively.
7. **Develop New Legal Strategies for Evolving Technologies:** With the rapid development of new technologies (e.g., blockchain and NFTs), the legal frameworks for domain name and trademark disputes need to evolve. Legal strategies should anticipate and adapt to these emerging issues, ensuring that trademarks are protected in new virtual spaces and that domainname disputes in these new arenas are effectively handled.

## LITERATURE REVIEW

### **1. Confusing the similarity of Trademark law in Domain name disputes (2018).**

Christine Haight Farley's work "Confusing the Similarity of Trademark Law in Domain Name Disputes" offers a comprehensive analysis of the jurisprudential issues surrounding trademark law in the context of domain name disputes. Using a doctrinal research approach, Farley investigates the legal issues of trademark law concerning domain name disputes. The article opens with a summary of how trademark law has evolved in the digital era. Farley notes that the growth of the internet has presented

trademark law with new difficulties, particularly about domain names. The author provides a comprehensive analysis of the many legal standards that have been applied in domain name disputes, including the "bad faith" norm and the "likelihood of confusion" test. In addition, Farley examines the criticisms made of the Uniform Domain-Name Dispute-Resolution Policy (UDRP), which resolves domain name conflicts. Farley also discusses the role that domain name registrars play in resolving conflicts. The report goes on to say that registrars have drawn criticism for their lack of transparency and for not providing trademark owners with adequate redress.

**2. The Issue of Domain Name Disputes with Special Reference to Cyber Squatting (2018).**

Examining the subject of domain name disputes and cybersquatting, the study paper "The Issue of Domain Name Disputes with Special Reference to Cyber Squatting" highlights the importance of trademarks in cyberspace and the necessity of protecting them. The rapid advancement of information technology and the creation of a new communication and business platform are covered in the paper's introduction. The act of registering, trafficking, or utilizing a domain name to make money from the goodwill of another person's trademark is then defined as cybersquatting in the document. The importance of protecting intellectual property rights online and the challenges posed by e-commerce are listed in the paper. The article discusses the many measures that can be taken to protect trademarks online. The article also discusses the importance of domain name monitoring and enforcement strategies.

**3. Trademark Violations in E-Commerce (2023).**

In "Trademark Violations in E-Commerce," Sujan U examines the problems that arise when trademarks are violated in an online retail environment. Doctrinal research is the basis of the article's methodology. Conceptual and analytical research methods are also utilized to understand and examine various legal norms and principles. The article provides a comprehensive overview of the various infringements that occur in e-commerce, including counterfeiting, cybersquatting, and keyword advertising. The legal frameworks that are in place to address trademark infringement in e-commerce are also covered in the article, including international agreements, national laws, and dispute resolution processes.

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