
Meaning Of Domain Name and Trademark: Understanding the Conflict

*Dr. Namah Dutta**

Abstract

Trademarks and domain names are essential for creating and safeguarding brand identities in the digital era. While a trademark legally protects a brand's distinctive identifiers, such names, logos, or slogans, a domain name acts as a website's address, directing people to online locations. When domain names mimic or closely resemble already-existing trademarks, they may cause confusion for consumers and reduce the value of the brand. This is where these two factors can collide. Cybersquatting, in which people maliciously register domain names that are identical or similar to well-known trademarks with the intention of making money by reselling them to their original owners, is one practice that frequently leads to conflicts. While reverse domain name hijacking occurs when trademark holders try to take domains away from lawful owners without a valid reason, typo squatting is the practice of registering misspelled copies of well-known domain names in order to redirect traffic. Such disagreements have the potential to damage brand reputations and undermine customer trust. Businesses navigating the online realm must comprehend the differences between trademarks and domain names. Conflicts can be avoided with proactive steps like trademark registration and domain registration monitoring. Resolving infringement complaints through recognized legal frameworks guarantees the preservation of customer trust and brand integrity.

Keywords: *Domain Name, Trademark, Cybersquatting, Typo squatting, Reverse Domain Name Hijacking, UDRP, ICANN, Brand Protection, Legal Dispute, Online Identity.*

* Assistant Professor of Law, Chandigarh Law College, Chandigarh Group Of Colleges, Jhanjeri, Mohali, Punjab.

Meaning of the term ‘Domain Name’:

In the layman’s terms, a DN is a one-of-a-kind identifier for a web structure or network. If a user needs information from a website, he will seek for the web address that will direct him to that website; the web address will then include the domain name. For example, if a user needs to link to WIPRO, he may just type <https://www.wipro.com/>, which will take him to WIPRO’s official website. No user will ever be led to a site that is a mirror of the original or a false web address that uses the same domain name as the legitimate user.

Prof. Vandana. Narvade. Kadam in his paper “Analytical Study of Domain Name System, its disputes and legal issues” suggested Domain Names to be *“The Internet equal of a smartphone wide variety or a geographical deal with. The layout used at the Internet to transmit information and translate them into unique addresses of websites is called the Internet Protocol (IP). As a part of the IP, Internet addresses are constructed from a string of digits delimited with the aid of using periods (normally called "dots"). The delimited discipline suggests the community, sub community and the local Address, study from left to right. A common Internet deal with would possibly display as ‘11.23.55’ where ‘11’ indicates the community, ‘23’ suggests the sub-community and ‘55’ denotes the laptop itself. All those numeric shape is called the IP addressed.”*¹

Leaffer, M. “Domain Names, Globalization, and Internet Governance. Domain Names, Globalization, and Internet Governance” stated that *“Each domain name responds to Internet Protocol (IP) addresses, which was numeric, used by the Internet to transfer and input data. Every computer linked to the Internet must have a numeric address in order to be identified and located by other users. The Internet address functions like a physical street address or a telephone number. Most importantly, each address must have unique sets of alphabets, so that other computers on the network are able to locate and to route messages to the correct address.”*²

¹ Narvade. Kadam, P. “Analytical Study of Domain Name System, its disputes and legal issue”. BVIMSR’S Journal of Management Research ISSN: 0976-4739, 2013.

² Leaffer, M. “Domain Names, Globalization, and Internet Governance. Domain Names, Globalization, and Internet Governance”, 1998.

Domain names are used to identify a website by assigning it a unique Internet address. Computers as gadgets only understand the language of numbers, hence they are addressed by numbers rather than words. A model Internet Address, also known as an IP address, would be "120.11.23.55". DN's are constructed with dots (.) and a model example of the same would be "ww.youtube.com".³ DN's are considered a significant assets for brands of companies and most important aspect of a domain name is that a hybrid Domain would act as a banner name of like a storefront to attract customers and aid the same is discovering the site in connection with such domain containing the particular information that may be beneficial to them. Trademarks possess the power to differentiate an identity which in turn helps in persuading people to choose what they want or even make people believe that they want a specific thing may it be a good or service. This is done on the basis of the advertisements and services that a good or service receives which in turn helps in the uniqueness of such goods or services. In comparison to Trademarks, DN's possess the ability to transmit a communicating message that in turn allows trademark holders to spread info regarding their products.⁴

DN's are considered an essential component for every business who is involved in or engages in online commerce related activities. Even after 2 decades of the boom of internet the tasks performed online are always increasing, the number of new online businesses being setup as well as the number of already established businesses shifting a chunk of their tasks online, the essentiality of DN's and their protection cannot be overlooked. DN'S are now more than only the names of distinct entities' websites; they also function as company identities and boosters. Domain names are sometimes even referred to as the online analogues of trademarks. Though the opinions on that matter many at times seem to disagree as whether DN's are right to be treated as Trademarks in terms of their legal standing.

It becomes pretty obvious that a DN may be a highly significant company asset as it can function as both a brand and a shop front, assisting customers in finding a product or service. Commercial website, and can build goodwill by attracting customers over time. A time period Internet domain names can be used for purposes other than commerce. It could be useful in enabling individuals in finding certain information sometimes as references to the material or

³ Lipton, J. D. (2005) Beyond Cybersquatting: Taking Domain Name Disputes Past Trademark Policy Wake Forest Law Review 40(4): 1361-1440.

⁴ Holstein-Childress, V. (2004) Lex Cyberus: The UDRP as a Gatekeeper to Judicial Resolution of Competing Rights to Domain Names Penn State Law Review 109(2): 565- 608.

as the information itself as a whole or maybe even as a link to a relevant source of info. (For example like a government website, website, website of a library, website of a university, and so on).

In today's internet-driven industry, domain names serve two purposes: they map IP addresses and they serve as identifiers for a company's trademark. Domain names, unlike trademarks, are not adequately protected by national laws. The laws of various nations do not all protect domain names in the same way. It was ICANN that had created the UDRP or the Uniform Dispute Resolution Policy with the concurrent aim to protect and preserve DN's and this establish uniformity. This study of DN's is also going to focus on various types of disputes that arise in the due course of dealing with them. Some of the areas discussed in this study are such as the important uses of the UDRP, the procedure of how would one go on to register their Domain as well as the procedure of utilising a dispute resolution policy when the situation demands that. Not only that but the most crucial cases in connect of DN disputes have been examined under this research. It is important to note that UDRP is seen to be applied to both the existing as well as the latest generic Top Level Domains or as we are going to call them, the gTLDs, while, for domains such as the country code Top Level Domain it seems to be far less important. In the case of gTLDs and new gTLDs, the losing party can still appeal to a court of competent jurisdiction. This option, however, is rarely used. It goes without saying that to bring uniformity to the Domain Name legislations becomes highly important between the nations around the globe so as to effectively and completely ensure the protection of domain names. The ICANN which is the Internet Corporation for Assigned Names & Numbers should establish a concrete model DN dispute resolution law that can be successfully adopted by governments of other nations which means it's necessary for the UDRP to be strengthened.

When we are talking about a DN it in a way performs the same function on the internet that a trademark does or would do in the real business world. Both the Trademark and the DN are essential as they play a crucial role when in comes to product & brand marketing. The trademark is a graphic indicator that enables the client to identify the product source and helps them to differentiate your product from competitors' products and on the same horizon the DN is by crux your company's Internet address that displays your business's virtual image on the internet.

After trademarks and "domain names" have been properly registered, the following advantages can be provided:

- A trademark that has been registered has the power to protect your brand in much as the same sense that a registered DN would promote and protect your web address against unlawful use by anybody or by any institution,
- Trademarks raise the perceived worth of your company or business, whereas a DN boosts your organization's global exposure and accessibility.
- The DN would also be very crucial in making any product noticeable in the market by differentiating your web address from your competitor's web address through a unique URL, which in turn helps any company to establish itself in the concerned market.

2.2 Concepts of Trademark

In its very basic sense a Trademark can be explained as any mark that has its place in the course of business functioning to basically identify or separate your goods from that of other brands who may be your competitors. It can be anything or of any form like a simple word, to a symbol, a certain way of configuration in a gadget and/or any combination of them which a business owner can make use of in order to separate or differentiate his/ goods from that or the competitors.

In the case of Cadbury India Limited and Ors. Vs Neeraj Food Products, the court defined "brand" as "a mark used to protect merchants and consumers from the malafide use/adoption of another's well-known trademark to deceive the general public in order to get unfruitful market benefits."

Trademarks are symbols that differentiate one marketer's merchandise from the ones of different entrepreneurs. They are badges that become aware of the beginning of the marked gadgets and function logos of the change mark owner's goodwill. Trademarks are essential in society due to the fact they function communicators. They assist clients to distinguish among gadgets whilst additionally permitting entrepreneurs to offer merchandise of various pleasant at various pricing. The marketplace financial system primarily based totally on preference might wreck down into a large number of unmarried product marketplaces if change marks had been now no longer used. There might be simply one lowest marketable pleasant and one lowest possible rate for every type of goods. However, for the marketplace to characteristic properly, the records contained through emblems have to be reliable.

Trademarks, like other kinds of intellectual property, are 'property rights' that provide the owner the exclusive right to use the mark in specified ways. The basic goal of trademark law was to protect consumers from deceit in the marketplace by protecting trademarks and origin badges. Property rights on the goodwill given by trademarks, as well as trademarks as such, have gradually been recognised. Business and commerce have grown more technology oriented as a result of advancements in information technology, and they have enlarged their market by advertising themselves through new technological advancements. As a result of online commercial transactions in commerce, the internet's value has grown, and trademarks are becoming more vital in cyberspace for business. As a result, a company's trademarks and goodwill must be protected in order to retain customers and increase marketability online.

2.2.1 Types of Trademarks:

It has been observed that there isn't just a single type of trademark but rather a trademark can be characterised in 5 different areas they cover. So below we'll be discussing those types briefly:

1. The first one would be a **Service Mark** which generally relates to companies that function on the service sector but is similar to a trademark as it still operates within the rules of a trademark. The only distinction being that they deal with companies offering services instead of goods. A really popular example of the same is the McDonald service mark which essentially is used to denote the hence services that are supplied.
2. The second one would be a **Generic Mark** which doesn't get the trademark status immediately, unless it possesses some additional detailed info which is due to the reason for avoiding giving some really generic word or phrase trademark. A generic mark needs to be somehow unique in its own sense to qualify for protection and this should have some detailed info such as the traits, qualities, distinguishing attributes of sorts or something like the components of the product the company has in the market.
3. The third type of trademark of the **Descriptive mark** is essentially used to describe a specific product by mentioning a couple of the said products qualities. Bear in mind that a descriptive mark doesn't denote a whole brand or company like the generic mark but a specific product only. Such a mark would be said to possess some really distinctive characteristics which would make it eligible for protection under the trademark law.

4. When it comes to the fourth type, the mark doesn't need detailed description about a product or service since a mark that merely suggests or hints to such product or service can be called a **Suggestive Mark** and granted protection under the rules. This mark is aimed at making the consumers employ their imaginations in order to come to an understanding of the product and services that the brand or a company as a whole makes available in the market. A great example of a suggestive mark would be NETFLIX since the name itself suggests a relation to the internet and movies but doesn't come and poster it directly on your mind. A person with no knowledge of what Netflix is could potentially identify its relation to a streaming site due to the suggestive name a mark.
5. Next up is the Whimsical or as we generally call it the **Fanciful mark**, as the name suggests these marks are distinct to anything present in the market. This is in the sense that these marks wouldn't be generally usable in the everyday communication making them highly unique in nature and pretty easy to get a trademark protection for. Brands such as UBON or GIOMEE are some fanciful marks that have no specific meaning or usage in everyday English and thus making them easier to register and protect under the trademark laws.
6. The final type of trademark is an Arbitrary Mark which alludes to some term or particular phrase that are quite known and consumers know their meanings but such terms or phrases are different on the sense of the brand. Like the Arbitrary mark of APPLE has a really well known meaning as a fruit but the brand itself deals in electronics which is totally different.

Importance of Understanding Trademark Types: Anyone who opts to file for a trademark protection under the law must be aware of the various distinctions of them. It almost becomes a necessity to do so if the phrase, term or symbol you're filing for is too generic as the uniqueness of a mark determines the ease of getting a successful registration for the same. This gets its merit from history when there were no trademark regulations, which resulted in a lot of confusion when it came to distinguishing between different brand products and companies which would thus, cause it nearly impossible for companies to obtain and sort of brand loyalty as it became harder for consumers to differentiate between them.

The Lanham Act, which was passed into law in 1945, aided in providing greater protection for trademarks registered in the United States. When a trademark application is approved, it confers legal rights and protection on a company or individual. Which would in turn make the trademark owner the only one eligible to generate profits from and/or reproduce such products protected by those marks. In federal court, a trademark owner can sue someone who infringes on his or her trademark. Infringement happens when someone else uses a mark that is confusingly similar to yours. It's difficult to show who used the mark first if neither party owns a trademark on it. It is advisable to company users to file for a trademark application ASAP in order to avoid any such conflicts in the future.

2.2.2 History & Origin of Trademarks around the World:

The Beginning: Since before there was a term for it, humans have been trademarking things. Although it is practically hard to say when the first trademark was created, we now have access to evidence that reveals one of the earliest known cases goes back to 5000 BC courtesy to Google (which is also registered).

People in China were producing ceramics with the name of the Chinese emperor in power at the time. This item also included the date and place of its creation, as well as the name of the creator. Let us now travel to a new continent. Egyptians put their distinctive fingerprints on almost everything they manufactured thousands of years ago, including clothing, stonework, tiles, silverware, gravestones, and so on. However, these old trademarks were not legally recognised. They were generally employed as a means of claiming ownership of any production.

Do you recognise the term hieroglyph? If you have, you are aware that hieroglyphs were used in ancient Egypt's writing system. These characters were employed to express a concept, as well as to identify something that had been made by someone. The Egyptians, however, were not the only ones who did so.

Early trademarks have also been discovered on Roman artefacts. Many years ago, the Romans were enamoured with trademarking and began using it on products like as crockery. Even the foundations of ancient Rome had their names written on them!

The first contemporary trademark rules wouldn't come into existence as late as the late nineteenth century. Regulations and norms have continued to evolve since then, up to the present day.

Official Legalization of Trademarks in History: In the year 1266, the English Parliament, during the kingship of King Henry the Third, approved the first trademark statute ever in history. The rule was referred to as the Bakers Marking Law and what this law suggested is that every baker must mark their respective loaves of bread with a special mark which was unique to themselves. This would lead to printer marks being added to books as well as emblems being added to palaces in order to distinguish the same. Not only palaces but the same was done to castles, inns, as well as taverns and the mark came to be widely being used in trade. All of this was taking place in the United Kingdom. Following a petition from Samuel Breck, a sail-cloth maker in Boston, Massachusetts, in 1791, Secretary of State Thomas Jefferson encouraged Congress to allow trademark registration. The suggestion, however, was not carried out.

The Oldest Licensed Names and Symbols in Trademark History: Let's take a look at some of the world's earliest registered trademarks.

- The Czech beer brand PILSNER, which dates back to 1859, is the world's oldest registered trademark. It has lasted more than 160 years and is still operational. Every ten years, it has been successfully renewed!
- The following are some of the oldest registered trademarks in context of the US: **Coca-Cola (1893):** We've all heard of it. This tonic beverage trademark was first registered on January 31, 1893, and has been successfully renewed every year thereafter! **Heinz (around 1897):** You're undoubtedly familiar with this name. On December 28, 1897, the trademark Heinz was registered. It has been successfully renewed until this day, much as the Coca-Cola trademark. As you can see, it's rather intriguing that trademark protection, if renewed in a timely and effective manner, can potentially be forever.
- The first trademark was registered by the Bass firm in the United Kingdom, and it was used to identify beer. The trademark registration legislation was enacted in the United Kingdom in 1875, and it comes with a fascinating backstory. When applications for trademark registration started on January 1, 1876, it is alleged that a Bass employee was assigned to wait outside the trademark office overnight the day before in order to be the first in line to submit for a trademark the next morning. Of course, he fulfilled his mission, and this trademark, like the Czech trademark, is still in use today.

Present state of Trademarks: Before trademarks were formally allowed, individuals considered adding a name, a symbol, or an image to a product that they created themselves.

They already felt like they were in charge. So we know it existed before a group of individuals decided it needed to be made a law. This is why individuals began placing symbols, pictures, and inscriptions on their items to ensure that everyone knew they held the trademark. However, the regulations were not the same back then as they are now. Over time, these marks developed into the trademark registration and protection system that exists today. In terms of trademarks, we now know that each nation has its own set of rules and authority. For example, certain nations, such as the United States, allow applicants to submit trademarks in black and white, while others do not. Alternatively, certain nations are more lenient when it comes to trademark similarities, and others are highly stringent. It is clear that trademarks are not new, and that symbols, "hieroglyphs," or visuals connected with certain persons or organisations have existed throughout history.

2.2.3 Benefits associated with Registration of a Trademark:

Now that we have covered the difference between trademarks and patents we will see what some of the Benefits of Registering a Trademark. Every aspiring entrepreneur should be aware of the various benefits that come with trademark registration. So, here's a rundown of the top ten benefits of trademarking your brand name.

1. **Exclusive Permissions:** A registered trademark is essentially the property of its owner in legal sense which means that such an owner can use the same trademark for all other items that fall under the application's class. The proprietor also has exclusive control of the trademark and can prohibit anyone from using it in the class in which it is registered. It also gives the owner the ability to sue anybody who infringes on his or her property without permission.
2. **Promotes Trust and Loyalty:** Trademarks symbolise a products or service's reputation and quality. Customers in the market get confidence and recognition by registering a trademark. It also helps you build a loyal and long-term customer base who will continuously choose your trademarked brand over others.
3. **Product Differentiation:** Customers will have an easier time finding your items if you register your trademark. It sets your product or service out from the competition while also acting as a powerful advertising tool. This is also because your trademark or logo indicates your company's vision, quality, and unique quality.

4. Assigns a unique identity to a product's quality: Trademark registration provides physical confirmation of the value and quality of your product or service. This is due to the fact that buyers identify a service or product's quality with its trademark. Furthermore, this awareness benefits in acquiring new clients who mistakenly distinguish the quality of a product or service based on its logo.
5. Creating Assets: A company's intellectual property is created as soon as a trademark completed the registration process. A trademark registration is a legal right that may be bought, transferred, delegated, franchised, or economically contracted. Furthermore, a trademark functions as an intangible asset in a company's balance sheet, providing all of the benefits associated with such assets.
6. Use of the ® Symbol Is Legal: When a trademark is registered, you may include the ® sign in your logo to show that it is a registered trademark and that no one else can use it. If someone else uses your trademark without your permission, you have the right to prosecute in court for such obvious infringement of your exclusive usage rights.
7. Protect Yourself From Infringement: A trademark registration has the power to protect an owner from infringement since the owner can then seek an injunction to prevent the person from using the brand without permission. Your trademarked logo cannot be used by anyone else, including rivals.
8. Protection for ten years at a low cost: Enrolling in a trademark helps your organisation to keep a distinct identity at a minimal cost. Maintaining a trademark registration online is simple and inexpensive. Similarly, all you have to do to register a trademark is pay the protection fee and the renewal charge, which is required after 10 years of trademark registration.
9. Registration of Trademarks around the World: If you wish to grow outside of India or just register a trademark in another country, don't worry; a trademark that has previously been registered in India may serve as a strong basis for gaining worldwide recognition. Because of all the goodwill accumulated, a trademark that has previously been registered in India can be utilised as the foundation for registration in another nation.
10. Recruiting Human Resources: Young talent is known to be attracted to well-known businesses. Furthermore, young people prefer to work for major firms since they provide better benefits and salary security. The registration of a trademark projects a

good image of a company. Furthermore, this lowers the cost of recruiting and other associated activities.

Trademark Laws around the Globe:

Trademark laws pertaining to the UK:

When we talk about Trademarks in context of the UK, the very first of the acts had established a registry of marks. This registry of marks which came into existence in London in 1876, was the very first ever in the world. Then later in 1883 the trademark law was eventually the Trademarks act of 1905 was formed and this act established the foundational definition of the 'Trademark'. The next significant came precisely in the form of legal amendments in the 1938 and such amendments highly impacted the area relating to registration of service marks.

Trademark Laws pertaining to the States (USA)

As stated by the Patent and Trademark office of the states, a trademark is "any term, name, symbol, or device, or any combination, used, or intended to be used, in commerce to identify and differentiate the goods of one maker or seller from those made or sold by others,". And as we saw earlier a service mark although being highly similar to a Trademark is different in the sense that a service mark is used to state a service rather than an actual product in the course of business commerce. The primary legal origins or foundations of trademark law in the United States are constitutional and statutory legislation. Keep the following in mind:

- The constitution of the states, specifically Article 1 (s8)(c3) which is sometimes referred to as the commerce clause, gives the US congress powers to regulate business commerce.
- The major legislation which is also the fundamental federal statutory legislation in context of the states would be the Lanham Act or the Trademark Act of 1946 and this act governs the trademark practices in the states. It not only establishes the extent and limitations of a trademark, but also forbids trademark infringement, dilution, and misleading advertising.
- Trademark laws in the states have been codified and narrated and this has been done under Title 15, Ch. 22 of the US code. The same code is a pinnacle as it also covers, the scope and restrictions of trademarks, the two trademark registries, the circumstances

and remedies for patent infringement, and the functions of the United States Patent and Trade Office.

So with that said, how can one acquire trademark rights in the US: The rights to trademarks can be purchased in one of two ways? Common law and federal registration are used to accomplish this. The Lanham Act provides legal protection to both of them. By simply utilising a brand name, logo, or any sign, among others, in the usual course of business, an individual or corporation instantly gets common law trademark rights. Registration is not required. The "TM" sign is frequently used with trademarks that have common law rights. Whereas it is highly likely that an individual and some corporation might actually prefer filing for trademark registration under the United States Patents and Trademark Office

(USPTO). The "R" sign is frequently used with registered trademarks. Almost always, federal registration is advised. It's worth noting that trademark rights under common law are confined to the geographic region in which the brand is utilised. A federal trademark registration provides the owner of a trademark rights worldwide protection.

A trademark can also be registered with the Secretary of State of a certain state. State registration, like common law trademark rights, is less powerful than federal registration since it exclusively covers intrastate commerce. Whereas a trademark registration must be filed with the USPTO, when the same trademark is to be used in interstate commerce.

Trademark Laws pertaining to Canada:

When it comes to Canada there is an absence of any provincial trademark registries. So the only way for registering your mark would be by doing so with the federal tm registrar. Such registration would give the holder of the mark absolute rights use such a mark across the nation as well as the power to forbid others from using the mark or any other mark which might be confusing similar in the course of their own business. Registration protects such marks for a period of ten years and can be renewed indefinitely if the necessary administrative costs are paid. At the moment, there is no necessity to establish that the trademark has been used at the time of renewal. On the basis of the concept of 'first to use' the trademark act sets up a registrar system for the holders, although it must be highlighted that a registration of such mark becomes undeniable based on the provisions of previous common law rights after 5 years of registration. This is unless the knowledge of such previous rights can be shown to be present while the registration was filed. As we know that a trademark registration is competent to prove the

ownership for the same thus, whenever there is a dispute relating to that mark, the burden of proving ownership would completely fall on the person challenging the holder's ownership. When a trademark is not utilised in relation to the course of business operations for a period of 3 years, may it be for production or trade of goods or services, the said registration could also possibly be cancelled. The cancellation can be overlooked if special circumstances had resulted in the non-usage of the said mark.

Trademark law in context of South Africa:

The South African Trade Marks Act ("the Act") governs registered trademarks. Although even unregistered trademarks or the marks which haven't been registered yet can still be protected under the ambit of common law, the level of protection they get is weaker as compared to the marks that have been registered beforehand. The descriptiveness of any mark is sometimes taken into account while determining inherent registrability. Invented words are powerful trademarks and on the other hand terms which merely describe the products or services for which a trade mark is being filed are comparatively weaker and may not be easily registrable.

Pre-existing marks on the trade mark registry are taken into account for determining relative registrability. If there is a mark in the register that is confusingly similar to your mark, the pre-existing mark may preclude your mark from being registered. The registration process of any trademark starts with submission of an application to the CICP or the Companies and Intellectual Property Commission, accompanied by any necessary registration costs. After the application is submitted it is assessed for any pre-existence or it is assessed whether any similar mark has already been registered, this is done before the granting of registration approval to the said mark. After which the mark is eligible to be advertised and available to third-party opposition for a period that would last three months. The registration certificates are issued once this term has passed. The entire operation will take roughly 18-24 months in a simple application. Trade mark rights will be awarded retrospectively from the day the application was received by CIPC if the registration is successful.

If a mark has gained a reputation in South Africa, it may be protected under common law. Most likely the remedy of common law or the passing off remedy would likely be used to enforce such an argument. When one dealer makes an unintentional deception that its goods or services

are those of another merchant, or are anyway affiliated with or approved by that other trader, the other trader suffers a loss. The entire get-ups of the goods or services are evaluated when determining if passing off has occurred.

Trademark law pertaining to India:

When we talk about the history of trademark laws in India we go back to the post world war period as even prior to 1940 there was effectively no law in the nation for regulation of the marks which would cause numerous infringements to occur in the context. Such infringements were then dealt under the ambit of Sec.54 of the Specific Reliefs Act of 1877. When it came to registration such was dealt under the ambit of the then Indian Registration act of 1908. This was the scenario until the 1940 when Indian Trademark law was brought into existence in order to deal with such issues that were becoming more and more prevalent. Baer in mind that this was the time after the wars and around the same time India got its independence, all of this resulted in the rapid growth of the trade and commerce segment of the economy.

With such a growth the growing need for strong trademark protection was inevitable. Ultimately in 1958, the trademark act was succeeded by the then newly enacted Trademark and Merchandise Act which made vast improvements in the trademark protection against the unlawful and fraudulent use of trademarks on products.

Eventually at the century's end in the 1999 the govt. decided to fully update and replace the previous act with the Trademark act of 1999. This was done to remain in sync with the mandatory guidelines provided by the TRIPS. One of the major features except the protection provided to the holders was that now the police administration was able to make arrests in relation to infringement of trademarks. Some other positive effects of this act were that the act diversified the definition of the term infringement as well as it imposed fines and punishments on those who violated the law but not just that, the act also lengthened the time taken to register a trademark and also to register a non-traditional trademark.

2.2.5 Domain Name being protected under the trademark law:

Whether or not protection may be given to a DN under the ambit of the trademark law of India singularly depends on whether or not can that DN fulfil all the conditions of the act. IF and

when the DN is given registration certificate after a successful registration process, that would give the holder of that registration certificate or in this case, the owner of that DN all the rights and powers that a trademark holder would get under the same act.

- Section 29 of the act speaks in relation to Infringement rights and the protection of DN that any person who violates a DN, one which is registered under the trademark law as a valid trademark must be held accountable for the infringement of that trademark.
- In the context of passing off if the person is the previous of the mark and his mark has acquired certain degree of uniqueness or distinctiveness and someone else is misrepresenting the same that might cause him damages or loss by deceiving the public than an owner of trademark who hasn't registered the same may also be given rights under the trademark law.

2.3 Registration of the Trademark Domain Name:

IF a DN meets all the qualifications of a properly registered trademark than it can be given protection under the trademark law at both the national as well as the international level. The condition being that if the specific DN has the capability to unique out or differentiate a company's products as well as its services from those that their rivals have in the market than that DN fulfils the eligibility to be protected under the trademark law. If the "domain name" meets all of the standards that are generally applied to trademark and service mark registration. 'Satyam Infoway Ltd. vs Sifynet Solutions' is one of the cases of the Indian SC, whose decisions is really noteworthy in this regard. The legality of Internet "domain names" as trademarks has been called into issue⁵. The court stated here that:

"The original role of a domain name was no doubt to provide an address for computers on the internet. But the internet has developed from a mere means of communication to a mode of carrying on commercial activity. With the increase of commercial activity on the internet, a domain name is also used as a business identifier. Therefore, the domain name not only serves as an address for internet communication but also identifies the specific internet site, and distinguishes specific businesses or services of different companies. Consequently, a domain name as an address must, of necessity, be peculiar and unique and where a domain name is

⁵ Satyam Infoway Ltd. Vs Sifynet Solutions Pvt. Ltd., 2004 Supp (2) SCR 465.

used in connection with a business, the value of maintaining an exclusive identity becomes critical.”⁶

This has opened up a new window of opportunity for having a unique address that would also offer display, services, and products similar to those available on an offline platform; this major shift reflects a new era of commercial and personal productivity, a supernova for both Internet providers and consumers. This has in turn led to the formation of a new era in the realm of intellectual property rights. As the number of web addresses used in modern business grows, the Internet Today, accessibility has sparked a slew of lawsuits involving domain name owners, trademark owners, and private persons. This is where DNS (Domain Name Systems) enters the internet world. DNS is a service that converts domain names into IP addresses and connects them to the websites that users wish to access. Working as an internet address book, DNS requests first go to the user's ISP's Recursive DNS servers, which are then checked against a database of IP addresses available to those ISPs and redirected to the authoritative DNS. Only then can a user access the website for which he has entered the domain name. To comprehend the link between trademarks and domain names, as well as the controversies surrounding them, it is necessary to understand how DNS works to turn domain names into IP addresses.

Existing Legal Framework of DN protection:

In general, a domain name serves the same goals in online business discussions and transactions that a trademark does in offline commercial negotiations and transactions. The DN serves as a great way to find your company on the internet and represents your organization's virtual image, whereas the trademark is a beautiful graphic representation of your product or company.

The following are some of the advantages of registering your name under the trademark law:

- When you have a properly registered DN than it will forever protect you from any infringement which means nobody can use your DN for their gains without your permission and if someone does so you have the remedy to sue them under the act,

⁶ *Protection Of Domain Name As A Trademark*, (2016),
<https://www.indialawoffices.com/legal-articles/protection-of-domain-name-as-a-trademark>.

- A trademark has the inherent ability to increase the valuation of your business single headedly. On the other hand a DN may increase the chances of your business being identified in the global context on the internet.
- As we know a trademark would successfully unique out or differentiate your products from that of the competing businesses while a DN would can be effectively aid in the growth of your business all around the globe.
- And so a trademark that is internationally registered is certainly helpful to a company's security, global renown, and income, a well-protected domain name is unquestionably beneficial to a company's security, global renown, and revenue.

Decoding the Uniform Dispute Resolution Policy:

It is important to remember that a trademark can only be potentially protected in places or more precisely countries in which they have been registered. Although a globally registered trademark would potentially be under protection anywhere. There aren't any organisations that register as well as protect DN's as trademarks under than, none except the ICANN and since the domestic laws dealing with trademarks are seen to be insufficient to protect them, the role of ICANN becomes really significant. The national trademark laws of any country are seen to be insufficient to protect a domain name. ICANN advocated two powerful and harsh measures to achieve this vital aim, with the help of the WIPO: the first being a method of DN registration that was rigorous and cantered on censorship, involving accredited registrars by ICANN. The second being a highly effective and efficient Dispute Resolution policy or the UDNR policy. A person or business may file a formal protest with ICANN's competent administration dispute resolution services for UDNR Policy dispute resolution if:

- It is against a specific Domain that is highly similar to their own registered domain which was registered previously or when
- Such a domain which is infringing in nature has been registered and is being used fraudently.

Under the UDNR policy, the dispute resolution to provide an expedient and rigorous remedy for bad faith and abusive domain name registrations that infringe on complainants' trademark rights is carried out by DN registrars that are first approved by the ICANN. As the UDRP rules states. Any person may it be a business corporation or even a non-profit, becomes eligible to

register their complaint regarding the rights of their DN with the dispute resolution service provider.

As of today, the following are some dispute resolution service providers that have been approved by the ICANN:

1. Arab Center for Domain Name Dispute Resolution Center (ACDR),
2. Asian Domain Name, Dispute Resolution Centre (ADNDRC),
3. The Czech Arbitration Court Arbitration Centre for Internet Disputes (CAC),
4. National Arbitration Forum (NAF),
5. World Intellectual Property Organization (WIPO).⁷

Now how the dispute resolution is carried out is that each service provider is asked to maintain a panellist list respectively. From such a panel list one or three are chosen to resolve a specific dispute at any time. As stated by para 4A of UDRP, to file for a successful dispute resolution to the service providers some conditions or we can say elements must be priory met by the person doing so. These elements of eligibility are the ones that we already discussed before. For one the presence of confusingly similar DN with the party against whom such resolution is being sought. Another element being the lack of interest by the defendant or lack of rights over a DN they currently use and/or the DN has acquired the registration status in bad faith. Meeting such conditions or fulfilling such elements makes a DN holder eligible to know at the doors of the DN service provides at any given time.

Now ill faith or bad faith is a really loose term and must be explained in brief since it is one of the crucial elements that needs be fulfilled. The same has been enshrined in para 4B of the policy. Some elements that determine ill faith under 4B are if the DN has just been registered in order for making sales at a later time and obtain profit and not for actual business use. Other intent being to purposely harm someone else's business by registering that DN or if the DN is registered so that the competitor becomes unable to register a comparable DN which might be important for thereon business. Some registered DN also have the motive of confusing the general consumers and diverting the target customers to their own website by doing so in turn harming the competitor.

Only when the DN dispute is fully resolved can the DN be transferred or can the complaint be dismissed. It's also feasible to ask for the domain name to be deleted. There are no monetary damages or injunctive relief available in UDRP domain name disputes. The losing party has

⁷ "Asian Domain Name Dispute Resolution Centre, https://adndrc.org/about_us"

10 business days to sue the winning party in the court of jurisdiction. Authorized Domain Name Registrars who have promised to comply with UDRP will implement the Dispute Resolution Panel's decisions within 10 business days. Board decisions are enforceable in the sense that accredited registrars must take the necessary steps to enforce them. B. Transfer of the disputed name. The UDRP, on the other hand, gives each party the right to bring the matter to the court of competent jurisdiction for the final decision. However, this option is rarely used.

Concept of Codifications:

The DNS which is the Domain Name System, serves as a database for all IP addresses. The IP addresses of such domain names are used to communicate via the internet, rather than the domain names themselves. "Domain Name is an IP address proxy." There is no correlation between how IP addresses are formatted and how their matching domain names should be formatted; a domain name just functions as a pointer to its own IP addresses, which is derived via DNS (Domain Name System). When a user login into a server and enters a domain name, the Recursive DNS server directs the user to the ISP. The server then performs the task of transforming the DN into a respective IP address, exposing the user to a website. By doing so a DN such as `www.twitter.com`, would be translated into an IP address of "128.242.245.116." This translation is only feasible because of the flow of information and data from DNS to the server.

We may further divide a DN into several supposed units or hierarchies of sorts and such units may be:

- Top Level Domain Name (TLD)
- Second Level Domain Name (SLD)
- Sub-Domain (SD)

As you see, the term twitter is just behind '.com' in `twitter.com`, which turns it into a second level domain name. Also if we look at it, here is no alphabetical order before twitter which would otherwise turn it into a sub-domain. A classifications TLD occurs after the last dot in a domain name and further along, when considering generic DN's, a TLD that relates or pertains to a country code has also been assigned to every country. For Example, Domain Name '.in' is for the country of India while '.fr' is used to denote France.

Since domain names being unique and dominated by their Top-Level Domain name, often momentarily driven it is safe to assume and only natural that they assume the role of a trademark in the real world thus in turn they end up attracting the disputes in relation to the violation of trademark rules and laws. This is also including any violations that would affect Domain Name, International efforts and laws that are present to protect any interests of the trademark holders and also dispute resolution.

The acquire knowledge behind this supposed veil helps us understand if DN are good to be considered a virtual property that would or are eligible to carry goodwill for their holders or are they nothing more than some unique names in this crowded virtual world and would only be helpful as pathways towards different IP addresses Next our discussion would comprise of various disputes that may and acutely do arise when dealing with DN's as trademarks and how such disputes have been dealt with by the judicial bodies.

Conclusion:

The interplay between domain names and trademarks underscores a significant intersection of technology and intellectual property law. While domain names serve as digital addresses, trademarks function as indicators of origin and brand identity. Conflicts arise when domain names mirror or closely resemble registered trademarks, potentially leading to consumer confusion, brand dilution, or cyber-squatting. Courts and regulatory bodies have increasingly recognized the need to balance the rights of trademark holders with principles of fair use and free commerce on the internet. As online presence becomes integral to business identity, ensuring legal clarity and proactive domain name management is crucial. A harmonized legal approach is essential to resolve disputes effectively and protect both brand equity and digital freedom.