

CYBERSQUATTING: A NEW FORM OF IP EXTORTION - POSITION IN INDIA & US AND IT'S REMEDIES*

Introduction

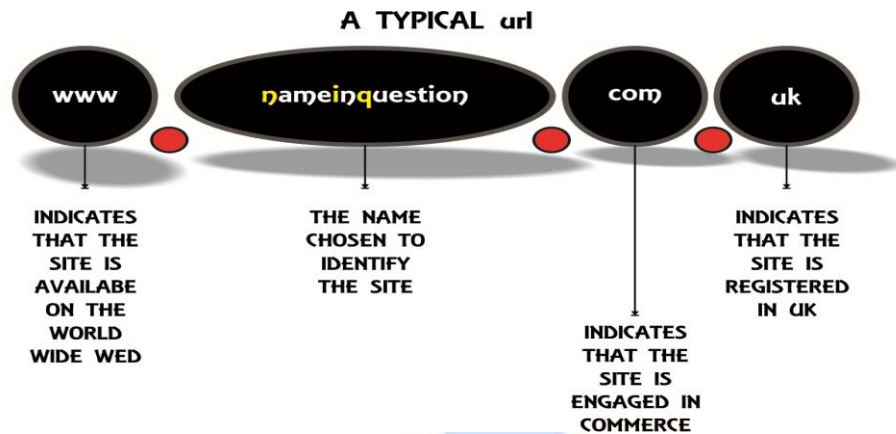
In the 21st century, internet domain names have an immense market of their own can also be a mark that defines a business, and this it creates endless opportunities for the cyber-citizens. Sadly, there is often much misuse of this 'domain' than it is put to good use. Cybersquatting is one such misuse of the cyber space. Cyber-squatting refers to the mala-fide registration of a domain name containing another's brand or trademark. The mala-fide registrant (cyber squatter) then extorts from the person or company who owns the trademark contained within the domain name and offers to sell the domain to the person owns the trademark at an inflated price.

1.1 Defining Cybersquatting

The Delhi High Court has defined cyber-squatting in *Manish Vij v. Indra Chugh* as "an act of obtaining fraudulent registration with intent to sell the domain name to the lawful owner of the name at a premium". Concern arises when the trademark owner cannot register his own trademark as a domain name as the 'cyber-squatter' has already registered the same in his name. All that the cyber squatter has to do to make quick money is to register a domain name that contains the name of someone's trade mark, trade name, and business name or even register an email id that contains the name of a person or his business which only he alone had the exclusive right to use. After doing this he may be trading on the reputation of that name using that domain name, basking on the goodwill of the 3rd party's goodwill, creating confusion by deception to the existing & prospective customers.

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1.2 What's a Domain Name?



Every piece of data on the internet be it a web page or a file has its own virtual address called a uniform resource locator(URL). The domain name forms a part of this address. A domain name is an alpha-numeric mnemonic device that corresponds to an Internet Protocol (IP) address to permits the ‘netizens’ to access the web more easily that if they had to remember the details of each IP address they wanted to visit.¹ A Domain Name System maps names to a series of numbers called the IP address and these numbers are then linked with an easily accessible, readable and remember-able name, commonly known to us as the Domain Name. The best thing about a domain name is that it does not change even though the service provider of the website may change. When the service provider changes, the only thing that changes is the IP address but thanks to the Domain Name System (DNS), one does not need to bother about such changes at all. It is also pertinent to mention here what an internet address system is, and this has been explained by Judge Mokenna in the *American Civil Liberties Union v. Reno* as follows: “each host computer providing Internet services has a unique address. Users seeking to exchange digital information with a particular internet host require the host’s address in order to establish a connection. Host actually possess two fungible addresses a numeric IP address and an alphanumeric domain name with greater mnemonic potential.”²

1.3 What's a Domain Name System

¹ H.L. Capron & J.A. Johnson, Computers: Tools for an Information Age, 543 (8th ed. 2004)

² Shine Joy, Domain Name, Cybersquatting and Domain Dispute Resolution , accessed online at <http://www.legalserviceindia.com/articles/cddisp.htm> on 5th June 2016

The (DNS) is divided into two parts: (1) the domain name and (2) its corresponding Internet Protocol (IP) number. Lets take an example:

If we use the ping function of the “Windows Command Processor” in the Windows operating system to find out the IP address of a website, (say google.com), we get a result 216.58.197.78. Therefore, “google.com” is the domain name and the string of numbers is the IP address of google.com. This is done with the help of a distributed database that contains the list of domain names and their corresponding address and then maps down the domain names to their IP numeric address and directs requests to connect computers on the Internet. A domain name is provided on first come first served basis. The DNS is administered by the Internet Corporation for Assigned Names and Numbers (ICANN). They are responsible for the allocation of IP address. ICANN, a private organization, manages and coordinates the domain name system, overseeing the distribution of unique IP addresses while the individual domain name registrars are responsible for the actual allotment of the domain name.

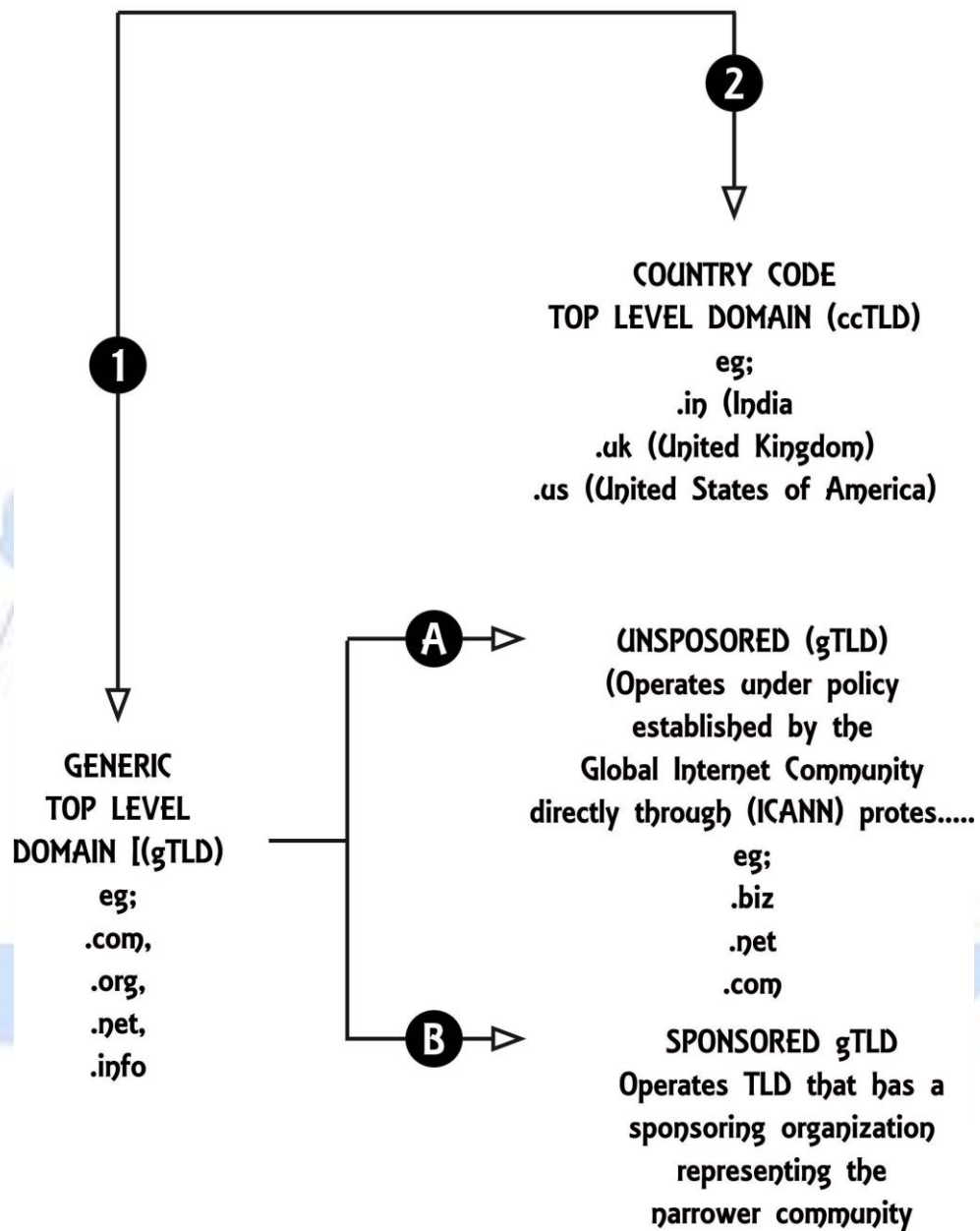
1. Types of Domain Names

Domain names are primarily of two types. The figure hereunder will assist to give a better idea:

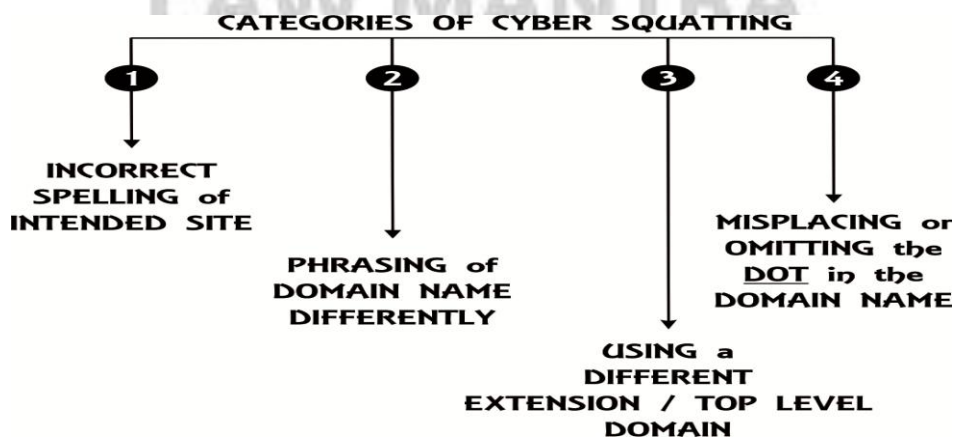


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DOMAIN NAME



2. Types of Cyber Squatting



Misspelling the intended site – known as typo squatting. When the visitor accidentally or inadvertently misspells the url or site name, leads the visitor to the spoofed website that does not belong to the company. Example: A victim may type www.del.com instead of www.dell.com

Phrasing domain name differently – When the mala-fide registrant registers a domain name that looks similar but phrased a bit differently, duping the visitor, to believe the domain is official which they intended to visit. Example: www.amaron.com may be wrongly phrased as www.amaronbattery.com.

Using a different domain extension –Here when the mala-fide registrant uses a different extension to for name of a well known website. Example: www.jbl.net for www.jbl.com.

Omission of the dot – A very common trap in the world of cybersquatting where a small typographical error by the visitor lands them to a different website than what was warranted for. A website by the url www.deepanjan.com is what the visitor wants to visit and a cyber squatter registers a domain by the name wwwdeepanjan.com and the visitor doesn't put the dot after www, he lands to a different place altogether.

3. United States' approach to cybersquatting

3.1 Pre Anti Cybersquatting Consumer Protection Act (ACPA), 1999

The cyber squatting law was quite unclear prior to the ACPA got enacted. There was no explicit provision that dealt cyber squatting.

Before the ACPA was enacted, trademark owners relied heavily on the Federal Trademark Dilution Act (FTDA) enacted in 1995 to sue domain name registrants. The intent to curb domain name abuses. The legislative history of the FTDA specifically mentions that trademark dilution in domain names was a matter of Congressional concern motivating the Act.³

The two cyber squatting landmark cases which played pivotal role in the development of cyber squatting law in the US were: *Intermatic v. Toeppen* and *Panavision v. Toeppen* . In the former case, the court observed that the respondent's conduct caused trademark dilution since the registration of the domain name www.intermatic.com lessened the capacity of Intermatic to identify and distinguish its goods and services on the Internet. In the latter case, the court ruled in the favor of the plaintiff and stated that the respondent had registered

³ *Panavision Int'l L.P. v. Toeppen*, 141 F.3d 1316, 1326 (9th Cir. 1998)

domain names with the names www.panavison.com and www.panaflex.com where the defendant had put pictures of Pana vally which infringed on the plaintiff's rights since the plaintiff had business of tourism sourcing its customers from the internet. These two cases gave an idea of the vulnerabilities of domain names that a trade mark owner who wants to make a presence in the virtual space, must keep in mind and be vigilant of. Not only this, these two land mark judgments aided in drafting the "Anti Cybersquatting Consumer Protection Act that was created specifically to prevent trademark infringement in the cyber space.

5.2 Post Anti Cybersquatting Consumer Protection Act (ACPA), 1999

The Anti-Cybersquatting Consumer Protection Act (ACPA), 15 U.S.C. § 1125(d), is an American law enacted in 1999 that established a cause of action for registering and/or using a domain name which is confusingly similar to, or dilutive of, a trademark or personal name.⁴ The law was made to prevent and deter "cybersquatters" who register Internet domain names containing trademarks with no intention of creating a legitimate web site, but instead plan to sell the domain name to the trademark owner or a third party.⁵ The U.S. Anti Cyber Squatting Consumer Protection Act (ACPA) of 1999 was basically an expansion of the Lanham (Trademark) Act (15 U.S.C.) and was intended to provide protection against cyber squatting for individuals as well as proprietor's of distinctive trademarked names. Under the current law, a victim of cyber squatting in the United States has two options:

- a) Sue the person under the relevant provisions of the ACPA act, or
- b) Go for an arbitration by using the international arbitration system created by the ICANN

5.2.2 Requirements to claim under ACPA

- a) That the defendant possessed a bad faith to profit from the use of a protected name, and
- b) That the defendant registered or used a domain name that:

⁴ Jane C. Ginsberg, *Trademark and Unfair Competition Law* 748 (Robert C. Clark et al. eds., Foundation Press 4th ed. 2007)(2001)

⁵ 2-7A Gilson on Trademarks §7A.06, *Trademark Cyberpiracy and Cybersquatting* (Matthew Bender & Co. 2009)

- (i) Is indistinguishable or confusingly alike to a distinctive mark or famous mark, or
- (ii) Is a trademarked word or name

5.2.3 Cases under ACPA

In *Morrison & Foerster v. Wick*⁶ the plaintiff was the owner of the registered trade mark “Morrison & Foerster”. This was used for legal services by the plaintiffs. The defendant registered the domain names “morrisonfoerster.com” and “morrisonandfoerster.com”. The court held that the defendant’s disputed domains were virtually identical to the plaintiffs trade mark name and also remarked that prejudice was present in that, since the defendant harmed the plaintiff’s goodwill by garnishment when the web pages carried racist slogans and hyperlinks.

In the case of *Jack In The Box Inc. v. Jackinthebox.org* the court held that act of registering a domain name itself comprised a commercial act as it involved sale between the registrant and the registrar. The court thus concluded that it met the definition of “use in commerce” as per the law⁷

5.2.4 Exception

In the case of *Interstellar Starship Services Ltd. v. Epic Inc*⁸ a computer enthusiast without having any mala fide interest or intent to make profit by using the word “Epix” trademark in his domain name, although the enthusiast did however offer to sell the domain name to trademark holder. But the offer did not attract the sections of the Anti Cybersquatting Consumer Protection Act (ACPA), 1999 because the offer was in the context of settlement negotiations as the enthusiast(defendant) had already invested sufficient amount of skill, labor and money into the site and also for the fact that “epix” according to the enthusiast(defendant) referred to the descriptive term to connote electronic pictures.

⁶ 94 F. Supp. 2d 1125 (D. Colo. 2000), available at <http://cyber.law.harvard.edu/ilaw/DomainNames/MorrisonFoerster.htm> last visted 4th June 2016

⁷ Supra 18

⁸ 304 F. 3d 936 (9th Cir. 2002), available at: cyber.law.harvard.edu/property00/domain/Interstellar.html visited on 4th June 2016

4. India's approach to cybersquatting

In India, there is no legislation which explicitly refer to dispute resolution in connection with cybersquatting or other domain name disputes.⁹ But even in India, cybersquatting is the occupation of a web address that does not belong to the occupier and he thus proposes to resell it by extorting money from the person who by virtue of his legal and moral interest wants to register it in his own name or for the purpose of his/her business. At best, the domain can be taken back from the cyber squatter. Cases involving cybersquatting is decided under relevant provision of trademark laws. The Trade Mark Act, 1999 is used for protecting the use of marks which defined the trade and is able to graphically differentiate between one or more trade of the same kind. It is also important to note that the cybersquatting cases are decided through the principle of passing off/infringement.

6.1 Remedies through Case laws

6.1.1 Remedy under law of passing off

(a) *Satyam Infoway Ltd v. Sifynet Solutions*¹⁰ - The Hon'ble Supreme Court in stated that: "As far as India is concerned, there is no legislation which explicitly refers to dispute resolution in connection with domain names...although the operation of the Trade Marks Act...may not allow for adequate protection of domain names, this does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing-off."

(b) *Yahoo Inc. v. Akash Arora & Anr.*¹¹ - The plaintiff sought for a permanent injunction to restrain the defendants from doing any business or dealing in any services on the internet under the trademark domain name "yahooindia.com" or any other trade mark that is identical to the plaintiff's well known trademark "Yahoo!". It was held that the service rendered by the plaintiff on the internet had become recognized and accepted globally. The Court agreed that although "Yahoo!" was a dictionary word, it had acquired sufficient uniqueness and distinctiveness so as to enable the plaintiffs to be protected against passing-off.

⁹ Ashwani K. Bansal, Law of Trademarks in India 642 (Centre of Law, Intellectual Property & Trade, New delhi, 2nd edn., 2006)

¹⁰ 2004(3)AWC 2366 SC

¹¹ 1999 IIAD Delhi 229

(c) *Titan Industries Limited v. Prashanth Koorapati and Ors.*¹² – The first case decided by an Indian court which accorded trade mark protection to domain names. The Delhi High Court found in favor of the plaintiff and granted an ex-parte ad-interim injunction restraining the defendant from using the trade name “Tanishq” or any other name that is deceptively similar and would likely lead to passing-off of the business and goods of the plaintiff.

(d) *Dr. Reddy’s Laboratories Ltd. v. Manu Kosuri and Anr*¹³, the defendants were restrained from using the domain name in question, “drreddyslab.com” which was identical to the plaintiff’s trade name. The Court was of the opinion that domain names hold an important position in e-commerce and held that the defendants were liable under passing-off.

(e) *Maruti Udyog Ltd v. Maruti Software Private Ltd* - a complaint was brought against the respondent in this case, who registered the domain name “marutionline.com”. The court held that the domain name was registered in bad faith as there was no evidence to suggest that the respondent intended to use the domain name for legitimate purposes.

6.1.2 Remedy by transfer

(a) *SBI Cards and Payment Services Private Ltd v. Domain Active Pty Ltd*¹⁴, - The respondent had registered the domain name “sbicards.com”. It was held that the registration was made with the intention to create confusion with the product, services and trademark of the plaintiff. The respondent was ordered to transfer the domain name to the complainant.

(b) *Maruti Udyog v. Maruti Infotech*¹⁵ – The plaintiff files a complaint with WIPO over a dispute relating to the domain name “maruti.org.” Maruti

¹² Delhi High Court Suit No. 179 of 1998, Decision dated 28 Jan 1998

¹³ 2001 PTC 859 (Del)

¹⁴ What is cybersquatting and its Legal Position in India available at <http://blog.ipleaders.in/cybersquatting-position-india/#ixzz4AV8kozUo> visited on 4th June 2016

¹⁵ Accessed at <http://arbiter.wipo.int/domain/decisions/2000-0520.html>

Udyog, a well known car manufacturer, proved that the trade mark “Maruti” was associated with its products and that a person of average intelligence and imperfect recollection would be led to believe that the domain name was associated with them. Moreover, the respondent sought to sell the domain name to the complainant for valuable consideration. The WIPO panelists held that there was a clear intent on the part of the respondent to make unmerited profit from the registration of the domain name and transferred the name to Maruti Udyog.

*(c) Tata Sons v. The Advanced Information Technology Association (“AITA”)*¹⁶, Tata Sons filed a complaint against AITA with WIPO for the illegal registration of the domain name “tata.org.”. The WIPO panelists held that “Tata” was a well known name, linked to high quality products. The name “Tata” was a family name and had no dictionary meaning. The domain name was, therefore, transferred by ICANN to Tata Sons based on the award granted by WIPO in favor of Tata Sons.

*(d) Sbicards.com v. Domain Active Property Ltd.*¹⁷ – Sbicards.com was ordered by the WIPO to be transferred to the Indian Company from the Australian entity which had hijacked the domain hoping to sell it at a high price to the State Bank of India.

6.1.3 Recognition of domain name as registered trademarks

*(a) Rediff Communication Limited v. Cyberbooth and Anr*¹⁸ - In this case, the defendant had registered the domain name “radiff.com” which was similar to the plaintiff’s domain name “rediff.com”. Deciding in favor of the plaintiff, the Court was of the opinion that the high importance and value attached to a domain name makes it a major corporate asset of any company. The court went on to state that a domain name is much more

¹⁶ Accessed at <http://arbitrator.wipo.int/domain/decisions/2000-0049.html>

¹⁷ Sanchit Mehta, “Cyber Squatting And Its Legal Position” available at <http://www.manupatrafast.com/articles/PopOpenArticle.aspx?ID=e336a09a-aa11-453a-935d-3fbc42492281&txtsearch=Subject:%20Media%20And%20Telecommunication> visited on 4th June 2016

¹⁸ AIR 2000 Bombay 27

than an internet address and as such, is entitled to protection equal to that afforded to a registered trademark.

(b) *Tata Sons Ltd v Manu Kosuri & Ors.*¹⁹, the defendant registered a series of domain names incorporating the well-known trademark “TATA”. The Court, in delivering judgment, referred to *Rediff Communication Limited v. Cyberbooth & Anr*²⁰ and *Yahoo Inc. v Akash Arora & Anr.*²¹, both mentioned above, and held that internet domain names are not merely internet addresses but are in fact corporate assets that are extremely important and valuable and as such, are entitled for protection equivalent to that afforded to registered trademarks.

5. Remedies

5.1 Uniform Dispute Resolution Policy (UDRP) Approach

The Internet Corporation for Assigned Names and Numbers (ICANN) on 1999 implemented the Uniform Dispute Resolution Policy (UDRP) which has been used to resolve over 20,000 disputes over the rights to domain name.²² The UDRP is basically an international arbitration process for the resolution of domain name disputes. It is designed to solve disputes between a trademark owner and a domain name registrant. This policy is applicable to all ICANN accredited registrars generic Top Level Domains (gTLDs) and some country code Top Level Domain (ccTLDs). The UDRP is designed to solve disputes which usually arise when registrant has registered a domain name identical or confusingly similar to the trademark with no rights or legitimate interests in the name and has registered and used the domain name in bad faith.²³ There are presently five approved dispute resolution service providers that are accepting complaints.²⁴ Each of these providers follows the UDRP as well as its own supplemental rules which can be found on the ICANN website itself. The dispute

¹⁹ III AD Delhi 545, 90 (2001)

²⁰ Supra 34

²¹ Supra 31

²² Christine Chiramel “India: The Domain Name Chaos- A Legal Perspective” available at <http://www.mondaq.com/india/x/142874/Trademark/The+Domain+Name+Chaos+A+Legal+Perspective> visited on 5th June 2016

²³ Paragraph 4(a) of UDRP

²⁴ The list of present and former approved providers for UDRP is available at <https://www.icann.org/resources/pages/providers-6d-2012-02-25-en> visited on 5th June 2016

resolution providers are: Asian Domain Name Dispute Resolution Centre (ADNDR), National Arbitration Forum (NAF), World Intellectual Property Organization (WIPO), The Czech Arbitration Court Arbitration Center for Internet Disputes (CACACI) and Arab Center for Domain Name Dispute Resolution (ACDR).

5.1.1 When can UDRP apply?

The Uniform Dispute resolution Policy is applicable if any one of the following conditions is satisfied:

- a. Similar or confusingly similar trademarks
- b. There is no legitimate interest in the domain name
- c. There exists bad faith registration and use of the domain name in question.

5.1.2 When UDRP cannot apply?

The Uniform Dispute Resolution Policy will not apply if the registrant has been known to use or is using the name in good faith and/or has a bona fide offering of goods and services or is using it for a legitimate non-commercial purpose.²⁵

Further, the US court in the case of *Interstellar Starship Services Ltd v. Epix Inc*²⁶. has clarified this point further stating that when the registrant is using a name in bona fide offering products or service that has a causality with descriptive term that connote the product, he is not said to have committed an offence of cybersquatting.

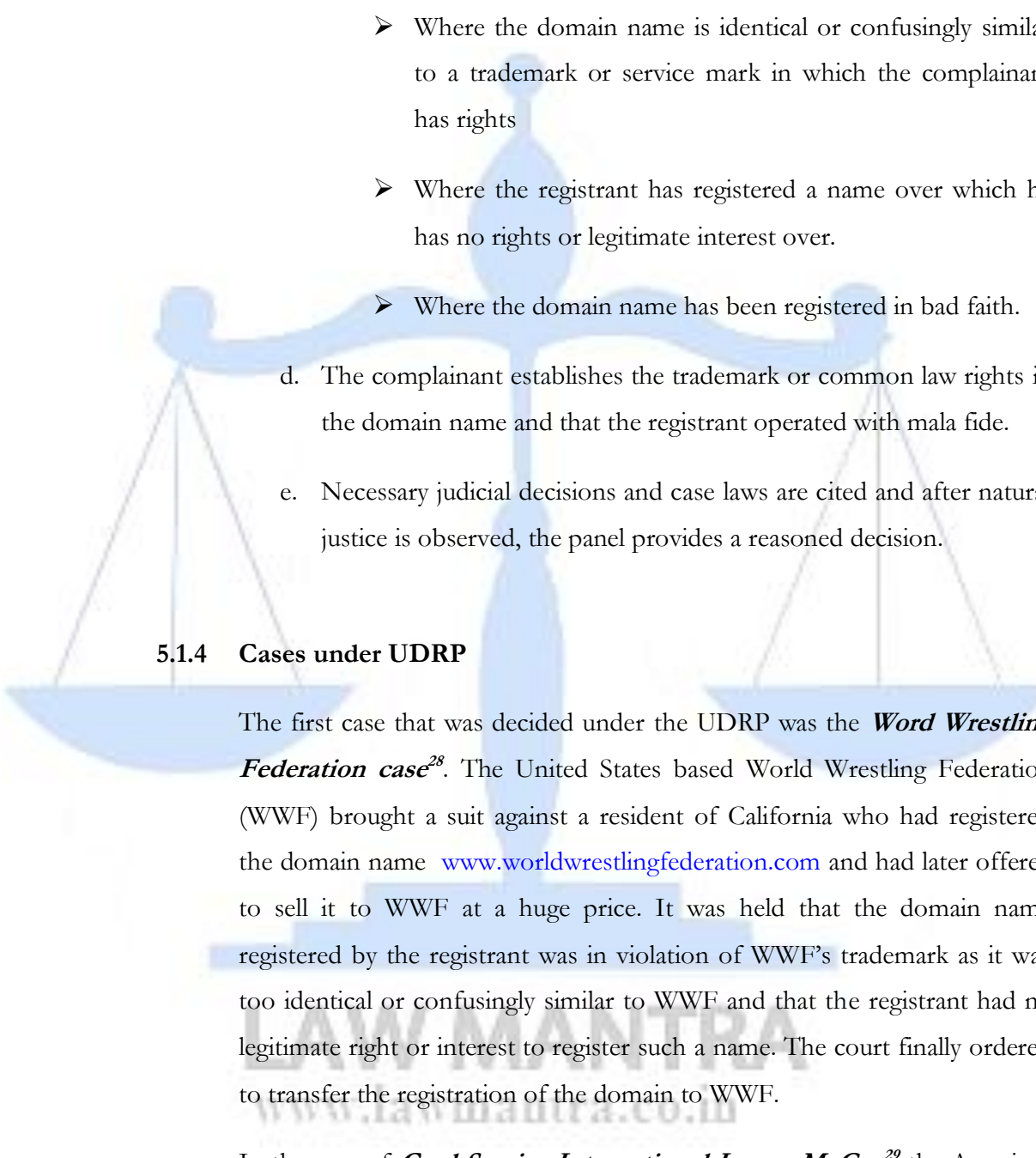
5.1.3 Procedure followed under UDRP

The following procedures are followed to decide the dispute:

- a. A set of neutral persons are selected from panels established for that purpose.

²⁵ Paragraph 4(c) of UDRP

²⁶ Supra 27

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- b. About \$1000 needs to be paid as fee to the entities providing the neutral persons and the transaction is mostly done online.
- c. Disputes of the following kind are heard and decided accordingly:²⁷
- Where the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights
 - Where the registrant has registered a name over which he has no rights or legitimate interest over.
 - Where the domain name has been registered in bad faith.
- d. The complainant establishes the trademark or common law rights in the domain name and that the registrant operated with mala fide.
- e. Necessary judicial decisions and case laws are cited and after natural justice is observed, the panel provides a reasoned decision.

5.1.4 Cases under UDRP

The first case that was decided under the UDRP was the ***Word Wrestling Federation case***²⁸. The United States based World Wrestling Federation (WWF) brought a suit against a resident of California who had registered the domain name www.worldwrestlingfederation.com and had later offered to sell it to WWF at a huge price. It was held that the domain name registered by the registrant was in violation of WWF's trademark as it was too identical or confusingly similar to WWF and that the registrant had no legitimate right or interest to register such a name. The court finally ordered to transfer the registration of the domain to WWF.

In the case of ***Card Service International Inc. v. McGee***²⁹ the American Court held that the domain name serves the same function as a trademark and is not merely to be construed as if it just identifies an Internet site.

²⁷ Rule 4 (a) of UDRP

²⁸ World Wrestling Federation Entertainment, Inc. v. Michael Bosman award available at <http://www.wipo.int/amc/en/domains/decisions/html/1999/d1999-0001.html> visited on 5th June 2016

²⁹ Available at <http://cyber.law.harvard.edu/metaschool/fisher/domain/dncases/cardserv.htm> visited on 5th June 2016

5.2 Indian Domain Name Dispute Resolution Policy (INDRP) Approach

“.in” is India’s Top level Domain on the Internet.³⁰ Since India does not subscribe to the Uniform Dispute Resolution Policy (UDRP), the IN Registry has published the Indian Domain Name Dispute Resolution Policy. This is a mandatory dispute resolution procedure for disputes relating to .in extension. It is interesting to note that INDRP has formulated on the lines of UDRP itself and other allied accepted international accepted guidelines. The INDRP has also incorporated certain relevant provisions of the Indian Information Technology Act, 2000.³¹ Further, there is glaring similarity of paragraph 4 of INDRP with Paragraph 4 (a) of the UDRP and thus the essentials for filing a complaint under INDRP and UDRP are very similar.

5.2.1 Procedure under INDRP

The following procedures are followed to decide the dispute after a complaint has been received by the .in registry:³²

- An arbitrator is appointed out of the list of arbitrators maintained by the Registry.
- The Arbitrator issues a notice to the other party with 3 days of the complaint
- Following which the arbitrator conducts the proceedings as provided under the Arbitration and Conciliations Act 1996 and also bears due regard to the policy and rules provided under INDRP
- The arbitrator shall pass a reasoned award within 60 days and shall send a copy of the award to the complainant, the other party and the .in registry. Although only under exceptional circumstances, the award may be passed after 60 days but not exceeding another 30 days and the reason for such delay shall be recorded in writing by the arbitrator.

5.2.2 Indian Cases under INDRP

³⁰ S. Ahmed, Cybersquatting: Pits and Stops, [2010] ILI Law Review 79

³¹ Paragraph 5 (iii), INDRP Rules of Procedure, available at <https://registry.in/INDRP%20Rules%20of%20Procedure> visited on 5th June 2016.

³² Paragraph 5 (iii), INDRP Rules of Procedure, available at: <https://registry.in/INDRP%20Rules%20of%20Procedure> visited on 5th June 2016

*Bloomberg Finance L.P., (BF) v. Mr. Kanhan Vijay*³³ – This was the most important case of 2009 before the Arbitration Panel. Here the plaintiff registered a domain name www.bloomber.net.in. But BLOOMBERG was a registered service mark in not just in India but abroad as well. But the respondent's bad faith was established by the Panel. The panel stated that there was a lack of due diligence on the part of the respondent towards their claims and that the domain should be accordingly transferred to the complainant.

*Youtube LLC v. Rohit Kohli*³⁴ - The respondent registered a domain name www.youtube.in, a name whose trademark lies with the complainant as "YOUTUBE". The complainant had submitted that he had applied for the trade mark in a number of countries and even in India. As the domain name was phonetically, visually and conceptually identical to that of the complainant's well known and distinctive trade mark "YOUTUBE". Hence the panel directed that the domain name be transferred on payment of requisite fee to registry.

*M/s Mahindra Holidays & Resorts India Ltd. v. Rahu*³⁵ – The complainant stated that the domain www.clubmahindraholiday.co.in as registered and held by the Respondent capitalizes on the trade mark, trade name, corporate name and domain name of the complainant per se. The arbitrator directed the .IN Registry to transfer the domain name to the complainant.

6. UDRP versus INDRP

Uniform Dispute Resolution Policy (UDRP) Approach	Indian Domain Name Dispute Resolution Policy (INDRP) Approach
Can be applied in any domain name extension	Can be applied only with domain names having .in extension
Provides for three circumstances when the domain name may be cancelled or transferred. They are as follows:-	Does not provide for circumstances for cancellation or transfer of domain name.

³³ Available at https://registry.in/system/files/bloombernetin_0.pdf visited on 5th June 2016

³⁴ Available at https://registry.in/system/files/youtubein_0.pdf visited on 5th June 2016

³⁵ Available at <https://registry.in/system/files/clubmahindraholidaycoin.pdf> visited on 5th June 2016

<p>(a) On written receipt or electronic instruction from registrant or authorized agent.</p> <p>(b) On receipt of order from court or arbitral tribunal or administrative panel</p>	
<p>The complainant is under the liberty to select from the five providers who will administer the proceedings.</p>	<p>The arbitrator who is selected by the Registry conducts the proceedings in accordance with the Arbitration and Conciliation Act, 1996.</p>
<p>All the fees charged in connection to a dispute are payable by the complainant.</p>	<p>All the cost arising out of the dispute would be evenly split between the parties to the dispute.</p>
<p>There is no res judicata or res sub judis that precludes a party who has submitted the dispute before the UDRP panel from submitting the same to a court of competent jurisdiction</p>	<p>There is no such express provision for excluding the party from submitting the dispute before a court at the same time when the matter is before an arbitration panel.</p>

Conclusion and Suggestions

Observing the features of cybersquatting, one can conclude saying that cybersquatting is a modern day form of online extortion in this era. India must learn from the US since at present there is no legislation that caters directly to cybersquatting. Moreover, the Information Technology Act, 2000 or the Trademarks Act, 1999 or the Arbitration Act, 1996 does not even have a definition for cybersquatting. In most cases in India it has been observed that individuals register domain names containing marks of other's trademark because they know that the repercussions are not quite severe. Following are some of the suggestions that the author puts forth at the conclusion of his paper for consideration:-

- a. There must be a definition of 'cybersquatting' in the relevant acts.
- b. The Trade Mark Act, 1999 must also make an accommodation for a domain name to be considered as a mark that is capable to distinguishing one good/service from another.
- c. A new law should be passed by the parliament that will cater directly for cases of cybersquatting.

- d. There should be an option of obtaining statutory damages in the new law.
- e. As a preventive measure, the registrars, courts and international organizations like WIPO should pool in resources to prevent the registration of domain names that are registered trademark without proof of ownership of the mark.
- f. There must be certain changes made to the Indian Domain Name Dispute Resolution policy as well. As the present INDRP has certain inconsistencies such as the arbitration procedure is filled with unnecessary procedures that differ for different domains and places.
- g. Cybersquatting must be prevented at the domain name registration level by scanning new domain names in reference to existing domain names to find out deceptive similarity.
- h. Penalty should be imposed on repeat offenders.

