

Domain Name and related Disputes

A Domain Name is a word or a combination of words which help identify a website's association with another individual. Domain names are used to locate a website and are popularly known as Uniform Resource Locator (URL). The Internet Domain Name is very important for every business that wants to establish their name globally. Domain Names consist of two parts, top-level and second-level domain names. These are easily identifiable, for e.g. www.google.com, here 'com' is the top-level domain and 'google' is the second-level domain. Any individual can purchase a Domain Name from a certified Registrar for a limited amount of time which can be renewed by the registrant upon its expiry.

Domain Names can be registered and protected as trademarks as long as it meets the requirements of a trademark under the Trade Marks Act 1999. Domain Names that are registered trademarks are universally protected primarily by the Internet Corporation for Assigned Names and Numbers (ICANN). Resultantly, in case of any abusive registrations or infringement of existing rights, an individual has the option to file a Domain Name Dispute complaint under the Uniform Domain Name Dispute Resolution Policy (at the international level) or under the .IN Domain Name Dispute Resolution Policy (at the national level).

A Domain Name Dispute may arise when there is infringing, conflicting and/or unauthorised use of a domain name on part of an individual. In order to successfully establish a Domain Name Dispute, the Complainant is required to satisfy the criteria laid



Sana Singh
Associate
E: sana@singhania.in

down in the various dispute resolution policies. These grounds are elaborated later upon in this article.

As the internet is not restricted by any borders or boundaries, and due to the global presence of most businesses, a Domain Name infringement can occur in a country different from where it is registered. In the event of such a trans-border infringement, the person can use the Uniform Domain Name Dispute Resolution Policy (UDRP), a standard and uniform Policy across the world, unlike domestic laws that can vary across jurisdictions.

Broadly, there are three different ways in which a Domain Name is infringed:

- **Cyber-Squatting:** Cyber-squatting is carried out through Domain Name Parking, or when an individual registers a Domain Name with no intention of carrying out any legitimate commercial or non-commercial activities. It is commonly done by Registrants in order to sell the domain name further to its authorised user at exorbitant rates.
- **Linking & Framing:** Linking & Framing is when a user clicks on a text hyperlink that takes them to a different website. This website is similar to a well-known company, and is created solely to deceive the consumers into believing that their domain name bears association with successful business entities that have a strong online presence.
- **Meta Tagging:** Meta Tagging is when words and tags are used to manipulate search engines into displaying the infringed website. They work similar to Hashtags that are used on social media websites to increase visibility.

Domain Name Disputes can be resolved using various mechanisms. Proceedings before the Uniform Domain Name Dispute Resolution Policy (UDRP) or .IN Domain Name Dispute Resolution Policy (INDRP) are governed by arbitral proceedings. The former provides for the Complainant to choose the arbitrator from a list of providers whereas in the case of the latter, the arbitration proceedings are conducted under the provisions of the India's Arbitration and Conciliation Act, 1996. Alternatively, the Complainant can also resort to civil remedies i.e. by filing an infringement suit before a commercial court. Notably, in the latter case, the domain name dispute is resolved under the Trade Marks Act, 1999 and proceedings are conducted in accordance with the Civil Procedure Code, 1908. Moreover, the Complainant can opt for out of court settlement as well, avoiding

litigation costs and prolonged pendency of the dispute. Evidently, the Complainants are free to choose their dispute resolution mechanism.

- **ICANN Dispute Resolution Policy** – The internet permits web access with no geographical limitations as a Domain Name is generally accessible regardless of the geographical location of the shoppers. (Unless a specific website is blocked in the country by that government). This is advantageous for universal accessibility and connectivity, and in turn grants the Domain Name a worldwide exclusivity. The ICANN (Internet Corporation for assigned Names and Numbers) is a world-wide internet administration and with the introduction of UDRP (Uniform name Dispute Resolution Policy), together they form the best possible redressal system for international Domain Name Disputes as they are cost-effective and efficient.
- **Uniform Domain Name Dispute Resolution Policy (UDRP)** – The UDRP sets out the legal framework for the resolution of disputes between a Domain Name Registrant and a third party in the case of an abusive registration in the Generic Top Level Domains (gTLDs). ICANN adopted the UDRP Rules which set out the procedures and other requirements for each stage of the dispute resolution and administrative procedure. The dispute resolution procedure is administered by service providers accredited by ICANN. The WIPO Arbitration and Mediation Centre (WIPO Centre) is such a dispute resolution service provider. This Policy provides for arbitration of the dispute instead of litigation in respect of Domain Name Disputes.

As per Paragraph 4 of the UDRP, any person (Complainant) can bring an action on the grounds that:

- A domain name is identical or confusingly similar to a trademark or service mark in respect of which the Complainant has rights,
- The domain name owner has no rights or legitimate interests in the domain name, and
- The domain name has been registered and is used in bad faith.

But the Complainant is required to prove all these elements if he wants his action to succeed. If the abusive registration is proved, the domain name registration is cancelled or transferred to the Complainant, however, no financial remedies are available.

- **WIPO Arbitration and Mediation Centre Decisions on Domain Names** – The World Intellectual Property Organization is the principal Domain Name Dispute resolution service

provider under the UDRP. WIPO provides qualified panellists, thorough and expeditious administrative procedures, and serves as an overall impartial and credible dispute resolution centre. A Domain Name case filed with WIPO is normally concluded with a minimal fee, within two months and using online procedures.

In India, no legislation explicitly refers to Cyber-Squatting or other Domain Name Disputes. However, Domain Names are considered to be trademarks based on their use and brand reputation. In the absence of an appropriate law to resolve Cyber-Squatting, Domain Name owners can initiate an action for passing-off and infringement of trademarks under the Trade Marks Act, 1999, against the infringer.

- **.IN Dispute Resolution Policy (INDRP)** – The INDRP has been adopted by National Internet Exchange of India (NIXI), and is incorporated by reference to the Registry Accreditation Agreement (RAA). It mandates the terms and conditions that govern any dispute in connection with .IN or .Bharat Domain Names. Under NIXI, the .IN Registry functions as an autonomous body that has the primary responsibility of maintenance and ensuring the operational stability, reliability and security of the of the .IN Country Code Top-Level Domain (ccTLD). Proceedings at the .INDRP can be initiated by any person who considers that the registered domain name conflicts with his legitimate rights or interests, under Paragraph 4 of the. INDRP on the grounds that:
 - the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which he has rights;
 - the registrant has no rights or legitimate interests in respect of the domain name, and
 - the Registrant's domain name has been registered or is being used in bad faith.

The Registrant is required to submit to a mandatory arbitration proceeding if a complaint is filed. The .IN Registry appoints an arbitrator to proceedings in accordance with the Arbitration & Conciliation Act, 1996.

The arbitrator considers the Domain Name as registered and used in bad faith in circumstances when:

The Registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the registration to the owner of the trademark or service mark, or to a competitor of the Complainant, for valuable

consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or

- The Registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Registrant has engaged in a pattern of such conduct; or
- The Registrant has intentionally attempted to attract the internet users to their website or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or of a product or service on the Registrant's website.

With the advent of the internet and the expansion of businesses and their presence over it, it is exceedingly important to protect and safeguard the trademark/brand name of an online business. Domain Name Disputes have revolutionised like trademark infringement over the web. These days with the presence of artificial intelligence and various tools, it has become easier for brand owners to identify online trademark infringement rather than identifying on-ground infringements, as Domain Names can be accessed from anywhere across the globe. It is seen that judicial precedents majorly favour the owner of the trademark or the prior user of the trademark, thus in case of an alleged infringement it is a good strategy to file a Domain Name Dispute Complaint.

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