
A STUDY BASED ON CYBER SQUATTING IN INDIA WITH RELEVANT CASE LAWS

Loka C. Thlaivanar¹

Martin Jeya Prakash V Y²

ABSTRACT:

Cybersquatting is a form of cybercrime where domain names containing trademarks are unauthorizedly registered, often with the intention of profiting illicitly. This practice, as old as the World Wide Web, poses significant challenges to businesses and individuals seeking to protect their intellectual property rights online. The paper explores cybersquatting's various manifestations, including Typo-squatting, identity theft, name jacking, reverse cybersquatting, and phishing. It examines the legal landscape in India, where specific legislation is lacking for domain name disputes. The paper also discusses preventive measures against cybersquatting and highlights landmark case laws like Yahoo! Inc. v. Akash Arora; Tata Sons v. The Advanced Information Technology Association and Rediff Communication Limited v. Cyber booth.

Keywords: Cybersquatting, Domain Name, Typo-Squatting, Intellectual Property Rights.

¹ LOKA C THLAIVANAR, STUDENT OF PONNAIYAH RAMAJAYAM INSTITUTE OF SCIENCE & TECHNOLOGY (PRIST) – SCHOOL OF LAW – MADURAI CAMPUS

² MARTIN JEYA PRAKASH V Y. STUDENT OF TAMILNADU DR AMBEDKAR LAW UNIVERSITY (SOEL), CHENNAI

INTRODUCTION:

Cybersquatting is one of the cyber-crimes which is as old as the World Wide Web itself. It is also known as domain name squatting. Cybersquatting is the practice of someone or a business registering a domain name that is identical to a trademark of another business and then attempting to sell it fraudulently in order to make money off of it. A domain name is a distinctive moniker assigned to a website. The domain name of any two websites cannot be the same. Often, this domain name is a person's name, business name, or brand. A domain name allows for simple access to a certain website. For example, when we search for a certain topic on the internet, the internet search engine shall identify all the websites that provide relevant material to that specific topic. A recognizable domain name is typically sought after by a lot of people and businesses to make it easier for internet users to find their websites.

WHAT IS CYBER SQUATTING?

Squatting is, very literally, the act of taking up residence in an empty or abandoned structure or place that one does not own, rent, or have permission to use. Therefore, the term "cyber-squatting" describes the unauthorized registration of a domain name that includes the brand or trademark of another person. It is the act of registering, trading, or utilizing a domain name with the true intention of profiting from the goodwill of another person's brand in bad faith.³ Those who reserve and then resell or license domain names (incorporating well-known marks) back to the corporations that hold the marks are known as cyber squatters. Their effort to make money from the internet is this.⁴

The first-come, first-served policy of the DNS (Domain Name System) provides a haven for squatters who lack the legal standing to register a trademark or the inherent right to "squat" or "pirate" domain names. In the case of *Manish Vij v. IndraChugh*,⁵ the Delhi High Court described cybersquatting as "an act of obtaining fraudulent registration with an intent to sell the domain name to the lawful owner of the name at a premium".

TYPES OF CYBER SQUATTING:

i. Typo squatting:

Internet users may make certain typographical mistakes when entering a website URL into a web browser. Therefore, when a user fills in the wrong address, they are sent to

³ <https://blog.ipleaders.in/cybersquatting-position-india/>

⁴ <http://lawmantra.co.in/infringement-of-intellectual-property-rights-causes-and-consequences/5>

⁵ AIR 2002 Del 243

another website made by a cyber squatter. Another name for this is URL hijacking. In order to fool internet visitors, typo squatters may also fabricate a phony website that closely mimics the genuine one by employing same fonts, color schemes, logos, and content.

ii. Identity theft:

After a domain name is successfully registered, it must be renewed on a regular basis. Cyber squatters acquire these domain names right away when their former owners mistakenly fail to renew them. They keep an eye on the expiration of some domain names using specialized software. Cyber squatters register expired domain names, replicate the original websites, and deceive people who really visit those websites.

iii. Name jacking:

Those who commit this crime typically target the names of well-known celebrities and register a domain name linked to those identities. The main motivation for this is to profit from the online traffic that these well-known individuals generate.

iv. Reverse Cyber Squatting:

Reverse cybersquatting entails the cyber squatters applying pressure to the person or business that possesses the genuine trademark of a domain name in order to secure the domain names of the rightful owners. Reverse cyber squatters are accountable for compensating their victims for any harm they may have caused as they are engaging in unfair business practices.

v. Phishing:

Cyberfraud known as "phishing" involves the improper use of sensitive or private information, including banking credentials. Emails purporting to be from reputable trademark owners are typically sent by phishers in disguise. Phishing schemes also encompass fraudulent websites that mimic authentic or respectable establishments as hosts.⁶

POSITION IN INDIA:

The settlement of issues pertaining to cybersquatting and other domain name disputes is not specifically addressed by law in India.⁷ Since the Trade Marks Act of 1999, which safeguards the use of trademarks in domain names, is not extraterritorial, it is unable to provide sufficient domain name protection. The Supreme Court has decided that domain names should

⁶ https://lawcorner.in/what-is-cybersquatting-types-and-legal-frameworks/#_ftnref2

⁷ Ashwani K. Bansal, *Law of Trademarks in India* 642 (Centre of Law, Intellectual Property & Trade, New delhi, 2nd edn., 2006)

have the strongest legal protection available under passing off legislation. This legislation in India was developed by judges, and the Supreme Court chose and endorsed the consensus view of all High Courts. Way back in 2004, the *Satyam Info way Ltd v. Sifynet Solutions (P) Ltd* decision perfectly captured the Indian domain name situation when it said that "There is no legislation in India that specifically addresses domain name dispute resolution. Domain names are nevertheless protected in India even if the Trade Marks Act, 1999's operation is not extraterritorial and could not permit sufficient domain name protection.

PREVENTION AGAINST CYBER SQUATTING:

- a) **Enter the URL** - Make sure you are viewing the correct website by typing the URL. Take care to check for any spelling mistakes or typos that might direct you to a website that engages in cybersquatting.
- b) **Do not click on dubious links or emails** - Avoid clicking on dubious emails or links since they can be phishing efforts leading to domain name squatting websites. If necessary, open a new window and type the URL to go directly to the affected website.
- c) **Examine the Website** - Seek out anything that doesn't appear to fit with the way the website works or is designed. Frequent pop-ups and advertisements, automatic downloads, and undesired redirections are common features of URL squatting websites.
- d) **Install antivirus software** - A decent antivirus product will not only block harmful domains but also provide web security to prevent malicious and phishing websites.⁸

LANDMARK CASE LAWS:

(i). Yahoo! Inc. v. Akash Arora and Another,⁹

The first case in India with regard to cyber-squatting was *Yahoo Inc. v. Aakash Arora & anr.*, where the defendant launched a website nearly identical to the plaintiff's renowned website and also provided similar services. Here the court ruled in favour of trademark rights of U.S. based Yahoo. Inc (the Plaintiff) and against the defendant, that had registered itself as *YahooIndia.com*. The Court observed, "It was an effort to trade on the fame of yahoo's trademark. A domain name registrant does not obtain any legal right to use that particular domain name simply because he has registered the domain name, he could still be liable for trademark infringement."

⁸ <https://www.geeksforgeeks.org/cyber-squatting/>

⁹ 1999 11AD Delhi 229

(ii). Tata Sons v. The Advanced Information Technology Association ("AITA")¹⁰

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.

(iii). Rediff Communication Limited v. Cyber booth and Another,¹¹

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

CONCLUSION:

Cybersquatting is a global cybercrime that threatens intellectual property rights and poses significant challenges to businesses and individuals. In India, the lack of specific legislation on domain name disputes exacerbates the issue. Preventive measures like URL verification and antivirus software are crucial. Landmark case laws emphasize the importance of protecting domain names as valuable corporate assets. Collaboration between governments, businesses, civil society, and international organizations is essential to combat cybersquatting and promote a safer digital environment.

¹⁰ Tata Sons Ltd. v. The Advanced Information Technology Association; case no. D2000-0049
<<http://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0049.html>>

¹¹ AIR 2000 Bombay 27