



# INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

## E-COMMERCE AND DOMAIN NAME DISPUTES AT THE CROSSROADS: ISSUES AND REMEDIES

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### ABSTRACT

Conflicts establish their own pace as development occurs. In the ever-expanding arena of e-commerce, where digital landscapes and commercial endeavors collide, there is a tight spot called domain name disputes. In the age of the internet, domain names play a significant role in identifying brands and influencing consumer views. The difficulty of cybersquatting and brand protection resides at the center of this juncture. E-commerce businesses frequently encounter situations where their trademarks are replicated in domain names registered by unauthorized individuals. These businesses heavily rely on internet branding. Applying intellectual property rules to these disputes allows trademark owners to take legal action to safeguard their brand's reputation and identity. Another noteworthy aspect is the preemptive registering of keyword-rich domain names to redirect traffic; rivals may take advantage of this. No devoted legislation addresses this problem directly, which defines the domain name dispute landscape in India. India uses an integration of prevailing intellectual property laws, cyber laws, the doctrine of passing off, and domain-specific policies to handle disputes, in contrast to certain nations with clear legal frameworks for domain name issues. The lack of specialization indicates a regulatory deficit despite the existing legal framework providing avenues for resolution. Due to the fact that e-commerce crosses national borders, it is crucial to have a thorough awareness of international intellectual property rules in order to resolve disputes concerning domain names registered in several countries. The delicate relationship between e-commerce and domain name conflicts is examined in this paper, along with potential legal remedies, the necessity for precise regulation regarding domain name disputes, and any emerging legal difficulties. The

adequacy of current remedies, such as the Uniform Domain Name Dispute Resolution Policy (UDRP) is evaluated in the research. It emphasizes the importance of international treaties in resolving cross-border disputes by addressing jurisdictional complications. This paper through a qualitative approach emphasizes the necessity of comprehensive and flexible remedies that protect online commercial integrity and intellectual property rights by examining these aspects.

**Keywords:** Domain name, E-commerce, UDRP, Cross-border, Cybersquatting

## Introduction

The use of digital information processing and electronic communications in business transactions to establish, redefine, and alter relationships for value creation between or among organisations, as well as between organisations and individuals, is known as e-commerce. E-commerce, to put it simply, is the exchange of products and services via the internet and electronic media. E-commerce is a fantastic experience these days. It has completely changed the way people shop nowadays. Compared to other shopping methods, it is far superior. A seller sets up an online storefront and uses the gateway to sell goods or services straight to customers. The portal takes credit, debit, and EFT (Electronic fund transfer) payments, and it uses a digital shopping cart or digital shopping basket system.

Domain names have become essential for companies looking to build a strong online presence because of their crucial role. A domain name is a unique online address that can be read by humans that designates a particular place on the internet. Websites, email services, and other resources on the Internet can be found and accessed with its help. Compared to numerical IP addresses, which are the actual numerical identifiers allocated to each device connected to the internet, domain names offer a more user-friendly method of interacting with the internet because they are simpler to remember. Domain name disputes are disagreements or conflicts between parties regarding the ownership, use, or rights pertaining to a particular domain name on the internet. These disputes frequently arise when two or more people, groups, or companies assert a claim to ownership of a specific domain name, frequently because it is related to their brand, trademark, or other intellectual property. But there are also a number of difficulties associated with this rise in digital importance. This research paper explores the complex intersection of domain name disputes and e-commerce, examining the diverse range of obstacles that firms must overcome to succeed in the digital era. The objective of this study is to analyse the subtleties and complexity present at this confluence, ranging from the widespread danger of cybersquatting to the changing landscape of trademark protection in the digital realm. The variety of legal remedies that are available as we traverse this landscape, from international frameworks to national legislations, providing businesses with information about how to protect their intellectual property and online assets is also examined.

## Brand protection

Given that a company's online presence plays a big role in defining its overall brand identity in today's digital age, the relationship between brand protection and domain names is essential. One essential component is the creation and upkeep of a unified online presence via brand-reflective domain names. Securing pertinent domain names becomes essential to guaranteeing visibility and recognition in the online space as businesses invest in creating and promoting their brands. The goal of brand protection initiatives is to prevent unapproved use of trademarks by opposing actions like misleading association, trademark infringement, and counterfeiting.

The court underlined the importance of a company's domain name in influencing consumer views in the *Cardservice Int'l v. McGee*<sup>1</sup> case. The statement made by the court implied that customers often presume that a domain name reflects the company's name when they are unsure about the latter. This emphasises how crucial it is to have a clear and consistent brand because a company's domain name is frequently a crucial component of its online identity. The potential impact of domain names on customer trust and recognition in the digital environment is shown by the court's recognition of this relationship. Similar remarks on the worth of a domain name that mimics a company name were expressed by the court in *MTV Networks Inc. v. Curry*<sup>2</sup>. The domain name in question has been recognised by the court as a significant asset of a corporation. This recognition results from the knowledge that a domain name that closely resembles a company name is an effective means of reaching out to the target audience. In the internet setting, it promotes efficient communication and brand recognition by facilitating simple and intuitive interaction. The statement made by the court highlights the strategic significance of domain names as valuable assets in the corporate environment, especially when they closely correspond with the identity and brand of the organisation.

There are different types/parts of domain name, they are:

- a. Top-Level Domains (TLDs) are the letters that appear in domain names after the final (and farthest right) ".", such as "net" in "www.example.net." The TLDs .com, .net, .edu, .jp, .de, and so forth are the most frequently used ones. Moreover, TLDs are divided into nation code top-level domains (ccTLDs) and conventional top-level domains (gTLDs), which are two broad categories.
- b. Generic Top-Level Domains, or gTLDs for short, are nonexclusive top-level domain names that serve to differentiate the domain class to which they belong (.com, .org, .edu, and so on).
- c. The ccTLD, or country code top-level domain, a two-letter domain extension, such as .uk or .fr, that is restricted to a country, region, or territory is what it is called.

The first step towards establishing an online presence for people, companies, or organisations is registering a domain name. This procedure entails contacting a registrar approved by the Internet Corporation for Assigned

<sup>1</sup> *Cardservice, Int'l v. McGee*, 950 F. Supp. 737 (E.D. Va. 1997).

<sup>2</sup> *MTV Networks v. Curry*, 867 F. Supp. 202 (S.D.N.Y. 1994).

Names and Numbers (ICANN), an organisation with the authority to register and administer domain names. These registrars make it easier to register domain names for a predetermined amount of time, typically in one-year increments. Periodically renewing a domain name is necessary to keep ownership and use going. Usually, the renewal term lasts for one year.

The act of registering, selling, or utilising a domain name with the intention of making money from the goodwill of another person's trademark is known as cybersquatting. In the modern world, it is regarded as an impending threat. The legal landscape pertaining to cybersquatting exhibits variation across national borders. Cybercriminals use a variety of techniques to construct phoney websites that mimic well-known companies. One such technique is typosquatting, in which they take advantage of spelling mistakes to generate traffic and distribute adware. These names are well-known brand names or memorable phrases of brands or people, such "samsung.com" or "nokia.com." A trademark provides a comparable purpose in disconnected business interactions, and a domain name does the same on the internet. It allows customers to determine the source of goods or services provided by the owner of those goods and businesses. As a result, domain names are extremely important to online businesses.

When genuine owners neglect to renew their domain names, identity theft entails obtaining them and tricking users into thinking the cybersquatter is the owner. Aggressive methods such as "reverse cybersquatting" are used by people or businesses to coerce rightful domain owners into ceding control. Cybersquatting, which is a danger to established businesses and their online presence, is generally defined as the act of obtaining domain names that mimic popular trademarks, motion pictures, or copyrights for financial gain. In 1994, cybersquatting was first noted in the United States. From then, cybersquatting cases have increased all over the world. Dennis Toeppen is credited for popularising cybersquatting in the United States. Judges found in favour of trademark owners in precedent-setting cases like *Intermatic v. Toeppen*<sup>3</sup> and *Panavision v. Toeppen*<sup>4</sup>, holding that cybersquatting constituted trademark infringement.

In *Intermatic vs. Toeppen* case, a cybersquatter who registered "intermatic.com" with the goal of selling or licencing it to the business was sued by Intermatic Inc. Recognising the defendant's business nature, the court advised allowing the plaintiff's motion for antidilution claims. It was decided that the defendant had violated trademark laws by cybersquatting the domain with the intention of making money off of it. On other issues, however, the court postponed making a decision due to concerns regarding consumer confusion and the defendant's website's noncommercial purpose. And in the case of *Panavision International vs. Toeppen* (1998), Panavision, a company holding a trademark, sued Toeppen for registering the domain names of famous trademarks with the intention to profit from selling them to the rightful owners. The court ruled in favor of Panavision, stating that Toeppen's actions constituted cybersquatting and was in violation of trademark laws.

<sup>3</sup> Intermatic v. Toeppen, No. 96 C 1982.

<sup>4</sup> Panavision v. Toeppen, 141 F.3d at 1316.

Toeppen's intent to sell the domain names for profit was considered a commercial use, leading to a finding of infringement. This case is notable for establishing the legal consequences of cybersquatting and the protection of trademarks in the online domain. Due to these incidents, the Uniform Domain Dispute Resolution Policy (UDRP), which was created in 1999 with the intention of defending brand owners, was developed.

### Legal framework in India for Domain name disputes

It is noteworthy that there are no particular regulations in India that specifically target cybersquatting. Cybersquatting victims in India have several ways to stop this illegal activity. Sending cease-and-desist letters straight to the cybersquatters is one strategy. These letters are a first step; they demand that any unauthorised use of domain names be immediately stopped and frequently include a warning about possible legal repercussions should the violation continue. A proactive and non-litigious way to handle problems involving cybersquatting is through cease-and-desist letters.

The Internet Corporation for Assigned Names and Numbers offers victims an additional option in the form of initiating arbitration proceedings. The Uniform Domain Name Dispute Resolution Policy (UDRP) is one of the formal dispute resolution frameworks offered by ICANN. Arbitration is a streamlined and effective mechanism that can help resolve domain name disputes more quickly. Victims of cybersquatting in India who choose to pursue legal action may do so by bringing a claim under the Trade Marks Act of 1999 and the Law of Passing Off. According to the Law of Passing Off, it must be shown that using a domain name without authorization increases the possibility of confusion or misrepresentation, which in turn affects the victim's rights. In addition, the Trade Marks Act, 1999 provide a strong legal basis for the defence of registered trademarks, allowing victims of infringement to pursue legal recourse. Victims also have the option to report the incident through the Indian Domain Name Dispute Resolution Policy (INDRP). Domain name conflicts pertaining to the.in top-level domain are explicitly addressed under this policy, which is managed by the National Internet Exchange of India (NIXI).

Indian courts take a proactive approach in resolving cybersquatting issues, even in the absence of specific legislation. The case of *Yahoo Inc. v. Akash Arora*<sup>5</sup> is the first cybersquatting controversy in India. Yahoo Inc., an American business, sued Akash Arora for registering the confusingly similar domain name "Yahoo.com." In order to prevent copyright infringement, the Delhi High Court granted a restraining order that forbade the respondent from using "Yahoo!" The defendant's disclaimer and the presence of "India" in the domain name did not exclude the possibility of consumer fraud, the court noted.

<sup>5</sup> Yahoo Inc. v. Akash Arora, 78 (1999) DLT 285.

*Rediff Communication Ltd. v. Cyberbooth and Others*<sup>6</sup> is another important case that influenced Indian domain name law. In this case, the Bombay High Court ruled that a domain name should have the same level of protection as a brand. The plaintiff requested an order against the defendant for registering a domain name that was strikingly similar to their own, and the court found evidence of the defendant's deliberate deception. The defendant's intention to benefit from the plaintiff's goodwill and reputation was highlighted by the judgment. With the 2004 *Satyam Infoway Ltd v. Sifynet Solutions (P) Ltd*<sup>7</sup> case, the legal environment continued to change. In this case, the Supreme Court made it clear that even in the absence of specific laws for resolving disputes over domain names, Indian law nevertheless protected domain names. The court upheld the traits of domain names that are similar to brands, allowing them to be protected in passing-off proceedings, notwithstanding the restrictions of the regulations that are now in place. This court ruling demonstrated how India's understanding of the legal standing and protection of domain names is developing.

The legal dispute in the matter of *Tata Sons Ltd v. Monu Kasuri & others*<sup>8</sup> concerned the defendant's registration of many domain names that included the word "Tata." In a clear decision, the court stressed that domain names are trademarks for businesses as well as online addresses, underscoring their dual function and importance in the digital sphere. The court's acknowledgement highlights how domain names are becoming viewed as more than merely technical identifiers. Rather, they are seen as important intellectual property assets that support a business's online presence and brand identity, much like trademarks.

### **Adequacy of existing legal framework**

Google AdWords has become a controversial practise<sup>9</sup> whereby entities take advantage of well-known brands on the internet, perhaps resulting in infringements. Based on keyword matches, this automated advertising system shows links to websites and commercials on Google's search results page. Trademark infringement arises from advertisers taking advantage of other people's trademarks by using keywords without their permission.

In a recent instance, M/s. Booking.com used Google AdWords to advertise the keyword "MakeMyTrip." After receiving a lawsuit alleging infringement from *M/s. MakeMyTrip India Private Limited*, the Delhi High Court issued an interim injunction<sup>10</sup>. The program's "invisible" trademark infringements, according to the court, are unacceptable since they give competitors an unfair advantage by using their reputation. In another instance<sup>11</sup>, the Madras High Court denied an injunction against *Kalyan Jewellers India Limited* for using the phrase 'Matrimony,' ruling that it was a general term with no exclusivity claim. In the case of *MK Advokaten GbR v. MRK RechtsanwälteGbR*<sup>12</sup>, the European Union's Court of Justice addressed a similar issue. The court ruled that

<sup>6</sup> Rediff Communication Ltd. vs. Cyberbooth and Others, AIR 2000 Bombay 27.

<sup>7</sup> Satyam Infoway Ltd vs. Sifynet Solutions (P) Ltd, AIR 2004 SC 3540.

<sup>8</sup> Tata Sons Ltd vs. Monu Kasuri & others 2001 PTC 432.

<sup>9</sup> Tishya Pandey , Google AdWords Liability for Trademark Infringement, 4 (3) IJLMH Page 319 - 323 (2021).

<sup>10</sup> Makemytrip India Private Limited v. Booking.com B.V & Ors. CS (COMM) 268/244 & LAs 6443-47/2022 (HC DEL).

<sup>11</sup> Matrimony.com Limited Vs. Kalyan Jewellers India Limited and Ors 2020 (82) PTC 1 (Mad).

<sup>12</sup> MK Advokaten GbR v. MRK RechtsanwälteGbR , Case C- 684/19, ECLI:EU:C:2020:519, European Court of Justice, July 2, 2020.

the advertiser's automated use of such a keyword in the absence of active activity and control does not subject them to liability.

Despite the lack of a clear legal framework, courts are attempting to regulate these activities, recognising the necessity to combat covert trademark infringements made possible by Google AdWords. Concerns have been raised about Google's perceived double standards and dishonesty in its policies, prompting a need for appropriate responses in light of Google's policies. It is clear that limiting Google and its regulations alone might not be enough to stop unfair practises on the internet. Stronger regulations, according to proponents, should be put in place in order to effectively handle trademark infringements. It is also notable that the Indian legal system's redressal mechanism for trademark violations on internet portals only takes into account the interests of commercial organisations, not those of customers<sup>13</sup>.

### Issues with UDRP

The Internet Corporation for Assigned Names and Numbers (ICANN), the body in charge of regulating domain names, created the Uniform Domain Name Dispute Resolution Policy (UDRP). This policy is the first online dispute resolution method to be recognised globally. The UDRP is usually incorporated into domain registration agreements and is specifically intended for the settlement of disputes resulting from the registration of domain names. It outlines the guidelines for handling disagreements about the registration and usage of Internet domain names that arise between the registrant and any other person save the registrar. In order to handle problems like cybersquatting, the UDRP provides a thorough framework with precise standards. By registering a domain name, the registrant consents to be bound by the UDRP and to cooperate with processes that are started in line with the UDRP and under the ICANN's auspices.

The UDRP is frequently criticised for being unfairly biased in favour of trademark holders. Trademark holders have the option to use the UDRP to contest the registration of domain names that are confusingly similar to or exact replicas of their trademarks. Nonetheless, domain name registrants' rights are not sufficiently protected by the UDRP<sup>14</sup>. The name, address, and phone number of the registrant are essentially unprotected by the UDRP, which might result in reverse domain name hijacking. The practise of a trademark holder abusing the UDRP procedure to attempt to seize control of a domain name that they do not have a rightful claim to is known as "reverse domain name hijacking." For those who register domain names, this can be a major issue because they might wind up having to give them up even though they have a right to use them.

Additionally, the UDRP threatens registrants to give up their domain names by greatly increasing the possibility of reverse domain name hijacking. Regarding which law should take precedence when two parties are from different jurisdictions, the UDRP doesn't offer much assistance. This may result in uneven rulings and make it

<sup>13</sup> Sujan U., Trademark Violations in E-Commerce, 5 INDIAN J.L. & LEGAL Rsch. 1 (2023).

<sup>14</sup> Sourabh Gosh, Domain Name Disputes and Evaluation of The ICANN's Uniform Domain Name Dispute Resolution Policy, Journal of Intellectual Property Rights, Vol 9, September 2004, pp 424-439.

challenging for people who register domain names to understand their legal rights. Due to the limited evidence requirements set forth by the UDRP, it is challenging to assess the system. Because of this, it may be challenging for the holders of domain names to defend themselves against accusations of trademark infringement.

Furthermore, the UDRP falls short in defending basic rights to free speech, such as mocking and criticising businesses. For people and organisations who wish to utilise domain names for political speech or to convey their beliefs, this might be a major issue. The UDRP's primary terminology are both ambiguous and foreign. It is still not quite obvious to the domain name registrants what usage would be considered "bad faith" as opposed to "rights or legitimate interests." To support their conflicting claims, both sides have leaned on the rules' ambiguity. Because of this, it could be challenging for domain name registrants to comprehend their responsibilities and rights under the policy.

The Indian Domain Name Resolution Policy (INDRP) plays a crucial role in the Indian digital landscape, providing a specialized mechanism for the resolution of domain name disputes. Aligned with the guidelines of the Internet Corporation for Assigned Names and Numbers (ICANN), INDRP operates within the framework of international standards, particularly drawing inspiration from the Uniform Domain-Name Dispute-Resolution Policy (UDRP). Given the criticisms and concerns raised about the UDRP, it raises a legitimate question about the potential transference of similar defects to the INDRP.

## **INDRP**

The legal landscape pertaining to cybersquatting has also changed in India. The purpose of the Indian Domain Name Resolution Policy (INDRP) is to resolve conflicts pertaining to internet domain name registration. As a signatory to the World Intellectual Property Organisation (WIPO), India abides by the UDRP procedure. Arbitration is used by the INDRP to settle domain name disputes; it complies with the UDRP. As the body in charge of managing and resolving disputes involving domain names under the.in top-level domain, the National Internet Exchange of India (NIXI) is a key player. The.in domain dispute resolution framework is regulated by the.in domain dispute framework. The particular Rules of Procedure for the IN Dispute Resolution Policy. Anybody who feels that a registered domain name infringes upon their lawful rights or interests may file a complaint with the.IN Registry, as per the INDRP Rules of Procedure. A complaint may be filed in certain conditions, such as when the registrant's domain name is confusingly close to or identical to a name, trademark, or service mark that the complainant legally owns. Furthermore, if the domain name has been registered or is being used in bad faith, objections may be made on the grounds that the registrant lacks rights or legitimate interests in the domain name.



In *YouTube LLC v. Rohit Kohli*<sup>15</sup> the primary issue of dispute was Rohit Kohli's registration of the domain name [www.youtube.in](http://www.youtube.in). This domain name was a close match to YouTube LLC's well-known brand. In reply, YouTube LLC submitted records showing its continued attempts to register the trademark in different countries, including India. After giving it some thought, the board decided that the domain name was conceptually and phonetically similar to YouTube's trademark. As a result, the board decided in YouTube LLC's favour and directed that the domain name be transferred to the registry. This transfer confirmed the protection of the trademark holder's rights in the online domain and was subject to the payment of certain fees. The INDRP panel ruled in favour of YouTube based on the brand's theoretical and phonetic resemblance. Consequently, YouTube, the legitimate owner of the trademark, was granted permission to transfer the domain.

Similarly in the legal dispute in *Vodafone Group Plc v. Rohit Bansal* stemmed from Bansal's registration of the domain name "vodafone.co.in." It was decided that the domain name directly matched Vodafone Group Plc's trademark. The complainant contended that the domain name was registered in bad faith with the express intent of selling it to Vodafone in order to profit financially. After giving the evidence considerable thought, the arbitrator determined that the respondent's actions did, in fact, demonstrate a lack of good faith. The panel decided to order the domain name to be transferred to Vodafone Group Plc since the registration was done with the deliberate aim to profit from the sale of the domain name to the legitimate owner of the brand. This case strengthens the laws against cybersquatting by highlighting the need to stop bad-faith registrations and guarantee that trademark owners have ownership over domain names linked to their brands. In the case *Bloomberg Finance L.P. v. Kanhan Vijay*<sup>16</sup>, the disputed domain "www.bloomberg.net.in" was at issue. Bloomberg Finance effectively lobbied for the domain transfer as the authorised owner of the BLOOMBERG brand. The panel concluded that Kanhan Vijay had behaved in bad faith, especially considering that Bloomberg had a solid 1986 reputation. The ruling in favor of Bloomberg was the result of the defendant's inadequate evidence and lack of a thorough investigation of their accusations.

It is crucial to remember that the Indian civil courts' jurisdiction is not excluded by either the Indian Domain Name Dispute Resolution Policy (INDRP) or the Uniform Domain-Name Dispute-Resolution Policy (UDRP). This implies that a party may choose to submit a complaint with the appropriate civil court if they believe they have been wronged and wish to pursue compensation. Common law offers a wider variety of legal actions and a vast array of remedies. A civil court in India has the power to make decisions in certain situations using the passing-off doctrine of common law. A permanent injunction against the improper use of a domain name may be granted in order to prevent this. In order to guard against deception and preserve the rights of the harmed party, the idea of passing off is used. A party may pursue both the transfer of the domain name and monetary damages reimbursement by pursuing remedies in a civil court.

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<sup>15</sup> YouTube LLC v. Rohit Kohli, INDRP Dispute Case no. INDRP/42.

<sup>16</sup> Bloomberg Finance L.P. v. Kanhan Vijay, INDRP Dispute Case no: INDRP/110.

## ACPA in United States

The Anti-cybersquatting Consumer Protection Act (ACPA) is an alternative to ICANN arbitration for resolving domain name disputes. However, there are some issues with the ACPA that should be understood by trademark owners. One key element to prove under the ACPA is bad faith, and the statute lists several non-exclusive factors for bad faith, including the registrant's intent to divert consumers from the mark owner's site and the offer to sell, transfer, or assign a domain name for financial gain without prior use or intent to use it for goods or services.

The ACPA is a federal law enacted by the United States Congress. It provides a statutory basis for legal action against those engaging in cybersquatting activities, allowing trademark owners to bring a legal case in a U.S. federal court. If the mark owner prevails in an ACPA lawsuit, they are entitled to recover three times the total amount of money lost because of the violation, plus the profits realized by the cybersquatter and attorneys' fees. Another important issue with the ACPA is what happens if the cybersquatter cannot be located. If no physical address can be found, no personal jurisdiction can be obtained to file suit. However, the ACPA does provide for "in rem" jurisdiction in these cases in the district where the domain name registrar or registry is located. Money damages are not available in "in rem" cases, but injunctive relief is possible.

The ACPA also provides a non-exhaustive list of factors that may be considered in determining whether a person has a bad faith intent, including the intellectual property rights of the registrant related to the domain name, whether the domain name is the legal name of the registrant, any prior lawful use of the domain name with the bona fide offering of goods or services, the registrant's intent to divert consumers from the mark owner's site, the registration of multiple and confusingly similar or identical names, and the offer to sell, transfer or assign a domain name for financial gain without prior use or intent to use it for goods or services.

## WIPO

The World Intellectual Property Organisation (WIPO) has been instrumental in providing trademark owners with an arbitration system for resolving disputes over domain names since 1999. WIPO has made available a forum for resolving disputes pertaining to domain names via the Uniform Domain Name Dispute Resolution Policy (UDRP) through its Arbitration and Mediation Centre. The number of UDRP cases filed increased significantly in 2018, as recorded by WIPO, to 3,447 cases. This notable rise is indicative of trademark owners' increased concern and proactive reaction to the expansion of websites participating in various forms of online trademark abuse. These abuses include practices that are becoming common in the digital sphere, such as fraud, phishing, and counterfeit commerce.

The WIPO Administrative Panel dealt with a cybersquatting dispute between an Australian company, Domain Active Pty Limited, and an Indian entity, SBI Card and Payment Services Private Limited, in the case of *SBI Card and Payment Services Private Limited vs. Domain Active Property Ltd*<sup>17</sup>. The Australian company registered the domain www.sbicards.com, which is quite similar to the goods and services provided by the State Bank of India subsidiary SBI Card. The Australian corporation registered the domain name in bad faith with the intention of selling it to State Bank of India at a greater price, according to the Administrative Panel's ruling. The Panel directed the surrender of the domain name sbicards.com to the Indian bank, recognising the possibility of public confusion owing to the affiliation with SBI Card's products. This action highlights the ramifications of bad faith registration and the protection of well-known trademarks in the online domain space.

In another landmark case, *Indian Oil Corp v. Nitin Jindal*<sup>18</sup>, the domain name indianoil.org was at the centre of the controversy. It was almost exactly the same as the complainant's registered trademark "INDIAN OIL," with the exception of the.org suffix. The trademark "INDIAN OIL" was well recognised and held a noteworthy reputation. Indian Oil Corp. was granted the exclusive right to the domain name by an ex-parte order made by the WIPO Administrative Panel, which is chaired by Christopher J. Pibus. This ruling, which was based on the company's well-known reputation, highlighted the protection given to acknowledged trademarks and the prevention of unauthorised domain registrations by ordering Nitin Jindal to transfer ownership of the website.

The inconsistent rulings made by WIPO panels are one significant issue. Opponents contend that inconsistent panel interpretation and use of the UDRP can produce unpredictable results. The lack of a uniform methodology could potentially exacerbate difficulties in comprehending the precedents established by earlier rulings. While intended to guarantee prompt outcomes, the focus on speed in WIPO processes has also come under fire for possibly forsaking careful scrutiny. The expeditious pace of UDRP hearings may result in rulings that, occasionally, fail to fully consider the subtleties and complexity of a given issue, casting doubt on the process's comprehensiveness.

## Conclusion and suggestion

E-commerce and domain name dispute law is interwoven in this dynamic environment in a way that necessitates constant adaptation and a deep awareness of technological and legal intricacies. A successful fusion of technological innovation and legal vigilance guarantees a stable, reliable, and legally compliant digital marketplace as e-commerce continues to grow tremendously.

One important way that national governments can contribute to and comprehend ICANN policies is through the Governmental Advisory Committee (GAC) of ICANN. In order to create policies that address particular government problems, it is believed that governments must actively participate while keeping in mind both

<sup>17</sup> SBI Cards and Payment Services Private Limited vs. Domain Active Pty. Ltd. Case no. D2005-0271.

<sup>18</sup> Indian Oil Corporation Limited vs. Nitin Jindal WIPO Case No. D2010-2003.

domestic and international economic interests. There are issues with the current structure, though, including the necessity for India to participate more actively in ICANN's projects. It is advised to accord with international standards, especially those established by the WIPO, and to actively participate in ICANN's endeavours. By utilising international dispute resolution processes, this integration may not only help create a digital India that is more practically sound, but it may also lessen the strain on the Indian judicial system.

The position regarding geographical indicators, personal names, and gripe sites that criticism is a legitimate interest and that the concept of tarnishment is inappropriate for the UDRP needs to be clarified. Additionally, the UDRP needs to be amended to make clear that bad faith is a separate element that the complainant must prove. If the system had an appeals level, future issues, and especially inconsistent rulings, may be avoided. Interpretation issues may be quickly resolved if the rulings of an appeal panel acted as binding precedent for all panels. Eliminating the ability of providers to decide which panellists receive a certain case will enhance the UDRP. Instead, 'cab-rank' rules should be enforced by each provider, wherein panellists are assigned cases based on availability and conflicts of interest in a predetermined sequence<sup>19</sup>. To make sure that each panellist was hearing roughly the same number of cases, all panellists would need to do a quick check of published decisions, which would involve some ICANN policing but not much time.

## LITERATURE REVIEW

### 1. Sugan. U (2023), "Trademark Violations in E-Commerce"<sup>20</sup>

In "Trademark Violations in E-Commerce," Sugan U explores the issues that trademark breaches poses in the setting of e-commerce. The article's methodology is based on doctrinal research. To comprehend and study different legal rules and principles, conceptual and analytical research methods is also used. The article offers a thorough summary of the different infringements that take place in e-commerce, such as keyword advertising, cybersquatting, and counterfeiting. The article also discusses the legal structures, such as national legislation, international agreements, and dispute resolution procedures that are in place to handle trademark infringement in e-commerce.

The paper's examination of the difficulties brought on by cybersquatting, which entails the registration of domain names that are identical to or confusingly similar to registered trademarks, is one of its major contributions. The research points out that many nations have distinct legal frameworks for dealing with trademark infringement in e-commerce, and that these frameworks can differ in terms of their efficacy and mechanisms for enforcement. The research points out that existing legal framework for trademark protection, like the Trade Marks Act of 1999

<sup>19</sup> Sourabh Gosh, Domain Name Disputes and Evaluation of The ICANN's Uniform Domain Name Dispute Resolution Policy, Journal of Intellectual Property Rights, Vol 9, September 2004, pp 424-439.

<sup>20</sup> U., Sugan. "Trademark Violations in E-Commerce." Indian Journal of Law and Legal Research, vol. 5, 2023, Retrieved from: [https://heionline-org.christuniversity.knimbus.com/HOL/Page?public=true&handle=hein.journals/injlo/w10&div=386&start\\_page=1&collection=journals&set\\_as\\_cursor=0&men\\_tab=srchresults](https://heionline-org.christuniversity.knimbus.com/HOL/Page?public=true&handle=hein.journals/injlo/w10&div=386&start_page=1&collection=journals&set_as_cursor=0&men_tab=srchresults)

and the Information Technology Act of 2000, offer remedies for trademark owners to deal with trademark infringements in e-commerce. The opportunity to file complaints or lawsuits against infringing parties in order to get crucial legal remedy such as injunctions, damages, and profit assessments is emphasised, underscoring the significance of legal activities. The paper also emphasises the usefulness and effectiveness of domain name dispute resolution procedures like UDRP and INDRP in resolving domain-related conflicts. The paper concludes by highlighting the significance of proactive trademark monitoring and enforcement and describing steps like sending cease and desist letters to infringing businesses.

## 2. Ankit Singh (2019), “Regulating E-Commerce in India: A Work in Progress<sup>21</sup>”

The paper titled "Regulating E-Commerce in India: A Work in Progress" by Ankit Singh examines the development and effects of e-commerce in India alongside the privacy and protection concerns that come into play with it. The article addresses India's e-commerce regulations and offers recommendations for change. The paper opens by stressing how India has played a crucial role in this digital revolution, which has made it possible to obtain a wide range of products at affordable costs. The article then explores the legal framework for Indian e-commerce. The Information and Technology Act was passed by the Indian government in the year 2000 in order to grant legal status to digital documents, digital signatures, and other electronic operations. The article describes the laws governing e-commerce in India, identifies their shortcomings, and makes recommendations for improving them. The article recommends that the government set up an impartial dispute resolution process for online purchases. This system must be rapid, effective, and economical.

The research also stresses the necessity of stronger data protection regulations in India. Concern over the protection of personal data is growing as e-commerce usage increases. The article recommends that the government pass a thorough data protection law that addresses all facets of data protection, such as the gathering, storing, processing, and sharing of personal data. The article recommends that the government pass a thorough intellectual property law that addresses all facets of intellectual property rights, such as patents, copyrights, and trademarks. The research also emphasizes the need for greater consumer protection laws in India in addition to these challenges. The paper recommends that the government pass a thorough consumer protection law that addresses all facets of consumer defense, such as product responsibility, deceptive business practices, and consumer redressal procedures. The paper gives a useful analysis on the development and effects of e-commerce in India, as well as the issues surrounding privacy and protection. The paper does, however, contain a number of gaps or omissions. Although the paper covers e-commerce in general, it may go into more detail about the obligations that e-commerce platforms and marketplaces have in terms of ensuring consumer safety and compliance.

<sup>21</sup> Ankit Singh, Regulating E-commerce in India, International Journal of Law Management & Humanities, Vol. 2, Issue 4, (2019), Retrieved from: <https://www.ijlmh.com/regulating-e-commerce-in-india-a-work-in-progress/>.

### **3. Mithra Rathakrishnan and Aswathy Rajan (2018), “The Issue of Domain Name Disputes with Special Reference to Cyber Squatting<sup>22</sup>”**

The research paper "The Issue of Domain Name Disputes with Special Reference to Cyber Squatting" examines the topic of domain name disputes and cybersquatting and emphasises the value of trademarks in cyberspace and the need for their protection. The introduction of the paper discusses the quick development of information technology and the establishment of a new platform for communication and commerce. The paper then defines cybersquatting as the act of registering, trafficking in, or using a domain name with the intent of profiting from the goodwill of someone else's trademark. The paper enumerates the significance of safeguarding intellectual property rights in cyberspace and the difficulties presented by e-commerce. The numerous steps that can be used to safeguard trademarks in cyberspace are discussed in the article. The significance of domain name monitoring and enforcement tactics is also covered in the article.

A more thorough examination of the subject, taking into account the social and economic aspects that influence cybersquatting, would have improved the article. The lack of a thorough study of the efficiency of the discussed measures is another drawback of the paper. While the UDRP and ACPA are significant legal safeguards for trademarks in cyberspace, there are drawbacks to these protections as well, including the expensive cost associated with legal action and the constrained range of protection they offer. A more critical examination of these metrics' efficacy and shortcomings would have improved the paper.

### **4. Christine Haight Farley (2018), “Confusing the similarity of Trademark law in Domain name disputes<sup>23</sup>”**

The paper "Confusing the Similarity of Trademark Law in Domain Name Disputes" by Christine Haight Farley provides a thorough examination of the jurisprudential problems relating to trademark law in the setting of domain name disputes. Farley examines the legal concerns concerning trademark law in the context of domain name disputes using a doctrinal research technique. An outline of trademark law's development in the digital age is given at the beginning of the article. Farley points out that the development of the internet has brought about additional challenges for trademark law, notably with regard to domain names. The author gives a thorough breakdown of the numerous legal criteria, such as the "likelihood of confusion" test and the "bad faith" standard, that have been used in domain name disputes. Farley also analyses the objections leveled against the Uniform Domain-Name Dispute-Resolution Policy (UDRP), which is used to settle domain name disputes. The function of domain name registrars in settling disputes is also covered by Farley. The paper adds that registrars have come under scrutiny for their lack of openness and for failing to offer trademark owners effective remedies.

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<sup>22</sup>Mithra Rathakrishnan and Aswathy Rajan, The Issue of Domain Name Disputes with Special Reference to Cyber Squatting, International Journal of Pure and Applied Mathematics, 2018, 118(20). Retrieved from: [https://www.researchgate.net/publication/352488167\\_The\\_Issue\\_of\\_Domain\\_Name\\_Disputes\\_with\\_Special\\_Reference\\_to\\_Cyber\\_Squatting](https://www.researchgate.net/publication/352488167_The_Issue_of_Domain_Name_Disputes_with_Special_Reference_to_Cyber_Squatting).

<sup>23</sup> Christine Haight Farley, Confusing the Similarity of Trademark Law in Domain Name Disputes, 52 Akron L. Rev. 607 (2018). Retrieved from: [https://heinonline-org-christuniversity.knimbus.com/HOL/Page?public=true&handle=hein.journals/aklr52&div=26&start\\_page=607&collection=usjournals&set\\_as\\_cursor=0&men\\_tab=srchresults](https://heinonline-org-christuniversity.knimbus.com/HOL/Page?public=true&handle=hein.journals/aklr52&div=26&start_page=607&collection=usjournals&set_as_cursor=0&men_tab=srchresults)