

Protection of trademark and domain names



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Project Report: Draft Protection of Trademark and Domain Names Indian Institute of Management, Lucknow July 2013 Submitted to Prof. D.

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840-1870 was considered as second Industrial revolution across the world which gained momentum due to increase in adaptation of Industrial laws, during this era legalization of Trademark was enacted and used by many countries around the world like United Kingdom for industry00 named Brass Brewery as a Red Triangle(Trademark) which was renowned beer brand. In India, the law was passed in year 1940 and was known as Trade Marks Act,

1940. This law has a similar provision like the UK Trade Marks Act 1938 which was followed in England. The Trade and Merchandise Act, 1958 was revoked by the Trade Marks Act, 1999 and this is the current governing law related to the registered trademark.

This law is administered by the Controller General of Patents, Designs and Trade Marks, a government agency which reports to the Department of Industrial Policy and Promotion (DIPP), under the Ministry of Commerce and Industry India. There have been a number of definitions given to the Trademark which varies from region to region and most common of it is as follows: “ Trademarks identify the goods and services of particular traders. Signs that are suitable for distinguishing products or services of a particular enterprise from that of other companies are eligible for trade mark protection. These signs may consist of words, letters, numbers, pictures, or even colors or sounds. ” It is important to note that currently it’s not possible to file and obtain a single trademark registration which will automatically apply around the world. Like any national law, trademark laws apply only in their applicable country or jurisdiction.

Trademark is considered as non-physical asset of company. Whenever a customer enters a market to buy a product or service then his/her first criteria for purchasing will be recognizable trademark. Without knowing the actual procedure or operations utilized to build that product or service, consumers search for trusted trademark. And even sometimes consumers show blind faith in trademark because of the only reason that those trademarks are highly reputed. Many proprietors invest more on publicity of their trademark than on any other visible asset. This is because a well-

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publicized trademark often has value far beyond the physical assets of a company.

A trademark sets a level of expectation in buyer's minds and that level raises when manufactures builds reputation in the market. Moreover, some trademarks are estimated to be worth more than twice what they generate in annual sales because of the worldwide name recognition. Domain Names Technically, domain names are used to find the Internet Protocol (IP) addresses of the computers connected in the internet. Domain names are introduced to eliminate the burden on the users from IP address of the website they want to visit. Typically, there exists multiple levels of domain name. The top level domain name is the part of the domain name after the last dot and the second level domain name is the one which is immediately left to the dot.

Some important top level domain names are generic top level domains (gTLDs) and Country code top level domains (ccTLDs). gTLDs is used to determine the prominent domains such as com, info, org etc. , and ccTLDs are used to determine domain names based on country. For instance, the domain name of google is “ www. google. com” where com is the top level domain name and google is the second level domain name.

With increased globalization and dependence of internet in commercial activities, the role of domain names is increased and it is now considered as a business identifier. This rapid growth in the internet usage led to many disputes in the domain names such as cybersquatting, domain name disputes, typo squatting etc. International Corporation for assigned names

and numbers (ICANN), a non-profit organization was formed to ensure stable and secure operations of domain names and is also responsible for coordination among the global information systems of unique identifiers.

Methodology Textbook Reference The team shall review the chapter 65 ‘ Trademark Protection’ under Part 8- Intellectual Property Rights of prescribed textbook ‘ Legal Aspects of business- 5 Edition’ by Akhileshwar Pathak.

The review findings will be recorded in the report and the learnings will be used to develop a knowledge base for report generation. Trademark Law articles analysis The trademark protection law articles, both in the context of Indian law and foreign law will be read and analyzed to attain the deep understanding of the law. Law articles to be analyzed in the case of Indian Trademark Protection Act are: a) Class of Goods in the Trade and Merchandise Marks Act, 1958 b) The Trade Mark Act, 1999 Case Based Approach The team will follow a case based approach to understand the technicalities of Trademark and Domain name protection law. Famous cases on Trademark and domain name infringement will be analyzed and presented in the report. The effect of these cases on the amendment of existing law will be covered in the report. Statistical Analysis With an increase in the cases of Trademark and Domain name infringement, it has become mandatory to keep an eye on the no of cases developing in this sector.

Keeping this thought in mind, the team shall perform a statistical analysis and future projection of the number of cases developing and pending in this area. Relevance of the report to contemporary manager The world is becoming a global village and the boundaries of businesses both local and global are getting diminished. Branding Strategies are becoming increasingly

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international. In a time like this when brand name plays a significant role in associating with the customer, it becomes imperative to protect the brand and inherent core competencies in designing the brand and the product. As a manager and entrepreneur one should be aware of the legal aspects of the trademark and domain name registration and protection. While setting up a business or introducing a new product, availability of the trademark name or domain name does not imply that it can be used.

It may infringe against a trademark which may later hamper the business's ongoing process. Ideally registration process of a company name or brand name or a product design should be done when the business is set up or new brand is introduced. It helps in the further expansion of the business. Hence, awareness of trademark and domain name protection laws is a must for a manager. Status of Trademarks and Domain Names The Information Technology Act 2000 of India doesn't look over the issues of domain name. Domain names which are like trademarks are protected by Trade Marks Act 1999.

There are various judicial cases where problem of domain name is addressed under the laws of passing off. However still there are gaps which need to be addressed by full-fledged amendments of judicial law. The Copyright Act, 1957 is also referred sometimes for trademarks but domain name protection is still not considered under it. There are international regulations through World Intellectual Property Organization (WIPO) and the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN takes care of the unique identifiers and address on the internet.

It also provides domain name registration details. ICANN includes a Governmental Advisory Committee (GAC) which was set up in 1999. The GAC invites countries to participate in policymaking activities. India is represented by Mr. N.

Ravi Shankar of the Ministry of Communications & IT. Dr. Govind and Mr. Ranjan Kumar of the Department of Information Technology, Ministry of Communications & IT of the Government of India head the GAC Secretariat aiming at increasing the influence of ICANN in India.

ICANN implemented Uniform Domain Name Dispute Policy (UDRP) in 1999 for resolving issues on domain names. India also used UDRP policy on . IN domains in association of National Centre for Software Technology and National Internet Exchange of India. Overall India should effectively change their legislature laws and strictly follow for preventing cybercrimes and protecting trademarks. Existing Laws on Trademarks and Domain Names A brief synopsis of the history of Indian Trade Marks Law: In 1940, the first Indian trademark law known as the Trade Marks Act was passed. This was replaced in 1958 by the Trade and Merchandise Act.

However after the Agreement on Trade Related Aspects of Intellectual Property Right (TRIPS) was passed by the United Nations in 1994, the Trade and Merchandise Act had to be amended. The new act which was then passed was the Trade Marks Act, 1999. This came into force on 15th September 2002 along with the Trade Marks Rules of 2002, which came into force on 5th December 2003, and presently governs the trademark law in India. The hierarchy of the organizations for administering of this law is as

follows: A brief synopsis of the procedure for protection of Domain Names in India: In India the domain name infringement cases are dealt with according to the trademark law as the IT Act does not deal with the domain name issues.

When the issue concerning protection of domain names arose before the Supreme Court of India in the case of Satyam Infoway Ltd. s. Sifynet Solutions P. Ltd (2004(28) PTC 566) it held that internet domain names are subject to the same legal norms applicable to other Intellectual Properties such as trademarks. The court further held that though there is no legislation in India which explicitly refers to dispute resolution in connection with domain names and even the operation of the Trade Marks Act, 1999 is also not extra territorial and may not allow for adequate protection of domain names, it does not imply that domain names are not to be protected legally to the extent possible under existing laws.

However there are International Agencies in place for the purpose of protection of Domain Names: References: Printed Books [1] Akhileshwar Pathak, Legal Aspects of Business, New Delhi: McGraw Hill Edu. 5th Edition Chapter 65- Trademark Protection, pp 659-671 [2] Jane C. Ginsburg, Trademark & Unfair Competition Law: Cases & Materials, New York: Foundation Press, 3rd Edition Chapter1- Concepts of Trademark and Unfair Competition Chapter2- What is Trademark? Chapter3- Acquisition of Trademark Chapter4- Registration of Trademarks Chapter5- Loss of Trademark RightsChapter 11- Internet Domain Names Chapter 13- Remedies Chapter 14- International Aspects of Trademark Protection Online Resources * [http://www. infoplease](http://www.infoplease).

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