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INTELLECTUAL PROPERTY ISSUES IN CYBERSPACE

Author –

Suryansh Singh Chandel

B.A. LL.B (Hons.)

The ICFAI University, Dehradun.

ABSTRACT

The use of the internet and the computer is so enrooted in modern business especially e-commerce, and with the change in time, the peoples of 21st century are very much drove towards the internet whereby creating immense opportunity for businessmen and also creating many options for the consumers. And, with such an expeditious development of technology the business and commerce are running evenly in our society.

Any maltreatment or abuse of the internet and computer, on the other hand, is inescapable which leads to cyber crimes and to put a restraint on these crimes the Information Technology Act, 2000 was brought which was the result of the resolution dated 30th Jan. 1997 of the General assembly of United Nations (UNCITRAL), under which the model law on electronic commerce on International Trade law was adopted. The internet reduces the importance of the physical location of business because the internet does not have territoriality, boundaries, and is limitless. Cybercrime is a result of the limitless boundaries of the cyberspace, which creates the accessibility and publicity of e-commerce or business very fast in any part of the world.

With the advent of such digital technology questions relating to jurisdiction and many other legal issues with time have come up like data protection, Intellectual property issues, crimes with relation to the computer system and many more. The Information Technology Act, 2000 was enacted with an object to provide growth to an electronic transaction, to provide legal identity to electronic commerce, to facilitate electronic governance, to prevent crimes through a computer system, and to provide security in cyberspace. IT Act, 2000 moreover has been successful in framing a regulatory framework in Indian Cyberspace but it does not cover the issues relating to Intellectual Property rights whereas IP is one of the important areas in such a period where e-commerce is growing day by day.

Key Words: - E-Commerce, Cyber Crimes, Intellectual Property Issues, Cyberspace, IT Act

Here arises a question that can one protect his Intellectual Property Right and its unauthorized use? There is no special legislation for IP protection in cyberspace, and its high time when we need one.

DIFFERENT CATEGORIES OF IP INFRINGEMENT IN CYBERSPACE

- **TRADEMARK-**

Unaccredited or unlicensed use of a trademark which is any name, symbol, figure, letter, word, or mark adopted and used by a company. There are certain functions of a trademark like it gives identity to the product, guarantees product quality, and creates a market image for that product in the consumer mind. Examples- Jio., Sony, Skoda, etc. Section 2(1) (zb) of the Trademark Act, 1999 defines a trademark as- “a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include the shape of goods, their packaging and combination of colors”.

DOMAIN NAME AND TRADEMARK –

Domain names are basically an alternative provided to access any website instead of typing its IP address because it becomes difficult to remember these IP address. The Trademark Act, 1999 has the objective to curtail the fraudulent use of marks. And websites use their trademark as their domain name. And, sometimes these domain names are used in a way to do fraud or abuse in some other manner which violates the right of the owner leading to trademark infringement. The value of Domain name in cyberspace is very high.

Cybersquatting - When one person registers the trademark of another person as a domain name and sells it back to that same person who has the trademark at a higher price its termed as cybersquatting. This practice is abusive in nature because one registers the domain in name of another person’s trademark. This shows how a domain name is relevant in the cyber world and due to this reason and to curtail such abuse courts derived a relation between trademark and domain name¹.

Reverse Cyber squatting - When the trademark owner makes a false legal action of cybersquatting against a rightful owner of the domain to secure such domain and the real owner of the domain gives away his right over such domain as to get rid of any legal action. Such action is known as reverse cybersquatting which is highly practiced by large companies and brands.

¹ Harish Chander, *Cyber Laws and IT Protection*

Some relevant case laws with relation to trademark issues in cyberspace: -

1) Yahoo! Inc. v. Akash Arora and another²

The first case in Quite a while as to cyber-squatting was Yahoo Inc. v. Aakash Arora and Anr., where the litigant propelled a site about indistinguishable from the offended party's prestigious site and furthermore offered comparative types of assistance. Here the court decided for trademark privileges of U.S. based Yahoo. Inc (the Plaintiff) and against the litigant, that had enlisted itself as YahooIndia.com. The Court held, "A domain name registrant doesn't get legal option to use that specific space name just in light of the fact that he has enrolled the space name, he could even now be at risk for trademark encroachment."

2) Tata Sons Ltd & Anr. v. Arno Palmen & Anr³

Delhi high court in this case protected domain name under the trademark. The suit was filed by the plaintiff for a permanent injunction against the defendant to stop the use of a trademark or domain name WWW.TATAINFOTECH.IN or any other name which is identical or deceptive and similar to the plaintiff's TATA and TATA INFOTECH marks.

3) Marks & Spenser's case

It was held that 'any person who deliberately registers the name, brand-name or trade-mark of another commercial organization, would face opposition and would be liable to passing-off. In such instances, the court will assume that the public will be deceived where the name solely consists of the name or trade name of another enterprise.'⁴

4) Google V. Racha Ravinder⁵-

In this case, googlenetbiz.com was registered, the complainant, Google Inc filed a complaint. Proceedings were commenced. Google was also a well know Trademark. The complainants pleaded that the defendant's website was similar to the Trademark Google, which had worldwide registration. It was submitted that the respondent had an ulterior motive or Bad faith in registering their web site so as to confuse the web users and it violates the Trademark as it is identical and confusingly similar to the worldwide Trademark 'Google'. The panel decision favored the complainant and ordered the transfer of the site to Google Inc.

² 1999 Arb. L. R. 620 (Delhi High Court)

³ 563/2005, (Delhi High Court)

⁴ Marks & Spencer's V. One-in-A Million 1998 FSR 265

⁵ WIPO D2009-1454 (October 28,2009)

- **COPYRIGHT –**

Copyright infringement means the use of works protected by copyright law in any way, without permission of the copyright owner. Section 2(ffc) of the Copyright Act, includes computer programs as a subject matter of copyright protection. Such a program comes under the literary work and such computer software owners are protected under copyright law. Such software can be reproduced a number of times and can be displayed in the internet, and are also sold, transferred, updated, etc. But no other person than the owner or any other authorized by him can use such copyrighted work for commercial reasons.

Offences relating to copyright infringements are provided under section 63 of the Copyright Act, 1957 under which any person who willfully with having knowledge infringes or abets to infringe copyright shall be punished with the imprisonment not less than 6 months which may extend up to 3 years with a fine of Rs. 50,000.

The computer software comes under the Copyright Law. Section 2(o) of Copyright Act, 1957 Computer program, creative data from computers are eligible for copyright, but business methods are not allowed.

Napster case-

Napster was sued by A&M Records Inc. for sharing P2P files (media files), from one's computer to some other person who uses Napster. The music companies took USD 100000 for each such copyrighted song downloaded through Napster. A final settlement was made where Napster had to pay some future profit to other parties. (A&M Records Inc. v. Napster Inc.)⁶

- **PATENT –**

Under the Patent Act, 1970 powerful protection is provided to the inventions and the process of invention, and also includes computer software of unique design which makes a technical effect.

Penalties regarding unauthorized use of patents and unauthorized claim over patent rights are provided under section 118 and 120, where penalty up to 1 lack or imprisonment up to 2 years or both are provided.

⁶ 2000 WL 573136, I (N.D. Cal 2000)

CURRENT SITUATION OF LAW CONCERNING TO CYBERSPACE **IN INDIA**

To apply traditional law intellectual property right in cyberspace is not an easy task, because the nature of the internet is boundary-less and problems relating to a jurisdictional issue arise. Also, with such a rapid growth of e-commerce traditional law cannot prevail longer.

Current IT Act, 2000 do not have the provisions of punishing cyber-squatting and also somewhere lacks with respect to the jurisdiction issue, Intellectual Property issue, etc. And where when we see traditional Intellectual Property laws like Trademark act, Copyright Act they are also silent on online trademark and copyright infringement.

.IN registry has taken certain sets to provide compensation to those companies who are a victim of cybersquatting and has taken proactive efforts to deter squatting by the implementation of new policies by GOI and Ministry of communication and information technology; IN is an autonomous body and has the responsibility to ensure operational stability, security and reliability.

CONCLUSION

There is a need for a proper regulatory law for Intellectual property rights protection in cyberspace because intellectual property is a valuable asset of any person and a level of skill and labor is needed to create an IP. With a proper law dealing with IP in cyber world lacunas of current legislation can be removed which lacks on the many issues of the internet and lead to a decrease in crimes relating to copyright, trademark, or domain protection. That person who willfully misuses a domain name to confuse or mislead should be penalized and the trademark or domain name holder should have a right against him. There should be special legislation relating to cyber-squatting to protect the right of the registered and unregistered trademark owner.

With this rapid growth in e-commerce and an increase in the use of the internet, everything is accessible very easily; traditional laws cannot keep pace with this rapid development where cyber crimes are increasing day by day. Government and International organizations are working on how to resolve legal issues arising out of cyberspace and it's a high time for India

to look at this issue seriously and have separate legislation protecting the Intellectual property in the cyber world.

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