



FACULTY OF JURIDICAL SCIENCES

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Lecture-36



LECTURE 36: Trademark law and cyberspace

Trademark Law & Domain Names Issues in Cyberspace Definition of Trademark- “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 shape of goods, their packaging and combination of colours”. Functions of a Trademark A trademark serves the purpose of identifying the source of origin of goods. Trademark perform the following four functions i. It identifies the product and its origin. ii. It guarantees its quality. iii. It advertises the product iv. It creates an image of the product in the minds of the public, particularly consumers or the prospective consumers of such goods.¹¹ Examples of trademark- Lee, Skoda, Colgate, Pepsi, Brooke Bond, Sony etc. What is a domain name? Very simply put, a domain name is the linguistic counterpart of what we call an Internet Protocol address. Every computer has an address, which is akin to a telephone number. If one wants to call up a friend, he needs to dial the friend’s number. In much the same way, if he needs to access a website has to type out its IP number. But since it is very difficult for one to remember a complete number such as 202.162.227.12 a system evolved under which a name is mapped to the concerned number or IP address. Thus, today, instead of typing 202.162.227.12, one has merely to type in www.tata.com. What is there in a domain name? These unmemorable lines by the great poet, William Shakespeare, were no doubt written in an era when neither trademarks, nor domain names were ever heard of. If only Shakespeare knew that Shakespeare.com had been available for sale, he would have thought twice before penning those lines. Thus value of domain names can’t be underestimated.

Dispute between Trademark and Domain Names The Trademark Act, 1999 has been enacted with an object to amend and consolidate the law relating to trademarks for goods and services and for the prevention of the use of fraudulent marks. However, trademark owners desirous of using their marks as domain names have found that such domain names have been recognized by unauthorized parties, often as a deliberate attempt ¹¹ Dr. B.L. Wadhwa, Law relating to Intellectual Property, Universal Law Publishing Company, New Delhi, 2009, at pg. no. 134. ¹² S. K. Varma & Mittal, Legal Dimensions of Cyberspace, Indian Law Institute, New Delhi, 2003, at pg. no.154. Published in Articles section of www.manupatra.com Bharati Law Review, April – June, 2016 174 to violate the rights of the original trademark owner. Actually, domain names are registered on ‘first come first serve basis’ which leads many a time to what are commonly referred to as ‘abusive registrations’ i.e. registration by a person of a domain name containing a trademark, in which such person/entity has no legitimate right or interest.

Various Forms of Infringement of Trademark through Cyberspace A. Cybersquatting Various types of domain names disputes come for consideration before the courts all over world. One of the most serious kinds of disputes has been about ‘Cybersquatting’ which involves the use of a domain name by a person with neither registration nor any inherent rights to the name. Trademarks and domain names being similar, have been exploited by some people who register trademarks of others as domain names and sell those domain names back to the trademarks owners or third parties at a high profit. This is known as ‘cybersquatting’ which means some person sitting on the property of another person. The practice of ‘cybersquatting’ is abusive whereby one entity registers a domain name that includes the name or the trademarks of another. This practice shows the importance of the role played by domain names in establishing online identity. This practice is usually famous in order to either block the legitimate user registering its most sought after domain name or hoping to sell the names for profit in the market. Such a trend of cybersquatting has led the courts to consider the relationship between trademarks and domain names. To file a complaint to prevent cybersquatting, the complainant will have to prove the dishonest intention, lack of legitimate rights and interests and similarity of domain name with the trademark.¹³ B. Reverse domain name hijacking It is also known as reverse cybersquatting. It happen when a trademark owner tries to secure a domain name by making false cybersquatting claims against a domain name’s rightful owner through legal action.

Sometimes, domain names owner has to transfer ownership of the domain name to the trademark owners to avoid legal

action and costly expenses, particularly when the domain names belong to the smaller organisations or individual who are not economically sound to fight the case. Reverse domain name hijacking is most commonly done by larger corporations and famous wealthy individuals. C. Meta tags Meta tag is an element of web pages that is also known as Meta elements. Meta tags provide information about page descriptions, key words and other relevant data. Originally, Meta tags were used in search engines to define what the page was about when the internet was in the early stages, Meta tags were used to help the place web pages in the correct categories. Nowadays, people began abusing Meta tags to build false page rankings for web pages that were poorly constructed. Meta tags can be categorised into title, description and keywords.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.			
2.			
3.			
4.			
5.			

Answers: 1-(),2-(), 3-(),4-(),5-()