

bring macro shift in the way we live and work. It will be one of the largest driving forces of future mobile application development. Leveraging IoT with mobile applications offers improved workflows and convenience in everyday life.

5.5 DOMAIN NAME DISPUTES

5.5.1 What is Domain Name?

Domain name refers to the internet address of an organization. Domain name is a valuable asset of the organization and is primarily used to identify one computer from the millions of others connected to the internet. Domain name enables users to send e-mail, to access web pages, to transfer files etc. As two persons cannot have the same telephone number, similarly no two organizations can have the identical domain name. An Internet Protocol (IP) address consists of multiple levels identified by both numbers and names. With the increase of commercial activities on the internet, the domain name is also used on the internet as a business identifier. Domain names are registered on a first-come-first-serve basis and offer a unique presence on the internet. The domain name can be used globally, it will always refer to the same internet page. Domain names, normally speaking, play an important role in e-commerce, it is truly the easiest and most convenient way to access any material on the cyber space.

5.5.2 Examples of Domain Names

.com: Used for Commercial and Personal Sites

.org: Used by Non-profit Organizations

.net: Used by Companies involved in Internet Infrastructure

.edu: Used by Educational Institutions

.mil: Used by Military Agencies

.gov: Used by Government Organisations

.int: Used by International Organisations

5.5.3 Difference Between Trade Marks and Domain Names

Basis	Trade Marks	Domain Names
1. Proprietary rights	Registering of trademarks provides proprietary rights.	Registering a domain name does not provide proprietary rights.

Basis	Trade Marks	Domain Names
2. Use	Trademark is used to distinguish goods or services of one trader from those of other traders.	Domain name is used to identify one computer from the millions of other computers connected to the internet.
3. Form	A trademark may consist of words, designs, letters, numerals, colours, shape of goods etc. or any combination of such signs.	A domain name must be contextual in form (e.g. www.du.ac.in).
4. Registration	A trademark may not be registrable, in case it is identical or similar to a previously registered trademark.	A domain name is registrable even if it is identical or similar to a previously registered domain name.
5. Class of	A trademark is registered in respect of the class of goods or services.	A domain name is not registered in respect of a particular class of goods or services as there are no different classes.
6. Validity period	A registered trademark is valid for a period of 10 years and it can be renewed for a further period of 10 years.	A domain name is valid for a period specified in the agreement between the registrant and accredited registrar and it can be renewed further.
7. Granting authority	Trademark is granted by state.	Domain name is granted by ICANN authorized entity.

5.5.4 Internet Corporation for Assigned Names and Numbers (ICANN)

It is a non-profit organization which co-ordinates the assignment of protocol and management of the domain name system. ICANN passes over the responsibility for the registration of domain names to registrars. There are **1500 accredited registrars** and each has his own policies and procedures for registering, maintaining and handling domain names. These registrars do not accept any liability for any dispute. ICANN, an international body, formed on **September 18, 1998** (located in California) has developed a **uniform domain dispute resolution policy** which can be used to resolve the issues pertaining to domain disputes without knocking the

door of the Court. This policy is followed by all registrars (For details visit <http://www.icann.org>)

5.5.5 Types of Domain Name Disputes

There are four types of domain name disputes:

1. Cybersquatting
2. Profit Grabbing
3. Misspelling and Identical Domain Names
4. Concurrent Claims

1. Cybersquatting. These are common disputes. It is the practice by means of which a person or legal entity gets the registration of the trade mark, business name or service mark of another as his own domain name. This is done for the purpose of holding and selling the same domain name to the other person for a valuable premium and consideration.

Cybersquatter. It means an individual, person, entity who uses a well known trademark as a web address or in any other manner for his web site. The main intention of the cybersquatter is to give deceptive impression that there is some kind of affiliation with that trademark which is being used as a web address.

Anti Cybersquatting Consumer Protection Act

In order to solve the problem of cybersquatting the Government enacted the Anti Cybersquatting Consumer Protection Act in 1999. Under this Act, the trademark owner is entitled to bring a course of action against a domain registrant.

CASE LAW : *Acqua Minerals Ltd. v. Promod Borse* (2001)

Facts: The plaintiff was registered proprietor of the famous trademark 'BISLERI for WATER'. The Court observed, "If any domain name is registered under the Trademarks Act, such domain name is entitled to equal protection for an action of infringement of trade name". In this case the plaintiff sought permanent injunction restraining the defendants, their partners from using the mark BISLERI or BISLARI.com as part of their domain name. **Held,** Here an injunction was granted to the plaintiff in respect of domain name "Bisleri.com".

2. Profit Grabbing. In this type of domain dispute, the defendant gets the domain name registered with identical trademark or tradename in order to gain profits out of such business.

CASE LAW : *Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd.* (2004)

Facts: In this famous and landmark case, the Apex Court declared that the Indian Trademarks Act, 1999 was applicable to the registration of domain name as well. In this case, Satyam Infoway (Appellant) had registered several domain names relating to its business such as sifynet.com, sifymall.com, sifyrealestate.com in the year 1999. Subsequently, Sifynet Solutions (Respondent) had started using the word sify as a part of the domain name (registered in the year 2001) under which it carried on online marketing (namely siffynet.com and siffynet.net). Afterwards the appellant instituted a suit seeking an injunction against the respondent. **Held,** The appellant was the prior user of the word "sify" as a result of which it enjoyed immense popularity and goodwill pertaining to the internet and other computer related services. Thus, the Apex Court granted an injunction in favour of the appellant and restrained the respondents from further using the domain names in their business transactions.

3. Misspelling and Identical Domain Names. With increase in E-transactions, many people tend to register domain names which appear to be identical with the already registered domain names. It creates confusion and misrepresentation in the minds of the general public relating to the ownership of such domain name.

CASE LAW : *Yahoo! Inc. v. Akash Arora* (1999)

Facts: In this case, the plaintiff submitted that they had registered the domain name yahoo.com with the Network Solutions Inc. and got the same registered in over 69 countries. The defendant raised the issue that its website had a disclaimer that it was not connected to the plaintiff's website and due to this there was no confusion of any kind. **Held,** The marks were similar and the disclaimer would not avoid confusion. Moreover the word yahoo was protected as it was a well known trademark used by the plaintiff and was distinctive.

4. Concurrent Claims. It refers to the situation which arises when two legitimate parties are involved in a dispute over a domain name where each party claims to be true and legitimate owner of the acquired domain name.

CASE LAW : Nissan Motors Co. Ltd. v. Nissan Computer Corporation

Facts: In this case, Nissan (defendant) used his surname "Nissan" as a trade name for various businesses since 1980. In 1991, he formed Nissan Computer Corporation and registered the domain name "nissan.com" in 1994 and "nissan.net" in 1996. Both these websites were offering computer related services. In 1995 plaintiff Nissan Motor Co. sent a letter to defendant containing the objection raised for the use of word "Nissan" in its domain name but no further action was taken at that time. In August 1999, defendant modified its website to include "Nissan computer" logo which was identical to plaintiff logo and also included various banner advertisements linking to number of automobile related websites. Consequently, the plaintiff instituted a suit, charging defendant with trademark infringement and moved for a preliminary action. **Held,** There was a infringement of trademark by the defendants in this case.

5.5.6 Remedies for the Domain Name Disputes

WIPO. The World Arbitration and Mediation Center provides time and cost saving mechanisms to resolve internet domain name disputes, without the need for Court litigation. Under this **WIPO** initiated **Uniform Domain Name Dispute Policy (UDRP)**, The **WIPO** Center has processed over **35,000 cases**. The UDRP provides that before a domain name registrar will cancel, suspend or transfer a domain name which is the subject of a trademark-based dispute, it is required to have an agreement signed by the parties, a Court order or an arbitration award. The first dispute under the **ICANN Policy** was settled on **January 14, 2000**, and it has been published by the **WIPO**.

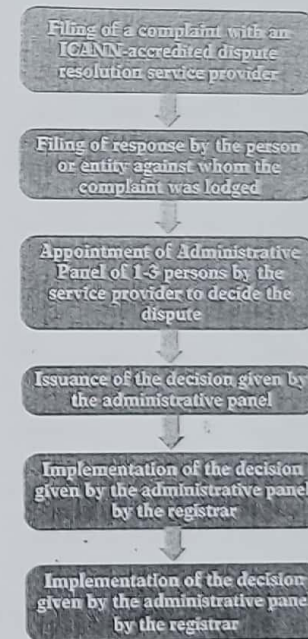


FIG 11 : VARIOUS STEPS IN THE UDRP ADMINISTRATIVE PROCEDURE

The above-said procedure must be completed within a period of 60 days from the date of receipt of complaint by the **WIPO** Center.

5.6 ELECTRONIC FORM (E-FORM)

Electronic form or online form is a computer program version of a paper form. Electronic form offers number of benefits such as elimination of cost of printing, storage, mailing of printed forms etc. In addition to all these benefits, e-forms can be filled out faster as the programming associated with them can automatically format, calculate, save and validate information for the user.