

Impediments to Cross-Border Trademark Dispute Resolution in the Digital Era: A Study With Reference to India

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Abstract

The digitally clad world today has made things easier but has also brought a novice paraphernalia to human's existence. The internet has made human interaction like butter especially in the e-commerce scenario. The collision of the internet with commerce along with Intellectual Property Rights has resulted in an ecosystem that is new for the consumers, businesses, legislators, lawyers as well as the judges. Trademarks as an IPR is of utmost importance that ensures good and healthy competition. The way trademarks are perceived today in the digital era is not conventional but rather they are now seen as domain names. Domain names are virtual trademarks that the companies utilise as their web address similar to shops in the physical world. The disputes that are pertaining to trademarks in the virtual world are cybersquatting, typo squatting, reverse domain name hijacking, meta tags, hyperlinking and framing. The nature of these disputes are different as they are not geographically bound but in fact are cross border. Cross border disputes are those that happen when two different countries having different domestic laws are at dispute. The issue with such disputes is the lack of a common legal ground, but the international bodies have tried to resolve these international disputes. The Universal Declaration of Human Rights (UDHR) vide Article 27 recognises the importance of protection of a person's production whether it is scientific, literary or even artistic. Protection of the trademarks is non-negotiable in today's world where infringement has taken a new virtual shape. The World Intellectual Property Organisation (WIPO) and the Internet Corporation for Assigned Names and Numbers (ICANN) along with the Uniform Domain-Name Dispute Resolution Policy (UDRP) work in consonance to settle the international disputes pertaining to the domain names but there are certain impediments in the resolution of these disputes which this paper has tried to bring forth. The jurisdiction of the international disputes always remains doubtful in comparison to the domestic laws of the disputing parties. The application of the law also requires better cooperation and harmonisation. Thus the advent of the internet along with the pace of the growth of domain names in a borderless digital world has left a loophole which the infringers use to their benefit resulting in international conflicts and difficulties in the resolution of the trademark disputes which are of international character.

INTRODUCTION

The emergence of information technology today has been the most groundbreaking change which has impacted all the facets of human life like an albatross; be it education, research, communication, businesses or even

commerce. The influence of internet can be seen even on intangible rights and the most glaring one being intellectual property rights. IPR are those rights which are accorded to those who have created something by their intelligence such as copyright, trademarks, patents, geographical indication, trade secret and many more. In this fast changing environment, protecting the rights of designers and creators along with propagating inventions and disseminating knowledge has turned out to be the main concern for policymakers, legal practitioners, and stakeholders of technology.¹

Trademarks are an important IPR which are essential in the present e-commerce era. The WIPO Handbook on Intellectual Property Information and Documentation defines trademarks as '*A sign which serves to distinguish usually the goods (as does the "service mark" with regard to services) of an industrial or a commercial enterprise or a group of such enterprises.*'² In India the Trademarks Act, 1999 defines trademarks under Section 2(zb) 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 shape of goods, their packaging and combination of colours*'. The most natural meaning of trademarks is nothing but the marks that are associated with a particular trade that enable the consumers to differentiate the goods or service of one seller from the other for instance the golden 'M' logo which is associated with a well known fast food brand - Mc Donald's. Traders now use their marks in the form of domain names with the view to captivate the prospective consumers to their webpages so that there is an enhanced market presence which will boost trade and lead to capital growth.³

Traditionally trademarks were logos, signs, names, colours, sounds and other special marks but in the digital world trademarks have taken a different form. Owing to the rise in the e-commerce

activities the businesses are now using the online address that are also known as domain names as an identification of their brands such as www.nike.com which is the domain name of a sports wear company known as 'Nike'. The increase in the presence of the commercial activities in the digital world has resulted in the increase of the infringement of the trademarks in the online world specially via domain name infringement. Infringement of trademarks happen when an infringer uses the mark of the company that has goodwill in the market as his own in a way to tarnish the reputation of the brand in order to dilute the reputation of the brand. This infringement majorly happens when the domain names of the company are infringed. Domain names have today become the identification of the companies which guide the consumers. With the increase in the use of social media and marketplaces in the online form, it has acted like a catalyst whereby individuals and companies can create counterfeit accounts or an internet site that impersonate well known brands.

Resolution of the International Disputes

A dispute that arises between two countries pertaining to the infringement of trademarks in the digital era are not of conventional essence. Whenever a trademark is infringed by an infringer a dispute arises between the holder of the registered trademark or domain name and the infringer. Infringement takes place when the effect of the proposed trademark is in a manner which has the probability of deceiving or confusing the minds of the consumers who are attuned to the existing trademark.⁴ These disputes are rather complex and layered which require specific resolution processes different from the customary resolution process. The inter-continental paraphernalia established to decide these disputes is the Uniform Domain Name Dispute Resolution Policy ("UDNDRP" or "ICANN Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN")—is a glaring example of how the existing system of multinational cooperation is being superseded by

1 Gurpal Singh, *Intellectual Property Rights In The Digital Age: Challenges And Solutions For Copyright And Patent Protection*, 5 INTERNATIONAL JOURNAL OF ADVANCED RESEARCH IN MANAGEMENT AND SOCIAL SCIENCES, 143, (2016).

2 <https://www.wipo.int/documents/d/standards/docs/en-08-01-01.pdf> (last visited Aug. 3, 2025).

3 V.K. UNNI, TRADEMARKS AND THE EMERGING CONCEPTS OF CYBER PROPERTY RIGHTS, 23 (Eastern Law House Private Ltd) 2002

4 VAKUL SHARMA, INFORMATION TECHNOLOGY LAW & PRACTICE, 517 (Universal Law Publishing) 2015.

the conventional manner of individual consent and Internet norms.⁵

In an event where a dispute arises between two countries the resolution shall be done by an appointed panel. Since both the countries have different *lex loci* it is imperative that the cognisance of the dispute is taken by a neutral international body. Credit is to given to ICANN and UDRP that take cognisance of any dispute that happens between two countries having different laws with respect to domain names. The Internet Corporation for Assigned Names and Numbers, that is ICANN which was established in the year 1998 is a non profit corporation that ensures protection to the domain names. It was in the following year, 1999 that ICANN with an intent to provide resolution in a situation where there are any conflicts with reference to domain names that the Uniform Domain Name Dispute Resolution Policy was laid down. Today, any issue between two countries that pertains to domain names is resolved by the UDRP in the following manner.

Complaint filed

As per the UDRP's procedure a legal holder of trademark files a complaint. The complain is filed with the dispute resolution service provider like WIPO and the lawful owner states that domain name registration was done by respondent in a *mala fide* way.⁶

Reply of the respondent

The respondent domain holder then replies to the complaint accompanied with evidences in a period that is of 20 days. The respondent has the choice of selecting panel with three-persons in a situation wherein the complainant has already called for a panel with one person. However the respondent shall be bound to reimburse one-half of the fees that is applicable for the panel which is consisting of three persons (otherwise the

complainant will be completely accountable for the payment).⁷

Appointment of the Panel

The UDRP appoints a panel consisting of panelists which are one or three in number to decide the dispute in line with the evidences and documents put on record by the complainant and the respondent. When a panel of three-members has to be appointed, the parties to the dispute may nominate panelists from the list of the service providers. The administrator will then appoint a panelist from amongst the ones who are nominated by both the parties.⁸ The panelists can either be academicians or attorneys. The Panel then decides the case according to the ingredients mentioned under Para 4(a).

In disputes that are cross border there is a requirement to satisfy the essentials as per the UDRP. Time and again the UDRP has upheld three essentials that are provided under para 4(a) of the UDRP. The Administrative Panel highlighted these in the case of *Khadi & Village Industries Commission, India v. Michael F Mann, Domain Asset Holdings, LLC, United States of America*⁹ where the conflict was pertaining to the domain name "khadiindia.com" which was put on sale by the respondents contending *bona fide* that the word "khadi" is a generic term and that in the USA there is no such trademark associated with the said word. The Panel ordered that the domain name must be transferred to the complainants who are the rightful owners and the respondents do not have the right to use the same. The Panel reached to this conclusion as there was fulfilment of the essentials stated under the UDRP Policy's paragraph 4(a) which are -

- The domain name disputed was identical or confusingly similar to complainants who have the rights
- There are no rights or legal interests of the respondents in the disputed domain name.
- The domain name is registered and is being utilised in a *mala fide* manner by the respondent.

5 Marcelo Halpern & Ajay K. Mehrotra, *From International Treaties to Internet Norms: The Evolution of International Trademark Disputes in the Internet Age*. 21 U. PA. J. INT'L ECON. L. 524 (2000).

6 Mr. Anurudh Upadhyay & Dr. Anita Yadav, *Trademark and Domain Name Disputes in India: A Critical Analysis of UDRP & Legal Strategies*, 13 INTERNATIONAL JOURNAL OF INNOVATIVE RESEARCH IN ENGINEERING & MULTIDISCIPLINARY PHYSICAL SCIENCES 7 (2025).

7 Sourabh Ghosh, *Domain Name Disputes and Evaluation of The ICANN's Uniform Domain Name Dispute Resolution Policy*, 9 J INTELLECT PROP RIGHTS 430 (2004).

8 Prachi Shah, *Role of UDRP in Resolving Domain Name Disputes (with top 4 important case laws)*, LAW BHOOMI, (August 25, 2020) <https://lawbhoomi.com/role-of-udrp-in-resolving-domain-name-disputes-with-top-4-important-case-laws/> (last visited on July 30, 2025).

9 (2021) WIPO Case No. D2021-3242.



Impediments To Resolution

The resolution that the UDRP offers has proven to be of help to the various cross border domain name or trademark disputes. WIPO via its Administrative Panel has been successful in the resolution by providing a uniform process. The resolution process is much quicker and inexpensive in contrast to the litigation process. However dealing with two sovereign nation having different jurisprudence is not cumbersome at many levels. In spite of WIPO, ICANN and the functioning of the UDRP has been commendable but there are still many impediments in the resolution process- the impediments are mentioned as follows-

Jurisdiction

Jurisdiction refers to the power of a forum to try a case. Whenever there is an infringement of any right the foremost step is to approach the right forum which has the power to resolve the dispute. Traditionally disputes were resolved in line with the territorial jurisdiction of the infringement. For instance, if an online trademark infringement via domain name takes place against a company registered in France and the infringer is from Japan committing the infringement from China the registration will not by default extend to Japan and China unless the company gets itself registered in those countries which thereby causes issue as to the place of cause of action to file the complaint.¹⁰ This results in rather complexities with reference to the resolution of the dispute as the laws of various domestic jurisdictions are different.

The digital space being borderless has also led to infringements that are not geographically bound rather can happen from any part of the world. This jurisdictional and conflict of law quandary implies that the courts might not be well versed to deliver effective resolution in many circumstances.¹¹ When the jurisdiction of the forum is not only clear this leads to difficulty in the resolution of the trademark dispute in the digital era. To resolve these cross

border issues that are increasing in the present world, countries have resorted to treaties and conventions. The WIPO and the ICANN are the pioneer bodies that deal with any such matters. As online interactions surpass the borders of the nations, the difficulties pertaining to jurisdiction and implementation of the rights become glaringly evident.¹²

The friction between the domestic laws and international laws exist which makes it difficult for the courts to give relief beyond the territorial boundaries. If the courts give a relief that is extra-territorial the same has no application in other nations. For instance in the judgement of *Google Inc v Equustek Solutions Inc*,¹³ the Supreme Court of Canada issued a global injunction against the famous company Google to take down the website of a company from its search engine internationally. The Appellants contended that the injunction can only be effected in the Canadian jurisdiction and nowhere else owing to the territorial jurisdiction of the court. No orders can be given by the Canadian Courts that are extraterritorial in nature. Impediment specifically like jurisdiction jeopardises the entire resolution process because the commencement of the resolution is delayed and the infringement continues.

Enforcement of Decision

Enforcing the decision of a forum is the most important step without which the entire process would be redundant. Enforcing a decision means that each party performs its part according to the decision. In domestic laws the enforcement of the decision is easier because the party and the law are bound by a single uniform law, but when an international dispute takes place the enforcement of the decision is not easy. In a situation where an extra-territorial settlement has been successfully received, the right holders may still have complexities owing to the restricted availability of real enforcement and implementation of the settlement.¹⁴

¹² Supriya Malviya, *Jurisdictional Challenges In Ipr Disputes In Cyberspace: Judicial Trends*, 5 E- JOURNAL OF ACADEMIC INNOVATION AND RESEARCH IN INTELLECTUAL PROPERTY ASSETS, 23 (2024).

¹³ 2017 SCC 34.

¹⁴ Kari Kammel et al. , *Trademark Counterfeiting Enforcement Beyond Borders: The Complexities of Enforcing Trademark Rights Extraterritorially in a Global Marketplace with Territorial-Based Enforcement* , 33 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 628 (2023).

¹⁰ Haitham A. Haloush, *Jurisdictional Dilemma in Online Disputes: Rethinking Traditional Approaches* , 42 INT'L L. 1136 (2008).

¹¹ Julia Hornle, *The Uniform Domain Name Dispute Resolution Procedure: Is Too Much of a Good Thing a Bad Thing*, 11 SCIENCE AND TECHNOLOGY LAW REVIEW, 288 (2008).

The implementation procedure for trademark infringement in the virtual world is relative and differential relying on the jurisdiction's judiciary system, the available degrees of alternative dispute resolution system, and the flexibility of the legal systems in the fast growing technologically clad globe.¹⁵ The UDRP itself does not provide for the provision of an appeal for a party who is not satisfied with the panel's decision. Once the panellists have decided, the only resolution for the party against whom the decision is taken is to file a suit in a national court, that is expensive and a timely process.¹⁶

Unambiguous Provisions

Undoubtedly, the pace with which trans-border conflicts now come up, both pertaining to intellectual property and otherwise, proposes that a slow pace of legislature drafting and institution building may not be sufficient to the deal with the issues at hand.¹⁷ Any domain name dispute that takes place requires that the complainant satisfies the 3 ingredients as given under paragraph 4 (a) of the Policy. It is still not clear to the registrants of the domain name as to what use will be considered "bad faith" in contrast to "rights or legitimate interests."¹⁸ To bring a successful action under the UDRP, the complainant has to necessarily prove the existence of the following essentials-

- An identical or confusingly similar mark - UDRP has no clear cut definition of 'confusingly similar' and as a result the decisions of the court have been inconsistent while interpreting this. As was held in the case of *Calmino group AB v. Domain Administrator, DomainMarket.com*.¹⁹ the Panel

held that the yardstick to determine confusingly similar will be on the basis of a straight-forward comparison amongst the registered domain name and the infringing domain name. However in the judgement of *Wal-Mart Stores, Inc. v. Walsucks and Walmarket Puerto Rico*²⁰ in which the Panel found that even if a suffix or prefix word is added to the registered domain name it will amount to confusingly similar. The difference of the Panel's opinion in both the cases with the meaning of confusingly similar leads to ambiguity.

- No right or legal interest in the domain name-inspite the burden of proving this situation, like the other two, depends on the complainant but in this circumstance, the complainant is bound to make a prima facie case accusing the respondent of lacking any lawful rights or interests in the domain name and then the onus moves to the respondent to prove it otherwise.²¹
- That the registration of the domain name was in the complainant's name and is being utilised in bad faith - the UDRP uses the terminology 'and' which means that both the essentials that is registered and the present usage in bad faith of the domain name have to be proved simultaneously. This implies that firstly bad faith itself is not a ground and secondly the bad faith has been used in an incoherent manner. The Panel's decision has interpreted the term bad faith in decisions even to the extent of its non-active usage. In the decision of *Telstra Corporation Limited v. Nuclear Marshmallows*²² the Panel while delivering its decision in the favour of the complainant held that respondent's bad faith can be interpreted as even passive holding depending from case to case. There is no straight jacket formula for the same.

Prejudice Towards Trademark Holders

Domain names have been considered at par with the trademarks in the digital world. Though this might be correct and any association of a domain

15 Mamta Pal & Dr. Ajaymeet Singh, *Infringement of Trade Mark in the Digital Domain: A Comparative Study of India, the United Kingdom, and the United States*, 5 INTERNATIONAL JOURNAL OF RESEARCH PUBLICATION AND REVIEWS, 325 (2024).

16 Jaivardhan Singh, *DOMAIN NAME DISPUTE in the AGE of SOCIAL MEDIA and E-COMMERCE*, 5 INDIAN JOURNAL OF INTEGRATED RESEARCH IN LAW, 641 (2025).

17 Laurence R. Helfer & Graeme B. Dinwoodie, *Designing Non-National Systems: The Case of the Uniform Domain Name Dispute Resolution Policy*, 43 WILLIAM & MARY LAW REVIEW, 151 (2001).

18 C. Amirdha Varshini, *E-COMMERCE and DOMAIN NAME DISPUTES at the CROSSROADS: ISSUES and REMEDIES*, 12 INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS, 390 (2024).

19 (2024) WIPO Case No. D2024-2579.

20 (2000) WIPO Case No. D2000-0477.

21 Snehlata Singh, *Conflicts between Trademarks and Domain Names: A Critical Analysis*, (September 14, 2011). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2045222 (last visited on August 2, 2025).

22 Case No. D2000-0003.



name with the trademark will have an impression in the mind of the consumer that the two are related. However, in the digital space where an individual who has bona fide domain name registered prior to a trademark that is similar to a well known mark a dispute arises. While resolving such a dispute the trademark holders are given an upper hand and the decisions are mostly in the favour owing to the registration of the trademark much earlier in contrast to the domain name. The UDRP is tilted towards the rights of trademark holders, signifying good success rates for the complainants and the mechanism permitting them to decide the service provider for dispute resolution.²³

In the dispute between *Wal-Mart Stores, Inc. v. Walsucks and Walmarket Puerto Rico*²⁴ in relation to the domain name “www.walmartsucks.com” that was pejorative in nature as per the complainants who were the trademark owners of Wal-mart all around the globe. The respondents contended that this was a gripe website which was an extension of the freedom of expression and was curated for people to share their bad experiences if any against the complainant’s business. The Panel held in the complainant’s favour as the domain name was abusive in nature and would affect the right of business of the Wal-mart. This case is a glaring example where the Panel was confronted with the balancing of the right of speech and expression as well as the right to trade. The reasoning of the Panel in the favour of the trademark holder will affect the right to speech and expression of the consumers on an online platform.

In light of the above impediments it is clear that even if there have been steps to resolve international disputes there is still a long way to go. Impediments will slow down the resolution process which will in return impact the businesses as well as the consumers.

The Indian Scenario

In India the law that deals with trademarks is the Trademarks Act of 1999. The present internet stage has propelled so fast that presently there is no specific

law that deals categorically with the infringement of trademarks in the cyber space especially domain names. It is the collaboration of the Trademarks Act, 1999 and the Information Technology Act, 2000 that work in coordination when a domain name dispute arises between the parties that are bound by the jurisdiction of the Indian Courts. The Indian Courts have time and again taken into consideration the UDRP which resolves international domain name disputes. On the other hand, nation-owned forums such as the INDRP in India, which resolves disputes on “.in” ending domain names and is under the National Internet Exchange of India (“NIXI”) could be regarded.²⁵

In the case of *Satyam Infoway Ltd vs Siffynet Solutions Pvt. Ltd*²⁶ the Apex Court acknowledged the increase in the use of Internet and its implication of being available all around the globe. The infringement of domain name is akin to infringement of trademarks and for this reason it is imperative to deal with such issues at the earliest in the light of e-commerce. The Court observed that there is a need to protect domain name internationally and for that the WIPO and ICANN along with the UDRP are performing a great job to which even India is a signatory.

However whenever a dispute arises between two parties one of which is not bound by the Indian Laws then it is the UDRP at the international level that resolves any domain name dispute between parties that come from different jurisdictions. The Trademarks Act, 1999 only provides for territorial jurisdiction and not for extraterritorial jurisdiction. India has always been in the favour of the protection of the trademark right holders. The Indian jurisprudence has repeatedly aligned itself with the international standards. However, implementation of the foreign judgment in Indian infringement of trademark cases would also lead to some complexities owing to the differences in the system of law and the requirement for reciprocity.²⁷

In India to enforce a decision which is given by a foreign forum requires the application of the Code of Civil Procedure, 1908. The decision

23 Nagesh Karale, *A comprehensive guide to WIPO Uniform Domain Name Dispute Resolution Policy (UDRP)*, IPLEADERS BLOG, (January 27, 2024) <https://blog.ipleaders.in/a-comprehensive-guide-to-wipo-uniform-domain-name-dispute-resolution-policy-udrp/> (last visited on July 30, 2025).
24 (2000) WIPO Case No. D2000-0477.

25 Aditya Joby, *The UDRP: An International Regulator or Suggested Policy?*, <https://jgu.edu.in/mappingADR/the-udrp-an-international-regulator-or-suggested-policy/> (last visited on Aug. 1, 2025).

26 AIR 2004 SC 3540.

27 *Supra* note 15.

will only be applicable if the same are in line with the jurisprudence of the nation with reference to jurisdiction, procedure and the applicable laws. Intellectual Property infringement in the virtual world is majorly unbridled by the state law in India, and is presently being dealt with by the judicial courts through wide interpretation and implementation of the laws that are existing.²⁸ The resolution as provided by World Intellectual Property Organisation (WIPO), Internet Corporation for Assigned Names and Numbers (ICANN) and the Uniform Domain Resolution Policy (UNDP) are not applicable to the courts jurisdiction and is incapable of being inclusive in the *res judicata* principle.²⁹

The WIPO domain name dispute resolution has till 2025 handled 77309 domain name disputes. The highest number of complaints have been filed by the United States of America that is 26959 amounting to about 34.87%.³⁰ The complaints from India are 936 in number which makes it only 1.21% of the total complaints as a result India comes at the 13th position. USA also tops in the respondent list where it has defended 22164 cases that is about 28.67% and India at the 5th position has defended 2278 cases which amount to 2.95%. This data represents the fact that USA has more representation and the other countries have not been able to match that level.

CONCLUSION AND SUGGESTIONS

The protection of trademarks in a world where all the businesses are going into an electronic form is the need of the hour. Resolving violation of trademarks conventionally were not complicated because of the territorial boundary. But with the non-borderless characteristic of internet it is recurrent that infringers are sitting in a different corner of the world and infringing trademarks leading to conflict of different

domestic laws. The dispute pertaining to trademarks earlier used to target only a particular geographical area but with the increase in the use of internet the loss that the business owners bear is much more as domain names have a global access.

The worldwide use of internet has led to the disputes that are cross border leading to difficulty in determining the applicable jurisdiction, the application of the substantive law, the execution of the decision and the biases that the international bodies might come with. The impact of these issues is not only on the business owners who have a goodwill in the market but rather on the consumers who become subject to these infringers and suffer. Though ICANN's effort to resolve domain name disputes via the UDRP is a welcome step but a deeper understanding of the policy brings shortcoming on the forefront which can act as breeding ground for more infringements and thereby putting domain name - the virtual trademarks at the peril.

The protection and promotion of the trademark especially as domain names in the contemporary world can be warranted the following suggestions can be helpful-

- Monitoring - The constant monitoring of the online website by the owners of the websites to make sure no such activity takes place that can mis-guide the consumers by either imitating or copying the domain name can help prevent disputes
- International Cooperation - Since the disputes have no borders it is required that the co-operation between the various nations is such that any dispute that arises can be resolved at the earliest and in a way that the infringer are prevented from doing any act of violation
- Alternative Dispute Redressal or Online Dispute Redressal - Litigation is very consuming monetarily as well as the time, ADR like arbitration in such situations is the best option. At present it will be much convenient if the ADR happens in the online format.
- Artificial Intelligence - AI is the future and application of the AI and Blockchain technology will help securing by tracking infringements at the earliest and speeding up the process.

These suggestions can help the brand owners to deal with new age infringement of the trademark especially in relation to the international disputes that take place.

28 Deepali Jain, *A Critical Analysis Of Domain Name System With Indian And International Perspective*, 6 JOURNAL OF EMERGING TECHNOLOGIES AND INNOVATIVE RESEARCH, 1357 (2019).

29 Aditi Singh, *The Plight Of Domain Names In India*, MONDAQ, <https://www.mondaq.com/india/trademark/1166612/the-plight-of-domain-names-in-india> (last visited on Aug. 1, 2025).

30 https://www.wipo.int/amc/en/domains/statistics/countries_a-z.jsp (last visited on Aug. 1, 2025).

