

AUTHORITATIVE DECISION OF SUPREME COURT OF INDIA ON DOMAIN NAME DISPUTES

In 1989 when a little known computer programmer, Tim Berner-Lee, proposed a global hypertext project called "World Wide Web", who would have thought that less than a decade later this proposal would cause a revolution not only in the manner in which man did business but also the law associated with it.

The issue concerning protection of domain names came up before the Supreme Court of India in the case of *Satyam Infoway Ltd. v Sifynet Solutions P.Ltd* (2004(28) PTC 566). The Court, in an authoritative decision has held that internet domain names are subject to the same legal norms applicable to other intellectual properties such as trade marks. The Court further held :

“The use of the same or similar domain name may lead to a diversion of users which could result from such users mistakenly accessing one domain name instead of another. This may occur in e-commerce with its rapid progress and instant (and theoretically limitless) accessibility to users and potential customers and particularly so in areas of specific overlap. Ordinary consumers/users seeking to locate the functions available under one domain name may be confused if they accidentally arrived at a different but similar website which offers no such services. Such users could well conclude that the first domain name owner had misrepresented its goods and services through its promotional activities and the first domain owner would thereby lose their custom. It is apparent therefore that a domain name may have all the characteristics of a trade mark and could found an action for passing off.”

The Court further held that there is no legislation in India which explicitly refers to dispute resolution in connection with domain names. The operation of the

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DECEMBER 2, 2004

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Trade Marks Act, 1999 is also not extra territorial and may not allow for adequate protection of domain names. This does not mean that domain names are not to be legally protected to the extent possible under the laws relating to passing off.

The Court further held that “a domain name is accessible by all internet users and the need to maintain an exclusive symbol for such access is crucial..... Therefore a deceptively similar domain name may not only lead to a confusion of the source but the receipt of unsought for services. The court observed that “It may be difficult for the appellant to prove actual loss having regard to the nature of the service and the means of access but the possibility of loss in the form of diverted customers is more than reasonably probable.

Commenting on the issue of passing off, the court observed that “it is an action not only to preserve the reputation of the plaintiff but also to safeguard the public.” The court held that “the appellant is the prior user and has the right to debar the respondent from eating into the goodwill that it may have built up in connection with the name.”

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