ABSTRACT
ABSTRACT

In an age of globalization, the world got shrunk and is considered as a single market, regarded as a single republic that has really started the process of concretising the idea of global governance which presented the stiffer competition from all corners of the world in any given field. Globalization - the 'big idea' of the late twentieth century - lacks precise definition. More than this, it is in danger of becoming, if it has not already become, the cliché of our times. Globalization can usefully be conceived as a process which embodies a transformation in the spatial organization of social relations and transactions, generating transcontinental or interregional flows and networks of activity, interaction and power. Nonetheless, the term globalization captures elements of a widespread perception that there is a broadening, deepening and speeding up of world-wide interconnectedness in all aspects of life, from the cultural to the criminal, the financial to the environmental. At issue appears to be 'a global shift'; that is, a world being moulded, by economic and technological forces, into a shared economic and political arena. Behind the rhetoric of globalization - rhetoric found in public as well as academic debate - laid three broad accounts of the nature and meaning of globalization today, referred to here as the hyper globalist, the sceptical, and the transformationalist views. At this juncture possession of intellectual property rights will give a better edge in the global play. The right to prevent others from using the ideas or information to their own commercial advantage is not easily delineated. Legal techniques of some sophistication are called for and this has until recently made intellectual property a somewhat esoteric specialist. But, particularly in industrial free-market economics, these intangible property rights are becoming increasingly valuable in the fight to secure and retain shares of a market.

Protection of intellectual property rights will definitely promote the development of new products, services and national economies and any erosion thereof can threaten the economic performance of the sector and might curtail the major benefits accrued there from. It has brought the abundance of information
and the each which can be accessed, reproduced, and distributed have become problems that must be seen in all of their complexity as well as the accompanying policy challenges. The Intellectual Property Right are increasingly becoming the physical assets in the digital age, though substantial time and effort may be required to achieve a workable balance between private rights and public interest in information. The technological changes bring challenges to the basic principles of Intellectual Property Right laws, Internet and the digital revolution poses complex problems for Intellectual Property Right laws and their protection. The three technological advances namely digitization of information, networking, and www. (world wide web) have turned the classical economics of the information upside down. An indication of the relative importance and complexity of the issues involved can be taken from a recent world intellectual property organization (WIPO) estimate that no Less than 90% of total investment in a multimedia product was expanded in dealing with intellectual property issue.

Broadly speaking, IPRs, are divided into two categories; firstly, patents, design, trademarks, domain names, trade secrets, geographical indications, plant varieties rights integrated circuits, which are known as industrial property, and secondly the copyright and related or neighbouring rights and collectively known as intellectual property. It is possible that one may be the owner of one or more rights separately or jointly. It is also interesting to note that all these rights are known as “Intellectual Property Rights”, each rights has its unique and different purpose, different laws protecting different intangible, assets viz. Patents for inventions, trademarks for brands, Designs for aesthetic designs, Copyrights for literary, dramatic, musical and artistic work to name of few.

A trademark can be word, a logo, a number, a letter, a slogan, a sound, a colour, or sometimes even “Service” identify the source of goods and/or services with which the trademark used. Trademarks can be owned or companies and should be registered at a governmental agency, which is usually referred to as the trader when a trademark is used in connection with service. It is sometime referred to as a “Service mark”. The registration symbol – the latter “R” in circle ® - may
not be used unless the trademark with which it is has been actually registered with the governmental agency alluded to above. It has four primary functions. The first is to signify that all goods bearing the trademark come from a single source. The second is to convey to the buying public a guarantee of quality. The consumer should know that from purchase to purchase, the favourable characteristics of the goods bearing the trademark remain the same. The third is to allow one trade to distinguish his goods from those of his competitors. The fourth is to promote the goods. It is important to realize trademarks are property; just as buildings and machinery are property. They should therefore be treated with the same respect as these, more obvious, tenable form of the property. This type of property to which trademark is attributed is known as intellectual property. This term also encompasses patents, which protect inventions (useful advances), registered designs, which protect the shape or surface decoration of articles and copyright, which protect artistic or literacy works. Whilst a product may also be protected by some, or even all of these other property rights, its source and quality is always identified by its trademark.

In India, intellectual property falls in the Union list of the seventh schedule under the article 246 of the constitution, which has itemized same as patents, inventions and designs, copyright trademarks and merchandise marks” (Item 49). A trademark may consist of one or more distinguishable words, signs, letters, numbers, drawings or pictures, emblems, colours or combination of colours etc. The mark may also consist of a combination of one or more of the said elements. A trademark is a commercial asset intended for commercial use and the owner thereof gets a perpetual right to its exclusive use in relation to goods and services. In India the, Trade & Merchandise Marks Act of 1958 was replaced by the Trade Marks Act of 1999 read with T.M. Rules 2002 making drastic changes so as to conform to the international standards on the law and also to include within its fold service marks. The said Act provides for the registration of trade marks in relation to particular goods and services and provides for the action (civil as well as criminal) against infringement of such trademarks. The Act also contains
provisions to facilitate civil action for passing off, i.e. where an unregistered trademark is flouted.

The emergence of the internet or the onset of the ‘e’ or ‘electronic culture’ or “e-Culture” that has led to a radical metamorphosis in the manner a business can reach out to its customers. Information about a particular product or a reputed brand name is easily accessible through the powerful search engines available on the internet. While before the emergence of the e-culture, business entities had acquired intellectual property rights viz. Trade marks in their products through continuous promotion of the particular brand name by means of advertising through the media viz. The press, television, radio broadcasts and other means, the development of the internet has opened new vistas for a very effective brand promotion for the internet users who are in fact increasing leaps and bounds with the awareness of the electronic culture. It is not difficult to find cybercafés even in the remote areas of the country and computer with internet access is becoming more of a necessity than a luxury. This factor has also opened the Pandora’s Box on the aspect of intellectual rights in the domain names and their conflicts vis-à-vis the registered trademarks. A domain name means the address of a business entity on the internet or cyberspace or a references for having access to the business credentials of an ‘entity. Domain names are made available by the Registering Authorities on application. The importance of domain names on a similar footing with trademarks is now legally recognized.

However, there is a possibility that some innocuous entity has already registered the domain name using the established trademark and owing to the strict rules of the registering authorities not to allow the same domain name the company seeking the domain name in the name of its trademark has to contend itself with an identical domain name but not the exact name as its trademark. It has also been observed in all such cases that the innocuous entity seeks a hefty compensation from the company for transfer of the domain name and this practice has come to be known as ‘cybersquatting.
Importance of trademarks and domain names have increased with the globalization of business and expanded usage of the internet for commercial purpose. Domain names are used to identify one or more IP Addresses. For example, the domain name **intel.com** represents about a dozen IP addresses. Domain names are used in URLs to identify particular Web pages. For example, in the URL [http://www.fordfoundation.org/index.html](http://www.fordfoundation.org/index.html), the domain name is **fordfoundation.org**. Every domain names has a suffix which indicates top level domain (TLD) to which it belongs i.e. **gov**-Government agencies, **edu**-Educational institutions, **org**-Organizations, **mil**-Military, **com**-commercial business, **net**-Network organizations, **ca**-Canada, **in**-India as Internet is based on IP addresses, not on domain names whereas every Web Server requires a Domain Name System (DNS) server that translates domain names into IP addresses. Thus, The progress and well-being of humanity rest on its capacity to create and invent new works in the areas of technology and culture. The legal protection of new creations encourages the commitment of additional resources for further innovation. The promotion and protection of intellectual property spurs economic growth, creates new jobs and industries, and enhances the quality and enjoyment of life. An efficient and equitable intellectual property system can help all countries to realize intellectual property’s potential as a catalyst for economic development and social and cultural well-being. However, the intellectual property system helps strike a balance between the interests of innovators and the public interest, providing an environment in which creativity and invention can flourish, for the benefit of all.

A trend of increased disputes over web address is gaining ground in India over the past few years as companies recognize the commercial potential on the Internet. As companies try to state their claims in cyberspace they often find their prime panels already in the hands of somebody else. The W1PO arbitration and mediation centre may order the respondent only to refrain from the use damages for the loss caused to the complainant law are being continuously amended to take care of the technological changes.
As per its reports, WIPO elected to limit its mandatory general administrators procedure for the resolution of domain name registration (cybersquatting) WIPO also recommended that the registration agreement contains a provision, for domain on an optional basis, in respect of any dispute in relation to the domain name and such arbitration takes place on live. When one is legitimately entitled to register a domain name, why should be penalized if he seeks to trade in it can be contended that a cybersquatting does not deal in any gods and hence, his activities are not likely to cause confusion in the minds of the public. Intellectual Property Law is being continuously amended to take care of the technological changes. But it still requires major amendments to deal with challenged posed by the internet and digital revolutions. This allows transactions signed electronically to be enforceable in a court of law. The Act provides legal framework for ecommerce, e-security and e-governance in India.

Object of the Study

Basically the main object of this study is to examine the crucial instances of hurdles in the way of the trademarks and domain names user and the protection given to the trademarks and the domain name under present legislations in India and Abroad. Almost all countries in the world register and protect trademarks. Each national or regional office maintains a Register of Trademarks containing full application information on all registrations and renewals, which facilitates examination, search and potential opposition by third parties. The effects of the registration are, however, limited to the country concerned.

Research Methodology

The methodology adopted by the researcher is purely doctrinal in nature. It involved in depth study of source materials, text review, case study and comparative study. The research is based on two types of material i.e., primary materials and secondary materials. Primary materials consist of the text of laws, declarations etc. on the issue. Secondary materials consist of books, articles, encyclopaedia, research papers, newspapers and magazines. The research also
includes study of case laws. Use of the internet was also made to gather important information relating to the subject of study. The research is analytical and descriptive in nature.

**Sources**

Primary and Secondary sources of information have been utilized in the writing of this research.

**Mode of Citation**

A uniform mode of citation has been followed throughout the research work i.e. OSCOLA.

**Review of the Literature**

A review of the literature was done by the researcher even before selecting the topic “Protection of Trademark and Domain Name in India and Abroad”. Once the topic was zeroed on, the review of the existing literature was done in detail. Lots of Articles, Journal report, Books, case law, paper submitted to a seminar or to a conference and web pages of different website were reviewed. They are as follows.


An Introduction to Intellectual property Rights by J.P. Mishra, Central Law Publication, 2005. According to the author trademark is a kind of symbol that helps a user to make difference in between the goods or services of one enterprise from those of the competitors.

Intellectual Property Law by Bentley and Sherman, first Indian Reprint, 2003, Oxford University Press, New Delhi. The book provides legal protection of
trademarks. The researcher analyses the provisions of the trade mark act 1999 for the better protection of trademarks.

Intellectual Property Law, by P. Narayan, Eastern law house, publication VIth edition, the researcher examines the definition, meaning kinds and essentials of a trademark. It also analyses and evaluates that how trademark performs functions.

Intellectual Property Law by Meenu Paul, Allahabad law agency publication, the book provides basic rules of registration of trademark. The process whereby a trademark is entered on the register of the trademark is referred to as registration.

Law Relating to Intellectual Property by B.L. Wadehra universal law publication IV edition, 2007 examines special provisions relating to protection trademarks to international registration, effects of registration, duration and renewal of registration.

Intellectual Property by D. Bainbridge, Publication by Pearson Education (Singapore). The book provides law relating to passing off in action why passing off is necessary because already trademark given the protection to goods and services?

Intellectual Property by Cornish and Ilewelyn, Thomson, Sweet and Maxwell Publication, Vth edition 2005, The researcher examines the doctrine of passing off that it arises in three cases first when it is injured the claimants goodwill, secondly in misrepresentation and thirdly in damages.

Intellectual Property and the Internet by Ryder, Rodney, Lexis Nexis Butterworths, publication the researcher examines the working of internet technology and domain name system. It also analyses the doctrine of
cybersquatting and to curb this menace in the present legislation in India and abroad.

Protection of Domain Names in India and Abroad by Prof. Saleem Akhtar and Shweta Jain, published by Aligarh Muslim University Press, 2012 the researcher examines meaning of domain names registration and its protection under Trade Marks Act 1999.

Information Technology law and Practise, by Sharma Vakul Published by Universal Publication (2008), the researcher examines the meaning of cybersquatting. How can this problem solve in the present scenario.

Cyber laws by Justice Yatindra Singh, Universal publication Vth edition, 2012, the researcher analyses online infringement of trademarks with the tools of cybersquatting, Metatags, Linking, Framing, Spamdexing, Spoofing.

Intellectual Property: Patents, Copyrights, Trade Marks and Allied Rights, by W.R. Cornish and D. Llewelyn, published by Thomson, Sweet and Maxell, VIth edition, 2008. The researcher Examines, much also continued to happen at the international and regional level to give IPR a growing significant worldwide.

Chapterization

The present work namely’ Protection of Trade Marks & Domain Names in India and Abroad” has been broadly divided into fifth chapters. This work has been written primarily to acquaint the initiated as well as uninitiated about the concept of trademarks and domain names and analysis of the legal framework both in national and international context which gives protection to trademarks and domain names as an intellectual property rights.

The first chapter deals historical background of trademark law, important features of Trade Mark Act 1999, the meaning and legal definition, essentials of
trademarks and its functions etc. It also includes some new additions in the term of Trademarks.

Second chapter gives an introduction of internet and domain name system. It also includes meaning of domain name and its hierarchy, Social and economic value and globalization of domain name system.

Third chapter deals with the registration of Trademarks and domain names and its protection under the Indian legislation as well as abroad.

Fourth Chapter focuses on infringement of Trademark and the common law remedy the doctrine of passing off in action.

Fifth chapter discusses about the uniform domain name dispute resolution policy, cybersquatting and the role of WIPO. It also includes resolution of domain name dispute under FTDA, ACPA and UDRP.

The work ends with the conclusion, which recapitulates the nodal points of our discussion.