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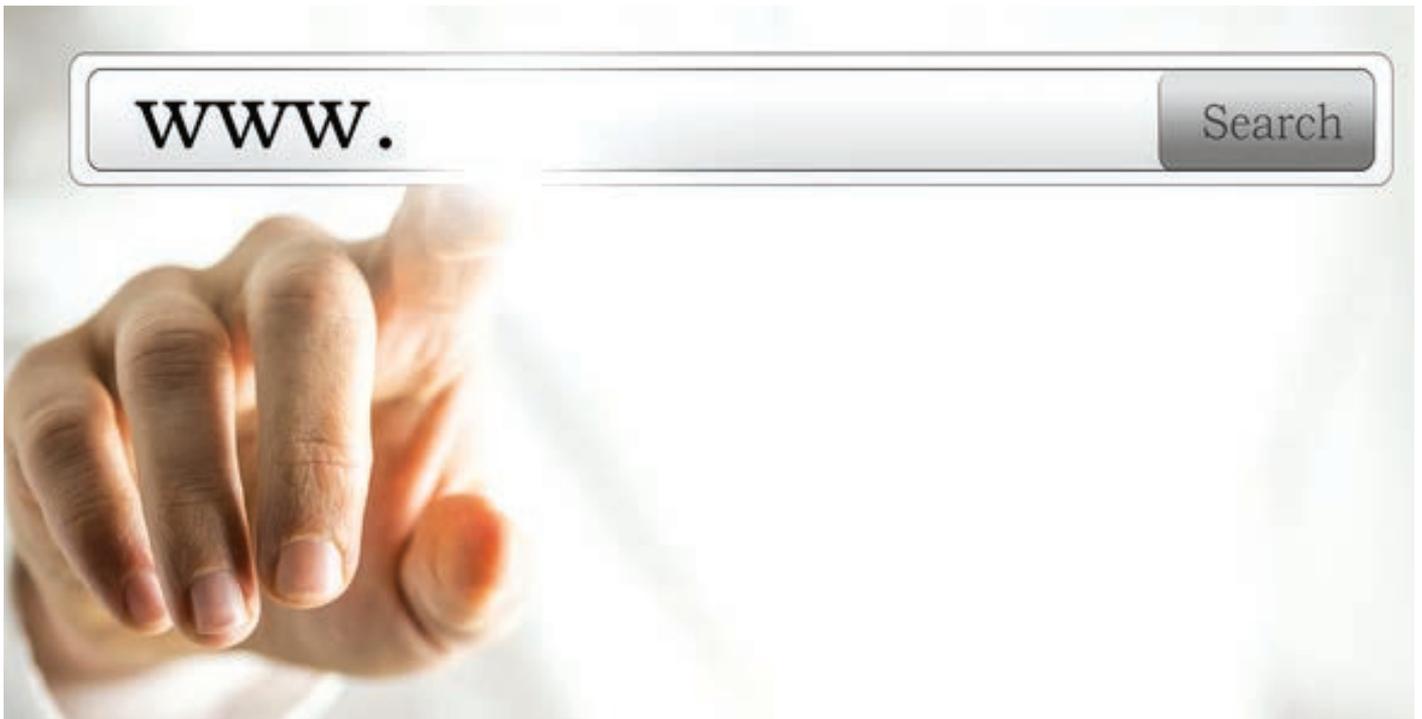
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Domain Names and Personality Rights



INTRODUCTION

Personality rights are rights of celebrities and well-known personalities to protect and control the commercial exploitation of their name, image or other aspects of their identity. In today's highly competitive market, brand owners tend to exploit a celebrity's identity to market and increase credibility of their goods or services. Sometimes, brand owners do not seek the

consent of these celebrities in using their identity.

Personality rights were first recognized by the Delhi High Court in the case of ICC Development (International) Ltd. v. Arvee Enterprises 2003 (26) PTC 245 Del. Since then, there has been an increasing trend of celebrities approaching judicial forums seeking relief against unauthorized use of their persona/name etc. Recently,

Rajinikanth, the renowned Tamil actor, secured an injunction against the release of a film titled "Main Hoon Rajini kanth" on the ground that the film producer had used the actor's name without prior permission.

Disputes arising from the unauthorized registration of domain names containing some other person's or entity's trademark are governed by the Uniform Domain Name Resolution Policy (UDRP). The UDRP can be

used against all generic top level domains (such as .com, .net, .info etc.) and some country code top-level domains (including .au, .br, .fr).

Under the UDRP, a complainant, in order to successfully seek the cancellation/transfer of a disputed domain, must prove all of the following:

1. The disputed domain name is identical or confusingly similar to the complainant's trademark;
2. The owner of the disputed domain has no rights or legitimate interests in the same;
3. The disputed domain has been registered and is being used in bad faith.

A complainant can base their complaint either on the basis of a registered trademark or common law rights accruing from use of their trademark.

Celebrities have used the UDRP to protect rights in their personal names. For instance, Author J.K. Rowling, successfully sought transfer of the domain names <kjkrowling.com>, <www-jkrowling.com> and <jkrowling.com>. The WIPO Administrative Panel ('the Panel') noted that J.K. Rowling has, inter alia, common law rights in her name. Other successful celebrities who have used the UDRP mechanism to protect their personality rights include Jeffery Archer, Michael Crichton, Julia Roberts, Gordon Sumner (Sting), Madonna, Tom Cruise and Serena Williams.

The question that arises - what must celebrities prove to enforce protection of their personality rights? Where a celebrity has registered their names as trademarks, there is no difficulty in enforcement. The challenge arises where a celebrity does not own a trademark registration for their name.

The Panel in Jeffrey Archer v. Alberta Hotrodstda CELEBRITY 1000, while transferring the domain <jefferyarcher.com> to the author, observed

that for asserting common law rights in a personal name, a complainant needs to show that the disputed name is an indication of source, used in trade and commerce and as a result, the name itself has become distinctive of that source.

WIPO further asserted that mere presence of a famous name will not suffice and act in lieu of unregistered trademark rights. Celebrities, who do not have trademark registrations for their personal name, would need to show reputation accruing in their personal name, as a result of its commercial use.

INDIAN DOMAIN NAME DISPUTE RESOLUTION

The Indian Domain Name Dispute Resolution Policy (INDRP), in some sense similar to UDRP in process, permits filing of complaints against ".in" and ".co.in" domain extensions.

In Aditya Birla Management Corporation Private Limited v. Ali Madencioglu, the complainant obtained a successful transfer for the domains <advaiteshabirla.com>, <ananyashreebirla.com> and <aryamanvikrambirla.com>. The disputed domains were the names of the children of the Chairman of the Aditya Birla Group. The Panel, apart from noting that the disputed domain names were confusingly similar to the registered trademarks "ADITYA BIRLA GROUP" and "ADITYA BIRLA", remarked, "While Birla is a family name, it beyond question functions as an indicator of source for the Complainant and the Complainant's goods and services".

In 2008, Uday Kotak, Founder of Kotak Mahindra Bank Limited, had the domain <udaykotak.com> transferred to him. The Panel observed that while it is less common for businessmen to have personal names protected as unregistered trademarks under the UDRP, while relying on evidence, also noted the recognition and repute enjoyed by Uday Kotak within the commercial community.

In 2010, in Arcelormittal v. info@setrillonario.com, the complainant, a

multinational steel manufacturing corporation, successfully had the domain <vanishamittal.com> transferred to it. The Panel found this domain name to be deceptively similar to Vanisha Mittal Bathia, the daughter of the CEO of the complainant. Interestingly, Vanisha Mittal had earlier filed a complaint regarding the same disputed domain and the Panel found against her on the ground that she had not demonstrated a commercial reputation in her name.

Outside of the INDRP, the one notable case was of ArunJaitley, current Union Finance Minister of India, who secured the domain name <arunjaitley.com>, pursuant to an order of the Delhi High Court.

CONCLUSION

Of note here is the evolution of personality rights, which maybe protected, if complainants can prove their name to be an indicator of source of goods/services, and evidence reputation earned through commercial use of the same. Domain name dispute resolution policies in India largely follow traditional trademark jurisprudence in protecting and enforcing such rights by directing either a cancellation or transfer of the domain to the complainant. While Kumar Mangalam Birla's children and Vanisha Mittal were found to have no personality rights accruing in their own names, the reputation and trademark registrations for ADITYA BIRLA and MITTAL were instrumental in enforcing their personality rights. [w](#)

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