
Resolving Disputes between Domain Name and Trademark: Legal Frameworks Available

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Abstract. Disputes that arise between domain names and trademarks involve the second level of domain name construction. For example, in the address “www.cocacola.com”, the second level domain name is cocacola. Identical or matching domain names cannot coexist on Internet. Given the domain name registration is a first-come, first-served scheme that does not necessitate trademark checks, it provokes disputes between trademarks owners and identical domain name holders. Following World Intellectual Property Organization’s recommendations, ICANN assumed the Uniform Domain Name Dispute Resolution Policy. The UDRP grants owners of trademark privileges with an administrative mechanism for the effectual resolution of disputes arising out of bad faith registration and practice by the domain names holders matching to those trademark rights. The two methods available to the owner of the infringing trademark, court or arbitration, are preferred to be retained, given that the UDRP recognized the influence of a regular court over the course of dispute resolution proceedings it decides.

Keywords: Domain name, Trademark, IVANN Dispute Resolution, UDRP, Cybersquatting.

1 INTRODUCTION

This study addresses the available legal frameworks for resolving disputes related to domain names, and it is a study that focuses on two topics, “Clarifying the legal concept of domain names” and “Comparing them with trademark” when resolving a dispute between the two components, the domain names are not simply a technical positioning system or a communication procedure, it’s a means of differentiation, fulfilling a role similar to that of intellectual property rights in identifying enterprises and businesses, and helping to differentiate products and services on the Internet.

The dual nature of domain names in terms of technology and distinction has divided the position of the agencies responsible for registering them, and it did this to the same extent in the opinions of jurists and judicial rulings, so there have been numerous trends in jurisprudence with regard to resolving disputes between domain names and the closest legal formations in intellectual property, namely trademarks.

2 LEGAL CONCEPT OF DOMAIN NAME

A domain name is a unique address consisting of a number of Latin alphabets or numbers by which a website can be accessed, however, the domain name cannot be confined to a single

definition, although it is a clear formation of identity and function, but it contains two different characters, which requires defining it twice, both in its technical nature and in its legal nature.

2.1 Nature of Domain Name

The domain name consists of three parts, the (Host) code, known as the level (III), and the name to be registered, which is the part dedicated to selecting the holder of the domain name, known as the level (II), and this part raises conflicts with trademarks, and the last part is the domain, known as the top level.

Jurisprudence did not agree on an overarching definition of the domain name, as some definitions went to its technical nature or composition, by considering that the domain name is an address composed of Latin alphabet letters or numbers through which an electronic page can be accessed, where this definition depends on the fact that a domain name is ultimately an online numbers alternative.

While other definitions went to describe the domain name with its function as an address, which is a web address that allows its location to be identified and distinguished from other sites (HUET, 2001), whereas users recognize it in its final form, regardless of its function, as the domain name is a serial configuration of letters and numbers that performs as a website address, and the Internet is the natural environment for the domain name, where the website is located on a host server, to which the connection is made through the computer number (IP), short for Internet Protocol (Al Talahma, 2005).

The (IP) consists of (12) numbers in the maximum, divided into four digits separated by a dot, e.g. in the following IP [122.300.241.33]:

Code	Indication
122	Network Number Connected on the Host Server
300.241	Sub-net.
33	The Computer Device on which the Information is Located.

To get to a website page, the user has to enter these numbers which are dealt with corresponding names via Domain Name System (DNS), and we get a domain name such as "yahoo.com" or "google.com" (Shareef, 2007).

The domain name in this sense is different from the e-mail, although both are electronic addresses, but the e-mail has a different function and mechanism, as it is a way of communication from one end to the other, unlike the domain name that allows browsing to the public at all.

The domain name consists of two existential phases, the first is the registration phase and the second is the operation phase, the first stage is after the completion of the registration process and storage on (the Registry), which is a global database in which all global domain names worldwide are registered, also called (Whois), so that if a domain name is registered in the name of a person, company, enterprise or organization, a second similar domain name cannot be registered as long as the first is found in the registration, however, the second domain name registration can be done technically, Which causes legal disputes, as in the case of a person registering a domain name (pepsi.jo) without any relation to (Pepsi) and despite having a previous registration of (pepsi.com).

If the domain name is established, but does not operate a website, it is defined as a fund, and is protected both civilly and commercially as long as its registration is legitimate and does not infringe others, while if the domain name operates a website, it becomes, in addition to being a legitimate fund protected by law, a distinctive name and takes its place among the components of the legal protection that intellectual property owners receive as a distinguished name (Sameer, And Sameer, 2000).

Initially, the difference between a domain name and a trademark should be clarified:

- 1- Domain name registration is not permitted by more than one registrar, while the same trademark may be registered by more than one party to distinguish different goods and products provided they are not interrelated.
- 2- It is not required that the domain name registration be related to goods or services, while it is required to register trademarks, because trademarks have one function to distinguish products or services in favor of commercial promotion, while the domain name has many purposes, commercial purposes as (Toyota.com), cultural purposes as (tradition.org), social purposes as (zakat.org), and political purposes such as (whitehouse.net), according to the objective of the domain name's site.
- 3- Domain name registration aims to refer to a specific website, while trademark registration aims to avoid confusion among the public regarding similar or related goods and services.

2.2 Legal Adaptation of Domain Name

Determining the legal nature of domain names is vital to understanding the nature of the convergence between domain names and trademarks, within this study, it will be noted that the legal nature of domain names is subject to two main trends, the first trend takes into account domain names as one of the subjects of intellectual property, while the second trend considers it as a mere technical component, and considers that the primary and main function of domain names is the technical function of identifying the website address and should not be taken out of this context despite the recognition of the influence of domain names in the field of intellectual property, as for the supporters of the first trend, considered domain names as a legal idea independent of any existing legal system, including the traditional laws governing intellectual property, but they returned and differed between who considered that the domain name holder has a temporary contractual right to provide a service and who considered it a property right, actually, it is not conceivable that ownership is given to describe the domain name holder's right over the name, since the name did not exist before it was registered and the registration is not considered a transfer of ownership from a registrant to other registrant, and the domain name is not transferred to the registrant at all but for a period specified in the registration contract, so that if this period expires and the domain name holder does not renew the contract, the domain name will return to the free space that allows it to be registered by anyone else.

It is observed that the registration contract is a service contract provided for a fee, and the fee paid does not reflect the value of the domain name that will increase through the publicity of the name when it is used, but the fee reflects the registration service performed by the certified agency in three areas, namely the technical field that includes linking the domain name on the server and its appearance on the (Whois) database, the administrative field that relates to contacting ICANN (Internet Corporation for Assigned Names and Numbers) for final approval of the registration, and the legal field that consists of the (Registration Contract).

Domain name registration authorities provide domain names through a contractual relationship, whereby domain names are granted under an electronic service contract between the (Registrant) of the domain name and the competent registration authority the (Registrar), which grants the (Registrant) the right to use the domain name for a specified period.

The trend that considers that domain names as a formation within the framework of intellectual property locates such names as elements of intellectual property, clarifying that whether the domain name will be considered a commercial address, trade name or a sign, whereas, most of this trend went to the necessity of considering the domain name as a new element by its own

nature, and that it should be integrated into the intellectual property industrial and commercial, provided that it has its own provisions.

Most national laws lack direct regulation of domain names, and legal protection established for trademarks through counterfeiting lawsuit and unfair competition lawsuit is still the real source of domain name protection, in addition to (ICANN's) uniform policy rules for resolving disputes through a special arbitration mechanism, ICANN, the enterprise that manages the domain name system, has established a complete system for managing, operating, trading, and resolving domain name disputes, and has adopted the "first come, first served" rule as the basis for the right of the domain name holder, and holding the registrant liable for any violation of the rights of others that does not comply with the registered domain name.

The dispute came about adapting the domain name in the general field of intellectual property, as some considered that the domain name should be considered a brand name, or a commercial address, so that the brand name under which a natural or legal person is appointed to invest in a business or commercial outlet, with the intention of defining it within his relations with customers, while the commercial address is any form or sign used to identify the business's location to distinguish it from other projects locations.

Most probably the domain name is none of the above, but it is a distinctive name with a dual function, as "Dr. Adnan Al Sarhan" considers that the domain name constitutes a distinctive name and a new image of the outlet in intellectual property rights (AL Sarhan, A., 2006).

One of the requirements of the registration process is to select a legitimate domain name, by selecting a name for level (II) that does not infringe on others, as in registering a trademark that does not belong to the registrant, and the selection must not conflict with both public order and international and national law, where if it is required to specify the above in the form of conditions, it would be as follows:

- i- The domain name shall be vacant and not registered for the benefit of others.
- ii- Not to be contrary to public order and morals.
- iii- Should not be of a nature that allows delusion and misleading others.
- iv- Not descriptive in nature, which would reflect the essential qualities of another product or service (AL Sarhan, 2006).

3 DISPUTES OVER DOMAIN NAME AND TRADEMARK

There are disputes that arise with regard to the domain name, which are often disputes between the domain name and the trademark, and the study will address the nature and types of these conflicts, and then about ways to resolve them through ICANN rules.

3.1 Nature of Disputes between Domain Name and Trademark

The underlying dispute raised by the registration and use of a domain name is the dispute with the trademark, which is evident through these questions:

- Who has the right to register a domain name?
- Is he the first person to register according to "first come, first serve" rule?
- Or the holder of the trademark identical or similar to the electronic domain name to be registered?
- Are there certain conditions and restrictions that must be adhered to in order to register a domain name?
- Is it trademark infringement to register a domain name that is identical or similar to a well-known trademark?
- Could this, if so, constitute unlawful competition by misleading website visitors and causing them to confuse the trademark with the domain name?
- Does this registration lead to imitation of the trademark?
- What are the procedures that individuals or enterprises that wish to establish their websites can take to protect themselves from what is known as Cybersquatting, which is the grabbing of domain names?

Cybersquatting is pre-empting the registration of a domain name belonging to a trademark that is not owned by the domain name registrant, and he is doing so in bad faith to resell the trademark holder's domain name for exorbitant sums, benefiting from the protection afforded to him by the "first come, first serve" rule, as he has already registered the domain name, this process was possible until (1999), when ICANN announced its Uniform Domain Name Dispute Resolution Policy, which allowed the holder of the infringed trademark to recover the domain name from the first registrant without paying him (Wisniewska, 2001).

These conflicts can be classified into:

- I. Registration of a Domain Name Identical to a Trademark: This type is the most common, especially at the beginning of internet spread when companies were not aware of the importance of being on the network, many speculators or fraudsters quickly registered the trademarks of major companies as site names without using them, but in order to sell or hire them to companies that may have the right to register them, In this regard, the holder of the trademark must prove that there is no right or legitimate interest for the registrant in the electronic address corresponding to his trademark, but this phenomenon has declined since the advent of the uniform policy for resolving domain name disputes.
- II. Registration of a Domain Name Similar to a Trademark: This case is exemplified by a person registering a domain name that is very similar to a trademark by a slight modification of one of the letters, which results in confusion in users' minds.
- III. Registration of a Domain Name Containing a Trademark with the Addition of Pejorative Phrases: This type of dispute can be described as illegal competition, where a person or company registers the company's trademark with the addition of a word or phrase offensive to the company, such as (boycottpepsi.com), where this is considered an infringement. Electronic arbitration is conducted entirely online, and is chosen as a means of resolving disputes arising from e-commerce by agreement between the disputing parties at the time of

conclusion of the contract or at a later stage by incorporating a clause termed an electronic arbitration agreement.

In this regard, reference may be made to a case in which the domain name registrant (www.marlb.com) infringed the famous trademark (Marlboro), where (Marlboro) requested from (WIPO - World Intellectual Property Organization), which handles these disputes, for a decision in this dispute, (Marlboro) was ordered to recover said domain name and delete it from the offending registrant.

In another case, (SA Galeries Lafayette) which is in the field of megastores, when developing its online activity and its desire to register the domain name (galerieslafayette.com), founded that this domain name had already been registered for (Association Excellence Francais) which is interested in French cultural and heritage, and when considering the case, the court decided that the trademark of (Galeries Lafayette) had been imitated and that the mere addition of level (III) (.com) was not fruitful to distinguish the domain name from the trademark (www.juriscom.net)

3.2 Available Legal Options in Case of Dispute

Domain name disputes based on default rather than contractual, which is illegal competition, where some believe that resorting to electronic arbitration in disputes of e-commerce contracts on a contractual basis can be replaced by traditional arbitration, however, domain name disputes inevitably resort to electronic arbitration, which has expanded its application to include non-contractual disputes, where ICANN, the body that oversees the implementation of the (Uniform Dispute Resolution Policy -UDRP), which includes the settlement of domain name disputes through electronic arbitration through WIPO's Arbitration and Mediation Center or through an accredited service provider, whereas, the uniform policy deals with the procedures for considering an application for arbitration whenever the trademark holder claims that his trademark has been infringed and that it was registered as a domain name by third parties in bad faith.

While WIPO has a particular preference among companies that avoid getting involved in costly and long-term litigation, WIPO is known as the organization that provides its express services for resolving registration disputes or misuse of domain names on the Internet, and these services are provided on a higher scale than public domain (com, net, org) as well as on local domains, through which trademark holders can file their complaint using the voucher forms available at the organization's website address, all stages are completed online and effective decisions are obtained within two months of the submission of the dispute.

The characteristics of the Internet domain name dispute resolution system can be determined in the fact that the settlement procedures are conducted through electronic means such as e-mail, WIPO center provides complaint forms and responses to them, and it also maintains databases to manage cases, and the operation of the system does not depend on the whereabouts or citizenship of the applicants, defendants or registrants, since the design of the system has taken into account at least the typical and global scope of disputes regarding high-quality domain names, as well as operates without the need for the physical presence of people in a particular location (Ibrahim M. Kh., 2007).

Most complaints filed with ICANN against domain names are based on trademark counterfeiting, and these complaints are accepted once the domain name is registered at a later date after the trademark is registered, where the domain name and trademark must be in a competitive position due to their association with goods or services that have one category of the international product classifications for the purposes of trademark registration, however, this does not necessarily imply success for the complainant in his endeavours, as it might be clear to the arbitrator that the domain name for the registrant also possessed a similar trademark

and had the right to create a domain name, and bad faith must be proven as provided in the ICANN rules.

It is worth noting here that there is still another option for the trademark holder who claims to imitate the domain name of the trademark, which is to resort to the ordinary court of unfair competition if the domain name is associated with products and services similar to those represented by a trademark, and if this association raises confusion with the consumer public, and this lawsuit is accepted even if there is no match between the domain name and the trademark, as it is enough for there to be a confusing similarity.

Resorting to ICANN via WIPO to file a complaint against the domain name will result in one of the following possibilities: loss of the lawsuit, retention of the domain name with the registrant, acquisition and deletion of the domain name, or transferring the registration in favor of the trademark holder, however, ICANN has nothing in its rules to request compensation, and therefore resorting to WIPO as an arbitrator in the application of (ICANN's) rules expanded the plaintiff's options and allowed to claim compensation on the basis of arbitration in a dispute in which the plaintiff seeks compensation (Multilingual domain names: join ITU/WIPO Symposium, WIPO briefing paper).

4. Application of Alternative Resolving Rules to Domain Name Disputes

The following will address how to resolve domain name disputes in ICANN and what are the arbitration procedures?

4.1 Application of the Unified Domain Name Dispute Resolution Policy

The Uniform Domain Name Dispute Resolution Policy UDRP was adopted in (1999), later this policy was adopted to consider (Generic) or (GTLD) domain name disputes ending with, for example, (.com, .net, or .org), In addition to national domain name (CCTLTD) disputes in which national registration authorities accept to adhere to the Dispute Resolution Policy of ICANN.

However, ICANN is a private institution and in no way can it require sovereign states to be subject to the UDRP, and this must be done by agreement, so ICANN has secured its accreditation contracts for registrars who will register domain names for the registrants, where it obliges them to include the registration contracts by a condition that registrants to be subject to the rules of the UDRP in the event that a complaint is submitted against them to ICANN.

The question here is what does the domain name holder do if a complaint is filed against him with ICANN accusing him of imitating a trademark by registering a domain name he is not entitled to?

He has two options either to respond to the lawsuit in which the judgment will be issued within two months from the date of its submission, or not to wait for the decision, where if the decision was issued against his interest, he may file the lawsuit with the competent court, which is permitted by the rules of ICANN within (10) days from the issuance of the decision and its notification, and if the lawsuits are brought before the national courts, ICANN should cease deleting or transferring the domain name to the plaintiff. In fact, this procedure weakens the authority of the uniform policy and reduces the effectiveness of ICANN-led dispute resolution, as the abusers who register domain names associated with a trademark that does not belong to them in bad faith takes advantage of this procedure to disrupt the deletion of the domain name and proceed to extort large companies to pay them to give them the domain name.

To file a lawsuit with ICANN, the plaintiff resorts to one of the accredited international centers for dispute settlement, the most important of which is the WIPO center, as these centers apply the UDRP of ICANN and add to it some rules and procedures related to how to submit the application and provide evidence, as this is done online, where an electronic form is filled out,

a file is opened to which all evidence is attached, and an account is opened on the site with a password and a special entry code (Younis, A., www.arablawninfo.com).

The opponent will be notified of the lawsuit filed against him and given a password and entry code, to access the lawsuit form and its appendices to prepare his responses to the list filed against him, where that is done electronically on the same site, and thus the entire case file is presented to the Administrative Committee specialized in settling domain name disputes to issue its decision and announce it to the public without revealing the details of the evidence (<http://www.wipo.int/amc/en/domains>).

The Settlement Committee consists of one to three arbitrators selected by the parties from among the experts nominated by the Arbitration Center.

The plaintiff must prove the following, in order to win the lawsuit:

i. The domain name is identical or similar to its trademark, and this requires the plaintiff to prove that he has a well-known trademark or it is registered with a competent authority, as the unified policy cannot be applied in the event of a dispute between the domain name and any other distinguished name except for the trademark and service mark, where it does not apply to the dispute between a domain name and a trade name for example.

It should be noted here that the description of the trademark will be by reference to the national laws in force in the dispute for the applicant, however, the arbitration centers increased this by deleting the domain name that imitates the famous personal name of a person, as happened to (jeannettewinterson.com) the domain name is taken from the name of a popular British author, (Jeanette winterson), where the arbitral tribunal ruled that Article (4) of UDRP does not require registration of a trademark for protection under British law, and ordered the removal of the domain name from the defendant's registration to the applicant for the requirements of Article (4) of the uniform policy, even US law deemed famous personal name to take trademark protection.

ii. The domain name holder has no legitimate interest in the domain name he registered, where it is not easy to prove it against the holder of the domain name, as it is difficult to prove the negative status rather than the positive status, in other words, it is easier to prove the existence of a thing than its non-existence, but what makes the matter reasonable and balanced is that the defendant proves in every way, what is required to influence the conviction of the members of the arbitral tribunal that the unified policy calls the administrative body or the settlement committee, because if it is proved to them that the holder of the defendant domain was not known by this name and that he was not used before, the committee therefore is convinced of the inability of the defendant to prove the existence of a right or legitimate interest, on the other hand, the plaintiff can prove that this domain name is associated with him and may have previously registered it as a trademark.

iii. The domain name was registered by the registrant in bad faith, and this requirement is more difficult than its predecessor, which leaves its discretion to the Settlement Committee in a substantial proportion. However, the uniform policy clarified the evidence of bad faith of the defendant's domain name holder, as Article (4-b) decided to prove bad faith against the defendant if one of the following facts is established:

- If the domain name is registered for the purpose of selling, renting, or otherwise transferring the domain name to the claiming owner of the trademark or service mark, or to any person who competes with the claimant for compensation in excess of the domain name registration fee paid by the domain name holder.

- The domain name was registered for the purpose of preventing the holder of a trademark or service mark that is identical or similar to the name from using it as the domain name of his website, and the domain name holder being habitual for such acts.

- The domain name was registered mainly to confuse the business of his competitors.

- The registration of the domain name was made to distract the Internet browser consumer from the plaintiff's website.

- The domain name was registered to take advantage of the brand's reputation and mislead users into entering the new site by mistake.

4.2 Arbitration Procedures in ICANN and in the WIPO Center

In this section, the study will present the arbitration procedures in ICANN and then in the WIPO center of the World Intellectual Property Organization.

4.2.1 Arbitration Procedures According to the Unified Policy in ICANN

Administrative Procedures for Dispute Resolution pursuant to the UDRP adopted by ICANN for these rules as well as the supplemental rules for the arbitration center administering the proceedings, as posted on its website, in the event that any center's supplementary rules conflict with the ICANN rules, these latter rules shall supersede them.

According to the Uniform Policy, a plaintiff is an entity that submits a complaint regarding a domain name registration to ICANN, in its definitions, the policy states that "competent jurisdiction" means the jurisdiction of the registrar's place of business (Headquarters), provided that the domain name holder has accepted in the registration contract such court jurisdiction to adjudicate disputes arising from the use of the domain name, it may determine jurisdiction based on the domain name holder's address as shown in the domain name registration records in the (Whois) Protocol database at the time the claim is brought to the arbitration center.

A conflict situation occurs when someone submits a complaint to ICANN via the WIPO Center as an example, a copy of a notification provided by the Arbitration Center to the respondent to initiate administrative proceedings under the UDRP, which requires that the respondent be notified that a complaint has been filed against him, and the notification must indicate that the arbitration center has automatically sent the claim, including the attachments, to the respondent by the specified means provided for in this law, and that the written notification does not contain a copy of the claim itself or any of its attachments.

When the complaint and its attachments are automatically redirected to the respondent, it is the responsibility of the arbitral center to use the means reasonably available to ensure the actual notification to the respondent, and the arbitration center is deemed to have already taken a reasonable and no any kind of responsibility toward him, if the center sends written notice of the claim to all existing mail and fax addresses in the domain name registration data in the registrar's database (Whois) of the registered domain name holder, technical contact data and administrative contact data provided by the registrar to the center to register the contact invoice. The claim and its attachments are then sent electronically via e-mail to the e-mail addresses of the technical and administrative contact invoice, if the domain name applies to the active web page, then the written notification process of the plaintiff or defendant shall take place electronically online or through such other means imposed by the circumstances of communication reasonably and specifically by the plaintiff or defendant respectively, certainly, notifications shall be given at the arbitration center or arbitral tribunal through the means available and set forth in the additional rules of the accredited arbitral center, and the notification shall be written in the language provided for in the uniform policy, later both parties will have the right to update the contact details by notifying the arbitral center and the registrar, except as otherwise provided in the rules or decided by the commission, all communications submitted under these rules are admissible if made online on the date on which the communication was transmitted, provided that the date of transmission was verified if the notification was received by telegram or fax on the date of the transmission confirmation, or if the notification is sent by postal services on the date recorded in the receipt, otherwise all periods of time calculated under these rules shall commence when the communication is deemed effective as soon as possible to adopt the date of submission.

According to the rules of the UDRP, it is the duty of the sender to retain the information and the reasons of the transmission, which shall remain available for inspection by the parties concerned and for the purposes established in the uniform policy, and this will include the plaintiff's mailing and/or fax notification in writing, in the event that a party sends a communication not to receive the notification, the other party shall immediately notify the tribunal or arbitral center, if no tribunal has yet been appointed, of the circumstances of the notification, in this case, further action is taken on the communication and any other directives issued by the arbitral tribunal or center.

With regard to filing a claim, any person or entity may initiate administrative procedures to file a claim in accordance with the UDRP and rules of the arbitration center, in ICANN, and due to obstacles that may arise for any other reasons (Faisal, 2008), the accreditation of the arbitration center may be frozen and accordingly, it lose its jurisdiction to accept complaints for sometimes, in which case, the arbitration center must refuse to receive any complaint from the claimants against the domain name holders, then the person or entity may submit the case to another arbitration center.

The plaintiff shall submit the lawsuit, its evidence and appendices electronically in accordance with the rules of the unified policy, wherein the name of the plaintiff, address, e-mail, telephone and fax shall be for the plaintiff and any person authorized by him to replace the plaintiff in the administrative procedures, and the preferred method is determined by the parties to communicate directly with them in administrative procedures, including the contact person, mediator, and address details.

The plaintiff must identify the trademark or service mark on which the lawsuit is based, and for each mark that describes the goods or services, if any, identifying the trademarks used, and any complaint may describe other goods or services that, at the time the lawsuit is filed, may use the mark in the future.

The arbitration center shall review the claim for administrative compliance with the uniform policy and the rules, and if compliance, the claim, including attachments, shall be submitted electronically to the respondent and the registrar, and written notification of the claim with an explanatory cover sheet specified by the Arbitral Center's Supplementary Rules shall be sent to the respondent within three days of receipt of the fee to be paid by the claimant.

If the arbitral center considers that there are administrative deficiencies, it shall immediately notify the plaintiff and the respondent of the nature of the identified deficiencies, and the plaintiff shall be given five days from the date of notification to correct these deficiencies, after which the administrative procedures will be considered withdrawn without prejudice to the submission of a different complaint by the claimant, and if the arbitration center dismisses the claim due to administrative deficiencies or if the plaintiff voluntarily withdraws the claim, the arbitration center shall notify the registrar of the cancellation of the proceedings, and the registrar shall issue a notice of closure of the proceeding within one official working day from the date of receiving the notice of rejection or withdrawal from the arbitration center, and that within twenty days from the date of commencement of the administrative proceedings, the respondent shall submit a response to the arbitration center, and the respondent clearly requests an additional four days from the date of response to the claim, and the arbitral center automatically grants an extension and notifies the parties accordingly.

The respondent's response is specific to the claims and allegations contained in the lawsuit and includes all of the plaintiff's rules for the retention the registration and use of the disputed domain name.

The dispute can be settled prior to the decision of the tribunal, if the parties agree to a settlement before the tribunal's decision, or if the parties apply for a written notice to suspend the procedures so that the parties discuss a settlement with the provider.

In case of any legal proceedings before or during administrative proceedings in connection with the domain name dispute that is the subject of the proceedings, the commission should be free to decide whether to suspend or terminate administrative proceedings or to issue another

decision, In the event that a party initiates any legal proceedings during the period of the administrative proceedings in respect of the domain name dispute that is the subject of the proceedings, the commission and the claimant must be notified immediately.

The uniform policy provides for the establishment of an administrative panel to consider the lawsuit submitted by the plaintiff and respond to it from the defendant, and then decide to settle the dispute by electronic means within a period of less than (50) days, the decision of the committee to settle the dispute is sent to the Arbitration and Mediation Center WIPO, Which in turn refers it to the parties to the litigation, the registrar, and ICANN, and the registrar enforces the administrative panel's decision on the dispute. The arbitral tribunal's decision in the dispute includes either keeping the domain name with the registrant in his name, or ruling that he is not entitled to use the domain name, in which case the ruling includes transferring the domain name to the trademark holder.

In order to win the plaintiff's lawsuit and recover the domain name from the defendant, the plaintiff must prove to the tribunal the three conditions previously indicated that the domain name is identical or substantially similar to cause confusion of the trademark over which the defendant has rights; Defendant, whose domain name is registered, has no right or legitimate interest in the domain name; The defendant had registered the domain name and used it in bad faith (Boudissa, 2012).

It is worth noting that whoever applies to register a domain name must accept to be subject to these dispute settlement procedures in accordance with the Unified Policy, as he undertakes to do so within the terms of his contract to register the domain name with the registrar.

4.2.2 Arbitration Procedures According to the Supplementary Rules of WIPO Center

"World Intellectual Property Organization's WIPO Supplementary Rules" for resolving domain name disputes are consistent with the Uniform Policy issued by ICANN, and they are in fact normal rules of procedure for WIPO, but took into account the rules of the UDRP in its approval (Supplementary Rules, art. 1.a).

This means that the disputes over the domain name under the umbrella of ICANN have a second option, which is to resort to the Arbitration Center of WIPO, which will carry out its procedures for resolving the dispute within the rules of the unified policy in ICANN that was presented earlier in this study, and to emphasize this, the supplemental rules specify that the legal terminology of these rules take the same legal concept in the uniform policy (Supplementary Rules, art. 2).

The complaint is submitted to WIPO via e-mail or through the computerized system of the WIPO Arbitration Center, WIPO will certainly archive all communications related to the complaint and respond to it (Supplementary Rules, art. 3.b, Archive; the Center shall maintain an archive of all communications received or required to be made under the Rules), thereafter, the center will designate a member to follow up the dispute file to become the accredited contact point (Supplementary Rules, 6; Appointment of Case Administrator: (a) Notification. The Center shall advise the Parties of the name and contact details of a member of its staff who shall be the Case Administrator and who shall be responsible for all administrative matters relating to the dispute and communications to the Administrative Panel).

It is observed here that the center not only receives the complaint, but also requires the complainant to submit a copy of the complaint to the registrar, who registered the disputed domain name for the potentially infringing registrant.

Within (5) working days, the center will review the complaint and notify the disputing parties in accordance with the unified policy, and the defendant must provide satisfactory answers to the issues raised by the WIPO center after studying the complaint, within the statutory periods prescribed in Article (4) of the supplementary rules (Supplementary Rules, art. 4: Submission of Complaint and Annexes: (a) Complaint Including Annexes. The complaint including any

annexes shall be submitted electronically in complete form (in accordance with paragraph 12(a) below); (b) Complaint Transmittal Coversheet. In accordance with Paragraph 3.b.xii of the Rules, the Complainant shall be required to send or transmit its complaint under cover of the Complaint Transmittal Coversheet set out in Annex A hereto and posted on the Center's web site. Where available, the Complainant shall use the version that is in the same language(s) as the registration agreement(s) for the domain name(s) that is/are the subject of the complaint).

It should be noted that the supplementary rules do not provide solutions to the dispute that differ from those provided by the unified policy, which is keeping the domain name with its registrant, deleting it from him, or cancelling his registration, which is considered a loss, because WIPO by its nature allows other types of the Complainant's intellectual property disputes claim compensation for damages suffered as a result of the infringement of his right, but the supplemental rules remained consistent with ICANN 's Uniform Policy.

This has two interpretations: first, that ICANN remains the exclusive responsible for resolving international disputes related to domain names and the head of the situation there, and second, that the WIPO center has put itself forward as an agent for resolving such disputes under the umbrella of ICANN and its unified policy, and that WIPO supplementary rules do not introduce a different dispute resolution system, but rather establishes administrative procedures for the settlement of such disputes under ICANN 's uniform policy reference.

5. CONCLUSION

At the end of this study, a number of results and recommendations were reached, as listed below:

1. Results:

- a) The domain name is a new legal formation that is included in the distinctive marks protected by intellectual property rights, and includes copyright in weak effect (according to the researcher).
- b) A domain name is an asset protected by law as long as it is legally registered without infringing the rights of others.
- c) The financial value of a domain name is determined by its market value in trading, not by the value of the registration fee.
- d) Trademark and service mark are usually involved in domain name disputes.
- e) The principle is to protect the domain name on the basis of its own nature and independently of the trademark and service mark, but this did not prevent the domain name from being protected by the rules of trademark imitation and unlawful competition as long as the domain name is associated with them.
- f) The holder of the trademark that was violated has two ways to demand his right, the first is to resort to ordinary courts through the lawsuit of imitation of his trademark and the claim of non-legitimate competition when it comes to specific goods and services, the second and fastest way is to resort to UDRP issued by ICANN in (1999), the most important of which is the ICANN Centre.
- g) If the claimant adopts at the second method, he will be subject to ICANN rules as well as the rules of the arbitration centre, which the UDRP has called the service provider.
- h) In this case, arbitration takes place within sixty days from the date of filing the complaint, and either the opponent responds to the complaint, or ignores the response until a decision is issued regarding the fate of the disputed domain name.
- i) A litigant against whom a decision to delete a domain name has been issued has the right to file a lawsuit before the ordinary courts (a trademark imitation lawsuit or unlawful competition lawsuit) within (10) days of the issuance of the decision. a copy

of the lawsuit documents shall be sent to the ICANN or arbitral tribunal constituted at the arbitration centre informing them of the existence of lawsuit in the same dispute, and then the center will postpone the deletion of the domain name until the national lawsuit is decided and a judgment is issued in order to reconsider its decision in the light of the decision, noting that ICANN is not bound by the position taken by the national court.

2. Recommendations:

- a. National registration authorities can avoid potential conflicts between domain name, trademark, and service mark by linking the national registration authority's database with the trademark registry database.
- b. There should be a legal regulation of domain names that defines its legal nature, its relationship with other distinct marks and methods of avoiding disputes over it.
- c. To date, there is no comprehensive legislation governing domain name issues and the legal issues they raise, especially when the name is identical, close or similar to a trade name or trademark, certainly after excluding the legislative rules regulating technical services and its provided standards and the rules to protect the user from the risks of harmful content that have been enacted by many Western countries, however, the European judiciary, specifically in France, has dealt with a number of cases in this regard, but the scope of application related to them has been the trademark laws and trademark protection rules, not the legal rules on domain names
- d. In the event that the national legislator does not initiate the regulation of domain names by a special and independent law, it is suggested at least to single out special articles in the law regulating the telecommunications sector, being the natural environment for the domain name, from a technical point of view, the domain name is nothing more than a communication tool between two parties, and it can be organized on this basis, and although the domain name is close to the distinguishing mark and close to intellectual property in some of its use, but it is difficult to include it in trademark law because it is not a trademark, also it cannot be included in copyright law because it is not protected by it and is not considered by it, nor is it patentable, so that it is included in industrial property laws, etc. Due to all of this, it is recommending the promulgation of a law for domain names and not being satisfied with the registration rules entrusted to the National Council for Science and Technology, as its regulatory rules are nothing but a procedural regulation that aids registration and is not sufficient for legal protection, also it is recommending, as a precaution, to add protection and dispute resolution articles related to the domain name in the Telecommunications Sector Regulatory Law.
- e. The two methods available to the holder of the infringing trademark, court or arbitration, are preferred to be retained, given that the UDRP recognized the influence of a regular court over the course of dispute resolution proceedings it decides.
- f. In addition to item (e) above, this effect is in its current form a loophole through which domain name hackers enter to disrupt the quick procedure that takes place in arbitration by linking it to the long-term ordinary judgment. In order to balance it is recommended to keep the two methods while protecting the speed of arbitration, it is suggested that the arbitral tribunal be given a broader discretion in deciding to suspend the committee's decision to delete the domain name or to continue with it when the opponent submits the documents of the lawsuit filed before the ordinary courts, so if the committee considers that bad faith is established against the opponent, it should not stop the decision to delete the domain name.

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