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The Intersection of Cyber-squatting and Traditional Property Law: A Deeper Look at Pierson v. Post

Mrudubhashini Uma Sriram,

B.Com; LL.B. (Hons.), School of Law, SASTRA Deemed University, Tamil Nadu

ABSTRACT

This study looks at the legal and ethical aspects of cybersquatting through the prism of traditional property law, including the landmark 1805 decision of Pierson v. Post. It investigates how this historical precedent, which established fundamental rules of property ownership, can enhance our understanding of contemporary domain name disputes. The analysis draws parallels between Post's pursuit of a fox and company expenditures in brand identification, raising questions about when and how digital property rights should be formed and preserved. The study contrasts the majority conclusion in Pierson v. Post—that mere pursuit does not establish possession—with Judge Livingston's dissenting perspective, which emphasizes the importance of effort and investment. This tension reflects current arguments about cyber-squatting, in which registrants can claim domains linked with recognized brands simply by being the first to register them. The paper recommends applying the Equitable Distribution principle to domain conflicts, arguing for a more nuanced approach than traditional property law's binary "winner-takes-all" model. It looks at how this idea might be applied to recent examples, such as the JioHotstar domain dispute, in which a developer registered the domain in anticipation of a business merger and asked educational financing in exchange. Through this comparative analysis, the paper argues that as society transitions from physical to digital property paradigms, our legal frameworks must evolve accordingly. It advocates for solutions that balance the interests of all stakeholders—domain registrants, trademark holders, and the public—to create a fair digital ecosystem that recognizes both legitimate first registration and established brand investments.

Keywords: Cybersquatting, Pierson v. Post, Trademark, Equitable Distribution, Intellectual Property

Introduction

In today's fast expanding digital landscape, cyber-squatting has emerged as a contentious subject that calls into question our traditional notion of property rights and ownership. Cybersquatting, also known as domain squatting, is the activity of registering a domain name that is similar to a well-known organization or person without their permission.[1] Typically, the domain registrant purchases the domain in bad faith, with the intention of profiting from the person or organization's goodwill or causing reputational harm to them.

[1] Charan, Piyush. (2015). A Survey of the Prominent Effects of Cybersquatting in India. International Journal of Information Security and Cybercrime. 4. 47-58. 10.19107/IJISC.2015.01.07.

While this may appear to be a new problem, the underlying legal principles can be traced back centuries to property law judgments such as Pierson v. Post. This key decision from 1805 established fundamental notions regarding how property rights are obtained and when interference with potential property rights becomes actionable. Similar to how Pierson investigated who had a legitimate claim to a hunted fox, cyber-squatting issues revolve around conflicting claims to digital territory.

The digital world has confounded traditional property conceptions. Unlike tangible property, domain names exist in an unbounded area managed by international organizations such as ICANN rather than local governments. This has prompted the implementation of new legal frameworks, such as the Anticybersquatting Consumer Protection Act in the United States and WIPO's Uniform Domain-Name Dispute-Resolution Policy around the world.

These restrictions try to strike a balance between valid free speech and fair use issues and predatory actions that harm established companies. As e-commerce continues to dominate global markets, the stakes in these conflicts climb, elevating cyber-squatting from an intellectual property worry to a substantial commercial risk that enterprises must actively manage and minimize.

The Pierson v. Post Case[2]: A Foundation for Property Rights

The Pierson v. Post case of 1805, although not a case of cyber-squatting, bears remarkable similarities to modern digital property disputes. The case unfolded when Post, a man from Long Island, New York, was hunting a fox with the help of his hounds. After investing considerable time and effort in the chase, another hunter named Pierson, who was well aware that Post was pursuing the fox, intervened at the last moment. Pierson killed the fox and carried it away, effectively claiming it as his own. This act sparked a legal dispute that would become a cornerstone of American property law.

The lower court initially gave judgment in favor of Post, acknowledging his effort and investment in the pursuit. However, when Pierson sued out a writ of certiorari, the judgment was reversed by the Supreme Court of New York. The higher court established a crucial principle: merely finding and chasing an animal does not give a person possession of it. Instead, capturing or killing the animal constitutes legitimate possession.

As the synopsis of the rule of law suggests, "Mere pursuit of an animal does not give one legal right to it," clearly indicating that Post did not have legal possession of the fox. The adjudication given in this case was reversed from that of the lower court, establishing the principle that only capturing or killing the animal gives right to possession.

The Dissenting Opinion: Considerations of Effort and Investment

Not all judges agreed with the majority opinion in Pierson v. Post. The dissent, authored by Judge Livingston, presented a compelling alternative view. He argued that when a person spends all day pursuing and hunting a wild animal and comes close to reasonably capturing it, another person should not be allowed to claim possession of that animal. This dissenting opinion emphasizes the value of effort, investment, and the expectations created by ongoing pursuit.

This dissent resonates with modern discussions about cyber-squatting. When a company invests years in building a brand identity and reputation, should someone be able to register a domain name that capitalizes on that investment simply because they reached the domain registrar first? The question of fairness in property acquisition continues to challenge our legal system across both physical and digital realms.

Applying Pierson v. Post to Cyber-squatting Scenarios

Limiting the cyber-squatting analogy to Pierson v. Post creates fascinating hypothetical scenarios. Had Post impersonated Pierson and claimed possession of the wild animal, the adjudication would likely have differed significantly. Similarly, if Pierson had impersonated Post

[2] 3 Cai. R. 175, 1805 N.Y.

and claimed to have had possession of the fox since it was his property, suggesting that the other person had trespassed and killed the animal, the judgment would have been entirely different.

These hypotheticals mirror the essence of cyber-squatting disputes. When a domain registrant uses a name that closely resembles an established brand or person, they are, in a sense, impersonating that entity in the digital realm. They are attempting to capitalize on the goodwill and recognition that the original entity has built through their efforts and investments, much like how Post invested time and effort in pursuing the fox.

In the physical world, impersonation would likely be met with legal consequences. In the digital realm, the legal back-ups may not be as fool-proof in India as it is in the US under the Anticybersquatting Consumer Protection Act, 1999 which was enacted as an amendment to the Lanham Act[3].

Parallely, in the Indian jurisprudential framework, to tackle the issue of cybersquatting, various legislations in India viz-a-viz, sections 27[4] and 29[5] of the Trade Mark Act, 1999—envisaging that one has redressal to resort to common law remedies when encountering such misuse and that usage of domain name without authorization can tantamount to trademark infringement— has been enacted along with The .IN Domain Name Dispute Resolution Policy (INDRP), maintained by NIXI (National Internet Exchange of India)— helps trademark owners regain domains registered in bad faith. If a corporation establishes that the domain was registered to exploit their brand, NIXI may transfer or delete the domain— to address similar concerns. This law allows trademark holders to seek damages from those who register domain names that are confusingly similar to their trademarks in bad faith.

Equitable Distribution Principle: A Modern Approach to Resolving Disputes

The principle of Equitable Distribution[6] is, as commonly known to be the holy grail in the cases involving marital dissolution, wherein the assets and liabilities of a divorcing couple are divided fairly among and between them. Without digressing into the philosophical nudges behind the usage of this principle in such cases, the essence of the matter translates to fairness doctrine, which attempts to deviate from the black and white binary system of win-or-lose instead of attempting a rather kaleidoscopic lens into resolution of disputes that demand a requisite of a liberated perspective, promoting the evolution of the conceptualized ideology of justice.

If we were to apply the law of Equitable Distribution Principle to the Pierson v. Post case, the judgment might benefit both parties involved. Under this approach, both parties would share the profit in a 6:4 ratio. Pierson, who killed the fox and thus gained possession of the animal, would receive 60% of the profit. Post, who found, hunted, and pursued the fox, would get the remaining 40% of the profit.

This proportional allocation recognizes the contributions of both parties toward the common goal. Pierson made the final, decisive action that secured the fox, while Post invested time and resources in locating and pursuing it. By acknowledging both roles, the judgment creates a more equitable outcome than the binary "winner-takes-all" approach of traditional property law.

In the context of cyber-squatting, a similar approach could potentially resolve disputes more equitably. Perhaps a domain registrant who secured a domain name before a trademark holder could be entitled to some compensation for their foresight, while still acknowledging the trademark holder's established rights and investments in their brand identity. Having said that, it is apparently recognizable that application of such a principle in the matters of meta realm is labyrinthine.

[3] (15 U.S.C. § 1125(d)) Glossary - Anticybersquatting Consumer Protection Act of 1999
[4] S. *27. No action for infringement of unregistered trade mark* - *The Trademarks Act, 1999*
[5] S.*29. Infringement of registered trade marks* - *The Trademarks Act, 1999*
[6] **What is Equitable Distribution?**
Visit: https://www.legalkart.com/legal-blog/equitable-distribution-a-fair-approach-to-resolving-family-matter-disputes

Balancing Competing Interests in a Digital Age

The equitable distribution principal approach suggests that both parties would be rewarded according to their contributions to meet the common goal. In the case of Pierson v. Post, this might have been getting rid of the fox to continue chicken farming. This resolution encourages farming to continue in harmony because of the fair outcome.

In the digital realm, balancing competing interests becomes even more complex. Domain names serve as crucial digital identifiers for businesses and individuals, functioning as gateways to their online presence. When cyber-squatters register domain names similar to established brands or personalities, they can divert traffic, confuse consumers, or hold the domain hostage for ransom.

Applying the equitable distribution principle to cyber-squatting cases might involve considering factors such as:

- The timing of domain registration relative to trademark establishment
- The registrant's intent (good faith vs. bad faith)
- The actual use of the domain (legitimate business vs. parking page)
- The potential harm to the trademark holder's reputation and business

These factors are not alternatively conditional. It is when all of the boxes are checked that the principle of equitable distribution could be applied considering that cybersquatting has now become the easy way to reproduce the "art" of conning and scamming by scheming a lazy way to earn easy bucks all by sitting on their swivel chair.

JioHotstar Case and the Ask: What precedent does it lay?

Let's take the example of the most recent case of cybersquatting in the JioHotstar[7] case. The merger between the Reliance Industries (RIL, including JioCinema) with Disney India ("Disney", including Dsiney+Hotstar), was once a highly anticipated action, prompting a quick-thinking app developer to claim the domain name "JioHotstar.com." The clicking of it redirects to a webpage with the message- *"Best of Entertainment, Streaming Soon."* The developer explained how the trend of RIL's acquisition worked and how his prudence to gamble on RIL, being the most dominant industry, acquiring Disney upon its user decline as a consequence of losing the Indian Premier League (IPL) streaming rights, inspired him to register the domain name based on the similar rebrand when Jio acquired Saavn and re-introduced into the market 'JioSaavn'. So, when the opportunity presented itself, he decided to grab it. Was it for a quick payday considering he was also working on his startup? That is where the predictable narrative changes, he had requested Reliance to merely fund his dream of attending Cambridge University as a consideration for the domain. This reflects how his dream to pursue a full degree program in Entrepreneurship was snubbed because of financial constraints.

Now, when applying equity, or doctrine of fairness quintessentially crutching on the principle of welfare maximization, this could be resolved if Reliance accepted the request/offer of the app developer. This could not be classified as something that was a malafide attempt at a quick grab of money, the intention was to merely get his dream fulfilled, a starry eyed, naïve venture. The resolve could have been that of a win-win, wherein the app developer gets to pursue his dream and the business giant would get the domain without having to resort to escalation of the matter to legal disputes, and the consideration would not even be a scratch on their extremely profiteering wallet.

Considering the lack of an airtight legislation, an ADR approach could have given a win-win result, however, this could also have laid a premature precedent leading to uneducated juvenile actions sky-rocketing the cases in cybersquatting. However, as the case would have it, Reliance penultimately rejected the request of the app-developer. After that, Dubai-based twins Divyank and Bhavin bought the domain.

[7] JioHotstar - An Enterprising Case of Cybersquatting by Garima Mitra

The siblings, famed for their entrepreneurial projects, including Media.net, then gave ownership to Reliance Industries for free, describing it as "an act of seva" (service), settling the high-profile domain dispute.

Similar Case Studies

The resolution of cyber-squatting issues exposes varied views of digital property rights, as demonstrated by several noteworthy WIPO panel rulings. The 2008 case of ***OnePhone Holding AB vs. Indigo Networks***[8] highlights the complexities of determining valid domain interests. When the Swedish telecoms business filed a complaint against the Bahamian company over "onephone.com," the panel discovered that Indigo Networks purchased the domain in 2007 for genuine VoIP services. The panel not only dismissed OnePhone's objection, but they also determined that OnePhone had participated in reverse domain-name hijacking, which is effectively seeking to wrongfully claim a properly registered domain.

Similarly, the dispute between Prince plc and Prince Sports Group Inc.[9] exemplifies the notion that generic or common names can be properly registered by organizations from various industries. The UK electronics company had acquired "prince.com" for its operations, whilst the US sporting goods manufacturer requested transfer based on their trademark rights to the name "Prince." The panel's decision in favor of Prince plc emphasized that simply possessing a trademark does not automatically provide rights to the related domain, especially when the domain holder proves legitimate use without ill faith.

The Bridgestone Corporation case against Horoshiy, Inc.[10] highlights the significance of proving bad faith in cyber-squatting claims. Despite Bridgestone's established trademark recognition, Horoshiy successfully retained "bridgestone.net" because they operated a legitimate tire sales business. The panel determined that simply registering a domain containing a trademarked term does not constitute cyber-squatting when the registrant has a genuine business.

These cases demonstrate that successful cyber-squatting claims must prove both the absence of legitimate interest by the domain holder and registration in bad faith—a dual burden that maintains the balance between trademark protection and legitimate domain use in the digital marketplace.

Evolution of Property Rights in the Digital Age

The Pierson v. Post case reflects a time when property rights were primarily concerned with physical assets like land and wild animals. The principle of "first possession" established in this case has evolved significantly as our society has moved increasingly toward digital and intellectual property.

Cyber-squatting represents a modern challenge to these principles. Unlike a fox, which can only be possessed by one party at a time, domain names exist in a digital space where traditional notions of physical possession do not apply. The question becomes less about who physically possesses the property and more about who has the legitimate right to use a particular digital identifier.

International bodies like the World Intellectual Property Organization (WIPO) have established dispute resolution mechanisms specifically for domain name disputes, recognizing the unique nature of digital property rights. These mechanisms often consider factors beyond simple "first registration," including the registrant's intent, the similarity to established trademarks, and the potential for consumer confusion.

Finding Harmony in Digital Property Rights

The suggestion that both Pierson and Post could share in the benefits of the fox hunt points to a more collaborative approach to property disputes. In the digital realm, this might translate to arrangements where domain registrants and trademark holders find mutually beneficial solutions rather than engaging in winner-takes-all litigation.

[8] Case No. D2007-1576
[9] [1998] F.S.R 21
[10] Case No. D2004-0795

Some potential approaches could include:

- Licensing agreements where trademark holders pay reasonable fees to use domain names registered by others
- Redirection services that benefit both the domain registrant and the trademark holder
- Collaborative marketing efforts that leverage the domain name's value while respecting trademark rights

These approaches align with the spirit of principle of equitable distribution, seeking outcomes that benefit all parties involved rather than simply declaring a single winner.

Conclusion: Learning from the Past to Navigate the Future

The Pierson v. Post case, despite being over two centuries old, offers valuable insights for addressing modern digital property disputes like cyber-squatting. By examining these historical precedents and considering their application to contemporary challenges, we can develop more nuanced and equitable approaches to resolving property disputes in the digital age.

The evolution from physical to digital property rights reflects our society's broader technological transformation. As we continue to navigate this changing landscape, balancing the interests of all stakeholders—domain registrants, trademark holders, and the broader public—will be essential to creating a fair and functional digital ecosystem.

The lessons from Pierson v. Post remind us that property rights are not absolute but exist within a social context. By recognizing the contributions and interests of all parties involved, we can work toward digital property frameworks that maximize welfare for society as a whole, rather than simply enforcing rigid rules of "first possession" that may not account for the complexities of our modern digital world.

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