



**COULD CYBERSQUATTING BE LEGALLY CONSTRUED AS A FORM OF
EXPLOITATION AND FRAUD?**

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Executive Summary

Cybersquatting is a serious online issue that threatens the success of online businesses. The perpetrators illegally register and use domain names that are identical to those of registered trademarks to promote economic benefits unfairly. The report was based on the trigger article titled "*Akamai loses cybersquatting fight with Cloudflare*" to show how the relevant statutes can be used to resolve domain name disputes. This IT ethics and law report evaluate cybersquatting to establish whether it qualifies as a form of exploitation and fraud or not. The report describes the social, technological, economic and ethical issues associated with cybersquatting to establish its impacts in the online business sector. Additionally, the report thoroughly discusses the associated legal issues, relevant UK statutes and case law examples to promote the readers' understanding of cybersquatting practices and how relevant statutes can be used to address them.

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Could Cybersquatting be Legally Construed as a Form of Exploitation and Fraud?

Introduction

The explosion of e-commerce over the past two decades has resulted in an increased rate of cybersquatting in the business sector. Many organizations have become victims of cybersquatting, with hundreds of cases reported in the United Kingdom (UK) within the last decade. Cybersquatting refers to a 'name game' in which a company or person registers and uses internet domain names similar to the trademark of others in bad faith to gain profits from the goodwill of the actual trademark owner (Deo & Deo, 2019). Cybersquatting has become a global cyberspace issue, with large international firms like Walmart and Amazon emerging as victims. In the UK, cybersquatting practice is determined by the intentions of the registrant towards the complainant's domain. Some registrants register the domain names of large trademarks to sell the domains back to those companies in future for profit gains.

Cybersquatting is a form of trademark infringement that threatens the performance of the business in the e-commerce sector. The increased cybersquatting cases have made organizations prioritize nailing down the domain names to minimize the vulnerability (Deo & Deo, 2019). The Akamai versus Cloudflare is one of the recent cybersquatting cases that caught my attention from the media. According to Allemann (2022), Akamai filed a lawsuit against Cloudflare based on alleged cybersquatting. However, the court ruled against Akamai after discovering that Cloudflare did not register the domains in bad faith. According to Sood and Nakta (2022), cybersquatting is an illegal issue affecting businesses today, and it's subject to legal action in the UK. This report highlights the key facts of the cybersquatting case between Akamai and Cloudflare, citing the relevant statutes and legal aspects. This

analysis paper evaluates cybersquatting to determine whether it can be considered a form of exploitation and fraud or not.

Brief Description of the “Trigger” Article

The “Akamai loses cybersquatting fight with Cloudflare” article authored by Andrew Allemann on March 10, 2022 (published by “Domain Name Wire”) is my trigger article on the topic. The article briefly describes the outcome of the cybersquatting case between Akamai and Cloudflare companies. According to Allemann (2022), there exist numerous cybersquatting cases involving large companies under the Uniform Domain Name Dispute Resolution (UDRP). Akamai versus Cloudflare was one among the multiple cybersquatting cases, and its outcome has legal significance to related cases. Akamai took legal action against the four domain names owned by Cloudflare. Allemann (2020) stated that the involved domain names included “edgeworker.net, edgeworkers.net, edgeworkers.com and edgeworker.com”.

At the onset, the case seemed worse for Cloudflare, but the outcome surprised many people. Cloudflare was accused of registering and using the four domain names a few days after Akamai formally applied to register the “Edgeworkers” trademark with the United States Patent and Trademark Office in August 2017 (Allemann, 2022). However, Cloudflare successfully defended itself by providing adequate evidence showing that it started to use the EdgeWorkers service before Akamai applied for a trademark (Allemann, 2022). The defendant further proved to the court that it changed the service name to Cloudflare Workers after learning about Akamai’s intent, and the word edge in their context was different from that of Akamai.

The justice panel found that Cloudflare indeed used the domains in bad faith. However, the panel discovered that defendant did not register the domains in bad faith (Allemann,

2022). UDRP requires the complainant to prove that the defendant registered and used the domain names in bad faith to win the case. Akamai, therefore, lost the cybersquatting case against Cloudflare because they could not prove the two requirements. Cloudflare thus retained the domain names.

Discussion of Ethical, Technological, Economical and Social Issues

Cybersquatting is considered an illegal issue in the UK and is subject to legal action under the UDRP statute. UDRP is a locally and internationally approved policy for addressing domain names disputes. The statute was established purposefully to discourage and resolve cybersquatting issues between organizations, as evident in the case of Akamai and Cloudflare. UDRP requires the complainants to prove that the defendants registered and used the domain names in bad faith; otherwise, no cybersquatting occurs (Allemann, 2022). An independent panel is usually formed from a list of specialists from more than 50 member countries to deliver judgment within two weeks. All the domain names in question are usually frozen during the trial period. The involved parties typically have ten days to appeal after the panel's decision, failure to which the defendant legally retains the domain names. According to Allemann (2022), about 548 cybersquatting cases were handled in the UK in 2021, marking the lowest number in two decades. Discussed below are the ethical, technological, economic and social issues related to the case scenario.

Ethical issues

Unfair taking of credibility

Although Cloudflare did not register the domain names in bad faith, as stated by the justice panel, it used them with bad intentions. According to Allemann (2022), the panel found that Cloudflare forwarded some of the domain names to its services. This was a deceitful practice to unfairly earn the trust of the customers that Akamai would have earned.

The unjustified taking of Akamai's credibility, for instance, enabled Cloudflare to unfairly generate additional profits and improve its business advantage. The practice may have also caused Akamai to suffer reduced public trust. Using the domain under questions to send services was unethical, deceptive and exploitative. Using domain names similar to other trademarks to unfairly take credibility is exploitative and deceptive.

Public confusion

Using domain names that are similar to other trademarks when sending services to the public confuses them on the right owner of the domain and creates public confusion. The article discloses that Cloudflare used the domain names in bad faith by forwarding them to services (Allemann, 2022). The public is vulnerable, and only a few people may have realized the distinction between Cloudflare's and Akamai's domain names. In other words, the majority got confused and could not tell the difference between the domain forwarded by Cloudflare and that used by Akamai. Since these two content delivery companies target the public, using confusing domain names to gain business advantage was exploitative and defrauding. The act was also unethical because it was likely to lead the unsuspecting potential customers to undesired business sites of Cloudflare.



Figure 1: Walmart Inc. site V. UFCW 'copy cat' site (Source: Allemann, 2013)

Walmart Company is a good example of a cybersquatting victim who suffered a similar fate when a parody firm created and used confusing domain names to mislead the public into

non-Walmart e-commerce sites. Using cybersquatting to confuse the public and achieve business goals is exploitative and defrauding.

Technological Issues

Violation of computing standards

Cybersquatting is an unethical practice that violates computing standards. The computing standards provide a universal approach to creating, implementing and using websites and domain names without infringing trademarks. In the UK, computing regulations discourage using computers to infringe other firms' trademarks, businesses, and domain names. Cloudflare created the four near-identical domains and used them in a similar way to Akamai's trademark. Practically, this was unethical and contradictory to computing standards. Cloudflare was aware of the computing standards requirements when registering and using domain names but proceeded to use their domain names unethically. Cloudflare's practice, therefore, violated the computing standards and clearly manifested fraud.

Misinformation and fake online identities

Cybersquatters have increasingly been linked to misinformation and imitation of other trademark identities to spread misleading information. Misinformation, in this case, involves imitating domain names of another trademark to send misleading information to unsuspecting customers. According to Allemann (2022), the four domain names created and forwarded by Cloudflare to its services were similar to Akamai's EdgeWorkers trademark and could be used for misinformation. Cloudflare forwarded the domain names to its services and must have used the strategy to imitate Akamai's identity (fake online identity) and send misleading information to the public. Cybersquatters usually use sophisticated machines to generate multiple "*difficult-to-differentiate*" domain names, which they use to imitate others and

spread false content. Cloudflare may have also used the same criteria to generate the multiple domain names under question.

Economic Issues

Unfair profit gains

Using similar domain names for goodwill does not serve as cybersquatting in the UK. However, registering and using domain names that are similar to other trademarks for economic gains clearly represent cybersquatting. The article reveals that Cloudflare used some of the four domains under the question to send services to customers (Allemann, 2022). This was an unfair approach to increasing economic profits by delivering more services to the customers. For example, using domain names that are almost similar to that of Akamai to deliver similar services undoubtedly confused the public and attracted unsuspecting customers. In this case, Cloudflare allegedly used Akamai's domain name to increase its profit unethically. This unjustified approach is unethical and violates the UDRP standards.

Unjustified market advantage

Many people and organisations in the UK use the cybersquatting approach to gain a market advantage unfairly. Cloudflare used some of the domain names to offer services to customers, thereby improving its market advantage in an unjustified manner. UDRP highly discourages registration and use of domain names that are similar to other trademarks to enhance market advantage or gain monetary benefits. Cloudflare violated this clause by forwarding the questioned domain names to services. After realising Akamai's trademark application intentions, Cloudflare claimed to have changed to "*Cloudflare Workers*" (Allemann, 2022). However, the company continued to use the controversial domain names, knowing that they would optimise their market advantage. This practice manifests complete

unethical behaviour that would have been avoided if Cloudflare had avoided using the domain names to better market advantage.

Increased online counterfeit sales

The increased online sale of counterfeit goods and services has been linked to cybersquatting. Akamai accused Cloudflare of using domain names similar to its trademark to send services to online customers. The respondent may have used the opportunity to sell counterfeit services behind Akamai's identity. The UDRP justice panel approved that Cloudflare used the domain names to forward services to customers (Allemann, 2022). Since Cloudflare operated in the same sector as Akamai, it must have used the domain names to sell counterfeit services. The UK patent and trademark statutes highly discourage such practices. Cloudflare would commit a legal offence and engage in unethical practice by violating this policy. Cloudflare's case with Akamai perfectly matches Walmart Inc.'s with the parody site. The parody firm used Walmart's domain name to create an e-commerce platform where it sold counterfeit products to consumers behind actual Walmart's image. Selling counterfeit services would benefit Cloudflare economically, but the act is unethical and illegal in the UK.

Loss of online customers

Some cybersquatters engage in cybersquatting to acquire the potential customers of competitors. Cloudflare may have forwarded the disputed domain names to customers to lure and acquire them from Akamai. By using a domain that was similar to Akamai, Cloudflare strongly believed that it would convince Akamai customers to buy from them without their knowledge. An increased customer base would maximise the company's general income, thereby maximising its profits margin. On the other hand, Akamai would lose its online customer base, which would, in turn, reduce its sales and profits. Using deceptive measures to

acquire the online customers of a competitor is unethical and contradictory to UDRP and Internet Corporation for Assigned Names and Numbers (ICANN) statutes.

Social Issues

Username squatting

Username squatting involves using social media usernames that are similar to that of a rival firm to impersonate them for personal interests. For example, Cloudflare created social media accounts bearing the same domain name as Akamai. This might have created public confusion about the genuine account of Akamai. This practice was deliberate because Cloudflare already knew about Akamai's intention to register the "Edgeworkers" title as its trademark (Allemann, 2022). The best option for Cloudflare was to completely drop the "edgeworker" domain names and shift to its "Cloudflare Workers" domain name.

ICANN and UDRP provide effective policies for resolving cybersquatting at various levels. Username squatting is considered an unethical practice under the above statutes. Engaging in any form of the act confuses the customers on social media platforms, making it difficult for them to know the correct social media name of the genuine trademark owner. This might make the customers of the genuine trademark owner follow the squatted usernames resulting in the loss of potential online customers. Cloudflare's action was likely to lure away Akamai's customers, and the practice was unethical.

Reduced customer trust and loyalty

Organizations that register or use domain names similar to those of other trademarks must not target the rival's customers in any way. In this scenario, Cloudflare operated four domain names similar to Akamai's trademark (Allemann, 2022). Since the two companies operated in the same sector, Cloudflare was supposed to operate without compromising the operations or customers base of Akamai. However, the panel discovered that Cloudflare

forwarded the domain names to its services, and this threatened the trust and loyalty of Akamai's customers.

For example, if Akamai's customers could not establish the differences between Cloudflare's counterfeit services and genuine Akamai services, those who received low-quality counterfeit services were likely to look for substitute service providers. Cloudflare being a substitute company to Akamai, would thus benefit. Producing counterfeit services to lower the loyalty and trust of the rival's customers is unethical and subject to UDRP action.

Legal Issues Discussion

Relevant Statutes

The Trademarks Act (TMA) 1994.

The Trademarks Act of 1994 is relevant to this study because it helps determine if the registration of a domain name incorporating a registered trademark constitutes trademark infringement or not. The act aligns with the Trademark Act (TMA) 2008, which serves as the amended version (Doran & Class, 2008; Legislation.gov.uk, 2022). The Act states that the outcome depends on the intended use of the domain name. For instance, if the domain was registered in good faith and subsequently used in good faith, then no trademark infringement occurs (Tolibovna, 2022). Section 10, sub-sections one to three clearly provide the specific instances when registration and use of domain names incorporating registered trademarks constitute trademark infringement.

Based on section 10 (1) of the TMA, trademark infringement occurs if a person or firm uses or trades goods or services that are similar to the registered trademark without their

authority (Legislation.gov.uk, 2022). Section 10 (2) clarifies that individuals infringe the registered trademark if they use identical symbols on products and services similar to those of the registered trademark, causing public members to get confused about the genuine product or service (Doran & Class, 2008). Because of the confusion, some public members may wrongly associate the cybersquatter with the genuine trademark owner. Cloudflare's case revolves around this sub-section two because it used similar domain names to forward services during the business, and there are chances that the practice caused public confusion.

Section 10 (3) further clarifies that using symbols identical to those of registered trademark on different products or services during business still constitutes trademark infringement if the act causes unfair business advantage or adversely affects the reputation of the actual trademark owner (Doran & Class, 2008; Legislation.gov.uk, 2022). Doran and Class (2008) state that TMA 1994 highly discourages individuals and organizations from engaging in any of the stated unethical practices, failure to which calls for legal action under sections 10 (1,2 and 3). This legislation was implemented in the UK to help address the issue of trademark infringement (cybersquatting) that had become a serious issue in the country.

The Copyright, Designs and Patents Act 1988.

This Act is the leading UK copyright legislation implemented to address issues related to the infringement of online copyrights. According to Carty and Hodgkinson (1989), the Act grants registered trademarks full control over how their contents are used online. The Act applies to the cybersquatting context because it addresses all forms of online copyrights in the UK. Section 16 (1) grants the copyright owner the exclusive rights to make public copies of the work or adapt it in the preferred way (Carty & Hodgkinson, 1989; Legislation.gov.uk, 2022). Third parties who copy the domain names without the trademark owner's permission infringe the copyright policies.

Section 16 (2) further clarifies that any individual or firm who perpetrates or authorizes another person to perpetuate the illegal practices infringes the copyrights policies (Carty & Hodgkinson, 1989; Legislation.gov.uk, 2022). The infringement may affect the work partially or wholly and occurs directly or indirectly depending on whether the person engaged directly or indirectly. Firms and individuals do not have the authority to copy or use copyrighted content unless permitted by trademark owners. This statute can thus be used in the UK to address copyright infringement cases involving individuals and organizations (Legislation.gov.uk, 2022). It can also be used to inform copyright owners about their rights, scope of application, exceptions and related legal policies. The Act also directs the copyright owners on legal procedures to undertake when facing copyright infringement issues.

WIPO Jurisprudential Overview 3.0

The World Intellectual Property Organization (WIPO) is an international organization established to promote the global security of registered trademarks, inventions and product designs of industries. The Act was also implemented to protect the copyrighted materials of global industries from third parties (Chay & Beckham, 2017). WIPO is relevant to the study topic because it provides specific guidelines for establishing domain names that are registered in bad faith. The Act emphasizes that the respondents' site or domain names must be active, not for commercial purposes and easily distinguishable from that of trademark owners. Failure to meet these standards results in property rights infringement.

Chapter two (12)(1) considers prior registration of the trademark relating to a domain name as a legitimate interest in owning the domain name (Chay & Beckham, 2017). Therefore, this section can be applied in the UK to address cybersquatting issues associated with trademark infringement and illegitimate domain name use. Chapter two, section 13

further clarifies that using a domain name to perpetrate criminal offences like selling illegal or counterfeit products manifests illegitimate interests in the domain and violates the Act.

Based on chapter three (2)(1) of the WIPO, any domain registered or bought with a primary target of transferring the ownership rights to the trademark owner (complainant) for monetary gains shows that the domain is registered in bad faith (Chay & Beckham, 2017). Additionally, the domain names registered to disrupt the business operations of the registered trademark owner or restrict them from reflecting the names or symbols in the related domain names also manifest bad faith registration. The legislation can thus be used in the UK and the rest of the world to establish the instances where domain names are registered in bad faith, as in the case of Cloudflare versus Akamai. UDRP that operates under WIPO intervenes in

WIPO's UDRP policy intervenes in domain name disputes by considering the evidence from both parties. In the UK, if the UDRP justice panel finds that the domain name was registered in bad faith and similarly used in bad faith by the respondent, cybersquatting is considered to have occurred (Chay & Beckham, 2017). The UDRP intervened in Cloudflare versus Akamai domain dispute, and the rulings perfectly aligned with the WIPO policies. WIPO Jurisprudential is therefore applicable in the UK to address domain name disputes between firms and individuals.

The Fraud Act 2006

The Act can be used to identify various types of fraud affecting firms and individuals in society. According to section one of this Act, fraud occurs if the perpetrator makes a false representation, provides dishonest information or deliberately misleads others to directly or indirectly benefit from the act (Legislation.gov.uk, 2022; Campbell, 2007). The Fraud Act 2006 is applicable in determining cybersquatters who use deceptive measures to benefit from the goodwill of the genuine trademark, domain name or business owners. According to

Campbell (2007), cybersquatters use domain names to create copycat websites to sell counterfeit or imaginary goods and services to increase profits. Such practices defraud the consumers and affect the brand image of the genuine trademark owner. Therefore, the Act is relevant to the study topic and applicable in the UK to address all forms of practices that reflect fraud directly or indirectly.

Relevant Case Laws

The UDRP panel ruled that Cloudflare did not perpetrate cybersquatting because the complainant could not prove the allegations of bad faith registration and usage. Cloudflare used the disputed domain names to forward services but retained the domain names after providing adequate evidence to show that its registration was in good faith. The case laws below briefly detail the domain name disputes between some international companies.

Luma Institute, LLC v. Perfect Privacy, LLC / James Redfern/Luma

This case involved a domain name dispute between a man (respondent) who registered Luma.com in 1995 and Luma Institute (complainant), which was established in 2009 (WIPO 2021). The complainant accused the respondent of using its registered trademark “LUMA” mark to create and use a similar domain name in its operations. Luma institute also accused the defendant of registering the domain name in bad faith with no legitimate interests in it (WIPO, 2021). The respondent in this case successfully defended his domain name registration and use intentions. The case was ruled under WIPO overview 3.0, and the justice panel found that the respondent registered and used the domain name in good faith. The arbitration panel approved that the defendant started to use the domain name in 1995, long before the complainant registered the trademark in 2009 (WIPO, 2021). The case reveals that registering and using domain names similar to registered trademarks in good faith does not result in cybersquatting.

Wal-Mart Stores, Inc. v. Domains by Proxy, LLC / UFCW International Union

In this case, Walmart Inc. filed a UDRP case accusing the respondent of violating the domain name policy by registering and using identical domain names that were confusing to the public. According to Allemann (2013), Walmart Inc. wanted all the parody site domain names to be taken down. The panel ruled in the complainant's favour. It directed the defendant to transfer all the disputed domain names to Walmart Inc. as provided by paragraphs four (i) and 15 of the WIPO policies (Allemann, 2013). The case reveals that the defendant registered and used the domain names in bad faith; therefore, it violated the UDRP.

French Republic v. France.com Inc

In this case, the complainant (Jean-Noel Frydman, a US citizen and French ex-pat) purchased and registered France.com in 1994 to use it in selling travel services in France. According to Brittain (2021), Frydman incorporated France.com Inc in California. The French government later filed a lawsuit in the US court to challenge Frydman's use of "France.com" on personal business. The French government convinced the US court that "France" was an exclusive mark that only the French government had the right to use and nobody else outside France. According to Brittain (2021), the Foreign Sovereign Immunities Act grants France exclusive right over the disputed "France" title. In this case, no trademark infringement occurred because the mentioned domain name was an exclusive sovereign right of France. The Supreme Court's ruling in favour of the French government was thus legitimate and unquestionable.

Cloudflare vs Akamai

This case involves two large companies in a cybersquatting dispute pursuant to the Uniform Domain Name Dispute Resolution (UDRP). Akamai accused Cloudflare of registering and using four domain names in bad faith (Allemann, 2022). The respondent

provided adequate evidence to the panel to prove that it registered the domain names in good faith. After learning about the complainant's intent to register the name as a trademark, Cloudflare adopted the Cloudflare Edgeworkers (Allemann, 2022). Cloudflare therefore had no bad faith when registering the domain names as claimed by Akamai.

Pursuant to UDRP and WIPO regulations, the panel required the complainant to prove that the respondent registered and used the domain names under question in bad faith (Chay & Beckham, 2017). Under chapter two of the WIPO overview 3.0, the panel established that Cloudflare indeed forwarded the domain names to service but did not register them in bad faith. The panel ruled in favour of Cloudflare and ordered the respondent to retain the four disputed domain names. The case offers a perfect road map for resolving current and future domain name disputes in the business sector. It also conforms with the UK trademark policies on effective ways of determining whether cybersquatting occurred or not.

Summary and Conclusions

Summary

Cybersquatting is an illegal and unethical practice characterised by registering and using online domain names identical to the registered trademark and company names. In the UK, the validity of cybersquatting depends on the intention and usage of the domain names. Numerous policies exist in the UK and across the globe to help in resolving domain name disputes between organisations and individuals. The Cloudflare versus Akamai domain name dispute was a typical case scenario where the trademark and copyright regulations helped resolve the cybersquatting issue. The UDRP policies provide specific guidelines for investigating domain name disputes to provide viable and justifiable resolutions. The panel's ruling on Cloudflare's case conformed with the UDRP policy and set a crucial framework for resolving domain name disputes.

Cybersquatters engage in cybersquatting to benefit in various ways, but the practice has ethical implications. It results in economic, technological, social and ethical issues in the business sector. By implementing effective trademark and copyright Acts, the UK significantly established an effective approach for addressing domain name disputes. Implementing the TMA 1994 made it possible to easily establish scenarios where trademark infringement occurs for a better resolution approach. Enacting the Copyright, Designs and Patents Act, 1988 offered an effective framework for resolving online copyright infringement issues. Legislating the WIPO overview 3.0 boosted the UK's effort in protecting industrial organisations' property rights. The Fraud Act 2006 enhanced the UK's effort in establishing forms of fraud and how to address them. The case law examples improve the understanding of how relevant laws can be applied to ensure justice in scenarios of claimed cybersquatting.

Conclusion

Cybersquatting is indeed an illegal practice and a form of exploitation and fraud in contemporary business society. The practice entails registering and using domain names that are identical to those of registered trademarks, persons and companies in bad faith. The trigger article involving the cybersquatting dispute between Cloudflare and Akamai reveals that cybersquatting does not apply to every domain name dispute. In the UK, the complainant's allegations must meet the requirement of the UDRP. Besides, the complainant must convince the UDRP arbitration panel that the respondent registered and used the disputed names in bad faith, failure to which results in no cybersquatting as in the case of Cloudflare. Although UDRP proceedings are suitable for solving domain name disputes, proactive measures such as buying the disputed domains from third parties can help the trademarks lower costs that would have been spent on legal proceedings.

Implementing the UDRP, WIPO overview 3.0, the Fraud Act, the Copyright, Designs and Patents Act 1988 and TAM 1994 Acts was a significant move by the UK to address the

increasing cybersquatting cases. The Acts help establish if the copyright infringement occurs and recommend suitable and justifiable resolution strategies. The Acts consider cybersquatting to have occurred if there is adequate proof that the respondent registered the disputed domain name in bad faith, then went ahead and used it in bad faith. However, if only one condition is met and the other not, no cybersquatting occurs. Cybersquatters engage in the practice using deceptive and exploitative ways to unfairly promote economic needs and enhance market advantage. Such practices violate the requirements of the above Acts and make cybersquatting a form of online fraud and exploitation.

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