

INFO EDGE (INDIA) PVT. LTD. v. SHAILESH GUPTA:

A Critical Analysis of Typo squatting, Descriptive Marks and the Boundaries of Passing Off in Indian Cyberspace Jurisprudence

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Abstract

The growth of the internet has changed the way businesses identify themselves and connect with consumers. In this changing environment, domain names are no longer used only as web addresses; they have also become important business identifiers. This article examines the Delhi High Court's decision in Info Edge (India) Pvt. Ltd. v. Shailesh Gupta, a significant case dealing with domain-name protection, passing off and typosquatting in India. The case concerned the well-known domain name "naukri.com" and a deceptively similar domain name used by a competing employment website to divert internet users. The article analyses how the Court approached the protection of a descriptive term that had acquired distinctiveness through continuous use and goodwill. It also considers the Court's reliance on the principles of passing off and the bad-faith standard under the ICANN UDRP. While the decision provided important protection against the misuse of domain names and helped establish the trademark-like character of domain names in Indian law, certain aspects of the reasoning remain open to criticism. In particular, the article examines the limited evidence relied upon to establish secondary meaning, the use of UDRP principles within Indian common-law reasoning, and the Court's approach to confusion caused at the initial stage of accessing a website. The article further highlights the difficulty of protecting descriptive and vernacular words without unnecessarily restricting their legitimate use by competitors. It concludes that Info Edge remains an important foundation of Indian cyber-IP jurisprudence, but its principles need to be applied with greater evidentiary and doctrinal care as new forms of online infringement continue to emerge.

II

. Introduction

The decision of the Delhi High Court in *Info Edge (India) Pvt. Ltd. v. Shailesh Gupta*¹ occupies a foundational position in the Indian jurisprudence on domain-name protection. Decided at the very turn of the millennium, when the Trade and Merchandise Marks Act, 1958 was still in force and the Trade Marks Act, 1999 awaited notification, the case raised a cluster of doctrinally rich questions: whether a domain name discharges trademark functions; whether a descriptive Hindi word transliterated into English script can acquire secondary meaning in

¹*Info Edge (India) Pvt. Ltd. & Anr. v. Shailesh Gupta & Anr.*, 98 (2002) DLT 499.

cyberspace; and whether the registration of a near-identical, mis-spelled domain name used merely as a hyperlink to a competing website amounts to passing off. The judgment delivered by Mukundakam Sharma, J. answered each of these questions in the affirmative, and in doing so, knit together common-law passing-off doctrine, comparative trademark jurisprudence, and the soft-law standards of the Internet Corporation for Assigned Names and Numbers (ICANN) Uniform Domain Name Dispute Resolution Policy (UDRP).

The doctrinal significance of the case is twofold. First, it consolidates and extends the line of authority initiated by *Yahoo! Inc. v. Akash Arora*² by holding that a descriptive term, when used distinctively over time and reinforced by goodwill, is capable of trademark protection in its domain-name avatar. Second, and more innovatively, it imports the bad-faith standard articulated in 4(b)(iv) of the UDRP into Indian common-law analysis, treating an instrument of private contractual dispute resolution as persuasive authority on the Indian law of passing off. The case thus operates as both a continuity case (faithfully applying the classical trinity of passing off) and an integration case (assimilating extra-statutory normative material into the common-law inquiry).

This comment proceeds on the central thesis that the judgment is doctrinally defensible and policy-coherent in its principal holding, but that its evidentiary methodology on the question of secondary meaning, and its reliance on UDRP standards without engaging the legitimacy concerns inherent in the use of soft law, leave it open to criticism. The comment further argues that the case, while celebrated as a typosquatting precedent, in fact rests on an under-articulated importation of the U.S. doctrine of initial-interest confusion — a doctrine whose Indian status remains uncertain even today.

III. Facts of the Case

The first plaintiff, Info Edge (India) Private Limited, is the registered proprietor of the domain name “naukri.com”, which it adopted on 27 March 1997. The plaintiff’s website operated as one of India’s earliest dedicated employment portals, offering listings of vacancies, advertisements from prospective employers, and a database of resumes. The choice of the word “naukri” — Hindi for “employment” or “job” — written in English script was distinctive in an

²*Yahoo! Inc. v. Akash Arora*, 1999 PTC (19) 201 (Del).

internet ecosystem then dominated by English-language identifiers. Through extensive press coverage and advertising, the plaintiff established a measure of goodwill in the trade.

The defendant, Shailesh Gupta, was the proprietor of two domain names registered approximately two years later, in 1999: “jobsourceindia.com” and “naukri.com” (with an additional letter “a”). The defendant’s primary website was hosted under “jobsourceindia.com”; the second domain functioned only as a hyperlink that automatically redirected users typing the misspelled URL to “jobsourceindia.com”. Both undertakings operated in the same field of activity — online employment services — placing them in direct competition.

The plaintiff filed a suit before the Delhi High Court seeking a permanent injunction, an account of profits, and damages. The interlocutory dispute, decided in this judgment, arose out of an application under Order 39 Rules 1 & 2 of the Code of Civil Procedure, 1908, for an ad interim injunction restraining the defendant from operating any business under the impugned domain name or any deceptively similar identifier.

IV. Issues Before the Court

- i. Whether a domain name performs the functions of a trademark and is consequently entitled to protection through an action of passing off under Indian law.
- ii. Whether the term “naukri”, being descriptive of the underlying service, is incapable in principle of attracting trademark significance, or whether it can acquire a secondary meaning through long and distinctive user.
- iii. Whether the registration and use by the defendant of the variant “naukri.com” (with an additional letter), employed solely as a redirect to a separately registered website (jobsourceindia.com), constitutes a misrepresentation actionable in passing off.
- iv. Whether the defendant’s conduct evidences bad faith within the meaning of ¶4(b)(iv) of the ICANN UDRP, and the extent to which UDRP norms may inform the Indian common-law inquiry.
- v. Whether, on the facts, the plaintiff has made out a prima facie case warranting interim injunctive relief under Order 39 Rules 1 & 2 of the Code of Civil Procedure, 1908.

V. Arguments of the Parties

A. Submissions on behalf of the Plaintiff

Mr. Rajiv Nayar, Senior Advocate, contended that the defendant's domain name was deceptively similar to that of the plaintiff and that, given the parties' identical line of business — internet-based employment services — there was a grave likelihood of confusion among users. He emphasised the chronology: the plaintiff's adoption of the mark in 1997, the assumption of reputation through press coverage, and the defendant's registration of two domain names only in 1999, the second of which was a near-typographical reproduction of the plaintiff's mark. The simultaneous registration of the legitimately operative website (jobsourcesindia.com) and the redirect domain, he argued, was probative of dishonest intent. The hyperlink architecture, by which a typing error on the part of an internet user inevitably brought that user to the defendant's competing portal, evidenced both bad faith and concrete diversion of goodwill. Reliance was placed on *Yahoo! Inc.*³ and *Marks & Spencer*⁴ for the proposition that domain names are entitled to trademark-equivalent protection.

B. Submissions on behalf of the Defendant

Mr. Sai Krishna, on behalf of the defendant, advanced three submissions. First, the impugned mark "naukri.com" was generic — being the Hindi word for the very service offered — and was therefore incapable of performing trademark functions or attaining secondary meaning. Second, the doctrine of secondary meaning was a question of fact requiring proof through evidence, and could not be adjudicated at the interim stage on the strength of press clippings alone. Third, in the absence of any protectable interest in the plaintiff's mark, the defendant's adoption of a similar generic expression could not, as a matter of law, constitute deception or evidence bad faith. The defendant relied principally on the rejection of secondary-meaning claims in cases involving descriptive identifiers.

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⁴*Marks & Spencer plc v. One-in-a-Million Ltd.*, [1998] FSR 265 (CA).

VI. Decision of the Court

The court allowed the plaintiff's application and granted a temporary injunction restraining the defendant, its directors, servants, and agents from using the domain name "naukri.com" or any other mark deceptively similar to the plaintiff's mark, and from hyperlinking the said domain name to "jobsourceindia.com", pending disposal of the suit. The court was at pains to clarify, by way of a non-prejudice rider at ¶32 of the judgment, that the views expressed were tentative and confined to the disposal of the interim application.

Ratio Decidendi

A descriptive domain name that has, through long, distinctive, and reputationally-supported user, acquired a secondary meaning in association with a particular trader is entitled to protection through an action of passing off; where a competitor in the same field of activity registers a deceptively similar variant of such a domain name and uses it in a manner calculated to divert internet traffic — including by employing a misspelling as a redirect to its principal website — the resultant confusion satisfies both the common-law standard for passing off and the bad-faith threshold articulated in ¶4(b)(iv) of the UDRP.

Obiter Dicta

The court observed, in reliance on the UDRP, that bad faith may be inferred where a domain name is intentionally used to attract internet users for commercial gain by creating a likelihood of confusion as to source, sponsorship, affiliation, or endorsement. The court further observed, by way of obiter, that the consideration applicable to internet trademark disputes — namely, the need for an "alert vigil" given the global accessibility of websites — calls for a stricter scrutiny than would obtain in conventional trademark disputes.

VII. The Court's Reasoning

The reasoning of Mukundakam Sharma, J. is best understood as proceeding in five analytical steps. *First*, the court reaffirmed the foundational proposition, traceable in Indian law to *Yahoo! Inc. v. Akash Arora*⁵, that a domain name is not a mere internet address but performs

an identification function analogous to that of a trademark. The court reinforced this position by reference to *Marks & Spencer*⁶ and *Cardservice International v. McGee*⁷, in which the U.K. Court of Appeal and the U.S. District Court for the Eastern District of Virginia, respectively, reached materially similar conclusions.

Second, on the question whether passing off lies for services as well as goods — a live issue under the unrepealed Trade and Merchandise Marks Act, 1958, which had not statutorily recognised services⁸ — the court applied the position taken in *Yahoo! Inc.*: notwithstanding the silence of the 1958 statute, the common-law action of passing off is available to protect services where reputation has accrued. The Trade Marks Act, 1999, although enacted, was at that point still awaiting notification⁹; the court therefore proceeded squarely on the common-law footing.

Third, the court engaged the descriptiveness defence. Acknowledging that the line between a generic and a descriptive expression is, in McCarthy's words, a thin one¹⁰, the court drew on the foundational English authorities: *Reddaway v. Banham*¹¹, *Erven Warnink v. Townend*¹² (the *Advocaat* case), and *Office Cleaning Services v. Westminster Window*¹³. From these the court extracted the principle, articulated also in *Halsbury*¹⁴, that a wholly descriptive expression may, by virtue of long and distinctive association with a particular trader, attain a secondary meaning identifying source rather than service.

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⁷*Cardservice International Inc. v. McGee*, 42 USPQ 2d 1850 (E.D. Va. 1997).

⁸The Trade and Merchandise Marks Act, 1958, s. 27.

⁹The Trade Marks Act, 1999, s. 27(2) (preserving common-law passing-off action notwithstanding non-registration).

¹⁰J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, vol. 2, ¶12.5(2) (3rd edn., 1992).

¹¹*Reddaway v. Banham*, [1896] AC 199; *Ellora Industries v. Banarsi Dass & Ors.*, 1981 PTC 46 (Del).

¹²*Erven Warnink BV v. J. Townend & Sons (Hull) Ltd.*, [1979] AC 731 (HL).

¹³*Office Cleaning Services Ltd. v. Westminster Window & General Cleaners Ltd.*, (1946) 63 RPC 39 (HL); see also (1944) 2 All ER 269 (CA).

¹⁴48 *Halsbury's Laws of England* 190 (4th edn.).

Fourth, the court applied the principles relating to common field of activity and likelihood of confusion. Following *Rediff Communication v. Cyberbooth*¹⁵ and the line of cases including *Acqua Minerals* and *Dr. Reddy's*¹⁶, the court emphasised that where the rival traders operate in the same or similar line of business, the likelihood of confusion is correspondingly aggravated. The court further invoked *Cadila Healthcare*¹⁷, in which the Supreme Court had departed from the more restrictive approach of *S.M. Dyechem*¹⁸, reaffirming a consumer-centric standard sensitive to the realities of the Indian market. The principle of equity articulated in *Gujarat Bottling v. Coca Cola*¹⁹ — that injunctive relief is conditional on the absence of inequitable conduct on the part of the applicant — was deployed to underscore the dishonesty inherent in the defendant's simultaneous registration of two domain names.

Fifth, the court turned to the bad-faith analysis under ¶4(b)(iv) of the UDRP²⁰. The cumulative inferences — the chronological gap of two years, the simultaneous registration of two operative addresses, the use of the typo-variant as a mere redirect, the absence of any reasoned explanation by the defendant for the dual registration, and documentary proof of actual diversion of traffic — were, in the court's assessment, sufficient to satisfy the bad-faith threshold. The court rejected the defendant's reliance on *Manish Vij v. Indira Chugh*²¹ on the ground that the website in that case ("kabbadibazaar") had not, on the evidence, attained secondary meaning.

VIII. Critical Analysis

A. Doctrinal Continuity with the Classical Trinity

¹⁵*Rediff Communication Ltd. v. Cyberbooth*, 2000 PTC 209 (Bom).

¹⁶*Acqua Minerals Ltd. v. Pramod Borse*, 2001 PTC 619 (Del); *Dr. Reddy's Laboratories Ltd. v. Manu Kosuri*, 2001 PTC 859 (Del).

¹⁷*Cadila Healthcare Ltd. v. Cadila Pharmaceuticals Ltd.*, (2001) 5 SCC 73.

¹⁸*S.M. Dyechem Ltd. v. Cadbury (India) Ltd.*, (2000) 5 SCC 573, expressly held not to lay down the correct law in *Cadila Healthcare*, supra n. 9.

¹⁹*Gujarat Bottling Co. Ltd. v. Coca Cola Co.*, (1995) 5 SCC 545, ¶47.

²⁰ICANN, *Uniform Domain Name Dispute Resolution Policy* (adopted 26 August 1999), ¶4(b)(iv) (hereinafter "UDRP").

²¹*Manish Vij v. Indira Chugh*, 2002 (24) PTC 561 (Del); *Girnar Food & Beverages Pvt. Ltd. v. Godfrey Phillips India Ltd.*, 2001 PTC 360 (Del). Distinguished by the court at ¶23.

The judgment is best understood as a faithful application of the “classical trinity” of passing off articulated by Lord Oliver in *Reckitt & Colman v. Borden*²²: (i) goodwill or reputation attaching to the plaintiff’s goods or services; (ii) misrepresentation by the defendant leading or likely to lead the public to believe that the goods or services offered by the defendant are those of the plaintiff; and (iii) damage suffered, or likely to be suffered, by reason of the erroneous belief. The court’s factual findings — that the plaintiff had cultivated goodwill through press coverage and consistent use; that the defendant’s domain name was a calculated misspelling causing actual diversion; and that loss flowed from the lost-traffic consequence — map cleanly onto the trinity. To this extent, the judgment is a continuity decision rather than a doctrinally innovative one.

B. The Secondary Meaning Inquiry — A Methodological Soft Spot

The doctrinal vulnerability of the judgment lies in the brevity of its secondary-meaning analysis. The court’s conclusion that “naukri.com” had attained secondary meaning rested on “various clippings and write-ups in support of [the plaintiff’s] claim of popularity, goodwill and reputation”. There was no consumer survey, no quantified evidence of advertising spend, no market-share analysis, and no expert evidence on user perception. While it is well-settled that, at the interlocutory stage, a *prima facie* threshold suffices, the practical reality of Indian commercial litigation — where interim orders frequently endure for years pending final disposal — makes the evidentiary threshold consequential. The contrast with *Erven Warnink*²³, which involved sustained and quantitative evidence of trade reputation in the Advocaat product, and *Office Cleaning Services*²⁴, in which the House of Lords explicitly required substantial proof of distinctive association, is instructive. The judgment therefore exemplifies a recurring tendency in Indian interim trademark adjudication to rely on press coverage as a proxy for consumer perception — a tendency that warrants methodological tightening.

C. The UDRP Importation — Soft Law and Common Law

²²*Reckitt & Colman Products Ltd. v. Borden Inc.*, [1990] RPC 341 (HL) (the “classical trinity”).
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The most innovative aspect of the judgment is its deployment of ¶4(b)(iv) of the UDRP²⁵ as a tool of analysis. The UDRP is, in formal terms, a contractual regime: it binds a domain-name registrant to its registrar and to ICANN, and it furnishes a mechanism of administrative arbitration. It is neither a statute, nor a treaty, nor — in the strict sense — a source of Indian law. The court’s use of the UDRP standard is therefore an exercise in persuasive borrowing rather than the application of binding norm. There is much to be said in defence of this methodology. The UDRP captures, in structured form, a globally-shared understanding of what constitutes abusive domain-name registration; it offers a vocabulary of analysis (intentional attraction, likelihood of confusion as to source, sponsorship, affiliation, endorsement) that is congenial to the passing-off inquiry; and it is informed by an extensive body of WIPO panel decisions. Yet the unselfconscious incorporation of soft-law standards is not without risk. It bypasses the question of democratic legitimacy that ordinarily attends the importation of normative content into domestic law, and it conflates two regimes — administrative panel adjudication and common-law adjudication — whose evidentiary thresholds, remedies, and review architectures differ. A more disciplined approach would have acknowledged the UDRP as informative authority while grounding the bad-faith conclusion firmly in the common-law of passing off.

D. The Generic / Descriptive Distinction in Cyberspace

The court’s observation that the line between a generic and a descriptive term is “very thin” is doctrinally accurate but analytically incomplete. A more rigorous engagement would have addressed whether “naukri” — which describes the very service offered, namely employment — is generic *ab initio* (and therefore incapable of trademark protection regardless of use) or merely descriptive (and therefore protectable upon proof of secondary meaning). The court appears to have folded the inquiry into a single descriptiveness analysis, declining to enforce the genericness threshold that, in trademark theory, operates as an absolute bar. The subsequent decision of the U.S. Supreme Court in *USPTO v. Booking.com*²⁶ — holding that a “generic.com” combination may, on consumer-perception evidence, function as a non-generic

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²⁶*United States Patent & Trademark Office v. Booking.com B.V.*, 591 U.S. 549 (2020).

source identifier — is suggestive of a more sophisticated analytical framework that the Indian court did not have occasion to develop.

E. Initial-Interest Confusion — An Unarticulated Import

The court's reasoning at ¶¶29–30 — that confusion at the moment of access is sufficient to ground passing off, even where the user, on landing, may realise that the wrong website has been reached — is, in substance, an application of the U.S. doctrine of initial-interest confusion articulated in *Brookfield Communications v. West Coast Entertainment*²⁷. The doctrine has been the subject of vigorous critique in U.S. scholarship, on the ground that it dispenses with the requirement of confusion at the point of sale and thereby expands the scope of trademark liability beyond classical contours. The Indian court's implicit adoption of this doctrine, without articulation or defence, is therefore consequential. It deserved acknowledgment as such, particularly given that subsequent Indian decisions on initial-interest confusion (in the metatag and AdWords contexts) have proceeded without a settled doctrinal anchor.

F. Comparative Coherence

Viewed comparatively, the holding aligns with the dominant transnational consensus on typosquatting. WIPO panel decisions under the UDRP have, with near-uniformity, treated typosqu岸ant registration coupled with redirection to a competing service as paradigmatic bad faith. The U.K. position, established in *Marks & Spencer*²⁸, and the U.S. position, codified in the Anticybersquatting Consumer Protection Act, 1999, similarly converge on the proposition that mis-spellings used to harvest erroneously-typed traffic are actionable. The Indian holding therefore sits comfortably within the comparative landscape.

G. Policy Implications

The policy choices implicit in the judgment are not free of tension. On the one hand, the holding protects substantial investment in the cultivation of online goodwill and disincentivises

²⁷*Brookfield Communications Inc. v. West Coast Entertainment Corp.*, 174 F.3d 1036 (9th Cir. 1999) (articulating initial-interest confusion in the internet context).

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the parasitic conduct that typosquatting represents. It reduces consumer search costs, channels traffic to its intended destination, and preserves the integrity of online identifiers. On the other, the willingness to recognise secondary meaning in descriptive vernacular terms on a relatively thin evidentiary record raises the spectre of competitive foreclosure: subsequent market entrants who wish to use ordinary Hindi descriptors of their service may find themselves enjoined from doing so. This concern is sharpened by the multilingual character of the Indian internet, where vernacular descriptive terms often constitute the most natural identifiers for indigenous services. A doctrinal posture more sensitive to the genericness threshold would mitigate the risk of de facto monopolies over descriptive language.

H. Practical Impact

The case provided a practical template for typosquatting injunctions that has since been routinely deployed in the Delhi and Bombay High Courts. Its reasoning was endorsed, with elevation in authority, by the Supreme Court in *Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd.*²⁹, which placed the proposition that domain names attract trademark-equivalent protection on the most authoritative footing. Its analytical apparatus has also influenced the architecture of the .IN Domain Name Dispute Resolution Policy³⁰ formulated by the National Internet Exchange of India, which closely tracks UDRP terminology.

IX. Interface with Existing Law

At the time the judgment was delivered, the applicable statutory regime was the Trade and Merchandise Marks Act, 1958. Section 27 of that Act preserved the common-law action of passing off notwithstanding non-registration³¹, but the statute did not extend its definition of trademark to services. The court was therefore correct in proceeding squarely on the common-law footing. The Trade Marks Act, 1999, by contrast, expressly incorporates services within the trademark definition and, through Section 27(2), retains the saving for passing-off actions³².

²⁹*Satyam Infoway Ltd. v. Sifynet Solutions Pvt. Ltd.*, (2004) 6 SCC 145 (the Supreme Court endorsing domain-name passing-off jurisprudence developed at the High Court level).

³⁰NIXI, *.IN Domain Name Dispute Resolution Policy* (INDRP) (modelled on the UDRP).

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Although enacted prior to the judgment, the 1999 Act had not yet been notified; the court was therefore not strictly required to engage with it. Nonetheless, an obiter acknowledgment of the impending statutory transition would have lent the reasoning prospective relevance.

The Information Technology Act, 2000³³, though by then in force, was conspicuously silent on the question of domain-name disputes. The court did not invoke it, and it remains the case that India lacks a dedicated statutory regime for cybersquatting; the field continues to be governed by general trademark doctrine and the .IN Dispute Resolution Policy³⁴. The judgment thus operates in a regulatory interstice where common law has had to do the work that, in other jurisdictions, has been performed by purpose-built statutes such as the U.S. Anticybersquatting Consumer Protection Act, 1999.

X. Implications and Future Impact

The doctrinal influence of the case has been substantial. The Supreme Court's eventual endorsement in *Satyam Infoway*³⁵ consolidated the position that domain names are protectable as trademarks, and the persuasive deployment of the UDRP standard in *Info Edge* has been replicated in subsequent High Court decisions across the country. The case has also informed the architecture of the .IN Dispute Resolution Policy and the procedural innovations subsequently developed by the Delhi High Court in *Banyan Tree Holding v. A. Murali Krishna Reddy*³⁶, in which the "purposeful availment" test was articulated for the assertion of personal jurisdiction in internet trademark disputes.

Looking forward, the analytical framework developed in the case will require recalibration to address emerging challenges. Three are particularly salient. First, the question of artificial-intelligence-generated domain names: where a domain is algorithmically minted rather than humanly chosen, the bad-faith inquiry — which has, since this judgment, depended heavily

³³The Information Technology Act, 2000 (which is silent on domain-name disputes).

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³⁶*Banyan Tree Holding (P) Ltd. v. A. Murali Krishna Reddy*, 2010 (42) PTC 361 (Del) (FB) (jurisdictional "purposeful availment" test).

on inferences of intentionality — will require reformulation. Second, the rise of decentralised naming systems built on blockchain (such as the Ethereum Name Service or Handshake) raises the prospect of trademark conflicts in registries that are not subject to ICANN governance, and therefore not amenable to UDRP-style resolution. Third, the increasing prevalence of internationalised domain names (IDNs), which may be visually confusable with Latin-script identifiers (the so-called homograph attack), will press further on the deceptive-similarity test that this judgment helped to crystallise. The case, although a creature of the early internet, is therefore best read not as a settled monument but as the opening move in an unfolding doctrinal conversation.

XI. Conclusion

Info Edge (India) Pvt. Ltd. v. Shailesh Gupta is a foundational decision in Indian cyber-IP jurisprudence. Its principal holdings — that domain names attract trademark-equivalent protection, that descriptive vernacular terms are capable of acquiring secondary meaning, that typo-variant registration coupled with redirection constitutes passing off, and that the UDRP bad-faith framework is a legitimate aid to common-law analysis — have proved durable and have been reinforced by subsequent authority at all levels of the judicial hierarchy. The judgment is doctrinally defensible, faithful to the classical trinity of passing off, and policy-coherent in its protection of investment in online goodwill.

Yet a critical reading must also acknowledge the methodological limitations that the judgment exhibits: the relatively thin evidentiary basis for the secondary-meaning finding, the unselfconscious importation of soft-law standards, and the implicit adoption of the contested doctrine of initial-interest confusion. None of these is fatal; each is symptomatic of the broader challenge of adjudicating internet disputes in the absence of dedicated statutory infrastructure. Two decades after its delivery, the case remains both a precedent to be followed and an analytical vocabulary to be refined. Its enduring contribution is the demonstration that the common law of passing off, suitably extended, is supple enough to govern the cyberspace economy — provided that the inquiry is conducted with continued attentiveness to the evidentiary and doctrinal disciplines that the common law itself demands.

