выполняя свою новую роль, социальное государство может успешно реагировать на растущие социальные вызовы современности.

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DOMAIN NAMES – NEW PROBLEM FOR THE LAWMAKER

С.С. Болотин,
магистрант ИГиП ТюмГУ
seryozhka1777@aol.com
Научный руководитель:
Е.Х. Речапова,
старшийпреподаватель кафедры
иностранных языков и межкультурной
профессиональной коммуникации
экономико-правовыхнаправленийИГиПТюмГУ

Summary: The article deals with the issue of avoiding conflicts over domain names. Having analyzed a number of legal instruments and some viewpoints of the specialists in the electronic transactions area, the author suggests his own opinion on the ways to improve the system of domain names registration.

Key words: domain name, doing business online, trademarks, cybersquatting, electronic commercial transactions.

In the new information technology era, companies widely use the Internet to safe their position in the market place and to build up their business images. Registering a domain name is a necessary step in a business society.

For businesses to communicate effectively on the Internet, it is essential that they have a unique ‘‘address’’ that is easily recognizable to customers.

Technically, a domain name is the conversion of a numerical IP address which points the location of an individual computer on the Internet into specific words making it easier to remember.

Domain names guide consumers to their desired locations on the Internet. Companies, doing business online, have a strong desire to acquire domain names that are easy to remember and that relate to their products, tradenames or trademarks. Mostly, domain names are similar to the trademarks.

Sometimes when a trademark owner wants to register his domain name it happens to be used by the competitors or by other individuals. It ends up that the individuals might try to sell the domain names back to the trademarks owners. On the other hand, the competitors using this domain name would intend to attract potential customers to their own products.

And in the Internet market, there have been a number of attempts to gain commercial benefits in domain names. As it has already been mentioned there are mainly two ways: 1. Cybersquatting and 2. Misleading domain names with bad faith.

In response to the domain names disputes, at the international level, the Internet Corporation for Assigned Names and Numbers (ICANN) was formed in 1998 to take over responsibility for the governance of the Domain Name System (DNS). With advice from the World Intellectual Property Organization (WIPO), ICANN developed a Uniform Domain Name Dispute Resolution Policy. This policy, finally adopted in October 1999, provides a mandatory administrative procedure for the resolution of disputes between trademark owners and domain name holders in cases where the domain name has been registered and is being used in ‘‘bad faith’’ (Clark, 2005). National approaches have kept up with the international development. In 1999, the US Congress passed legislation designed to curb cybersquatters, such as the Anticybersquatting Consumer Protection Act (ACPA) went into effect on 29 November 1999, amending Section 43 of the Lanham/Trademark Act. On September 30, 2002, China Internet Network Information Center (CNNIC) approved and implemented the CNNIC Domain Name Dispute Resolution Policy (CNDRP). In September 2004, Nominet.UK released the second version of Dispute Resolution Service Policy (DRS Policy), which applies to all disputes filed on or after 25 October 2004. It could be regarded as an appendix to the Trade Marks Act 1994 governing domain names.

Discussing these problems F.F. Wang suggested his own solutions: “Instead of simply attempting to force the ‘‘square peg’’ of trademark law into the ‘‘round hole’’ known as the ‘‘DNS”, perhaps a more efficient way to solve the problem is to reshape the system. If the DNS can be broadened while maintaining its user-friendliness, then the grip of cybersquatters may be loosened and the conflict between multiple legitimate trademark owners may be solved. One of the most discussed transformations of the DNS is the addition of new generic top level domains, such as ‘‘.arts’’, ‘‘.shop’’, ‘‘.store’’, ‘‘.news’’, ‘‘.sex’’, ‘‘.rec’’ and ‘‘.firm’’. Some argue that the addition of new gTLDs will help relieve perceived scarcities in existing name spaces and will provide consumers with a diversity of choices and options. Also, new gTLDs are technically easy to create. Those opposed to the idea argue that this will create consumer confusion and increase the opportunities for cybersquatting. In my perspective, if the domain names regulations or rules could be developed to keep pace with these new technology changes and protect the rights between domain names registrars and trademarks owners, the increase of gTLDs would seem to open opportunities to trademark owners who desire an online presence more than it will expose them to the risk of cybersquatting. For example, the new ‘‘.eu’’ top level. In order to prevent new gTLDs from turning into cybersquatting heavens, the preventive IP protection mechanisms are needed. They are supposed to be effective and in a way that minimizes the potential for abuse” (Report 5). Sunrise mechanisms are designed to offer a means to protect the interests of IP owners. That is, prior to commencing .eu registration on a first-come-first -served basis and in accordance with EU Regulation 733/2002 and EC Regulation 874/2004, there will be a 4- month sunrise period to allow owners of ‘‘prior rights’’ (e.g. trademark holders, public bodies) to register their names as domain names before other eligible parties. Sunrise complies with the geographical requirements applicable to all .eu domain name holders, as set out in EU regulation 733/2002 (Article 4(2)(b) of EU Reg. 733/2002), and protects all owners of rights in identifiers. All owners of such rights would compete during sunrise on an equal footing. Sunrise applicants will be also dealt with a validation process, that is, the domain name for sunrise applicant will become usable only after a 40-day period to allow for any errors or appeals.

A second possible way to restructure the DNS would be to use directories or gateways. Under this system, multiple individuals or organizations could coexist under the same domain name. When someone types in the domain name, they would find a ‘‘gateway,’’ or list of websites under that name accompanied by a description of each, giving the person the choice of which site to visit. While this system may slightly weaken an organization’s ability to create a distinctive online identity, it would also prevent a cybersquatter from tying up the domain name simply by registering it.

Another way to avoid trademark conflicts over domain names would be to create a system of random numbers that would remove trademarks from the domain name altogether. This system would all but eliminate the user-friendliness of the current system to which people have firmly grown accustomed. It seems like an unlikely alternative way, since it will make consumers more confused with vanity names and it will also cause new difficulties in domain name legislation.

Among the above options, the addition of new gTLDs and /or gateways might be possible to allow more organization and trademark owners to join the online community and offer consumers more choices, while weakening the cybersquatter’s ability to stranglehold domain name registrations. But at the same time, it needs some further intensive special legislation to support its operation” [1].

We assume that the best way to resolve these problems is to complicate the procedure of registering the domain names. E.g. when someone sends a request to the DNS (domain name system) in order to register a new domain name, the DNS registrant must check the firm with equal name at first. Then if there is no company, he registers it. If there is a company, then applicant must provide the agreement of that company to register this domain name on another individual. And then if there is no agreement, registrant must refuse the registration. Otherwise, if the agreement is provided, there are no obstacles to reject the request and the domain name should be registered.

To sum up everything mentioned above, we can assume that the system of domain names is imperfect and requires completion and implementation of amendments. However, currently national legislations worldwide are focused on the problem of unfaithful capture of domain names.

In our opinion, fighting with occurred violations is not the most effective way of resolving the problem of fairness in the domain name relations. Thus we should concentrate on preventing violations better than trying to resolve their consequences. If all participants involved in these relations behave faithfully we can avoid numerous problems.

In conclusion, with the booming exploration of cyberspace conducting, domain name has been one of the most popular issues among the electronic commercial transactions. The legal issues on domain name have been the subjects of intensive discussions throughout the world. This paper illustrated that it is essential to reshape the Domain Name System (DNS) or to establish the new management mechanism that accommodates the growing volume of traffic on the Internet. Meanwhile, in order to keep the balance of the rights between the domain names registers and trademark owners, the rules governing domain names should be improved or amended over the traditional laws. According to the analysis before, it is clear that the purpose of the trademark system is to recognize and protect rights, while the purpose of the DNS is to award an address for operation in a telecommunications network. The trademarks system aims to prevent legal confusion, while the DNS aims to prevent ‘‘communication’’ confusion. Since the systems have different purposes and methods of implementation, conflict is to be expected. In our perspective, since the domain name issue is a cross-bordered topic, an international agreement on domain name policies may help to integrate the worldwide internet marketplace. The policies are supposed to solve the uncertainty about how traditional laws would apply to the new frontier of the Internet and what are both trademarks owners and domain name registrants’ legal rights. It is suggested that, based on the national laws, the agreement should be established to clarify trademark abandonment in the context of domain name by redefining the limits of ‘‘failure to police a mark.’’ Furthermore, it should be formed to clarify the desired result in lawsuits involving two or more parties with legitimate ownership of the same trademark. Finally, with regards to the nature of trademarks that can be confined by region, goods and services, several parties may own the same mark. The international agreement should clarify whether there should be some sort of shared system or whether it is merely a first-come, first-served basis amongst the trademark owners [1].

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