

ABSTRACT

When the Internet was in its infancy, domain names were created to serve as useful mnemonic means of locating specific computers on the Internet. With the globalization and commercialization of the Internet, domain names have taken on a new significance as business identifiers. Domain names are now highly visible in "real space" as well- showing up on television commercials, billboards, magazine ads, and even the sides of buses. In these new guises, they sometimes conflict with trademarks and other traditional business identifiers. Two factors exacerbate this conflict. First, domain names are global and must be unique - a particular string of letters can link to only one site - while trademarks may overlap in different industries or different geographical locations. Second, it is common practice for many Internet users to guess at domain names. Thus domain names based on intuition become valuable corporate assets. The rapid growth of the Internet and the use of web sites has generated a rapidly growing set of disputes between firms asserting traditional trademark entitlements and the registrants of identical or confusingly similar domain names. Typically, the trademark owner demands that the domain-name registrant cease using the name and/or relinquish it to the trademark owner. Disputes of this sort have been progressing through the litigation system since 1994. While much of the case law is fact specific, at least one general conclusion is possible. If a court finds that a domain name registrant was acting in bad faith, the court will find a means of preventing the domain name holder from continuing the use of the domain name, whether traditional trademark analysis seems to apply or needs to be stretched. This is true of courts around the world. In the absence of a finding of bad faith, the response of a court is much less predictable. The potential for conflicts inherent in the two different systems of registration has been exploited by persons who have made it a practice to register, as domain names for themselves, the trademarks of other persons or enterprises ("cybersquatting"). There is no doubt that there is currently a great deal of confusion surrounding the issue of trademarks and domain name. In this confusion there are a number of fundamental issues that have to be resolved, "which law applies?", "where did the injury occur?".

Keywords : Domain Name System, Trademarks, Internet