

Cybersquatters – Buying and Selling Domain Names

Cybersquatting is the act of registering domain names, especially those connected with recognizable trademarks, with the intent to resell the domain name at an exaggerated price. Most cybersquatters take advantage of the domain registration companies' first come/first serve by submitting a list of the most popular words and names all at once. A cybersquatter can literally sit on a domain name for years, paying their fees from the profits of individual domain name resales. The only remedy for the actual trademark owner is to sue the cybersquatter, relinquish the domain name or pay whatever price the current domain name owner demands.

Buying and selling domain names is perfectly legal, until the cybersquatter infringes on a third party's trademark or begins using the name in "bad faith." Most domain investors operate within legally-acceptable territory; however, in some cases the domain owner is not aware of the legal constraints, or chooses to ignore them.

Domain Name Disputes

Possession of a trademark for a given term does not automatically mean a legitimate claim exists to a domain name. Possession is only one of three requirements needed to win ownership of a domain name. One must also prove the domain registrant has no legitimate interests in the domain and that they evidenced bad faith in registering the domain name, according to the Uniform Dispute Resolution Policy of ICANN's, the policy governing ownership of disputes for generic TRLDs (.com, .net, .org, .biz, and .info) and the U.S. Consumer Protection Act 15 U.S.C. §1125.

Under the UDRP, the following is accepted as a valid reason to file complaint.

1. domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
2. you have no rights or legitimate interests in respect of the domain name; and
3. your domain name has been registered and is being used in bad faith.

Under the UDRP, the following shall be evidence of the registration and use of a name in bad faith:

1. circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
2. you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
3. you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
4. by using the domain name, you have intentionally attempted to attract, for commercial gain, internet users to your web site or other on-line locations, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location.

Before making a complaint make sure you consult a qualified trademark attorney with experience in domain names.