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DOMAIN NAME DISPUTES IN LITHUANIAN COURTS: SILENT STEPS TOWARDS FAIRNESS ON THE NET

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Abstract. *National <.lt> domain name disputes in Lithuania are the ones which courts must decide without having any specific legal regulation. In such cases courts shall apply analogy of law, customs and general principals of law. Last but not least, the courts must address international legal practice as regards the domain name disputes, i.e. take into account the famous ICANN Uniform Domain Name Dispute Resolution Policy adopted in 1999 and mostly applied by the panels of WIPO Arbitration and Mediation Centre while dealing with disputes on generic top level domain names <.com>, <.net>, <.org>, also analyse the practice of ADR cases of Czech Arbitration Court which has the jurisdiction over <.eu> domain name disputes.*

This article deals with the case-law of Lithuanian courts in <.lt> domain name disputes and analysis the trends of Lithuanian internet law as regards the protection of the owners of intellectual property in Lithuania. The special attention is given to the phenomenon of cybersquatting in Lithuania and the lack of effective means to fight such unfair practices on the net.

Keywords: *domain name disputes, cybersquatting, ICANN UDRP, internet law.*

Introduction

Lithuania is still among those countries which choose not to adopt any laws in respect of domain names and their disputes. The number of domain names with <.lt> ending (Lithuanian country code.LT) has almost reached 135.000 in September, 2011[1]. In the meantime, according to WIPO statistics more than 25 million trademarks were registered globally in 2008. One can clearly imagine the potential possibility of the clash between trademarks (traditional business identifiers) and so called "cybermarks," usually referred as domain names. The rapid growth of Internet users in Lithuania recently brought this clash to the Lithuanian courts. This is why it is important to overview the first cases of domain name disputes in Lithuania, identify the precedents and conclude the possible trends of Lithuanian domain name law in the future.

Actually, there has been no finally decided cases concerning the infringement of domain names in the Lithuanian courts until 2006, but since then—the number is growing steadily. So far, there have been more than 35 cases regarding domain names.[2]

The aim of this article is to overview the most remarkable Lithuanian and worldwide cases regarding domain names infringement matters, as well as to highlight the trends of future legislative practice regarding domain names protection in Lithuania.

The object of this research is targeted at Lithuanian judicial practice as well as examples of other countries' cases. Also, to reveal the tendencies of further development of domain names protection, it is necessary to identify the legal acts and statutes which are being applied while Lithuania does not have its special legal act that regulates the use of domain names.

There is no one single categorization which is used to group the ways of domain names violation. To express the various aspects of such infringements, the author relies on a few theories of domain names violation, supporting ideas with legal practice analysis.

Researchers of intellectual property law have presented some short articles on the said issues[3], however, they were mostly in Lithuanian language and did not scoped on the exhaustive and most recent case-law of Lithuanian courts.

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1 For current statistics see .LT domeno registras [interactive]. [accessed 15-07-2011]. <http://www.domreg.lt/public?pg=CFF17D>.

2 Seminar on domain names. The presentation of Daiva Tamulionienė, Kaunas University of Technology Information Technology Development Institute. 15th of February, 2011.

3 Ivanauskienė, E.; Zaleskis, J. Challenging infringing <.lt> domain names: remedies for rights holders, published March 08 2010 [interactive]. [accessed 15-07-2011]. <http://www.internationallawoffice.com/newsletters/detail.aspx?g=5d92ab91-b39b-4d63-b883-6548251ed061>; Bruzgulytė, V. Domeno vardo apsauga: ką turi žinoti įmonės arba prekių ženklo savininkas? (nuomonė) [The Protection of Domain Name: what should Companies or the Owner of the Trademarks know? (opinion)], published 18-11-2010 [interactive]. [accessed 15-07-2011]. <http://www.diena.lt/naujienos/mokslas-ir-it/domeno-vardo-apsauga-ka-turi-zinoti-imones-arba-prekiu-zenklo-savininkas-nuomone-311952>; Ramuckis, L. Alternatyvūs ginčų dėl domeno vardų sprendimo būdai ir ko trūksta Lietuvai [Alternative Resolution of the Disputes concerning Domain Names and what do Lithuania Needs], published 09-09-2010 [interactive]. [accessed 15-07-2011]. <http://vz.lt/blog/2010/9/9/alternatyv%C5%ABs_gin%C4%8D%C5%B3_d%C4%97l_domeno_vard%C5%B3_sprendimo_b%C5%ABdai_ir_ko_tr%C5%ABksta_lietuvai>; Rudzinskas, A. Intelektinė

The author presents his research based on the wide spread methods of research: historical, logical analytical, systematic, comparative and statistical.

1. Courts Apply Company Name and Trademark Regulation Analogy in Domain Name Cases

The analysis of certain provisions of Lithuanian law suggests that the court is able to resolve the dispute on the basis of interpreted articles of the Civil Code, Law on Trademarks, as well as certain provisions of the Law on Competition and the Law on Advertising.[4] In the hereinafter case *UAB "Baldų centras" v. UAB "Neiseris"* on domain name <balducentras.lt>[5] the Supreme Court of Lithuania emphasized that having regard to the fact that there is no law regulating the legal protection against unauthorized and fraudulent use of a legal person's name as a domain name, the court uses the analogy of law.[6] Vilnius Regional Court noted in the latter case that the EU Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the <.eu> Top Level Domain may be taken into account as the one which sets basic principles that deals with the fight against cybersquatting. Also, Vilnius Regional Court in the case *UAB "Pieno žvaigždės" v. E. K.* on *<pienožvaigždės.lt>* noted that in Lithuanian legal system there is a situation when there happens to be no legal regulation of domain names, i.e. there are no direct legal rules that define domain name's (such like *<domenas.lt>*) legal status as well as there are no rules that regulate the rights to the domain name, possible violations, disputes over domain names, types, and most importantly—legal protection against unauthorized use of domain names and possible means of protection. The main acts which could be used indirectly protecting against unauthorized use of domain names are considered to be the Civil Code, the Law on Competition and the Law on Trademarks.[7]

Article 2.20 of the Lithuanian Civil Code governs the natural person's right to have a name while Article 2.21 grants him the right to bring a claim in court requesting for the termination of the infringement of his right to a name when another person illegally acts on his behalf, or in any other way appropriates a name of another person, or inhibits its use. For example, the rights may be used by famous painters, writers, sportsmen, politicians as well as other public figures against the registration of domain names containing their personal names by other persons.

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nuosavybė ir interneto adresai - praktinės problemos sprendžiant šiuos ginčus teisme [Intelectual Property and Internet Adresses – Practical Problems solving such Disputes in the Court], published 23-11-2010 [interactive]. [accessed 15-07-2011]. <www.vpb.gov.lt/docs/20101123_5.ppt>, *et al*.

4 Polish author J. Antoniuk is of a similar opinion in the context of the Polish law, as presented in his recent study. See Antoniuk, J. *Ochrona znaków towarowych w Internecie*. Wydawnictwo Prawnicze LexisNexis, 2006.

5 In English that might be <furniturecenter.lt>.

6 Lithuanian Supreme Court's Civil Division in June 22, 2009, Ruling in a civil case No. 3K-3-272/2009.

7 Vilnius Regional Court, Civil Division in October 1, 2008, Decision in a civil case No. 2-1061-623/2008.

Legal persons have been granted corresponding rights to their names (Article 2.42 (1) of the Civil Code):

> *It shall be prohibited to gain rights and assume obligations by using other legal person's business name as a cover or to use other legal person's business name without the latter's consent*.

The legal person has the right to apply to the court and request the court to oblige another person to discontinue the infringement of his name. Moreover, Article 2.42 (2) stipulates that the legal person has the right to request the person to return everything he has acquired by using other person's name as a cover or using the said name without the latter's consent. It follows that it should be possible to apply to the court and request a re-registration of a domain name.

If a cybersquatter has registered a domain name containing a trademark illegitimately, a trademark owner may use remedies provided in Articles 38 and 50 of the Law on Trademarks of the Republic of Lithuania; they stipulate that the proprietor of a registered mark shall have an exclusive right to prevent all third persons not having his consent from using in the course of trade **any sign**[8]:

1) which is identical with the registered mark in relation to goods and/or services which are identical with those for which the mark is registered;

2) where, because of its identity with the registered mark covering identical or similar goods and/or services, there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association between the sign and the mark;

3) which is identical with or similar to the registered mark in relation to goods and/or services which are not similar to those for which the mark is registered, where the latter has a reputation in the Republic of Lithuania and where use of that sign without due cause takes unfair advantage of or is detrimental to, the distinctive character or the repute of the mark.

According to Articles 16 and 17 of the Law on Competition actions against cybersquatters can be taken on the basis of unfair competition. Under Article 16, undertakings shall be prohibited from performing any acts contrary to honest business practices if such acts may be detrimental to competition interests of another undertaking, including:

1) unauthorised use of a mark (as it has already mentioned, a domain name may be considered as such) identical or similar to the name, registered or unregistered well known trade mark or other reference having a distinguishing feature of another undertaking, if this causes or may cause confusion with that undertaking or its activity or where it is sought to take undue advantage of the reputation of that undertaking (its mark or reference) or where this may cause injury to the reputation (its mark or reference) of that undertaking or reduction of the distinguishing feature of the mark or reference applied by that undertaking;

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8 A domain name should beyond doubt be considered a mark in the context of the law.

2) misleading of undertakings by providing them with incorrect or unjustified information about quantity, quality, components, properties of usage, place and means of manufacturing, price of its goods or goods of another undertaking, or concealing risks associated with the consumption, processing or other possible usage of those goods;

3) using, transferring, disclosing the information representing a commercial secret of another undertaking without its consent, also obtaining such information from the persons having no right to transfer it, in order to compete, seeking benefit for oneself or inflicting damage on that undertaking;

4) proposing that the employees of the competing undertaking terminate their employment contracts or refrain from performing all or part of their work-related duties, with a view to self-benefit or seeking to inflict damage on the competing undertaking;

5) simulating the product or product packaging of another undertaking by copying the external shape or packaging colour or other distinguishing feature of the product, if this can be misleading in determining the identity of the product or if the acts are intended to obtain the benefits by taking undue advantage of the reputation of another undertaking;

6) providing incorrect or unsubstantiated information about its own or another undertaking's managing personnel, skills of the employees, legal, financial or other position if damage may thereby be inflicted on another undertaking;

7) advertising claims which are considered misleading under the laws of the Republic of Lithuania.

Under Article 17 of the Law on Competition, with the aim of protecting his infringed rights, the proprietor of the mark shall be entitled to apply to court which may make a decision relating to:

1) injunction to terminate all infringing actions;

2) reimbursement of losses or damage;

3) obligation to make one or several announcements of specific contents and form which may refute the incorrect information provided earlier or explanations related to identification of the undertaking or its goods;

4) seizure and, where it is impossible to remove infringements, destruction of packaging, goods, devices or equipment directly related to the unfair competition actions.

The infringing registration and use of domain names could also be considered as misleading advertising in Lithuania. Article 2 (4) of the Law on Advertising of the Republic of Lithuania[9] provides that misleading advertising means advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to harm another person's capabilities in competition.

When judging whether or not advertising is misleading, account shall be given to the advertiser or any other person, activity, registered office, company name, trademark or service mark, copyrights and related rights, patents and licenses (Article 5 (3) (1)).

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9 Law on Advertising of the Republic of Lithuania. *Official Gazette*. 2000, No. 64-1937.

Administrative liability applies for the misleading advertising. Thereby remedies provided to trademark owners and contentions arising out of the use of domain names, could be possibly governed in the Law on Advertising.

Judicial practice shows that analogy of law is evidently used in domain name disputes and the legal rules stated above are clearly interpreted in favour of the company name and trademark owners.

2. Lithuania and Cybersquatting: the Combat Has just Begun

2.1. Cybersquatting—Just Another Business Practice?

The fact that cybersquatting was and still is widely considered a usual commercial activity in the public follows from the article about domain names written by the observer of the news website "Penki kontinentai" maintained by one of the best known Lithuanian ISPs.[10] T. Cimakevičius, the author of the article stated that "as soon as the domain names and the websites came into existence, the groups of people appeared which have shown an interest in unused addresses and their endings. That is how the field of e-commerce has developed, known as cybersquatting in English, which can be translated as cyberspace squatting, the participants of which are engaged in leasing of addresses and domain endings." Unfortunately, the author remained silent about the fact that in the entire civilized world such persons are considered bad faith domain name grabbers which are subjected to civil liability (in some states – even criminal liability) and the domain names registered by them are returned to their legitimate owners.

The abovementioned author may reflect the public opinion concerning cybersquatting matter. Therefore, the arguments of the defendant in the case *UAB "Pieno žvaigždės" v. E. K.* should be taken into account.[11] In this classical cybersquatting case the guilty party, who established a malicious domain name that was identical to the well known trademark "Pieno žvaigždės"[12], pointed out that trading of domain names is business, in which a lot of people all over the world is engaged in, and that he, the defendant, has been involved into this kind of trading for some time.

This straightforward argument, presented to the court as a statement of defence, reveals widespread public opinion on trading and the serious lack of respect to the intellectual property rights in general.

According to the ICANN UDRP, cybersquatting is an act, when a domain name is usually registered in bad faith where the applicant:

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10 Cimakevičius, T. Raskite savo vieta Internete (I) [Find your Place on Internet. (I)]. Penki kontinentai Online, 2002.04.15–2002.04.25 [interactive]. [accessed 13-06-2003]. <http://online.5ci.lt/Article.asp?Lang=L&ArticleID=3947>; Cimakevičius, T. Raskite savo vieta Internete (II) [Find your Place on Internet. (II)]. Penki kontinentai Online, 2002.04.24–2002.05.03 [interactive]. [accessed 13-06-2003]. <http://online.5ci.lt/Article.asp?Lang=L&ArticleID=3976>.

11 Vilnius Regional Court, Civil Division in 2008 October. 1, decision in a civilcase no. 2-1061-623/2008.

12 In English that would be <milkstars.lt>.

1. *intends to sell the domain name.* In this case the applicant is expecting to use a domain name in either of the following ways:
   a) to sell a domain name to the trademark owner;
   b) to sell it to a third person expecting to benefit from the domain name;
   c) to hold up a domain name and prevent the trademark owner from using it;[13]
2. *intends to mislead users* or any part of them by taking it over and deriving commercial benefit from that;
3. *intends to damage the reputation* of a person having the right to the domain name.

The background which revealed the said actions as the bad faith behaviour was the short in time but numerous in contents case-law of the United States courts in the period of 1996 to 1999. The landmark case of *Panavision v. Toeppen* has become a precedent in 1996. Summary of the case: a well-known US company *Panavision* has applied for the registration of the domain name <panavision.com> in 1995. However, such domain name has already been registered by Mr. D. Toeppen. The defendant simply published some pictures of Pana City (Illinois) in the website under the disputed domain name <panavision.com>. The plaintiff's lawyer has produced a formal letter to the defendant notifying that *Panavision* has registered an identical trademark PANAVISION and asking for the termination of the use of this trademark and the respective domain name. Meanwhile the defendant offered to transfer the domain name to Panavision for 13 000 USD. The defendant also promised that when the requested amount is received, he will refrain from registering any other "Internet addresses that could possibly be owned by *Panavision.*" After *Panavision* has rejected the offers of D. Toeppen, he has registered another domain name made of the plaintiff's trademark <panaflex.com> and the respective website contained merely a word "Hello." The plaintiff has brought a claim in court based on the Federal Trademark Dilution Act. The claim was satisfied in the first instance. Nevertheless, D. Toeppen appealed against the decision claiming that there was no dilution as he has not used the trademark PANAVISION for any commercial purpose. Such defendant's approach was based on the statement that a domain name is merely an address directing to the website; however, that does not mean that the website contents should correspond to the meaning of the domain name. Nevertheless, the court was not persuaded by this argument. It stressed that the D. Toeppen's business in essence was the registration of domain names and offering them for sale to their legitimate owners. The defendant has inhibited the effective operation of *Panavision* on the Internet and sought for elimination of such obstacles for remuneration only. Such use was considered as "commercial use" by the court. The sole fact that the defendant did not label any specific goods with the plaintiff's trademark does not mean that the mark was not used for commercial purposes. An attempt to sell the domain name itself was considered as commercial use. On dilution of the domain name, the court has stressed that under the federal law, the "dilution" means the "lessening of the capacity of a famous mark to identify and distinguish goods or services, regardless of

13 Kelleher, D.; Murray, K. *IT Law in the European Union*. London: Sweet & Maxwell, 1999, p. 53.

the presence or absence of competition between the owner of the famous mark and other parties, or likelihood of confusion, mistake, or deception." The court has decided that by doing so the defendant has diminished the capacity of the *Panavision* marks to identify and distinguish *Panavision's* goods and services on the Internet. The defendant tried to prove that since the plaintiff had many other options to register other domain names and use the related websites for advertising of his trademarks none of his possibilities were restricted. However, the court has rejected D. Toeppen's idea on principle, that a domain name is a mere address on the Internet. According to the court, identification of the person (undertaking) owning that website is one of the major functions of the domain name. The court has also stressed that the person wondering about the specific domain name of the company would guess that it is the one that corresponds to the name of the company. In addition, the court was of the opinion that after typing the domain name <panavision.com> potential clients of *Panavision* would be disappointed by the need of the assistance of search engines and having to waste their time searching for the actual *Panavision* website. Thereby the value of *Panavision* trademark would diminish. It should be stressed that if the domain name <panavision.com> is transferred to the defendant, *Panavision's* name and reputation would depend on the defendant's will what is contrary to the trademark's nature. As a result, the claim was satisfied completely and the defendant's arguments were rejected.[14]

However, the cybersquatting as the bad faith practice on the net did not disappear regardless of the *Panavision* precedent. Conversely, it has become even more widespread in the US and other countries. The most important reason for this growth of bad faith is the possibility to take advantage of the use of software for automatically registering expired domain names. Such practices include domain name "parking" involving the registration of large numbers of domain names which are "parked" and used for "click-through" advertising, and domain name "tasting" (or "domain kitting"), involving the registration of large numbers of domain names by professional speculators during five day grace period granted by most registries during which refunds will be granted.[15] Lithuania is currently experiencing the peak of this abnormal behaviour but the government doesn't make and don't even plan to make any steps to combat it. *Vice versa*, the US authorities reacted radically towards cybersquatting more than a decade ago. On 29 November 1999, the US President has signed the Anti-cybersquatting Consumer Protection Act[16] (ACPA) and established that a person shall be liable in a civil action by the owner of a mark, including a personal name which is protected as a mark under this section, if, without regard to the goods or services of the parties, that person has a bad faith intent to profit from that mark, including a personal name which is protected as a mark under this section; and registers, traffics in, or uses a domain name

14 *Panavision v. Toeppen* [interactive]. [accessed 19-09-2011] <www.techlawjournal.com/courts/avery/19980417.htm>.

15 Lindsay, D. *International Domain Name Law/ICANN and the UDRP*. Oxford and Portland, Oregon: Hart Publishing, 2007, p. viii.

16 American Intellectual Property Law Association [interactive]. [accessed 24-08-2011]. <www.aipla.org/html/S.1948IS.html>.

that in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that mark; in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to or dilutive of that mark; or is a trademark, word, or name protected by reason of federal law. ACPA enabled intellectual property owners to bring the actions of two types: 1) *in personam* (against a specific person, a defendant) and 2) *in rem* (for the object of the dispute, a thing under dispute). Action *in personam* was directed against the bad faith applicants of domain names and prevents the illegitimate use of trademarks as domain names. Following the lengthy debates in the United States Senate Committee on the Judiciary, a possibility of the special *in rem* action was included in the ACPA too. It was particularly supported by the *Porsche* car manufacturers which had difficulties in searching for certain domain name applicants.[17] Considering the fact that a domain name applicant does not in all cases correspond to the criteria of the defendant against the *in personam* action as well as that it can possibly hide from the plaintiff (it may be easily accomplished in the Internet by presenting false personal data to the registry), the action may be directed against the domain name itself. This particular *res* (i.e. a domain name) has to be localized in the state of the court, i.e. in the domain name registry. The ACPA stays the unique act of domain name law because it also provides the amounts that can be awarded as compensation from the bad faith domain name applicant to the trademark owner. The amount of compensation under the ACPA may range from 1 000 to 100 000 USD; the specific amount is awarded by the court.

A lot of US cases were easily decided according to ACPA.[18] The ACPA proved to be effective in cases based on the in *rem* actions against the domain name itself. Such actions may result in the forfeiture of a domain name, its transfer to the plaintiff, or cancellation.[19]

The similar trends of the case-law on cybersquatting have occurred in the United Kingdom, Germany and other developed countries that experienced high number of Internet users. It was agreed by many lawyers, judges, patent attorneys and intellectual property researchers that cybersquatting shall be prohibited and the possibility to expand this "business" shall be limited in all possible ways.

Unfortunately, this was not the case of Lithuanian reality: the gulf between Lithuanian legal sense and the worldwide doctrine on domain use protection is still the great problem for the courts and the society in general.

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17 Burkard, P. H. Remedies Against Unlawful Domain Names [interactive[. [accessed 13-09-2011]. <www.burkardlaw.com/unlawfulldomainnames1/Remedies.pdf>; <www.wvu.edu/~wvjolt/arch/burk/burk.htm>.

18 Eg. see the first one *in personam* decided according to ACPA: *Sporty's Farm LLC v. Sportsmen's Market, Inc.* [interactive]. [accessed 13-09-2011]. <http://legal.web.aol.com/decisions/dlip/sportydec.html>.

19 Eg. see the first one *in rem* decided according to ACPA: US Court Applies Anticybersquatting Law against Canadians [interactive]. [accessed 14-07-2010]. <www.e-commercecanada.net/Archives/July25/body_july25.html>.

2.2. Peace Agreements in Cases of Cybersquatting

Another noticeable observation that follows of the Lithuanian case analysis is the amount of peace agreements between disputing parties, even in clear cybersquatting cases. The injured party is more inclined paying a ransom to cybersquatter because, first, the litigation is very long (sometimes up to two years), and, second, the outcome of such cases in courts is vague (having regard the outcomes of similar cases in Russia, potential litigants in Lithuania have become much less enthusiastic).

Lithuanian courts have faced not only peace agreements, when the injured party has to give up on litigation even if the breach of law is self-evident, but also situations when the aggrieved party is under the necessity to pay certain amount of money to end the protractedly enduring court process. The case between *H-D Michigan, Inc v. UAB „Vilbana"*on <*harley-davidson.lt*> precisely reveals the aforesaid matter.[20]

The plaintiff H-D Michigan, Inc. applied to the Vilnius Regional Court against the defendant company "Vilbana" for the violation of trademark owner's rights. The claimant stated that the defendant has used the domain name <*harley-davidson.lt*> without the consent of the applicant. The domain name is identical to the claimant's trademark. By using the sign as a domain name, the defendant has breached the owner's rights to the trademark, as well as violated the principles of fair competition. In addition, the defendant's actions are confusing the customers about the origin of the plaintiff's production and services.

The claimant requested that the respondent conveys all the rights to domain name <*harley-davidson.lt*>, cancels very similar internet domain name's <*harely-davidson.lt*> registration. Moreover, the claimant sought to prohibit the defendant to use the signs of HARLEY-DAVIDSON and/ or HARLEY.

In this context it is necessary to point out that the defendant was the distributor of the claimant. This argument was used by the respondent to justify the use of the domain name <*harley-davidson.lt*>. However, the Court stated that the defendant ceased being the plaintiff's distributor a few years ago, and the fact that the domain name was registered legitimately does not mean that the further use of the claimant's name HARLEY-DAVIDSON without being its distributor may be legally grounded. The court considered the current domain name use as an infringement of trademark ownership rights.

The Court fully granted the claim, obliging the defendant to convey the domain name <*harley-davidson.lt*> rights to the claimant as well as to cancel the registration of the very alike domain name <*harely-davidson.lt*>.

"Vilbana" appealed against the judge's decision to the Court of Appeal, however, the peace agreement was signed. The conditions of this agreement are as follows: the plaintiff *voluntarily* agreed to pay compensation of 3000 EUR to the respondent for the transfer of the rights to domain name <harley-davidson.lt>.

20 Lithuanian Court of Appeal, 2010 December 2 in civil case no. 2A-228/2010.

Thus Lithuanian doctrine meets a situation when the injured party, whose arguments are recognized in the first instance courts, has to surrender the causer by signing a peace agreement, besides, the guilty party gets a ransom.

Why do the injured parties choose to give up on cases where the infringement facts are evident? In this matter, the status of disputing parties should be taken into account. *H-D Michigan, Inc* is the business company. Its trademark and domain name, which functions as an important tool of identity, enables the company to promote and market their goods and services. The time factor is extremely important (remember American saying "Time is money"). Therefore, bearing in mind that the duration of the trial proceedings is few years, injured parties tend to solve the dispute as quick as possible, which means that slow justice in such cases is not needed to anyone, even the claimant.

To be objective, one must also note, that cybersquatters are also in favour of having peace agreement instead of court judgment as their bad faith is more than clear after initial court proceedings.

The case which clearly reveals the typical cybersquatting case ending by a peace agreement, when the injured party gives up on protecting their ownership rights even if the breaches are clear, is a case *UAB "Švyturys—Utenos alus" v. M. K.*[21] The plaintiff went to court with the claim against M. K. for the infringements of the trademark owner's rights and requested the respondent to cease the unlawful actions by transferring the rights of the domain name <švyturys.lt.>. The claimant stated that the trademark ŠVYTURYS[22] has been already registered when the defendant on the 11th of January in 2007 registered the domain name <švyturys.lt.>. Noteworthy is the fact that on the day after the registration of the domain name <švyturys.lt.>, the defendant contacted the plaintiff offering to buy the domain name. According to the applicant, the defendant violated the exclusive rights of the plaintiff to the registered trademark ŠVYTURYS, because the defendant had no intention to use the domain and only sought to profit from the plaintiff, using the reputation of his trademark ŠVYTURYS. Vilnius County Court upheld the claim and ordered the defendant to terminate the use of domain name <švyturys.lt>, as well as to cancel the registration of the aforesaid domain name. Right after the ruling of Vilnius County Court, M. K. appealed against the judge's decision, however, the Court of Appeal did not have a chance to decree, as the parties decided to sign a peace agreement according to which the disputed domain name was transferred to plaintiff. The respondent most probably have negotiated that he will not pay for the legal expenses to the plaintiff.

Another remarkable case where the injured party chose to sign a peace agreement rather than win a dispute in court is *AS "Delfi" v. UAB "Respublikos" leidiniai, UAB "Naujasis aitvaras", A. T.*[23] The object of the dispute was violation of trademark as well as unfair competition. The applicant, Estonian company AS Delfi, went to court with a claim seeking to prohibit the defendants to use the widely known trademark DELFI in

21 Lithuanian Court of Appeal, 2008 August 1, orders issued in civil case no. 2A-292/2008.

22 In English that would be LIGHTHOUSE.

23 Lithuanian Court of Appeal, 2008 April 24 in civil case no. 2-275/2008.

domain name <delfis.lt> in any of their commercial activities. Also, the claimant asked to ban trademarks and domain names of any variations of its legal entity name, which is "delfinas.lt", "DELFIS.lt", etc. Even though the proves of trademark infringement were obvious, on the preparatory court hearing parties presented already prepared peace agreement, where the defendants agreed to all applicant's requirements regarding malicious use of trademark, legal entity and domain name.

The given examples show that Lithuanian cybersquatters are likely to gain what they seek – the reward which is several times higher than the investments to the cybersquatted <.lt> domain name and no liability for their bad faith actions. The absence of the possibility to apply to the online ADR panel[24] and get the fast decision in clear cybersquatting cases is the main reason why trademark owners in Lithuania usually choose to quit litigation and rather "pay and get" than "wait and see."

2.3. Lithuanian Precedents that Protect Domain Name Use

The optimistic trends about the development of currently young Lithuanian legal practice on domain use disputes shall be emphasized in relation to the case "*Pieno žvaigždės" v. E. K.*[25] This case is a standard cybersquatting matter. The plaintiff UAB "Pieno žvaigždės" went to court seeking to prohibit the use of the internet domain name <pienožvaigždės.lt> as well as to cancel the registration of the aforementioned domain name on the defendant's name. The claimant stated that the company with a trademark "Pieno žvaigždės" was established in 1998, while the defendant registered the domain name <pienožvaigždės.lt> in 2007. After the registration, the defendant inquired the claimant whether *"such a domain name is attractive"* to the company, so the company could *"extend the reach of the clients on the Internet web pages."*

It is noted that the website *<www.pienožvaigždės.lt>* has never been used by the defendant's to provide any of information as it was using the one without Lithuanian letters <pienozvaigzdes.lt>.

The plaintiff noted that the defendant infringed the plaintiff's exclusive rights to the registered trademark and his legal entity name—UAB "Pieno žvaigždės".

Vilnius County Court fully satisfied the claim, mentioning that the case has the features of cybersquatting.

In the context of malicious trademark and domain use the dispute between *UAB "Baltijos muzika", Theater Mogul BV, E. J. P* and *"Baltijos reklamos projektai"* on the author's moral and property rights infringement and unfair competition are worth to be mentioned.[26] In this case the dispute arose between plaintiff and defendant for the rights of the domain name <urvinemoteris.lt>. "Urvinė moteris"[27] was used as a name of the play. Applicants have indicated that in 2005 UAB "Baltijos muzika" in cooperation with the Dutch company Theater Producers Mogul BV, which is the owner of the rights of

24 Such like <.eu> ADR. See more on <http://eu.adr.eu/html/en/Roadshow%20nove.pdf>.

25 Vilnius County Court, 2008 October 1, the Decision in a civil case no. 2-1061-623/2008.

26 Lithuanian Court of Appeal, 2008 April 24 in civil case no. 2-275/2008.

27 In English that could be „Cave woman".

the comedy "Cave man," built a comedy named "Urvinis žmogus" (eng. "Cave man"). The show attracted huge success and gained popularity in Lithuania. Applicants noted that back in 2004 they planned to build a comedy "Cave woman" (lt. *urvinė moteris*) by E. J. P. comedy, as a natural response to a woman's dramaturgical husband, the note was announced as a press release in 27th of March, 2006.

The applicants noted that on the 17th of March, 2006, the defendant registered domain names <urvinemoteris.lt>, <urvine.lt>, as well as started to build a new play named "Urvinė moteris". Applicants have indicated that with such actions—application for the patent office to register the name "Urvinė moteris" as a trademark, the registration of web addresses, as well as using the applicant's image (the logo of the play)—the defendant violated the copyright moral and economic rights as well as performed unfair competition actions.

The case reached the Supreme Court, where the plaintiff's claim was satisfied, although the court remained silent about domain name use protection.

Nevertheless, Lithuanian judicial practice is more or less predictable and seems to be clearly in favour of the rightful owners of intellectual property. This case may affect all the further doctrine on domain names' protection by applying the analogy of the trademark regulation. The term "cybersquatting" has been officially used by courts, allowing them to use the same domain use protection related arguments concerning the forthcoming disputes. Therefore, it is supposed that there would be no need for the injured parties to end the dispute with a peace agreement when the infringement facts are evident, unless the time is money and the slow justice is bad justice for them.

2.4. Generic Names

Many disputes on the use of generic domain names as the practice of unfair competition may arise in Lithuania in the future as well. In this context the civil case between two furniture manufacturing companies *UAB "Baldų centras" v. UAB "Neiseris"* on the domain name <balducentras.lt> should be mentioned.[28] The litigation started in Vilnius Regional Court, where the claimant UAB "Baldų cetras" stated that the defendant violated its industrial property rights by using the phrase "baldų centras"[29], which is identical to the applicant's legal entity name, in his advertisements at the entrance of a shopping mall. The applicant also stated that the defendant uses domain name <balducentras.lt> as its website address name, as well as the widely used consumer electronic search systems.

Vilnius Regional Court, as well as Court of Appeal and Lithuanian Supreme Court decided that UAB "Neiseris" has violated the owner's—"Baldų centras" exclusive rights by using his legal entity name in the advertisements without any other identifiers. In the context of this case it is important to emphasize that the court hearing the case did not prohibit the use of the phrase "baldų centras" in general, but the use of this

28 Lithuanian Supreme Court's Civil Division. Ruling of June 22, 2009 in a civil case no. 3K-3-272/2009.

29 In English that could be <Furniturecenter.lt>.

phrase without other distinguishing words on the advertisement at the entrance of one of the shopping malls and also in the company's "Neiseris" work.

That is, the court did not ban to use this specific expression "baldų centras" as one of the elements of business identifiers of UAB "Neiseris," but prohibited to use this phrase without any other identifiers.

The Supreme Court stated that like trademarks, individual and corporate names, depending on the constituent elements or combination of the elements of exclusivity may be the so-called "strong" and "weak." That means some legal entities have stronger name's distinguishing function, others—weaker. The "strength" of this distinguishing function determines criteria to the similarity evaluation of other brands and names of the entities. The so-called "strong" trademark or name of the entity (i.e. made up of exclusive items) similarity evaluation will be more rigorous compared with the trademark or name of the entity consisting of less exclusive items. A certain similarity threshold, which will be allowed to exceed the other entities belonging to the trade mark or name of legal entity, which protects the rights of their "strong" and "weak" mark or the name of the entity will be different.[30]

This case is important as it shows that current direction of the Supreme Court's case-law is to protect the owner of company name even if it is combined from generic words. Of course one cannot say that this case will keep owners of "weak" trademarks safe. The case-law of Germany is of great value in this respect. The famous <mitwohnzentrale.de> domain name case shall be reminded here.[31] On 13 July 1999, the Hamburg Court has passed a ruling which caused havoc in the domain name world and was quoted as one of the most radical and controversial as well as most criticized rulings in the domain name history.[32] Summary of the case: both the plaintiff and the defendant were hostel room agencies, searching for roommates for temporary accommodation. As many as 40 such agencies were united by the plaintiff's association while around 30 were united in the defendant's association. The defendant has registered a domain name <mitwohnzentrale.de> meaning "roommate council" in English. According to the German Trademark Law such term could not be registered as a trademark as it appears to be a descriptive common word. The plaintiff has brought a claim in court asking to prohibit the defendant's use of such domain name which is not pointing to one of the *Mitwohnzentrale* precisely. The action was based on Article 1 on the Law against Unfair Competition, which prohibits actions in violation of good business practice. The defendant used a generic term, preventing the plaintiff from using the same term in its activities. According to the plaintiff, the Internet users searching for a roommate may skip the search engine and type <mitwohnzentrale.de> expecting to access the website providing information

30 See, for example, The Lithuanian Supreme Court of the Civil Division of the Trial Chamber on 7 January 2003 the orders issued in civil proceedings *ZAO TORGOVYJ POTOMKOV POSTAVŠČIKA DVOR DOM EGO IMPERATORSKOGO VELIČESTVA PA SMIRNOV (Russian Federation) v. UDV North America, inc.* (now the company's name is Guinness UDV North America, Inc.).

31 Case *Mitwohnzentrale.de* [interactive]. [accessed 13-09-2011]. <www.netlaw.de/urteile/olghh_2.htm>.

32 Stroemer, *Abschied von shoenen Internet-Adressen?* [interactive]. [accessed 13-09-2011]. <www.netlaw-de/newsletter/news0001/adressen.htm>.

about the services of such kind. After accessing the competitor's website the user may not seek for any other services thereby the defendant would acquire unfair competitive advantage against the plaintiff. In response to these arguments the defendant has claimed that only a very minor share of Internet users searching for the respective services on the Internet have typed the domain name directly while a major part have used the search engines. The defendant has also noted that the results presented by the search engines were much more favourable to the plaintiff, therefore the defendant did not actually gain any competitive advantage against the plaintiff regardless of the use of a generic term as a domain name.

The court of first instance as well as the Hamburg Court of Appeal which has left the decision unchanged have ruled that the defendant using the domain name <mitwohnzentrale.de> has essentially monopolized a generic term *mitwohnzentrale* by using it exclusively in reference to its own association on the Internet and thereby eliminating the plaintiff from possible Internet traffic in connection with the domain name. Although the plaintiff and the defendant have based their claims on opposite arguments regarding Internet user's habits in search for information, the court has decided that the expert's assistance is unnecessary to establish the actual habits of the Internet users as the three judges in the panel appear to be Internet users themselves and therefore capable of unbiased research. The court has nevertheless established that there are many Internet users dissatisfied with the results presented by the search engines and trying to find the information directly by typing a domain name. Therefore, in the court's opinion, the use of a common word in the domain name <mitwohnzentrale.de> is causing the unfair luring away of potential plaintiff's clients which is prohibited in Article 1 of the Law against Unfair Competition. The appeal court has satisfied the claim and prohibited the defendant's use of that particular domain name.

However, the Supreme Federal Court of Germany has overturned this decision and remanded the case back to the appellate court. It stated that a violation of Section 1 of the Unfair Competition requires the anti-competitive impairment of business opportunities of a competitor and either an intent to cause the disruption and thereby to drive the competitor out of the market, or such an intensity of the impairment that the competitor can no longer market its achievements in an acceptable way. These requirements were not met, the court concluded, even though many Internet users search for information by typing in generic terms as domain names rather than using a search-engine.[33]

2.5. Reverse Domain Name Hijacking

When the trademark owner acts in bad faith, i.e. he intends to capture a trademark identical to the domain name, the situation is known as reverse domain name hijacking (also known as reverse cybersquatting). In some cases not only ordinary citizen are blamed for such activity, but even national governments themselves. For example, the government of the New Zealand, after becoming aware of the registration of the domain

33 Hestermeyer, H. P. Domain Name Law. *Annual of German & European Law*. Vol. 2–3. Miller, R. A.; Zumbansen, P. Berghahn Books, 2004, p. 441.

name <newzealand.com> by the US company *Virtual Countries Inc*, was the first to register the trademark NEW ZEALAND intending to vindicate the respective domain name. However, the Administrative Panel of WIPO Arbitration and Mediation Center rejected such claim of the New Zealand government concluding that the intention to reclaim a domain name was exercised unlawfully.[34]

In this context the Lithuanian civil case *D. Michejevas v. O. Silevičius* concerning the domain name <arthouse.lt> and the trademark "ARTHOUSE.lt, kitokio kino projektai" shall be analysed. The litigation started in the Vilnius Regional Court.[35] In this particular case alternative cinema and films produced outside Hollywood was promoted in the website. The defendant O. Silevičius has submitted an application to the State Patent Bureau on 21 February, 2002, on the registration of the trademark "ARTHOUSE.lt, kitokio kino projektai." Although the application was accepted by the State Patent Bureau, during the consideration of the application the plaintiff D. Michejevas has brought a preventive action claiming for the prohibition of the use of the mark by O. Silevičius and obliging him to withdraw the application from VPB. The court has not satisfied such claim at first. A plaintiff, facing the Lithuanian legal problem of "sluggish justice" has decided not to waste time in litigation on the rights to the domain name <arthouse.lt> and has created a new business identifier "GERAS KINAS." All its resources as well as the contents of the former website <arthouse.lt> were transferred to the new website <geraskinas.lt> by him; all the rights were secured right away by submitting an application to the State Patent Bureau on the registration of the trademark "GERAS KINAS". Thereby the following litigation lost sense and the court left the action unconsidered.

The rights of the domain name owner were not protected since the State Patent Bureau did not pay attention whether any identical domain name was registered when accepting the application by O. Silevičius. The court's actions were neither urgent nor appropriate. Finally, if the case was to be resolved on a purely formal basis, it would have been resolved in favour of O. Silevičius since he was the first to apply for the registration of the disputed trademark. In the US case law as well as in the ICANN UDRP practice such actions of O. Silevičius would be considered as reverse domain name hijacking and the ruling would certainly be against O. Silevičius as the bad faith applicant for the trademark identical to the domain name. The formula of reverse domain name hijacking could have been developed in the Lithuanian courts on the grounds of the existing laws, mainly on Article 1.5 of the Civil Code, the Law on Trademarks and Article 16 of the Law on Competition. Nevertheless, in the aforementioned case not only the plaintiff's determination but the court's readiness for the dispute of such kind were lacking.[36]

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34 See Bikoff, J. L.; Jones, P. L. 'New Zealand.com' Case may deter governments from seeking <.com> domain names. *January 31 2003 – International* [interactive]. [accessed 24-09-2004]. <www.worldebusinesslawreport.com>; Bazerman, S. H.; Georget, R. L. The obverse of cybersquatting, April 10 2003 [interactive]. [accessed 24-10-2004]. <www.worldebusinesslawreport.com>.

35 Civil case *D. Michejevas v. O. Silevičius*. Plaintiff's advocate A. Goštautas has presented the case material to the author.

36 Also, see: Lithuanian Court of Appeal, 2008 April 24 in civil case no. 2-275/2008. The dispute could be understood as an example of reverse hijacking.

Conclusions

It may take some time for the final and clear case-law concerning bad faith registration and use of domain names to appear in Lithuanian courts. Nevertheless, there is enough legislation in Lithuania providing remedies against infringements of the rights to the name, title or trademark. However, there are no legal provisions providing remedies against violation of rights to a domain name; therefore, the courts would likely face legal gaps in such cases. The first domain name case before the Vilnius Regional Court <arthouse.lt> only endorsed such fears and it is hard to be optimistic while the public opinion towards cybersquatting has not changed remarkably in the recent years. The number of peace agreements between cybersquatters and the rightful trademark owners even after the success in the first instance courts showed that business people were more worried about the time loss in the courts when the long awaited and yet unclear justice. The hope of more accurate justice emerged with the case of <pienožvaigždės.lt>, that have ended with the clear victory of the trademark owner and the defeat of the cybersquatter. Considering that, the idea of having the online ADR in respect of <.lt> domain names in Lithuania is of particular interest. Establishment of a specific procedure of extrajudicial settlement of domain name disputes as soon as possible is the best way to achieve more fairness on the net. On the other hand, the courts shall be ready to decide the difficult cases on the use of generic terms as domain names (like German courts did) in the context of competition law and set the fairness standards for the Internet users in general.

References

Antoniuk, J. *Ochrona znaków towarowych w Internecie*. Wydawnictwo Prawnicze LexisNexis, 2006.

Bazerman, S. H.; Georget, R. L. The obverse of cybersquatting, April 10 2003 [interactive]. [accessed 24-10-2004]. <www.worldebusinesslawreport.com>.

Bikoff, J. L.; Jones, P. L. 'New Zealand.com' Case may deter governments from seeking '.com' domain names. January 31 2003 [interactive]. [accessed 24-09-2004]. <www.worldebusinesslawreport.com>.

Bruzgulytė, V. Domeno vardo apsauga: ką turi žinoti įmonės arba prekių ženklo savininkas? (nuomonė) [The Protection of Domain Name: what should Companies or the Owner of the Trademarks know? (opinion)], published 18-11-2010 [interactive]. [accessed 12-05-2011]. <http://www.diena.lt/naujienos/mokslas-ir-it/domeno-vardo-apsauga-ka-turi-zinoti-imones-arba-prekiu-zenklo-savininkas-nuomone-311952>.

Burkard, P. H. Remedies against Unlawful Domain Names [interactive]. [accessed 13-09-2011]. <www.burkardlaw.com/unlawfulldomainnames1/Remedies.pdf>

Case Mitwohnzentrale.de [interactive]. [accessed 13-09-2011]. <www.netlaw.de/urteile/olghh_2.htm>.

Hestermeyer, H. P. Domain Name Law. *Annual of German & European law*. Vol. 2–3. Miller, R. A.; Zumbansen, P. (eds.). Berghahn Books, 2004.

Ivanauskienė, E.; Zaleskis, J. Challenging infringing '.lt' domain names: remedies

for rights holders, published March 08 2010 [interactive]. [accessed 12-05-2011]. <http://www.internationallawoffice.com/newsletters/detail.aspx?g=5d92ab91-b39b-4d63-b883-6548251ed061>.

Kelleher, D.; Murray, K. *IT Law in the European Union*. London: Sweet & Maxwell, 1999.

Lindsay, D. *International Domain Name Law. ICANN and the UDRP*. Oxford and Portland, Oregon: Hart Publishing, 2007.

Panavision v. Toeppen [interactive]. [accessed 12-05-2011]. <www.techlawjournal.com/courts/avery/19980417.htm>.

Ramuckis, L. Alternatyvūs ginčų dėl domeno vardų sprendimo būdai ir ko trūksta Lietuvai [Alternative Resolution of the Disputes concerning Domain Names and what do Lithuania Needs], published 09-09-2010 [interactive]. [accessed 12-05-2011]. <http://vz.lt/blog/2010/9/9/alternatyv%C5%ABs_gin%C4%8D%C5%B3_d%C4%97l_domeno_vard%C5%B3_sprendimo_b%C5%ABdai_ir_ko_tr%C5%ABksta_lietuvai>.

Rudzinskas, A. Intelektinė nuosavybė ir interneto adresai – praktinės problemos sprendžiant šiuos ginčus teisme [Intelectual Property and Internet Adresses – Practical Problems solving such Disputes in the Court], published 23-11-2010 [interactive]. [accessed 12-05-2011]. <www.vpb.gov.lt/docs/20101123_5.ppt>.

Sporty's Farm LLC v. Sportsmen's Market, Inc. [interactive]. [accessed 13-09-2011]. <http://legal.web.aol.com/decisions/dlip/sportydec.html>.

US Court Applies Anticybersquatting Law against Canadians [interactive]. [accessed 14-07-2010]. <www.e-commercecanada.net/Archives/July25/body_july25.html>.

Vainoris, J. Prekių ženklų ir domenų vardų konfliktai [The Conflicts of Trademarks and Domain Names]. *Justitia*. 2010, 2: 44−53.

GINČAI DĖL DOMENŲ VARDŲ LIETUVOS TEISMUOSE: TYLŪS ŽINGSNIAI LINK SĄŽININGO ELGESIO INTERNETE

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Santrauka. *Nacionalinio <.lt> kodo domenų vardų ginčai Lietuvoje yra priskirtini prie tokių bylų, kai Lietuvos teismai privalo priimti sprendimus nesant jokio konkretaus teisinio reguliavimo tuo klausimu. Šiais atvejais teismai taiko teisės analogiją, papročius ir bendruosius teisės principus. Be to, teismai privalo atkreipti dėmesį į tarptautinę teisinę praktiką, susijusią su domenų vardų ginčais, t. y. įvertinti 1999 m. ICANN Vieningąją domenų vardų ginčų sprendimo strategiją, kuria praktikoje spredžiant bendrinių aukščiausio lygio domenų vardų, tokių kaip <.com>, <.net>, <.org> ir kt., ginčus vadovaujasi WIPO Arbitražo ir tarpininkavimo centro paskirti arbitrai, taip pat susipažinti su Čekijos arbitražo teismo, kuriam patikėtas <.eu> domenų vardų ginčų nagrėjimas, bylų praktika.*

Pirmoje straipsnio dalyje nagrinėjama, kaip Lietuvos teismai taiko teisės analogiją spręsdami ginčus dėl domenų vardų. Paprastai teismai remiasi kai kurių Prekių ženklų įstatymo nuostatų pritaikymu, taip pat nemažas dėmesys skiriamas ir juridinio asmens apsaugos reguliavimo, nustatyto Civiliniame kodekse, pritaikymui. Tiesa, teismai bylose papildomai

galėtų remtis ir kitų įstatymų, tokių kaip Konkurencijos ir Reklamos įstatymai, nuostatomis. Vilniaus apygardos teismas žengė dar toliau ir vienoje iš precedentinių tapusių bylų rėmėsi net 2002-04-22 Europos Parlamento ir Tarybos reglamentu (EB) Nr. 733/2002 dėl aukščiausio lygio domeno .eu įgyvendinimo (pažymėtina, kad šis ES teisės aktas apibrėžia <.eu> domenų vardų piratavimo požymius).

Antroje straipsnio dalyje didžiausias dėmesys skiriamas domenų vardų piratavimo (angl. cybersquatting) problemai. Aptariama esama padėtis Lietuvoje ir daroma išvada, kad domenų vardų piratavimui tarpti sudarytos itin palankios sąlygos. Visuomenė šios veiklos iš esmės nelaiko nei teisės pažeidimu, nei piktnaudžiavimu teise. Valdžios institucijos yra visiškai nusišalinusios nuo šių problemų sprendimo (pateikiamas visiškai skirtingas JAV požiūris. Čia net buvo priimtas specialus įstatymas, saugantis intelektinės nuosavybės savininkus nuo domenų vardų piratų ir už tokią nesąžiningą veiklą internete numatantis baudas, prilygstančias baudžiamosios teisės sankcijoms). Lietuvoje intelektinės nuosavybės savininkai iš esmės palikti likimo valiai, o civilinis procesas lėtas ir brangus, jis visai neatgraso piratų, o intelektinės nuosavybės savininkus verčia geriau mokėti išpirką piratui nei bylinėtis. Aptariama ydinga taikos sutarčių praktika, kai net ir laimėjęs bylą pirmosios instancijos teisme prekių ženklo savininkas vis tiek yra linkęs sumokėti piratui išpirką ir taip kuo greičiau perimti domeno vardą, nei dar pusmetį ar net ilgiau laukti galutinio teismo sprendimo. Reikia pripažinti, kad tokį elgesį anksčiau galėjo paskatinti ir tai, kad nebuvo aiškesnės teismų praktikos, tačiau pastaruoju metu teismų sukrtų precedentų, kuriais prekių ženklų savininkai apginami nuo klasikinių domenų vardų piratavimo atvejų, yra pakankamai. Straipsnyje pristatoma viena žinomiausių Lietuvoje nagrinėtų bylų <pienožvaigždės.lt>, kurioje suformuota teismų praktika ateityje neturėtų iš esmės pasikeisti.

Straipsnio pabaigoje gilinamasi į domenų vardų, sudarytų iš bendrinių terminų, problemą. Pateikiama Vokietijos teismų praktikos apžvalga šiuo klausimu ir nagrinėjamos galimos tokios praktikos prielaidos Lietuvoje.

Atskirai aptariama ir vadinamojo „atgalinio domeno vardo nuvarymo“ problema, kai nesąžiningi asmenys įregistruoja domeno vardą kaip prekių ženklą ir vėliau tuo pagrindu reikalauja teisėto domeno vardo naudotojo perleisti jam domeno vardą. Tokia praktika Lietuvoje nėra paplitusi, tačiau tokių nesąžiningų bandymų praeityje jau būta.

Straipsnis baigiamas išvadomis, kuriose valdžios institucijos dar kartą raginamos imtis iniciatyvų sukurti neteisminį domenų vardų ginčų nagrinėjimo mechanizmą.

Reikminiai žodžiai: *domenų vardų ginčų sprendimas, interneto teisė, domenų vardų piratavimas.*

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