

2000-12-22

Subject: Second WIPO Internet Domain Name Process

Dear Madam or Sir:

Through my work it has become clear that the UDRP as composed today unfortunately does not function as the tool against cybersquatting it was aimed to be. Intellectual Property traditions are very different from one country to another. Since I work with Intellectual property in Sweden and often related to domain names, I have found that the protection of trademarks only, in connection to domain names is inadequate since trademarks hold no stronger position than the trade name.

The issue of the protection of trade names is critical within the business community not only in Sweden, but also in Denmark, Norway and Finland, since the legal traditions in all of Scandinavia are extremely connected.

The basic structure of business in these countries is normally conducted not primarily with the use of trademarks, as is in the common law countries, but rather under the use of a registered trade name. In fact most corporations are definitely known for their trade names.

The actual registration of a trade name (firma) in Sweden provides extensive protection. The trade name (firma) of a limited corporation (aktiebolag, AB) is in fact protected by law from any use that might infringe on its' rights. The same authority handles the two systems of trade names and trademarks. An application for both a trade name and a trademark are matched against each other, meaning that no identical registered trade name or trademark can coexist in the same class without the senior owners consent.

The status of the trade name (firma) therefore in some cases holds an even stronger position than the trademark.

The protection of the trade name in connection with the UDRP is balancing on the borderline of the scope of the constituted text of today, since it only provides protection for the trademark. However, some of the decisions under the UDRP have tended to widen the interpretation of the UDRP to include a so-called "recognized identifier". This is the issue, which in the case of Scandinavian tradition and law becomes very interesting. When interpreting the above in view of the principle of applicable national laws, I find that a dispute involving parties originating in the same country should in the case such as the one in Sweden, definitely include protection of trade

names. In some cases the protection of a trade name should also be extended internationally, even if one party is situated in a different country than the trade name owner.

Since the “recognized identifier” is a very weak principle to depend on in this case I urge that the Second WIPO Domain Name Process will implement the protection of trade names so that cybersquatters can be dealt with, as they should have a long time ago.

Sincerely,

Isaac Keren

Client Manager
Dipcon - Domain and Intellectual Property Consultants AB
Lilla Bommen 1
411 04 Göteborg
Sweden
Tel: +46 31 7202030
Fax: +46 31 7202079
E-mail: isaac.keren@dipcon.com
Internet: www.dipcon.com