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ANALYSIS OF PROBLEMATIC ISSUES BETWEEN DOMAIN NAMES AND OTHER MEANS OF INDIVIDUALIZATION

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ABSTRACT

In the article, the author studies the similarities and differences between domain names and individualization means, as well as the growing number of problems between domain names and individualization means due to the globalization of the Internet and the proliferation of e-commerce. The commercial significance of domain names is directly reflected in the disputable situations. The article also lists the objects of intellectual property that are not registered as domain names under the legislation of the Republic of Uzbekistan and not prohibition of the registration of domain names that are identical or confusingly similar to a trademark or service mark is brought up as a matter of discussion.

KEYWORDS

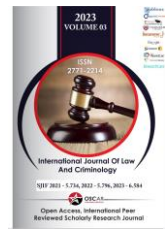
Individualization means, domain name, company name, trademark or service mark, infringement.

INTRODUCTION

With the globalization and commercialization of the Internet, domain names have taken on new importance as business identifiers, no longer just as a means of identifying the location of specific computers. They are finding their place in the "real space" by taking over commercials, billboards, magazine ads and even the side windows of buses. As such, they are now fighting back with individualization

means such as trademarks that exist in the "real space".

In the age of new information technologies, companies widely use the Internet to strengthen their position in the global market and create a business image. Domain name registration has become one of the necessary steps in an ever-changing information-driven society. Having said that, it can be said that there is a need for a deep analysis of the importance of the domain name



in modern trade and electronic commerce, its specific function, the terms and limits of protection of domain names established by law.

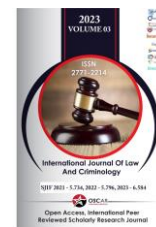
The definitions of a domain name are not very different from each other. In general, the Domain Name System (DNS), an important component of the internet infrastructure is a translation system that converts an Internet host name, that is, a domain name, into a unique string of numbers that make up an Internet Protocol (IP) address for each specific domain name. Like a phone number, an IP address requires connecting and coordinating signals on the Internet. A simple but sophisticated DNS system handles up to 20 billion address translation or "search" queries per day.

According to the definition of domain names given by the World Intellectual Property Organization, domain name is a combination of letters or numbers, an address that can be typed into a browser to go to a desired site, and are human-friendly forms of Internet addresses that are usually used to find web pages. In other words, domain name is necessary to specify a string of numbers that contain an IP address that is difficult to remember. For example, the domain "iprhelphelpdesk.eu" serves to host the web page of the Help Desk of the European Intellectual Property Organization <http://www.iprhelphelpdesk.eu>. Besides specifying the IP address, domain name is used to identify company names or trademarks on the Internet. It is this aspect that also causes problems with the use of domain names and company names or trademarks and service marks.

Although domain name is considered as an intangible asset like other forms of intellectual property, one of the sharp differences between them is that domain name is created under a commercial contract rather than being registered with an office responsible for protecting intellectual property. The right to use a

domain name arises from the contractual relations among the domain user, the registrar (or domain name "seller") and the top-level domain registry (database manager – a non-profit organization entrusted with the security, stability and interoperability of the Domain Name System (DNS) – (ICANN) Internet-corporation). Thus, a domain name is more like to obtain a telephone number for a cell phone operator rather obtain legal protection for an intellectual property object. Although there are a number of complex agreements governing the registration and use of domain names, in practice, the act of registering a domain name is simple – much simpler than other forms of intellectual property. A domain user or "registrant" does not need to go through years of background checks or provide "proof of use" to obtain a domain name. Payment of the registration fee and agreement to comply with the terms of use of the registrant are only required. The relative ease and speed of obtaining a domain name means that many domain names are purchased at a low price, which immediately becomes valuable to the registrant.

Domain name registration is done on the basis of filing date priority, as in the case of individualization means or patent rights, which means that a domain name that has not been registered by another person can be purchased by anyone who requests to have it registered in their name. Unlike them, domain names do not have the principle of territoriality, but they are considered unique names that serve for identification in the world information network. A trademark or service mark, if it has not received protection on the basis of international agreements at the international level, will receive legal protection in the territory of another country or, if it is intended to designate goods or services of another class, it will receive legal protection in the territory of the same country. This differs from domain names that are owned by only one registrar worldwide.



In addition to these differences, domain names are retained indefinitely (for uncertain period) upon payment of an annual registration fee to the registrar. The protection of intellectual property objects is valid for a certain period, for example, inventions protected by patents are legally protected only for twenty years (with a few exceptions), after which the invention is considered public domain. Copyright protection lasts for fifty years before an object becomes public domain. Trademarks may not expire, but under the laws of many countries, a trademark or service mark can be cancelled early if it is not used for a certain period. Domains are held in perpetuity as long as the terms of the registration are not violated and payment is made, making the program a direct service to a valuable commercial asset.

Despite these notable differences, there are actually more similarities than differences between forms of intellectual property and domain names.

Firstly, trademarks, copyright objects, patents and domain names give the owner who registered them the right to use, dispose and protect this asset from infringement. As commercial success is achieved, the value of these assets also increases.

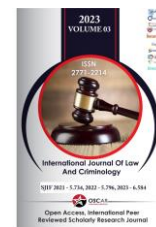
Secondly, each of them is in commodity nature, meaning that each of them can be bought, sold, or licensed, which increases their value because they create a market for buyers and sellers who benefit from the transfer of each asset.

As the Internet becomes an increasingly important tool for the development of any business, the number of potential threats to right holders of means of individualization has increased. Imagine that you are buying a product under a certain brand name, for example, confectionery under the name "Candy gold" in a supermarket or grocery store, but you are not

satisfied with the manufacturer or other information on the product packaging. You will search for detailed information on the Internet, and your intuition will, first of all, prompt you to auto-type a site with the same domain name as the product name, or to go to a site with the same name that appeared in the trademark search on Google (in our case, candygold.uz/com)

It's no secret that guessing domain names is common for many Internet users. In the article "Trademark Infringement in Domain Names: Perspectives on IR Country Code Domain Names", co-authored by Fakhroddun and Muhammad Bager Agmashhadi and Hoda Korjazi, the authors claim that consumers are highly dependent on brand names in the purchasing process, and when using a trademark associated with another brand as a domain name, there is very high probability of being deceived, at least being misled. Because of this, predictable domain names have become valuable corporate assets through the means of individualization. The same situation is observed with the names of organizations of state importance. Their website domain names are usually derived from the organization's national language or abbreviations in other languages. But the most interesting part of the matter is that there are cases where the domain name containing the company name or trademark or service mark belongs to another domain name administrator – a person who has nothing to do with this personalization tool.

Conversely, not all domain name administrators are in a rush to register their web page names as trademarks or service marks. According to statistics, only 1 percent of website owners register their domain names as trademarks. Such a low level of security of the sites leads to many violations, in particular, the illegal use of them with a slight change of domain names.



Many of the cases studied in the world experience reveal that individuals and companies that have developed their trademark and patent portfolios, but do not invest in domain name portfolios, take additional risks by misjudging the importance of domain names or do not capitalize on the value of their portfolios. After all, a domain name is the foundation of a company's online presence, and having multiple domain names is important for driving user traffic, increasing search engine visibility, and protecting a valuable brand.

J. Thomas McCarthy, a professor at the University of San Francisco School of Law, said that as more companies seek to place information and products on the Internet, conflicts over Internet domain names are becoming more and more. These conflicts prove the need for developing new procedures and legal rules that are consistent with the law and actions taken by the Internet community.

Here are two main forms of trademark infringement on the Internet associated with domain names:

- the domain name is identical or confusingly similar to a registered trademark or service mark.
- the domain name is the same or confusingly similar to the name of the registered company name.

According to Clause 75, Part 2 of the decree of the State Committee for Communication, Informatization and Telecommunication Technologies of the Republic of Uzbekistan dated December 30, 2014 "On Amendments and Additions to the Regulation on the Procedure for Registration and Use of Domain Names in the UZ Domain" [8] registering domain names which is already registered in the name of another person in the Republic of Uzbekistan or an application for registration has been submitted, as well as protected even without registration in accordance with the

international agreements of the Republic of Uzbekistan or having a much earlier priority, domain names that are the name of the place of origin of goods, company names (as a non-protected part registration of a domain name that is confusingly identical or closely similar to (except as otherwise provided) is prohibited. It follows that domain names that are identical or closely similar to company names to the degree of confusion will not be registered.

However, the matter of domain names that are identical or confusingly similar to a trademark or service mark remains open. Violation of trademark or service mark owners' rights on the Internet takes two main forms:

1. Domain names that are confusingly similar to the name of a trademark or service mark of third parties, products and services advertised on the sites, misleading the buyer about the original product or service (where the owner of the site aims to engage in online sales or advertising of counterfeit products);
2. Registration of domain names by third parties that are exactly the same as the name of a trademark or service mark, in other words - cybersquatting, that is, obtaining a profit or other type of advantage in violation of the rights of a third party.

E-commerce, e-news, e-advertising, e-gaming and e-things are all essential to managing a company's Internet presence in this age, and a domain name portfolio needs to be the strongest intellectual property asset to promote and support a business and protect its online identity.

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