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DOMAIN NAME DISPUTES

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The development of the digital environment leads to a large number of websites. Some websites are very popular among users and that promotes the company-holder of the website, its commercial name and activity results within the market. Every website has its own «name» posted in the Internet. This is the domain name (domain) identifying a web resource in the global information network.

At a time when practically every member of society has access to the Internet using a computer, phone, tablet or other device, the existence and operation of a website becomes a necessity for every company wants to present itself in the Internet-environment. Thereby, there are unfair competition signs through the using of a domain name (website name) closer to the domain name of the competitor (other entity). Thus, due to the mixing of two websites names for the Internet users-potential customers, a domain dispute between two domain holders of similar domain names emerges. There is no regulation under Ukrainian legislation of the procedure for settling domain disputes. There is no unified legal regulation of settling such disputes in the EU and in the world at large. This is due the fact that the Internet is «a space without borders» and the administration of the Internet address space is performing by NGOs guided by their own rules and principles.

Domain dispute is a dispute concerning the legality (unfairness) of the domain name registration and use between the holder of the domain name and other interested person (for example, trademark certificate holder). There is a point of view highlighted in scientific literature that the settling of disputes, regarding to domain names, usually requires special knowledge in the province of information technology that causes a great difficulty both to the parties to a dispute and to mediators trying to settle [1]. Such a position is rather controversial, since even the court (other entitled person or body), solving this category of cases, does not require an expertise to verify claims or objections. We consider that special knowledge (expertise) regards the

understanding of technical functioning of a website and the Internet, differentiation of technical features of the registrant, registrar and administrator of the address space in the Internet and technical possibilities to change the website holder, etc. Everyone can have basic knowledge of these circumstances, including judges, lawyers, etc., while the correct understanding of the technical nature of some issues is rather difficult.

The regulation of domain disputes considering and settling in Ukraine is characterized by the absence of special legal regulation of such a procedure. At first glance, this phenomenon is justified because state legislation cannot regulate relations emerging, changing and stopping within virtual «space without borders» all over the world.

In the international practice of resolving the domain name disputes the main regulative document is Uniform Domain Name Dispute Resolution Policy. This policy has been adopted by the Internet Corporation for Assigned Names and Numbers («ICANN») in 1999. Its terms are incorporated by reference into registration agreement between the registrant and the registrar, and this Policy is required for use in a dispute concerning the legality of the domain name registration and use between a domain name holder and other interested person.

Domain name dispute occurs when there are evidence of the registration and use of a domain name in bad faith:

- circumstances indicating that the holder of the domain name has registered or has 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 his documented out-of-pocket costs directly related to the domain name;
- the domain name holder has registered the domain name in order to prevent the holder of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that he has engaged in a pattern of such conduct;
- the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor;
- by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to his website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of his website or location or of a product or service on his website or location.

Thus, all these domain registrant's actions aim at the violation of economic competition in a particular province and unlawful «fight» against competitors entitled to rights to a trademark.

In Ukraine, the domain names administrators of second level also often indicate types of domain disputes that may occur between website holders and others. For example, under the Rules of domain disputes settling in domain .LVIV.UA, domain disputes may occur:

1. If the delegated to a defendant private domain name or a part of it is identical or confusingly similar to a registered plaintiff trademark, so that they can be confused.

2. If the plaintiff considers the defendant is not entitled to use the domain name or the using of it violates the rights and legal interests of the plaintiff.

3. If the spelling or pronunciation of the domain name delegated to the defendant is a word or expression that violates the honor and dignity of the plaintiff or harms their reputation.

4. If the spelling or pronunciation of the domain name or a part of it reproduces surnames, names or aliases of famous persons in Ukraine without their consent.

5. Other violations of the Rules by a defendant.

Therefore, the violation of applicant rights (plaintiff rights) can be proved by different facts: the violation of rights to a trademark, violation of other rights and interests of the applicant (including rights to a commercial name), violation of honor, dignity and business reputation, using of names of famous persons without their consent etc.

Domain disputes can also occur in case of the domain registration per person who is not the true holder of the site or in case of so-called «domain theft», that is the change of the registrant contact information, including «theft» by registrars, unfair employees (dismissed directors, technical specialists) or other persons. Such a phenomenon is highlighted in scientific literature, accenting on the fact that despite the domain using by a particular person claiming to be the website holder and paying for the domain and hosting, such a domain does not belong to that person because it is «stolen» and controlled by another subject [2]. This affirmation is also pointed out within comments on domain disputes issue. A field «admin-c» often indicates a person different to the one actually entitled to the right to use the domain name. For example, it may be a company employee, authorized to register the domain name, hosting company etc. It is worth stressing that it is only the entity that has registered the domain has the right of its disposal [1].

The abovementioned highlights the problem of non-acquaintance of people ordering websites for the development of their business (or other demands) and then posting them within the Internet. In order to function properly, a website shall at least have a domain name, providing the opportunity to find it in the Internet, and the hosting. Usually all these steps are complexly performed by a person (entity) providing the website development. Further, this person (entity) provides hosting and intermediation in the process of domain registration. Sometimes there are cases of unfair dealing resulting in domain registration not to the customer, but any other person specified above. At the same time, the customer usually does not understand what does it mean to be the registrant (website holder), due to the fact that he/she is provided with the opportunity to fulfill the website content, and the website operates without problems. However, over time, problems with the access to the website may occur, especially if this website turns out to be a successful one. In this case, the person – website

registrant can «sell» (re-register) the website to a customer competitor. Thereby, a domain dispute emerges.

Taking into consideration the abovementioned, we should stress the point that the domain disputes arise regarding the use of the domain name without the consent of the subject of intellectual property rights to a trademark, commercial name, other commercial designations, name of individual, and other objects of intellectual property.

Domain disputes are usually initiated in order to stop the infringement of intellectual property rights, mainly rights to a trademark or commercial name pointed in a domain name. The aim can also lie in the nullification (cancellation) of domain registration violating the abovementioned rights or transfer (re-delegation) of rights to the domain to the complainant.

Settling such disputes, the norms of current legislation, the provisions of the Civil Code of Ukraine and the Law of Ukraine «On Protection of Rights to Trademarks for Goods and Services» (regarding the regulation of trademarks and commercial names protection) shall be applicable.

In addition, the courts guide by the rules that are not normative, but governing contentious relations between the parties to the dispute. In particular, these are as follows: .UA Domain Rules, The Regulations of domain names registration within .COM.UA and other rules provided by Ltd. «Hostmaster» (a high-level administrator of the address space) or other domain names administrators of second level. Nowadays, there are two main positions in the judicial practice regarding the legal nature of these documents. These rules are applicable as terms of accession agreement to the proposed conditions (if there is such a reference in contract between the registrant and registrar) or as a custom (if there is no such a reference). We consider both positions to be noteworthy, but the issue of the legal nature of these rules is the subject of a separate discussion. Moreover, the courts settling domain disputes often guide by the provisions of the Uniform Domain Name Dispute Resolution Policy. Analyzing the content of this Policy one can consider that in domain name dispute a complainant has to prove that: 1. the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights to; 2. the defendant has no rights or legitimate interests in respect of the domain name; 3. the domain name has been registered and is being used in bad faith. In the proceedings the complainant has to prove that each of these three elements is present. So the subject of a complaint is the illegal registration of a domain name. Parties of domain name dispute are a complainant and respondent (defendant). Complainant means the party initiating a complaint concerning a domain-name registration. Respondent means the holder of a domain-name registration against which a complaint is initiated.

The defendant (potential offender) has to demonstrate the rights or legitimate interests to the domain name. In particular the domain name holder must demonstrate that: 1. before getting the notice about the dispute he has used the domain name, he has done demonstrable preparations to use it, and the domain name or a name corresponding to the domain name has been in connection with a bona fide offering of goods or services; 2. the

registrant (as an individual, business, or other organization) has been commonly known by the domain name, even if he has acquired no trademark or service mark rights; 3. the domain name holder is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

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«ELECTRONIC COURT» SYSTEM IN UKRAINE: TRENDSETTING AND CHALLENGES

The article substantiates the necessity of introducing technological solutions, in particular, «Electronic Court» system, which has become an important step towards transformation of legal activity from the established system to the communication model, which involves de-bureaucratization and increasing the efficiency of legal proceedings. In this context, the article analyzes the stages of implementation of the e-justice system, which laid the foundations for automation and informatization of the court process and highlighted their advantages.

Key words: *e-justice, «Electronic Court», efficiency of justice.*

Researchers from different spheres guess that informatization of society has numerous risks, since it generates a large number of contradictions [3], and the ability of a person to timely realize and follow the pace of the functioning of the information environment is far behind these pace. As a result of this, there is a threat to the privacy of human life.

However, the abovementioned does not mean reducing the value of information technology to meet public needs. On the contrary, informatization of public relations becomes an important tool in areas that are of a purely public nature [1, p. 5], for example, public administration, a separate component of which is justice.

The democratic structure of the state envisages the division of the branches of power into legislative, executive and judicial, this axiom can