



International Trademark Association
Representing Trademark Owners Since 1878

Via Electronic Mail

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twomey@icann.org

November 16, 2006

Vint Cerf, Chairman
Paul Twomey, President & CEO
Internet Corporation for Assigned Names and Numbers (ICANN)
4676 Admiralty Way, Suite 330
Marina del Rey, CA 90292

Re: Domain Name Tasting

Dear Drs. Cerf & Twomey:

The International Trademark Association (INTA) is writing to you in connection with a proposal by the Public Interest Registry (PIR) to amend its Registrar Accreditation Agreement (RAA) with the Internet Corporation for Assigned Names and Numbers (ICANN) in order to reduce the number of instances of what has become known as "domain name tasting." In particular, the current RAA provides for a registration grace period which allows domain name speculators to temporarily register (i.e., "taste") thousands of domain names solely for the purpose of calculating the potential revenue or profit for such domain names. The registrations for the domain names that do not have significant revenue or profit potential (are "unsavory") are then cancelled, with the domain name speculators obtaining a full refund.

The PIR proposal to solve the domain name tasting problem would allow registries to charge the domain name speculators a five cent (US \$0.05) fee per cancelled domain name if more than ninety percent (90%) of the registered domain names within a single registration application are cancelled during the grace period. However, since ICANN's response to the PIR proposal likely will serve as a model for the larger domain name system community in which all Internet users will be affected, any solution to the domain name tasting problem must be fully vetted and well thought out.

Domain name tasting regularly involves the registration of domain names that are misspellings of or otherwise confusingly similar to trademarks. This intentional misuse of trademarks in domain names is intended to draw consumers to landing pages that often advertise competing products and services. This exploitation of the goodwill of known brand names has no legitimate purpose. Not surprisingly, given the revenue potential at

issue, many domain name registrars themselves are engaged, directly or through undisclosed affiliated businesses, in domain name tasting in order to tap into such revenues.

To appreciate the magnitude of the domain name tasting practice, according to Bob Parsons, CEO and founder of GoDaddy.com, of the over 35 million names that were registered during the month of May alone, only a little over 2.7 million were permanent registrations (See, <http://www.bobparsons.com/MayKiting.html>). In other words, approximately 92.3% of all the domain names registered were part of this domain name tasting activity.

INTA understands that the domain name registration grace period may have been created with good intentions to prevent penalizing registrars and registrants from inadvertent errors in the application process, and to minimize payment risks to registrars when payments by registrants could not be processed. However, whatever good intentions were contemplated originally when registration grace periods were instituted have long since been outweighed by the actions of bad actors. Instead, the registration grace period has provided an opportunity for large-scale unauthorized and free trafficking and speculation in domain names. To begin with, with respect to application errors, most registrars have a provision in their registration agreements which prevents registrants from obtaining a refund for errors in their domain name application.* Thus, the current registration grace period provides no effective relief for domain name registrants. In addition, we are not aware of any instance where a commercial entity is completely insulated from the risk of bad debt. That risk is simply part of the cost of doing business.

More importantly, a five cent fee (or any fee short of the registration fee), will have little or no deterrent impact on the participants of the domain name tasting game, and, therefore, will do little to reduce the widespread practice of domain name tasting and its negative impact on trademark owners in particular, and Internet users in general. While such a fee may make the “tasters” a bit more discriminating in what they grab from the “domain name buffet,” trademarks are clearly the “caviar,” and thus a small fee will still be better than paying the standard full registration fee.

Finally, if ICANN approves the PIR proposal, it will be viewed as an endorsement and acceptance of the domain name tasting practice. Such a message would be inconsistent with ICANN’s role as a legitimate and impartial regulatory entity, especially given ICANN would ultimately get a portion of any such fee.

In light of the foregoing, INTA urges ICANN to eliminate the registration grace period. We believe that this proactive measure will protect the integrity of the registration process and ensure that trademark owners do not to suffer from virtually unchecked domain name tasting.

* In any event, this could be easily remedied by adding a function to the application process that requests confirmation of the accuracy of the application information before it is submitted (similar to the process used to file trademark applications online with the U.S. Trademark Office).

Thank you for the opportunity to provide information relevant to this important issue. We look forward to working with ICANN to resolve these concerns and to ensure the continued protection of the rights of trademark owners. If you have any questions concerning this letter, please contact Bruce MacPherson at bmacpherson@inta.org.

Sincerely,

A handwritten signature in black ink, reading "Paul W. Reidl". The signature is written in a cursive, flowing style.

Paul W. Reidl
President

cc: John O. Jeffrey, Esq., ICANN General Counsel and Secretary, jeffrey@icann.org