

Domain Testing

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Summary

This white paper describes the process by which a registrant may test a domain name for five days to determine whether it is profitable and able to attract the desired volume. An overview of the controversy associated with paid advertisements on test sites that are cancelled before the five-day period expires follows.

ICANN (the Internet Corporation for Assigned Names and Numbers) allows a five-day grace period during which registrars of a domain name may test out the success of domain names or correct misspellings and other mistakes. If a domain is not profitable, if it does not attract the volume anticipated, or for any other reason, the person can cancel the domain name and receive a refund of the price paid for registration.

Domain tasting is the practice of using the Add Grace Period to test the marketable nature of a domain name. Registrants try on variations of domain names and test them for profitability by keeping track of the number of visits per cite. If a domain is not profitable, registrants may simply cancel the domain.

The practice of domain tasting has become controversial. Practitioners register hundreds or thousands of domain names and derive income from these by placing pay per click advertisements on those sites. Before the five-day period ends, these registrants cancel the domain names, thereby never paying for registering them.

Domain Tasting in the Courts

The U.S. District Court for the Central District of California addressed the issue of domain tasting in the recent decision of *Verizon California Inc. v. Navigation Catalyst Systems, Inc.*, 568 F. Supp. 2d 1088 (C.D. Cal. 2008). Defendant Navigation Catalyst Systems had registered some 1,392 domain names that were confusingly similar to Plaintiff's marks. For example, they registered such domain names as "ve3rizon.com," "veri8zon.net," and "veri9zonwireless.com" hoping to profit from consumers' misspellings of the Plaintiff's domain names. Defendants argued that the domains were not registered, but merely "reserved." However, the California court found differently. The Court stated that it was clear from the evidence that Defendants' intent was to profit from the poor typing abilities of consumers and that there can be no clear value in a name like ve3rizon.com.

New Developments

As of June 26, 2008, the ICANN Board has adopted a new policy targeted at the problems faced with domain tasting. Once implemented, the new policy will prohibit registry operators from offering refunds to registrars for domain names that are deleted during the Add Grace Period that exceed a threshold defined by the Policy. The limits defined in the policy are (i) 10% of that Registrar's net new registrations in that month, or (ii) fifty domain names, whichever is greater. Supporters of the new policy believe that adding limits will reduce the problems faced when the grace period is abused.

If you are interested in additional information on domain tasting, or if you have any questions regarding domain tasting or our Internet and e-commerce practice, please contact one of our Dallas IP attorneys. We offer an array of services in the areas of intellectual property including patents, trademarks, copyrights, trade secrets as well as intellectual property litigation and enforcement.

About Klemchuk Kubasta LLP

Klemchuk Kubasta LLP is an IP boutique law firm offering a full array of intellectual property related services, including litigation and enforcement of all forms of intellectual property, as well as registration and licensing of patents, trademarks, trade dress, and copyrights. The firm also provides legal services relating to trade secrets, unfair competition, domain names, e-commerce, privacy policies, Internet law, commercial litigation, and business litigation. Located in Dallas, Texas, Klemchuk Kubasta LLP supports a diverse client base ranging from individuals and startups to established market-leading companies. Through its Virtual IP Counselsm and Virtual General Counselsm programs, the firm also has experience with technology incubators and pre-first round financing technology start-ups. Klemchuk Kubasta LLP also serves as local counsel for IP and commercial litigation cases pending in Texas, including the federal courts in the Northern and Eastern Districts of Texas. Additional information about the firm and its attorneys may be found at www.kk-llp.com.

About Darin M. Klemchuk

Mr. Klemchuk, an intellectual property trial lawyer, focuses his practice on patent, trademark, copyright, trade secret, and other intellectual property litigation and enforcement. In addition, Mr. Klemchuk has extensive experience representing clients in commercial and business disputes, particularly software development, trade-secret, and non-compete disputes. Named by D Magazine as one of the "Best Lawyers in Dallas," in Intellectual Property for the third year in a row (2007-09), Mr. Klemchuk also focuses on intellectual-property licensing and technology agreements and serves as local counsel for out of state plaintiffs and defendants involved in patent, trademark, copyright, IP, and commercial litigation in the state and federal courts in Dallas, Texas. Learn more about

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About Kelly J. Kubasta

Mr. Kubasta, an intellectual property attorney, has substantial experience in all aspects of IP, with a particular emphasis on patent, trade dress, trademark, and unfair competition litigation. Mr. Kubasta is also skilled in counseling clients on strategic development and utilization of IP assets; negotiating and drafting technology transfer agreements such as software, dealer/franchise, and co-branding agreements; developing and maintaining patent, trademark, and copyright portfolios; constructing Internet e-commerce policies; and resolving domain name disputes through ICANN or the ACPA. In addition, Mr. Kubasta serves as local counsel in patent, trademark, trade dress, copyright, and unfair competition litigation in the federal courts in Dallas, Texas. Learn more about

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