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A Future in Flux: Why the Anti-Cybersquatting Consumer Protection Act Created More Questions Than Answers

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Since its enactment in 1999, the Anti-Cybersquatting Consumer Protection Act (ACPA) has carried its controversies like a shadow. From its failure to harmonize key trademark principles with domain name ownership to a more recent circuit court split on the meaning of “registration” within the ACPA, the ACPA needs rescuing. The ACPA was a darling of the dot.com boom but lacks teeth to keep up with Web 2.0. Congress should act to amend and clarify the ACPA, otherwise the statute may have outlived its usefulness.

Part I of this article provides an overview of cybersquatting and the ACPA. Part II discusses the troubles of the ACPA, which stem from the statute’s inattention to the nature of domain name ownership and the potential for misuse over time. Lastly, Part III provides possible resolutions to the discord the ACPA created and how those resolutions may inform the future of cyberlaw.

I. THE INTENT OF THE ACPA

Domain names hold significant value for trademark owners because they offer consumers an interactive way to patronize the trademark owners’ business online. Today, having a domain name that matches or complements a trademark is a necessity for companies to compete in the marketplace.

Cybersquatting is the practice of registering internet domain names containing trademarks or tradenames of others for the purpose of extorting payment from the trademark owner.¹ Cybersquatting restricts a rightful trademark owner from fully exploiting their trademark rights. The U.S. Court of Appeals for the Fourth Circuit observed that “a person can reap windfall profits by laying claim to a domain name that he has no legitimate interest or relationship to.”² Congress outlawed the practice when it passed the ACPA in 1999, empowering trademark owners to seek transfer of a domain name from a cybersquatter.

Before the APCA, legal practitioners and companies leaned on the Federal Trademark Dilution Act (FTDA) in domain disputes. The FTDA required trademark owners to prove their mark was “famous,” and that the domain name owners’ “commercial use” of the mark caused actual dilution of the mark.³ Some courts have found that

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a defendant's domain name registration and offer to sell the domain names to the trademark owner constituted "commercial use" of the mark under the FTDA.⁴ This allowed cybersquatters to easily circumvent the FTDA by simply waiting for a trademark owner to make the first offer.⁵ Thus, cybersquatters could avoid liability by simply owning sought-after domain names – even with bad intent – without engaging in "commercial use." With the ACPA, Congress intended to provide "clear deterrence to prevent bad faith and abusive conduct, and to provide adequate remedies for trademark owners[.]"⁶

Before the APCA, legal practitioners and companies leaned on the Federal Trademark Dilution Act (FTDA) in domain disputes.

Under the ACPA, a person may be liable to the trademark owner for cybersquatting if that person:

- (i) has a bad faith intent to profit from that mark . . . ; and
- (ii) registers, traffics in, or uses a domain name that . . . in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to that mark.⁷

Additionally, the ACPA provides a non-exhaustive list of good and bad faith factors meant to guide the courts in their analysis and to avoid the inconsistencies that arose under the FTDA. The analysis for good and bad faith intent under the ACPA is driven by these factors:

- (i) the trademark rights of the person in the domain name;
- (ii) whether the domain name is the legal name of a person;
- (iii) the person's prior use of the domain name in connection with goods or services;
- (iv) the person's fair use of the mark in a site accessible under the domain name;

- (v) the person's intent to divert consumers to a site under the domain name that would harm the goodwill represented by the mark, either for commercial gain or for intent to tarnish the mark;
- (vi) the person's offer to transfer, sell, or assign the domain name to the mark owner for substantial consideration without having used, or having an intent to use, the domain name for commercial purposes;
- (vii) the person's intentional and misleading false contact information when applying to register the domain name; and
- (viii) the person's registration or acquisition of multiple domain names that are identical or confusingly similar to trademarks or service marks of others that are distinctive at the time of domain name registration.⁸

The first four factors indicate a good faith use of the domain name, while the last four apply to bad faith use. Factor (vi), especially, has many different facets. First, it connects domain name ownership with use. Owning a domain name is akin to owning other property in that the owner need not use the property to hold title. On the other hand, trademark rights accrue based on use in commerce. Therefore, this factor is especially important because it allows evidence of use of the domain name to support bad faith intent. Furthermore, Factor (vi) may support the idea that the domain name owner's initial good faith intent may subsequently turn into bad faith intent.⁹

Since 1999, persistent confusion on various aspects of the ACPA has clouded its advantages.

When it was first enacted, the ACPA posed a remarkable improvement over the FTDA as it provided a specific federal remedy against cybersquatting. Additionally, the ACPA set a lower burden of proof for the trademark owner, requiring the mark to be "distinctive," instead of "famous."¹⁰ The ACPA also seemingly created a viable framework for determining good or bad faith intent. However, the wildly varying interpretations of that framework,

discussed below, have led to a fundamental lack of understanding of what and whom the ACPA is protecting.

II. ACPA PLAIN MEANING CONFUSION

Since 1999, persistent confusion on various aspects of the ACPA has clouded its advantages. Lingering debates over statutory interpretation turned a seemingly slam dunk ACPA case into a mess. Potential plaintiffs are turning to the Internet Corporation for Assigned Names and Numbers' (ICANN) Uniform Domain-Name Dispute-Resolution Policy (UDRP) over the ACPA. This trend begs the question: is the ACPA too risky to use anymore?

Registration and Re-registrations

The vague language in the ACPA created a circuit court split regarding whether “registration” under the second prong of 15 U.S.C. § 1125(d)(1)(A) is limited to the domain name’s first registration, or includes “re-registrations” from subsequent transfer or resale of the domain name. A strict interpretation that excludes re-registrations allows a subsequent buyer of a domain name to escape liability under the statute because the buyer can rely on the intent of the original registrant at the time of the initial registration, rather than the intent of the buyer at the time it acquires the domain name.

In *Schmidheiny v. Weber*, Weber first registered the *schmidheiny.com* domain name in February 1999, before the enactment of the ACPA.¹¹ In June 2000, Weber transferred the domain to his company, Famology.com, who entered a new registration agreement with the domain name registrar. Weber subsequently offered to sell the domain name to Schmidheiny. Schmidheiny commenced an action against Weber and Famology.com alleging violation of the ACPA. Weber and Famology.com moved for summary judgment, arguing that the ACPA is inapplicable because the initial registration occurred before the statute was in effect. The district court granted the motion, finding that, as a matter of law, the registration was “not covered by ACPA.” The district court reasoned that the plain meaning of “registration” “imparts to us no other meaning but the *initial registration* of the domain name.”¹²

The U.S. Court of Appeals for the Third Circuit reversed. The court “[did] not consider the ‘creation

date’ of a domain name to control whether a registration is subject to the Anti-cybersquatting Act,” and held “that the plain meaning of the word ‘registration’ is not limited to ‘creation registration.’”¹³ The court admonished the district court for reading the words “initial” and “creation” into the statute where Congress excluded those words. The court held that “registration” “includes a new contract at a different registrar to a different registrant.”¹⁴

In *Jysk Bed’N Linen v. Dutta-Roy*, the defendant re-registered the *bydesignfurniture.com* domain name after the previous registration had expired, and then refused to transfer the domain name to his employer.¹⁵ The U.S. Court of Appeals for the Eleventh Circuit agreed with the district court’s analysis, which held the defendant liable under the ACPA. The Eleventh Circuit found that the ACPA “does not define the term *register*,” nor does it contain “the qualifications of *initial* or *creation* when it refers to the act of registering. It refers simply to a registration, and a re-registration is, by definition, a registration.”¹⁶

As recently as January 2023, the Fourth Circuit agreed with the interpretation of “registration” by the Third and Eleventh Circuits. In *Prudential Insurance Co. v. Shenzhen Stone Network Information*, the court held the term “registers” includes the initial registration and each subsequent “re-registration” of a domain name.¹⁷ The domain name owner and defendant in this case was not the initial registrant of the PRU.com domain name, but purchased it from the initial registrant and re-registered it under a new domain name registration agreement.

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The lone circuit on the other side of the split is the U.S. Court of Appeals for the Ninth Circuit. In *GoPets Ltd. v. Hise*, the Ninth Circuit held that only the initial or “creation” registration triggers the ACPA protection.¹⁸ There, Hise registered the *gopets.com* domain name in 1999, and, after GoPets failed to acquire the domain name through WIPO arbitration, Hise transferred the domain name to his family’s corporation. GoPets then brought an ACPA claim to acquire the domain name. In reversing the district court, the Ninth Circuit reasoned that “Hise

could have retained all of his rights to gopets.com indefinitely if he had maintained the registration of the domain name in his own name,” and saw no basis to take that right away just because he transferred the domain name to another owner.¹⁹ Thus, the court held the “re-registration” by the defendant’s corporation was not a registration within the meaning of the statute.

The plain language of the ACPA, legislative intent, judicial interpretations, and sound public policy necessitate a broader interpretation of the word “registration” that will help achieve the goal of protecting trademark rights. The plain language of the ACPA shows that a subsequent registration, or re-registration, is still a registration. The statute does not expressly define “registration,” thus the ordinary meaning of the word applies.²⁰ As Justice Holmes wrote, “We do not inquire what the legislature meant; we ask only what the statute means.”²¹ Moreover, Congress was primarily concerned with abusive domain name registrations, which may include a “re-registration.”²² The ordinary meaning of “registration,” is simply “the act of registering.”²³ Re-registering, thus, is simply registering anew.²⁴

From a public policy perspective, courts should hold new registrants of existing domain names accountable for their bad faith at the time they register the domain name and should not allow them to benefit from the prior registrant’s good faith. Indeed, although domain names have some attributes of intangible property, the rights of the domain name registrant are contractual in nature. Every domain name registrant, including those after the initial registration, are subject to the terms and conditions of a registration agreement. Every registrant must accept representations and warranties under that agreement as of the date of their registration. These include a representation that the new registration is undertaken in good faith. Sound public policy necessitates holding all domain name registrants to the same standards.

Judicial bodies across the country and globally agree that re-registrations are registrations. Several WIPO panels also agreed with the approach to “re-registrations” by the Third, Fourth, and Eleventh Circuits. For example, in *Twitter, Inc. v. Geigo, Inc.*, the WIPO panel stated “Policy precedent is clear that the question of Respondent registration in bad faith (or otherwise) is determined on the date of Respondent’s registration (or if not the original

creator, *acquisition*) of the disputed domain name, *not the date the domain name was first created.*”²⁵

Further, other district courts have rejected the Ninth Circuit’s interpretation of registration. For example, in *Instructure, Inc. v. Canvas Techs.*, the U.S. District Court for the District of Utah addressed the academic criticism of *GoPets Ltd.* and rejected the Ninth Circuit’s interpretation.²⁶ In sum, interpreting “registration” to include “re-registration” is in accordance with the plain language of the statute, legislative intent, and sound public policy.

Abandonment and Use

Trademark rights in the United States arise under the Commerce Clause and accrue only from use in commerce.²⁷ Even before registering a mark, using the mark in commerce grants the trademark owner common law rights in that geographic region.²⁸ Use remains an extremely valuable and important tenet of trademark law. Moreover, three years of nonuse creates a presumption of abandonment.²⁹

“Use,” for purposes of federal trademark enforcement and protection, relates directly to offering for sale to consumers goods or services associated with a mark.³⁰ To determine if use of a mark by another constitutes infringement, the Lanham Act examines whether consumer confusion is likely. To prevail on a trademark infringement claim, a trademark owner must demonstrate the potential infringer used in commerce a mark that could lead to consumer confusion.³¹ Thus, use of the trademark represents the foundation of trademark protection.

In contrast, the ACPA considers nonuse of a domain name as one factor indicating bad faith intent.

In contrast, the ACPA considers nonuse of a domain name as one factor indicating bad faith intent. But some courts have ignored cybersquatters’ nonuse when analyzing ACPA claims. For instance, in *GoPets*, the defendant offered to sell the domain name to the plaintiff multiple times for as high as \$5 million, then eventually added content to the domain.³² The court did not find bad faith intent in these exorbitant offers even though the domain name sat unused. A domain name that includes another’s trademark – without additional use on a corresponding website – should suggest

likelihood of consumer confusion. Even if there is no website associated with the domain name, a consumer may assume the brand they are looking for is now defunct. The lack of emphasis by some courts on actual domain name use allows cybersquatters to circumvent the ACPA and extort trademark owners.³³

Domain registration agreements do not require registrants to declare any intent to use the domain name, as is customary in a trademark application.³⁴ Without intent to use a domain name, legitimate concerns arise over bad faith intent between domaining, explained in further detail below, and cybersquatting. If a domain name investor or purchaser purchases a domain name without using it in a meaningful way, they exclude others, namely trademark owners, from using the domain name. This presents an odd quandary for trademark owners in the internet age: they must prove their mark is famous or distinctive without using a domain name that features the mark before they can acquire the domain name via an ACPA claim.³⁵

Some circuit courts have emphasized commercial use of a domain name as evidence of good faith intent under the ACPA. In *Jysk*, the court determined that the defendant's nonuse of the domain name in the bona fide offering of goods or services evidenced bad faith and significantly impacted the court's ultimate decision in favor of the trademark owner.³⁶ However, the Ninth Circuit diverted from that reasoning in *GoPets*. The court acknowledged the defendants had additional domain names as leverage to increase confusion with the plaintiff's mark and increase the cost of the gopets.com domain without actually using any of these domain names in commerce.

Ultimately, *GoPets* found no cybersquatting, which weakened the ACPA by focusing the analysis on the timing of the registration rather than commercial use. Congress intended for the ACPA to deter bad faith and abusive conduct by cybersquatters.³⁷ The *GoPets* analysis channels the bad faith intent inquiry into a "re-registration" inquiry. Further, in *Prudential Insurance*, the Fourth Circuit criticized *GoPets* for its failure to apply a bad faith intent analysis altogether: "[t]he underlying rationale for the Ninth Circuit's decision – a public policy concern that innocent persons would be subject to ACPA liability for minor, periodic

re-registrations of domain names – is best addressed through the bad faith intent to profit inquiry."³⁸ From the FTDA to the ACPA, the concept of domain name "use" continues to present a challenge for courts to navigate, as shown in *Panavision* and *GoPets*. As a result, domain name use, which should be central to a bad faith intent analysis, becomes an afterthought.

A domain name registrant's nonuse also raises public policy concerns regarding obstruction or interference of business opportunity and unfair competition. Trademark protection should facilitate a competitive marketplace to avoid unfair competition, but overprotection may encroach on First Amendment rights or raise monopolization concerns. Without a usage requirement for domain names, nonuse of a domain name potentially blocks productive use.

The ACPA provides no resolution or framework for harmonizing trademark use and domain name ownership, leaving courts to bridge the gap. But courts adopt varying and inconsistent interpretations, as discussed above.

Domaining

Domaining is the practice of purchasing large quantities of domain names for strategically selected generic, arbitrary, or fanciful terms, with the hope that at least some purchased domain names will match the name of a future product, event, celebrity, or other viral trend and then selling the matching domain names for exorbitant prices.³⁹ The ACPA does not explicitly prohibit domaining. The thin line between domaining and cybersquatting is whether any third-party trademark rights exist in any of the terms in the domain name at the time of purchase. A domain name investment portfolio may include generic terms or geographic names that are not eligible for trademark registration, and business names or timely names, such as Super Bowl- or World Cup-related domain names, that are fair game for trademark registration.

Purchasing domain names that contain trademark-eligible terms without intent to use the domain name should fall under Factor (vi) of the ACPA bad faith intent analysis. However, domaining likely does not violate the ACPA and is generally not the subject of much litigation. Courts have not yet connected the initial purchase of a domain

name in “good faith,” even without intent to use, with a subsequent bad faith attempt at extorting a trademark owner.

Before the ACPA, cases that involved domaining (essentially, registering a domain name to reserve it and without intent to use), prompted trademark owners to assert unfair competition and dilution claims.⁴⁰ The ACPA purported to offer a more complete resolution for trademark owners. However, courts’ emphasis on the “re-registration” analysis stunted the novelty and influence of the ACPA, thereby allowing domaining to remain largely unchecked in the marketplace. Ultimately, the difference between domaining and cybersquatting is small but should be nonexistent, as domaining has the same extortionist attribute.

Domaining draws many comparisons to “patent trolls,” a term of art used to describe a legal but often criticized practice in patent law. Patent trolls purchase patents to profit, license, or litigate them rather than to further innovate and produce goods and services. Most states have enacted laws that create a cause of action against patent trolls.⁴¹ Similar to the ACPA, many of these laws have a non-exhaustive list of bad faith factors.

III. POSSIBLE RESOLUTIONS

Dispute Resolution Opportunities

With courts undercutting the value of the ACPA, trademark owners must lean on other procedures for adequate assistance in cybersquatting or domaining cases. One such procedure is to utilize the ICANN UDRP process. The UDRP was promulgated in 1999, around the same time as the ACPA. ICANN is an accreditation organization for domain name registrations. It requires domain name registrars to maintain certain information in an international record.

Section 2 of the Sherman Act creates a cause of action against those attempting to monopolize in a relevant market.

The UDRP was created as an alternative to court litigation. Those with registered domain names in ICANN may utilize the UDRP process,

which is quicker and cheaper than litigation under the ACPA. Essentially, the UDRP “creates a contract-based scheme for addressing disputes between domain name registrants and third parties challenging the regulation and use of their domain names.”⁴²

While the ICANN rules do not directly prohibit anticipatory cybersquatting, the UDRP process tends to favor the trademark owner in cases involving cybersquatting. To transfer or cancel a domain name registration under the UDRP, the complainant must prove:

- (1) The domain name is “identical or confusingly similar to a trademark or service mark in which the complainant has rights[.]”
- (2) The domain name registrant has “no rights or legitimate interests in respect of the domain name[.]” and
- (3) The domain name “has been registered and is being used in bad faith.”⁴³

Similar to the ACPA, the UDRP also provides a list of bad faith factors. However, instead of eight factors, there are only four, all of which are broader than their ACPA counterparts. The complainant need only prove they own a trademark or service mark. Thus, the UDRP may also apply to domaining, especially in situations where the domain name owner insists on an exorbitant sale price.

Where the ACPA focuses on bad faith intent, the UDRP considers situations where circumstances indicate bad faith; no evidence of bad faith intent is required.⁴⁴ Again, this allows the UDRP process to favor the trademark owners. As a result, the UDRP has become a more realistic course of action for trademark owners than the ACPA.

Support from Consumer Protection and Unfair Competition Laws

Additionally, state consumer protection laws and state or federal unfair competition laws may serve as a crutch to ACPA claims. State consumer protection laws are generally favorable over the ACPA if the complainant may show evidence of consumer confusion. Section 5 of the Federal Trade Commission Act offers remedies on both the consumer protection and unfair competition

side if the challenged conduct made no economic sense.⁴⁵

Section 2 of the Sherman Act creates a cause of action against those attempting to monopolize in a relevant market.⁴⁶ This requires a defendant to engage in some sort of predatory anticompetitive conduct with intent to monopolize.⁴⁷ Monopolization claims are all about how the market is defined, and this may be proven through market research or evidence of consumer confusion. Predatory pricing, such as charging an exorbitant amount for a product, is evidence of a Section 2 violation as well.⁴⁸ Section 2 may also provide a cause of action against domainers that purchase domain names in bulk, thus monopolizing a certain market of domain names.

A trademark owner could deploy the Sherman Act if an alleged cybersquatter was charging an outrageous amount for numerous domain names, resulting in a predatory pricing issue. Also, if the alleged cybersquatter expressed bad intent to squash any market power of the trademark owner, this would reflect poorly on the domain name owner in a rule of reason analysis.

Amending the ACPA

The most effective resolution comes in the form of legislation passed by Congress to amend the ACPA on many different levels. First, Congress should clarify the interpretation of the word “registration” and mandate whether registration should be defined as only initial registrations or includes re-registrations. The majority of circuit courts that have faced this issue favor interpreting “registration” as including both initial registrations and re-registrations. As mentioned above, adopting registrations as a contract right, rather than a property right, aligns with the spirit of domain ownership.

In amending the ACPA, Congress should also prioritize nonuse as a factor in demonstrating liability and bad faith intent for the ACPA. Nonuse is included in Factor (vi), though Congress should explain that a domain name purchase may start off with good intent, but nonuse could transform into bad intent.⁴⁹ Nonuse itself could be its own bad faith factor, which would address domaining issues. Bad faith and nonuse should also extend to the use of subdomains, usernames, and e-mail addresses, all of which are vulnerable to cybersquatting.

IV. CONCLUSION

The ACPA’s severe limitations put the Act at risk of extinction. The Act served as a band-aid to the FTDA during the dot.com boom but failed to reconcile key trademark principles with domain name ownership. Moreover, domain name ownership is not solely a trademark issue and should be analyzed using the lens of other legal theories as well, including unfair competition and consumer law. The circuit split on the interpretation of “registration” indicates confusion on the application of the ACPA. Without intervention from Congress the ACPA may no longer be a useful weapon in a trademark owner’s arsenal.

Notes

1. *Jysk Bed’N Linen v. Dutta-Roy*, 810 F.3d 767, 775 (11th Cir. 2015) (“Cybersquatting is essentially extortion”).
2. *Harrods Ltd. v. Sixty Internet Domain Names*, 302 F.3d 214, 238 (4th Cir. 2002).
3. See e.g., *Westchester Media v. PRL USA Holdings, Inc.*, 214 F.3d 658 (5th Cir. 2000) (holding that the FTDA requires proof of actual harm); *Ringling Bros.-Bamum & Bailey Combined Shows, Inc. v. Utah Div. of Travel Dev.*, 170 F.3d 449 (4th Cir. 1999) (holding a dilution claim requires more than mere proof that customers may make a mental association between marks).
4. *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1325 (9th Cir. 1998).
5. See, e.g., *HQM, Ltd. v. Hatfield*, 71 F. Supp. 2d 500, 506 (D. Md. 1999) (providing that a.com designation does not, by itself, constitute commercial use); *Acad. of Motion Picture Arts & Scis. v. Network Solutions, Inc.*, 989 F. Supp. 1276, 1278–79 (C.D. Cal. 1997) (holding mere registration of a domain name does not constitute commercial use); *Juno Online Services v. Juno Lighting, Inc.*, 979 F. Supp. 684 (N.D. Ill. 1997) (ruling reservation of domain name without a website does not constitute trademark infringement).
6. S. REP. NO. 106-140 (1999).
7. Lanham Act, 15 U.S.C. § 1125(d)(1)(A).
8. Lanham Act, 15 U.S.C. § 1125(d)(1)(B).
9. See *DSPT Intern., Inc. v. Nahum*, 624 F.3d 1213, 1219–1221, 97 U.S.P.Q.2d 1022 (9th Cir. 2010).
10. Lanham Act, 15 U.S.C. § 1125(d)(1)(A)(ii).
11. *Schmidheiny v. Weber*, 319 F.3d 581 (3d Cir. 2003).
12. *Id.* at 582.
13. *Id.*
14. *Id.*
15. *Jysk*, 810 F.3d at 771–72.
16. *Id.* at 777 (emphasis in original).

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17. Prudential Ins. Co. of Am. v. Shenzhen Stone Network Info. Ltd., No. 21-1823, 2023 WL 367217, at *9 (4th Cir. Jan. 24, 2023).
 18. GoPets Ltd. v. Hise, 657 F.3d 1024, 1031–1032 (9th Cir. 2011).
 19. Id. at 1031.
 20. Star Athletica LLC v. Varsity Brands, Inc., 137 S.Ct. 1002, 1010 (2017) (citations omitted).
 21. Oliver Wendell Holmes, The Theory of Legal Interpretation, 12 Harv. L. Rev. 417, 419 (1899).
 22. H.R. REP. NO. 106-464, at 10 (1999).
 23. MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/registration> (last visited Jan. 11, 2023).
 24. MERRIAMWEBSTER, <https://www.merriam-webster.com/dictionary/re-registration> (last visited Jan. 11, 2023).
 25. Twitter, Inc. v. Geigo, Inc., No. D2011-1210 (WIPO Nov. 2, 2011) (emphasis added).
 26. Instructure, Inc. v. Canvas Techs., 2:21-CV-00454-DAK-CMR, Dkt. 1 (D. Utah Jan. 5, 2022).
 27. 15 U.S.C. §§ 1051 et seq.
 28. Crystal Entm't & Filmworks, Inc. v. Jurado, 643 F.3d 1313, 1321 (11th Cir. 2011) (quoting Planetary Motion, Inc. v. Techsplosion, Inc., 261 F.3d 1188, 1193–94 (11th Cir. 2001)) (“Common-law trademark rights are ‘appropriated only through actual prior use in commerce’”).
 29. Lanham Act, 15 U.S.C. § 1127.
 30. Lanham Act, 15 U.S.C. § 1114(1)(a); 15 U.S.C. § 1125(a).
 31. Lanham Act, 15 U.S.C. § 1114.
 32. See GoPets, 657 F.3d at 1028.
 33. Supra note 17 at 1027.
 34. INVESTOPEDIA, <https://www.investopedia.com/financial-edge/0412/how-to-make-money-with-domain-names.aspx> (last visited Jan. 11, 2023).
 35. See Lanham Act, 15 U.S.C. § 1125(d)(1)(A)(ii).
 36. Supra note 1 at 779.
 37. Supra note 6.
 38. Prudential Ins., 2023 WL 367217, at *9 (quoting Prudential Ins. Co. of Am. v. PRU.COM, 546 F. Supp. 3d 476, 492 (E.D.Va. 2021)).
 39. Supra note 37.
 40. Actmedia, Inc. v. Active Media Int'l, Inc., No. 96C3448, 1996 WL 466527, at ** (N.D. Ill. July 17, 1996) (finding “reservation” of domain name constituted unfair competition and dilution).
 41. BLOOMBERG LAW, <https://news.bloomberglaw.com/ip-law/state-laws-fighting-patent-systems-dark-underbelly-put-to-test> (last visited January 13, 2023).
 42. Parisi v. Netlearning, Inc., 139 F. Supp. 2d 745, 751 (E.D. Va. 2001).
 43. ICANN, <https://www.icann.org/resources/pages/policy-2012-02-25-en> (last visited Jan. 11, 2023).
 44. ICANN, <https://www.icann.org/resources/pages/policy-2012-02-25-en> (last visited Jan. 11, 2023).
 45. Kellogg Co. v. National Biscuit Co., 305 U.S. 111 (1938).
 46. Sherman Act, 15 U.S.C. § 2.
 47. Spectrum Sports, Inc. v. McQuillan, 506 U.S. 447 (1993).
 48. Utah Pie Co. v. Continental Baking Co., 386 U.S. 685 (1967).
 49. Supra note 6.

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