PROTECTION OF TRADEMARKS ON THE INTERNET IN THE COURTS OF UZBEKISTAN

Babakulov Zafar Kurbonnazarovich
Doctor of Philosophy on Legal Sciences (PhD).,
Tashkent State Law University
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ABSTRACT.
Today, the expansion of trade relations in the material space to the virtual space creates a favorable trading environment for participants. However, the development of the Internet, along with its positive aspects, has become a place of dishonesty for some parties. World-famous brands` domain names are being misappropriated resulting in tendencies of unfair market-competition. In some countries, this practice is called as a cyber-piracy, while in our country it is named as an unfair competition. While this illegal activity is regulated by the relevant legislation and court documents in foreign countries, the issue of determining its legal status in our national sphere is still remaining to be under covered. It should be noted that those rules are adjusted to the narrow meaning of the legal status and consequences of cybercrime. That is, the appropriation of a trademark in domain names, the elimination of its legal consequences, special mechanisms to prevent this (as a rule, the availability of technical measures), the legal assessment of the actions of the perpetrator, the process of discovery of such actions as a cybercrime are not developed according to the laws and practices of foreign countries. Thus, these cases are discussed in detail in the following article. Cybercrime is analyzed on the basis of the judicial practice of foreign and national courts, followed by drawing appropriate conclusions and recommendations.

KEY WORDS
trademark, domain name, cybercrime, USA, Russia, internet, “www.kitobxon.uz” “kitobsavdo.uz”, “wildberries”, “wildberries.uz”.

INTRODUCTION
The Internet has provided countless new ways for ingenious businesses and individuals to refer to a plaintiff’s mark in a manner that inpacts the plaintiff’s business. These new methods may not directly associate the mark with goods or services that the defendant is offering for sale and may be completely hidden from consumers’ view. In evaluating the numerous trademark infringement and dilution suits that these unauthorized references have generated, courts have often failed to focus on the appropriate role of the “trademark use” requirement,

which has traditionally limited the scope of the trademark infringement (and more recently, trademark dilution) cause of action. Some courts appear to have completely ignored the trademark use limitation, while others have acknowledged the limitation but construed it in a manner that undercuts or distorts it. This has given rise to a number of splits in the Circuit Courts of Appeals. This Article undertakes to bring some focus and coherence to the trademark use issue in the Internet context. It provides an in-depth examination of the history and purpose of the limitation and proposes a modern, general definition of "trademark use" in light of that history and purpose. It then demonstrates how this definition should apply in several important contexts on the Internet.

RESEARCH METHODS.

Methods such as historical, systematic-structural, comparative legal, logical, induction and deduction, specific sociological, complex research of scientific sources were used during the research.

DATA ANALYSIS.

A trademark is not intended to operate as a monopoly over the use of a particular word or phrase-rather, it is intended as a means of protection against consumer confusion as to the source of a particular set of goods and/or services. Traditionally, this has meant that trademarks often are individually registered for use in connection with certain classes of goods. Thus, the same mark can be used by different entities simultaneously in connection with different classes of goods.

The Internet, however, has changed the equation. Opportunistic attempts by third-party non-rights-holders to secure domain names corresponding to or closely resembling a famous mark have fostered a unique form of trademark infringement known as "cybersquatting." Cybersquatting generally refers to the registration of a domain name incorporating a trademark to which the registrant has no genuine relationship. Unlike many other areas of intellectual property law, where existing legal doctrines have been extended to cover Internet-related activities, cybersquatting has engendered significant new remedial laws and administrative procedures.

A substantial amount of litigation also has arisen over competing claims to domain names between registrants who both have a legitimate claim to use of a mark in different commercial sectors. Because only one rights-holder in a mark can possess any particular Internet domain name address, ownership of a domain name can essentially mean ownership of the exclusive Internet rights to

a particular mark. For example, Hypothetical Pencil Company, a national company, and Hypothetical Donut Shop, a local bakery in Buffalo, New York, might co-exist in the offline world without consumer confusion, both claiming trademark rights in the Hypothetical name. However, only one such rights-holder can be the owner of the Internet domain name address "hypothetical.com," and, with the increasing importance for all businesses in maintaining an Internet presence, rapidly determining the parties' respective rights in such domain name disputes has become nothing short of essential.

"Cybersquatting" is the registration of Internet domain names that incorporate the trademarks of famous brands, products, and companies by individuals wholly unrelated to those marks, as well as the subsequent sale of those domain names to third parties, including to the trademark owner, at extortionate prices. Initially, trademark holders' remedies were limited to extant federal and state law, which provided remedies in some cases but left owners at the mercy of the cybersquatter in many others. Now, new federal law and a coordinated administrative dispute resolution system provide more effective remedies against such infringement.

In the context of developing economic relations, the role of the Internet is enormous. This global system has made it possible to establish mutually beneficial relations by ensuring the common integration of different sectors. At the same time, the interaction of entities using the Internet has made it possible to easily identify the information resources provided by domain names. By this global system, international trade relations have also developed. This in its turn has created a favorable environment for manufacturers to advertise their products by the use of domain names and find buyers accordingly. As a result, the concept of "virtual commerce" has been introduced into modern market relations [1].

The development of the Internet, along with its positive aspects, has also entailed some negative effects on social, economic and other relationships. In other words, the Internet has not limited itself to a single economic space, but has influenced the global economic system through domain names, and this process is intensifying day by day. In particular, this process has affected the legal title of intellectual property and their status, raising some issues that need to be regulated. An example of this is the occasions of registration of world-famous and popular brands as domain names by some unscrupulous individuals. Unfair registration of trademarks by unknown individuals on the Internet as domain names leads to a certain limitation of the rights of the owner of the

trademark in the virtual world, and secondly, the devaluation of the trademark in the market and, consequently, the decrease its self-cost.

By a single domain that identifies relevant information and data, countless people around the world are colliding within a single space and meeting their needs there. Registration of trademarks as domain names can also be done by such unrestricted persons. It is impossible to detect such cases. This is because they is done by invisible hands, taking advantage of the infinity of the Internet world and undermining the reputation of brands through domain names. As a result, the interests of the owners of the rights to the trademark are becoming vulnerable in the way that is not against the law of different countries around the world.

Cases related to the use of trademarks in domain names are studied as a relatively common issue in general and scientific work by the law enforcement practice of foreign countries. In foreign law and jurisprudence, this type of dispute is defined as a cybersquatting.

In 2018, the World Intellectual Property Organization (WIPO) received 3,447 applications from its member states [2] to consider and resolve cases of unfair use of trademarks in domain names in accordance with the Additional Rules on the Unified Policy for Resolving Disputes with Domain Names. Applications were mainly from the United States (976), France (553), the United Kingdom (305), Germany (244), Switzerland (193), Malta (135), Sweden (131), Italy (113), the Netherlands (96), Spain (68), Denmark (61), Australia (51), India (50) and other countries [3].

Courts in the United States, Germany, the United Kingdom, and other countries have considered the appropriation of trademarks in a domain name as a contentious case. The content of this type of dispute does not depend on the specificity of the states and the nature of the social relations within them. In Uzbekistan, the nature of the dispute considered by their courts is also the same. For this reason, the appropriation of trademarks in domain names in Uzbekistan is defined as a legal conflict as in the above-mentioned countries. Therefore, it is rational to develop and apply the relevant national legislation based on the experience and legislation of the United States, Germany, the United Kingdom.

The concept of a domain name is defined in the Regulation on the procedure for registration and use of domain names in the domain "uz" dated December 30, 2014, according to which it is defined as a “domain - a part of the Internet network allocated for ownership by an organization responsible for its support”. It is difficult to call this definition suitable for addressing the use of trademarks

in domain names, as it only defines the essence of the domain name and does not provide information about its relationship with the trademark, as well as the aspects of its legal protection.

Article 27 of the Law of the Republic of Uzbekistan "On Trademarks, service marks and appellations of origin" dated 30 August 2001 and Article 11 of the Law "On Firm names" dated 18 September 2006 stipulate that a domain name may be used in conjunction with trademarks and trade names. The current Civil Code does not define the concept of a domain name and its legal status. Hence, the issue of recognizing a domain name as an object of intellectual property remains unclear. There is no answer to this question not only in the national legislation of Uzbekistan, but also in the legislation of the Russian Federation. The World Intellectual Property Organization also states that the domain name is not protected as a civil object. While the World Intellectual Property Organization defines a domain name as an unprotected object of intellectual property it adds that "in fact, the trademark and the domain name exist as a whole and perform the same function." Commenting on this definition in more detail, the international organization added that: "Domain names were originally designed to be user-friendly only for technical functions, but are now used as a personal or business personalization tool because they are easier to receive and remember directly. Thus, while domain names are not considered intellectual property, they now perform the same personalization function as trademarks" [4]

Thus, according to the legislation of the Russian Federation and the authorization of the World Intellectual Property Organization, the domain name is not considered an object of intellectual property. In particular, according to the decision of the Supreme Arbitration Court of the Russian Federation, "domain names have in fact become a mean of acting as a trademark. This made it possible to distinguish the goods and services of some legal entities or individuals from similar goods and services of other legal entities or individuals respectively. In addition, domain names, including trademarks and trade names, have a certain commercial value [5]. Here we can see that domain names are practically equated with trademarks.

Moreover, trademark and domain names as interrelated disputes are not only regulated by intellectual property law. In many cases, the violation of trademark rights in domain names is accompanied by a violation of competition law as well. The creation of an independent free system in the registration of domain names on the Internet has created an opportunity to create a conflict with other

features protected by law. A.G. Sergo points out that such a conflict can occur in relationships with any protected characters (not only trademarks, but also other means of personalization, personal names, work title, character name, etc.) [6]. This dishonest behavior has been referred to as “cybersquatting” in scientific papers and in the legislation of some foreign countries.

In the scientific literature, scientists analyze specific aspects of cybersquatting. In particular, SA Sudarikov defines cybersquatting as “the use of trademarks, company names, geographical names and other objects as domain names by persons without exclusive rights” [7]

According to M.M. Budagova, cybersquatting (poss., Squatting) is the acquisition or ending of promising domain names (corresponding to well-known brand or company names or simply “beautiful” and easy to remember). As a result, it was accepted as a registration event for resale” [8] A similar idea can be found in the work of A.A. Alexandrova, who believes that “in world practice, such actions are called cybersquatting, domain names that contain the names of well-known companies or simply” or “names for later sale or advertising” [9]

In the scientific works of S.Ya. Kazantsev and O.E. Zgadzay, it is stated that “The business of registering unknown or little-known company names and world-famous and well-known trademarks as domain names on the Internet has become popular - this is called cyberquatting” [10]

It follows from the above definitions that cyberquatting is the dishonest activity of the bidder to register the results of intellectual activity belonging to him as a domain name and sell it to those interested in that domain, limiting the legal capacity of the right holder.

FINDINGS AND DISCUSSIONS.

The Uzbek courts have also established a practice of reviewing disputes related to cybersquatting. However, in the courts of countries such as the United States, Germany, Japan, France, the practice of litigation related to the unauthorized acquisition of trademarks from domain names is sufficiently formed. In addition, the World Intellectual Property Organization has special commissions for resolving such disputes.

In Uzbek jurisprudence, there are also disputes over the acquisition of trademarks in domain names through cyberquatting. On March 15, 2021, the Tashkent City Court ruled in favor of the plaintiff “Wildberries” LLC (owner of the “Wildberries” trademark) No. 4-10-2125 / 42 against the defendant individual enterpreteur (owner of the domain name “Wildberries.uz”) in a

dispute over the status of appropriation of the trademark. According to the facts of the case, the plaintiff's trademark "Wildberries" belonging to "Wildberries" LLC is under international legal protection under No. 1020283 and No. 1237056. The defendant, an individual entrepreneur named A, took advantage of the brand's reputation in the commodity market and registered it as a Wildberries.uz domain name without the owner's consent. This has led to cybersquatting, which is the practice of piracy in a domain name. This is a scientifically and internationally recognized offense. That is, the defendants in this case had been abusing the plaintiff's position in the electronic commodity market by registering a plaintiff's similar domain name and a domain name identical to the trademark.

This dispute has beeen considered by the Shaykhantahur Interdistrict Civil Court on March 17, 2020. According to the status of the dispute, on April 2, 2010 the State Patent Office of the Republic of Uzbekistan issued a trademark and service mark "KITOBXON" in the name of a person named "A" for a period of 10 (ten) years on the basis of certificate MGU 20382. On September 27, 2019, the Intellectual Property Agency extended the validity of the trademark "KITOBXON" until 2030. Also, on August 26, 2011, the plaintiff registered the domain "KITOBXON.UZ". However, the plaintiff then transfers the domain name to a person named “X” in order to cooperate with the person named “X”. The person named "X" registers the domain "KITOBXON.UZ" in the name of the responsible person named "B".

According to the case file, the person named "B" registered the domain name "WWW.KITOBXON.UZ" from November 30, 2013 to February 12, 2021, which is the same as the trademark belonging to the plaintiff. Along with the person named "B", the registrar of the domain "www.kitobxon.uz" VneshinvestProm LLC was also involved in the case. It was established that the plaintiff, A, had previously cooperated with the head of VneshinvestProm LLC, X, in particular, by launching the KITOBSAVDO.UZ domain and providing customers with access to the site with “uz” domain. Taking advantage of the situation, a person named "X" takes the advantage of the situation and registers the domain “www.kitobxon.uz” in the name of a person “B” by the LLC VneshinvestProm belonging to himself and thereby, escapes the liability.

Upon learning of this situation, the plaintiff, named “A”, repeatedly sent warning letters to the defendant, demanding the domain "www.kitobxon.uz" in order to restore the violated rights to his trademark, but the defendant did not respond to these inquiries. As a result, the plaintiff appealed to the court to cancel the

registration of the domain "www.kitobxon.uz" in the name of the person named "B" and re-register it in his name. Based on the circumstances of the case, the court revoked the domain "www.kitobxon.uz" registered in the name of the person named "B" and re-registered the plaintiff in the name of the person named "A".

CONCLUSION.

Cyberquatting, or otherwise occupying a trademark in an unauthorized domain name, leads to an increase in such dishonesty as economic relations move into the virtual world. The reason it is not possible to restrict this behavior and therefore, many well-known and popular brands are becoming symbolic victims of domain names. There is no way to regulate these situations in an unlimited web space. This opportunity is being used by some swindlers in their own interests. It is possible to prevent such cases within a single region, but it is not possible to do so on the global web space. In this sense, based on the above considerations, we have come to the conclusion that the following issues should be addressed by the legislation:

firstly, the national legislation should clearly define the criteria for fair and unfair use of trademarks in domain names. Also, the widespread concept of cyberquatting, which reflects the behavior of appropriation of a trademark in the domain name, the establishment of special rules in national legislation related to the procedure for combating it;

secondly, it became clear that Russian and U.S. litigation did not have a reciprocal nature when studying controversial issues related to the use of trademarks as domain names. Therefore, it is necessary to expand international cooperation through the conclusion of bilateral or multilateral agreements between states aimed at preventing the use of trademarks as domain names or any illegal activities against trademarks in general. This agreement shall include provisions governing the mutual recognition and enforcement of judgments by both States;

thirdly, based on international practice, it is necessary to harmonize the applicable standards while maintaining important methods for alternative resolution of domain name disputes in arbitration courts. It also requires the development of uniform standards that allow for domain name ownership on a legal basis. In this regard, it is appropriate to use the US Consumer Protection Act (ACPA) as a model for the development of national legislation.

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