

Abstract

Registration and Use of Domain Names in Unfair Competition

The subject of this diploma thesis is the application of Czech law concerning unfair competition to the unfair competition practices related to registration and use of domain names, in particular to the unfair competition practices of cybersquatting. The aim of the thesis is examining questions whether the Czech legislation provides an effective instrument for ensuring legal recourse to the practices concerned.

In order to solve the stated issue, the author of the thesis describes in the first chapter, mainly by the descriptive method, the necessary technical basis of domain name problematics and registration, in the second chapter defines the legal nature of a domain name and related rights considering the recodification of civil law, in the third chapter the author analyzes mainly by the descriptive method the legal grounds of EU legislation on competition, the form of regulation and its influence on the national regulation of unfair competition. The fourth chapter examines the general provision of unfair competition and analyzes whether the general provision is correctly interpreted and applied by courts to unfair competition practices of cybersquatting, particularly whether the courts correctly interpret the concept of the normative average consumer, which has become an essential criterion for the assessment of unfair competition practices. In this section, the thesis discusses in detail the impact of a change in access to information by Internet users on the concept of the average consumer. This fundamental change is characterized by the shift from users entering the exact domain name to users entering a distinctive part of a domain name as a keyword in the search box. The fifth chapter contains the typology of cybersquatting methods. The means of protection against unfair competition are analyzed in the sixth chapter with the effort of finding a possibility to claim successfully transfer of a domain name within such legal remedies. Furthermore, the thesis compares the application of claims regarding unfair competition in court proceedings and in the alternative dispute resolution.

The major finding of the thesis indicates that the legislation on unfair competition is timeless and technologically neutral, and concurrently provides the prosecution of unfair competition practices, the cybersquatting in particular. However, the judicial practice analysis implies that its correct interpretation and application causes problems to the courts. These problems are caused partially by an incorrect application of the normative concept of the average consumer, due to the non-reflection of the change in disclosure on the Internet, and

partially by the narrow interpretation of the removal claim. The thesis provides an analysis of the theoretical basis for a successful claim to domain name transfer regarding unfair competition before the court considering unfair competition practices of cybersquatting. The author considers as the resulting method a claim for the transfer of a domain name within the removal claim, and, courageously, also within the claim for unjust enrichment. On the basis of the comparison of court decision-making practice, alternative dispute resolution experts and statistics of actions in domain disputes under ccTLD .cz, a conclusion can be made that judicial protection against cybersquatting fails, and the only effective means of prosecuting unfair competition practices of cybersquatting represents the alternative dispute resolution under ADR rules for ccTLD .cz, whose source of inspiration are the UDRP rules of ICANN.

Key words: unfair competition, domain names, cybersquatting