

RESUME

This thesis is focused on the analysis of legal aspects of Internet domain names related to unfair competition.

Domain names are the user-friendly form of Internet addresses. While designed to serve the function of enabling users to locate internet material in an easy manner, domain names have acquired a further significance as business identifiers and, as such, have come into conflict with the system of business identifiers that existed before the arrival of the Internet.

1. Most of these conflicts are brought about by specific unfair behaviour between competitors on the Internet, based on **speculative registration and use of domain names**, called **cybersquatting**. So far, no definition has been broadly accepted, but we can indicate its basic attributes:

- The domain name is identical or confusingly similar to another sign (trademark, business name or symbol) in which someone else has rights
- The registrant has no rights or legitimate interests in respect of the domain name
- The domain name was registered or was being used in bad faith

It is possible to distinguish a few forms of cybersquatting: Basic cybersquatting, Domain grabbing, Domain tasting, Domain parking, Typosquatting, etc.

Most countries (Czech republic included), however, do not create special acts in order to regulate this new phenomenon, since it is almost always possible to use the traditional commercial law regulation for unfair competition supported by regulations such as business name, trademark, copyright, in addition to some other civil law regulations.

The Czech law against unfair competition is regulated in the Commercial Code No. 513/1991 Coll (hereinafter only as the CC). Legal regulation concerning the law against unfair competition is based on a general provision (the general clause of unfair competition) with demonstrative examples of wrongful acts.

According to general clause, practices in economic competition that are capable of causing harm to a competitor (not only to an undertaker) or a consumer and that are contrary to the morality of economic competition, are prohibited.

Thanks to the very general formulation of general clause and some examples of acts of unfair competition (namely: acts contributing toward mistaken identity under Sec. 47 of the CC, misappropriation of reputation under Sec. 48 of the CC and derogating under Sec. 50 of the CC), the current business law regulation provides adequate protection against cybersquatting and its above mentioned forms.

2. Even in the **absence of bad faith**, the registration and use of a domain name may violate the rights of another sign owner (if there is a danger of confusion between the domain name and that sign). Considering the global nature of the Internet, it is obvious that such conflicts may occur even between subjects from different states.

The Czech law against unfair competition is based on objective liability for the wrongful acts. According to this, even legitimate users acting in good faith may be liable and sanctioned for an act of unfair competition. I think that such unrestricted enforcement of the unfair competition law is very strict. We must keep in mind the unique nature of domain names (The Internet does not have a central point of authority and control. Domain names are registered on a first-come-first-served basis with minimal checks and screening. The Internet is multijurisdictional, users can access it from any place on earth. Domain names allow a great variety of permutations at every level of domain, etc.) and individual circumstances of each particular case.

Provisions relating to unfair competition should be therefore interpreted in a more restrictive manner according to Sec. 41 of the CC, in order to find a balance between the interests of legitimate users acting in good faith on the one hand, and owners of rights which might be infringed by similar or identical domain names on the other. (For instance, the similarity and confusion test should be relaxed, when applied to domain names and the criterion of “an average consumer“ should be taken into account. If committing an act of unfair competition is stated, the remedy should be appropriate.)