

AS SEEN IN **Upsize**
Minnesota

mary source of advertising revenue.

The law is rapidly developing to keep pace with the new ways of doing business on the Internet. However, vigilance and quick response are vital. A trademark owner who neglects to monitor the Internet for infringement and dilution

[tips] 1 | The best way to protect your company's trademarks from theft by a cybersquatter is to register them with the U.S. Patent and Trademark Office.

2 | Likewise, register your trademarks to protect from infringement by meta-tags.

Courts have been quick to issue preliminary injunctions when the intent of the defendants was to lead customers to their Web sites by using the competitor's registered trademark in hidden meta-tags.

3 | To minimize the likelihood of creating a dispute you should obtain permission from the owner of a Web site before linking to it, particularly if you are not linking to the home/index page and are accessing specific information.

runs the risk of allowing an infringer to build up rights over a period of months or years, making the infringement more difficult to cure.

Owning domain names

One of the early questions addressed by the courts is who (between a first trademark user and a first domain-name user) should own the rights to a particular domain name. This controversy was initiated by businesses discovering that others had established their trademark as a domain name and were holding them for ransom. Famous trademarks could garner savvy cybersquatters thousands of dollars.

The best way to protect your trademark from theft by a cybersquatter and to prevent another from claiming that your domain name infringes its trademark is to register your company's trademarks. In the United States, trademarks are registered with the U.S. Patent and Trademark Office.

Owners of registered trademarks can



Here's how to protect trademarks, names on the Internet

WITH THE RISE of the Internet as a medium for generating significant revenue, deceitful competitors have pirated and misused protected trademarks in novel and occasionally shrewd ways to gain an unfair advantage over the competition.

Common forms of trademark misuse spawned by the Internet include cyber-

squatting (the purchase of another party's trademark as a domain name for the purpose of selling back to the rightful owner of the mark), improper meta-tagging (use of a trademark in a manner that is visible to search engines but not visible to the reader), and unfair linking practices that can bypass the linked-to site's homepage and therefore its pri-

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take advantage of applicable anti-cybersquatting laws like the Anti-Cybersquatting Consumer Protection Act (ACCPA). Also, having your trademark registered gives you some assurance that others are not using confusing similar trademarks

search the Internet. If your competitor uses your trademark in its meta-tags, search engines will direct customers seeking your trademark to your competitor's Web site. Improper use of meta-tags results in

Lessons on linking

To understand how linking can be considered an act of unfair competition in some instances, it is important to realize the commercial realities of the Internet. Web sites that are often viewed are considered prime real estate, and are relatively costly sites at which to advertise. Most Web sites offer a number of pages of data. The home page is where most viewers enter a site, and it is on this page that the majority of advertising occurs.

The complaints about linking are not linking per se, but rather about links that circumvent another's home page or the advertising portion thereof. Such links result in the advertisements of the sponsor Web site not being viewed, and the value inherent to that Web site to advertisers is therefore reduced. In essence, the Web site that has established the link benefits because viewers find its value enhanced (additional relevant access), but this is done at the expense of the linked site.

To minimize the likelihood of creating a dispute you should obtain permission from the owner of a Web site before linking to it, particularly if you are not linking to the home page and are accessing specific information.

If your site is developed by another party, your Web development agreement should clarify that links should not be added by the developer without your consultation, to give you the opportunity to seek permission from the other site. There is a possibility that a business owner not taking these steps could become vicariously liable for the unauthorized actions of the Web developer.

“A trademark owner who neglects to monitor the Internet for infringement and dilution runs the risk of allowing an infringer to build up rights over a period of months or years, making the infringement more difficult to cure.”

— Kyle Peterson, Patterson, Thunte, Skaar & Christensen

in your area of business, and that your adoption of a domain name based on your registered trademark will not infringe someone else's trademark.

Once your trademark is registered it is important to monitor the Internet and confirm that others are not using your trademark in a confusing or misleading way.

Registered trademark owners have had considerable success in preventing piracy of their marks by cybersquatters. For example, Ernest and Julio Gallo Winery successfully won a case against a defendant who registered the ernestandjulio-gallo.com domain name.

The court ordered the defendant's domain name turned over to the winery, enjoined the defendant from registering any domain name including the word Gallo, and awarded the winery monetary damages.

Messing with meta-tags

A less obvious way trademarks can be infringed is by including a competitor's trademark in a Web site's meta-tags. A meta-tag is a code hidden within a Web site that provides identification information or describes the contents.

Meta-tags are not visible when a Web page is displayed but are inspected by the search engines that consumers use to

confused and misguided customers and allows an unscrupulous individual or company to ride on the coattails of the good will of your business. This kind of trademark infringement is particularly dangerous because the consumer is never even aware of the meta-tag.

Internet advertising is geared toward the number of "hits" or times a certain Web site is accessed. Sites visited frequently can command higher advertising fees. Because a site will be visited more frequently the more often it is uncovered during a computer search, there exists a strong commercial incentive for a site to employ meta-tags and develop extensive keyword lists.

Moreover, there are no limits to the number of keywords a meta-tag might contain. Theoretically, a site developer could list every word in the English language, and thereby increases the site's hit rate.

A good way to protect yourself from infringement by meta-tags is to register your trademarks. Courts have been quick to issue preliminary injunctions based on trademark infringement claims when the intent of the defendants was to lead customers to their Web sites by using the competitor's registered trademark in hidden meta-tags.

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