

LOOKING BEYOND COPYRIGHT : OTHER IPR ISSUES IN BROADCASTING

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Trademark

- A trademark identifies products or services as coming from a particular source.
- Could be a word, a phrase or a design, it can also consist of or incorporate features such as color, smell, taste, shape (product configuration), touch, motion and sound.

Some Trademark Related Issues

- How has the trademark been used?
 - Is the use incidental?
 - Does the use constitute the crux of the content?

Cybersquatting

- It refers to registering, selling or using a domain name with the intent of profiting from the goodwill of someone else's trademark.

- **Numerous ways of cybersquatting :**
 - (i) By just adding or dropping a hyphen.
 - (ii) By adding a generic term
 - (iii) By misspelling a word
 - (iv) By omitting a letter

Cybersquatting : What Should You Do?

- Establish a budget : Only for most egregious cases.
- Send a cease and demand letter : Only if a competitor.
- If need be, opt for arbitration under Uniform Dispute Resolution Policy (UDRP)

Uniform Dispute Resolution Policy (UDRP)

- Process established by ICANN for the resolution of disputes regarding the registration of internet domain names.
- Provides for mandatory arbitration.
- Advantages : relatively inexpensive and fast remedy.

UDRP : What Do You Have to Prove?

- The domain name is identical or confusingly similar.
- The registrant has no legitimate interest in the domain name.
- The domain name was registered and has been used in bad faith.

UDRP : Cases That Can be Ignored

➤ Pay-per-click webpages

- Contains links to third party sites or advertisements.
- Registrant receives a small payment for each person who clicks on one of these links.

➤ If domain name is used only for legitimate criticism

- Right of free of speech

Publicity Rights

- Also known as personality rights.
- Governed by either statutory law or construed under laws related to privacy.
- The right of publicity prohibits the usage of an individual's "*persona*" for a "*commercial purpose*" unless proper consent has been sought.
- Prior written consent should be sought before using the likeness of a celebrity.

Privacy

- Consensus in academic literature that privacy is better addressed within the realm of ethics.
- Due to the public nature of broadcasting, care should be taken before posting anything.
- What should be posted? : Same rules as applicable to what can be posted to traditional broadcasting platforms shall be applicable

Some Case Laws

- In Romano v. Steelcase : The Supreme Court of New York Court held that there was no reasonable expectation of privacy with respect to social media sites such as Facebook and Myspace.
- In Moreno v. Sentinel : The Court of Appeals of California held that there was no expectation of privacy when a girl posted an Ode about her hometown to Myspace.

Thank you