CONGRESSIONAL RECORD — HOUSE

H10823

October 26, 1999

There was no objection.

TRADEMARK CYBERPIRACY PREVENTION ACT

Mr. CONE. Mr. Speaker, I move to suspend the rules and pass the bill (H. R. 10823) to amend certain trademark laws to prevent the misappropriation of marks, as amended. The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Trademark Cyberpiracy Prevention Act." (Sec. 1. SHORT TITLE: This Act may be cited as the "Trademark Cyberpiracy Prevention Act".)

(A) REFERENCES TO THE TRADEMARK ACT OF 1946.—Any reference in this Act to the Trademark Act of 1946 shall be a reference to the Act entitled "An Act to provide for the registration of marks and for the protection of marks and for other purposes," approved July 2, 1946 (15 U.S.C. 1051 et seq.).

(B) CONSTRUCTION.—

(1) (A) A person shall be liable in a civil action by the owner of a mark, including a famous personal name which is protected under this section, if, without regard to the goods or services of the party, that person—

(i) uses a domain name to, or uses a domain name that—

(I) in the case of a mark that is distinctive at the time of registration of the domain name, is identical or confusingly similar to the mark; or

(II) in the case of a famous mark that is famous at the time of registration of the domain name, is identical or confusingly similar to the mark; or

(II) is a trademark, word, or name protected by reason of section 96 of title 18, United States Code, or section 2401 of title 15, United States Code;

(II) In determining whether there is a bad faith use of the domain name under subsection (A), a court may consider factors such as, but not limited to—

(i) the bad faith intent of the person who used the domain name;

(ii) the extent to which the domain name consists of the legal name of the person or a name that is otherwise customarily used to identify that person;

(iii) the person's prior lawful use, if any, of the domain name in connection with the bona fide offering of any goods or services;

(iv) the person's lawful noncommercial or fair use of the mark in a site accessible under the domain name;

(v) the extent to which the person desires to divert consumer traffic from the mark owner's online location to a site accessible under the domain name;

(vi) the extent of any attempt to divert consumer traffic from the mark owner's online location to a site accessible under the domain name;

(vii) the extent to which the person in commerce uses a domain name that is identical to, or confusingly similar to, the mark or a domain name to the extent that it is confusingly similar to, the mark;

(viii) the extent to which the person in commerce uses a domain name or a domain name to the extent that it is confusingly similar to, the mark;

(viii) the extent of any attempt to divert consumer traffic from the mark owner's online location to a site accessible under the domain name;

(ix) the extent of any attempt to divert consumer traffic from the mark owner's online location to a site accessible under the domain name;

(x) the extent to which the person in commerce uses a domain name or a domain name to the extent that it is confusingly similar to, the mark;

(xi) the extent to which the person in commerce uses a domain name or a domain name to the extent that it is confusingly similar to, the mark;

(xii) the extent of any attempt to divert consumer traffic from the mark owner's online location to a site accessible under the domain name;

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CONGRESSIONAL RECORD — HOUSE

October 26, 1999

OVER the past 2 years, the Subcommittee on Courts and Intellectual Property, through a series of oversight hearings, has become very aware of the problems faced by owners of famous marks when dealing with the issue of domain names.

Time and time again we heard stories of cyberpiracy and the efforts of the Federal Election Commission. The Senate's reauthorization of the Trademark Act, the Cyberpiracy Prevention Act, is a very important and significant piece of legislation, and I rise in support of it as a co-sponsor.

Mr. COBLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 3288, as amended.

The SPEAKER pro tempore. The gentleman from North Carolina (Mr. COBLE) is recognized for 2 minutes. The Chair recognizes the gentleman from North Carolina (Mr. COBLE).

Mr. COBLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 3288, as amended.

The SPEAKER pro tempore. The gentleman from North Carolina (Mr. COBLE) is recognized for 2 minutes. The Chair recognizes the gentleman from North Carolina (Mr. COBLE).

Mr. COBLE. Mr. Speaker, I yield to the gentleman.

Mr. Speaker. Mr. Speaker, H.R. 3288, the Trademark Counterfeiting Prevention Act, is a very important and significant piece of legislation, and I urge a favorable vote on H.R. 3288.

The Chair recognizes the gentleman from North Carolina (Mr. COBLE).

Mr. COBLE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 3288, as amended.

The SPEAKER pro tempore. The gentleman from North Carolina (Mr. COBLE) is recognized for 2 minutes. The Chair recognizes the gentleman from North Carolina (Mr. COBLE).

Mr. Speaker. Mr. Speaker, H.R. 3288, the Trademark Counterfeiting Prevention Act, is a very important and significant piece of legislation, and I urge a favorable vote on H.R. 3288.

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CONGRESSIONAL RECORD – HOUSE

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H10825

HEINOnline -- 1 Anticybersquatting Consumer Protection Act: A Legislative History of Public Law No. 106-113 Appendix I, 113

Stat 1501A-545 H10825 2002

This section provides that the act may be titled "the Anticybersquatting Consumer Protection Act" and that any references within the bill to "the Trademark Dilution Act of 1988" shall be read to include the act itself. An Act for the purpose of registration and protection of trademarks used in commerce, since in the provisions of certain international conventions for that purpose, approved July 5, 1985 (65 U.S.C. 305 et seq.), is also commonly referred to as the Lanham Act.

SECTION 5. Jurisdiction.

Subsection (a).

This subsection provides that the act may be titled "the Anticybersquatting Consumer Protection Act" and that any references within the bill to "the Trademark Dilution Act of 1988" shall be read to include the act itself. An Act for the purpose of registration and protection of trademarks used in commerce, since in the provisions of certain international conventions for that purpose, approved July 5, 1985 (65 U.S.C. 305 et seq.), is also commonly referred to as the Lanham Act.

SECTION 5. Jurisdiction.

Subtract (a).

This subsection effectively provides that the act may be titled "the Anticybersquatting Consumer Protection Act" and that any references within the bill to "the Trademark Dilution Act of 1988" shall be read to include the act itself. An Act for the purpose of registration and protection of trademarks used in commerce, since in the provisions of certain international conventions for that purpose, approved July 5, 1985 (65 U.S.C. 305 et seq.), is also commonly referred to as the Lanham Act.

SECTION 5. Jurisdiction.

Subtract (a).

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15 U.S.C. (a). The protection provided by section (a) shall apply to all trademarks....
The petition case mentioned above, where courts have found defendant's offer to sell the domain name in question lawful because the domain name was being indicative of the defendant's intent to trade on the value of a trademark owner's marks by engaging in the business of registering those marks and selling them to the rightful trademark owners. It does not suggest that a court should consider the registration as a factor, as the mere fact of the registration decision is a factor in determining whether the defendant's offer to sell the domain name is lawful.

In fact, there are cases in which a person registers a name in a good faith attempt to avoid bad faith, but simply never pursues it. And someone who has a legitimate claim to a domain that mirrors someone else's domain name, such as a trademark owner, who is a lawful consensual user of that name with another trademark owner, may, in fact, wish to sell that name to the trademark owner for a profit.

This bill does not imply that those facts are an exclusive set of factors by which any court may consider a court with the necessary discretion to disregard the evidence of bad faith when it is present. In practice, the offer to sell domain names that are both fair competitive use and infringing is a factor in determining whether the defendant's offer to sell the domain name has been one of the most common threats in abusive domain name registration.

Interestingly, the Senate Report on the Trademark Law Revision Act of 1988, Section 43A, states that a party may not transfer or otherwise assign a domain name to another person by limiting consideration to the person's contact information. And even then, factually, the factors that indicate bad faith are simply never present. And someone who has a legitimate claim to a domain name with another trademark owner, this allows a court to determine the proper course of action.

Lastly, under paragraph (1)(d)(vi), a court may consider the registrant's provision of material and misleading false contact information in determining whether the defendant's offer to sell the domain name is lawful.

Under paragraph (1)(d)(i), a court may consider the registrant's provision of a false or misleading domain name registration. Nevertheless, the Senate Report on the Trademark Law Revision Act of 1988, Section 43A, states that a party may not transfer or otherwise assign a domain name to another person by limiting consideration to the person's contact information. This allows a court to determine the proper course of action.

Finally, under paragraph (1)(d)(vii), a court may consider the registrant's provision of misleading false contact information in determining whether the defendant's offer to sell the domain name is lawful. This allows a court to determine the proper course of action.

In any case where the infringer has been served with notice of the infringement and has failed to respond within thirty days, the court may direct the registrar, registry, or other transferee to transfer the domain name. When a domain name is transferred or otherwise assigned, the registrar, registry, or other transferee shall notify the registrar, registry, or other transferee of the transfer or other assignment.

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trademark owners. Under a new section sub-
paragraph (D)(iv) in section 302, a trade-
mark or service mark that erroneously or
mistakenly is registered to the domain name registrar
or registry that a domain name is infringing shall be liable to the domain name registrant
for damages resulting from the suspension, cancellation, or transfer of the domain
name. In addition, the court may grant inj-
unrelocational relief, or, in the domain name reg-
istrator by ordering the reactivation of the
domain name on the back to the domain name registrar.
Finally, in creating a new subparagraph (D)(iv) in section 302, current core law limiting the secondary li-
ability of domain name registrants for the act of registration of a domain name to target the
domain name registrar. The definition section
amends the Trademark Act's definitions section (section 1501A-545 H10827 2002)
the President. Members of
the Federal Trademark Dilution Stat-
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protocol that protects the act of registration of domain names.
Mr. Speaker. I reserve the balance of
my time.
Mr. COBLE. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from California (Mr. ROGAN), the author of the bill.

Mr. ROGAN. Mr. Speaker, I thank the distinguished chairman of the Subcommittee on Courts and Intellectual Property for yielding time to me, and also for his incredible leadership on this particular measure.

Mr. Speaker, I am pleased to join with my friend and colleague, the gentleman from Virginia (Mr. BOUCHER) and coauthor of the bill in bringing forward the Trademark Cyberpiracy Prevention Act.

America's trademark owners are facing a new form of piracy on the Internet today caused by acts of cybersquatting. Cybersquatting is the deceptive practice of registering a domain name or establishing a web site containing trademark-name information that is associated with the trademark being confused. Children and the potential for financial gain is far greater.

For example, after a cybersquatter registered four domain names for $20, he tried to sell to Warner Brothers the domain names Warner_Records.com, Warner_Bro_records.com, andWARNerpictures.com for $539,000.

Second, court actions take place for a number of reasons: first, to enjoin payment from the rightful owners of the trademark. These are among the most prevalent cases, since it only costs $70 to register a domain name, and the potential for financial gain is far greater.

For example, after a cybersquatter successfully registered a domain name, he tried to sell it to Warner Brothers for $539,000.

Mr. Speaker, it is a reality opportunity to strengthen the Internet's ability to serve as a viable marketplace in the 21st century. It does so by shortening the kickback by cybersquatters and providing a more certain and less expensive remedy for American businesses and otherwise. That explicitly prohibits this practice. The Act provides a legal remedy for American businesses and individuals whose traditional trademark law has failed. It protects trademarks and service mark owners while promoting the growth of electronic commerce by punishing individuals who register domain names in an attempt to profit at the expense of businesses and individuals.

This legislation specifically prohibits registration, trafficking in, or use of a domain name that is identical to, confusingly similar to, or that dilutes a mark that is distinctive at the time the domain name is registered.

Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from California (Mr. BERMAN), the coauthor of the legislation.

Mr. BERMAN. Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from California (Mr. BERMAN), the coauthor of the legislation.

Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Virginia (Mr. BOUCHER), the chairman of the Subcommittee on Courts and Intellectual Property, for moving this bill so rapidly through the process, and to my distinguished friend, the gentleman from California (Mr. BERMAN), for all his help on this.

Mr. Speaker, it is a pleasure for me to join with my friend and colleague, the gentleman from California (Mr. ROGAN), in offering this legislation. I want to join with him in expressing our mutual appreciation to the gentleman from North Carolina (Mr. COBLE), the Subcommittee chairman, and the gentleman from California (Mr. ROGAN), the ranking member of the subcommittee, for their excellent assistance in processing the bill and bringing it to the floor today.

Under current law, it is hard for a trademark owner to obtain relief from a domain name that is similar to his trademark name. The legal remedies are expensive and, at the end of the day, uncertain. Many trademark owners conclude that it is easier simply to pay the cybersquatter his ransom and in effect buy back his trademark name rather than to enforce his legal rights in a court of law.

The gentleman from California (Mr. ROGAN) and I want to get cybersquatters out of business by promoting a more certain, less expensive and more timely legal remedy to those who have trademarks and seeks to enforce those trademarks. Our legislation sets forth a list of factors that can be applied in determining if a domain name registration is made in bad faith with the intent to profit from the good will that is associated with the trademark. These factors can be applied by a court. They can also be applied by the domain name registrar, who then would be given exemption from liability if, upon application of that list of factors, the determination was made that the registration was in bad faith, that the registration in fact was made by a cybersquatter, and that the registration should therefore be suspended or canceled.

Cancellation or suspension in that instance would be accompanied by the award of an exemption from liability. Should the cybersquatter pursue the domain name registration.
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This reverses an error that was made, and I want to compliment all of the members of the Committee on the Judiciary, and particularly the chairman and the ranking member, for bringing this back to our attention so we can correct this situation.

Mr. COBLE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Florida (Mr. SHAW).

Mr. SHAW, Mr. Speaker, I thank the gentleman from North Carolina (Chairman COBLE) and the gentleman from California (Mr. BERMAN), the ranking Democrat member, for the swift action that they have taken in bringing this matter and attaching it to this bill and bringing it to the floor.

For those of my colleagues who have not been to Miami Beach lately, there is a tremendous resurgence going on. The history of that area dates back to the early days of the 1980s when art deco was just getting started. The architecture that has evolved over the years in that area dates back to the 1960s is something truly to behold and is unique in this country. Part of that architecture is the wonderful names and the magical names that are attached with the many hotels in that area. Now we are seeing that the great renaissance is going on, and Miami Beach is turning back to its past and bringing out its future, which has become a tremendous tourist attraction.

The gentleman from Florida (Ms. ROS-LEHTINEN) represents the beautiful part of South Beach, which has become so famous, I wish my district went down quite that far, but I stop right at Lincoln Road.

I was born and raised right there on Miami Beach. I can remember as a child the wonderful buildings that were down there. The lights that one would go see. When someone would come to town, one would drive them down into that area and show off Miami Beach.

All of this is back. The magic of that great city is back. Nancy Liebman, who is the gentleman from Florida (Ms. ROS-LEHTINEN) mentioned in her statement, has been working in bringing this matter back to our attention. She personally showed me and my wife Emily around Miami Beach. We were looking for the old theaters where we used to go on dates when we were both in high school together. It has really been quite good to see a city come back and bring back such a wonderful part of its past.

Due to an unexpected circumstance, unintended circumstance in the 1998 law, many of these hotels were robbed of their identity and were forced and were being made to change their name.

This reverses an error that was made, and I want to compliment all of the members of the Committee on the Judiciary, and particularly the chairman and the ranking member, for bringing this back to our attention so we can correct this situation.

Mr. COBLE. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Utah (Mr. CANNON), a member of the Committee on the Judiciary.

Mr. CANNON. Mr. Speaker, I rise today in support of H.R. 3202, the Trademark Counterfeiting Prevention Act. I commend the gentleman from North Carolina (Chairman COBLE) and the gentleman from California (Mr. ROGAN) for their work on this legislation, and also the gentleman from California (Mr. BERMAN).

The explosive trends of E-commerce, which some experts predict will reach $1.3 trillion in total sales by the year 2003, combined with the exponential growth of the Internet, has led to a problem: The increasing epidemic known as cybersquatting.

Recently, within my State of Utah, a local paper reported that the Salt Lake City Olympic Organizing Committee has had to file a cybersquatting lawsuit against a shadowy group of defendants who are trying to cash in on their hard work. This bill is part of an overall effort to preserve legally protected names and trademarks. These are valuable corporate assets. This is how people learn to identify and contact these organizations.


These names infringe on the trademark rights of the Salt Lake Olympic Organizing Committee's authorized website: www.salt2002.org and 12 other protected phrases.

This bill is part of an overall effort to preserve legally protected names and trademarks. These are valuable corporate assets. This is how people learn to identify and contact these organizations.

The SLOC and other companies and organizations like this spend money, time, and effort in advertising these phrases. Unscrupulous cybersquatters are trying to cash in on their hard work.

In the Salt Lake example, the Olympic Committee received a phone call from a person, known only as "John L." who offered to sell three sites for $25,000.

Investigators went to the address listed on the company's registration and found an empty office with no signs on the door. The registered telephone number did not work. The company was suspended for failure to pay taxes.

Both other companies within my district, Novell, shared with me a current problem. Apparently someone from Novell has registered the names of each Novell's product lines and names, but because the person is located outside the United States, there is currently no way for the company to gain judicial relief. This bill resolves that problem by allowing in rem jurisdiction.

The Rogan bill will prohibit registration, trafficking in, or the use of a domain name that is identical to, confusingly similar, or dilutive of a trademark that is distinctive at the time the domain name was acquired.

Mr. Speaker, this bill will allow the trademark owners to seek the forfeiture, seizure, or transfer of an infringing domain name if the trademark owner can prove it has attempted to register or acquire a domain name without a good faith belief that it would not impart confusion.

I urge my colleagues to support this legislation.

Mr. BERMAN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just rise in conclusion to again tell the gentleman from North Carolina (Chairman COBLE) and the gentleman from Utah (Mr. CANNON) how much I appreciate the speedy movement of this bill, the process which I think made it better. I want to particularly thank the staff that worked on this bill, Mitch Rozen and Vinze Carlock, and Bart Schwartz and Stacy Baird from my staff. I think we are all indebted to their hard work and their thoughts about this.

Mr. Speaker, I yield back the balance of my time.
CONGRESSIONAL RECORD—HOUSE

October 20, 1999

THE SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The Clerk read the Senate bill, as follows:

S 1135

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ...
October 26, 1999

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